

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

3 In Re: .
4 LAVIE CARE CENTERS, LLC, LAVIE . Docket No. 24-55507-pmb
5 CARE CENTERS, LLP, et al., .
6 Debtors. . Atlanta, GA
7 February 4, 2025
8 9:49 AM

9
10 TRANSCRIPT OF HEARING
11 BEFORE THE HONORABLE PAUL M. BAISIER
12 UNITED STATES BANKRUPTCY COURT
13
14
15
16
17
18
19
20

21 Transcription Services: eScribers, LLC
22 7227 N. 16th Street
23 Suite #207
Phoenix, AZ 85020
(800) 257-0885

24 PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

25 TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE

1 Debtors' Motion for Entry of Order (A) Authorizing Debtors'
2 Entry into, and Performance under, ERC Settlement with
3 Internal Revenue Service, (B) Approving the ERC Settlement,
4 and (C) Granting Related Relief

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Michael Drake



1 APPEARANCES:

2 For the Debtors, LaVie Care DANIEL M. SIMON, ESQ.
Centers, LLC, et al.: MCDERMOTT WILL & EMERY LLP
3 1180 Peachtree Street,
Northeast
4 Suite 3350
Atlanta, GA 30309

5
6 EMILY C. KEIL. ESQ.
MCDERMOTT WILL & EMERY LLP
444 West Lake Street
7 Chicago, IL 60606

8 For Official Committee of FRANCIS J. LAWALL, ESQ.
Unsecured Creditors: TROUTMAN PEPPER LOCKE LLP
9 3000 Two Logan Square
Eighteenth and Arch
10 Streets
Philadelphia, PA 19103

11
12 MATTHEW R. BROOKS, ESQ.
TROUTMAN PEPPER LOCKE LLP
600 Peachtree Street,
13 Northeast
Suite 3000
14 Atlanta, GA 30308

15 For United States of America: JEREMY RILL, ESQ.
VIVIEON K. JONES, ESQ.
16 HANA BILICKI, ESQ.
(TELEPHONICALLY)
17 CHASE BURRELL, ESQ.
(TELEPHONICALLY)
18 UNITED STATES DEPARTMENT
OF JUSTICE
19 441 G Street, Northwest
Suite 6150
20 Washington, DC 20530

21 For Omega parties: MATTHEW W. LEVIN, ESQ.
SCROGGINS, WILLIAMSON &
22 RAY P.C.
4401 Northside Parkway
23 Suite 230
Atlanta, GA 30327

24

25



1 For Omega parties: LEIGHTON AIKEN, ESQ.
2 FERGUSON BRASWELL FRASER
3 KUBASTA PC
2500 Dallas Parkway
Plano, TX 75093
4
5 ROBERT J. LEMONS, ESQ.
(TELEPHONICALLY)
6 GOODWIN PROCTOR LLC
620 Eighth Avenue
New York, NY 10018
7 For TIX 33433 LLC: JAMES MUENKER, ESQ.
DLA PIPER LP (US)
8 1900 North Pearl Street
Suite 2200
9 Dallas, TX 75201
10 For MidCap Financial Trust and BRIAN E. BATES, ESQ.
MidCap Funding IV Trust: PARKER HUDSON RAINER &
11 DOBBS LLP
303 Peachtree Street,
12 Northeast
Suite 3600
13 Atlanta, GA 30308
14 DYLAN J. MARKER, ESQ.
(TELEPHONICALLY)
15 PROSKAUER ROSE LLP
Eight Times Square
16 New York, NY 10036
17 Office of the United States JOHN S. ADAMS, ESQ.
Trustee: (TELEPHONICALLY)
18 U.S. DEPARTMENT OF JUSTICE
75 Ted Turner Drive,
19 Southwest
Atlanta, GA 30303
20
21 For Welltower NNN Group, LLC: MICHAEL G. FARAG, ESQ.
(TELEPHONICALLY)
22 GIBSON, DUNN & CRUTCHER
LLP
333 South Grand Avenue
23 Los Angeles, CA 90071
24 Also Present: Benjamin Jones
Debtors' CFO
25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

					VOIR
WITNESSES:					DIRE
FOR THE DEBTOR:					
Benjamin Jones					
	DIRECT	CROSS	REDIRECT	RECROSS	
	7	23,36	37	42	
EXHIBITS:					
No.	Description		Marked	Admitted	
DEBTOR'S:					
1	Motion and attached chart				46



Colloquy

1 THE CLERK: The court will come to order.

2 Good morning, Your Honor. Today is February 4th,
3 2025. The time is now 9:49 a.m. We are here for the
4 specially set hybrid hearing and evidentiary hearing for Case
5 Number 24-55507. LaVie Care Centers, LLC, et al.

6 There are three matters on the calendar. The
7 following matter has been rescheduled: the Garrett Motion at
8 docket number 425. Movant's counsel filed a notice for
9 scheduling hearing at docket number 835 rescheduling this
10 matter to April 30th, 2025 at 9:30 a.m.

11 The following hearing on this matter has been
12 canceled: the debtors' claim objection at docket number 751.
13 The evidentiary hearing was canceled per order entered on
14 January 30th, 2025 at docket number 831.

15 And pursuant to the agenda, the following matters
16 contested and proceed this morning. It is the debtors' 2019
17 motion at docket number 825.

18 Debtors' counsel, is this your understanding?

19 MR. SIMON: It is. Good morning, Your Honor. Dan
20 Simon, McDermott Will & Emery, on behalf of the debtors.

21 THE COURT: Good morning.

22 MR. SIMON: With Your Honor's permission, we'll
23 proceed right into the debtors' 9019 motion. And we will
24 start with evidence. And we have the debtors' witness, Mr.
25 Ben Jones, who we would ask to take the stand.



Benjamin Jones - Direct

1 THE COURT: All right. Any objection to that, Mr.
2 Lawall?

3 MR. LAWALL: No, Your Honor.

4 THE COURT: All right. Let's get started.

5 THE CLERK: Can you please raise your right hand? If
6 you'll state your name for the record, spelling your last
7 name.

8 THE WITNESS: Marion Benjamin Jones, J-O-N-E-S.
9 (Witness sworn)

10 THE CLERK: Thank you. You may be seated.

11 DIRECT EXAMINATION

12 BY MR. SIMON:

13 Q. Good morning, Mr. Jones.

14 A. Good morning.

15 Q. Can you please state your name for the record again?

16 A. Marion Benjamin Jones.

17 Q. And Mr. Jones, who are you employed with?

18 A. I am employed by Ancora Consulting.

19 Q. And what is your role in these Chapter 11 cases?

20 A. I serve as the debtors' chief restructuring officer.

21 Q. How long have you served in that role?

22 A. Since May of 2024.

23 Q. And can you highlight for the Court what your role and
24 responsibility would be as the debtors' chief restructuring
25 officer?



Benjamin Jones - Direct

1 A. Sure. As CRO, involved in, you know, almost all aspects
2 of the debtors' restructuring, that includes DIP financing,
3 managing cash flow and liquidity, discussions and negotiations
4 with creditors, development of the restructuring strategy,
5 participation in the mediations and other negotiations,
6 assistance with the drafting of the plan of reorganization and
7 disclosure statement, and most recently participation in the
8 dispute regarding the IRS proof of claim.

9 Q. And have you testified live before this Court before?

10 A. I have not.

11 Q. But have you submitted declarations in support of certain
12 relief before this Court?

13 A. I have.

14 Q. And with respect to the IRS dispute that's the subject of
15 the debtors' settlement motion, are you familiar with that
16 underlying dispute?

17 A. I am.

18 Q. And can you briefly describe that dispute for the Court?

19 A. Sure. The debtors submitted and received employee
20 retention credits. The IRS contends that those credits should
21 not have been received and those submissions were not valid.

22 Q. And were there -- are you aware of settlement negotiations
23 that began with the IRS in the early to mid-January time
24 frame?

25 A. I am.



Benjamin Jones - Direct

1 Q. And can you briefly describe those?

2 A. Sure. The -- the IRS submitted a proof of claim around
3 the end of November. The debtors then proceeded with respect
4 to discovery discussions, produced data with respect to those
5 discovery requests in late December to the first week of
6 January. And around the same time, the debtors also began to
7 have preliminary discussions with the IRS with respect to a --
8 a settlement.

9 Q. And can you highlight kind of the substance of some of
10 those discussions in that time frame?

11 MR. LAWALL: Objection, Your Honor; foundation as to
12 whether Mr. Jones was involved directly in those discussions
13 or whether it's hearsay.

14 THE COURT: Sustained.

15 MR. SIMON: Your Honor -- I'm sorry.

16 Q. Mr. Jones, were you involved in certain of those
17 discussions?

18 A. Some of the discussions, yes.

19 Q. And so can you briefly describe those discussions?

20 MR. LAWALL: Objection, Your Honor. To the extent
21 that he was directly involved, yes, but not to the extent it
22 was relayed to him by third parties.

23 THE COURT: Again, sustained.

24 Q. Mr. Jones, to the extent you were involved, can you
25 briefly describe any of those discussions?



Benjamin Jones - Direct

1 A. The initial discussions centered around a proposal whereby
2 there would be a walkaway. The debtors and reorganized
3 debtors would walk away from their claim for the additional
4 3.7 million dollars of ERC funds that had not been received.
5 The IRS would walk away from its claim or its position with
6 respect to the funds that had been received.

7 MR. RILL: Objection, Your Honor. United States
8 would object under Federal Rule of Evidence 408. This is all
9 settlement negotiation. I'm not really sure how it's
10 relevant.

11 MR. SIMON: May I respond, Your Honor?

12 THE COURT: You may.

13 MR. SIMON: We're seeking to introduce this testimony
14 to show the extensive arm's-length negotiations with the IRS.
15 We're not seeking to put it in -- 408 protects settlement
16 communications to the extent they're being put in for guilt or
17 liability or damages. We would seek that these are settlement
18 discussions with the IRS for the purpose of showing part of
19 the Justice Oaks factors under the Eleventh Circuit, the
20 extensive nature of them.

