

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VILLAGE ROADSHOW ENTERTAINMENT
GROUP USA INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10475 (TMH)

(Jointly Administered)

Ref. Nos. 11, 276, 446, 477, 478, 518, 908,
915, and 934

**ALCON MEDIA GROUP, LLC'S (I) JOINDER TO THE DEBTORS' RESPONSE TO
WARNER BROS. ENTERTAINMENT INC.'S AND REGENCY ENTERTAINMENT
(USA), INC.'S OBJECTION TO ENTRY OF THE DERIVATIVE RIGHTS SALE ORDER
AND (II) RESPONSE TO WARNER BROS. ENTERTAINMENT INC.'S AND REGENCY
ENTERTAINMENT (USA), INC.'S OBJECTION**

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¹ The last four digits of Village Roadshow Entertainment Group USA Inc.'s federal tax identification number are 0343. The mailing address for Village Roadshow Entertainment Group USA Inc. is 750 N. San Vicente Blvd., Suite 800 West, West Hollywood, CA 90069. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors and the last four digits of their federal tax identification is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://www.veritaglobal.net/vreg>.



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Alcon Media Group, LLC (“Alcon”), by and through its undersigned counsel, submits this joinder (the “Joinder”)² to the Debtors’ response (the “Debtors’ Brief”), responding to (I) Warner Bros. Entertainment Inc.’s (“Warner Bros.” or “WB”) *Supplemental Objection to (I) the Debtors’ Motion for an Order Approving the Sale of the Debtors’ Assets, and (II) the Debtors’ Assumption and Assignment of Certain Warner Bros. Agreements* [D.I. 908] (the “WB Objection”); (II) Regency Entertainment (USA), Inc.’s (“Regency”) *Supplemental Objection by Regency Entertainment (USA), Inc. to Sale of Debtors’ Derivative Rights Assets and Assumption and Assignment of Co-Ownership Agreement* [D.I. 915] (the “Regency Objection”), (III) *Warner Bros. Entertainment Inc.’s Omnibus Objection to (I) The Debtors’ Motion for an Order Approving the Sale of the Debtors’ Assets, (II) The Debtors’ Sale Supplement with Respect Thereto and (III) The Debtors’ Assumption and Assignment of Certain Warner Bros. Agreements* [D.I. 518] (the “Initial WB Objection”), (IV) *Objection by Regency Entertainment (USA), Inc. to Sale of Debtors’ Assets* [D.I. 477] (the “Initial Regency Sale Objection”), (V) *Objection by Regency Entertainment (USA), Inc. to Assumption and Assignment of Co-Ownership Agreement* [D.I. 478] (the “Initial Regency Contract Objection” and together with the Initial Regency Sale Objection, the “Initial Regency Objections”) (collectively, the “Objections”) and (VI) separate response to the Objections. In support of this pleading, Alcon submits the *Declaration of Broderick Johnson in Support of Alcon Media Group, LLC’s (I) Joinder to the Debtors’ Response to Warner Bros. Entertainment Inc.’s and Regency Entertainment (USA), Inc.’s Objection to Entry of Derivative Rights Sale Order and (II) Response to Warner Bros. Entertainment Inc.’s and Regency Entertainment (USA), Inc.’s Objection* dated October 15, 2025 (the “Johnson Decl.”) and respectfully states as follows:

² Alcon incorporates by reference *Alcon Media Group, LLC’s (I) Joinder to the Debtors’ Response to Warner Bros. Entertainment Inc.’s Objection to Entry of Derivative Rights Sale Order and (II) Limited Response to Warner Bros. Entertainment Inc.’s Objection* [D.I. 528] as though fully set forth herein.

PRELIMINARY STATEMENT³

1. Warner Bros., two other qualified bidders, and Alcon participated in a fairly conducted auction process that lasted ten rounds of bidding and saw the purchase price nearly triple from the opening bid. Only when Warner Bros. was unable to raise its bid at the Auction did it argue for the first time that its \$17.5 million lower bid was higher and better than Alcon's, urging the Debtors to accept the lower bid. Ultimately, in the exercise of their business judgment, the Debtors selected Alcon as the successful bidder with the highest and best bid of \$18.5 million. But rather than concede or stand on the legal merits of its objections to the Sale, Warner Bros. seeks to derail the closing of the Sale with a procedurally improper bid not in compliance with the Bid Procedures Order, a distorted narrative of its over 25-year relationship with Alcon that Warner Bros. willingly renewed *in June 2025*, and legal arguments that are without merit. Moreover, despite Warner Bros.' assertions to the contrary, its late bid, just like its \$17.5 million Back Up Bid, is not the highest or best offer. At this stage, Alcon simply seeks to halt the negative discourse, close on the Sale, and move forward as a willing and cooperative co-financier with Warner Bros. in the successful financing and exploitation of films.

2. Warner Bros. asserts a series of arguments as to why its consent to the Sale is necessary. Alcon seeks to purchase the "Purchased Assets," which are defined in the APA to include, among other things, the "Purchased Derivative Rights"⁴ as well as the "Assumed

³ Terms utilized but not otherwise defined in this Preliminary Statement shall have the meanings ascribed to them in the body of this Joinder.

⁴ "Purchased Derivative Rights" are defined to mean "all of each Seller's entire worldwide right, title and interest in and to the Derivative Rights in each of the Pictures, together with any and all of the assets, properties and rights of each Seller of any kind, whether tangible or intangible, used in, held for use in, relating to or arising from the financing, development, production or Exploitation of any Seller's Derivative Rights in each of the Pictures, and includes the entire worldwide right, title and interest of each Seller (if any) in and to, for each of the Pictures, an undivided interest equal to the Applicable Percentage for such Picture in the Derivative Rights (including, without limitation, the results and proceeds of any development activity relating to such Derivative Rights [*e.g.*, any and all development materials

Contracts,” consisting mainly of Co-Ownership Agreements that govern the Purchased Derivative Rights. None of the Assumed Contracts constitute financial accommodations nor personal services contracts, and the Assumed Contracts themselves do not create or convey any intellectual property for which Warner Bros.’ consent is necessary. The Assumed Contracts may be assumed by the Debtors and assigned to Alcon without Warner Bros.’ consent.

3. Nor can Warner Bros. establish that Alcon cannot provide it with adequate assurance of future performance. Alcon is one of the oldest independent film studios in the world. It has produced and financed *My Dog Skip*, *The Blind Side*, *Sisterhood of the Traveling Pants*, *Blade Runner 2049*, *The Garfield Movie*, and numerous other well-regarded films and television shows. Most of Alcon’s films were and are distributed by Warner Bros. as part of a decades-long series of agreements that have generated more than [REDACTED] in revenue. Alcon’s history of successfully financing films and meeting all of its obligations in connection therewith—including to Warner Bros.—speaks for itself. Alcon has also provided proof that it has the current liquidity to consummate the Sale and the future liquidity to adequately assure it can participate in funding opportunities it elects to participate in as they arise. This liquidity includes ongoing revenue from its own operations, access to bank credit, and the backing of the Smith Family’s [REDACTED]. Indeed, the Court just recently approved a \$417 million purchase by Alcon of the Film Library and a \$4 million purchase of the Studio Business.

4. One of Alcon’s competitive advantages is its close ties with the Smith Family. Alcon was founded in 1997 based on a business plan presented by co-founders Broderick Johnson

created, commissioned or otherwise owned by any Sellers relating to any Derivative Work(s), including, without limitation, scripts, screenplays, treatments, artwork, etc.]) in and to such Picture for the entire world.” *Notice of Filing of Revised Proposed Sale Order and Asset Purchase Agreement for the Derivative Rights* [D.I. 824], Ex. B (Purchase Agreement (Derivative Rights)) at § 1.01 (defined term).

and Andrew Kosove to FedEx Chairman and Founder Frederick W. Smith. Alcon and Mr. Smith worked closely for decades, until Mr. Smith's passing a few months ago in June of this year, and Alcon's partnership with the Smith Family remains close and strong. As set forth in the letter from Molly Smith, produced to Warner Bros., Alcon continues to have the financial backing of the Smith Family to support its future projects, just as Alcon has had over the last nearly 30 years.

5. Warner Bros.' argument that it and Alcon cannot work cooperatively under the Assumed Contracts is belied by the two companies' long history together, which Warner Bros. itself just recently in June 2025 agreed to renew and extend. As discussed more fully below, in June 2025, Warner Bros. and Alcon entered into two contracts that will require them to work collaboratively for many years to come. In any event, pending, unrelated litigation between two parties is not *prima facie* evidence that two parties cannot work cooperatively on other endeavors, especially considering the evidence that exists to the contrary. More importantly, the standard governing whether a contract can be assumed and assigned is not determined by the litigation history of the parties.

6. Thus, for all the reasons set forth herein and as will be adduced at the Sale Hearing, the Court should overrule the Objections and authorize the Debtors to sell the Purchased Assets to Alcon.

BACKGROUND

A. The Debtors' business relationship with Warner Bros.

7. Warner Bros. and the Debtors have co-financed over 90 theatrical motion pictures under various arrangements. *See Declaration of Wayne M. Smith in Support of Warner Bros. Entertainment Inc.'s Motion (I) for an Order, Granting Limited Relief from the Automatic Stay to Obtain its Damages Award and Judgment and (II) to Enforce Arbitration Provisions in the Matrix*

Agreements with the Debtors [D.I. 325] (the “First WB Decl.”) at ¶ 3. “Pursuant to the parties’ agreements, Village is entitled to a contractually defined share of the proceeds from Warner Bros.’ exploitation of the co-financed films.” *Id.*

8. Under the Motion Picture Rights Purchase Agreement executed in 2014 (the “2014 MPRPA”), which was amended and restated in 2020 (the “2020 MPRPA” and collectively the “MPRPA”), the Debtors were entitled to co-finance new projects. *See Declaration of Wayne M. Smith in Support of Warner Bros. Entertainment Inc.’s Omnibus Objection to (I) the Debtors’ Motion for an Order Approving the Sale of the Debtors’ Assets, (II) the Debtors’ Sale Supplement with Respect Thereto and (III) the Debtors’ Assumption and Assignment of Certain Warner Bros. Agreements* [D.I. 519] (the “First WB Sale Decl.”) at Ex. 2-3, ¶ 6. For each co-financed picture, Warner Bros. and the Debtors also entered into a “Rights Purchase Agreement” (the “Rights Purchase Agreement”) and a “Co-Ownership Agreement” (the “Co-Ownership Agreements” or “Assumed Contracts”) which specified the terms of the Debtors’ ability to co-finance derivative works (*i.e.*, remakes, sequels, prequels, etc.) based upon pictures co-financed (the “Derivative Rights”). *Id.* at ¶ 9.

9. As discussed further below, the various “Co-Ownership Agreements” for each picture previously co-financed by the Debtors are the main Warner Bros. executory contracts being assumed and assigned as part of this Sale. *See Notice of Filing of Revised Proposed Sale Order and Asset Purchase Agreement* [D.I. 824], Ex. B (Purchase Agreement (Derivative Rights)) (the “APA”) at Annex II. Alcon is not seeking to assume the MPRPA, the agreement that Warner Bros. alleges constitutes a financial accommodation and that details the manner in which Warner Bros. and the Debtors contribute their respective share towards a new picture. In fact, the MPRPA expired pursuant to its terms on December 31, 2020. 2020 MPRPA at Art. 4, § 4.1.

10. Since December 31, 2020, the Debtors co-financed only projects based upon the Derivative Rights. First WB Decl. at ¶ 4.

11. [REDACTED]

B. Warner Bros.' Business Relationship with Alcon.

12. Broderick Johnson and Andrew Kosove co-founded Alcon Entertainment in 1997 with the financial backing of the late Frederick W. Smith, who was the founder and chairman of

FedEx. Johnson Decl. at ¶ 3. He was also the Chairman of Alcon for 28 years before his untimely passing in June. *Id.* at ¶ 22.

13. Despite Mr. Smith's recent passing, the Smith Family "intend[s] to take the necessary steps to provide the financial and other support to enable Andrew and Broderick to continue to grow [Alcon] and achieve both its short term and long term goals." *Id.* at Ex. G (September 25, 2025 letter from Molly Smith, the "Smith Support Letter").

14. Alcon and Warner Bros. have been working together since 1998 under various financing and distribution agreements. *Id.* at ¶ 9. Alcon and Warner Bros. have collaboratively worked on, co-financed, co-produced, and/or co-distributed dozens of movies including household names such as *The Blind Side*, *Sisterhood of the Traveling Pants*, *Insomnia*, and *Book of Eli*. *Id.* at ¶¶ 5-14.

15. From 1998 to 2019, Alcon and Warner Bros. had an exclusive distribution deal, pursuant to which Warner Bros. was required to distribute up to three Alcon films each year. *Id.* at ¶ 9. Warner Bros.' own logo would appear on these films, and the agreement required close cooperation between the two companies on the theatrical release and marketing of films, as well as coordination on the post-release exploitation of Alcon films. *Id.* at ¶ 16.

16. This exclusivity expired in 2019, allowing Alcon to now release movies with other distributors, yet Warner Bros. remains a distributor of over twenty Alcon films to this day. *Id.* at ¶ 9.

17. In addition, in December 2023, Alcon purchased the Debtors' shares of participation revenues and co-financing obligations related to Warner Bros.' production of the film *Wonka*. *Id.* at ¶ 36. In connection therewith, Alcon procured and paid Warner Bros. [REDACTED] [REDACTED] within just three weeks of agreeing to the transaction with the Debtors. *Id.*

18. Just recently, in June 2025, Warner Bros. and Alcon agreed to extend several distribution agreements for Alcon films through [REDACTED]. *Id.* at ¶ 14. Also in June 2025, Alcon agreed to Warner Bros.’ request in addressing Warner Bros.’ objection to the Library Sale to amend the audit provisions for the Library Assets. *Id.* at ¶ 15 and Ex. C (the “Audit Agreement Amendment”). Alcon will continue to audit Warner Bros. for many years to come. *Id.* at ¶ 15.

19. In the nearly three decades of doing business together, Alcon has always lived up to its payment obligations to Warner Bros. *Id.* at ¶ 13; *see also* Smith Depo. at 185:23–187:6 [REDACTED] [REDACTED]). Moreover, Alcon and Warner Bros. maintain a cooperative and productive working relationship, which Warner Bros. publicly lauded several times over the years. Johnson Decl. at ¶¶ 16-19; *see, e.g.*, Anthony Kaufman, *Alcon steadily supplies solid titles*, VARIETY (Sept. 25, 2008, at 4:33 pm PT), <https://variety.com/2008/film/markets-festivals/alcon-steadily-supplies-solid-titles-1117992912/> (“‘It was the perfect combination of their resources and our desires,’ [Warner Bros. production head Kevin] McCormick says, adding, ‘They are the most thorough, prepared producers that I think I’ve worked with the entire time I’ve been here.’”); Dave McNary, *Alcon renews pact with Warners*, VARIETY (May 14, 2011, at 12:07 am PT), <https://variety.com/2011/film/news/alcon-renews-pact-with-warners-1118037033/> (Per Warner Bros. Pictures Group President Jeff Robinov, “Warner Bros. has enjoyed an incredible relationship with Andrew, Broderick, and their entire team at Alcon over the years, and we look forward to continuing this tremendously successful partnership.”); Anita Busch, *Alcon Entertainment, Warner Bros. Extend Deal to 2019, Arranges \$200M in New Financing*, DEADLINE (Nov. 5, 2015, at 9:47 am), <https://deadline.com/2015/11/alcon-entertainment-warner-bros-extend-deal-200-million-financing-1201609157/> (“‘Andrew, Broderick and Alcon have been great partners to Warner

Bros.,’ said Kevin Tsujihara, Chairman and CEO, Warner Bros. in a statement. ‘Their films are always great additions to our slate, and I’m very glad they’ll continue to be a part of the Warner Bros. family for years to come.’”).

20. Over the course of Alcon and Warner Bros.’ nearly thirty year relationship, there has been only one lawsuit between the companies, the *Tesla* litigation filed by Alcon in October 2024. Johnson Decl. at ¶ 20. Alcon filed the lawsuit in order to protect its intellectual property from infringement by an AI tool, which was used to recreate an iconic image from Alcon’s film, *Blade Runner 2049*. *Id.* Even after that lawsuit was filed, Alcon and Warner Bros. agreed to extend their distribution agreements through [REDACTED]. *Id.* at ¶ 21.

C. The Derivative Rights Auction.

21. On March 17, 2025, the Debtors filed the bid procedures motion [D.I. 11] (the “Bid Procedures Motion”), which sought approval to both sell the Debtors’ (i) Film Library, (ii) Derivative Rights, and (iii) Studio Business and establish procedures to govern the process to sell such assets.

22. On April 16, 2025, the Debtors filed a motion [D.I. 197] (the “Stalking Horse Supplement Motion”) seeking entry of an order approving the Debtors’ designation of Alcon as the Stalking Horse Bidder for the Library Assets (both terms as defined in the Stalking Horse Supplement Motion).

23. On April 24, 2025, the Court entered an order approving the Bid Procedures Motion and Stalking Horse Supplement Motion. *See* D.I. 276 (the “Bid Procedures Order”).⁵ The Bid Procedures Order ratified the bid procedures, *see id.* at Ex. 1 (the “Bid Procedures”) and authorized

⁵ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Order.

and approved the Debtors' entry into and performance under one or more asset purchase agreements to sell their various Business Segments.

24. Among other things, the Bid Procedures provide that they "shall govern the Bids and proceedings related to any Sale of the Debtors' Assets and the Auction(s) (if any) in all respects." Bid Procedures Order at ¶ 3.

25. No stalking horse bidder emerged for the sale of the Derivative Rights. Instead, parties submitted their bids by revising a form purchase agreement for Derivative Rights provided by the Debtors (the "Base APA").

26. On May 22, 2025, the Debtors filed their *Notice of Successful Bidder for Library Assets* [D.I. 396] designating Alcon as the Successful Bidder for the Library Assets with a \$417.5 million winning bid.

27. On May 28, 2025, the Debtors conducted the auction with respect to the Derivative Rights and the Studio Business⁶ at the offices of the Debtors' counsel in Los Angeles, California (the "Auction").

28. The bidders at the Auction included Alcon, Warner Bros., and two other bidders. *See* May 28, 2025 Hr'g Tr. at 6:16-13:19 (the "Auction Tr.") (introduction of the bidders).

29. Warner Bros.' \$6 million bid and markup of the Base APA (the "WB Purchase Agreement") was the baseline bid (the "Baseline Bid") for the Derivative Rights against which the other bidders, including Alcon, bid at the Auction. *See id.* at 15:5-9 (announcing that Warner Bros.' bid was the baseline bid).

⁶ Alcon was the only bidder for the Studio Business and ultimately reached agreements resolving issues raised by Warner Bros. regarding its successful bid.

30. The Auction spanned 10 rounds of bidding with the last two remaining bidders being Alcon and Warner Bros. *See id.* at 37:2. For its final bid, Warner Bros. bid \$17.5 million for the Derivative Rights on the same terms and conditions as its prior bids (the “Back Up Bid”). *Id.* at 37:2-8.

31. At this point in the Auction, if a party wanted to make an overbid, it was required to overbid by at least \$1 million. *Id.* at 37:4 (“The new bid increment is 1 million.”). In the final round, Alcon submitted an overbid of \$18.5 million on the same terms and conditions as its prior bids (the “Alcon Bid”). *Id.* at 37:19-25.

32. Warner Bros. did not submit a higher bid [REDACTED]
[REDACTED]. Smith Depo. at 151:13-20.

33. Instead, Warner Bros. raised for the first time its argument that its lower bid was higher and better. Specifically, [REDACTED], Warner Bros. stated that “its Round 10 bid is the highest and best when taking into account [its] previously stated objections and rights . . . and the requirement that Warner Bros. must consent to any assignment to any third party, and that Warner Bros. has not provided consent to assignment to Alcon.” Auction Tr. at 38:22-39:4.

34. In response, the Debtors requested that Alcon modify the terms of its overbid to waive any requirement that the Debtors obtain and receive Warner Bros.’ affirmative consent to the assignment of any agreements in connection with the Sale. *Id.* at 39:10-25. Alcon assented to this modification and agreed to consummate the Sale predicated on the Baseline Bid. *Id.*

35. Accordingly, the Debtors determined: “[o]n that basis [of Alcon’s modified bid] and on the basis that the Warner Bros.’ bid was \$17.5 million, notwithstanding the rights and remedies

that it has reserved here today . . . the [D]ebtors . . . determine[d] that the Alcon bid of 18.5 million to be the highest and best bid following the conclusion of Round 10.” *Id.* at 40:1-6.

36. Warner Bros. did not submit a bid for Round 11 and stood on its objection. *Id.* at 40:9-15. It is now clear that it could never have submitted a winning bid in round 11 in compliance with the Auction procedures. [REDACTED]

[REDACTED]. Smith Depo. at 151:13-20. Even Warner Bros.’ post-Auction “bid” discussed below does not overbid Alcon’s winning bid by \$1 million, as required. Auction Tr. at 37:4 (“The new bid increment is 1 million.”).

37. Consequently, on May 29, 2025, the Debtors filed the *Notice of (I) Successful Bidder for Derivative Rights and Studio Business and (II) Back-Up Bidder for Derivative Rights* [D.I. 446], indicating that the Debtors selected (i) Alcon as the Successful Bidder for (a) the Derivative Rights, with a cash purchase price in the amount of \$18,500,000, and (b) the Studio Business, with a purchase price comprised of cash in the amount of \$4,250,000 plus the assumption of certain liabilities; and (ii) Warner Bros. Entertainment, Inc. as the Back Up Bidder for the Derivative Rights, with a cash purchase price in the amount of \$17,500,000.

38. On June 3, 2025, Regency filed the Initial Regency Objections to, among other things, the sale of the Derivative Rights.

39. On June 13, 2025, Warner Bros. filed the Initial WB Objection, which mainly addressed the Library Sale but also previewed its objection to the sale of the Derivative Rights.

40. After negotiations lasting several days, the parties were able to resolve the Initial WB Objection to the Library Sale. Among other things, Alcon agreed to Warner Bros.’ request to amend the audit provisions for the 94 pictures that Alcon had purchased, to more closely align with

Warner Bros.’ preferred, more current audit provisions. Johnson Decl., at ¶ 15 and Ex. C (Audit Agreement Amendment).

41. The Library Sale closed on July 23, 2025. *See Notice of Library Assets Sale Closing* [D.I. 689].

42. After mediation between the Debtors and Warner Bros. failed, and following discussions between the parties, an *Agreed Scheduling Order for the Pending Contested Matter Regarding the Sale of the Debtors’ Derivative Rights Assets* [D.I. 800] (the “Scheduling Order”) was entered by the Court.

43. On August 21, 2025, Warner Bros. filed a *Letter to the Court* [D.I. 730] requesting that the Sale Hearing be bifurcated to first determine if its \$17.5 million Back Up Bid was the highest and best.

44. That same day, the Debtors filed a *Letter to the Court* [D.I. 729] opposing the relief.

45. On August 22, 2025, the Court held a status conference where it denied Warner Bros.’ request to bifurcate the Sale Hearing. Aug. 22, 2025 Hr’g Tr. at 20:8-15.

46. After this tactic failed, Warner Bros. made a new and non-conforming bid (the “Post-Auction WB Bid”) in the same amount as Alcon’s \$18.5 winning bid, despite having just campaigned to this Court that its \$17.5 million Back Up Bid was higher and better.

47. On October 6, 2025, Warner Bros. filed (1) the WB Objection; (2) the *Supplemental Declaration of Wayne M. Smith in Support of Warner Bros. Entertainment Inc.’s Supplemental Objection to (I) the Debtors’ Motion for an Order Approving the Sale of the Debtors’ Assets, and (II) the Debtors’ Assumption and Assignment of Certain Warner Bros. Agreements* [D.I. 909] (the “Suppl. WB Decl.”); and (3) the *Appendix of Warner Bros. Entertainment Inc. and its Affiliates to*

Warner Bros.’ Supplemental Objection in Connection with the Derivative Rights Sale Hearing [D.I. 910] (the “WB App’x”).

48. On October 6, 2025, Regency filed the Regency Objection.

ARGUMENT

I. ALCON’S BID WAS PROPERLY DECLARED THE HIGHEST AND BEST BID

49. On May 28, 2025, Alcon and Warner Bros. both participated in the Auction for the Debtors’ Assumed Contracts and Derivative Rights. Alcon submitted the Alcon Bid of \$18.5 million. Auction Tr. at 37:20-25. The Debtors declared this the highest and best bid at the conclusion of the tenth round as compared to the WB Bid of \$17.5 million. *Id.* at 40:1-6. Warner Bros. was invited to submit an overbid of at least \$19.5 million.⁷ *Id.* at 40:7-8. Warner Bros. declined to do so and instead stood by its \$17.5 million bid. *Id.* at 40:9-15. [REDACTED]

[REDACTED]. Smith Depo. at 151:13-20.

50. The Debtors then invited any other party “to tender a bid that is higher or better than \$18.5 million.” Auction Tr. at 40:21-24. Warner Bros. again was [REDACTED]

[REDACTED]. *Id.* at 40:25. No other bidder submitted a bid higher or better than the Alcon Bid. *Id.*

51. The Debtors determined that the Alcon Bid was the highest and best bid and declared Alcon the successful bidder naming Warner Bros. as the backup bidder. *Id.* at 40:21-41:7.

52. At all points throughout the bidding and Auction process, Alcon followed the procedures set by the Court in the Bid Procedures Order. Alcon submitted a Qualifying Bid, participated in each round of the Auction, overbid where appropriate during the Auction in amounts consistent with the overbid increment requirements, and was named the successful bidder

⁷ At this point in the Auction, if a party wanted to make an overbid, it was required to overbid by at least \$1 million. Auction Tr. at 37:4 (“The new bid increment is 1 million.”).

in a process that Warner Bros. admits was conducted fairly. *Id.* at 43:7-44:2 (Debtors: “As to how today’s auction was conducted, setting apart the substance of who was named the successful bidder, is there any additional objection of which we are unaware?” Warner Bros.: “No.”).

53. At this point, under Delaware precedent, the Auction is closed and Alcon is the successful bidder. *See In re Radioshack Corp.*, Case No. 15-10197 (BLS), Hr’g Tr. at 190:25-191:3 (Bankr. D. Del. May 20, 2015)⁸ (“[A]n auction closes when the debtor, after consultation, identifies a winner as the highest and best bid. And that auction remains closed until and unless [the Court] say[s] it’s open again.”). As such, the Court should not consider or evaluate the Post-Auction WB Bid. Indeed, Warner Bros. does not ask this Court to reopen the Auction under the exacting standards set by the courts; it simply wants to be declared the winning bidder.

54. Even if Warner Bros. were to switch strategies again and request to reopen the Auction, the Court should decline to do so. Courts do not reopen properly conducted auctions lightly. “Typically, a court will reopen bidding, and thereby upset the results of a properly conducted judicial auction, only if ‘there was fraud, unfairness or mistake in the conduct of the sale . . . or . . . the price brought at the sale was so grossly inadequate as to shock the conscience of the court.’” *Four B. Corp. v. Food Barn Stores (In re Food Barn Stores)*, 107 F.3d 558, 564 (8th Cir. 1997).

55. Here, the Auction was conducted fairly and in accordance with the Bid Procedures Order and the price adduced at such Auction was not inadequate. Warner Bros. at no point has suggested otherwise. In fact, Warner Bros. does not even attempt to argue that there are grounds to reopen the Auction.

⁸ A true and correct copy of the *RadioShack* transcript is attached hereto as **Exhibit A.**

56. Moreover, Warner Bros. has admitted that it could not have prevailed at the Auction because it only had \$17.5 million with which to bid. Again, Warner Bros. tried to convince the Court earlier that its \$17.5 million Back Up Bid was higher and better. Now, Warner Bros. simply asks to be declared the highest bidder based on an offer that was not presented until four months after the Auction closed and that would have been rejected at the Auction because it is not \$1 million higher than Alcon's \$18.5 million winning bid. This attempt to overturn a fairly conducted auction should be dismissed for multiple reasons.

57. **First**, “the concept of finality of a proper auction is a bedrock principle” and “a bidder’s willingness to pay more money, even a lot more money, is not a basis to undo an auction that was otherwise properly conducted and concluded.” *In re Radioshack Corp.*, Case No. 15-10197 (BLS), Hr’g Tr. at 191:15-16, 192:2-5 (Bankr. D. Del. May 20, 2015)⁹. The Auction was properly and fairly conducted and concluded in accordance with the court-approved Bid Procedures. No party has asserted there was any fraud, collusion or unfairness in the Auction process. The Post-Auction WB Bid is four months too late and should not be considered. To do otherwise would undermine confidence and faith in the bankruptcy system and the sales processes conducted thereunder. *See, e.g., In re Reading Broad., Inc.*, 386 B.R. 562, 575-76 (Bankr. E.D. Pa. 2008) (“Courts have long concluded that the ability to achieve the highest price would be undermined if bankruptcy sales were not considered final at the conclusion of an auction, unless clear evidence of impropriety in the sale process has been demonstrated. To easily reopen the bidding process would chill future interest in purchasing property from a bankruptcy estate, since

⁹ *See also In re New Rite Aid, LLC*, Case No. 25-14861-MBK, Hr’g Tr. at 30:19-34:16 (Bankr. D.N.J. June 30, 2025) (declining to reopen an auction to accept a higher bid when “[n]o entity was deprived of such an ability to make a last and final bid that would serve as the basis for court approval.”). A true and correct copy of the *Rite Aid* transcript is attached hereto as **Exhibit B**.

bidders could not feel secure at the conclusion of an auction[.]”); *In re Bigler, LP*, 443 B.R. 101, 115 (Bankr. S.D. Tex. 2010) (“The public in general, and all participants at auctions in particular, need to have confidence in the judicial system. A court order reopening the auction process when procedures were clearly established, when the auction was conducted without fraud or collusion and in compliance with the procedures, and when an adequate bid was accepted, will undercut such confidence and faith in the system. This, the Court will not allow, even if reopening the auction would generate more proceeds for the estate.”); *In re Palmer*, 2016 Bankr. LEXIS 4431, at *16 (Bankr. S.D.N.Y. Dec. 22, 2016) (same).