21 THE COURT: Mr. Lawall, you want to add to this?

22 MR. LAWALL: Your Honor, thank you. Before we go to
23 that, could there be a foundation laid as to whether Mr. Jones
24 is directly involved in these negotiations? I don't believe
25 that's been established from the foundation standpoint. And



Benjamin Jones - Direct

1 then what was his participation in those negotiations?

2 THE COURT: Okay. Well, why don't we do that first?

3 Let's ask him some questions about exactly what he was

4 involved in or not.

5 MR. SIMON: Mr. Jones --

6 I guess I would -- before we get there, Your Honor,

7 we can lay a foundation. But to the extent Mr. Jones is a

8 corporate representative of the debtors, he would be able to

9 testify as to settlement negotiations that occurred amongst

10 the debtors even if it was through counsel.

11 MR. LAWALL: Objection, Your Honor. I'm not sure

12 what amongst the debtors mean. Does he mean internal

13 communications on the debtors' side, or does that mean

14 negotiations with the IRS?

15 THE COURT: You did say amongst the debtors. And I

16 kind of thought you meant between the debtors and the IRS.

17 But is that what you meant?

18 MR. SIMON: That's what I meant, Your Honor.

19 THE COURT: Okay.

20 MR. LAWALL: Okay. Then, Your Honor, it would be

21 the same objection to the extent that he is going to testify

22 with respect to communications he was not directly involved in

23 and he is going to, again, testify to the truth of the matters

24 asserted.

25 MR. SIMON: Well, I disagree that he's testifying to



Benjamin Jones - Direct

1 the truth of the matter asserted, Your Honor. He's testifying
2 as to kind of the fact that there are negotiations occurring.
3 Whether or not that was the negotiation, I'm not sure we're
4 getting to the truth of the matter asserted.

5 MR. LAWALL: I apologize for belaboring this, Your
6 Honor. But the one question that needs to be directly
7 answered is was Mr. Jones directly involved with the IRS in
8 those negotiations, or did somebody else undertake the
9 negotiations? Maybe having that foundation will help us kind
10 of sort through this.

11 THE COURT: I don't know. I mean, as the corporate
12 representative. I mean, he'd have to know what was going on
13 and what the debtors' positions were. And I think that's all
14 Mr. Simon is trying to establish is that there were
15 negotiations and they went from here to there. And they
16 started in one place and went to another place over the course
17 of time, which he would know as the corporate representative,
18 wouldn't he?

19 MR. LAWALL: Your Honor, I do -- I think to the
20 extent that he's testifying as to the debtors' position then
21 as corporate representative, I think he can so testify. It's
22 with respect to what the IRS said to him that may go too far.
23 So maybe we break it down into pieces.

24 THE COURT: All right. I think I'm going to overrule
25 both objections and just let Mr. Simon proceed.



Benjamin Jones - Direct

1 BY MR. SIMON:

2 Q. I think, Mr. Jones, you were testifying -- just kind of
3 rekindle where we were, testifying as to in the early to mid-
4 January timeframe the discussions that were occurring between
5 the debtors and the IRS.

6 A. That's correct. And I think my testimony is that there
7 was a preliminary discussion around a proposal whereby, you
8 know, each party would in effect walk away from their pending
9 claims in order to resolve the matter.

10 Q. And was there a settlement reached on those terms?

11 A. No, there was not.

12 Q. And what occurred subsequent to that with respect to
13 settlement discussions?

14 A. Well, discussions regarding the -- the walkaway took some
15 time. The IRS was insisting on certain language whereby the
16 debtors would admit that the claims were not valid. And
17 therefore, the discussions took some time.

18 The debtors then had a discovery conference on January the
19 17th. And during that discovery conference, it was agreed
20 that there would be a settlement conference. And that
21 settlement conference occurred on January the 22nd.

22 Q. And were you on that settlement conference?

23 A. I was.

24 Q. And what took place at that settlement conference?

25 A. On the settlement conference, representatives for the IRS



Benjamin Jones - Direct

1 indicated that the prior proposal that had been under
2 discussions was no longer workable and they were no longer
3 willing to proceed on those terms. They indicated that, you
4 know, the IRS would need --

5 MR. LAWALL: Objection; hearsay.

6 THE COURT: I think he's testifying as to what the
7 IRS said, not whether what they said was true. In other
8 words, what's no longer acceptable to us may or may not have
9 been true, but it may be what they said. And he was there.
10 All right.

11 MR. LAWALL: Well, Your Honor, it still seems that
12 they are asserting for the truth of that particular statement
13 that the IRS -- and I apologize -- for exactly what the
14 statement was. But he is saying this is the IRS's position.
15 So respectfully, I think he is asserting for that being the
16 truth of the statement.

17 THE COURT: And I'm --

18 MR. RILL: Judge, United States would renew its
19 objection. These are all confidential settlement negotiations
20 that don't think are directly relevant to the claim that is
21 before the Court at all.

22 THE COURT: Well, we're not litigating the claim.
23 We're litigating about whether the settlement that you've
24 agreed to is appropriate. And some context about the
25 negotiations would certainly be helpful in that regard,



Benjamin Jones - Direct

1 wouldn't it?

2 MR. RILL: I don't think we need to dive into the
3 specifics of what the United States is offering at any given
4 time. If he wants to talk about the arm's-length
5 negotiations, which is what I understood this to be relevant
6 for, he can talk about the calls we've had, the negotiations
7 that took place, but I'm not sure the specific substance of
8 what was offered when is relevant.

9 THE COURT: Okay. Well, that sounds more like a
10 relevant objection than a --

11 MR. RILL: Both, Your Honor.

12 THE COURT: And as you know, this objection typically
13 comes up in the context of if we had to go forward on the
14 objection to claim, then they say, well, in the settlement
15 negotiations, they said X. But this isn't that. This is sort
16 of the opposite of that.

17 MR. RILL: Understood.

18 THE COURT: All right. I'm going to provide Mr.
19 Simon -- continue to provide Mr. Simon some latitude in that
20 regard.

21 MR. RILL: Thank you, Your Honor.

22 MR. SIMON: Thank you, Your Honor.

23 THE COURT: To the extent you can stay away from
24 things that you might appreciate the IRS considers
25 sensitive --



Benjamin Jones - Direct

1 MR. SIMON: We do, Your Honor.

2 BY MR. SIMON:

3 Q. Without really delving into the specifics, can you
4 describe kind of the negotiations as you understand them from
5 the settlement conference on January 22nd until the filing of
6 the debtors' motion?

7 A. Sure. During the conference on the 22nd, conversation
8 around the prior proposal stopped. Conversation around a
9 different construct began, a construct whereby the IRS was
10 seeking actual value for its claims. There was a discussion
11 of what impact that would have on the -- the plan, because,
12 again, the IRS was seeking a substantial amount of
13 consideration for its claim. And so there was discussion back
14 and forth in terms of impact on plan and whether or not that
15 was even possible. At the conclusion of the call, the parties
16 resumed discussions with respect to discovery and depositions
17 as it was not clear that there was a path to the settlement.

18 Following that conference on the 22nd, the debtors put
19 together a letter and proposal which was sent to the IRS
20 outlining a different structure under which a settlement might
21 be achieved. Subsequent to the delivery of the letter, there
22 were discussions between debtors' counsel and counsel to the
23 IRS. And that culminated in the receipt of a revised proposal
24 from the IRS on January the 27th.

25 Q. And do you believe, based upon all that you just



Benjamin Jones - Direct

1 described, that the negotiations between the debtors and the
2 IRS were arm's length?

3 A. I do.

4 Q. And do you believe they were extensive?

5 A. They were.

6 Q. And are you familiar with the terms of the proposed
7 settlement?

8 A. I am.

9 Q. And can you briefly describe for the Court what the terms
10 of the proposed settlement are?

11 A. Sure. The -- the key terms involve the IRS withdrawing
12 its proof of claim, the debtors withdrawing its objection,
13 the IRS receiving general unsecured claims that are split into
14 two groups. The first group, twenty million dollars, that
15 claim would be spread across class 6A and 6B. The remainder
16 of the IRS claim, approximately nine million dollars, would
17 also be spread across 6A and 6B but would be subordinated to
18 recoveries to other unsecured creditors such that the IRS
19 would only receive recovery once those creditors were paid in
20 full. The terms of the settlement also would require the
21 debtors and reorganized debtors to withdraw its claim for the
22 remaining 3.7 million dollars of ERC credits that had not been
23 received.

24 Q. On that last point, the 3.7 million dollars of ERC credits
25 not yet received, for whose benefit would that have gone to if



Benjamin Jones - Direct

1 the debtors were successful on their claim dispute with the
2 IRS.

3 A. The reorganized -- reorganized debtors.

4 Q. Is it fair to assume that that is ultimately the plan
5 sponsor as well?

6 A. That's correct.

7 Q. And you mentioned a split between 6A and 6B. How was that
8 split determined?

9 A. The split was determined by looking at which debtor
10 entities received the -- the ERC credits and splitting them
11 into the OpCo and DivestCo buckets that were used for purposes
12 of the plan and purposes of separation of the claims and the
13 plan and disclosure statement.

14 Q. Is the IRS receiving an allowed priority claim under the
15 settlement?

16 A. No.

17 Q. What are they receiving instead?

18 A. They are receiving a general unsecured claim, again, split
19 into two different pieces, one part that will receive
20 distribution and one part that will receive a subordinated
21 claim.

22 MR. SIMON: Your Honor, if I may, I'm going to
23 approach with the debtors' motion, the 9019 motion. I just
24 want to ask Mr. Jones a question on that.

25 THE COURT: You may. Oh, I've got one already. I



Benjamin Jones - Direct

1 came prepared.

2 Q. Mr. Jones, are you familiar with this document?

3 A. I am.

4 Q. Can you please turn to page 10 of this document?

5 MR. SIMON: Yeah. We'll mark this as Exhibit 1.

6 It's the motion. It's page 10, on the top and bottom.

7 Q. Do you see the chart at the top of the page?

8 A. I do.

9 Q. Who prepared this chart?

10 A. I prepared it along with my team in Ankura.

11 Q. Okay. What is shown in this chart?

12 A. This chart is a comparison of recoveries for classes 6A
13 and 6B. On the left-hand side, it shows those recoveries in
14 terms of dollars in percentages, excluding the additional IRS
15 claim. And on the right-hand side, it shows the recoveries
16 both dollars and percentages, including a twenty-million-
17 dollar IRS claim.

18 Q. Just so we're clear, is there a typo on this page?

19 A. There is.

20 Q. What is that typo?

21 A. On line 6, that should be 6B claim recovery, not 6A claim
22 recovery.

23 Q. And based upon this chart and the work around it, what is
24 your understanding of the impact on potential recovery
25 percentages for general unsecured creditors?



Benjamin Jones - Direct

1 A. In total, for classes 6A and 6B, the recovery percentage,
2 including the IRS claim, would reduce from 3.4 percent to 3.2
3 percent. For class 6A specifically, the recovery percentage
4 would decrease from 10.8 percent to ten percent. And for
5 class 6B, the recovery percentage would remain at 1.2 percent
6 in both scenarios.

7 Q. What is your understanding of the impact of the ERC
8 settlement on the gross amount funded to general unsecured
9 creditors?

10 A. The proposed settlement does not impact the amount funded
11 for general unsecured creditors' settlement. It remains the
12 same.

13 Q. So based upon this chart, what is your view of the
14 potential IRS recovery on account of their claim?

15 A. The IRS recovery is up to 795,000 dollars.

16 Q. What are these numbers based upon, as far as the kind of
17 claims pool?

18 A. The claims pool is based on estimates that the -- the
19 debtors worked with the advisors to the unsecured creditors'
20 committee to -- to compile for purposes of the -- the plan and
21 disclosure statement.

22 Q. And when were these compiled?

23 A. These would have been compiled back in, let's call it
24 September, October of this year -- or last year.

25 Q. And was there ever any -- well, let me back up. Do you



Benjamin Jones - Direct

1 know whether these claim amounts were the same claim amounts
2 that were provided in the debtors' plan and disclosure
3 statement?

4 A. These are the same amounts.

5 Q. And are you aware --

6 A. With the exception of the IRS claim.

7 Q. And are you aware of any caveats or disclaimers as far as
8 the claims pool that was included in the plan and disclosure
9 statement?

10 A. There are a few caveats. You know, we did note that these
11 claim estimates were preliminary and subject to change based
12 upon a full reconciliation of the claims. We also noted that
13 these recovery percentages did not yet take into account
14 potential cost of reconciling the claims and administering the
15 trust.

16 Q. And at the time that they were prepared, had the
17 government claims bar date even passed?

18 A. No.

19 Q. Based upon your view of the negotiations that you
20 testified to and the impact, potential to creditors, do you
21 believe that this settlement is reasonable?

22 A. I do.

23 Q. Why?

24 A. For a number of reasons. One, this settlement avoids
25 litigation. And the outcome of that litigation was far from



Benjamin Jones - Direct

1 certain. While the debtors had confidence in their position,
2 the IRS also had confidence in its position. And, you know,
3 there's significant risk with respect to the outcome of
4 that -- that litigation.

5 Second, when you look at the potential outcomes from the
6 litigation, were the IRS to win, then again, I don't think the
7 plan would be confirmable. Were the IRS to lose, they're
8 likely to appeal, which would prolong the process, increase
9 expenses to the estate. And again, the outcome of that appeal
10 would remain uncertain.

11 This settlement avoids the expense. It avoids the
12 uncertainty. And I think, as was outlined in the plan and
13 disclosure statement, you know, the best recovery and the best
14 scenario for the creditors in this case is confirmation of the
15 plan. And while this does increase the amount of unsecured
16 claims, it still does not change my conclusion that this is in
17 the best interest of creditors and this is the best outcome
18 for -- for stakeholders.

19 Q. When you say this settlement is in the best interest of
20 creditors, do you believe that it's in the best interest of
21 general unsecured creditors?

22 A. I do, because if a plan is not consummated here, unsecured
23 creditors will not receive any recoveries.

24 MR. SIMON: Those are all my questions at this time.
25 We can pass the witness.



Benjamin Jones - Cross

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. LAWALL:

4 Q. Good morning, Mr. Jones.

5 A. Good morning.

6 Q. So just to recap, the plan allocated 12.75 million dollars
7 to the unsecured creditors, right?

8 A. Correct.

9 Q. That's the contribution? And even by your own testimony,
10 if you allow the IRS claim as a GUC claim, that will reduce
11 the overall amount, not what's going to be paid, but what will
12 be available to other unsecured creditors by approximately
13 800,000 dollars, right?

14 A. I want to say this to make sure I understand that.

15 Q. Sure.

16 A. To the extent the IRS claim is included in the general
17 unsecured claim pool --

18 Q. Right.

19 A. -- it will receive a distribution. And that will reduce
20 distributions that would otherwise be available to -- to the
21 other creditors.

22 Q. Right. And using your math for purposes of this
23 discussion, you're familiar with the 6A treatment under the
24 plan?

25 A. I am.



Benjamin Jones - Cross

1 Q. Okay. Isn't it fair, sir, based upon your math that the
2 6A distribution will be reduced by seven and a half percent if
3 it's diluted by the addition of this IRS claim?

4 A. I believe the seven and a half percent was in your
5 objection. I didn't check the math but --

6 Q. Would that sound about right though? I mean, if you want
7 to -- you're a math guy. If you want to --

8 A. Again --

9 Q. Yeah.

10 A. -- probably sounds about right.

11 Q. Okay. So just again, this plan provides -- you're
12 familiar with the plan, right? You testified that you were
13 heavily involved in the negotiation of the plan, the
14 disclosure statement, and what have you, correct?

15 A. I am familiar with the plan.

16 Q. And so you're familiar with the terms and conditions of
17 the plan?

18 A. Generally, yes.

19 Q. Okay. And you're familiar with the provisions that say
20 priority claims will not be paid out of the unsecured, the GUC
21 contribution as it's defined in the plan?

22 A. I'm familiar that there's language in the plan with
23 respect to that.

24 Q. Okay. Now, this settlement that you're negotiating, it
25 calls for the withdrawal of the proof of the objection that



Benjamin Jones - Cross

1 the debtor filed to the IRS's proof of claim, right?

2 A. It does.

3 Q. And the IRS proof of claim nowhere asserts that the
4 twenty-nine-plus million dollars is anything other than a
5 priority claim, correct?

6 A. I believe that's correct, but I'd have to look back at the
7 claim.

8 Q. And in connection with the debtors' objection, are you
9 familiar with that, the objection that the debtor filed to the
10 IRS proof of claim?

11 A. I am.

12 Q. And isn't it true, sir, that nowhere in that objection did
13 the debtor take the position that was, in fact, an unsecured
14 claim?

15 A. Again, I don't recall everything in the -- in the
16 objection.

17 Q. Would you like me to hand the copy? Are you aware at any
18 time of the debtor taking the position that the priority claim
19 asserted by the IRS was an unsecured claim?

20 MR. SIMON: Objection to the extent it's calling for
21 a legal conclusion.

22 MR. LAWALL: No. It's not a legal conclusion. It's
23 a position that the debtor took.

24 THE COURT: Right. Overruled. He's a representative
25 of the debtor. He should know -- well, have some



Benjamin Jones - Cross

1 understanding of what positions it has or hasn't taken.

2 A. The debtors objected to the IRS's claim because, again,
3 the debtors did not believe the IRS claim was valid.

4 Q. Right. And so it didn't take the position that it was an
5 unsecured claim?

6 A. I don't believe so.

7 Q. Okay. Now, are you aware of the IRS ever taking the
8 position that the twenty-nine-million-dollar priority claim
9 was an unsecured claim?

10 A. Again, they filed a proof of claim, noting that it was a
11 priority claim. I'm not aware of any other claims they filed.

12 Q. Are you familiar within the objection it was -- I'm sorry,
13 within the settlement motion that debtors' counsel had handed
14 to you that it said that, as part of this settlement, it would
15 be treated as an erroneous tax refund; is that correct?

16 A. That language is in the settlement.

17 Q. Right. And are you aware and do you know whether an
18 erroneous tax refund therefore becomes a claim for a tax?

19 MR. SIMON: Objection. Again, he's not a lawyer.
20 Calls for a legal conclusion.

21 THE COURT: Sustained.

22 Q. Okay. Now, as you indicated, you were heavily involved in
23 the plan and the disclosure statement, right?

24 A. That's correct.

25 Q. And nowhere in that plan or disclosure statement does it



Benjamin Jones - Cross

1 highlight the possibility of a twenty-plus-million-dollar
2 claim diluting the GUC pool; is that correct?

3 A. At the time the plan and disclosure statement was filed,
4 it did not include any information with respect to this claim
5 being a potential unsecured claim. I believe the IRS filed a
6 claim about two weeks after confirmation of the plan.

7 Q. And do you know whether the IRS agrees with you that this
8 is not a priority claim?

9 A. I don't know.

10 Q. So it's possible that the IRS's position that, in fact,
11 this is a priority claim, it's just being paid similar to the
12 way an unsecured creditor claim would be paid, right?

13 A. I don't know that to be the case. The IRS agreed to
14 proceed with a settlement that treated their claim as an
15 unsecured claim.