58. **Second**, the Post-Auction WB Bid does not even qualify as a proper overbid as it is less than \$19.5 million.¹⁰ Even if this bid had been made at the time of the Auction (which it was not, because Warner Bros. was not authorized to make it), the bid would have been in violation of the Bid Procedures, as it merely matches the Alcon Bid rather than meets the applicable minimum overbid requirements. Not having the [REDACTED] is not a legitimate basis to reopen the Auction.

59. **Third**, Warner Bros. overvalues the Post-Auction WB Bid. The Post-Auction WB Bid is \$18.5 million cash (identical to the Alcon Bid), a “\$10 million reduction to the Warner Bros. Reserve,” (the “Reserve Reduction”) and other unquantifiable “consideration.” WB Objection ¶ 38. Warner Bros. touts this as a \$28.5 million bid, but that is not accurate. Warner Bros. has agreed to the Reserve Reduction subject to reserving rights to fully collect on its asserted claims against the Debtors regardless of the amount in the Warner Bros. Reserve. At best, any valuation

¹⁰ Auction Tr. at 16:9-18; 37:4 (describing requirement to increase the bid by the applicable increment and setting the overbid increment for round ten at \$1 million).

of the Reserve Reduction is speculative and, at worst, the valuation is likely zero, making the Post-Auction WB Bid no higher or better than the Alcon Bid.

60. Because Warner Bros. has failed to provide (1) a valid reason to reopen the Auction or (2) a valid bid even if the Auction were reopened, the Court should reject Warner Bros.’ request to declare the Post-Auction WB Bid the winning bid. The Post-Auction WB Bid should not be considered.

II. ALCON HAS PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE

A. Alcon Has a Demonstrated Record of Success and the Financial Wherewithal to Close the Sale.

61. Founded in 1997, Alcon is one of the oldest independent film studios in the world. Johnson Decl. at ¶¶ 3-4. The company develops, finances, and produces theatrical feature films, television series, interactive gaming content, publishing and music for worldwide audiences. *Id.* at ¶ 4.

62. Alcon has produced and financed dozens of films, including *My Dog Skip*, *The Blind Side*, *The Book of Eli*, *Sisterhood of the Traveling Pants*, *Sisterhood of the Traveling Pants 2*, *The Garfield Movie*, *Dolphin Tale*, *Prisoners*, *Insomnia*, *P.S. I Love You*, and *Blade Runner 2049*. *Id.* at ¶ 5. Alcon’s feature films have generated close to [REDACTED] in revenue. *Id.* at ¶ 6.

63. Alcon has funded its film and television programs almost entirely independently, without relying on production capital from the major studios, while partnering with major studios for distribution. *Id.* at ¶ 7.

64. Alcon has a 100% success rate in securing and funding projects to which it commits itself. *Id.* at ¶ 25; Johnson Depo. at 176:19-177:6 (“[Other than New Regency and Village Roadshow, Alcon is] the oldest [independent] film financing company of studios in the business,

other than the major studios, and, therefore, *we are completely comfortable that, based upon whatever pacing of these derivatives that Warner Bros. brings to us, that we will be able to accommodate the films that we think are good investments.*") (emphasis added); *see also* Smith Depo. at 185:23–187:6 (testifying that every time Alcon was obligated to meet a payment obligation, payment was made on time).

65. As an example, Alcon was able to obtain the [REDACTED] necessary to co-finance and close on the *Wonka* project about a month after being presented with the opportunity. Johnson Decl. at ¶36; *see also* Johnson Depo. at 175:5-16.

66. As yet another example, Alcon displaced the stalking horse bidder for the Library Assets and submitted a \$41 million deposit to be the stalking horse within several weeks of the Petition Date and closed on the \$417.5 million sale a couple of months thereafter.

67. In addition to its proven long track record of success and the financing facilities available to it, the Smith Family has pledged “to take the necessary steps to provide the financial and other support” for Alcon as it has done the last 28 years. Johnson Decl., at Ex. G.

68. Alcon also has always lived up to its payment obligations to Warner Bros. specifically. Alcon’s long distribution relationship with Warner Bros., discussed further herein, required Alcon to guarantee certain distribution fees to Warner Bros. Johnson Decl., at ¶ 13. When film revenues were insufficient to cover those fees, Alcon always met its obligation to pay the total amount of Warner Bros.’ fees it was obligated to under the parties’ respective agreements. *Id.* Warner Bros. corporate representative, Wayne Smith, confirmed that Alcon always met its contractual obligations to Warner Bros. during his deposition. Smith Depo. at 179:18-21; 186:14-187:6.

69. In sum, Alcon has an established film-financing business and revenue stream and ready access to capital to fund future projects, as they are presented. Alcon will have capital for future film projects on an ongoing basis from (1) its existing film and tv library revenues, (2) the revenues generated from the purchased Library Assets, (3) existing and any future lines of credit, and (4) financial support from the Smith Family, if needed. Johnson Decl. at ¶¶ 27-35. Alcon will—at the time each derivative rights project is presented to it—evaluate the merits of each project and its commercial prospects before it decides if it is a worthwhile investment.¹¹ *Id.* at ¶ 27.

B. Alcon is Confident it Can Work Cooperatively with Warner Bros.

70. Warner Bros. has argued that the Sale should be rejected because it should not be forced to work with Alcon on the Future Projects. This argument does not hold merit.

71. ***First and foremost***, whether there is trust between the new contract counterparties is not the relevant test to determine whether there is adequate assurance of future performance. Warner Bros. cites a single case for the proposition that courts consider “a purchaser’s ability to maintain a healthy relationship with a primary contract counter-party[.]” WB Objection ¶ 72, but fails to explain that the case cited involves a nursing home where the court’s concern was that “[m]ore important to this Court, the negative effects of the poor relationship between the parties must ***affect the welfare of the nursing-home residents*** to some degree.” *In re Texas Health Enters.*, 246 B.R. 832, 836 (Bankr. E.D. Tex. 2000) (emphasis added). The unique circumstances of *Texas Health*—the welfare of a vulnerable class—is simply not at issue in the present case. Here, where the contracts at issue are between two sophisticated parties that both have the ability

¹¹ While Alcon anticipates participating in several of the projects involving the Derivative Rights and Assumed Contracts, Alcon need not commit to funding those projects now before they have even been imagined. Therefore, any argument that Alcon cannot today meet the funding obligations for an entirely hypothetical project is without merit.

and financial wherewithal to perform (and have done so in the past successfully), Warner Bros. has provided no caselaw supporting the argument that trust between the new contract counterparties is a relevant consideration.

72. *Second,* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Alcon will merely gain the right to say yea or nay to co-financing Warner Bros.' projects. Warner Bros.' designated corporate representative and Business Affairs Chief, Steve Spira, testified that in a similar circumstance when Warner Bros. was looking for a financial partner for the film, *Gravity*, the only relevant factor for Warner Bros. was whether the [REDACTED] Spira Depo. at 186:6-7. Alcon's money is green.

73. *Third,* Warner Bros.' contention that it cannot work with Alcon is belied by its decades-long and continuing relationship with Alcon. From 1998 to 2019, Alcon and Warner Bros. had an exclusive distribution agreement, pursuant to which Warner Bros. was required to distribute up to three Alcon films each year. Johnson Decl. at ¶ 9. Warner Bros.' own logo appears on all these films, and the agreement required close cooperation between the two companies on the theatrical release and marketing of films, as well as coordination on the post-release exploitation

of Alcon films. *Id.* at ¶ 16. Warner Bros. has distributed the majority of Alcon's films under this arrangement, which have collectively generated [REDACTED] in revenue. *Id.* at ¶ 11.

74. While Warner Bros. and Alcon's exclusive distribution agreement ended in late 2019 (meaning Alcon can now release movies with other distributors as well), Warner Bros. remains a distributor of over twenty Alcon films to this day. *Id.* at ¶ 9. Just recently, in June 2025, Warner Bros. and Alcon agreed to extend several distribution agreements for Alcon films through [REDACTED]. *See Id.* at ¶ 14; *see also* Smith Depo. at 199:1-24. This agreement was approved by [REDACTED]. *See* Smith Depo. at 201:3-22.

75. As the Court is aware, Alcon and Warner Bros. also resolved in June 2025 Warner Bros.' objection to the Library Sale by, among other things, entering into a new agreement regarding the manner in which Alcon may audit the books and records of Warner Bros. for years to come. *See* Johnson Decl., at ¶ 15 and Ex. C (Audit Agreement Amendment).

76. As the record demonstrates, when it suits its economic interests, Warner Bros. has no objection to contracting with Alcon. But when it wants to purchase the assets that Alcon won fair and square at an Auction, it professes not to have any trust and confidence in Alcon.

77. ***Fourth***, Warner Bros. claims to be concerned that the filing of the *Musk* lawsuit eroded the trust between the parties. *See* WB Objection ¶ 74. But this lawsuit ***preceded*** the recent June 2025 agreements entered into between Warner Bros. and Alcon. The lawsuit is also merely an exercise of Alcon's legitimate interest in protecting its intellectual property from infringement by third-party AI tools. Johnson Decl., at ¶ 20. Holders of intellectual property ***must*** file suits to protect their intellectual property rights when they are arguably infringed, lest they risk deterioration of those rights. *See*, Johnson Depo. at 223:16-22; *see also* Johnson Decl. at ¶ 20. Warner Bros. is well aware this is a common practice in the industry as it too has filed lawsuits to

protect its intellectual property. *See* Johnson Decl., at ¶ 20; *see also*, Smith Depo. at 217:13-219:9

(
 [REDACTED]
 [REDACTED]
 [REDACTED]).

78. Warner Bros. also raises two other past disputes with Alcon. Suppl. WB Decl. at ¶¶ 29-30. But neither of these two issues resulted in any litigation, and both occurred before Warner Bros. elected to extend its business relationship with Alcon through [REDACTED].

79. In fact, during the decades-long relationship between Warner Bros. and Alcon that started in the 90's, there has been no other litigation between the parties whatsoever. Johnson Decl., at ¶ 20; Smith Depo. at 178:10-21. This is true even with respect to the numerous audits that Alcon has conducted over the decades. *Id.* at 179:5-13. Nor has Warner Bros. or Alcon ever made claims against one another under the distribution agreements that were renewed in June 2025. Smith Depo. at 179:14-17. Alcon never breached any confidentiality obligations in its dealings with Warner Bros. *Id.* at 182:3-10. Furthermore, Warner Bros. has publicly lauded Alcon and their relationship many times over the years. Johnson Decl. at ¶¶ 17-19; *see, e.g.*, Anthony Kaufman, *Alcon steadily supplies solid titles*, VARIETY (Sept. 25, 2008, at 4:33 pm PT), <https://variety.com/2008/film/markets-festivals/alcon-steadily-supplies-solid-titles-1117992912/> (“‘It was the perfect combination of their resources and our desires,’ [Warner Bros. production head Kevin] McCormick says, adding, ‘They are the most thorough, prepared producers that I think I’ve worked with the entire time I’ve been here.’”); Dave McNary, *Alcon renews pact with Warners*, VARIETY (May 14, 2011, at 12:07 am PT), <https://variety.com/2011/film/news/alcon-renews-pact-with-warners-1118037033/> (Per Warner Bros. Pictures Group President Jeff Robinov, “Warner Bros. has enjoyed an incredible relationship with Andrew, Broderick, and their entire

team at Alcon over the years, and we look forward to continuing this tremendously successful partnership.”); Anita Busch, *Alcon Entertainment, Warner Bros. Extend Deal to 2019, Arranges \$200M in New Financing*, DEADLINE (Nov. 5, 2015, at 9:47 am), <https://deadline.com/2015/11/alcon-entertainment-warner-bros-extend-deal-200-million-financing-1201609157/> (“‘Andrew, Broderick and Alcon have been great partners to Warner Bros.’ said Kevin Tsujihara, Chairman and CEO, Warner Bros. in a statement. ‘Their films are always great additions to our slate, and I’m very glad they’ll continue to be a part of the Warner Bros. family for years to come.’”).

80. Based upon all of the foregoing, it is respectfully submitted that Alcon has established its ability to provide adequate assurance of its ability to perform under the Assumed Contracts.

III. THE DEBTORS HAVE THE RIGHT TO ASSUME AND ASSIGN THE ASSUMED CONTRACTS

81. Under the Bankruptcy Code, the Debtors “may assume or reject any executory contract[.]” 11 U.S.C. § 365(a). Warner Bros. argues that the Assumed Contracts are excepted from the default rule that executory contracts can be assumed and assigned freely because they are (1) financial accommodation agreements that cannot be assumed or (2) require Warner Bros. consent to assign.

82. Warner Bros. is wrong on both counts.

A. The Assumed Contracts are not Financial Accommodations.

83. Under the Bankruptcy Code, the Debtors

may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

...

such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor[.]

11 U.S.C. § 365(c)(2). In order to understand what a financial accommodation is—and why the Assumed Contracts are definitively not financial accommodations—it is helpful to look at the underlying purpose of Bankruptcy Code Section 365(c)(2). Section 365(c)(2) is meant to protect a contract counterparty from having to extend new credit when the original agreement to extend credit was based on the financial strength of the now bankrupt debtor. *In re Sportsman's Warehouse, Inc.*, 457 B.R. 372, 392 n.47 (Bankr. D. Del. 2011) (quoting S. Rep. 95-989, 95th Cong., 2d Sess. 58-59 (1978)) (“The legislative history of this prohibition explains that ‘[t]he purpose of this subsection is to make it clear that a party to a transaction which is based upon the financial strength of a debtor should not be required to extend new credit to the debtor.’”).

84. Courts tend to take a conservative approach and “define the term ‘financial accommodations’ narrowly, as ‘the extension of money or credit to accommodate another.’” *Sportsman's Warehouse, Inc.*, 457 B.R. at 392 (citation omitted). When giving effect to this underlying purpose, courts look at the “principal” or “primary” purpose of the contract. *See, e.g., In re Best Prods. Co.*, 210 B.R. 714, 717 (Bankr. E.D. Va. 1997). Assumption will be denied only where the contract’s “principal purpose is to extend financing to or guarantee the financial obligations of the debtor.” *Sportsman's Warehouse, Inc.*, 457 B.R. at 393 (quoting *In re Thomas B. Hamilton Co.*, 969 F.2d 1013, 1019 (11th Cir. 1992)) (internal quotation marks omitted). In other words, “[a] contract is not a ‘financial accommodations’ contract if the extension of credit is merely incidental to the broader contractual arrangement involving the debtor.” *Id.* at 392-93.

85. Warner Bros. attempts to rewrite the applicable law by suggesting that the recent holding in *In re Svenhard's Swedish Bakery*, No. 23-60045, 2025 U.S. App. LEXIS 23641 (9th Cir.

Sept. 12, 2025) expanded the definition of “financial accommodation.” However, this is simply untrue. Rather, the *Svenhard* court reaffirmed that financial accommodations “should be ‘strictly construed so as not to extend to an ordinary contract to provide goods and services that has incidental financial accommodations or extensions of credit[.]’” *Id.* at *12-13. The *Svenhard* court applied this narrow definition to reach the non-controversial determination that a settlement agreement “is not a contract for goods and services that has only ‘incidental’ financial accommodations. No goods or services were exchanged as part of the Settlement Agreement; its only apparent purpose was to accommodate [the debtor’s] financial needs and thereby ensure that the Pension Fund received *some* payment on [the debtor’s] obligation.” *Id.* at *13 (emphasis in original). In short, despite Warner Bros.’ claims to the contrary, *Svenhard* does not transform an ordinary contract for services—such as the Assumed Contracts—into financial accommodations.

86. Here, there are two primary reasons why the Assumed Contracts are not financial accommodations contracts: (1) the Assumed Contracts do not require Warner Bros. to provide any financial accommodations and (2) assuming *arguendo* that the Assumed Contracts include financial accommodation provisions, and they do not, such provisions are “merely incidental” to the overall contract.

87. **First**, the Assumed Contracts do not contain any provisions requiring Warner Bros. to provide up front financing for Alcon. The language oft cited by Warner Bros. permitting the Debtors to pay its financing share [REDACTED] is actually contained in the MPRPA,¹² which Alcon is not seeking to have assumed and assigned to it and

¹² In the WB Objection, Warner Bros. objects to assumption and assignment of the “**Derivative Rights Agreements**,” but misleadingly includes within that defined term contracts that Alcon is not assuming, as the Assumed Contracts do not provide for Warner Bros. to advance the full amount to produce each Picture; the MPRPA does. See WB Objection, n.4; see also ¶ 5 (“The Derivative Rights Agreements define the parties’ interests in the Derivative Rights and provide for Warner Bros. to advance the full amount to produce each Picture for the Debtors’ benefit.”)

which is expired in any event. First WB Sale Decl. at Ex. 3, § 5.1 ([REDACTED])

[REDACTED]). The Assumed Contracts are separate documents without integration clauses¹³ and beyond a conclusory statement in Warner Bros' Objection,¹⁴ Warner Bros. has made no attempt to argue that the Assumed Contracts should be integrated with any other contracts nor could they successfully do so under the circumstances.

88. *Second*, even if Warner Bros. somehow carried its burden that the Assumed Contracts should be integrated with the MPRPA, they are still not a financial accommodation. The “principal purpose” of the MPRPA is not to extend financing to or guarantee the financial obligations of the Debtors, it is to govern the relative rights of the parties over a shared asset (the copyrights owned 50% by each party) and exploitation of the rights in the motion picture at issue. As Warner Bros. admitted, [REDACTED]

[REDACTED] Smith Depo. Tr. at 38:6-22. Warner Bros. does *not* mention [REDACTED]. *Id.*; see also *Sportsman's Warehouse, Inc.*, 457 B.R. at 392-93. The timing of the payment of the purchase price under the MPRPA is not the primary purpose of the MPRPA, it is merely incidental to the larger purpose of governing the parties' relative rights in connection with co-financing and

¹³ The Sample DRA in fact states that [REDACTED] Sample DRA at § 5(l).

¹⁴ WB Objection at ¶ 56 (stating a series of contracts “are integrated” without citation); *id.* at ¶ 56 n.24 (citing Warner Bros' own conclusory definition); *id.* at ¶ 65 (stating a series of contracts “are fully integrated” without citation); *id.* at ¶ 67 (same).

exploiting a motion picture. Further, a co-financier paying its purchase price with respect to a picture after it has been produced is not a “financial accommodation”, it is merely the timing of when one counterparty is required to pay its contractual obligation. Such provisions are routine in the motion picture industry. In fact, Alcon and Warner Bros. executed multiple agreements using substantially similar terms [REDACTED]

[REDACTED]. Johnson Decl. at ¶ 10.

89. Additionally, Alcon has a plethora of resources (financing, cash on hand, Smith Family, etc.) to enable it to co-finance any picture it chooses to purchase pursuant to the Co-Ownership Agreements and does not need nor expect any financing from Warner Bros. Simply put, the Assumed Contracts do not constitute financial accommodations and thus Bankruptcy Code Section 365(c)(2) does not apply.

B. Assignment of the Assumed Contracts Does Not Require Warner Bros.’ Consent.

90. Under the Bankruptcy Code, the Debtors

may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

[] applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

[] such party does not consent to such assumption or assignment[.]

11 U.S.C. § 365(c)(1). “Exceptions to assignability under 11 U.S.C. § 365(c)(1) are narrowly construed, as executory contracts can be valuable assets for the debtor’s estate.” *In re Vice Grp. Holding, Inc.*, 652 B.R. 423, 429 (Bankr. S.D.N.Y. 2023) (citation omitted).

91. Warner Bros.’ argument can be broken into separate and distinct legal arguments. *First*, Warner Bros. contends that the Assumed Contracts are preempted by Warner Bros.’ underlying copyright in the derivative works such that the Debtors have no rights to assign to Alcon. *Second*, Warner Bros. contends that the Assumed Contracts are personal services contracts and Warner Bros. is therefore not required to accept performance by Alcon in place of the Debtors.

92. Warner Bros. is wrong on both counts.

i. The Assumed Contracts Do Not Govern the Underlying Copyrights.

93. Warner Bros.’ argument that the Sale should be denied because Warner Bros.’ intellectual property is somehow at stake should be rejected. The Assumed Contracts do not create, assign, or transfer the actual intellectual property. *See, e.g.*, Sample DRA. The Assumed Contracts impose certain *contractual restrictions* on the *use* of the intellectual property that is a separate asset under the APA. *Id.* Put another way, the Purchased Derivative Rights may be sold to Alcon even if the Assumed Contracts are rejected, because the Assumed Contracts merely govern the manner in which the Debtors and Warner Bros. may exploit the Purchased Derivative Rights. Warner Bros.’ consent is not necessary for the Debtors to either assume and assign the Assumed Contracts to Alcon or sell the Purchased Derivative Rights to Alcon.

ii. The Assumed Contracts are Not Personal Services Contracts.

94. Personal services contracts require the “performance of contracted-for duties involving the exercise of special knowledge, judgment, taste, skill, or ability.” *In re Rooster, Inc.*, 100 B.R. 228, 232 (Bankr. E.D. Pa. 1989); *see also In re Planet Hollywood Int’l, Inc.*, 2000 U.S. Dist. LEXIS 23309, at *15 (D. Del. Nov. 21, 2000) (stating that a personal services contract is a contract where “the parties rely on such qualities as ‘character, reputation, taste, skill, or discretion of the party that is to render performance’”). In general, a contract is one for personal services

where *only one* party is uniquely positioned to perform it and “no replacement performance could satisfy the contractual requirements.” *Vice*, 652 B.R. at 429; *see also In re ANC Rental Corp.*, 277 B.R. 226, 237 (Bankr. D. Del. 2002) (holding that a personal services contract is one “where generally only one party will do”).

95. The court, considering “the nature and subject matter of the contract, the circumstances of the case and the intention of the parties[,]” ultimately determines whether a contract is a personal services contract. *Planet Hollywood*, 2000 U.S. Dist. LEXIS 23309, at *15–16. Here, the Assumed Contracts are governed by California law. “The statutes in [California] clearly manifest a policy in favor of the free transferability of all types of property, including rights under contracts.” *Superbrace, Inc. v. Tidwell*, 124 Cal. App. 4th 388, 396 (Dist. Ct. App. 2004) (citing Cal. Civ. Code, §§ 954, 1044, 1458). Importantly, “[c]ourts applying California law have found the fact that a party contracted with a corporation as evidence that a contract is not for personal services.” *Vice*, 652 B.R. at 429. When assessing whether a contract is one for personal services, courts look for the identification of specific individuals to complete duties or specific requirements in the contract. *See Rooster*, 100 B.R. at 234 (stating that “indicia of an agreement contemplating personal services” were lacking because there were “no contractual terms requiring the personal performance of any identified employee for any particular duty”); *Vice*, 652 B.R. at 431 (finding that requirements such as “timely delivery” and “first-class technical quality” in the contract were “not sufficiently specific to qualify as personal services”). Courts have also found that contracts that are “managerial in nature”—such as the contracts of “actors and artists, managers, sales agents, school-teachers, mechanics, [and] cooks”—are personal services contracts, whereas contracts “for the creation and delivery of a product rather than the management of a project” *are not* personal services contracts. *Vice*, 652 B.R. at 431-32.

96. Contracts involving a corporate entity rather than an individual is “evidence that [a] contract [is] not for personal services.” *Id.* at 429 (applying California law); *see also Haldor, Inc. v. Beebe*, 72 Cal. App. 2d 357, 366 (1945) (“[T]he instant case relates to a contract with a corporation which, as we have said, cannot, as such, render personal service.”); *Lauter v. Rosenblatt*, No. CV 15-08481 DDP, 2020 U.S. Dist. LEXIS 115183, at *8 (C.D. Cal. June 30, 2020) (“[T]he fact that a party contracted with a corporation, rather than an individual, is often evidence that the contracts at issue are *not* personal service contracts intended to be nonassignable.”).

97. Here, the Assumed Contracts are definitively not personal services contracts. The Assumed Contracts are entered into by corporate entities. Moreover, Alcon is not tasked with any personal services, merely a right to co-finance. Warner Bros. retains complete creative control over any contractual rights that may be perceived as personal services. *See* Sample DRA at § 4 ([REDACTED]); Smith Depo. at 184:11-185:6 ([REDACTED]); [REDACTED] ; [REDACTED] ; [REDACTED] ; [REDACTED]).

98. Further, the Assumed Contracts do not require or even contemplate that any particular individual from the Debtors would be involved in a Warner Bros. project. *See, e.g.,* Sample DRA; *see also* Smith Depo. at 204:1-22 ([REDACTED]); [REDACTED]). In fact, Warner Bros.

[REDACTED] Smith Depo. at 111:2-21.

[REDACTED]. *Id.* at 111:2-112:20.

99. Similarly, the “*Don’t Say a Word*” *Co-Ownership Agreement* (the “Regency Agreement”) is not a personal services contract as Regency has pointed to *no* “contracted-for duties involving the exercise of special knowledge, judgment, taste, skill, or ability.” *In re Rooster, Inc.*, 100 B.R. 228, 232 (Bankr. E.D. Pa. 1989). Rather, Regency objects to the assignment to Alcon because Alcon will gain the right to develop derivative works which Regency speculates may damage its reputation by association. Initial Regency Sale Objection at pp. 9-10. However, this is not a consideration when determining if the *contract itself* is for personal services.

100. Additionally, Regency appears to rest its argument on the fact that—at the time of signing the Regency Agreement—[REDACTED]

[REDACTED] *Amended Declaration of David C. Friedman in Support of Objections by Regency Entertainment (USA), Inc. to Sale of Debtors’ Assets and Assumption and Assignment of Co-Ownership Agreement* [D.I. 918] at ¶ 9; Friedman Depo. at 17:5-10 ([REDACTED])

[REDACTED]). [REDACTED]

[REDACTED] Friedman Depo. at 25:15-26:9; 28:11-16; 29:19-30:23.

[REDACTED]. *Id.* at 22:15-29:17.

101. Regency did not negotiate for or receive any clause requiring those individuals to be involved in any derivative rights project. *See, e.g.*, Regency Agreement; *see also* Friedman

Depo. at 36:6-18. [REDACTED]

[REDACTED]
[REDACTED] . Friedman

Depo. at 34:5-25.

102. It is further inconceivable that any of the parties intended the Assumed Contracts or the Regency Agreement to be a personal services contract when the length of time between projects could be measured in decades. If the parties intended to rely on the “character, reputation, taste, skill, or discretion” of each other, then they would not have signed a blanket deal with a corporation that will inevitably have turn over. *Planet Hollywood Int’l, Inc.*, 2000 U.S. Dist. LEXIS 23309, at *15. For example, the original *Practical Magic* was released **27 years** before the now in production *Practical Magic 2*. The individuals who had the “reputation, taste, skill” on the first film are unlikely to be the individuals creating the new derivative work.

103. Given that the Assumed Contracts are executory contracts that can be assumed and assigned under Bankruptcy Code Section 365 and are not subject to any exception restricting assignability, Alcon respectfully requests that the Court overrule all the Objections to the Sale Motion and grant Alcon such other and further relief as the Court deems just and proper.

JOINDER

104. Alcon joins in and adopts all of the Debtors’ arguments made in the *Debtors’ Reply in Support of the Derivative Rights Sale* in response to the Objections as if set forth in full herein.

RESERVATION OF RIGHTS

105. Alcon reserves the right to supplement or amend this pleading, and to make other and further arguments at the hearing.

CONCLUSION

Alcon respectfully requests that the Court overrule all the Objections to the Sale Motion and grant Alcon such other and further relief as the Court deems just and proper.

Dated: October 15, 2025

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:) Case No. 15-10197 (BLS)
) Chapter 11
RADIOSHACK CORPORATION, *et al.*,)
)
Debtors.) Courtroom No. 1
) 824 Market Street
) Wilmington, Delaware 19801
)
) May 20, 2015
) 9:00 A.M.

TRANSCRIPT OF HEARING
BEFORE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

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<u>WITNESS FOR</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Further Redirect</u>
<u>DEBTOR:</u>					
David Peress	99	134	153	155	

<u>WITNESS FOR</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Further Redirect</u>
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1 THE CLERK: All rise.

2 THE COURT: Please be seated. Good morning. Mr.
3 Fournier.

4 MR. FOURNIER: Good morning, Your Honor.

5 THE COURT: You've been busy.

6 MR. FOURNIER: Mr. Gordon's been busy, Your Honor.
7 David Fournier on behalf of the Debtors. Your Honor, we
8 submitted to the Court a third amended agenda yesterday.

9 THE COURT: I have it; thank you.

10 MR. FOURNIER: In connection with today's hearing.
11 We would just move in the order of the agenda, Your Honor.
12 And so the first item that we have up is the motion to
13 establish bid procedures in connection with the real property
14 sales and Mr. Green will handle that.

15 THE COURT: Great; Mr. Green, good morning.

16 MR. GREEN: Good morning, Your Honor; Paul Green
17 with Jones Day on behalf of the Debtors. I'm pleased to
18 report we did not receive any objections to our bid
19 procedures for the real estate property. Just real quickly
20 this relates to our own real estate. We have a number of
21 properties in Fort Worth, Texas where our headquarters are
22 located and also a property in Hagerstown, Maryland and one
23 out in California. Those are our distribution centers.

24 Basically, the procedures to set forth the auction
25 process to sell those owned real property, the key dates that

1 I'd just like to reiterate a bid deadline of June 8th, sale
2 objection deadline we're asking to propose of June 9th, an
3 auction on June 11th, and we're proposing a sale hearing on
4 June 16th and I'm told Your Honor has availability at 9:30 on
5 June 16th for that hearing.

6 THE COURT: Okay.

7 MR. GREEN: And so basically while we didn't receive
8 any objections or there was a little bit of a change, we
9 thought we would have some stalking horse purchase agreement
10 signed up a week or so ago. We actually do have them. We
11 have one of them signed up and it has been filed on the
12 docket and we believe we'll have the other one hopefully by
13 the end of the hearing today signed up. Those do have some
14 bid protections associated with them. It's going to be
15 basically bid protections in the range of one to two percent
16 of the purchase price.

17 THE COURT: Okay.

18 MR. GREEN: What we're seeking to do with that is
19 have that, the bid procedures section of that heard next week
20 at the May 27th hearing. And also in connection with that
21 we've spoken with the U.S. Trustee and the Committee and
22 Cerberus. And assuming that they're on board, I think we've
23 shared the purchase agreements already with the Committee and
24 Cerberus. We'll get them to the U.S. Trustee as well.

25 What we'd like to do is submit that under COC

1 assuming that we have everyone's agreement prior to the 27th
2 hearing. So that's our current plan. If Your Honor --

3 THE COURT: So if the major stakeholders are on
4 board and I think what you're talking about is you've got a
5 fish on the line right now, but you haven't finalized bid
6 protections. And I think was it in this case that we had a
7 colloquy. I had a discussion a couple weeks ago with
8 somebody about and my point was that I think O'Brien in Third
9 Circuit case law requires that the party be identified and
10 that I make that finding. It was this case?

11 MR. GREEN: It was, Your Honor.

12 THE COURT: It seems like everything is in this
13 case. So that sounds fine to me. And, again, it's not
14 typical but given the fact that we've been down this path
15 before if the stakeholders are on board, the major
16 stakeholders I'd entertain under certification. If there are
17 issues with it, then we'll deal with it on the 27th. I have
18 no problem with that time.

19 MR. GREEN: Thank you, Your Honor. And one thing I
20 would note just for the record because you did mention the
21 identity of the purchaser. With regard to one of the bidders
22 we are revealing the purchaser obviously to the U.S. Trustee
23 and all the parties. We're not revealing it as a public
24 matter. Our brokers thought that would be beneficial to the
25 process. So to put a little bit more color on that, the bid

1 protections for one of the agreements it relates to our
2 California and Texas properties. It has a customary
3 inspection period, so it won't go firm until June 1st.

4 THE COURT: Okay.

5 MR. GREEN: The bid protections we're seeking they
6 wouldn't be entitled to those until it goes firm. But in
7 connection with that since it's not firm, we're asking
8 basically not to share publically the total purchase price or
9 the name of the purchaser until it's firm. So I just wanted
10 to make sure that was clear for the record as well. But
11 obviously we'll disclose those for the major parties and the
12 U.S. Trustee.

13 THE COURT: Okay; I understand.

14 MR. GREEN: Thank you, Your Honor. So with regard
15 to the form of order our plan is we're going to update it a
16 little bit to tweak that we filed these stalking horse
17 agreements, and we should have a form generally that's
18 related to what we filed hopefully this afternoon.

19 THE COURT: Terrific; I'll look for that

20 MR. GREEN: Thank you, Your Honor.

21 THE COURT: Item number two.

22 MR. GORDON: Good morning, Your Honor.

23 THE COURT: Good morning, Mr. Gordon, good to see
24 you.

25 MR. GORDON: Good to see; Greg Gordon on behalf of

1 the Debtors. It's kind of a good news/bad news day for me.
2 I have twin sons. They both graduated from college the last
3 two consecutive weekends, which was great. The bad news is
4 I'm not even at my usual level of incompetence in terms of
5 preparation for the hearing today, so I'm going to have to
6 call on more help than usual with respect to the matters on
7 the docket.

8 That's it, Your Honor, with respect to the bar
9 date. We had two objections that were filed. The good news
10 is we worked both of those out, I believe. One is a limited
11 objection filed by the state of Texas. They filed an
12 objection on behalf of holders of gift cards raising a
13 concern about the timing of the bar date with respect to
14 holders of gift cards.

15 And after some discussions that occurred between Mr.
16 Prieto at Jones Day and Mr. Morris with the Texas Attorney
17 General's Office, we've come to the conclusion that the best
18 way to proceed is to carve the gift card holders out of the
19 bar date process altogether at this point. It struck us that
20 the issues are better handled in connection with the plan,
21 and I'll talk later in the hearing about where we are in the
22 plan.

23 Because as we talked through it, Mr. Morris the idea
24 of moving the date back which would be after confirmation
25 having a specialized claim form and that sort of thing, it

1 just struck us that it would be more efficient to handle
2 these issues as part of the plan process. So we've agreed to
3 carve that matter out, carve those holders out of the bar
4 date and we think that resolves the issues with respect to
5 Mr. Morris, although I do understand he's on the phone this
6 morning.

7 THE COURT: Mr. Morris, you on the line this
8 morning, sir?

9 MR. MORRIS: I am, Your Honor; good morning. For
10 the record, Your Honor, Hal Morris with the Office of the
11 Texas Attorney General. Your Honor, Mr. Gordon is correct I
12 did have a conversation about 9:00 last night central time
13 with Mr. Prieto and I don't know that we've fully resolve it.
14 We certainly look forward to working with the Debtor to
15 resolve it. Here are the concerns, Your Honor, that remain
16 unresolved while we try to work out the broader issue about
17 unredeemed gift cards.

18 And the Debtor tells us they have \$46 million
19 dollars in unredeemed gift cards so it's a significant sum
20 and an important issue. And, Your Honor, as we pointed out
21 in our pleadings under present Third Circuit law in
22 Wilmington there's a reported decision the WW Wireless case
23 that we cite in our papers that says that the gift cards will
24 be treated as a priority claim. I believe from memory the
25 code section was 507(a)(7). So, again, it's a significant

1 issue and we look forward to working with the Debtors about
2 it.

3 In the meantime, though, Your Honor, we think it's
4 very important that to the extent that the Debtor can
5 identify gift card purchasers. Now we recognize a lot of
6 gift cards were purchased at grocery stores and elsewhere and
7 the Debtor would have no record of who bought them. We also
8 recognize that a lot of gift cards were obviously then given
9 away as gifts or promotions. So the Debtor may not have any
10 way of knowing who ultimately holds them. But we think it's
11 important that, you know, any consumers as a matter of sort
12 of fundamental due process who, you know, has a claim against
13 the estate and since the code recognizes a gift card holder
14 has a priority claim, we don't think there's any dispute.
15 They're creditors.

16 So, Your Honor, what we would ask is to the extent
17 that the Debtor can identify purchasers of gift cards and
18 that might be for example through the 67 million customer
19 files they have that contain, among other data, a SKU number
20 and we still don't seem to have a clear answer whether a gift
21 card would be identified by a certain SKU number, the same
22 way a radio or a battery might be. But the point being, Your
23 Honor, to the extent the Debtor can identify purchasers of
24 gift cards, we think they're entitled to know this.

25 And equally important, we think that it's in

1 everyone's interest that someone holding a gift card have a
2 simplified way of filing a proof of claim. And we submitted
3 to the Court to the Debtors' consideration, we're happy to
4 work on a final version; a sample form of proof of claim that
5 would substantially comply with rules for forms. And, Your
6 Honor, we've done this in other cases.

7 We did in the U.S. the Dalles case which involves
8 only 650,000 consumers in St. Louis. But we've had, you know
9 there's certainly a history where we've helped develop sample
10 proof of claim forms to allow consumers an opportunity to
11 have a much easier way to file a proof of claim. And I
12 believe based on my conversations with Mr. Prieto, and Mr.
13 Gordon can confirm this, the Debtor is willing to have some
14 kind of a link or a menu item on its website so that
15 consumers who want to file a proof of claim can download the
16 form from there.

17 And we think that's important that happen now both
18 the notice to consumers and the proof of claim form be
19 available for consumers to download now. And then the other
20 issues I agree with Mr. Gordon, we can work out in the weeks
21 or months ahead or as part of a plan process. But we would
22 ask in connection with the bar date that the Debtor be
23 required to try to give notice as best it can from its
24 records and also put up a proof of claim form and a sample
25 similar to ours that allows consumers to file those. Thank

1 you very much, Your Honor.

2 THE COURT: Thank you, Mr. Morris. Mr. Gordon.

3 MR. GORDON: Again my only response is and maybe I
4 wasn't clear at this point in time we'd like to just carve
5 the gift holders out of the bar date motion, so we're not
6 seeking any relief with respect to the holders regarding a
7 bar date and will, otherwise, address notice issues and how
8 to treat the holders of gift claims in connection with the
9 plan. That would be our preference. So this morning I'm
10 basically withdrawing our request with respect to gift card
11 holders.

12 THE COURT: Mr. Morris, anything to add on that?

13 MR. MORRIS: Well, Your Honor, again, the only
14 concern that's fine. But the problem is that if the Debtor
15 has told everyone and we understand the economic realities if
16 the Debtor is going to be filing a plan within the next few
17 months. If the Debtor has what we believe to be potentially
18 identifiable known creditors which are gift card holders, we
19 think that the Debtor should be actively working toward
20 giving them notice. And we think that there should be a
21 simplified method the same way the Debtor has sent proofs of
22 claims along with other creditors, we're just asking we have
23 this simplified proof of claim form.

24 All the other issues can certainly wait for later,
25 but you know it's not going to be helpful in a plan to say

1 well we haven't noticed any of our gift holders, so here's
2 how we're going to deal with them when the Debtor is
3 liquidated. So that's all we're asking for today is that the
4 Debtor actively work to identify and notice them, have a
5 simplified proof of claim form, and all the other issues we
6 can work out in the weeks and months ahead. Thank you.

7 THE COURT: Okay. For purposes of today I think I
8 understand clearly what the Debtors' plan is or proposal and
9 that is to the extent that I'm setting a bar date holders of
10 gift cards would not be bound by that bar date and there
11 would be further procedures that would govern those folks.
12 And I'm prepared to proceed on that basis. I will not
13 require or direct that the Debtor prepare or circulate or
14 provide notice at this stage relating to gift card holders.

15 The concern that I have is absent wrapping them in
16 to a basic bar date structure, I'm concerned about the
17 prospect of a risk of confusion in the marketplace for those
18 gift card holders where the Debtor I think has affirmatively
19 stated that they will not be bound by this bar date. But I
20 think, Mr. Morris, the fact of the matter is that your
21 concerns and observations have moved this issue to the front
22 burner and it's clearly on the Debtors' radar as well.

23 Issues of sufficiency of notice for known creditors
24 are the subject of no shortage of case law from the Supremes'
25 all the way down to and through the Third Circuit. So this is

1 an issue that the Debtor, I assume, is focused on, and we'll
2 grabble with it and moving forward under its plan. I make no
3 comment at this point with respect to the sufficiency of
4 notice or mechanics of dealing with gift card holders. And
5 whatever the Debtor will propose I expect that they'll keep
6 you in the loop in that exercise, and I will reserve,
7 obviously, to a point where I may be asked to rule on
8 something with respect to gift card holders. But at this
9 stage, the Debtor is prepared to move forward with a bar date
10 that will not be binding upon gift card holders, and I'm
11 satisfied with that.

12 MR. GORDON: Thank you, Your Honor.

13 MR. MORRIS: Thank you very much, Your Honor.

14 THE COURT: Sure.

15 MR. GORDON: And then, Your Honor, the other
16 objection that was filed to the bar date motion was by a
17 David Verderame. I may be mispronouncing it; it's V-e-r-d-a-
18 m-e, on his behalf and on behalf of a certified class of
19 plaintiffs. That's a lawsuit. That relates to a lawsuit
20 filed back I believe in 2013 alleging violations of defense
21 of Minimum Wage Act.

22 As I indicated, there was a class certified. There
23 was a settlement reached in December of 2014. It was
24 preliminarily approved by the Federal District Court in which
25 that litigation is pending in December 2014 and a final

1 approval hearing was set in February. But RadioShack filed
2 for bankruptcy before that final approval hearing could
3 occur.

4 The objection basically raises a concern about
5 whether the class representative would have authorization to
6 file a class proof of claim. At the end of the day, the
7 request is that we agreed to move the bar date out for
8 members of that class to a date that's 45 to 60 days
9 following the filing of a plan of reorganization.

10 We basically received a similar informal objection
11 from the unsecured creditors committee with respect to the
12 length of time we were proposing between today and the
13 setting of the bar date. And, of course, they're focus,
14 obviously, is on unsecured creditors in general. And what we
15 proposed both the unsecured creditors committee's concerns
16 and the concerns of Mr. Verderame is that number one that we
17 would set a bar date for unsecured creditors including the
18 class members in this litigation for a date that's 45 days
19 after the service of a plan. And that would be the rule, of
20 course; unless that 45th day falls on a weekend or a holiday
21 in which case it would extend over to the next business day.

22 THE COURT: Okay.

23 MR. GORDON: But, otherwise, the bar date would
24 remain our proposed June 22nd date with respect to
25 administrative claims including 503(b)(9)'s and also priority

1 claims. And the reason for that is that we need that
2 information --

3 THE COURT: You need the hurdle.

4 MR. GORDON: For feasibility purposes and to assess
5 the confirmability of a plan. And I should, I guess, point
6 out at this point our objective at this point in time is to
7 actually file a plan as early as the end of this week.

8 THE COURT: Okay.

9 MR. GORDON: With a schedule that basically would
10 propose a confirmation hearing before Your Honor goes out of
11 town, I think, at the end of June. And I think Your Honor
12 may have seen that we submitted an agreed scheduling order
13 with the IRS with respect to or with the DOJ, I guess, I
14 should say, with respect to the IRS claim. And that schedule
15 proposed in there and agreed to in there fits with the
16 schedule that I'm describing with respect to confirmation.

17 THE COURT: I don't want to get off topic on the bar
18 date issue. I did see this order, and you do have me
19 scheduled for or time in front of me on the 25th of June for
20 all day. That's fine and you've got that day. But I rely
21 upon you guys to exercise some judgment in this respect. If
22 the IRS issue is on and presumably plan confirmation as well,
23 because those two, as I understand the Debtors' task, those
24 two travel together.

25 Here's the concern that I have and we've been, I

1 think, proactive in reaching out to you. If it doesn't
2 conclude on the 25th the earliest we'd be back would be the
3 13th of July. And as long as you're aware of that that's
4 fine. But I don't, I want to be as up front as I can about
5 scheduling issues, you know. We accommodated a lot of
6 scheduling and what I don't want are huge amount of resources
7 brought to bear for a hearing that I think if you conclude
8 that it can't wrap up on the 25th then we should think about
9 it.

10 MR. GORDON: We are hoping to come to you depending
11 on where you might be.

12 THE COURT: I'm at Boy Scout Camp. If you want to
13 come, you're going to need a neckerchief and green socks.

14 MR. GORDON: Well I know Mr. Burke has green socks.
15 We appreciate that, Your Honor. And we are aware that you
16 had those constraints and we'll work around that. I mean
17 this is obviously a, you know, a schedule that's aggressive
18 and we recognize know. And we know that there's a lot of
19 work between now and then. We've already had, I think, some
20 very productive discussions with the Department of Justice
21 about the IRS issues. And they've asked now for information
22 from us which we'll provide in the next week or so and we'll
23 move that along. And you know we'll have a better idea,
24 obviously, as we move along this path whether these dates can
25 hold and whether the June 25th date continues to make sense in

1 view of Your Honor's schedule, but we appreciate your
2 comments.

3 THE COURT: Okay, Mr. Loizides.

4 MR. LOIZIDIES: Yes, good morning, Your Honor. For
5 the record Chris Loizides for David Verderame as a class
6 representative in this case which I do believe based on the
7 representations of Debtors' counsel that this largely
8 resolves our objection.

9 I would just like to put a couple things on the
10 record just to note what our concern is here. Part of it
11 was, frankly, given the fact that, you know, I guess we're
12 reserving our rights technically. We have never asserted
13 anything other than a prepetition general unsecured non-
14 priority claim in this case and it's just a matter of cost
15 essentially given what may or may not be the dividend to
16 general unsecured creditors to keep motion practice and
17 filings to a minimum.

18 An additional concern is and I don't want to
19 exaggerate this, but to the extent that we filed a motion for
20 permission to file a class proof of claim and were denied for
21 some reason. I don't necessarily envision that, but it's
22 possible. Then we just don't want to put in a situation
23 where the members of that class don't have sufficient notice
24 to address that at that point. As long as the Court
25 understands that and the parties understand I don't know that

1 the Court needs to deal with that right now. Our goal here,
2 by the way, is to come up with a global resolution of
3 everything. And that's what brings me to the next issue.

4 And if it possible depending on what their plan
5 looks like that I don't know how possible, but I can envision
6 circumstances under which it might actually not make sense to
7 proceed with a class claim which was another concern that we
8 had, just depending on a number of issues. Now I don't
9 necessarily envision that, but again it's possible depending
10 on what the plan looks like.

11 And we had adjourned, by the way our motion to
12 compel assumption or rejection with the idea in mind of
13 coming to a global resolution rather than a piecemeal
14 process. And part of that is I think necessarily could
15 depend on what their plan looks like. So those were really
16 our concerns, Your Honor. And unless the Court has any
17 questions.

18 THE COURT: No I don't have any questions and I
19 understand the issues that you're raising and you're
20 anticipating. Given that the plan has not yet been filed,
21 I'm not going to speculate on what it may be. And if we need
22 to deal with issues that are raised by the plan then we'll
23 deal with them at the appropriate time. But I agree with you
24 I don't believe that those are today issues.

25 MR. LOIZIDIES: Yeah and as I said, Your Honor, I

1 guess I mean look this class was certified prepetition. I
2 think some Courts have held that regardless of that this
3 Court would have the authority to essentially not treat the
4 claim as a class claim for purposes of bankruptcy. As a
5 practical matter that's not something that happens very
6 often; maybe for obvious reasons. I mean most Bankruptcy
7 Courts don't want to say well another Court has already dealt
8 with this issue, why should I reinvent the wheel. But you
9 know it's just, we just, if we get to that point for some
10 reason we can address it at that point. I don't necessarily
11 envision it, but I just want to put that on the record.

12 THE COURT: We'll cross that bridge if and when we
13 come to it.

14 MR. LOIZIDIES: Okay thank you.

15 THE COURT: Thank you. Mr. Clark, good morning;
16 good to see you.

17 MR. CLARK: Good morning, Your Honor; good to be
18 seen. I rise not because I have anything to say about this
19 particular motion, but the discussion that Mr. Gordon and
20 Your Honor had about the plan process there's a certain air
21 of inevitability around this concept of a plan. And I didn't
22 want Salus Capital's silence as we sit here to be taken as
23 some kind of a scent to the proposal or fact or whatever you
24 want to call it that there's going to be a plan. We're not
25 on that bandwagon at this point. Candidly for the Court, for

1 the record I don't expect we will be. We're not getting
2 paid. We're a secured lender. We're not getting paid in
3 full from this process. Nobody projects that we will be.

4 And we don't see how a plan process really can go
5 forward here; certainly not using our cash collateral to fund
6 the plan or to fund all that work that Mr. Gordon says he's
7 contemplating doing between now and then. So I just want it
8 clear so when these issues do come to a head Your Honor
9 doesn't hear from somebody else that geez Mr. Clark was lying
10 in the weeds. He should have something long before now.

11 THE COURT: I think you raise a fair point. And I'm
12 not going to get any further into it. I haven't seen the
13 Debtors' plan. I make no comment again about --

14 MR. CLARK: Nor have I.

15 THE COURT: Right. About whether or not who's on
16 board and who's not. But I think your point does go to the
17 my observation from a few minutes ago about my reliance,
18 frankly, not just on Mr. Gordon, but, frankly, on the other
19 stakeholders and participants.

20 MR. CLARK: That was what I got [indiscernible].

21 THE COURT: You folks know how to get me on the
22 phone. And, obviously, you're aware of my preference as it
23 relates to discovery and mechanics, etcetera. But if there
24 are scheduling issues and overall process issues, I would
25 generally prefer to deal with them promptly between the

1 parties.

2 And there are a lot of moving parts here. The
3 Debtor, I think, has been focused on immediate issues and
4 we're doing that today as well with respect to dealing with
5 assets, the disposition of assets and more immediate
6 concerns. I think the Debtor is moving promptly toward a
7 plan process. Again, I make no comment on right or wrong,
8 but in recognition that many of the immediate kind of triage
9 steps or value capturing steps have been completed and that
10 there is no benefit to anybody from lingering in bankruptcy.

11 So I am aware that the Debtor is moving and I think
12 Mr. Gordon used the word aggressive and I don't disagree with
13 that, but that's pretty much par for the course in this case.
14 But I would encourage the parties to keep those lines of
15 communication open even if they're not productive. The issue
16 is I do not want to be in a position where I'm wasting your
17 time or that parties are sort of running down blind alleys.
18 If I can be of assistance in that process, I'm here to do
19 that.

20 MR. CLARK: I think Your Honor that there is a
21 looming issue that's going to come up in the next week or so
22 which is cash collateral and continue to use cash collateral.
23 It may bring some of this to a head, but as I said as I sat
24 there and listened to Your Honor's comments about how much
25 you do rely on the parties to keep you informed of the

1 process I thought it would be important at this point let's
2 get up and make sure that everybody is aware of where Salus
3 Capital is coming from; at least as of today.

4 THE COURT: Very good.

5 MR. CLARK: Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Clark. Mr. Indyke, good
7 morning.

8 MR. INDYKE: Good morning, Your Honor; Jay Indyke of
9 Cooley for the creditors committee. Two items, first, with
10 respect to the plan. Just briefly, the committee has been in
11 discussions with the Debtor with respect to the plan timeline
12 and is on board with that timeline. So I just wanted, even
13 though that's not on for today, I just wanted to let you know
14 that we have had discussions with the Debtor with respect to
15 that.

16 On the bar date, we assume that the Debtor will be
17 submitting the order under certification of counsel since we
18 had the, we were working out the details yesterday. We
19 haven't seen an order and we'll look at the order to make
20 sure the language comports with what we agreed to. But
21 subject to that, we're in agreement with Mr. Gordon's stated.
22 Thank you.

23 THE COURT: Thank you. Mr. Harris, good morning.

24 MR. HARRIS: Good morning, Your Honor; Adam Harris
25 from Schulte Roth & Zabel on behalf of Cerberus Capital

1 Management. Your Honor, on a matter kind of tangentially
2 related to what we've been talking about here mostly on
3 timelines and process, you know, one of the, as I understand
4 it from the conversations I've had with Mr. Gordon and
5 others, one of the things that Mr. Gordon hopes the plan will
6 achieve here is way to focus a lot of issues around trying to
7 resolve open items including the tax liability, the gift card
8 issues, all these other different things.

9 As Your Honor probably has noticed there have been a
10 number of motions filed for allowance of payment of
11 administrative expense claims particularly by landlords who
12 are looking for payment of stub rent for February and other
13 items, all of which presumptively will be or presumably will
14 be addressed by the terms of this plan of reorganization. I
15 had spoken to Mr. Gordon about as a scheduling matter, Your
16 Honor, potentially having all of those motions set for a date
17 either at the same date of confirmation or for a date
18 subsequent to confirmation to allow that process to work
19 itself through, see whether it gets resolved in the context
20 of the plan; and only if it's not then dealt with to the
21 extent necessary by motion practice before Your Honor.

22 So I just wanted to raise that as a possibility so
23 that in the subject matter of maybe hurting cats, if you will
24 not to be pejorative to anybody. It would be a way to kind
25 of focus all of that onto a particular date, have all those

1 motions adjourned to a specific date, not have the Debtor
2 have, we start filing responses to all of these. And just
3 set it up for scheduling purposes and efficiency in a manner
4 that would allow that to be deal with in some date in the
5 future which would seem to make more sense from just a
6 scheduling and efficiency standpoint.

7 THE COURT: Okay I understand and obviously you can
8 confer with the movants and with the Debtor on that. And I'm
9 certainly a big fan of efficiency. But the point that I have
10 is just making sure that the expectations are rational about
11 what is likely to be presented and accomplished on a
12 particular day or days, okay.

13 MR. HARRIS: Thank you.

14 THE COURT: So, Mr. Gordon, as I understand it I'll
15 look for a final or revised version of bar date order under
16 certification. And I'd hear from anybody else who wishes to
17 be heard with respect to the Debtors' request for a bar date
18 order at this point. Very well.

19 Based upon the record before me I will approve and
20 authorize the relief requested. The establishment of a bar
21 date is a basic element of a Chapter 11 case, and I think
22 that the Debtors demonstrated that it's necessary in this
23 case and appropriate. I have heard and I have no issue with
24 the modifications and arrangements that have been achieved in
25 response to formal and informal objections. And I appreciate

1 hearing that the Committee is supportive of the bar date
2 process and we'll go from there. I'll look for that order
3 and I'll enter it when I see it.

4 MR. GORDON: Thank you, Your Honor. And I guess I
5 would just add with respect to the comments on the plan I'm
6 perhaps an optimistic to a fault. But and I certainly want
7 to talk to Salus and their counsel about what the thought is.
8 But I think as Mr. Harris indicated my view is we need to
9 bring this case to a close. And I believe the most efficient
10 way to do that is through a plan process. Because as Mr.
11 Harris indicated there are a lot of issue lingering out there
12 and the resources are, of course, relative de minimis that
13 we're working with.

14 And to me what I'm trying to avoid is a situation
15 where this case continues to limp along month after month
16 after month. And we're dealing with a variety of motions,
17 because we have so many parties, so many constituents who
18 have a stake in this and have issues to raise. So my hope is
19 that we can really focus everyone on the issues that need to
20 get resolved; do it in a way that the secured lenders are
21 supportive of because, frankly, at the end of the day I
22 believe having a more efficient process that leads to a
23 prompt conclusion of these cases is in their interest as
24 well. But I certainly recognize and appreciate the comments
25 by Mr. Clark and realize, again, there's a lot of work to be

1 done in connection with the plan.

2 THE COURT: Okay I understand.

3 MR. GORDON: Your Honor, then that will take us to
4 our motion for approval of the sale of certain intellectual
5 property and related assets. And I thought I just for a
6 moment step back to sort of go over the procedural history
7 and then I want to talk about the objections. And the good
8 news is that we resolved a large majority of the objections
9 that have been filed through the work of hard number of a
10 number of people.

11 But his motion's been on a really long track. It
12 was filed all the way back on April the 10th. The hearing on
13 the bid procedures was April the 28th. Your Honor approved the
14 bidding procedures by order entered on the 30th. And, again,
15 by way of reset, Your Honor may recall the bid deadline was
16 set for May the 6th, auction set for May the 11th and, of
17 course, the sale hearing was set for today.

18 We received a number of bids; all different kinds of
19 bids by the bid deadline. And I meant to go back and count.
20 I think it was some 16 or 17 bids or so that we received.
21 And so we did end up having an auction which did begin on the
22 11th. It continued through to the 12th. And as Your Honor
23 knows General Wireless was selected as the winning bidder.

24 So then I want to address the objections that have
25 been filed and talk about the agreements that have been

1 reached.

2 THE COURT: Okay.

3 MR. GORDON: And, again, I think the news is really
4 good here because we've resolved a large majority of the
5 objections. The first I wanted to address were the
6 objections filed by various states Attorney's General with
7 respect to the proposed sale of customer data. And as Your
8 Honor knows, we had agreed at the prompting of Mr. Morris
9 prior to I think the last hearing on the 28th to go to
10 mediation with respect to the issues raised by the Attorney's
11 General and that mediation was conducted by Retired Judge
12 Leif Clark.

13 General Wireless is the winning bidder, was invited
14 to attend that mediation, did attend the mediation. The
15 Consumer Privacy Ombudsman Ms. Frejka also attended that
16 mediation. I'm trying to remember; the days all run
17 together, but it was held in Dallas I believe last Thursday
18 the 14th. And it was successful. We reached an agreement.
19 It's been joined in by a number of state's Attorney General.

20 I think what I do at this time is ask some of the
21 other parties to comment on the terms. They're in a better
22 position than I am. I know Mr. Galardi is here this morning;
23 Mr. Frejka is here this morning as well. And, of course, Mr.
24 Morris is on the line. And I know Mr. Morris has some
25 statements he wants to make in connection with the settlement

1 that's reached. But I think, Your Honor, you had a chance to
2 review the document that was filed last night.

3 And, in fact, also if you had a chance to review the
4 Consumer Privacy Ombudsman report, you can see the amount of
5 work that went into that settlement; the level of detail that
6 was reached with respect to the agreement. And I just
7 appreciate all the hard work of all the many parties
8 including the many state's Attorneys General who showed up in
9 Dallas and also participated on the telephone to reach the
10 agreement with respect to the customer data.

11 THE COURT: I'd like to hear first from Mr. Frejka,
12 and then I'll hear from Mr. Morris and any of the other
13 participants that wish to be heard and, of course, from Mr.
14 Galardi as well. Ms. Frejka, welcome.

15 MS. FREJKA: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MS. FREJKA: Ms. Frejka; I'm the Consumer Privacy
18 Ombudsman in this case. It's been a long contentious but
19 eventually successful process. I'd like to thank as well the
20 parties who worked incredibly hard to put together something
21 which I think is acceptable and appropriately strikes a
22 balance between consumer privacy expectations and the
23 realities of a bankruptcy case.

24 My report that I filed on May 16th what it does it
25 takes into account the agreements that were reached prior to

1 the document that was filed last night. And puts some
2 limitations on the data that's appropriately to be
3 transferred to the purchaser, as well as takes into account
4 some notice provisions to consumers and puts some limits on
5 the data. I think that's where we are.

6 A couple of bells and whistles that we kind of took
7 into account things like how successful publication notice
8 actually is and what it does in crafting some of the notice
9 provisions for consumers. We also had discussions with, you
10 know, what are the data elements that the Debtors collect and
11 what is really relevant. Is it necessary to, in fact, give
12 everything or is it appropriate to limit it to what would be
13 useful and beneficial to both consumers and the purchaser.