16 Q. Right. So the plan sponsor is not putting any new cash
17 into this settlement, is it?

18 A. Into --

19 Q. This particular proposed settlement?

20 A. The plan sponsor is agreeing not to pursue the 3.7 million
21 of additional ERC credits, but they're not putting any
22 additional dollars into the settlement.

23 Q. So the only one who's putting dollars in or being directly
24 impacted are the GUC creditors, correct?

25 A. I don't believe that's correct.



Benjamin Jones - Cross

1 Q. Okay. But they are being diluted as a result of this
2 settlement?

3 A. There are additional claims that are being included in the
4 unsecured pool.

5 Q. Okay. I'll take that as a yes.

6 A. I just -- I don't know the ultimate math. So I --

7 Q. So in terms of these negotiations, were you directly
8 involved with the IRS?

9 A. I participated in some conversations involving the IRS.
10 Yes.

11 Q. And who else was involved in those negotiations?

12 A. Who else from the debtor or --

13 Q. From the debtor or anybody -- other than the IRS and the
14 debtor, was anyone else involved in these negotiations?

15 A. I was on calls that also involved or included
16 representatives of the plan sponsor.

17 Q. Okay. And are you familiar with the plan provision that
18 says that priority claims, priority tax claims, can be paid
19 over a five-year period?

20 A. There's a provision that says it can be paid over time. I
21 don't remember the specific amount of time.

22 Q. And do you know whether that particular treatment of the
23 IRS claim was proffered during the course of the negotiations?

24 A. Do you mean payment over time?

25 Q. Correct.



Benjamin Jones - Cross

1 A. I don't recall conversations regarding paying the claim
2 over time.

3 Q. And through these negotiations -- let me take a step back.
4 Are you aware that the committee filed a joinder in the
5 debtors' objection to the IRS claim?

6 A. I believe that's correct.

7 Q. And isn't it true that the committee was not made a part
8 of these negotiations with the IRS?

9 A. Well, when you say not made a part, what do you mean?

10 Q. Well, you were involved in, as you testified, as to the
11 negotiation of the IRS claim, correct?

12 A. That's correct. I participated in discussions.

13 Q. And during that, was the committee involved -- well, you
14 were involved in connection with those negotiations?

15 A. Committee representatives were not on the calls that I was
16 on.

17 Q. And in fact, before this deal was struck, the committee
18 wasn't even consulted, was it?

19 A. I believe the committee was. Once the letter was received
20 from the IRS, we had a call with representatives of the
21 committee that evening.

22 Q. So is it your position that it wasn't -- and let me take a
23 step back just to set the time frame. When did you receive
24 that letter?

25 A. We received that letter, I believe, the afternoon of



Benjamin Jones - Cross

1 January the 27th.

2 Q. Was that last Monday?

3 A. Sounds right.

4 Q. And before that time, the committee was not part of any of
5 those negotiations, correct?

6 A. The committee was not present on any of the calls I was.

7 Q. And that letter that you received on the 27th, is it any
8 different than the proposed settlement that's now before the
9 Court?

10 A. I believe it's substantially the same.

11 Q. Let me ask, is it the debtors' position that if it were to
12 reach a separate deal with the IRS, the 795,000 dollars that
13 you indicated were the impact on the general unsecured
14 creditors, that it could not find that cash some other place
15 in its budget?

16 A. I'm not sure I understand the question.

17 Q. Well, if the cost of this settlement is 795,000 dollars,
18 as you have indicated, are there other sources from the debtor
19 from which this might be paid?

20 MR. SIMON: Objection; relevance. He's asking about
21 different settlement constructs. And what's before the Court
22 is the settlement construct that's before the Court.

23 MR. LAWALL: This goes to a determination of whether
24 it's above the lowest point in the range of reasonableness.
25 And this goes directly to whether this is a plan modification,



Benjamin Jones - Cross

1 which we'll get to later on, Your Honor.

2 THE COURT: Okay.

3 MR. LAWALL: But this --

4 THE COURT: Overruled.

5 THE WITNESS: Okay. I'm sorry I asked the question
6 again.

7 Q. Sure. As you testified, the impact on the general
8 unsecured creditors is that it's approximately 795,000
9 dollars, correct?

10 A. Correct.

11 Q. Okay. Did the debtor look to see within its either
12 current budget or future budgets whether it could find that
13 795,000 dollars elsewhere as opposed to diluting the general
14 unsecured creditor class?

15 A. The debtors operate subject to a DIP budget. The DIP
16 budget did not include any -- any amounts for the payment of
17 payment of these claims. So the debtors, again, had no other
18 pool of -- of liquidity without going back and seeking
19 approval.

20 Q. Now, you're familiar with the most current budget that's
21 been approved by the DIP lender and the debtor, right, through
22 the end of March?

23 A. I am.

24 Q. And isn't it true, if I read this correctly, you've
25 estimated that the debtors' professional fees alone, just the



Benjamin Jones - Cross

1 debtors' professional fees, will be seventeen million dollars?

2 MR. SIMON: Objection; relevance.

3 MR. LAWALL: It's --

4 THE COURT: I'll allow it. Go ahead.

5 A. Again, the seventeen-million-dollar number does not ring a
6 bell to me. I'm not sure that's correct.

7 Q. Okay. So do you know what the expected professional fees
8 are for the debtor standing here as the debtors' financial
9 advisor and CRO?

10 A. Not off the top of my head I don't.

11 Q. Okay. Are you aware within the budget that you have
12 503(b)(9) claims? Are you familiar with 503(b)(9) claims?

13 A. I am.

14 Q. And are you aware that within the current budget, it's
15 budgeted at 1.4 million dollars?

16 A. That sounds right.

17 Q. And are you aware that the debtors' estimate of those
18 claims are actually closer to 600,000?

19 A. Again, the debtors have still been working through the --
20 the reconciliation.

21 Q. But is that the debtors' current estimate?

22 A. I would have to check that.

23 Q. So you don't know today. Are you familiar with the
24 600,000-dollar number?

25 A. Again, the debtors have received multiple estimates of the



Benjamin Jones - Cross

1 503(b)(9) claims. I am not going to sit here today and say
2 609 is the -- the final number.

3 Q. But the bottom line is, is it not, that if, in fact, that
4 number were overstated, there'd be an extra 800,000 dollars
5 just in that line item for purposes of this current budget?

6 A. If the number, in fact, turned out to be less, then --
7 then yes. That number would be understated.

8 Q. Sitting here today, do you have a projected effective date
9 for the plan?

10 A. We don't have a firm effective date.

11 Q. Well, what do you expect it to be?

12 A. Again, at this point, I would say it would be somewhere
13 between April and May, assuming resolution of this matter.

14 Q. When you say between April and May, are we talking about
15 the end of April or the beginning of April?

16 A. I think it's going -- the beginning of April, or the
17 beginning of May.

18 Q. And what issues other than this are outstanding with
19 respect to going effective?

20 A. In order to go effective, the plan sponsor has to file a
21 number of regulatory matters. And again, so that process, the
22 regulatory approval process, takes time. And that is one of
23 the gating issues.

24 Q. Okay. And so why haven't they been filed until now?

25 A. Well, again, I think the -- it's my understanding that the



Benjamin Jones - Cross

1 plan sponsor will need resolution of this matter and
2 confidence that the plan is moving towards effectiveness
3 before fully completing those filings.

4 Q. Okay. And there are no other issues that you're aware of
5 today?

6 A. I'm sorry. I --

7 Q. There are no other issues besides that?

8 A. Well, I think it's all the mechanics of -- again, of the
9 effectiveness of the plan. The regulatory is the -- the
10 major.

11 Q. And are you familiar with the post-effective date
12 operating budgets for the debtor or the reorganized debtor?

13 A. We filed projections as part of the -- of the plan and
14 disclosure statement that laid out the kind of expected
15 results of operations in the future.

16 Q. And how far do they go through?

17 A. They went out for a couple of years.

18 Q. Okay. And sitting here today, do you know whether if, in
19 fact, 795,000 dollars were to be paid to the IRS, say over a
20 period of four to five years, would that make the go-forward
21 operations untenable or not successful?

22 A. Based on the --

23 MR. SIMON: I'll just object that he's calling for
24 speculation. I'm not sure he's laid the proper foundation
25 either.



Benjamin Jones - Cross

1 MR. LAWALL: Well, again, I thought I had, but thank
2 you for pointing that out.

3 THE COURT: Do you want to ask him some more
4 questions? Go ahead.

5 MR. LAWALL: Sure.

6 Q. So you are familiar -- in fact, you guys prepared the
7 budgets for the post-effective date reorganized debtors,
8 correct?

9 A. We assisted in the preparation of the budgets, working
10 with the plan sponsor, Synergy.

11 Q. So you're familiar with them?

12 A. I am.

13 Q. Okay. And again, I'll repeat my question. With respect
14 to if you were to pay 795,000 dollars over a five-year period,
15 assuming the IRS would agree to such, would that make the
16 success --

17 MR. LAWALL: I apologize, Your Honor. Let me try
18 this again.

19 Q. Would the reorganized debtors still be able to continue to
20 operate?

21 A. Based on the projections that are included in the plan and
22 disclosure statement, the payment of 795,000 dollars over five
23 years would not impair the debtors' ability to -- to operate,
24 again, based upon those projections.

25 Q. And are you familiar with the plan provisions that say



Benjamin Jones - Cross

1 that priority claims are not to be paid by the GUC -- from the
2 GUC contribution and/or from the plan sponsor? Are you
3 familiar with that provision?

4 A. Can you say it -- or the plan sponsor?

5 Q. Or the plan sponsor, right.

6 A. I am familiar with the -- the provision that says priority
7 claims are not to be paid from the GUC contribution.

8 Q. Okay.

9 A. I'd have to review the plan for the sponsor piece.

10 MR. LAWALL: That's fine. Your Honor, I can deal
11 with that later on in argument. Thank you. Thank you, Mr.
12 Jones.