14 And I think the recommendations in the report strike
15 that balance appropriately. I think you'll hear from Mr.
16 Morris on behalf of the State Attorney General that they're
17 on board with it. And to the best of my knowledge the
18 successful bidder has agreed to put these recommendations
19 into the final order that would approve the sale.

20 I'm sure you'll deal with this later that you'll
21 deal with the objection to the bid procedures. Depending
22 upon the outcome of that I began having discussions with
23 Wonderland. And if need be, I will amend the report to
24 address that party as a potential successful bidder as well.

25 THE COURT: Okay I understand. Thank you again for

1 your work in this. Mr. Morris.

2 MR. MORRIS: Good morning, again, Your Honor; for
3 the record Hal Morris, Assistant Attorney General for the
4 state of Texas. As Your Honor knows Texas was joined by
5 literally 37 other state Attorney General's including the
6 District of Columbia in its opposition to the sale which
7 would constitute 74.5% of all the state Attorney General's in
8 the United States. And I am very pleased, Your Honor, that
9 we were, in fact, able to amicably resolve our issues and we
10 were able to strike what I think all of us believe was a very
11 appropriate balance between the very important consumer
12 privacy rights that we are all bound to protect, along with
13 the business legitimate needs of going concern moving forward
14 and being able to have access literally to just its customer
15 list.

16 And I think, Your Honor, is very important in
17 perspective if you look at you know boil down to its
18 essentials. What's really happening here is the largest of
19 shareholder of RadioShack decided to purchase the business,
20 purchase 1750 of the 3,000 stores in a prior auction, is
21 going to employ 10,000 former RadioShack employees of which I
22 believe over 1500 are in Texas. And is now asking this
23 Court's permission to purchase the intellectual property,
24 trademarks, and along with that personally identifiable
25 information.

1 And, Your Honor, the buyer has agreed and I want to
2 express my thanks and my compliments to General Wireless and
3 to its counsel Mr. Galardi. This matter was handled
4 extraordinarily professionally by all counsel involved. And
5 I literally express to Mr. Gordon and Mr. Green from Jones
6 Day. I don't think the matter could have been handled
7 anymore professionally. And while everyone was a zealous
8 advocate for their client, I think an appropriate balance was
9 struck here.

10 And Your Honor, the balance that was struck is that
11 RadioShack is going to continue with a going concern. And I
12 think we all recognize there is a legitimate need for a going
13 concern business to have access to what literally amounts to
14 its customer list. And the balance that was struck, Your
15 Honor, again boils down to a [indiscernible] is that
16 RadioShack will continue to maintain. It will be transferred
17 to the new owner. The names, postal addresses, city, state,
18 zip code of 67 million of its customers; now that's down from
19 the 117 million files that RadioShack has, so that's a 42%
20 reduction in the data that's going to be transferred.

21 And in addition that, Your Honor, they will have
22 access to emails. And rather than the 8.5 million emails that
23 the company maintains, the buyer has graciously agreed to
24 limit their access to the last two years which I believe will
25 be about a third less or maybe even half of the number of

1 emails there. And of the 170 fields of data that RadioShack
2 maintained on its customers, the buyer is limiting those
3 fields that its obtaining to literally 7. And those fields
4 contain such mundane information as the transaction date, the
5 type of transaction whether it was debit, credit, etcetera.
6 And so rather than a 170 fields of data being transferred,
7 we're talking about 7 fields, along with the name and postal
8 address.

9 I want to be sure to put on the record and its
10 memorialized in the agreement, but I think it's important for
11 everyone to understand that the buyer and the seller are all
12 agreeing that there is going to be no transfer of any credit
13 card information, no social security numbers, no date of
14 birth; not even phone numbers. None of that information is
15 being transferred. And, Your Honor, we think that offers
16 significant protection for consumers how when they enter the
17 RadioShack store or dealt with RadioShack on the website
18 we're promised that their information would never be
19 transferred.

20 But the economic realities here, Your Honor, we
21 believe, is that even though in bankruptcy these are, in
22 fact, asset sales. The reality is, is that the largest
23 shareholder is essentially continuing the business as a going
24 concern. It's a stripped down going concern. It's 1750
25 stores, rather than 3000. But we think that that we're

1 dealing with essentially a continuation of the existing
2 business. It's very important and I raise that issue today
3 because we think that that's a very important consideration
4 for us.

5 And you'll hear later today about someone else who
6 wants to upset the sale and come in. And, Your Honor, will,
7 of course, be the one to decide whether that's appropriate.
8 But you know we would be concerned that we would ever be able
9 to reach a deal with any entity who wasn't, in fact, buying
10 what we view is really the entire business, the brick and
11 mortar stores along with the website as a going concern. And
12 I'm not sure, Your Honor, that you know any other buyer would
13 ever, frankly, be acceptable to us given the facts and
14 circumstances of this specific case.

15 Your Honor, I believe I have a number of colleagues
16 on the phone from other states and would certainly welcome
17 their participation. This has been a very much a team effort
18 by all of the Attorney's General all of whom are, in fact,
19 sovereign. Your Honor, 19 state Attorney's General were able
20 to sign onto the term sheet between its finalization sometime
21 late Sunday. As Mr. Gordon pointed out we mediated, I
22 believe, for nine hours in Dallas last Thursday. Judge Clark
23 was kind enough to have a follow-up mediation call on
24 Saturday which lasted, I believe, three and a half hours with
25 an additional call on Sunday.

1 And as Your Honor can appreciate, it can be
2 difficult for governmental agencies to obtain authority to
3 sign on to settlements in a very short period of time. And
4 so, Your Honor, even though we have 19 states now and,
5 unfortunately, two of the states Rhode Island and the
6 District of Columbia's name was not added in time to the
7 list. They also signed onto this. So when anyone looks at
8 the term sheet those two names did, in fact, express support.

9 And Your Honor I understand will be asked to
10 actually approve an order sometime next week. And I
11 anticipate and hope, Your Honor, that between now and the
12 signing of the order a number of additional states will also
13 wish to be included and supportive of the settlement. But,
14 Your Honor, we are very pleased on behalf of the state of
15 Texas and many of my colleagues who withdraw our objection.
16 We very much support the sale to General Wireless to that
17 specific entity for the reasons that I stated. Again, I
18 commend all the parties. We appreciate very much the
19 participation with the Consumer Privacy Ombudsman. We think
20 everyone worked very hard in this matter and we would urge
21 Your Honor to approve not only the settlement today but also
22 to approve the sale to General Wireless. And I'd be happy to
23 respond to any questions the Court may have. Thank you very
24 much.

25 THE COURT: Thank you, Mr. Morris, I have no

1 questions at this point. I'd be happy to hear from any of
2 the other Attorney's General that wish to be heard.

3 MS. MCCLOUD: Your Honor, this is Laura McCloud from
4 the state of Tennessee. I just wanted to, I think that was
5 well said by Mr. Morris. And I just wanted to thank the
6 Court for allowing Tennessee to appear by phone today. And
7 thank all the parties that participated in the mediation.
8 And wanted to just state for the state of Tennessee that we
9 also have resolved our concerns and are withdrawing our
10 objection. Thank you, Your Honor.

11 THE COURT: Thank you, Ms. McCloud. I have counsel
12 at the podium; welcome, sir.

13 MR. MORARKI: I'm Sam Mirarchi for the Commonwealth
14 of Pennsylvania, Office of Attorney General, Bureau of
15 Consumer Protection. The commonwealth of Pennsylvania filed
16 a formal joinder in this case. And I also attended on behalf
17 of the Commonwealth mediation in Dallas, Texas, so I felt the
18 need to just say that we concur with everything the state of
19 Texas said. And I really want to thank the parties for their
20 hard work and their cooperation and their courtesies in
21 working through all of our issues. So the Commonwealth is
22 satisfied with the terms of the negotiated mediation and as
23 memorialized in the term sheet, I believe filed with the
24 Court this morning. Thank you.

25 THE COURT: Very well. Mr. Galardi, good morning.

1 MR. GALARDI: Good morning, Your Honor. Just very
2 briefly, Your Honor, first my thanks to all the parties too.
3 I did want to say two things or three things that I think
4 Your Honor should know.

5 I think the auction ended on Tuesday night probably
6 around 10 or 11:00. And the mediation, so there is, and I
7 know this goes to some of the Wonderland issues. But as to
8 the timing then we turned around starting working to get to
9 the mediation. And the mediation started at 10:30 on
10 Thursday morning, so there was really finish the APA, go to
11 the mediation. And that was critical timing.

12 With respect to General Wireless I think it is
13 important and the A.G.'s asked us the question and I did want
14 to emphasize this but this was critical to the business. It's
15 not as if, we did separate in the first auction, but the
16 intellectual property was important to the business as you
17 already approved us buying to succeed in that business. So
18 we wanted the IP for that reason.

19 Importantly, though, and my client has stated and
20 stated to the Attorney's General we take the privacy of the
21 RadioShack former customers quite seriously and we've agreed
22 to abide by that policy until they opt into a change in any
23 such policy. And with respect to that, we tried to be very
24 limited as to the Consumer Privacy Ombudsman notice and Mr.
25 Morris did. We took only seven fields. We've been working

1 with AT&T and Verizon. We'll hear about that next. We took
2 only seven fields and we took a limited timeframe to be able
3 to both balance that and to take what we believe is the most
4 important customer information.

5 And it's not just important customer information as
6 to we get and market. It's also very important as we
7 described the Attorney's General and I believe they accepted
8 this that it is also important to advise those customers that
9 there still are RadioShack stores. They are still open for
10 business. They are still in the locality. They are still
11 selling the same goods and they can still get the service and
12 the reliability.

13 So it was very important for us to obtain that data
14 to actually support the stores as Your Honor already approved
15 to make those stores be successful. And we appreciate the
16 state's Attorney Generals for their support and I just wanted
17 to let Your Honor know about timeframe and why we did what we
18 did.

19 THE COURT: Very well. All right does anyone else
20 wish to be heard with respect to the consumer ombudsman and
21 the Attorney's General issues and the follow-up from the
22 mediation? All right obviously, there are a number of moving
23 parts, there remain issues and concerns. And I want to be
24 clear I'm not getting ahead of myself in this respect. But I
25 would take a moment to express my appreciations specifically

1 to Retired Judge Clark for his efforts.

2 As I said at the outset a few weeks ago, I thought
3 that the concept of mediating this was creative and a
4 thoughtful way to approach a complicated and challenging
5 multiparty issue. And so, obviously, I'm going to deal with
6 the issues that remain on the merits, and I will, but my
7 point is that as we get going in this, I would not want to
8 conclude today one way or the other without expressing my
9 appreciation to Mr. Clark for his efforts in this respect.

10 All right so, Mr. Gordon, where does that leave us
11 then? I think you had a number of other objections you
12 wanted to go through.

13 MR. GORDON: Yes one of the comments to make. There
14 was a lesson to be learned and I'm continuing to learn new
15 things even as I'm getting into the twilight of my career as
16 Mr. Burke would say. But serving good cookies is the key to
17 a successful mediation. And having an exhaustible supply of
18 those cookies is also key. So that's just a practice pointer
19 for everyone here in the room; keep that in mind.

20 Okay that said, Your Honor, the next issue I wanted
21 to take up or the next set of objections are the ones filed
22 by AT&T and Verizon. They both raise concerns about the
23 potential sale of information that they view as proprietary
24 to them. I'm obviously simplifying. And, again, as I
25 understand it this morning agreements have been reached

1 between AT&T and General Wireless, as well as Verizon and
2 General Wireless. And I think there's some work that remains
3 to be done with respect to those agreements. But again I
4 think Mr. Galardi is in a better position than I am to report
5 to the Court on the status of those objections.

6 THE COURT: All right, Mr. Burke or Mr. Galardi.

7 MR. GALARDI: If Mr. Burke will let me hobble up I
8 will also be in twilight of my career. Your Honor, Mr. Burke
9 will have more details, but what we have agreed with both
10 AT&T and Verizon and we'll put more details into the record.
11 Mr. Burke will certainly do it. But I wanted to give Your
12 Honor the concept of the way that we were proceeding. We're
13 going to actually make use potentially of the May 27th
14 hearing.

15 But generally speaking if you read the objections,
16 both AT&T and Verizon there's a lot of information that is
17 governed by their confidentiality agreement. The first thing
18 is that the sale wouldn't close before June 1st so we do have
19 a little bit of time to address detail issues. But the way
20 in which we have structured a settlement and my very general
21 terms is nothing is going to be transferred prior to the
22 closing, so we have until June 1st.

23 Second is having two depositions taken, a lot of
24 conversations, a lot of interviews, a lot of calls to the
25 Consumer Ombudsman, as well as with AT&T, frankly, what

1 happens is you learn that somebody can go into a store and
2 buy an AT&T charger and that may not be the same information
3 as if they bought a data plan. So what we've come up with as
4 a protocol which will be actually helpful to the actual
5 scrubbing before we get the data that basically says we're
6 going to sit down with AT&T and Verizon. We're going to take
7 what they think is the universe of the information. If AT&T
8 and Verizon pieces their parse, their plan wasn't involved in
9 a transaction, there's no controversy. We can get that data.

10 To the extent that AT&T and Verizon has or part of a
11 transaction, we're going to go through a protocol and
12 actually look at the SKUs and see how the SKUs work. In some
13 instances you register your information with AT&T on a
14 computer. You went onto the website and RadioShack copied
15 it. We decided it was almost fruitless to say is that an
16 AT&T customer or is that a RadioShack customer. We thought
17 it would be better to go down to the SKU level, talk about
18 what's really the FCC's concern of confidential information.

19 And so Mr. Burke and I last night and Verizon joined
20 today to say we're going to work on a protocol. Your Honor
21 may have to actually call balls and strikes if we can't agree
22 about a SKU, whether this is really something that should be
23 excluded or not. But take a very simple example. If
24 somebody comes into a RadioShack store and says I want an
25 AT&T and Verizon data plan and I want you to put it into the

1 system that's classic FCC information. We're not going to
2 take it. That's their only transaction; we're not going to
3 fight over it.

4 If you come in and we've gone through examples of
5 batteries, extension cords, remote control cars and AT&T
6 chargers, there are all sorts of permutations. We're going
7 to have to go through what does that sales receipt say, was
8 that the sort of information that went to AT&T and Verizon
9 and got copied onto the system. But we think we can do it
10 because we did learn that are SKUs and there are specific
11 SKUs for wireless plans and service plans. And that's the
12 sort of information that they're most concerned about
13 protecting.

14 We couldn't do that all today so we're going to try
15 to sit down and take a protocol, look through the SKUs, agree
16 and not agree. To the extent we don't agree, we can come
17 back to Your Honor whether it's on the 27th. That information
18 doesn't go over until such time as Your Honor says it's fine
19 or we agree and work that way. And that way RadioShack can
20 also go look at the information and actually have clear what
21 we call rules for scrubbing data before turning it over
22 because we can find the SKUs in all these categories. And if
23 you look at the category we did have three types of SKU
24 numbers in the category.

25 So this should be easy and then the question is do

1 you scrub the name or you don't scrub the name. And then
2 there's going to be combinations. So we have, I believe,
3 worked out a protocol. We're going to go for the next seven
4 days before the May 27th hearing to try to come up with those
5 SKUs. I think it's an easier way to approach it. There's
6 also documents that I think both of them are worried about
7 like the agreements themselves. That's not going to be
8 turned over. To the extent we already have it under our
9 confidentiality agreement that's fine. But that's not going
10 to be made publically available. And we're just working
11 through that.

12 We thought that was the best way to not have Your
13 Honor hear the mind numbing testimony that we had to go
14 through with respect to every data field, every category,
15 every permutation of RadioShack cards. And this way the
16 business people can actually look at the transactions. We
17 understand they [indiscernible] transactions and we can agree
18 fair and not fair, swipe and not swipe. And, again,
19 protecting consumers, but also giving us the best marketing
20 tool to keep our stores open and to let consumers know we're
21 here and the products that we have.

22 THE COURT: Okay I understand. Mr. Burke.

23 MR. BURKE: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. BURKE: Thank you. Michael Burke Sidley Austin

1 for AT&T Mobility LLC. I like to thank Mr. Gordon and
2 Galardi and we very quickly last night were able to come to
3 some sort of resolution. I'd like to put a little bit more
4 substance on the matter, a little more meat on the bones.
5 Because as Your Honor will remember we entered into a
6 settlement agreement with the Debtors and General Wireless
7 about a month ago in which ATT provided, paid certain money.
8 And some of the obligations that were put upon RadioShack was
9 to not sell specifically AT&T protected information.

10 THE COURT: Which was a defined term in your --

11 MR. BURKE: Yes, and if I may can I bring up the
12 order or may I approach?

13 THE COURT: I have it.

14 MR. BURKE: As Your Honor will see paragraph four of
15 the order says neither the Debtors and the purchaser of the
16 Debtors' assets nor any of the party or entity will receive
17 or possesses AT&T protected information may disclose,
18 transfer or sell the AT&T protected information. If Your
19 Honor would be so kind as to go to page four of the, three of
20 the settlement agreement itself, and I won't read at all.
21 But this was very carefully drafted and agreed to because it
22 was drafted for purposes of obviously AT&T is not only a
23 partner with RadioShack, it has its own subscribers and
24 customers which I'll get into in a moment. It has its own
25 privacy policy with its customers. And it's subject to the

1 Federal Telecommunications Act.

2 So with that backdrop AT&T protected information
3 included I'll go three: proprietary information of AT&T, of
4 customers of AT&T, Section 222 of the Federal Communications
5 Act puts a statutory obligation on wireless carriers to
6 protect the confidential proprietary information of their
7 customers. Then we have four customer proprietary network
8 information; again defined in the Telecommunications Act.
9 Customer subscriber names and six, seven or maybe seven is
10 probably also relevant here.

11 Personally identifiable information of AT&T
12 customers and subscribers obtained through AT&T systems or as
13 a result of selling AT&T services. Obviously, Your Honor, we
14 know what personally identifiable information is among other
15 things. It's defined in 10141(a) of the Bankruptcy Code. It
16 includes names, addresses, email, telephone numbers. There's
17 also case law out there under the Telecommunications Act that
18 may expand it from what's in 101(a). So we specifically
19 thought that we knew what could not be sold very briefly
20 through the rest of the settlement agreement.

21 You'll note on page seven, Your Honor, Debtor shall
22 not disclose, provide, transfer, sell to any third party
23 including for the avoidance of now General Wireless, Sprint
24 or any other purchaser any protected information. There's a
25 whole host of other obligations upon RadioShack, what to do

1 upon the termination of the agreement. So there's protected
2 information is not sold. And as you know, General Wireless
3 and AT&T both signed the agreement.

4 Your Honor will also recall that at the last hearing
5 during cross examination, there was a lot of talk about what
6 can and cannot be done with the information that's in the
7 RadioShack database. And just for background and Mr. Galardi
8 referenced it, in essence, what happens if an AT&T customer
9 or subscriber goes into a RadioShack store and says I want a
10 phone; for example a phone in Mobility plan it will be
11 entered directly into the AT&T point of sale system by the
12 RadioShack agent. What happens after that then is there is
13 an automated process in which RadioShack will integrate,
14 download, copy the information that was provided in the AT&T
15 system. And, again, our understanding was is that you know
16 AT&T subscriber information, and that cannot be sold.

17 A bit of an issue about that, so we endeavored to
18 come to a resolution. And the first thing we needed to do
19 was see if the information could be extracted. To that
20 point, we spoke with the Debtors. There was still some open
21 question so AT&T hired its own consultant Stroz Friedberg to
22 go down to Dallas and in fairness, well not in fairness and
23 thank you to RadioShack. They gave us full access to their
24 systems and databases. They gave us access to their
25 personnel. And we found out that the information that

1 RadioShack copied on AT&T subscribers and customers can be,
2 I'm going to use the word, but the consultant will kill me,
3 can be extracted.

4 Essentially, what's going to happen is a new
5 database or a new file will be created so that there is no
6 way that AT&T protected information can be sold. Having said
7 that Mr. Galardi did go into; then there was an issue of well
8 what specific products and services. And that's where this
9 further revision, I guess, of the settlement agreement comes
10 into play. Also just want to make one other point on this.

11 I noting in the Ombudswoman report that, well she
12 took no position with respect to the AT&T and the other
13 wireless carrier's objection. There was a phrase in there
14 that we took issue with the transaction database. I just
15 want to be clear we're not talking about any specific
16 database itself. We're talking about AT&T protected
17 information what in any form, in any database, whether it's
18 included in a server, whether it's included in manual
19 records, hard copies, electronic form. None of that can be
20 sold to General Wireless or the successful purchaser.

21 So we're not limiting ourselves. And a lot of this,
22 sometimes when you're speaking to people we need to clarify
23 the definitions. So we don't think it can be sold in any
24 form what so ever. And the consultant and AT&T have
25 endeavored to work towards that end. And now let me get to

1 the protocol that Mr. Galardi referenced.

2 Very briefly, Your Honor, and I won't go through it
3 in its entirety although I maybe should. You know there are
4 four guiding principles and the final protocol must be agreed
5 to by General Wireless and AT&T prior to May 25th. The final
6 protocol would amend and supplement the AT&T settlement
7 agreement in order; final protocol along with proposed
8 amended and supplemented AT&T order would be filed under
9 certification of counsel. If the parties do not agree to a
10 protocol by the 25th we will then proceed with argument on the
11 proposed sale of AT&T protected information on the 27th at the
12 second day of the sale hearing.

13 Two, no AT&T protected information as defined in the
14 AT&T settlement agreement will be transferred or sold unless
15 and until there is an order entered by the Court amending or
16 supplementing the AT&T settlement agreement. I believe Mr.
17 Galardi referenced that the closing is not going to occur
18 until June 1st. So not only our settlement agreement is AT&T
19 protected information, but from his comment I figured no
20 information of any kind is going to be --

21 THE COURT: Transferred. He nodded.

22 MR. BURKE: Until closing. Three any sale
23 orders/amended AT&T settlement order must provide an
24 expressed finding and that AT&T had taken every reasonable
25 step to protect customer proprietary and confidential

1 information throughout these Chapter 11 cases. And that the
2 sale does not violate non-bankruptcy law.

3 And now is the guts of it, Your Honor, and for
4 purposes of brevity we will just say that we broken down some
5 protocols. The main issue is the definition of AT&T products
6 and services which is going to give us essentially the frame
7 work. And how many -- there's about 6,000 SKU's that we're
8 going to have to agree upon. And if an SKU is identified as
9 an AT&T product or service that will attach and no
10 information of any kind, name of the person, email address,
11 any personally identifiable information, any CPNI as defined
12 in the Telecommunication Act. No information of any kind can
13 be transferred to General Wireless.

14 It's a bit easy with RadioShack only customers. For
15 example if someone comes in and buys a battery that's their
16 information. You didn't go into the AT&T system. It doesn't
17 relate to an AT&T product. As my Irish ancestors would say
18 Mazel Tov, God Bless you can have that information.

19 THE COURT: They got around.

20 MR. BURKE: Second, the AT&T only customer. It's
21 obviously it's only an AT&T inclusive transaction. No
22 information of any kind will be provided to General Wireless.
23 Now this one I'm going to read and this is the guts of it
24 where there is a RadioShack AT&T. It's both of their
25 customers. If a customer has one or more AT&T inclusive

1 transactions and one or more RadioShack only transaction the
2 AT&T inclusive transactions no information will be provided
3 to General Wireless. For RadioShack only transactions GW
4 would be provided the customer information from the sales
5 tables, name, email or mailing address to the extent it
6 exists, so thus they can copy the AT&T information. In
7 transaction data from the sales ticket tables and the seven
8 fields and the ombudswoman's report, store number ticket, SKU
9 number, description, selling price tender.

10 Last item, Your Honor, 50% of the reasonable costs
11 and fees of Stroz Friedberg shall be deducted from the
12 inventory purchase price. As you may --

13 THE COURT: I recall.

14 MR. BURKE: You remember that, Your Honor. So just
15 RadioShack in light of the fact that we've sent down
16 consultants they're just going to essentially bear 50%
17 through deduction. Your Honor, I think that's it. As Mr.
18 Galardi said we still have a lot of work to do on this
19 protocol. So I do not want to say we're completely resolved.
20 We may be up here, but as I understand no one information is
21 going to be transferred to General Wireless so we're okay
22 right now. We'll get this done.

23 THE COURT: Okay I understand. Ms. Kelbon. Thank
24 you. Good morning, Ms. Kelbon.

25 MS. STANGO-KELBON: For the record Regina Stango-

1 Kelbon on behalf of Cellco Partnership doing business as
2 Verizon Wireless. Your Honor, as you know since the very
3 first day of this case we've been up here seeking to protect
4 the consumer private information, as well as what Verizon
5 believes is Verizon confidential information given that we
6 believe that the information was obtained by RadioShack
7 acting on our behalf as our agent.

8 So you know we do think that there's been a lot of
9 progress that has been made. The four protocols or the three
10 protocols of how the information will be sorted and this is
11 going to apply to Verizon Wireless as well, so we're just
12 working on the language for the order that's going to be
13 submitted. So we will be working alongside with AT&T and
14 General Wireless and the Debtors to make sure that none of
15 the Verizon confidential information is transferred to
16 General Wireless.

17 So that is first and foremost that, you know, a
18 concern to us. So we may be back before Your Honor if we
19 have disputes as to what that is. While we do not have a
20 Court order as AT&T did as part of their settlement, we do
21 have a contract and we do have an agreement that, in our
22 view, protects us and the Debtor cannot have any greater
23 rights in this Court than those under state law. And so our
24 agreement prohibits the transfer and the sale and requires
25 RadioShack to comply with its own privacy policy which

1 prohibited the sale and requires them to comply with
2 Verizon's privacy policy which prohibits the disclosure and
3 sale of this information.

4 So we believe that we don't need a Court order to
5 enforce our agreement. And that Your Honor will enforce our
6 agreements and protect us if need be if we cannot come to a
7 resolution on these issues. We do have one additional issue
8 that I have to reserve rights on because we are still trying
9 to figure out what exactly is being transferred here in this
10 regard. When the Debtors' reply was filed last night to the
11 dealer franchise objection, it concerned us because Verizon
12 has maybe 75 exclusive agents that are RadioShack dealer
13 franchisee. And under the Verizon agreements with their
14 exclusive agents the confidential information belongs to
15 Verizon. It's Verizon's position and could not be shared
16 with RadioShack. So we are trying to figure out whether
17 that information has somehow gotten into possession of
18 RadioShack and RadioShack is taking to transfer that and/or
19 through these protocols that will be scrubbed, excluded and
20 so on and so forth.

21 So you know Verizon is reserving its rights against
22 RadioShack as well as against the buyer that put it on notice
23 that it has its own agreements that it cannot be tortuously
24 interfered with by virtue of this sale. So we are trying to
25 work through this. We don't have enough information. Mr.

1 Gordon was trying to figure that out for me at midnight last
2 night. So all I can say at this point is you know hopefully
3 that will as well be resolved since no information is
4 transferring right now. And we're coming back before Your
5 Honor on the 27th if we can't resolve it. That in the interim
6 we're going to try to resolve that issue as well to see if
7 that information is being scrubbed and cleansed if, in fact,
8 it came into possession of RadioShack.

9 So with all that, Your Honor, I guess that's a long
10 way of saying we hope that we are resolving these issues and
11 protecting, we intend to protect the consumer and intend to
12 protect Verizon. Thank you. Do you have questions for me?

13 THE COURT: I don't have questions. I think I'd
14 like to observe that there is nobody that wants this to
15 resolve more than me. But and I really do appreciate and I
16 have, frankly, great confidence that the parties will be able
17 to work through this issue. But I understand that it's being
18 reserved if I have to call balls and strikes.

19 I recall and I actually went back and studied the
20 transcript that was Mr. Burke's examination and your
21 examination of Mr. Peress from a couple weeks ago. If I am
22 asked to call balls and strikes, again I'm speculating. I
23 don't know exactly but I will need more than, and no
24 disrespect, a bunch of lawyers telling me what they think how
25 a computer works. Okay.

1 UNIDENTIFIED: Oh understatement.

2 THE COURT: Well the reason is this you don't know.
3 Mr. Burke doesn't know and Mr. Galardi is too old to know how
4 all of this works. So you know I'm just giving you a heads
5 up that if we have this issue it will not be helpful to me.
6 And, again, I'm not yelling at anybody, but I want you -- you
7 know if we get into this discussion about hypotheticals,
8 about somebody bought a charger, but not a. I get all of
9 that.

10 But the rubber meets the road in how the material is
11 hashed. And that's going to be a guy who is going to explain
12 that to me. If I'm asked to drill down that far. If you
13 have categories that you're explaining colloquial terms and
14 want me to make those decisions, I think I can understand
15 that. But the consequences of those decisions and their
16 implementation seem to me to be matters that are, at least,
17 at a minimum in the hands of the IT guys.

18 MS. STANGO-KELBON: Your Honor, I couldn't agree
19 more. And I think that the two depositions that were taken
20 Monday and Tuesday gave great clarity to all of us and was a
21 little bit different than what Mr. Peress said, because I
22 think he didn't have the information. But when we drilled
23 down with their head of IT Mr. Reagan [*phonetic*] and Mr.
24 Faulkner from Stroz Friedberg that we were able to figure out
25 that they can identify by transaction what happened. So that

1 will be of assistance to Your Honor if, in fact, it comes to
2 that.