13 THE WITNESS: Sure.

14 THE COURT: All right. Mr. Lawall didn't do this
15 either, but could you identify yourself for the record before
16 you ask him questions?

17 MR. RILL: Sure. Jeremy Rill on behalf of the United
18 States and the Internal Revenue Service.

19 THE COURT: Thank you.

20 CROSS-EXAMINATION

21 BY MR. RILL:

22 Q. Good morning, Mr. Jones.

23 A. Good morning.

24 Q. I believe you testified that on January 27th, the IRS sent
25 a proposal back. Is that your testimony?



Benjamin Jones - Cross

1 A. Yes. A letter was sent back to the debtors.

2 Q. Okay. Is that pages 26 and 27 of debtors' motion that
3 you're referring to?

4 A. Yes, it is.

5 Q. Okay. So I just want to clarify that this is a letter
6 acknowledging debtors' offer, right?

7 A. Sorry?

8 Q. Sorry. Sort of a confusing question there. But to be
9 clear here, this is an acknowledgment offer -- or sorry, an
10 acknowledgment letter acknowledging the debtors' offer, right?

11 A. Yeah. The letter -- the letter states that the debtor
12 sent a letter. There were subsequent conversations. And this
13 letter is acknowledging that -- you know, the results of those
14 conversations.

15 Q. Okay. And are you aware that this offer is not final
16 until it is accepted by a delegate of the attorney general?

17 A. I am.

18 Q. And are you aware of whether that has happened yet?

19 A. To my knowledge, it has not.

20 MR. RILL: Okay. Nothing further, Your Honor.

21 THE COURT: Anyone else before I ask Mr. Simon if he
22 has any redirect?

23 Okay. Mr. Simon, that appears to be where we are.

24 REDIRECT EXAMINATION

25 BY MR. SIMON:



Benjamin Jones - Redirect

1 Q. Mr. Jones, talking about the underlying IRS dispute, and
2 you testified based upon your knowledge of the budget, can you
3 briefly describe kind of the discovery and deposition stage in
4 the underlying dispute prior to settlement? What was
5 happening in the underlying dispute?

6 A. With respect to the underlying dispute, the IRS had taken
7 two depositions. The IRS had additional depositions
8 scheduled. That did not proceed because of the -- the
9 settlement offer. The debtors had produced documents on
10 December the 30th as well as January 6th in response to the --
11 the IRS request. So there had been a fairly significant
12 volume of information produced. There had been depositions
13 taken. And there were more depositions scheduled.

14 Q. Those two depositions that were not yet taken, what
15 parties were those of?

16 A. One was my own deposition on behalf of the debtors. The
17 second deposition was a representative of Synergy with a Y.

18 Q. And based upon your view of the budget as well as the
19 ongoing cost of that dispute, do you believe the cost exceeded
20 the budget?

21 A. When you say the budget, you mean the -- the DIP budget?

22 Q. The DIP budget, the professional fees in the DIP budget.

23 A. Yes. The cost that were being incurred were in excess of
24 the estimates in the DIP budget. It did not contemplate this
25 level of level of litigation.



Benjamin Jones - Redirect

1 Q. And who would bear that burden?

2 A. Well, the debtors have -- would bear that burden. And
3 ultimately, the reorganized debtors would bear that burden as
4 well because it would -- the debtors would use more of the DIP
5 funds and have less cash on hand as of the effective date.

6 Q. And if the matter was not settled and the issue were
7 litigated presumably today, would there have been additional
8 funds expended as well?

9 A. Yes.

10 Q. And would those funds have been beyond the DIP budget?

11 A. They would.

12 Q. Mr. Jones, did you attend the confirmation hearing?

13 A. I did.

14 Q. And in the lead-up to the confirmation hearing, are you
15 aware of language that was placed in the confirmation order
16 that was approved by the Court regarding the resolution of the
17 underlying IRS dispute?

18 A. I'm somewhat familiar with that language. I don't
19 remember it verbatim.

20 Q. And do you recall whether the resolution of that dispute
21 required the consent of any other parties?

22 A. Well, the resolution of the IRS matter had to be
23 acceptable to the plan sponsor.

24 Q. Why did it have to be acceptable to the plan sponsor?

25 A. Because it would directly impact the plan sponsor.



Benjamin Jones - Redirect

1 Q. And Mr. Lawall asked few questions as to whether the
2 committee was involved in any of those negotiations. Was the
3 committee a consent party under that language that you're
4 referring to in the confirmation order?

5 A. The committee was represented and, you know, did work with
6 the debtors on that final confirmation order and language.

7 Q. But was the committee identified as a party that had to
8 consent to a settlement with the IRS?

9 A. I don't believe so.

10 Q. You testified earlier that you are familiar with the
11 contents of the plan; is that correct?

12 A. That's correct.

13 Q. You testified earlier that you were involved in the
14 negotiation and the mediation process that led to the plan; is
15 that correct?

16 A. That's correct.

17 Q. Are you aware of any provision in the plan that provides
18 certain guaranteed recovery amounts to general unsecured
19 creditors?

20 A. The plan provided for a guaranteed amount in terms of the
21 pot for general unsecured creditors but did not guarantee a
22 specific recovery amount or percentage.

23 Q. Why do you believe that is?

24 A. No party was willing to -- to guarantee a recovery
25 percentage to the unsecured creditors.



Benjamin Jones - Redirect

1 Q. The claims amounts that were laid out in the debtors' plan
2 and ultimately in the chart that was before you today, do you
3 believe that in order to get to those amounts, there will need
4 to be additional reconciliation and potential claim objections
5 filed with the Court?

6 A. I believe that would be pretty -- pretty standard and
7 would occur in these cases.

8 Q. So is there any certainty or guarantee that those would
9 all be successful?

10 A. No, there's not.

11 Q. And so is there any certainty or guarantee that the claims
12 pool would be as described in the debtors' plan and disclosure
13 statement?

14 A. There's not.

15 Q. And do you believe that the plan and disclosure statement
16 adequately provided notice to creditors about that?

17 A. I do. I think there was language in the -- in the plan
18 that talked about the preliminary nature of the claim
19 estimates and the fact that more reconciliation work would be
20 required.

21 MR. SIMON: Can you give me just one moment, Your
22 Honor?

23 THE COURT: Sure.

24 MR. SIMON: I have no further questions.

25 THE COURT: All right. Mr. Lawall.



Benjamin Jones - Recross

1 MR. LAWALL: Yes. Thank you, Your Honor.

2 RECROSS-EXAMINATION

3 BY MR. LAWALL:

4 Q. Okay. So Mr. Jones, let me go back for a second.

5 Debtors' counsel had handed you a chart which I believe was

6 contained within the motion to approve the settlement. Do you

7 have it in front of you?

8 A. I do.

9 Q. And again, focusing you on page 10, if you would, please.

10 Do you have it there?

11 A. I do.

12 Q. Okay. Now, I'd like you to focus on line 6-4 if you

13 would, please. I'm sorry, line 4, 6B. Do you see that there?

14 A. I do.

15 Q. So in coming up with your no-harm to the 6Bs, you assume

16 that there's only three and a half million dollars going into

17 the 6Bs, don't you?

18 A. This scenario only focuses on the cash. That's correct.

19 Q. So that's a little bit misleading, isn't it? Because a

20 big component of what the 6Bs got were D&O claims with a

21 policy limit of twenty-five million dollars, correct?

22 A. That's correct.

23 Q. So if, in fact, there is a recovery on those D&O claims,

24 these percentages would be wrong, and therefore, the impact on

25 the 6Bs would be more substantial; is that correct?



Benjamin Jones - Recross

1 A. I don't know that that's correct.

2 Q. Well, let's go back for a second. If, in fact, the amount
3 that's available for distribution is not three and a half
4 million but in fact is twenty-five million, is it your
5 testimony that that would not change the recovery to the class
6 6Bs?

7 A. The class 6B creditors will still receive the same amount.

8 Q. I'm talking --

9 A. In terms of dollars.

10 Q. I apologize. I'm talking about as a percentage recovery,
11 here you have it listed at -- I believe it's 1.2 percent. My
12 point is that that one-two percent, 1.2 percent, would change
13 if, in fact, there was a recovery under the D&O claims,
14 correct?

15 A. If there was a recovery under the D&O claims, the
16 percentage for all creditors would increase.

17 Q. Well, no. When you say for all creditors --

18 A. All 6B creditors.

19 Q. All 6B. Right. Okay. We're on the same page. Thank
20 you. Now, debtors' counsel focused a little bit on the
21 confirmation order language that said that the plan sponsor
22 had to be a consenting party to a settlement with the IRS; is
23 that correct?

24 A. Correct.

25 Q. Anywhere in that confirmation order did it say that the



Benjamin Jones - Recross

1 committee did not have to be a consenting party?

2 A. You're asking a negative.

3 A. Correct. Correct. You had implied from that statement
4 that the committee did not have to be a consenting party. And
5 so my question to you is, are you aware of anywhere where it
6 says the committee did not have a consent right?

7 A. I think my testimony was that the settlement with the IRS
8 had to be acceptable to the plan sponsor. That specific
9 language was included in the --

10 Q. And I thought the debtors' counsel had asked a follow-up
11 question, is the committee a consenting party. And I thought
12 your testimony was no.

13 A. Well, again, the committee -- there was no specific
14 provision that the settlement had to be acceptable to the
15 committee --

16 Q. Or that it --

17 A. -- that I recall.

18 Q. But there's also no statement in there that said that it
19 did not have to be acceptable?

20 A. I think that's correct.

21 Q. And in fact, the committee, after the confirmation order,
22 joined the debtors' objection to the IRS claim which was also
23 filed after the confirmation order, right? You remember that
24 timing?