3 THE COURT: And that's fine.

4 MS. STANGO-KELBON: And we will have to call those
5 witnesses in.

6 THE COURT: I understand. And you know I recall the
7 colloquy that you had with Mr. Peress and I actually
8 suspended it and said everyone's rights are reserved, but we
9 need to figure out precisely what we're talking about. And I
10 understand conceptually and I'm sure Mr. Peress has a much
11 better handle on it than I do. But at the end of the day you
12 know especially with the details that Mr. Burke walked
13 through, these are very, very technical questions about what
14 is being transferred. And I understand conceptually. And if
15 I'm obliged to get my arms all the way around the mechanics
16 of it then I will do so, but I just want the parties to be
17 aware that unless everybody is okay with coming in and saying
18 Judge do I get it if he bought this. I can do that, but I'm
19 not sure that that's responsive to the issues that you're
20 raising to me.

21 Again, at least to my rights and from my experience
22 this issue should be susceptible to resolution without coming
23 back to me because this is a business issue. And I think
24 parties are saying the right things and with the right
25 intentions. But this does not seem to me like a simple

1 inquiry and you know I don't have the luxury of the
2 deposition transcripts. I don't want them until and unless I
3 need them. But I want to be clear that if this does go off
4 the rails that seems to me to be a somewhat involved hearing.
5 Okay.

6 MS. STANGO-KELBON: Agree, Your Honor. Thank you,
7 Your Honor.

8 THE COURT: Mr. Burke.

9 MR. BURKE: Less than a minute, Your Honor. We
10 couldn't agree more. And actually Kevin Faulkner from Stroz
11 Friedberg is here today because we didn't know whether we
12 would have a settlement proposal and we were ready to
13 actually have someone that has been down to RadioShack that
14 understands the data, how the databases work. Because as I
15 told Mr. Gordon and Mr. Galardi you know when they first
16 started practicing computers didn't even exist so, therefore,
17 you know this would be an exercise in futility to try to have
18 lawyers do this. Having said that --

19 THE COURT: You're included in that group.

20 MR. BURKE: Yeah okay. I know; I know.

21 MR. GORDON: Thank you, Your Honor.

22 MR. BURKE: So that's allowed Mr. Reagan to be
23 deposed; Mr. Strosberg [*phonetic*]. We have the consultant.
24 The consultants are going to work towards the protocol and
25 essentially the lawyers just follow their lead, so we

1 couldn't agree more. We were ready to put that Mr. Faulkner
2 on. We will if need be. Hopefully that won't be the case,
3 but we understand.

4 You know as to Mr. Peress's testimony you know and
5 Your Honor was exactly right to shut it off you know at that
6 time because you know he didn't know. And you know for
7 example we subsequently you know found out the information is
8 directly copied. It can be extracted. I mentioned that to
9 the Ombudswoman in the report that it's not two separate
10 databases after it was filed. So we're learning things and
11 the people are the IT people. Now we've got them engaged and
12 we hope that this will resolve it. But if not, you'll hear
13 directly from them.

14 THE COURT: All right.

15 MR. GALARDI: Your Honor, may I take just one
16 second?

17 THE COURT: Of course.

18 MR. GALARDI: Few more than one second. Your Honor,
19 although there's 6000 SKU's I just want you to understand and
20 I think that all the parties do understand. I think we're
21 going to be able to do this and my client probably knows the
22 SKU's because he's picking product now better than anyone and
23 we'll talk to AT&T and Verizon. But what we did learn was
24 that there are SKU's and SKU's get specific for wireless
25 plans and services. So that's why we think, though it sounds

1 complicated, and I can't do the processing. I'm not a
2 techie. I do understand SKU's. I do understand that they
3 can be identified, so I think we have a good starting point.
4 And I hope it's not going to be complicated and need the
5 expert testimony. But without that expert testimony we
6 wouldn't have gotten to this point which is why I think it
7 was very helpful.

8 THE COURT: Yeah I completely agree and my comments
9 I was reluctant about observing but you know this is now the
10 second time I've dealt with this issue and it's been
11 presented to me. And I understand and I really do appreciate
12 the process that's going on and I, frankly, have very, very
13 high confidence that the parties will resolve this as a
14 business issue. But I just wanted to be clear that at least
15 what my expectations would be if this in the unlikely event
16 that it did go off the rails, so I appreciate that. Mr.
17 Harris, anything to add?

18 MR. HARRIS: Your Honor, I just want to mention for
19 the record that in looking at the asset purchase agreement
20 with General Wireless the definition of customer information
21 talks about the schedules that are attached as they may be
22 modified prior to the sale hearing. I would just like some
23 confirmation from General Wireless that the agreements
24 they've reached with AT&T and Verizon on this protocols as
25 they may turn out, however the Court may ultimately rule,

1 that concept of modification prior to the sale hearing such
2 that we're not going to get to a resolution by Your Honor as
3 to what's in and what's out. And all of a sudden we face the
4 question of whether we have satisfied the condition to
5 closing or not.

6 MR. GALARDI: And, Your Honor, just to even put more
7 detail. We filed the schedule. If you remember the Debtors
8 filed an exhibit that said this is what's for sale. And we
9 filed an exhibit to the APA that says we'll buy whatever is
10 and I think we modified it to say except to the extent
11 modified by you know the agreement with the A.G.'s and stuff.
12 What I think this exhibit is going to have to do is once we
13 get through all of these that exhibit we'll just call it we
14 had one before that the final one will be what Your Honor
15 approved and that will be the data that will be transferred
16 in. It's not going to be a condition to the closing. It's
17 what we're going to get.

18 THE COURT: Very good.

19 MR. HARRIS: That's fine, Your Honor, I appreciate
20 the clarification. Thank you.

21 THE COURT: All right why don't we do this. We're in
22 the thick of this exercise, why don't we just take a five
23 minute break and then we'll reconvene. Stand in recess.

24 [Recess 10:27:52 - 10:34:16]

25 THE COURT: Please be seated. Mr. Gordon.

1 MR. GORDON: Your Honor, Greg Gordon, Jones Day,
2 again on behalf of the Debtors. We were in the midst of
3 walking through objections and resolutions of those
4 objections. The next one on my list was the objection filed
5 by Apple. This was another objection related to data related
6 to Apple customers or Apple products. Again, Mr. Galardi has
7 been on the front lines of that issue with Apple and I
8 understand that an agreement has been reached with Apple with
9 respect to this objection. I asked him to address Your Honor
10 with the details of that.

11 MR. GALARDI: Your Honor, this will actually be a
12 fairly short one. The Debtors, there is Apple data, Apple
13 products and the Debtors have filed a response that
14 essentially said that Apple data would be stricken. Whether
15 its Apple data, once again, it's whose data is it. So what
16 we did was we reached an agreement with Apple that says we
17 will get, whether its Apple data or RadioShack data, we will
18 get the data which includes the skews. They don't have the
19 FTC or FCC issues, but in exchange for that we are agreeing
20 to be bound by the terms of the reseller's agreement,
21 including that if that reseller's agreement expires, there is
22 a period of time that you have to maintain the
23 confidentiality of the information. We are agreeing to be
24 bound by that. So that was how we resolved the Apple
25 objection and Apple's counsel is here.

1 THE COURT: Yes, sir.

2 MR. STEMERMAN: Thank you, Your Honor, Jonathan
3 Stemerman of Elliott Greenleaf on behalf of Apple, Inc. Your
4 Honor, Apple takes the protection of its customer information
5 very seriously. That is one reason why the reseller
6 agreement specifically includes provisions governing the
7 protection of Apple's customer information, including the
8 requirement that Mr. Galardi just mentioned about keeping
9 that information confidential for a period of five years
10 beyond the term of the agreement.

11 Its Apple's position that the customer information
12 that's sought to be transferred here is Apple's property, at
13 least as it relates to Apple products and it cannot be sold
14 under normal circumstances; however, since General Wireless
15 has agreed to treat the Apple customer information in
16 accordance with the terms of the reseller agreements
17 confidentiality provisions, governing treatment of such
18 information, the concerns raised in our objection have been
19 adequately addressed. I want to point out that, as we have
20 throughout this case, we have been cooperating with General
21 Wireless and the Debtors on this. We thank them for helping
22 to reach this resolution.

23 As a final point, I wanted to note that for the same
24 reasons that Mr. Morris raised, this resolution, sitting here
25 today, only applies if General Wireless is the successful

1 bidder. That's not to say that we can't reach a similar
2 resolution if somebody else becomes the successful bidder.

3 THE COURT: I understand.

4 MR. STEMERMAN: Thank you very much, Your Honor.

5 THE COURT: Thank you, Mr. Stemerman.

6 MR. GORDON: The next one, at least my list, Your
7 Honor, was there was an objection, as Your Honor knows, filed
8 on behalf of dealer franchisees. It raised issues with
9 respect to customer data. It raised Section 365(n) issues.

10 THE COURT: I think we should deal with the
11 Wonderland issues before we deal with dealer franchisees.

12 MR. GORDON: As I understand it, the Wonderland
13 objection, and I've read it and I've also seen the Salus
14 statement as well, is that the auction proceeded for a day
15 and a half or two days. At a point in the auction the
16 Debtor, in consultation with stakeholders switched the
17 structure of the auction from an incremental hundred grand
18 process to a best and final sealed bid approach, do I have
19 that right?

20 MR. GORDON: You do, Your Honor.

21 THE COURT: And that that process concluded with
22 General Wireless prevailing. What we have at this point, and
23 I have seen the Wonderland submission, is a request by
24 Wonderland to submit a new bid, demonstrably larger at \$30
25 million. So I would like to turn to that objection at this

1 point if that makes sense to the parties.

2 Let me make an opening comment because I have seen
3 the submissions. There is, obviously, no shortage of case
4 law that deals with the question of whether or not a bidder
5 has standing, a frustrated bidder. I've often said, kind of
6 flippantly, my approach with standing is I listen to the
7 party and then I decide after I've heard them whether they
8 have standing. My instinct, at least at this stage is that
9 while I understand that case law, I view the Wonderland
10 objection as going to concerns about the sufficiency and
11 integrity of the process at the auction and whether or not
12 the change in the process did violence to either the Court's
13 order, the process that had been established for the
14 expectations of the parties.

15 I don't think there is any real question, at least in
16 my mind, that a party that participates in an auction that
17 wishes to challenge the fairness or appropriateness of that
18 process, I believe does have standing. On the flipside,
19 somebody that wants to challenge a Debtors' business judgment
20 and say that my bid was better, etc., usually, I think,
21 Courts have consistently held you don't have standing to do
22 that.

23 So I would rather that the argument focus not on
24 standing today, but on the issues that have been raised
25 substantively by Wonderland. I would hear first from the

1 Debtor and, I believe, this was addressed and the Debtor
2 provided transcripts from the auction as Exhibits, I think, A
3 and B to your reply, do I have that right?

4 MR. GORDON: Yes, Your Honor.

5 THE COURT: Mr. Gordon, you have the podium.

6 MR. GORDON: I guess I would ask a question of Your
7 Honor. I am prepared to make a very brief opening statement,
8 if you want, but I am also prepared to go straight to the
9 evidence because to me I agree with Your Honor's assessment
10 of what that objection is about and I feel that the burden is
11 on us to give Your Honor, basically, the detailed story in
12 terms of what transpired at the auction. We plan, primarily,
13 for that purpose to call Mr. Peress and we had some exhibits,
14 as well, that we would submit into evidence.

15 THE COURT: I think that makes sense. I think I know
16 where you stand. I have read your brief. I have read the
17 Wonderland brief. I'd be happy to hear very briefly, in
18 terms of opening comments. I am not trying to monkey with
19 your process, but I want to deal with the Ad Hoc franchisees
20 and dealers issues. That seems to me to be a distinct issue,
21 but I think that this is kind of hanging over the question
22 today because if Wonderland prevails, then what we do is we
23 stop and I send you back to Mr. Fournier's office to conclude
24 an auction. So I think I would like to hear briefly from
25 Wonderland and other parties, again, very briefly because I

1 think you are right, this goes to your burden and I think
2 your instincts are correct. I would like some guidance and
3 sort of framing concepts from parties.

4 MR. GORDON: Okay. Your Honor, will say, just so you
5 know with respect to the dealer franchisees, the reason I was
6 addressing that is because those issues are resolved as well.

7 THE COURT: Let's proceed with dealers and
8 franchisees. You know, I'm not reading you today Mr. Gordon.

9 MR. GORDON: Sorry, I just didn't telegraph that very
10 well. So I was just point out, so they filed an objection on
11 a few different grounds. I have to give credit where credit
12 is due, as hard as it sometimes is. Mr. Galardi has been the
13 one, again, leading, in charge and working, primarily, with
14 counsel for the Committee to resolve those issues and I'd
15 like to call on him to report to the Court.

16 THE COURT: Very good. All right, Mr. Galardi.

17 MR. GALARDI: Your Honor, very briefly, as Your Honor
18 has heard from the Ad Hoc Committee and as Your Honor has
19 heard from my client, it was always our intention that if we
20 bought the intellectual property, we would try to work with
21 the Ad Hoc Committee regarding a future relationship. We
22 did, in fact, prepare a particular dealer agreement and
23 shared it with the Ad Hoc Committee and another group. We
24 are pleased to say that we have an agreement, in principal,
25 with respect to them and I think counsel for the Ad Hoc

1 Committee will probably be much more articulate with respect
2 to specific points.

3 Your Honor, here is what we have done, and Your Honor
4 is aware that the Debtors scheduled a hearing on May 27th
5 because part of the asset purchase agreement required them to
6 get an order rejecting the dealer franchisees agreements
7 because there are many forms of them, there are many types of
8 them and right now General Wireless was not prepared to go
9 forward with those particular forms of agreement. Your Honor
10 has seen your own case put back to you regarding what the
11 implications of a clear and unequivocal rejection is and
12 whether they could use the trademark. We are all aware that
13 there are splits in authority in that.

14 What I am pleased to say is that understanding the
15 reality and then trying not to burden the Court with making
16 that kind of ruling, what we have come up with is an
17 agreement, that is what we will call an interim agreement
18 with an idea to get to a franchise, an actual franchise
19 system by, no earlier than, I think its January 15th of 2016.
20 What we have agreed was if we are the successful bidder and
21 if Your Honor approves us going forward, what we would
22 essentially do is the rejection motion would go forward,
23 subject to any individual creditors coming in or franchisers
24 coming on the May 27th date, the rejection, just for the sake
25 of clarity, would be, I think, and this is a modification at

1 the podium, the later of May 30th or May 31st and/or the
2 closing of our transactions.

3 There wouldn't be an effective rejection.

4 Notwithstanding the rejection, we understood the Ad Hoc
5 Committees concerns for dealers and franchisers that you just
6 can't take down the RadioShack store signs and do the
7 fixtures. So what we have given to them is, what we have
8 proposed is we will make a proposal to a dealer agreement.
9 If they want to sign up for the dealer agreement, then that
10 dealer agreement will be an interim agreement up until
11 January, I think its 15th will we will at that time
12 anticipate, we will then offer them up a real franchise
13 system in the truest sense of the word.

14 If they don't take the dealer agreement by July 31st,
15 then they will still have, they will be out of what we are
16 going to give them is a temporary license through July 31st to
17 be able to use the trade name to do the fixture and all that.
18 Even if they don't take the dealer agreement on July 31st,
19 they will still have 90 days to deal with the signs, deal
20 with that. So we are not going to enforce a trademark action
21 against them. We will stop the system that they can use the
22 portal and all that as of July 31st, but they still have a
23 period of time. That was a combination of they'd like to see
24 what we are going to do, we would like to see what they are
25 going to do. They are free to buy goods. One of the issues

1 we can't simply supply them with all the goods right now
2 because we are getting our distribution system up and
3 running, so they are going to be free.

4 So this dealer agreement is really we want them to
5 continue to use the name, we are giving them a look see, but
6 we are asking them that by July 31st they are going to decide
7 whether they want to buy into this, continue to use the trade
8 name, continue to use the portal and grow with us through the
9 end of the year. We had a holiday season issue, so they
10 wanted to make sure they could use the RadioShack name if
11 they were a dealer agreement all the way through the holiday
12 season and then we would offer a new franchise system as of
13 January 16th.

14 We are working with the Ad Hoc Committee regarding
15 the terms of that agreement, the interim agreement. We will
16 work with people about the ultimate terms of the franchise
17 agreement, but at least we, I think, now a particular dealer
18 may come in and say I should use my trademark, but with
19 respect to the Ad Hoc Committee, we have resolved their
20 concerns about the interim use. We think this is the best
21 way to deal with dealers and franchisers that have been loyal
22 to RadioShack. They have time to decide to join with us and
23 they also have the right to join with us and continue to use
24 the RadioShack name as we move into the new year.

25 That is the essence. I'm sure I will be corrected

1 about more details from counsel to the Ad Hoc Committee, but
2 we thought that was the best way to approach it and
3 everybody's rights are reserved individually to object to the
4 rejection motion that we filed. Your Honor will have to make
5 whatever the findings are. The findings will still be the
6 same, but they will know that they will have a license if we
7 are the successful bidder from us to continue to use the
8 trademark for a period of time and then if they decide not to
9 go to continue to wind down those operations, which we
10 understand may be a financial expense.

11 THE COURT: Okay. I understand. I will hear from
12 Ms. Walker. Welcome.

13 MS. WALKER: Thank you, Your Honor, Adrienne Walker
14 on behalf of the Ad Hoc Committee of U.S. Dealers and
15 Franchisees. As Mr. Galardi referenced, we have been able to
16 come to a conclusion with our concerns raised in our
17 objection. Your Honor, we also raised a customer privacy
18 issue, I will just mention that at the end, which is also
19 resolved.

20 THE COURT: I saw that as well.

21 MS. WALKER: There is also one minor issue in the
22 asset purchase agreement that because of the structure,
23 again, that's resolved. Let's just stick with the dealers
24 and franchise. Yes, we are actually pleased to say that it's
25 going to be in that three phases that Mr. Galardi referenced.

1 We think either in the sale order or perhaps more
2 appropriately in the rejection orders that arguably may get
3 entered next week, will have non-exclusive royalty free
4 license for that period up until the end of July.

5 At the end of July, let's say that someone decides,
6 you know, we have had our little looks and we don't want to
7 go forward. Then, General Wireless will have in the order a
8 provision that that would have a 90 day de-identification.
9 So they can still use their mark as they wind down that
10 process of taking down their signs. So it wouldn't be on
11 August 1st you take down the sign. They would have that 90
12 day period.

13 We assume that a lot of folks will sign up to the
14 dealer agreement that would go in effect from, arguably, July
15 31st or August 1st, all the way to the end of January. At that
16 point in time, again, if they don't roll into a franchise
17 agreement, which would be new, that they too would have that
18 90 day de-identification process that we think that that's an
19 appropriate way to allow people to have that transition with
20 their businesses that have been doing business with the
21 Debtors for a decade. So I think that that's appropriate and
22 we will work that into and/or a sale order or rejection
23 orders.

24 The two other points, if I could, on the customer
25 data points that were raised; we filed an objection like the

1 attorney general because of costs and logistics. We didn't
2 participate in mediation, but we are very pleased that the
3 results of mediation were as reported in the ombudspersons
4 report. We were identified as stores and we understand that
5 General Wireless will agree to those same privacy protocols
6 that were in place with the dealer stores and just wanted to
7 make sure that, again, the stores or all of the stores.

8 Finally, Your Honor, in either for now or when we get
9 into the order, there was a provision in the asset purchase
10 agreement dealing with how dealer franchisees must satisfy
11 their outstanding accounts receivable with the Debtors in
12 order to go into this dealer agreement in July. I think its
13 provision 8.10 in the APA. We have talked with the Debtors
14 to clarify. Your Honor might recall that we have an order
15 relating to a March payment with the Ad Hoc dealers and
16 franchisees that allows some holdback.

17 THE COURT: I recall.

18 MS. WALKER: We have gotten clarification from the
19 Debtors that the asset purchase agreement won't upset that
20 prior order and that the claims resolution process will take
21 care of how that hold back is to be addressed. So we expect
22 there will be some clarification like in the sale order.

23 THE COURT: To me that seems, at least, initially, as
24 a business matter. There is going to be credits, debits and
25 setoffs. Hopefully, that issue would be resolved

1 consensually and if not, then we can deal with it, but I
2 think it's a business issue.

3 MS. WALKER: It is, but it also ended up being,
4 perhaps, a timing issue because the APA would have required
5 people to have, you know, choice, do I need to go forward
6 with the dealer agreement or settle up without giving them
7 the due process time for a claims resolution process. The
8 Debtors have conceded that as far as the holdback is
9 concerned, that will be addressed in the claims process.
10 Thank you.

11 THE COURT: Okay. I understand. Thank you. Mr.
12 Gordon.

13 MR. GORDON: I guess two other things before we get
14 to Wonderland in terms of objections that have been resolved,
15 at least two, maybe there is more that I'm missing. There was
16 an objection that was filed by BBDO Puerto Rico with respect
17 to certain setoff and recoupment rights that it has under an
18 agreement with RadioShack. We have reached an agreement with
19 BBDO on language that we would add to the sale order that
20 would basically reserve their rights with respect to any
21 offset or recoupment rights. I know counsel is here.

22 THE COURT: Okay. Ms. Sawczuk.

23 MS. SAWCZUK: Good morning, Your Honor, Maria Sawczuk
24 on behalf of BBDO Puerto Rico, Inc. Your Honor, that's
25 correct, we have reached agreement, hopefully, no matter who

1 the winning bidder would be. I am hopeful that the language
2 can remain in the order. We will have to see, but basically
3 BBDO has a services agreement. Basically, they provide
4 advertising services and there is some setoff of recoupment
5 rights that potentially could be lost in a sale process that
6 we are just trying to protect.

7 The language in the order would just say that
8 notwithstanding any other terms of the order, the rights and
9 defenses, if any, that BBDO would have, including any rights
10 and defenses of recoupment and setoff related to its
11 agreements with RadioShack Corporation or with respect to any
12 obligations or rights under such agreement are preserved and
13 are not barred, effected or impaired by the order.

14 THE COURT: Okay. I understand.

15 MS. SAWCZUK: Thank you, Your Honor.

16 THE COURT: Thank you, Ms. Sawczuk.

17 MR. GORDON: Then, lastly, Your Honor, I think in the
18 resolved column, there are a number of objections that were
19 filed with respect to cure issues and contract assignment
20 issues. Again, I think Mr. Galardi has been more on the
21 front lines on this, but my understanding is those have
22 either been resolved or they are all basically pushed to the
23 hearing next week on the 27th. I don't know whether Mr.
24 Galardi might have some further color to the positions.

25 MR. GALARDI: Your Honor, we are not assuming any

1 specific contracts pursuant to this agreement. There is a
2 schedule. We have the right to designate, essentially, going
3 later. So with respect to cure objections and contracts
4 being assumed, I don't even think the hearing will be May 27th
5 because I don't think we have disputed issues. The only
6 contracts that actually appear on the schedules are the ones
7 that I have already mentioned, which are the dealer
8 agreements and the rejection.

9 There was a list of what are the possible contracts
10 and some people confuse that with being that we are going
11 forward on those assumptions. We are not going forward on
12 assumptions. So adequate assurance issues, cure amount
13 issues and all of those issues are reserved for a day and we
14 will notice them up when, in fact, we do go forward on those
15 contracts.

16 THE COURT: Very good. I understand.

17 MR. GORDON: So, Your Honor, that brings us to
18 Wonderland and I understand Your Honor wants to hear from the
19 other parties with respect to their initial comments.

20 THE COURT: I would. Mr. Horan, good morning.

21 MR. HORAN: Good morning, Your Honor, Thomas Horan
22 from Womble Carlyle Sandridge & Rice for Wonderland.

23 THE COURT: Good to see you.

24 MR. HORAN: You to, Your Honor. Thank you. Since we
25 moved past the standing issue, I think that the way we can

1 frame this is pretty simple. The Court entered an order
2 approving bidding procedures. Those bidding procedures said
3 how the auction should be conducted. The process,
4 ultimately, did not follow the bidding procedures,
5 apparently, under the color of the discretion of the Debtor
6 in consultation with the consultation parties to make
7 revisions to the procedures that were consistent with the
8 bidding procedures that Your Honor approved. Now, I don't
9 think it's consistent to go from a process that specifically
10 calls for incremental bidding to a sealed bid.

11 We have also heard to, Your Honor, that there were 16
12 or 17 bids presented. So, certainly, there was a robust
13 process taking place with over bids going on and further bids
14 being submitted. The change came, rather as a surprise to
15 Wonderland. We did not expect it. Parties went off the
16 record and for probably the bulk of the 30 minutes that was
17 allotted to parties to put together their sealed bid,
18 Wonderland was in a room objecting and discussing why the
19 sudden process change was taking place and why Wonderland
20 felt it was inappropriate. Ultimately, with very little time
21 before the envelopes were to be opened, Wonderland wrote a
22 bid.

23 So, I think, certainly there were process problems
24 and the Court can certainly look at its bidding procedures
25 order and decide was the process that ultimately was

1 implemented, consistent with the bidding procedures that Your
2 Honor approved. If it wasn't consistent, if it wasn't a
3 permissible change, then let's reopen, let's do it according
4 to the bidding procedures and see where we get.

5 There were other areas of confusion as well regarding
6 what assets, precisely, were being sold and what rights were
7 being conveyed and whether they were subject to other
8 licenses; those sorts of issues, which I don't think are
9 necessarily necessary for Your Honor to consider to decide
10 this narrow point. Beyond that, certainly it has to be said
11 that the primary purpose of the 363 sale is to maximize value
12 for creditors.

13 Today, Wonderland is here with a bid that is
14 appreciably larger than what's already out there and we are
15 willing to go to a re-opened auction with that. We have got
16 two client representatives in the Courtroom, Your Honor,
17 along with my colleague and my co-counsel. We are ready to
18 go and do this. It's a serious offer. We have topped up the
19 deposit. There is \$4.5 million dollars sitting in escrow
20 right now. So we are ready to go ahead, but, you know, it
21 sounds like the auction was time consuming, it seemed to have
22 been draining and so one can understand why one might be
23 tempted to say, you know, let's cut to the chase, let's get
24 there, but the bidding procedures don't permit that sort of
25 an amendment to the rules. Certainly, I mean demonstrably,

1 Judge, it did not result in the highest and best offer
2 because we are here today with a higher and better offer that
3 we would like to be able to have the opportunity to present
4 to the Debtors.

5 THE COURT: Very good. Thank you. Mr. Clark, good
6 morning.

7 MR. CLARK: Good morning, again, Your Honor, thank
8 you. Tony Clark for Salus Capital. Your Honor, in your
9 comments a few minutes ago, you indicated that you read the
10 papers, you read Wonderland's objection and it raised issues
11 of sufficiency and integrity of the process. Now I'm dumb,
12 but I'm not dumb enough to disagree with Your Honor on your
13 reading of that objection. Frankly, I think that really
14 doesn't hit the point; although, I was happy that Mr. Grant
15 was able to come up with a creative argument as to why the
16 process wasn't right.

17 The real focus here, cardinal principal under Section
18 363 isn't process. They talked about it like its mom and
19 apple pie in this Courtroom. Process is important, but the
20 cardinal principal of 363 is value maximization. So we have
21 had a process. What happened, happened. There is no dispute
22 in the facts with respect to what went on in New York at the
23 auction. It ended up where it ended up, but things change.
24 Since then things have changed and they've changed in a
25 material way. Your Honor's words. We now have a

1 demonstrably larger bid on the table. I took math a long,
2 long time ago, but I remember enough.

3 THE COURT: Even I can do this math.

4 MR. CLARK: Yeah, 30, 26.2, I think 30 is bigger and
5 as you said demonstrably so. So that is where we are today.

6 THE COURT: Let me ask you a question because this is
7 the obvious question. Leave aside for a moment the issue of
8 the change in the process, okay, because I think you have
9 left that to Mr. Horan. Your point is we are talking about
10 value maximization. I get it. What is the limiting
11 principal that tells me and gives a bidder confidence that an
12 auction is concluded and sufficiently so?

13 MR. CLARK: When Your Honor brings the gavel down and
14 says sale approved. That is what has happened in other
15 cases. Mr. Grant's papers site to those cases, Polaroid.
16 There are other examples of it where auctions were conducted,
17 according to a set of procedures, came to some kind of a
18 conclusion and by the time the matter was presented to the
19 Court, a bidder, one or more bidders came back and said I'll
20 pay even more money. I'm not going to tell Your Honor that
21 in every such case, every Court in the country has always
22 said well, we opened the auction and let's have at it, but,
23 certainly, the Court has the discretion to do that.

24 I communicated this, we communicated this through
25 counsel to Wonderland when we first heard that they were

1 upset, well, the people at the auction knew they were upset,
2 but we heard that they were upset and were intending to make
3 an objection and make a further bid. The message from us
4 back to them was if its 26.3 don't bother. If you're going
5 to make some kind of a token increase bid, don't bother,
6 didn't use those words, but if its demonstrably larger if it
7 has real value to this process, then by all means we
8 encourage you to do it and we will support you in your effort
9 to get the Court to re-open the auction.

10 So, I think that's what we have here. We're not
11 telling Your Honor, we're not asking Your Honor and they're
12 not asking Your Honor to bring the gavel down and declare
13 them the winner. What we are saying is re-open the auction.
14 You've heard from Mr. Galardi and others, Mr. Gordon, that
15 there is no particular uncharacteristically for this case,
16 right now, there is no particular rush. The General Wireless
17 deal will not close for another 10, 11 days regardless. You
18 have heard from several of the parties who had objections
19 with respect to consumer data, indicating that they have
20 reached agreements with General Wireless in terms that have
21 been trotted out in front of you.

22 First of all, as I understand it, Wonderland's bid is
23 not conditioned on any of that stuff. They are willing to
24 accept the deal as has been negotiated by Standard General,
25 but they are also willing to sit down with the Debtors, with

1 the AG's, with the consumer privacy ombudsman, and by the
2 way, I believe that is a gender neutral term.