25 A. I do.



Colloquy

1 MR. LAWALL: Okay. Give me one second, Your Honor.

2 THE COURT: Okay.

3 MR. LAWALL: That's all I have. Thank you, Judge.

4 THE COURT: All right. Any re-redirect or --

5 MR. SIMON: Nothing further, Your Honor.

6 THE COURT: All right. You may step down.

7 Any other witnesses?

8 MR. SIMON: We do not, Your Honor. Thank you, Your
9 Honor.

10 MR. LAWALL: The committee doesn't have any further
11 testimony, Your Honor. It'll be argument from here.

12 THE COURT: Okay.

13 MR. SIMON: We would simply move the debtors' motion,
14 which includes the chart -- we would ask that that be admitted
15 into evidence if Your Honor needs them.

16 THE COURT: Yeah. I guess the chart in particular is
17 what you're interested in.

18 MR. LAWALL: And, Your Honor, we'll have certain
19 exhibits on argument that we'll ask you to take judicial
20 notice of because there's not any need for testimony.

21 THE COURT: All right. What about the -- let's deal
22 with one we have right now.

23 MR. LAWALL: Yeah. We have no objection to that.

24 THE COURT: Okay. That's admitted.

25 (Motion and attached chart was hereby received into



Colloquy

1 evidence as Debtor's Exhibit 1, as of this date.)

2 MR. SIMON: Yeah. No exhibit list was filed or
3 exchanged, so we may need to address that.

4 MR. LAWALL: Well, you see, under the local rules,
5 you don't require it if there's less than five. And so that's
6 what --

7 MR. SIMON: Does Your Honor wish to proceed to
8 argument?

9 THE COURT: Yes.

10 MR. SIMON: Again, for the record, Dan Simon,
11 McDermott Will & Emery, on behalf of the debtors.

12 Mr. Jones testified, and I think uncontroverted, that
13 this was a fair and negotiated settlement, a reasonable
14 settlement under the circumstances.

15 Your Honor, we could have been before you today on an
16 issue of first impression of tax law, one that I think all
17 parties agree had the potential to shape the trajectory of the
18 case and potentially have wider ramifications. The debtors,
19 the IRS --

20 THE COURT: Let me ask you something about that.

21 MR. SIMON: Yes.

22 THE COURT: Was any of that argument going to be
23 about how this claim isn't a priority claim?

24 MR. SIMON: Is any of my argument going to --

25 THE COURT: Would any of that argument have been? I



Colloquy

1 didn't see it anywhere in your objection to the claim that --
2 and I think you said, at least it's quoted somewhere, that
3 it's either a priority claim or it's no claim.

4 MR. SIMON: Yeah. The quote that Mr. Lawall included
5 in the objection was more along the lines -- and we made
6 similar arguments to the IRS, which is even if you win, you
7 lose, right? So even if you win and it's a priority claim,
8 you lose because there's no collection. That was taken a bit
9 out of context.

10 We had not yet finalized our kind of reply brief
11 around that. So we were looking into arguments as to why it
12 could be an unsecured claim, but we hadn't gotten to that
13 point to file it. That was scheduled to be filed on Friday.
14 And obviously we put our pens down on that.

15 THE COURT: Sure. But the settlement says it's a
16 refund claim, which makes it a priority claim, right?

17 MR. SIMON: The settlement says that -- what it
18 actually was is it was filed as a priority claim in part.
19 There is a portion of it that was secured --

20 THE COURT: Sure. It's, like, twenty-nine versus
21 thirty-one.

22 MR. SIMON: The debtors disputed the entirety of it.
23 The debtors disputed the claim. So it was really a disputed
24 priority claim. And the debtor settled the claim by allowing
25 it as a general unsecured claim.



Colloquy

1 What the plan says and what the language that Mr.
2 Lawall has pointed to and will point you to is that allowed
3 priority claims are to be paid by the reorganized debtors.
4 This is not an allowed priority claim. What it is is an
5 allowed general unsecured claim. And the reason why that
6 language --

7 THE COURT: Well, let me take you to the definition
8 of priority claim in the plan which doesn't say a general
9 unsecured claim where the creditor claims priority. It says a
10 general unsecured claim where the claimant is entitled to
11 priority.

12 So the IRS can't make their priority claim an
13 unsecured claim just by not claiming priority that it's
14 entitled to. At least that's how I read the definition.

15 MR. SIMON: And the reason why the language around
16 who's paying for priority claims as well as admin claims has a
17 very logical genesis, which is the committee wanted to make
18 sure that dollar-for-dollar claims wouldn't come off the top.
19 And that's why it was always put in there that allowed
20 priority claims which are paid dollar for dollar wouldn't come
21 off the top and dilute the claim. It was never
22 contemplated -- and as part of the discussions or the plan, it
23 was never contemplated that a debtor couldn't settle a
24 priority claim or an admin claim, which happens all the time,
25 or reclassify that as a general unsecured claim under the plan



Colloquy

1 and under the 9019.

2 And we've got case law, and we can walk through in a
3 moment, on very similar facts that allows that to kind of
4 shift if Your Honor believes that the settlement is in the
5 best interest. And it kind of comes back to the 9019 factors.
6 But that's why the -- that's why the language is in there
7 around payment of allowed priority claims. And this is -- the
8 settlement contemplates an allowed general unsecured claim.
9 It doesn't contemplate an allowed priority claim. It was a
10 disputed priority claim. And as part of that dispute, and as
11 part of that settlement, it was agreed that it would be an
12 allowed general unsecured claim.

13 THE COURT: And what about the language in the plan
14 that says -- it says priority claims will not be paid in any
15 respect from the GUC trust money.

16 MR. SIMON: Allowed priority claims, which would be a
17 dollar-for-dollar payment or paid over five years, but a
18 dollar-for-dollar payment of the --

19 THE COURT: Well, it doesn't say that though. I
20 mean, the whole plan is structured around -- unlike what you
21 might typically see where there's a pot of money and first it
22 pays the administrative claims and the priority claims and
23 then whatever is left goes to the unsecured creditors, this
24 plan says that the plan sponsor and the reorganized debtors,
25 they take care of all the administrative and priority claims,



Colloquy

1 and the unsecured creditors get this.

2 And so normally, as you know, in a normal case,
3 reclassifying claims from priority claims to unsecured claims
4 is a great benefit to everyone. In this case, that's not the
5 case.

6 MR. SIMON: Well, I would submit that in this case,
7 it is the case because the potential impact of litigating the
8 claim and not settling the claim would bring those --

9 THE COURT: So I think Mr. Lawall and your witness
10 made reasonably clear that the -- so you were talking about a
11 walkaway which frankly occurred to me when this dispute first.
12 And then the IRS said, no, we need more than that. And it
13 seems based on where they've landed, for the most part, what
14 they need is about 800,000 dollars more than that. And then
15 the question is, where does that come from?

16 And it appears that the -- and what I didn't get from
17 the witness was whose idea this was. But the question is,
18 where does the 800,000 dollars come from? It seems that
19 someone decided they should take it out of the money they were
20 already paying to the trust, which does not seem to me to be
21 consistent with the plan that was confirmed.

22 MR. SIMON: So what the IRS said, and Mr. Rill is
23 obviously in the courtroom, is that if there were to be a
24 settlement, they don't want to be treated any different than
25 unsecured creditors. And there was a negotiation that I think



Colloquy

1 you heard from Mr. Jones as to what that meant and their
2 ability to collect as an unsecured creditor. And that's
3 ultimately what the settlement provided is that they
4 recognized that there was an inability to collect. They
5 recognized and were on discussions with the plan sponsors
6 around what additional payments could be made. That 3.7
7 million dollars is real money to the plan sponsor and the
8 reorganized debtors that if we litigated the claim and Your
9 Honor ruled in our favor through res judicata or otherwise,
10 that amount would be owed.

11 And what they wanted in exchange was an unsecured
12 claim because they didn't want to be treated any worse. It
13 wasn't necessarily about 800,000 or otherwise. And obviously,
14 again, Mr. -- I don't want to speak for Mr. Rill or his
15 client. But I think the -- I think the point is that the
16 debtors believe that this -- that everyone is taking a hit
17 here, right? I mean, the reality is this all took us by
18 surprise.

19 THE COURT: This wasn't everyone's hit to take. In
20 the plan, priority claims were the sponsors and the
21 reorganized debtors' problem.

22 MR. SIMON: Allowed priority claims. This is not an
23 allowed priority claim. I come back to this is an allowed
24 general unsecured claim through a settlement, through a
25 settlement that meets the factors under 9019 for that



Colloquy

1 settlement. It wasn't allowed as a priority.

2 THE COURT: I understand. It's also -- I would argue
3 it's inconsistent with the settlement that's in the plan. The
4 plan refers to a settlement on numerous occasions, as does the
5 confirmation order.

6 MR. SIMON: And I would submit, Your Honor, that
7 there's no -- I think a couple of things. Number one, we
8 don't believe the plan actually requires that. We think the
9 plan provides for the ability to reclassify, assuming it is
10 approved by Your Honor.

11 I would also say, to the extent Your Honor disagrees
12 with that, we would reserve the right to modify the plan and
13 argue that, under Rule 3019 and 1127, that it's a de minimis
14 impact and not material and adverse. But we could get to that
15 if we need.

16 But we would submit that given the magnitude of this
17 issue in this case and the clear satisfaction of the 9019
18 standard, that it does make sense and that it is consistent or
19 not inconsistent with the plan because the agreement reached
20 does not make it an allowed priority claim. And the plan says
21 allowed priority claim.

22 THE COURT: No, I understand. But just saying hocus
23 pocus, it's an unsecured claim doesn't make it an unsecured
24 claim. I mean, it's not a secured claim. So I guess in some
25 respects, it's an unsecured claim.