3 THE COURT: They are looking that up right now.

4 MR. CLARK: That's what I was doing and I find out it
5 is gender neutral, so I don't have to stumble --

6 THE COURT: Too many syllables in ombudsperson.

7 MR. CLARK: Ombudsperson, but they are willing to sit
8 down and talk with whoever needs to be talked with and work
9 out whatever needs to be worked out. There is time to do it.
10 So from my perspective, number one, as the fulcrum security
11 whose money we are talking about here, that \$3 million,
12 almost \$4 million flows to us. I know Mr. Indyke's got some
13 argument, but you don't have to pay attention to him.

14 It certainly flows to us in full or in part. So we
15 would like to get that cash. Obviously, there is time to do
16 it. There is absolutely no reason why we can't re-open the
17 auction. Mr. Galardi's client could come in and bid more if
18 it wants to do so, but we are talking about how do you best,
19 under the circumstances today, on the ground today, how do
20 you best maximize value and I think the answer to that
21 question is obvious, Your Honor.

22 THE COURT: Very good. Mr. Indyke.

23 MR. INDYKE: Your Honor, the interesting thing about
24 this case is that amongst the different parties, one day you
25 can be disagreeing with someone and the next minute you can

1 be agreeing with them. We didn't file any papers, but the
2 Committee had a lengthy call yesterday to discuss this issue.
3 The Committee, who is a consultation party, was active in the
4 auction. We certainly have no issues with respect to the
5 integrity of the process.

6 If there is a case where we need to maximize value,
7 it's this case. The thing about this, and of course
8 practicing a bit, there has been references made to peoples
9 ages and how long they have been practices, but it does bring
10 back memories of other cases. I remember appearing before
11 Your Honor in the Tower Records case a few years ago when I
12 represented a winning bidder of an auction that had
13 concluded. We rolled right into Court late on a Friday and
14 on the way to Court the --

15 THE COURT: Thursday and the auction lasted 40 hours.

16 MR. INDYKE: So, Your Honor recalls that.

17 THE COURT: You guys looked like hell.

18 MR. INDYKE: Well, here, Mr. Gordon allowed for sleep
19 in between. On the way to Court, the secondary bidder raised
20 their bid by \$500,000.00, which in that case was not that
21 significant. It wasn't, what I think anybody would consider a
22 demonstrably larger bid. I recall what Your Honor said at
23 that time. I listened very carefully to two things. I
24 wanted to hear what the creditor constituencies had to say
25 about it and I also wanted to see how significant the bid was

1 and did it really make an impact.

2 In that case the Creditors Committee actually, in
3 considering the amount of the bid that was made, stuck to the
4 process and said we go with the winning bidder that we chose
5 at the auction. Your Honor, took that into account, also
6 took into account and, I believe, made comments on the record
7 that the \$500,000.00, I don't know if the words were
8 demonstrably larger, but it didn't have a significant impact
9 and that if it was really, really significant, it might have
10 made a difference. So I look at in this case, we do have
11 certainly creditor constituencies, at least two of them who
12 have spoken up and have a stake in it.

13 THE COURT: Hang on. My recollection of the Tower
14 Records auction and sale hearing, it goes back to 2006, but
15 the auction went on and it went from a bid in the mid 60's to
16 over \$120 million. The issue at that hearing was partly
17 whether or not an additional \$500,000.00 was worth re-
18 opening. The primary issue that was, at least that I
19 initially struggled with and you actually clarified was they
20 were presented to me as there was a going concern bid that
21 was \$500,000.00 less than a liquidation bid.

22 I will tell you precisely, because I haven't told you
23 what I did, which they tell you at Judge school, I had just
24 finished Judge school and I took a break and I went and asked
25 Judge Walsh because I said I have never seen a situation

1 where a management and the Debtor accepted a liquidation bid
2 for a nominal sum over a going concern bid. He responded,
3 helpfully, that sounds difficult, good luck with it. Since
4 the case is long closed, you were the one who stood at the
5 podium and said the going concern bid is Hilco who said they
6 will operate for six more weeks.

7 So what I was looking at were two liquidation bids.
8 The operative consideration there was partly re-opening. I
9 have had this issue before. You have seen it, more than I
10 have, probably. The interesting, I haven't thought about
11 Tower in a while, but the interesting question with this is
12 it, obviously, has to be sufficient to get the Court's
13 attention to do this exercise, all right. It has to be, you
14 know. Mr. Clark, I assume, you know, gave precisely the
15 advice that he said he did, which was you want to get
16 everyone's attention, then you need to come in.

17 I would like your response, having done this a lot,
18 to Mr. Clark's comment about whether an auction that
19 concludes in the conference room or does an auction conclude
20 when I bring the gavel down.

21 MR. INDYKE: Your Honor, it's when you bring the
22 gavel down.

23 THE COURT: I'm not certain that I accept that
24 proposition because if I were a bidder, if I were advising a
25 bidder, why would I give my last bid, I would probably be

1 willing to drop out of an auction process and then come in. I
2 could do well with that process. I am not suggesting and I
3 want to be clear, I am not suggesting that Wonderland bid
4 that, right. This is a different dynamic, but I have a
5 broader consideration here. I find this issue really
6 interesting and just the retail and sales process.

7 Clearly, the process doesn't conclude until I bring
8 the gavel down. I am not satisfied that the principal that
9 under girds this process is that you can always buy your way
10 back into an auction by showing up. I have stood at that
11 podium with a check, I should have brought a check and waived
12 it around, you know what I mean?

13 MR. INDYKE: Your Honor, I have been on the other
14 side of it and I have argued integrity of the process no
15 matter what, it doesn't matter. I don't care if they bid,
16 you know, ten times as much, it doesn't matter. Every
17 auction is different. Things happen in auctions for various
18 types of reasons. That is why the rules don't say you go to
19 an auction and that's it, the Judge just signs it. People
20 can report back; 363 talks about maximizing value.

21 I think when you have something significant like
22 this, when you have Wonderland, which is a qualified bidder.
23 There is no question about whether they are a qualified
24 bidder, that has the ability to raise the bid so
25 significantly, and this doesn't conclude the auction. The

1 point has been made this may not conclude it, but this can
2 get much higher. We have an estate here where we clearly
3 have very, very significant claims in this case.
4 Notwithstanding the fact that we are talking about going
5 forward with a plan, we have very, very significant hurdles
6 to overcome here.

7 We are looking for real dollars in this case, however
8 we can do it. This is, certainly, a means of providing
9 significant value. We don't think it does a tremendous
10 amount of harm to the process. The auction is supposed to
11 start, you know, whenever it is, 5:00 in the morning, 11:00
12 in the morning, you don't start until 2:00, you go over
13 night. With respect to the major sale that went on for three
14 days. It went on until the morning. We have all the
15 different types of processes and people work with those
16 processes. This is just something else that has developed.

17 Again, if Wonderland had come in with a relatively
18 insignificant bid that move the needle much, then we wouldn't
19 be here arguing. But it's because it moves the needle that
20 we believe that we can raise this under 363 and talk about
21 maximizing value and talking about re-opening the auction.

22 THE COURT: I understand.

23 MR. INDYKE: Thank you.

24 THE COURT: Mr. Clark.

25 MR. CLARK: Very briefly, Your Honor. An answer to

1 the question that you just raised with Mr. Indyke, the reason
2 why a bidder isn't going to show up at the auction and then
3 sandbag his high bid in that process because the auction
4 isn't over until the gavel comes down in the Courtroom is
5 because the Court does have, as I've said before, the Court
6 has the discretion to re-open the auction, to tell them to go
7 back and keep it going. On that, the Court has the
8 discretion not to do that. If you really want those assets,
9 are you going to roll the dice on the fact that you are going
10 to get the Judge's discretion by sandbagging a bid, which by
11 the way didn't happen.

12 THE COURT: And I think I was pretty insidious in
13 saying, and I don't think it's been alleged, if that were my
14 concern, we wouldn't be having much of a hearing.

15 MR. CLARK: I appreciate that.

16 THE COURT: I have no issues with respect to, you
17 know, gamesmanship or anything else. The issue is I think
18 the way it's been presented by the parties in the briefing,
19 which is, again, why I'm permitting standing to Wonderland
20 and hearing this issue.

21 MR. CLARK: So as I say, Your Honor, the fact that a
22 Judge has the discretion to help you out as a bidder by re-
23 opening an auction, he also has the discretion not to do that
24 and that's an incentive to the bidder to step up to the plate
25 at the auction and do the best you can, which I think is

1 probably what happened here, but these people got blindsided
2 for the reasons they have explained. I am not attacking the
3 integrity of the process.

4 The process was a good process up to the point when
5 circumstances changed and we needed to change the process to
6 meet those circumstances and maximize value. I will also
7 say, in terms of these bidding procedures, Your Honor, on
8 their face, they tell you when the auction is over. They say
9 it's when you bring the gavel down. It says the Debtors will
10 be deemed to have accepted a successful bid only when a
11 contract therefore has been executed and such bid has been
12 approved by the applicable sale order. So it's your action
13 that brings the auction to close and we would urge you to
14 direct the Debtors to re-open the auction and invite all the
15 qualified bidders in and have a fun time.

16 MR. MORRIS: Your Honor, may the Texas Attorney
17 General be heard at an appropriate time?

18 THE COURT: At an appropriate time and, Mr. Morris,
19 you are one of three people that are currently headed toward
20 the podium. So I will give you an opportunity, but I would
21 observe that the Debtor proposed and I agreed that it is the
22 Debtors' burden to demonstrate that the transaction is
23 appropriate. I felt that it was helpful to get brief
24 commentary from stakeholders regarding where we are going,
25 but where we head from momentarily, is presumably to the

1 Debtors' evidence. So I will hear Mr. Harris right now. I
2 will hear from Mr. Galardi. I will hear from you, Mr. Morris
3 and I would hear very briefly in reply, opening reply, from
4 Mr. Horan or others from Wonderland. Mr. Harris.

5 MR. HARRIS: Thank you, Your Honor. I will say that
6 I to can do math, obviously, and \$3.8 million dollars is
7 nothing to sneeze at and certainly in these circumstances. I
8 appreciate that everybody here thinks that my client is
9 absolutely positively to get paid in this case, but we're
10 focused on the dollars as well. So I am not minimizing the
11 impact of that.

12 I answer Your Honor's question differently than some
13 of my colleagues who I am sitting at the same table with
14 because, you know, the client that I represent often finds
15 themselves in these procedures and we take them
16 extraordinarily seriously. When we show up at auctions and
17 start bidding, we do so with full authority, with full
18 analysis and with full value, ready to participate and come
19 to closure in the context of that auction.

20 We do not expect auctions to be conducted in front of
21 Your Honor. We would not support a system, frankly, where
22 every auction could only be done in the Courtroom and then
23 immediately go to the sale hearing because that's the only
24 way you can get any kind of assurance of finality. That is
25 not a process that would be good for the Courts. It would not

1 be a process that would be good for the parties.

2 I agree that Your Honor has full discretion to
3 determine to re-open this. I think that anyone here who
4 questions the integrity of this process is misguided. The
5 process was absolutely well conducted. Everybody was given
6 full opportunity. I think the testimony will show that the
7 decision that was made to move to seal bids was done in
8 consultation with all the consultation parties and it was
9 based on an informed business judgment and an intelligent
10 rational as to why they went in that direction.

11 I believe, Your Honor, that in asking the Court to
12 exercise a discretion to re-open, frankly, given the
13 testimony that I expect you will hear, that is incumbent on
14 Wonderland to present some evidence that they, in fact, were
15 there, fully authorized and prepared to make a \$30 million
16 dollar bid the night of the auction and that it was not based
17 upon information that came subsequent to them, including the
18 terms of what General Wireless was ultimately willing to pay.
19 You heard Mr. Galardi talk about how General Wireless had
20 always intended to bid on this and it was important to their
21 go forward business plan.

22 Frankly, in some respects, given that information to
23 Wonderland, may have been the basis upon which they
24 determined that they could pay more money because now they
25 understand that maybe they have got a licensee who really

1 desperately needs access to this and is in a weakened
2 position to negotiate with them if they are successful
3 bidder. I don't know that that's happened, Your Honor, but I
4 think it's important for somebody to elicit testimony from
5 Wonderland and let them present the evidence that, in fact,
6 what they say in their papers is fully truthful that they
7 were there and ready to spend \$30 million dollars the night
8 of the auction and the decision to up their bid was not based
9 on information that became available subsequent to that,
10 including what General Wireless was ultimately willing to put
11 on the table.

12 So there is a fundamental fairness issue here. I am
13 completely deferring to Your Honor's discretion as to what to
14 ultimately do here. Yes, we would like to get \$3.8 million
15 dollars more, but if you want to talk about integrity of the
16 process, it has to be complete integrity on both sides, not
17 only the way the auction is conducted, but the way the
18 bidders conduct themselves as well. So I think Your Honor
19 should hear all the testimony and make a decision as to
20 whether, in your discretion, re-opening of the auction will
21 be appropriate. Thank you.

22 THE COURT: Very good. Mr. Galardi.

23 MR. GALARDI: Your Honor, a few things were said and
24 I do want to take issue and, obviously, we believe their
25 highest and best bidder. First of all, 363, as Your Honor

1 recalls in the local rules, 363 doesn't say you get the
2 highest bid anyway. It basically says the Debtor can go and
3 sell it. What we have come up with in Delaware and other
4 jurisdictions, Your Honor it works on the local rules, is we
5 have come up with this two-step process.

6 The two step process is to say these are the rules of
7 the game by which we will elicit and let the Debtor discharge
8 their fiduciary obligation to get the highest and best bid.
9 As the testimony is going to show, the exact statement given
10 to the bidders, at the time, was blind bid, give us your
11 highest and best and whoever gives us your highest and best
12 when we get that envelope, that would be the highest and best
13 and that what we are going to with the Court. So we did
14 that. We did that in reliance on your procedures.

15 Your Honor, I do believe, I disagree with Mr. Clark,
16 the auction closed when the Debtor said it closed. Whether
17 that bid is accepted or approved by Your Honor doesn't happen
18 until we come into Court, but that auction was closed,
19 according to Your Honor's order, and I don't think
20 Wonderland's raise go to \$100,000.00 increments. The order
21 provides, they can change those procedures, change the
22 increments to get what they believed was the highest and best
23 offer. So I think Wonderland has to try to change the
24 business judgment.

25 With respect to Wonderland, again, I am not going to

1 criticize their counsel, but if they had that \$30 million
2 dollar bid, this goes to Mr. Harris', and if it were my
3 client, Your Honor has been here saying get on the phone,
4 call me, we can decide this then. It's been seven days
5 later, you get a bid, we have actually shared information
6 with them to try to make a resolution and I don't know if
7 they are bidding on that information and that's when it came
8 about. Now they are going to say well we now bid \$30
9 million, we have done all this work in reliance, on the time
10 table to do that and I think, Your Honor, you know, on the
11 way over after a 40 day auction want to know if this is the
12 best bid, but we don't even know their business plan, we
13 don't know whether there is franchises, we don't know whether
14 there is stores. They are certainly not our stores.

15 Your Honor, we relied on that process. We relied on
16 getting and scrambling, just like the other bidders did to
17 come up with our highest and best, according to Your Honor,
18 and according to the rules. So unless they can challenge it,
19 there was a flaw in the procedures. We don't think Your
20 Honor can, you can do what you want, as I always say to Your
21 Honor, but to re-open your own order that approved the
22 procedures with compliance with those procedures, at this
23 point we think one, sets a bad precedent. Two, it's not
24 justified by any facts in the circumstances.

25 The evidence, even though its seven days later on a

1 number, and I'm sure Mr. Clark said get them up because I
2 would do the right thing, but the fact of the matter is why
3 weren't they hear that next morning, why weren't they hear at
4 the auction, why didn't they call Your Honor, why didn't we
5 have this issue come out then to address it and not everybody
6 go through and rely on Your Honor's order and now say, well
7 lets scrape the order because somebody came up with \$3
8 million dollars. So we would ask Your Honor to enforce your
9 order and approve us as the highest bidder.

10 THE COURT: Mr. Morris, do you wish to be heard?

11 MR. MORRIS: I do, Your Honor. Very briefly, Hall
12 Morris of the office of the Texas Attorney General. Your
13 Honor will recall for the states objections that we believe
14 very strongly that in order for the Court to approve any sale
15 of PII, the Court must find that under 11 U.S.C.
16 363(b)(1)(b), the sale would not violate applicable, rather
17 not violate applicable non-bankruptcy law. Your Honor, I
18 believe recalls that it is an undisputed fact and the Debtors
19 file pleadings to this effect, that the Debtor cannot
20 distinguish between whether the PII in its files originated
21 from brick and mortar stores or whether it originated from
22 the e-commerce site. All of that data was intermingled.

23 So, Your Honor, should there be a sale or a proposed
24 sale to someone who didn't end up owning both the brick and
25 mortar stores, but only the e-commerce site, we believe that

1 such a sale would, in fact, violate 363(b)(1)(b).
2 Accordingly, Your Honor, we don't believe our settlement with
3 General Wireless is candidly transferable to another buyer
4 unless that buyer also owns the brick and mortar stores,
5 which, of course, is impossible because the brick and mortar
6 stores have already transferred.

7 So, Your Honor, my concern is and, obviously, it will
8 be Your Honor's sole decision were there to be a new auction,
9 simply cannot transfer and then we will be back in front of
10 Your Honor litigating why none of the PII could be sold. If
11 that were to happen, we would, again, re-urge our earlier
12 motion that the PII should be separated from the other assets
13 so that Your Honor could approve a sale of other assets, but
14 not PII because we don't believe the PII could be sold to
15 anyone other than General Wireless under these facts and
16 circumstances. Thank you for the Court's courtesy.

17 THE COURT: Very good. Mr. Horan, brief opening
18 reply.

19 MR. HORAN: Very briefly, Your Honor.

20 THE COURT: Sure.

21 MR. HORAN: First, the invitation identified the
22 defect in the process. Paragraph 9 in the bidding procedures
23 says, the participants will be permitted to increase their
24 bids and improve their terms. It further provides that the
25 Debtors may adopt rules that the Debtors reasonably determine

1 to be appropriate to promote the goals of the bidding
2 procedures and are not in conflict with these bidding
3 procedures.

4 When the sealed bid process was introduced, it
5 eviscerates the provision that participants will be permitted
6 to increase their bids. You can't increase your bid any
7 further at that point. You get to a point where it's a false
8 stop and even if you have bidders there ready to increase
9 their bids and approve their terms, they can't do it. So
10 it's an inconsistency with the terms of the bidding
11 procedures; therefore, I would argue not within the
12 discretion of the Debtors and the consultation parties to
13 alter.

14 The other point that I would make real briefly is
15 that in the event that Wonderland ultimately becomes a
16 winning bidder, Wonderland's intention is not to materially
17 alter the sorts of terms that have been discussed here today
18 as regards to other parties. We have been engaged to the
19 extent that we could with the consumer privacy ombudsman and
20 other parties about concepts. I think what you would find is
21 that what we are really doing is an apples to apples except
22 on the monetary consideration, which is greater at this
23 point.

24 THE COURT: Okay. I understand.

25 MR. HORAN: Thank you.

1 THE COURT: All right, here is what we are going to
2 do; Mr. Gordon, who are your witnesses? I think you
3 mentioned Mr. Peress.

4 MR. GORDON: Yes, Mr. Peress, Your Honor, and then
5 depending on cross-examination and perhaps if anyone else is
6 going to put on a witness, I also have Mr. Adrianopoli here
7 and Mr. Tempke from Lazard here as well. But at the moment,
8 I am thinking that Mr. Peress will be the only witness.

9 THE COURT: Okay. Mr. Horan, does Wonderland intend
10 to -- I'm just trying to figure out what our game plan is.
11 Do you have a witness that you intend to put on?

12 MR. HORAN: Your Honor, Wonderland would intend to
13 call Mr. Tony Luo, who is a principal of Wonderland.

14 THE COURT: Okay.

15 MR. HORAN: Thank you.

16 THE COURT: Any other witnesses? So I've got at
17 least two and maybe more. Why don't we do this; I would
18 suggest that we go, we will commence, I assume with Mr.
19 Peress right now. We will take a break that would be fairly
20 brief because I have some time constraints this afternoon.
21 The lunch break would probably be in the 30 to 45 minute
22 range. I am not exactly sure, we will take that an
23 appropriate breaking point, but I think we just roll through.
24 Does that make sense? Very good. Call your witness.

25 MR. GORDON: The Debtors would call Mr. Peress. Your

1 Honor, while he is coming to the stand, I would like to, be
2 sure to offer into evidence the auction transcript and I have
3 extra copies here if Your Honor wants me to mark one to
4 submit, so that it's in the record that way.

5 THE COURT: I do think that that needs to be, we will
6 swear him in a moment. I do think that that needs to be
7 admitted into evidence, whether we do it by stipulation or
8 you do it through Mr. Peress; that sounds fine with me. As I
9 note, saw that it was attached to your reply. I have had an
10 opportunity to review it and I assume that that's part of it.
11 So I will leave that to you however you want to do it.

12 MR. GORDON: What I would like to do is submit it
13 and, obviously, people can be heard. I would like to just go
14 ahead and submit it as Debtors' Exhibit 1 combined into the
15 two days. Then, as the Debtors' Exhibit 2, I would like to
16 submit, but just for Your Honor's eyes only, the sealed bids
17 as they came in. As Your Honor may have noted from the
18 transcript, if you had an opportunity to review it, we did
19 not --

20 THE COURT: Share.

21 MR. GORDON: We did not share the results of the
22 sealed bidding, at least, below the General Wireless bid
23 publicly. Obviously, the consultation parties were aware of
24 what they were. I don't know, for the integrity of the
25 process I still have a level of discomfort in just publicly

1 making that information available, but I do think that Your
2 Honor might find that information helpful as you evaluate the
3 issues that are being presented to you.

4 THE COURT: Why don't we do this; we will swear the
5 witness in and then we will figure out this issue. It seems
6 to me the transcript shouldn't be controversial. The issue
7 of the sealed bids, I would hear from Wonderland or other
8 parties on it. We will go ahead and swear the witness,
9 please.

10 DAVID PERESS, SWORN

11 THE CLERK: Please state and spell your name for the
12 record.

13 MR. PERESS: David Peress, P-e-r-e-s-s.

14 THE COURT: Welcome back, Mr. Peress.

15 MR. PERESS: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. GORDON:

18 Q. Good morning, Mr. Peress.

19 A. Good morning, Mr. Gordon.

20 Q. Would you remind, Your Honor, or remind this Court who
21 you are employed by in this case?

22 A. So I am a consultant to Salus Capital.

23 Q. Okay and is your engagement letter with Salus Capital or
24 with another party?

25 A. It's with 360 Merchant Services who is also a consultant

1 to Salus Capital. So it's in connection with those services.

2 Q. Okay and would you also remind the Court when you were
3 retained in connection with this matter?

4 A. So it was in February of this year.

5 Q. Briefly, by way of further background, would you just
6 describe for the Court, generally, what you have been doing
7 since your retention in February?

8 A. Sure. So we have been working with the parties,
9 including the secured lenders as well as the Debtor, to try
10 and identify and create a process designed to maximize the
11 recovery on the intellectual property assets of RadioShack.

12 Q. And as part of that process, were you involved in
13 identifying potential bidders for those assets?

14 A. Yes, that was a significant part of our role.

15 Q. Again, would you just describe, briefly, what you did,
16 generally, to identify and contact prospective bidders?

17 A. Sure. So we have a lot of experience working with
18 parties who might have an interest in intellectual property
19 assets related to a consumer electronics business. So we
20 identified parties that we thought might have an interest in
21 these assets that were contacted in the original process,
22 conducted by Lazard, as well as some parties that Lazard had
23 contacted because sometimes multiple contacts at different
24 points within large organizations is useful. We also worked
25 with the parties to develop a messaging campaign that

1 involved e-mail, principally e-mail, but also telephone calls
2 and other ways to get the word out that there were some
3 significantly interesting assets for sale.

4 Q. Would you tell the Court, please, how you generally
5 interface with Lazard, RadioShack's investment banker, with
6 respect to the sale of assets?

7 A. Sure. So I think once we got past the original sale of
8 assets to General Wireless that, you know, we worked in
9 partnership with them, you know, on a very transparent and
10 free flowing process.

11 Q. Okay. Now, let's talk specifically about Wonderland.
12 Was it you or your firm who had the initial communication or
13 contact with Wonderland?

14 A. Yes, it was.

15 Q. Okay and would you tell the Court, approximately, when
16 that communication or contact occurred?

17 A. So according to our records, we received a voicemail
18 message from Mr. Luo, Tony Luo, which came in on March 29th;
19 although, I did not pick it up until the beginning of the
20 following week because, I think if you recall, we were all in
21 Delaware the week that he made that call, dealing with the
22 sale hearing. So it was probably the first week of April
23 that I called Mr. Luo back and had a discussion with him
24 about his interest in acquiring the RadioShack intellectual
25 property and then we went from there to tell him that there

1 was a bid package that involved an NDA, a data room and that
2 we were available to make due diligence. So I think the next
3 step was to get an NDA to Mr. Luo and Wonderland.

4 Q. Okay. Now is Wonderland a firm that you are familiar
5 with?

6 A. I was not familiar with them at the time he called, but
7 after our conversation we did do some research to see if we
8 could find out anything about Wonderland and we learned that
9 Wonderland had been the winning bidder in a bankruptcy
10 auction involving a company called DesignLine, which had a
11 proprietary bus system, which we were also familiar with
12 because DesignLine had, what we consider, some interesting
13 intellectual property and at one time we had, had some
14 discussions with parties in DesignLine about acting as a
15 broker in that case; although, ultimately, we were not.

16 Q. Do you recall what size transaction there was in the
17 DesignLine case?

18 A. My recollection is that the intellectual property assets
19 of DesignLine were sold for, approximately, \$1.7 million
20 dollars and then that there was also press reports,
21 subsequent to the sale, that Wonderland had intended to
22 invest another \$30 million dollars of capital into the new
23 company.

24 Q. So you described, briefly, your initial interaction, I
25 think you said Mr. Luo, sorry if I'm pronouncing that, but

1 would you then describe for the Court what any subsequent
2 interactions were that you had with Wonderland and Mr. Luo?

3 A. Sure. So after the NDA got executed, we set up a
4 conference call with Mr. Lou and his colleague Diway Ju
5 [phonetic], and members of my team, Jack Hazan and Dimitri
6 [indiscernible], to go over, sort of give them a sense of
7 where we were in the process, what we consider to be the
8 interesting aspects of the RadioShack intellectual property.
9 In the course of that call they asked us a series of
10 questions, some of which we could answer, some of which
11 required additional work to respond to their questions. So
12 that call probably lasted an hour or so. From there we then
13 got on the phone with Trevor Hines and Tim McDonagh from FTI,
14 went over requests that were not address by items in the data
15 room and asked if FTI could assist us in pulling that
16 information.

17 Q. Did you get to the point that you asked Wonderland to
18 become a stalking horse for the assets?

19 A. From the first conversation I had with Mr. Luo, he
20 indicated that they had an interest in being a stalking horse
21 to buy the intellectual property, which we were very
22 interested in, obviously. It was clear that a gating item to
23 that decision was getting the diligence items that, you know,
24 were requested on that subsequent phone call, but, yes,
25 throughout the process and our communications, we

1 consistently asked him if he had an interest in stepping up
2 to that role.

3 Q. Okay and after this conversation you described with
4 respect to diligence items, what happened in terms of further
5 communications, if any, between you or your firm and
6 Wonderland?

7 A. So it took about a week, I would say, to generate full
8 responses to that information. We transmitted that
9 information and as well at that time, they had access to the
10 data room. All members of my firm, not me in this case, had
11 conversations with Wonderland about, you know, moving forward
12 with the process. We discussed the need to, in our judgment,
13 hire bankruptcy counsel or counsel who was sophisticated with
14 363 sales, as well as to start to look at the asset purchase
15 agreement, which was in the data room and discussed, you
16 know, the qualifications for bidding. Also, in the context
17 of those conversations, suggested that if we were interested
18 in being a stalking horse that we sort of saw the right value
19 to get the process started in the \$15 million dollar range.

20 Q. Okay. Was there a period of time, Mr. Peress, during
21 which you just did not hear anything at all from Wonderland?

22 A. Yes. So I think starting around, after we provided the
23 initial information, not the initial, but the subsequent
24 information that was responsive to their request that they
25 seemed to not be that responsive and we were unsure of

1 whether they were continuing to engage in the process of
2 being interested in the opportunity; that was probably a week
3 and a half or two weeks. As we're marching along toward the
4 bidding deadline, so we are still in April.

5 Q. During that period, were you or individuals in your firm
6 continuing to follow-up with Wonderland to assess whether
7 they remained interested in any of the assets?

8 A. Yes.

9 Q. Okay. Were there then, after this period of time during
10 which you did not hear from Wonderland, were there then
11 further communications with Wonderland prior to the bid
12 deadline?

13 A. Yes. So after the bidding procedures hearing, we again
14 reached out and this time connected with Wonderland. They
15 indicated to us they were still very much interested in
16 participating in the auction process, but that they needed
17 additional due diligence in the form of actual meetings with
18 certain RadioShack personnel. They asked a series of
19 questions around e-commerce, around global sourcing, around
20 product development. I think these conversations took place
21 in that last week, the last full week of April, which was the
22 week immediately preceding the bid deadline.

23 We had subsequent conversations, which they came back
24 in response to questions about, sort of, narrowing exactly
25 what it was that they wanted to accomplish through meetings.

1 We followed that up with conversations, again with Mr.
2 McDonagh and Mr. Hines from FTI to discuss availability of
3 the people at RadioShack who could be responsive to these
4 questions. One of the challenges throughout the case,
5 obviously, has been RadioShack has only a finite number of
6 people available to respond to diligence questions.

7 We were, at the same time that we were on this track
8 with Wonderland, we were also on this track with another firm
9 called Delta Marketing who also asked for some physical due
10 diligence, if you will, and we had scheduled that the week of
11 the bid deadline as well. So we were trying to balance our
12 desire to make as much diligence as possible available
13 without realities of the limitations imposed by the number of
14 people available.