Colloquy

1 MR. SIMON: It is an unsecured claim, right? All
2 priority claims are unsecured claims. The question is whether
3 it's entitled to priority under 507. I don't think we've had
4 that fight before, Your Honor. So we disputed the claim. We
5 may have disputed the priority. And because of the cost and
6 the risk associated with litigating, we agreed on an allowed
7 general unsecured claim. We haven't gotten to --

8 THE COURT: Right.

9 MR. SIMON: -- all of the steps of the litigation.
10 And that may very well include, even if they have a claim,
11 it's not entitled to priority.

12 THE COURT: Okay. We were four days away from the
13 hearing, and that would have been news to me if we got to the
14 hearing and that was your objection. But I had that question.
15 I wasn't sure whether it's -- because I'm no tax expert. I
16 was about to become one.

17 MR. SIMON: Yeah. Look, I don't think it's clear. I
18 think there's some case law around erroneous refunds. There's
19 some case law around payroll taxes. This is neither of those,
20 right? So we wouldn't have agreed. And Your Honor may not
21 have agreed that even if the IRS were successful, that it was
22 a priority claim, an erroneous refund, however you want to
23 categorize it, but we would have had that fight. And if Your
24 Honor disapproves of the settlement, maybe we do have that
25 fight.



Colloquy

1 But I would submit that from the perspective of the
2 estate and what you heard from Mr. Jones, from the perspective
3 of the unsecured creditors, they are far better off. And
4 that's not a risk that the debtors wanted to take. That's not
5 a risk that the debtors believed was appropriate to take. The
6 plan sponsor agreed. Obviously, the committee disagrees. But
7 at the same time, I think they're playing with fire a little
8 bit. And ultimately --

9 THE COURT: Oh, I think you all are playing with fire
10 all over 800,000 dollars, as far as I can tell. I find it
11 kind of disappointing that you can't figure out a way to work
12 this out or that somebody isn't just willing to -- given the
13 risk this posed to the plan and how much I think everyone
14 would like to have the plan go effective, that this issue is
15 standing in the way.

16 And I understand the committee's issue with -- as I
17 said, it kind of looks to me like you got the IRS to give you
18 a number, and then you decided that you didn't want to pay it,
19 but you'd get somebody else to pay it.

20 MR. SIMON: Yeah. The negotiation wasn't about a
21 number. I mean, we -- I guess we didn't get into it. It was
22 about -- well --

23 THE COURT: Well, as Mr. Lawall points out, with
24 respect to class 6B, it's not a fixed number. If they're
25 successful in the D&O litigation, the return could be a lot



Colloquy

1 better. And maybe that's why the IRS wants to be in the
2 class. But I don't know what Mr. Lawall's position would be
3 if you sort of made the GUC trust whole on the cash part, the
4 800,000 dollars we're talking about, but let the IRS
5 participate in the rest of it. It seems like right now he's
6 complaining about the 800,000 dollars.

7 MR. SIMON: Yeah. I think that's a high-class
8 problem, right, like a rising tide lifts all boats. And
9 obviously, what Mr. Jones testified to is the value to
10 unsecured creditors would be increased. And again, the IRS is
11 an unsecured creditor. Like it or not, the IRS is in the
12 class. Nothing in the plan in our view prevented that.
13 Nothing in the plan prevents a 9019 settlement that
14 reclassifies the claim as an allowed general unsecured claim.

15 And I think it is telling that taking a position of
16 playing with fire, right, taking a position that we should
17 just litigate the claim or someone else should pay, and yet
18 the committee doesn't have a witness to support it. The
19 committee doesn't have a witness to say that's a risk we're
20 willing to take, because in some respects, no one is willing
21 to pay 800,000. And everyone's pointing to the plan sponsor
22 when they're the ones giving 3.7 million dollars in this
23 settlement.

24 So again, everyone is harmed. Why should the
25 committee be the one to say their recovery is sacrosanct and



Colloquy

1 everyone else should --

2 THE COURT: I think they say that because that's what
3 the plan said.

4 MR. SIMON: Well, I would submit, Your Honor, that
5 there is a case that supports -- there's a few cases that
6 support us, but I do want to talk about one, America West
7 Airlines v. City of Phoenix. Very similar fact pattern. This
8 is the District of Arizona Bankruptcy Court. I don't have the
9 cite, but we could get it momentarily.

10 There's a dispute between the debtors and the
11 committee there, and the debtors agree to reduce the priority
12 claims in a way that impacted the unsecured creditor pool.
13 The committee objected and argued that the changing of the
14 claim resulted in a new claim being filed after the bar date.
15 The court rejected that notion and stated that the law favors
16 compromise and fell back to the 9019 factors. Justice Oaks
17 factors controlled.

18 Here the committee says the Bankruptcy Code does not
19 prohibit the settlement. That court disagreed with that and
20 said the Bankruptcy Code did not prohibit the settlement or
21 the reduction of the claim. That is 214 B.R. 382.

22 So I'm going to go back and take a look at the
23 language you cite. But again, I come back to the notion that
24 what the plan contemplates is an allowed priority claim. And
25 those are paid dollar for dollar by the plan sponsor. And



Colloquy

1 that's not being reduced by the amount funded to the GUCs.
2 That's not what this settlement does. What it does is it
3 takes an impediment to the plan. And as part of the
4 settlement, all of the disputes, whether the dispute is the
5 extent, the priority, or the claim itself settles that
6 litigation and agrees to make it an allowed general unsecured
7 claim. And I think that is allowed by the terms of the plan.

8 THE COURT: Okay. I may be with you right till the
9 end there.

10 But Mr. Lawall?

11 MR. LAWALL: Thank you, Your Honor. I won't beat
12 this too hard at this point. Fran Lawall for the committee.

13 A couple of things. I think that debtors' counsel
14 may have just misread the plan just a little bit. The word
15 "allowed" is not in front of all those provisions. In fact,
16 plan article 3, section C.5, page 49 of the plan specifically
17 provides that the GUC trust/GUC contribution will not fund,
18 pay administrative expense claims, including 503(b)(9) and
19 priority claims. The word "allowed" is not there. I agree
20 the word "allowed" is in some places, but it's not everywhere
21 in the plan because we were putting those guardrails up.

22 I disagree with debtors' counsel. The issue with
23 respect to the priority claim restriction was put into the
24 confirmation order in part generated by the issue that was
25 raised by the IRS on the eve of confirmation.



Colloquy

1 And, Your Honor, we did in part rely upon counsel.

2 And I think he was right at the confirmation hearing by
3 saying, look, this is either a priority claim or it's not any
4 claim. It was never, ever contemplated that this would be an
5 unsecured claim because of the diminution. And that's an
6 important question, Your Honor. Your Honor has completely
7 focused on it.

8 We don't want to blow this up. We've said to the
9 IRS, without giving too much away, yeah, this should get
10 settled, we agree with it getting settled. But with respect
11 to this particular plan, given the way that it was negotiated,
12 given the mediation that occurred, there were very specific
13 dollars and expectations that were put into this plan. The
14 debtor's CRO has indicated that the -- on a go-forward basis,
15 the reorganized debtor over a five-year period could bear the
16 cost of this 795,000 dollars. And that was one of the options
17 that's in the plan. It wouldn't be paid by the plan sponsor,
18 it wouldn't be paid by the GUCs, but it could be paid by the
19 reorganized debtors. That's exactly the right outcome here.

20 We weren't at the table for these negotiations, so we
21 didn't have a chance to have input. And quite frankly, we're
22 still willing to try and look for a way to resolve this, but
23 it really shouldn't come out of this GUC pool. We do believe
24 that if, in fact, this claim is put into the GUC pool, it will
25 be a violation of the plan based upon the misclassification



Colloquy

1 under Section 1122 because this is a priority claim. Again,
2 the proof of claim has been withdrawn -- not withdrawn. I'm
3 sorry. The objection to the proof of claim has been
4 withdrawn.

5 THE COURT: It's been agreed to be withdrawn as part
6 of the settlement, right?

7 MR. LAWALL: I'm not sure that's the case. I thought
8 it was the objection was withdrawn, but the proof of claim
9 stayed.

10 THE COURT: Yes. That's right. That's right.

11 MR. LAWALL: Right.

12 THE COURT: That's what I meant.

13 MR. LAWALL: Right. Right.

14 THE COURT: But the agreement says they'll withdraw
15 it. It hasn't been withdrawn yet.

16 MR. LAWALL: Right. So the proof of claim still
17 stands.

18 THE COURT: Settlement is not approved.

19 MR. LAWALL: And it still stands as an asserted
20 priority claim. And what was suggested here was that, yes,
21 the IRS wanted to be paid as an unsecured creditor, which is
22 fine. They could be paid at the same rate that the unsecured
23 creditor is being paid, but it's a priority claim that can't
24 come out of the unsecured GUC contribution pool. That was
25 just too hard to negotiate. And we just went through it again



Colloquy

1 and again.

2 I also would disagree with debtors' counsel to the
3 extent that this is an erroneous tax refund, it can't be
4 anything other than a tax claim, and it's a priority claim.
5 And at no point during the presentation, the evidentiary
6 presentation that was made today, was there any suggestion
7 that it didn't fall within the period that would make it a
8 priority claim. So to try and now backfill, we think
9 respectfully, it's inappropriate.

10 This is a tax claim. It should be resolved. Yes, it
11 is plan-determinative. But there are other outcomes. It
12 doesn't have to be black and white where the plan fails. But
13 it shouldn't come out of the unsecured creditors' pot.

14 Your Honor, I was very honest with you very early --
15 weeks ago in this case about how hard it was to get this
16 settlement through. And it's actually -- this is almost a
17 straw that broke the camel's back where they're saying enough.
18 We're getting so little now. To try and take more out, given
19 that the expectations had been set that this came on the eve
20 of confirmation, it wasn't going to be an unsecured claim.
21 And now to say we have no choice, it's got to come out of your
22 pot, we'd say, respectfully, we've got to find another way of
23 doing it, but this isn't it.