15 Q. So was a meeting, ultimately, scheduled at RadioShack to
16 address this more recent set of due diligence requests from
17 Wonderland?

18 A. Yes, it was. Those series of meetings took place in the
19 first week of May, so, actually, subsequent to the bid
20 deadline. In order to accommodate that timing, what we
21 encouraged Wonderland to do was to make, at least, a minimum
22 bid supported by a deposit and to, at the very least, fill
23 out a bid summary sheet which we had prepared in an effort to
24 make sure that if folks needed coaching or help, that we were
25 going to be able to utilize every hour possible to get them

1 to qualify, but not to erect barriers that, you know,
2 discouraged participation in the process.

3 MR. GORDON: You Honor, if I could, at this point, I
4 would like to provide to Your Honor what I have marked as
5 Debtors' Exhibit 1, which is a copy of the two days of
6 auction transcript.

7 THE COURT: Any objection to admission of the
8 transcripts? Very well, they're admitted.

9 MR. GORDON: May I approach?

10 THE COURT: Sure. Thank you. I would have heard an
11 objection, Mr. Clark.

12 MR. CLARK: I am outraged by it, Your Honor, but I
13 just wanted to get through.

14 MR. GORDON: The outrage is coming later, Your Honor.
15 He's got to see what's coming next. Then, Your Honor, while
16 I'm thinking about it, I would also like to offer what I
17 suggested before, which is the copies of the three sealed
18 bids that we received at the end of the auction for Your
19 Honor's eyes only just because, again, I think it will be
20 helpful to Your Honor to have that as we go through the
21 testimony.

22 THE COURT: Have they been shared with Wonderland?

23 MR. GORDON: Well, Wonderland knows what it bid. It
24 certainly knows what General Wireless bid, which are probably
25 the two keys. They wouldn't know what the third party, Regal

1 Forest, has bid.

2 THE COURT: I'll hear from Wonderland. Mr. Horan.

3 MR. HORAN: Your Honor, practically, the issue is
4 whether we want to see the third bid. I don't think that we
5 need to see that, Your Honor. So we have no objection.

6 THE COURT: Okay. All right, I will take them and,
7 Mr. Gordon, what I would ask is that they are being reviewed
8 in camera, until and unless I am asked to admit them, I don't
9 think I am going to admit them into evidence. As I have
10 heard your comments, and I will deal with Mr. Peress's
11 testimony to the extent it touches on them, it's to provide
12 me with a measure of context. I am reluctant to admit
13 documents, particularly the third bid to the extent it's
14 important to relevance, without it being shared with a
15 litigant before me. So I will take those three documents,
16 but I would ask you to remind me to return them to you so
17 they don't wind up on the docket.

18 MR. GORDON: Okay, Your Honor.

19 THE COURT: When they clear this place off, God only
20 knows what happens to it.

21 MR. GORDON: Thank you, Your Honor. Your Honor, I
22 think what I am going to do is I am just going to offer up
23 the two, the third sealed bid is not really relevant. I will
24 just offer the two.

25 THE COURT: That sounds fine.

1 MR. GORDON: May I approach?

2 THE COURT: Sure. Thank you.

3 BY MR. GORDON:

4 Q. Mr. Peress, I would like to hand you what I have marked
5 as Debtors' Exhibit 4, which I understand is a copy of the
6 initial bid submitted by Wonderland. Would you take a look
7 at that and tell me whether my conclusion about that is
8 correct?

9 A. Yes. So this is the bid submission form that my firm
10 created in consultation with Lazard and the Debtor to allow
11 parties to indicate their interest in making a bid, even if
12 they weren't yet at the point ready to qualify completely.

13 Q. Does this reflect that the bid amount offered by
14 Wonderland was \$1 million dollars?

15 A. Yes.

16 Q. Do you recall whether this bid form was submitted on or
17 before the bid deadline?

18 A. Yes, it was.

19 Q. And do you recall whether it was accompanied by an asset
20 purchase agreement?

21 A. It was not.

22 Q. Was it your understanding that bids to be filed by the
23 bid deadline were to be accompanied by a marked up asset
24 purchase agreement per the bidding procedures?

25 A. Yeah, if you look at page 4 of the bid procedures, it

1 says asset purchase agreement and it says that all bids are
2 subject to the execution of an APA, the form is in the data
3 room, all bids must include a signed APA and marked APA to
4 show opposed amendments to the form APA.

5 Q. Just to be clear, you are referring to page 4 of Debtors'
6 Exhibit 4, its paragraph 5?

7 A. Yes.

8 Q. Thank you.

9 MR. GORDON: Your Honor, I'd move the admission of
10 Debtors' Exhibit 4.

11 THE COURT: Any objection? It's admitted. Let me
12 also clarify, I think my prior comment was that I was not
13 going to admit Exhibits D2 and D3 because of concerns about
14 the third bid, which was not being shared. I think we have
15 covered that issue. The third bid is not relevant to this
16 inquiry. So I think both of these can be admitted. I will
17 not do anything with them to publish them. They are admitted
18 in camera, but they are admitted. I think that's consistent
19 with where the parties are right now. Do I have that right?

20 MR. GORDON: Thank you, Your Honor. We would prefer
21 that they be admitted, yes.

22 THE COURT: All right, Mr. Horan. Very well, they
23 are admitted.

24 MR. GORDON: Thank you, Your Honor.

25 BY MR. GORDON:

1 Q. Now, do you recall, Mr. Peress, whether at the time the
2 bid was submitted, Wonderland was represented by counsel?

3 A. They were not.

4 Q. Okay.

5 A. To my knowledge, anyway. They never identified counsel
6 at that point.

7 Q. Okay. Now following the bid deadline, did the due
8 diligence meetings at RadioShack, that you previously
9 described, actually occur?

10 A. Yes, they did. Representatives from Wonderland went to
11 Fort Worth on Thursday, so May 6th was Wednesday, so May 7th
12 and they had extensive meetings, you know, over the next day
13 and a half. I think there was an effort to extend some of
14 those to Saturday; although, I don't think we were able to
15 find RadioShack folks available for anything on Saturday,
16 but, yes, those two days were accommodated.

17 Q. Okay and then sometime in that timeframe, did counsel for
18 Wonderland surface?

19 A. Yes, I think it was probably Friday I heard from Terri
20 Gardner that she had been retained by Wonderland and was
21 trying to get up to speed to assist them to participate in
22 the auction process.

23 Q. Okay and did you have discussions with her or anyone else
24 at Wonderland about the need to submit an asset purchase
25 agreement?

1 A. Yes, Ms. Gardner was aware of that fact, I think, in the
2 conversation we had and told me that they were working on it,
3 but that she had just been engaged and needed some time.

4 Q. Okay and to your memory was a marked asset purchase
5 agreement submitted prior to the auction?

6 A. We received a draft mark-up asset purchase agreement
7 Sunday night, prior to the auction on Monday.

8 Q. Okay. Mr. Peress, let's turn to the auction itself and
9 let me ask you as an initial matter, were you in attendance
10 at the auction.

11 A. Yes, I was.

12 Q. Would you remind the Court where the auction was held?

13 A. It was held at Jones Day's offices in Manhattan.

14 Q. Were you there throughout the entire course of the
15 auction?

16 A. I was.

17 Q. Would you tell the Court, please, what the first order of
18 business was on that Monday morning that the auction was set
19 to begin?

20 A. Sure. So the auction was called for 10:00, I think
21 pretty close to 10:00 a.m. We went on the record with a view
22 of --

23 Q. Let me stop you there, if I could.

24 A. Sorry.

25 Q. Just to get the sequencing right. Were there activities

1 that took place with respect to General Wireless prior to the
2 actual opening of the auction?

3 A. Sure, General Wireless. I think your question is a good
4 one. We should take a step back. Sunday night we had a
5 number of different submissions. There seemed to be four
6 principal submissions that attempted to buy all or mostly all
7 of the intellectual property assets. We scheduled meetings
8 with all four of the folks that had submitted those, more
9 encompassing, bids to discuss how to qualify them as a
10 baseline bid if they were going to offer the highest amount
11 to open the auction. So there were conversations going on
12 with General Wireless, but as well we had a meeting with
13 Wonderland scheduled at 9:00 a.m., with Delta Marketing, I
14 think, shortly thereafter and as well with Regal Forest. All
15 with the view of qualifying those bidders and determining
16 which one was the highest opening bid to designate as the
17 baseline bidder. So I think that's probably responsive.

18 Q. Okay. Thank you. As a result of those meetings and
19 discussion that occurred, were the Debtors able to get to a
20 point where they selected a baseline bidder?

21 A. Yes, the Debtors selected a \$12 million dollar bid from
22 General Wireless as the baseline bid that was based on a
23 substantially negotiated agreement and supported by a deposit
24 of 15 percent.

25 Q. Okay and do you recall whether a meeting occurred between

1 the Debtors, and yourself and the consultation parties
2 regarding the designation of General Wireless as the baseline
3 bidder?

4 A. Yes, so I think the Debtor went on the record around
5 10:00 in the morning, indicated that we were still working on
6 trying to resolve some questions that the Debtor had, but
7 that it seemed that the high bid at that point, the baseline
8 bid was going to be \$12 million dollars from General
9 Wireless. I think certain other contractual issues were
10 worked out over the next hour or so and then the consultation
11 parties were advised by the Debtor of its determination that
12 it was at a place where it was comfortable with the agreement
13 with General Wireless, and that it was the highest opening
14 bid, and it was going to be designated at the baseline bid.

15 Q. To your memory, was there any disagreement, by any of the
16 consultation parties, with respect to the Debtors decision to
17 designate the General Wireless bid as the baseline?

18 A. I don't recall any disagreement.

19 Q. Again, just as a reminder for the Court, can you just
20 state for the record who you understood the consultation
21 parties to be?

22 A. It was a growing list, but it was the Creditors
23 Committee, it was the SCP Lenders, it was the Ad Hoc dealer
24 franchise committee and I think Standard General was no
25 longer a consultation party.

1 Q. Do you see in the Courtroom many of the individuals who
2 actually participated in those meetings on behalf of the
3 consultation parties?

4 A. They all have representatives here that were at the
5 auction.

6 Q. Okay. So let's then talk about day one of the auction.
7 You indicated that General Wireless was designated as the
8 baseline bid. Would you take the Court through, again, in
9 kind of a summary way because I know the Court has the
10 transcript, who the active bidders were on day one of the
11 auction?

12 A. So I think as I mentioned, there were four principal
13 bidders that had provided encompassing bids and seem to have
14 the likelihood of being participants that would be
15 meaningful. So that was General Wireless, it was Regal
16 Forest who previously had acquired certain interests, certain
17 trademarks in Latin America and South America, and who was a
18 longstanding RadioShack licensee. It was Delta Marketing.
19 Delta Marketing is a company that used to run "brick and
20 mortar" consumer electronics. Its business is now,
21 principally an e-commerce seller of consumer electronics as
22 well as a source, primary source under different brands,
23 including a brand called [indiscernible], an imaging
24 equipment and then Wonderland Investment Group.

25 Q. Of those four, to the best of your recollection, which of

1 those submitted bids during the course of the auction on day
2 one?

3 A. So three of them submitted bids, actually on day one only
4 two of them participated in the bidding; it was Regal Forest
5 and General Wireless. I was thinking three because Delta
6 Marketing did discuss a bid with us; however, ultimately, the
7 Debtor concluded that they needed to do more in terms of
8 demonstrating the financial wherewithal to bid over \$12
9 million dollars. So, ultimately, they weren't a bidder.

10 Q. All right, so during the course of the first day, just so
11 the record is clear, were any bids submitted by Wonderland?

12 A. No, there were no bids submitted by Wonderland.

13 Q. All right, to your knowledge, was Wonderland represented
14 by counsel during the course of the auction both on day one
15 and day two?

16 A. Ms. Gardner was there on behalf of Wonderland.

17 Q. Okay and were there other representatives of Wonderland
18 there as well?

19 A. Mr. Luo and Diway Ju. There were other folks over the
20 course of the day who joined them; although, known of them
21 were ever introduced to me.

22 Q. Okay. Do you recall where we ended at the end of the
23 first day of the auction?

24 A. So I guess it was probably around 11:30.

25 Q. At night?

1 A. Monday night. At that point there was a bid made of \$15
2 million dollars.

3 Q. Was that by General Wireless?

4 A. Correct. The Debtor first heard from Regal Forest that
5 it was interested in bidding, but that the parties that were
6 physically present at the auction had reached the limit of
7 their authority and requested more time to get additional
8 authority. In addition to that, given the fact that we were
9 now at a level of \$15 million dollars and the only parties
10 whose initial bid had been really close, you know, ball park
11 with General Wireless that we didn't have deposits from other
12 parties that were meaningful in the context of where we were
13 now bidding.

14 So we discussed with the Debtor and the consultation
15 parties discussed the notion that we should adjourn our
16 auction till the following morning, that we should delay the
17 restart of the auction. We thought 11:00 was enough time to
18 allow parties to top up their deposits to at least 15 percent
19 of \$15 million dollars and to the extent that they needed the
20 authority to exceed \$15 million dollars to gather that
21 authority.

22 Q. Okay. Was the idea, as well, to provide the parties who
23 had not been able to finalize their asset purchase agreements
24 to finalize those agreements before the auction resumed as
25 well?

1 A. Yes, that was definitely communicated to all the parties
2 that to the extent that there were still open issues relating
3 to how you perceived what you wanted to buy and how you
4 wanted to frame your APA, that we needed to have final APA's.

5 Q. Then, finally, was there a further request made that any
6 party who hadn't yet provided the necessary information on
7 financial wherewithal that that information be provided to
8 the Debtors prior to the start time of the auction the
9 following day?

10 A. Yes, I think that was part and parcel with what I was
11 saying before?

12 Q. Okay. So now would you just tell the Court, briefly,
13 what, to the best of your recollection, transpired the
14 following morning, Tuesday morning prior to the start of the
15 auction?

16 A. So around 10:00 we started to canvass the other parties
17 to determine whether they had been able to get additional
18 authority, whether they had been able to wire, top up their
19 deposits, whether they had asset purchase agreements for us
20 and whether they could demonstrate financial wherewithal.
21 General Wireless had topped up their deposit and we had a
22 substantially completed agreement with them.

23 Regal Forest had indicated that there was a two hour
24 time difference between New York and their principals in El
25 Salvador, and that they may need a few more minutes to

1 provide us the topping up and the other information that we
2 needed. It seemed that at that point Delta Marketing had
3 concluded that it was not going to qualify and was no longer
4 actively seeking to bid. Wonderland said to us that they
5 needed, actually, until noon to be able to top up the
6 deposit, but that they did make a presentation to the Debtor
7 and others about what they considered to be evidence of their
8 financial wherewithal. They also said that they were working
9 on an asset purchase agreement and expected to have it to us
10 shortly.

11 Q. Okay. At some point did the Debtors, and I know you were
12 involved in this as well, get into a position where they felt
13 that the conditions had been sufficiently satisfied, that it
14 was appropriate and time to restart the auction?

15 A. Yes, so around noon we received the top up bid deposit
16 from Regal Forest. We hadn't received it from Wonderland,
17 but they did show us the wire advice and the bank account
18 where it was coming from. So at that point, and they
19 provided us with a draft agreement, we commenced the auction.

20 Q. Okay and then again, briefly, because I understand the
21 Court has the transcripts, so what transpired then after the
22 auction was restarted?

23 A. So it was incremental bidding, again, principally between
24 General Wireless and Regal Forest.

25 Q. At some point during the day did Wonderland submit a bid?

1 A. Yes. So Wonderland came in around \$17.3 million dollars.
2 They made an incremental bid of \$100,000.00 to top the prior
3 bid of \$17.2.

4 Q. Was a break taken at that point?

5 A. There was because at that point we didn't really have, we
6 hadn't really had an opportunity to review their agreement
7 and discuss it with them because it came to us again that
8 morning. So we wanted to have the opportunity to understand
9 the basis in which they were making their \$17.3 million
10 dollar bid.

11 Q. Have there been some conflicting statements made by
12 Wonderland in terms of what assets they wanted to purchase
13 and what assets they wanted to leave behind?

14 A. Principally as it related to the global sourcing
15 business, it seemed that, initially, at least our
16 understanding was that they were not interested in acquiring
17 the global sourcing business. Then, when we reviewed their
18 agreement in the list of assets to be acquired it listed, in
19 sort of generic terms, the global sourcing business.

20 So one of the key issues for everyone was to understand
21 what their conception was about global sourcing and to try
22 and understand that in the context of what they were bidding
23 for. So we had a series of conversations with Wonderland and
24 its counsel about the global sourcing business and were
25 advised, and at this point we're probably around 1:00 in the

1 afternoon on Tuesday, that they could take out the global
2 sourcing references in the contract. So, I don't know if
3 I'm going past your questions.

4 Q. No, that's fine. What happened after that, in terms of
5 your discussions with Wonderland?

6 A. So at that point, literally, the focus of the Debtor and
7 my firm were to get an agreement that we were comfortable
8 with could be consummated with Wonderland if they were the
9 successful bidder. Christopher Froelich from your firm, who
10 is the principal corporate lawyer working on the transaction
11 at that point, took their agreement to his office and started
12 working on knocking out a revision, which it was a process.
13 He came back to us with, sort of, questions, issues and so
14 around 4:00, so it took about two and a half, three hours,
15 around 4:00 Mr. Froelich had an agreement which he felt
16 captured what we understood Wonderland to be interested in.
17 We were comfortable bringing that to Wonderland and its
18 counsel to say okay, can you please review this and confirm
19 that you're prepared to make your \$17.3 million dollar bid on
20 the basis of this agreement.

21 I should say that toward the end of that time period I
22 received an e-mail from Ms. Gardner saying that she was also
23 on a parallel track working on an agreement. I said we had
24 stopped, don't do that because that will just push this
25 process further. In terms of time, we have been working on

1 that and we think we are very close, in a timeframe, to
2 provide that contract to you.

3 Q. Okay. Then, following the time that Mr. Froelich had
4 prepared this agreement, based on the understanding that the
5 global sourcing business was out, did Wonderland come back
6 then and indicate that they wanted to acquire the global
7 sourcing assets?

8 A. Right. So Mr. Froelich and Tim McDonagh from FTI went to
9 meet with Wonderland. I was not in that meeting, but I
10 understood the purpose of the meeting was to walk through,
11 sort of, the changes to the agreement and what the agreement
12 kept in and took out. They then came back from that meeting
13 and said, well, Wonderland changed its position. Its
14 interest at this point, now it wants to acquire global
15 sourcing and it also wants to now acquire the interest of the
16 Debtor in a joint venture, which joint venture is the
17 licensee of the Debtor for exploiting the RadioShack related
18 trademarks in China. So that was, obviously, a big change
19 after several hours of trying to accommodate their original
20 ask.

21 So at that point, I then went to meet with Wonderland
22 and its counsel to confirm that what I had just heard from
23 Mr. McDonagh and Mr. Froelich was, in fact, what their new
24 position was. Given that we were now approximately hour and
25 a half hours between the \$17.3 million dollar bid and trying

1 to their auction restarted, I felt that the only way to do
2 that was to pin down Wonderland to exactly what it was that
3 they wanted. So I suggested to them that we needed to sit
4 down, put in front of both of us the provisions in the
5 General Wireless agreement that dealt with global sourcing,
6 reach an agreement on what they wanted, what timeframes, what
7 they were prepared to pay for, and what they weren't prepared
8 to pay for and memorialize those in a written agreement or
9 memorandum that would be signed by Wonderland and the
10 company, and then provide a basis for moving forward with the
11 auction.

12 MR. GORDON: Your Honor, may I approach?

13 THE COURT: You may.

14 BY MR. GORDON:

15 Q. Mr. Peress, I've handed you what I marked as Debtors'
16 Exhibit 5. Is this the memorandum of understanding, I guess
17 for lack of a better word, that you prepared with counsel for
18 Wonderland to address the global sourcing issues that you
19 have just discussed?

20 A. Yeah, it was with Mr. Froelich that I prepared this, but
21 correct.

22 Q. Again, briefly, would you just tell the Court, again,
23 what was the purpose of this, in your mind, in terms of
24 attempting to restart the auction and move forward with the
25 process?

1 A. So as I stated, the Debtor had worked on revising the
2 asset purchase agreement to reflect what it had been told by
3 Wonderland were the assets it was interested in. Wonderland
4 then said, no, we need this additional assets. So this was
5 intended to address how those additional assets would be
6 covered by the asset purchase agreement. So the Hong Kong
7 subsidiary; that is the entity that owns the interest of the
8 Debtor in the joint venture, but is also a principal
9 component of the global sourcing business. So it has, sort
10 of, two purposes. They would designate whether they wanted
11 to buy the shares of the Hong Kong subsidiary by May 31st.

12 The Shinjin subsidiary is a PRC entity that is also
13 part of the global sourcing business. Again, they would
14 designate whether they were interested in buying the equity
15 in that entity by May 31st. The Taiwanese assets are assets
16 related to the global sourcing business. It's set up as a
17 branch of a foreign company. It's not, itself, a separate
18 corporate entity.

19 So there were four principal liabilities, if you will,
20 associated with taking control over the Taiwan branch; one
21 was the lease of their office space in Taipei, the other was
22 the harbor maintenance contract, the telephone system
23 contract and, obviously, employee contracts. Again, they had
24 to designate by May 31st whether they were going to assume
25 those liabilities. The Chinese joint venture, this is a

1 joint venture with an affiliate of Foxconn; the Debtor owns
2 49 percent of that venture, Foxconn affiliates own 51
3 percent.

4 The joint venture agreement, there are anti-assignment
5 provisions that effectively make it such that effectuate a
6 transfer of RadioShack's interest, you likely need the
7 approval or agreement of Foxconn and those 49 percent
8 interests are owned by the subsidiary in Hong Kong. The
9 agreement was that they would decide whether or not they
10 wanted to take that interest by June 30th; however, because
11 the interests were owned by the Hong Kong entity, if they had
12 chosen by May 31st that they did not want to buy the Hong Kong
13 entity, but RadioShack, nevertheless, had to continue the
14 Hong Kong entity in business during this further option
15 period that Wonderland would be responsible for the cost
16 associated with operation of the Hong Kong subsidiary up to
17 \$250,000.00 for that month.

18 Now to the extent that there are any contracts related
19 to sourcing product from vendors or otherwise they had to
20 designate whether they were going to take those by May 31st
21 and then to the extent there were any contracts or, sorry,
22 beyond contractual assets that were owned by the Debtor and
23 transferable, again, they had until May 31st to make that
24 designation.

25 MR. GORDON: Your Honor, I would move the admission

1 into evidence of Debtors' Exhibit 5.

2 THE COURT: Okay. Any objection? Very well, it's
3 admitted.

4 MR. GORDON: Thank you, Your Honor.

5 BY MR. GORDON:

6 Q. Let me just ask this question, Mr. Peress; was this
7 document, as well as the asset purchase agreements that had
8 been finalized with General Wireless, Regal Forest and with
9 Wonderland provided to the consultation parties as well as to
10 the bidders during the course of the auction?

11 A. Yes.

12 Q. Okay. So will you tell the Court, briefly, what happened
13 after the auction resumed following this break to address
14 these issues associated with the Wonderland bid?

15 A. So the Debtor gained the \$17.3 million dollar bid from
16 Wonderland to be a qualified bid. At that point there was
17 another bid made by Regal Forest. In that case the bid by
18 Regal Forest was for \$16 million dollars, but they were
19 excluding certain assets that were of interest to another
20 licensee of RadioShack who had been a bidder for discreet
21 assets called Berjaya.

22 Berjaya had made an offer to the Debtor to acquire
23 interests in the territories it licenses, plus adding to it
24 the territories of Australia and South Korea, and to resolve
25 a \$1.5 million dollar receivable for \$2 million dollars. The

1 Regal Forest bid \$16 million dollars, plus said that it would
2 accommodate by pairing down the assets that it was acquiring,
3 the Debtors ability to accept the Berjaya agreement. So on
4 that basis, they contended that their bid was \$18 million
5 dollars.

6 Q. Did the Debtors value that bid at \$18 million?

7 A. I think they did, yes.

8 Q. And was that determination of value discussed with the
9 consultation parties and supported by the consultation
10 parties?

11 A. That's my recollection.

12 Q. Okay. Following the submission of this bid by Regal
13 Forest, what happened at the auction in terms of further
14 bidding?

15 A. So at that point, it appeared to the Debtor and to me
16 that we were at an inflexion point where the two most active
17 bidders, up to that point, Regal Forest and General Wireless
18 were pretty close to the end of their authority and/or the
19 end of their ability to spend. Then we had a third bidder,
20 who we didn't have a lot of information about, but who had
21 jumped into the auction since it was opened, now cried toward
22 the end.

23 We had a concern that if we continued to go in
24 incremental bidding, that the two weaker bidders, as
25 perceived by us, would at that point raise the white flag, if

1 you will, and that there was probably additional value that
2 we were going to leave on the table. So we made the
3 decision, at that point, that the best way to flesh out what
4 people's highest bids were, what the limits of their
5 authority and their limits of their perception of value were
6 was to give everybody an opportunity to put their best bid on
7 the table in a sealed bid and close the auction based on
8 that.

9 Q. Was that decision by you and by the Debtors to move to
10 that final sealed bid format, discussed with the consultation
11 parties?

12 A. Yes, it was.

13 Q. Was it supported by the consultation parties?

14 A. Nobody objected to it and seemed to think that that was a
15 good idea.

16 Q. Then take the Court through, we are now at the very end
17 of the auction, I think, just take the Court through, in your
18 own words, what happened after we went to the sealed bid
19 format?

20 A. Sure. So the Debtor indicated that at this point the
21 high bid was \$18 million dollars, that for the next round of
22 bidding bids were going to be accepted in sealed bid format,
23 that the Debtor had three envelopes, one for each of the
24 remaining parties in the auction and that the Debtor was
25 prepared to give each party 30 minutes to come up with their

1 best bid and at the conclusion of 30 minutes, anybody who had
2 made a bid, the Debtor would open the envelopes and in
3 consultation with the consultation parties, declare the high
4 bidder and the back-up bidder.

5 Q. Okay. Did that all, in fact, happen? Did each of these
6 three bidders submit a sealed bid?

7 A. Yes. So at that point, the bidders adjourned back to
8 their perspective caucus rooms. Some of them asked questions.
9 The Wonderland folks seem to be a little upset about the way
10 that we were proceeding. We explained that this was a
11 decision that the Debtor had made in consultation with the
12 consultation parties and felt that it was the best process
13 for the Debtor and that they were free to make the decision
14 that they wanted to make. If they were interested in
15 bidding, they should bid. A half hour turned into more like
16 55 minutes, I think, was by my watch, but at the conclusion
17 of that almost hour long period, three sealed envelopes were
18 submitted to you.

19 Q. And then once those bids were opened, were there further
20 discussions with the consultation parties regarding the
21 selection of the successful bidder and the backup bidder?

22 A. Yes, two of the bids were for a finite dollar figure.
23 One of the bids contained provisions related to attribution
24 for other assets that that bidder was willing to carve-out of
25 its bid, as well as a future payment, which needed to be

1 valued in order to determine whether it was either the
2 highest bid or the backup bid. The other two were easy
3 because they were just numbers. So we consulted internally
4 and then with the consultation parties, and all concluded
5 which was the high bid, which was the backup bid and which
6 was not.

7 Q. Okay. You say you consulted, you consulted with all the
8 consultation parties that is?

9 A. Yes.

10 Q. And all of those consultation parties supported the
11 selection of the General Wireless bid as the successful bid?

12 A. Yes, it was \$8.2 million dollars higher than the last bid
13 that had been made in the open outcry portion of the auction
14 and it was many millions higher than the next bid.

15 MR. GORDON: Your Honor, I'm almost done. I know we
16 are pushing time here.

17 THE COURT: What we will do is when you conclude your
18 direct, we will take a break for 35, 40 minutes and then we
19 will reconvene for cross-examination.

20 MR. GORDON: Okay. Almost done.

21 BY MR. GORDON:

22 Q. Let me just ask you a few, hopefully, brief questions
23 regarding post-auction proceedings. What is your
24 understanding in terms of what has happened with respect to
25 the General Wireless bid, well let me back up. Following the

1 selection of the winning bidder and the backup bidder, was
2 the auction then closed?

3 A. Yes, around, I think it was like 10:00, 10:30 on Tuesday
4 night.

5 Q. Following the auction, what is your understanding in
6 terms of what's happened with respect to the General Wireless
7 bid and the finalization of the General Wireless asset
8 purchase agreement?

9 A. The asset purchase agreement has been finalized and, you
10 know, agreements have been reached with most of the other
11 parties in interest that had concerns relating to the assets
12 being transferred.

13 Q. Okay and did you yourself, Mr. Peress, participate in the
14 mediation that we've heard about in Court today with the
15 State's Attorney's General and the consumer privacy
16 ombudsman?

17 A. Yes, so I was in Dallas on Thursday to meet with Judge
18 Clark and representatives of the various State's Attorney
19 Generals and the FTC. General Wireless was there as well as
20 representatives of the Debtor.

21 Q. For the record, who was present on behalf of General
22 Wireless?

23 A. So telephonically Mr. Lavan, Mr. Gerricks, I think and
24 Mr. Fallon, who are all, well Mr. Lavan, I think, is a future
25 director of General Wireless and the other two are either

1 existing or future employees of General Wireless. Mr.
2 Galardi was present.

3 Q. Okay. Just too sort of sum things up, Mr. Peress, do you
4 believe the move to the sealed bid process at the time that
5 move was made was the right strategy to pursue?

6 A. Yes, we were at a point where it seemed that the open
7 outcry process was not likely to elicit the highest value for
8 those assets. The sealed bid process, at that point in time,
9 offered the best opportunity for that.