24 THE COURT: Well, I kind of posed this question
25 rhetorically while I was talking to Mr. Simon. But what would



Colloquy

1 it take to make the pot adequately whole to allow them to do
2 otherwise what they're -- in other words, if we put the IRS
3 claim in the classes 6A and 6B, how much would they have to
4 add to the pool to -- would the 800,000 dollars cover it?

5 MR. LAWALL: Your Honor, here's my problem. And I
6 appreciate where you're going. The sensitivity of this issue
7 is such that I'd have to have a conversation with the
8 committee. But what you're suggesting, it may make sense, but
9 I don't want to get out ahead of my group here. I, quite
10 frankly, in part, was surprised at how adamant the committee
11 was on this point, basically saying -- it's basically
12 exhaustion. It's enough already. We've negotiated our deal.
13 This is the way it should stay. Is there another way around
14 it? Certainly, we'll look for it.

15 And I think the IRS may well have flexibility. I
16 won't speak for the IRS, but I have a feeling there's
17 flexibility there. But we weren't at the table to try and
18 explore that. Give us a chance. Maybe we'll be able to do
19 so. There is some time here to do this. My guess is getting
20 approval, given what's going on in Washington right now, it
21 could take a while to get final sign-off on this, but we'll
22 see.

23 THE COURT: Speaking of -- there was mention made of
24 the fact that with respect to the resolution of these types of
25 claims, the committee is not -- and what's a pretty long list



Colloquy

1 of people who have to consent to the settlement.

2 MR. LAWALL: Right.

3 THE COURT: And I think that the negative implication
4 is the committee doesn't have to consent to the settlement.
5 But again, given the structure of the plan where the priority
6 claims are the problem of the reorganized debtors and the plan
7 sponsor, that suggests to me why the committee might not be in
8 that list, because it's not their problem.

9 MR. LAWALL: It shouldn't be.

10 THE COURT: Somebody else can take care of that
11 problem.

12 MR. LAWALL: Well, that's exactly right. This got
13 made as our problem. And again, as you heard from the
14 testimony, we weren't even involved in these negotiations. We
15 weren't even asked until it was basically a done deal last
16 Monday night. And so we're trying to be as creative as
17 possible. And I think we've demonstrated throughout this case
18 a lot of creativity and a lot of flexibility. But at some
19 point, it's got to stop. And that's where we are today.

20 We have no interest in blowing up the plan. We want
21 to see success. But we did negotiate the plan. If this is
22 put into the pot, this would be a significant material
23 modification of the plan. It's not an immaterial
24 modification. And only indicating that it's an immaterial
25 modification because they see it as we're getting so little to



Colloquy

1 begin with, so what the heck, why take a little more, well,
2 we're saying enough here. Anyway, Your Honor, I've said
3 enough. Thank you for your time, Your Honor.

4 MR. RILL: Judge, briefly. I won't add much more to
5 what's already been said other than that the United States
6 feels strongly about its erroneous refund claims. But we
7 recognize the reality of the situation that we're in, which is
8 that if we win, this almost certainly blows up the plan. So
9 I've sort of jumped in to try and negotiate. What I think
10 everybody agrees is the better route, an alternative to
11 litigation. But as you can see, we've sort of been between
12 people who don't want to pay, which is fair.

13 And I don't want to speak too much about settlement
14 negotiations because, as I've made clear, I don't have
15 settlement authority. It's got to go way up the chain beyond
16 my head. But we've sort of just approached this from the
17 creditors' committee has made the point that they weren't at
18 the table for this negotiation. I mean, I did call Mr. Lawall
19 to sort of broach this with him, and, and I got sort of a
20 brick wall, same way I got with the plan sponsor. So I'm sort
21 of working under the confines of what I've got to try and get
22 something that gets this done.

23 But we also feel the same way, that we weren't at the
24 table of the plan confirmation. So we approach these
25 settlements with an idea that we just wanted to be treated



Colloquy

1 fairly, get a sort of fair cut, not be treated any worse than
2 the general unsecured creditors. So this proposal would sort
3 of do that. That's the idea that we had in mind.

4 And we had these negotiations sort of under the gun
5 of an evidentiary hearing that, as I said, everyone seems to
6 agree doesn't really benefit the plan. So that's where we
7 are.

8 And again, we feel strongly about our claims. We'll
9 litigate it if we have to, but we don't want to blow up the
10 plan. So we think the offer on the table should be approved
11 by the Court, but if not, we're willing to have further
12 conversations. Thank you.

13 THE COURT: All right. Well, it seems to me that
14 some time for some further conversations might be productive.
15 And those could be an hour. Those could be a day. First,
16 does everyone agree with me that further conversation might be
17 warranted or -- and then I should give you -- I'm definitely
18 inclined to give you maybe till and through the lunch hour to
19 chat and figure out whether peace could break out. Otherwise,
20 I think I'm happy to come back after lunch and rule on this
21 motion. I'm also happy to continue this hearing to tomorrow
22 or the day after and let you all talk for a couple of days and
23 see if there's an amended motion or whatever. But --

24 MR. SIMON: I think a recess at this point would be
25 useful.



Colloquy

1 THE COURT: Okay. And do you have a --

2 MR. LAWALL: Your Honor, I apologize. Again, it's
3 going to take some time for me to get committee focused on
4 this, given where this is. The committee believes very
5 strongly this is just not a priority claim. Nevertheless,
6 we're willing to try and negotiate something. We just may
7 need more than an hour. I don't think we're going to get very
8 far at the end in an hour. I'm not going to be able to get
9 that kind of authority. And I don't want to waste the Court's
10 time.

11 My problem is I have to go to a mediation in the next
12 few days in New York in Celsius. So I'm going to be out of
13 pocket for the next two days. So we're going to need a little
14 bit more time to try and come to a resolution, if folks want
15 to try and see if something can be done. Otherwise, Your
16 Honor, if you rule, and I hope that you do, that this
17 settlement as structure is violative to the plan and can't be
18 approved, at least as to that aspect of payment, then we'll
19 deal with the aftermath and trying to come up with a deal.

20 But otherwise, we're willing to talk and see what we
21 can do. Given the time frame of knowing what's happened over
22 the last week and dealing with the committee, it's going to
23 take a little bit more time.

24 (Pause)

25 THE COURT: So it doesn't sound like we could make a



Colloquy

1 super amount of progress this week.

2 MR. SIMON: Why don't we do this, Your Honor? I hear
3 Mr. Lawall -- why don't we just take an hour and then we can
4 come back to you? It may be that settlement discussions
5 aren't productive. It may be that we agree to take a few
6 days. But why don't we at least break for now and come back
7 to you, say, at 12 or 12:15? And maybe we have a view on how
8 to move this forward.

9 THE COURT: Okay. If you think that some -- or it's
10 not really extended period, but longer period might be
11 productive, we could reconvene either Monday morning or
12 Wednesday afternoon if either of those days next week -- if
13 either of those work out. So anyway, think about that.

14 In the meantime, I'll take all my papers and go hide
15 out. And so, I don't know, you want to, say, reconvene at, I
16 don't know, 12:30?

17 MR. SIMON: That works for us. Thank you.

18 THE COURT: All right.

19 MR. LAWALL: Thanks you, Judge.

20 THE CLERK: All rise.

21 (Recess from 11:14 a.m. until 12:43 p.m.)

22 THE COURT: Please be seated.

23 THE CLERK: The court will come to order.

24 Good afternoon, Your Honor. Today is February 4th,
25 2025. The time is now 12:43 p.m. We are resuming after the



Colloquy

1 recess for Case Number 24-55507, LaVie Care Centers, LLC, et
2 al., regarding the debtors' 9019 motion.

3 MR. SIMON: Good afternoon, Your Honor. Thank you
4 for the time.

5 I think the parties are in discussions about what --
6 how to proceed next and whether that's -- on the underlying
7 dispute, whether that's on the settlement motion or whether
8 that's on a revised settlement. I think there's agreement of
9 the parties to adjourn the matter until Tuesday at 11 a.m.
10 And we'll come back with a further update at that point.

11 THE COURT: Okay. Sounds okay to me.

12 Mr. Lawall?

13 MR. LAWALL: Yeah. Thank you, Your Honor. And thank
14 you again for the time.

15 I think a point to that is I think counsel for the
16 AG's Office and ourselves, if we can have it as a virtual
17 hearing, that would be appreciated.

18 THE COURT: And we're not taking any more evidence.
19 The evidence is closed. So it'll just be for argument and
20 rendering a decision if that turns out to be necessary.

21 MR. SIMON: We're fine with that. Thank you, Your
22 Honor.

23 THE COURT: I mean, it's virtual now. There are lots
24 of folks here. But we'll just add some more faces to the
25 screen, I guess. And debtor is welcome to attend virtually as



Colloquy

1 well. No point in dragging everybody down here. If there's
2 nobody else here but you and me --

3 MR. SIMON: We'll see. We'll see where we're at at
4 that point, Your Honor, and make that decision. But we're
5 fine if other parties appear virtually.

6 THE COURT: Okay. Well, very good. Hopefully we can
7 make productive use between now and Tuesday. Tuesday actually
8 just freed up while we were on break there. So another matter
9 moved off to March. So --

10 MR. SIMON: Perfect.

11 THE COURT: Glad we were able to make the time.

12 MR. SIMON: We appreciate it. Thank you, Your Honor.

13 THE COURT: Thank you all. You all have a good rest
14 of your day.

15 THE CLERK: Thank you. All rise.

16 (Whereupon these proceedings were concluded at 12:45 PM)

17

18

19

20

21

22

23

24

25



Colloquy

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

I, Michael Drake, 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.


MICHAEL DRAKE

February 4, 2025

DATE

AAERT Certified Transcriber, CER-513, CET-513