10 Q. Do you believe, sitting here today, that that move was
11 successful?

12 A. I think \$8.2 million dollars speaks for itself.

13 Q. Okay and in your experience in 363 sales, have you seen
14 this type of format in auctions before where an auction moves
15 or involves a sealed bid process?

16 A. Oh sure.

17 Q. Would you view it as unusual or atypical?

18 A. Some jurisdictions they only do sealed bids. I am not a
19 big fan of that, but I think that depending on the fee
20 auction dynamics that you do get to the point where it's
21 appropriate to go to sealed bids because the hope, the goal
22 of doing that, I mean, is pretty evident, I would think, is
23 to get the winning bidder to bid more than they otherwise
24 would in an incremental process.

25 Q. Finally, do you believe, Mr. Peress, that Wonderland was

1 given the same chance or the same opportunity as other
2 bidders to submit its highest or best bid at the auction?

3 A. Everybody was on the same playing field, sure.

4 MR. GORDON: Pass the witness, Your Honor.

5 THE COURT: All right, what we will do is we will
6 take a break right now and we will reconvene at, I'm going to
7 say 1:25, which will get everybody back here, hopefully, by
8 1:30. We will reconvene for cross-examination. Mr. Peress,
9 you remain under oath and you are not to discuss your
10 testimony during the break, so go eat alone. Anything
11 further before we break? All right, we will reconvene in 40
12 minutes. Stand in recess. Thank you.

13 [Recess 12:45:15 to 1:30:37]

14 THE CLERK: All rise.

15 THE COURT: Please be seated. Mr. Peress, I would
16 remind you, sir that you remain under oath.

17 MR. PERESS: Thank you, Your Honor.

18 THE COURT: Mr. Clark.

19 MR. CLARK: Good afternoon, Your Honor, may I
20 proceed?

21 THE COURT: You may.

22 MR. CLARK: I just don't really have much to ask Mr.
23 Peress, but I could not pass the opportunity to skewer him on
24 cross-examination for a change.

25 THE COURT: Have at it.

1 CROSS-EXAMINATION

2 BY MR. CLARK:

3 Q. Mr. Peress, would you agree with his Honor's
4 characterization that \$30 million dollars is demonstrably
5 larger than \$26.2 million dollars?

6 A. Its \$3.8 million dollars more; that's definitely real
7 money.

8 Q. Now you were at the auction in New York at the meetings
9 in New York?

10 A. Yes.

11 Q. Do you recall that when Mr. Gordon tried to declare that
12 the auction was closed that Salus, on the record, made a
13 statement reserving its rights in that respect?

14 A. Yes.

15 Q. On direct Mr. Gordon asked you a few questions, the
16 thrust of which was how did things work out when the Debtors
17 went to the sealed bid procedure, do you recall that topic?

18 A. Yes.

19 Q. You referred to the \$8.2 million dollar incremental
20 increase in the General Wireless bid and I believe you said
21 that \$8.2 million dollars speaks for itself, do you recall
22 that?

23 A. Yes, I do.

24 Q. Does the \$3.8 million dollars by which Wonderland's bid
25 now exceeds the General Wireless bid also speak for itself?

1 A. I'm not of the context. The context in which I answered
2 Mr. Gordon's question was as it related to the sealed bid
3 process. So help me, Mr. Clark?

4 Q. Sure. Is there any reason in your expert opinion, at
5 this time, not to re-open the auction with the \$30 million
6 dollar Wonderland bid and have the Debtors welcome General
7 Wireless and all the other qualified bidders to come back
8 into the process and bid some more?

9 A. So from my personal interest I would love to have more
10 money paid and from my clients perspective I think that would
11 be a great outcome.

12 Q. My clients perspective as well.

13 A. Well your client is my client.

14 Q. Mr. Peres, I am violently agreeing with you.

15 A. So, obviously, \$3.8 million dollars would be an increase
16 in the consideration paid for these assets, would be a good
17 outcome for me personally because my firm makes 3 percent of
18 any amounts paid for the intellectual property above \$40
19 million dollars. With the other IP sales, we are in that
20 place right now. From Salus' perspective, who has a
21 meaningful deficiency claim, of course, \$3.8 million dollars
22 more would decrease their deficiency claim. So that would be
23 a great thing. I think the fundamental question that you
24 asked though is probably one that the Court has to answer.

25 MR. CLARK: I agree. His Honor will be answering

1 that question for us as well. Thank you, Mr. Peress. Thank
2 you, Your Honor.

3 THE COURT: Sure. Further cross.

4 MR. HORAN: Your Honor, Tom Horan. Ms. Gardner, I
5 believe the Court knows.

6 THE COURT: Welcome.

7 MR. HORAN: We move Ms. Gardner's admission *pro hac*
8 *vice*.

9 THE COURT: Very good.

10 MR. HORAN: We ask that she be permitted to question
11 the witness.

12 THE COURT: Happy to oblige.

13 MR. HORAN: Thank you.

14 THE COURT: Welcome, Ms. Gardner.

15 MS. GARDNER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. GARDNER:

18 Q. Good afternoon, Mr. Peress.

19 A. Ms. Gardner.

20 Q. Mr. Peress, in your earlier testimony you indicated that
21 you have significant experience in conducting auctions and
22 sale procedures, is that correct?

23 A. That's true, yes.

24 Q. And that you're an expert in that field, correct?

25 A. I think so, yes.

1 Q. With regard to the sealed bid procedures, you also
2 indicated that in your experience it was a good mechanism to
3 realize the highest and best value, is that correct?

4 A. In some circumstances, yes.

5 Q. Why did the Debtor, and I expect you consulted with them
6 about the bidding procedures in this case?

7 A. Yes, I did.

8 Q. Prior to them being presented to the Court for approval,
9 did you consult and develop the procedures?

10 A. I reviewed them and was comfortable with them, sure.

11 Q. If the sealed bid procedure was one that you felt could
12 maximize value, why was the provision for a potential sealed
13 bid not included in the procedures presented to the Court for
14 approval?

15 A. I'm not sure.

16 Q. Why was the sealed procedure, if in, your experience
17 could be a way to maximize value, not outlined as a potential
18 option for bidding in this particular sale?

19 A. I think that the point of bid procedures, from a seller's
20 perspective, is to maximize flexibility. I think sealed
21 bidding is one technique that can be used. I think there are
22 others. In this auction, for example, the Debtor chose to
23 proceed by open outcry. Sometimes we don't do that.
24 Sometimes we have serial bidding. In some cases, where we
25 have multiple bidders, we specify that bidders have the right

1 to pass or be eliminated from bidding if they don't make bids
2 in successive rounds. I mean there are many different
3 techniques that we use in auctions. I don't think that it's
4 my practice to outline all of those in the context of the
5 bidding procedures order because, again, I go back to where I
6 started that the idea is to maintain maximum flexibility to
7 adjust the process to the dynamics that are occurring in the
8 auction.

9 Q. Do you agree that it's important for participants who are
10 engaging in a procedure to understand the rules that they
11 will be bidding by, from the outset?

12 A. Yes.

13 Q. And, in fact, in this particular auction, wasn't it
14 announced that the bidding would occur in \$100,000.00
15 increments?

16 A. Actually, I think at the beginning of the auction Mr.
17 Gordon stated that after consultation with the consultation
18 parties, that the auction was going to start with a baseline
19 bid of \$12 million dollars, that to make a subsequent bid
20 that it had to be at least \$500,000.00 more and that
21 thereafter any additional bids needed to be in minimum
22 increments of \$100,000.00.

23 Q. Why was the decision made to lower the increments to
24 \$100,000.00 as opposed to some larger amount to move the
25 bidding along more rapidly?

1 A. Well, again, as in every auction dynamic there is a
2 tradeoff and a balance. It's not unusual to change
3 increments along the way. For example, in the Border's case
4 we started actually with \$25,000.00 increments and then moved
5 to \$100,000.00 increments when it appeared that there was
6 robust bidding among many parties. In this case there wasn't
7 robust bidding among many parties. There were only two
8 bidders who participated for most of the auction.

9 My concern, and I can't speak for the Debtors, but my
10 concern is if we had gone to a higher bidding increment that
11 we may have given away value if somebody were willing to go
12 up \$100,000.00, but couldn't or didn't have the authority or
13 the wherewithal to go up \$500,000.00. So at the point where
14 we were at \$12 million dollars in the bidding process, as our
15 baseline bid, \$100,000.00 was meaningful in the context of
16 recoveries.

17 Q. Was there any discussion before the bidding procedure was
18 changed to a sale bid to increase the increments as another
19 option to move the bidding process along?

20 A. I don't recall any specific discussion. I do recall that
21 the concern we are trying to address at that point, when we
22 moved to sealed bids was not that a higher increment would be
23 better, but the concern was that we felt we only had three
24 bidders that one had already signaled very clearly by its
25 inability to, on its own, bid higher. Regal Forest, without

1 combining its bid with a second party, that it was tapped.
2 If we continued by any increment that we were likely not to
3 elicit the highest offer that people had come to that auction
4 prepared to make.

5 Q. How did you know that Wonderland wasn't prepared to bid
6 more than Regal and/or General Wireless?

7 A. I hoped they were. I assumed they were. I mean that was
8 my desire, but my desire was not to generate a bid of
9 \$18,100,000.00 and then have everybody finish. My desire was
10 to elicit a bid of considerably higher value.

11 Q. You indicated in earlier testimony that you felt that bot
12 Regal and General Wireless were close to the top of their
13 bidding ability?

14 A. Yes.

15 Q. How did you know that?

16 A. Well, Regal had told us that they didn't have any more
17 powder and that's when we proposed to them that they could
18 combine their bid with the bid of Berjaya if they were
19 willing to exclude the assets that Berjaya wanted from the
20 package of assets that were being sold. With respect to
21 General Wireless, they had signaled earlier in the process
22 that they probably had about, they had valued the IP at \$20
23 million dollars. They had made a proposal at one point in
24 the process of \$20 million dollars. So our view was that
25 that was probably at the high end of their valuation.

1 Q. Going into the auction process, what was your expectation
2 as to what this auction might bring?

3 A. I thought that \$20 million dollars would be a good
4 recovery.

5 Q. Well, considering that the bidding was at \$18 when it
6 went sealed bid, did you not believe that continuation of
7 incremental bidding might bring up to \$20?

8 A. I was concerned, I mean the principal driver of the
9 decision to go to sealed bids was that I thought, and I think
10 the Debtor agreed, and ultimately the consultation parties
11 agreed that the incremental open outcry methodology technique
12 that we were using at that point was not going to elicit \$20
13 million dollars?

14 Q. Well, did you ever discuss --

15 THE COURT: I have a question.

16 MS. GARDNER: Yes, Your Honor.

17 THE COURT: I'd like a little bit more context. I
18 don't know if I am going to be able to articulate this well.
19 I've read the transcript. Obviously, the transcript is the
20 thinnest of indicators of what went on for two days. What it
21 sounds to me like is that you were in the room and it was
22 your assessment that the momentum of the auction seemed to be
23 dying, is that accurate?

24 THE WITNESS: That's very accurate.

25 THE COURT: I'd like you to respond because the open

1 outcry is, I've seen it before, but it's not typical, you
2 know, often there is just round and round, and maybe somebody
3 can pass or pass once. I'd like you to respond and I think
4 this may be going to some of Ms. Gardner's points, did not
5 the involvement or entry of Wonderland into this process at
6 \$17 million and change, why didn't that give you hope that
7 General Wireless, which was clearly a motivated player for
8 reasons that we have discussed, why did you assess that that
9 was not going to yield, on an incremental basis, a result
10 that you would have found acceptable? I think you touched on
11 this, but I'd like sort of that clarity.

12 THE WITNESS: So the feeling that I had, and I think
13 the Debtors shared, was that we are getting to a point where
14 General Wireless would start to evaluate whether it can or if
15 we were fortunate enough to get to \$20 million dollars could
16 be utilized better in --

17 THE COURT: Rebranding.

18 THE WITNESS: Right, building their own brand on
19 their own terms. We also had a discussion with General
20 Wireless at that point about if we were to move forward with
21 a bid that did not include global sourcing, were they
22 interested in buying global sourcing separately and apart
23 from the other assets. They indicated to us that they would
24 be very interested in doing that, which was material to me.

25 I think Your Honor may recall that I already

1 testified in this case that it was my judgment that
2 meaningful pieces of the global sourcing business had been
3 sold already in the first sale. So it seemed to me, logical,
4 that the party that would best value the global sourcing
5 assets was General Wireless. So my feeling at that point was
6 that I might be selling the IP to Wonderland, without global
7 sourcing, and be able to then sell global sourcing separately
8 to aggregate the maximize value. We were trying to move
9 around the pieces on the chess board like you do in 363
10 auctions to try to come up with the highest aggregate
11 valuation.

12 THE COURT: I apologize for the interruption.

13 BY MS. GARDNER:

14 Q. Mr. Peress, in the qualification of Wonderland, were you
15 and the other parties made aware of the financial resources
16 of Wonderland that got you comfortable that it would be a
17 qualified bidder and could close a sale? Do you recall
18 hearing about the financial wherewithal of Wonderland?

19 A. Well, we heard a number of different statements. Mr. Luo
20 showed us a bank statement that showed that they had \$13
21 million dollars of cash in a bank account in California. I
22 already testified about the other information we had about
23 the DesignLine case, some of which I had discussed with you.
24 Mr. Luo also made a statement that Wonderland was part of an
25 affiliated group of companies that had access to \$8 billion

1 dollars at which he later revised to \$800 million dollars of
2 availability; however, that was in China. I don't recall
3 anything further about financial wherewithal being presented
4 to us.

5 Q. Well, isn't it correct that after Wonderland bid \$17.3
6 million, there was only one bid of \$18 million until the
7 procedure was changed, such that it had no further
8 opportunity to bid in a competitive method?

9 A. No, it had an opportunity to submit a sealed bid.

10 Q. Right, but it had no further opportunity to evaluate the
11 positions of the other bidders in a competitive manner to
12 determine where the value would go?

13 A. I'm not sure I follow your question, Ms. Gardner. They
14 had an opportunity to make a sealed bid, which they did do.

15 Q. Right, but isn't it correct you were informed that they
16 had the financial wherewithal to bid and could bid, and they
17 were very interested in bidding because they had stayed
18 throughout the two days. So at that point, you knew that two
19 bidders were at the top of their game, but you didn't know
20 where Wonderland was in that process, is that correct? I'm
21 just saying, you were talking to the other parties about how
22 high they could bid, but did anyone talk to Wonderland to get
23 a sense of how high it might go before the decision was made
24 to go to a sealed bid?

25 A. We had many discussions with Wonderland about their

1 interest in the assets. Interestingly, every time I asked
2 them to commit to higher numbers, they didn't. In fact, I
3 think you probably recall that throughout the process I kept
4 encouraging them to become the stalking horse, which they had
5 originally when I first contacted them said they wanted to
6 be, and yet I couldn't get them to offer me more than \$3
7 million dollars for purposes of being the stalking horse. So
8 I really didn't have any comfort that I was ever going to get
9 any straight transparent answer from Wonderland in terms of
10 what the limit of their authority or interest was.

11 Q. They did stay the entire two day process though, did they
12 not, and submitted an APA in a significant bid in the
13 process?

14 A. Yes.

15 Q. With regard to the global sourcing issues and the
16 Wonderland APA, do you recall that after it bid \$17.3 million
17 that you wanted to have discussions with Wonderland, with
18 regard to what was left in the global sourcing asset base of
19 RadioShack?

20 A. Yes.

21 Q. And at that point, do you recall telling Wonderland that,
22 really, most of the meaningful global sourcing assets had
23 already been sold to General Wireless?

24 A. I think the word meaningful is yours. What I said --

25 Q. The knowhow, the protocol and such?

1 A. So, unfortunately, I think that on April 1st the Debtor
2 entered into an agreement with General Wireless where it sold
3 a number of assets, including assets that related to the
4 global sourcing business. That document was in our data room
5 and was part of the due diligence that was provided to
6 Wonderland. It became apparent to me in a discussion that I
7 was having with them about their interest, which, you know,
8 they have isolated on several times about whether or not they
9 wanted global sourcing. Nobody had read the April 1st
10 agreement or at least if they had read it, they hadn't shared
11 it with counsel or somebody else who could point out to them
12 the assets that were sold.

13 So I found myself at a point, on the second day of the
14 auction, that your client had been sitting through and
15 participating in going over issues of basis due diligence
16 that really should have been covered, I think, by a bidder
17 who was prepared to step into these assets, but hadn't been.
18 So then it was my obligation to the process and to Wonderland
19 because I wanted them to participate, I wanted them to
20 participate on a basis that was cognizant of the issues to
21 understand what those issues were. So I found myself on the
22 second day of the auction going over matters that had been
23 disclosed to anybody who had been in the data room since
24 April 1st.

25 Q. What exactly was in the data room that would have made

1 parties aware of what had been sold to General Wireless?

2 A. In the asset purchase agreement between General Wireless
3 and RadioShack.

4 Q. Are you absolutely sure that document is in the data
5 room?

6 A. Yes.

7 Q. Do you also believe that information was in the data room
8 to show that there had been a license of intellectual
9 property, copyrights and patents already transferred to
10 General Wireless?

11 A. That's in the asset purchase agreement.

12 Q. The agreement that was ultimately negotiated with
13 Wonderland prior to its or in conjunction with its \$17.3
14 million dollar bid, was that bid more favorable in terms than
15 the General Wireless bid? On its face of the agreement, did
16 it have more favorable terms?

17 A. We've never finalized an agreement with Wonderland. You
18 had provided us, on the second day, a revision to the
19 agreement which you had sent to us on Sunday night.

20 Q. Well didn't we have an APA that everybody felt they knew
21 what the deal was when we went back in the bidding room to
22 resume bidding Sunday night?

23 A. We had an APA plus a memorandum.

24 Q. Didn't the Wonderland deal provide a much shorter period
25 for Wonderland to decide who to assume or reject contracts?

1 A. It really -- I don't really recall what the period for
2 assumption or rejection was other than what's set forth in
3 the memorandum. But that issue wasn't of any moment to the
4 debtor because General Wireless agreed to pay for the
5 optionality it required. So there was already in place a
6 transition services agreement with General Wireless. The
7 debtor had experience working with General Wireless to know
8 that General Wireless was prepared to pay the carrying costs
9 associated with its options.

10 So in that respect, you know, and I -- I think it's
11 easier to say things were equal. But, you know, the debtor
12 may have had the -- that was my perspective. The debtor
13 might have had the perspective that actually there were more
14 risks associated with the General Wireless deal because we
15 didn't have a transition services agreement in place with
16 General Wireless. What we had was an agreement conceptually
17 that there would be the need to pay for carry associated with
18 optionality that General -- that Wonderland wanted.

19 Q. Well, wasn't the time frame for Wonderland to make any
20 decisions about the China entities much shorter than the time
21 frame that General Wireless had to make decisions?

22 A. It was 60 or 90 days shorter, yes.

23 Q. Well, I think there was a six-month period for General
24 Wireless. And we had approximately a month on the Chinese
25 joint venture post-closing. Is that correct?

1 A. Correct. But again, as I -- I don't remember if it was
2 six months, honestly. But what I do recall is that our
3 agreement with General Wireless was that as long as they
4 needed to maintain optionality, that they needed to pay for
5 the costs associated with that option which your client
6 agreed to as well as it relates to the joint venture, which
7 was costs up to \$250,000 a month in respect of maintaining
8 the Hong Kong entity that is the owner of the forty-nine-
9 percent interest in the Foxconn/RadioShack joint venture.

10 Q. Okay. In the General Wireless APA that was bid upon by
11 them in the sealed bid, an asset was added that had not
12 previously been available to other bidders, the Berjaya
13 account receivable. Are you familiar with that asset?

14 A. Yes.

15 Q. Why was that asset added to the General Wireless APA?

16 A. That was a condition of their -- of \$26.2 million that
17 they added that asset as part of the package of assets they
18 were acquiring.

19 Q. And what do you know about that receivable and its
20 collectability?

21 A. So the debtor is owed -- the debtor is subject to a
22 thirty-year license agreement with Berjaya that allows
23 Berjaya to utilize the RadioShack trademark in ten countries,
24 I think it is, that -- in Southeast Asia. And there are
25 payments to be made along the way by Berjaya under that

1 agreement, including a payment of \$1.5 million that was due
2 in December of -- excuse me, December of 2015. Berjaya has
3 not paid that amount and has asserted that it has defenses to
4 the payment of that amount based on the non-performance of --
5 by RadioShack of its obligations under that agreement, which
6 -- which assertions the debtor contests. So you have a
7 dispute as it relates to the -- you know -- whether that
8 amount needs to be paid and is due and owing.

9 Q. Okay. Were other bidding parties made aware of this
10 asset and that it was being added to the sale assets?

11 A. I -- you asked me two questions.

12 Q. Right. Were other parties made aware of this asset so
13 they could add it as well to their purchase offer?

14 A. Yes. The Berjaya license agreement and the obligations
15 are in the data room. Whether parties had the view of adding
16 it or not was really up to the parties.

17 Q. Was the Berjaya account receivable an asset that was
18 specifically identified in your big package as available to
19 purchase?

20 A. No. But the Berjaya license agreement under which the
21 receivable arises was.

22 Q. And was that license not part of what Wonderland was
23 bidding upon? Wasn't Wonderland --

24 A. Yes. Berjaya was buying --

25 Q. -- right?

1 A. Yes. Yes.

2 Q. Okay.

3 A. Wonderland sought to buy. But under the language of the
4 APA, we excluded the receivable. So up until the last round
5 of bidding, that receivable was excluded. General Wireless
6 added it to the bucket of assets that it wished to acquire
7 for \$26.2 million. And the debtor was agreeable to that, but
8 reduced its valuation of the bid under those circumstances by
9 \$500,000.

10 Q. Going into the sale process, was it your expectation that
11 General Wireless would likely be the high bidder?

12 A. I didn't know who would be the high bidder. I knew that
13 General Wireless had meaningful incentives to want to own the
14 intellectual property. But my job was, notwithstanding that,
15 to identify and assist other entities that would see the
16 value in the RadioShack intellectual property in making bids
17 for that intellectual property with the goal to maximize
18 value and -- and sell the assets to the party who was willing
19 to pay the most.

20 Q. Did General Wireless have access to information that
21 generally was not available to other bidders based on your
22 knowledge?

23 A. I -- I mean, I can comment that General Wireless had
24 acquired many assets in a purchase agreement dated April 1st
25 that General Wireless was party to a transition services

1 agreement with the debtor, that General Wireless management
2 was onsite in Fort Worth. General Wireless had done lots of
3 due diligence, had probably expended, just based on my
4 assessment of the level of professionals that they had
5 working on the case, millions of dollars in diligence.
6 General Wireless is affiliated with a fund that was the
7 largest shareholder of RadioShack. It still probably is the
8 largest shareholder. General Wireless is affiliated with a
9 fund that was a lender to RadioShack. So I -- I think all of
10 those things suggest that they had very intimate knowledge.
11 But no other party was excluded from making -- if they were
12 willing to make the investment in time and energy and
13 diligence to get that same level of information or
14 information necessary to make their -- to make an informed
15 investment decision. But those are the facts.

16 Q. Okay. Why didn't General Wireless agree to be a stalking
17 horse bidder?

18 A. Mr. Lavin is over there. You can ask him.

19 Q. Okay. Well, do you have knowledge yourself of why they
20 weren't?

21 A. They made us two proposals to be the stalking horse
22 bidder that I recall. There may have been more, but two that
23 were brought to my attention. And both of them were
24 rejected.

25 Q. What were those proposals?

1 A. One was for \$5 million, and one was for a combination of
2 notes and earn-out that I can't recall exactly the structure,
3 but we valued it at far less than par and it ultimately was
4 not accepted.

5 Q. All right. One other question. Was General Wireless
6 informed of the sealed bid procedure before it was announced
7 by the debtors at the sale?

8 A. Not to my knowledge, no.

9 MS. GARDNER: That's all, Your Honor.

10 THE COURT: Very well.

11 Any further cross? Any redirect, Mr. Gordon?

12 MR. GORDON: I think just one question, Your Honor.

13 THE COURT: Okay.

14 MR. GORDON: Or maybe two questions.

15 REDIRECT EXAMINATION

16 BY MR. GORDON:

17 Q. With respect to the decision to move to the sealed bid
18 format, was any consideration given to making that move in
19 order to shorten the auction, to conclude the auction earlier
20 than it otherwise might have concluded had we proceeded with
21 the incremental bidding?

22 A. I don't recall that ever being part of the discussion,
23 no.

24 Q. And then with respect to the Wonderland thirty-million-
25 dollar bid that we've heard about today, when was the first

1 time you were made aware of that?

2 A. When I saw their pleading on Wednesday. Was that --
3 Wednesday. Yes.

4 Q. And to your understanding, did any representative of the
5 debtors have knowledge of their willingness to submit a
6 thirty-million-dollar bid before the filing of that pleading?

7 A. I'm sorry. I said Wednesday. When was the objection
8 done -- was it --

9 Q. In this case, who knows. Can we just focus on the day
10 the pleading was filed?

11 A. It was the date the pleading was filed.

12 Q. Okay.

13 A. I'm sorry.

14 Q. That will make it easier for me.

15 A. That was the first time I saw 30 million.

16 Q. And to your knowledge, did any representative of the
17 debtors, was any representative of the debtors aware of that
18 -- the willingness to make that bid prior to the submission
19 of that pleading?

20 A. Not to my knowledge, but -- but I don't know what the
21 debtors knew.

22 MR. GORDON: Pass the witness, Your Honor.

23 MR. CLARK: All right. Just one thing.

24 THE COURT: Sure thing.

25 RECROSS-EXAMINATION

1 BY MR. CLARK:

2 Q. Mr. Peress, if I understand it right, when the General
3 Wireless sealed bid came in, they added this Berjaya
4 receivable to the package of assets.

5 A. Yes.

Q.6 And as a result of that, the debtors and their advisors
7 applied a five-hundred-thousand-dollar ding to the value of
8 the General Wireless bid?

9 A. I think they adjusted the value downward by \$500,000 --

10 Q. So the value --

11 A. -- relative to other bids, such as Wonderland's bid, that
12 it did not acquire that asset.

13 Q. So the facial amount of the bid is 26.2. So it was
14 valued at 25.7?

15 A. Correct. I think the debtor put that on the record at
16 the auction.

17 Q. So the General -- the Wonderland bid is actually based on
18 that valuation \$4.3 million higher at this point?

19 A. If it doesn't include the Berjaya receivable, that's
20 correct.

21 Q. Okay. Thank you, Mr. Peress.

22 MR. CLARK: Thank you, Your Honor.

23 THE COURT: Any redirect?

24 MR. GORDON: No, Your Honor.

25 THE COURT: No. Mr. Peress, thank you, sir. You may

1 step down.

2 THE WITNESS: Thank you, Your Honor.

3 (Witness excused)

4 THE COURT: I believe we would move to Mr. Luo.
5 Welcome, sir.

6 All right. We'll swear the witness, or affirm if you
7 wish.

8 THE CLERK: Please raise your right hand.

9 MR. LUO, WITNESS FOR WONDERLAND, SWORN

10 THE CLERK: Please state and spell your last name for
11 the record?

12 THE WITNESS: My name is Tony Luo.

13 THE COURT: Can you spell your last name for us, sir?

14 THE WITNESS: Last name L-u-o.

15 THE COURT: Very good. Welcome.

16 THE WITNESS: Thank you.

17 THE COURT: Please have a seat.

18 DIRECT EXAMINATION

19 BY MS. GARDNER:

20 Q. Mr. Luo, good afternoon. Mr. Luo, where do you reside?

21 A. Wonderland Investment Group.

22 Q. Right. Well, where do you live?

23 A. In California.

24 Q. All right. And what is your position with Wonderland
25 Investment Group?

1 A. I'm president of Wonderland Investment.

2 Q. Please describe to the Court the nature of the business
3 of Wonderland so that we can better understand that entity
4 and what it does.

5 A. Wonderland Investment is an investment company. We do
6 all the bankrupt company we buy and we reorganize, we run and
7 the nature of business and existing business like before. So
8 like we do couple case already just like last time. We go to
9 the Chapter 11 case in the North Carolina. There is a
10 bankrupt company called DesignLine. And we just got the
11 assets and then we keep it running. We put in the money and
12 they reorganized and then we increase the sales, and also
13 hire the -- whatever the current employee is and they
14 increase the employment, and also increase the local economy.

15 Q. Mr. Luo, what is the source of funding for the assets
16 that are purchased by Wonderland if it decides to invest in a
17 distressed company?

18 A. Yeah. Wonderland have couple investment partners. They
19 are -- I'm already doing business global and they doing the
20 franchise business and also they do a consulting business for
21 international. And that's why the RadioShack came to
22 interested because they do a similar business. They -- what
23 they want is they want to keep running the RadioShack
24 business because they thinking this is a very bright name, so
25 want to keep that name and keep, you know, forever. Yeah.

1 Q. So in terms of the continuing the RadioShack business,
2 are you referring to the dealer franchise stores?

3 A. Yes. Actually, the -- we do the -- because we know this
4 (indiscernible) late, it's kind of at the end of March, and
5 the first contact I call the Hilco and actually the -- I do
6 call the David Peress, but he's -- you know, he's not
7 available. But I call his colleague and -- Jake Hazan. And
8 he gave all the information. We sign NDA. We create a data
9 room. And have a couple conference call with their economist
10 team and also global sourcing team, also the -- the franchise
11 team. Each time we have about a one hour's conversation.
12 And after that first conversation with them, we think we
13 should go there to take, you know, the conversation again.

14 So that's why before the 11th, this auction day, so we
15 came to the Dallas, their headquarter. We spend almost the
16 whole day with their three groups. And the first group, we
17 talk about the global sourcing and we understanding how the
18 structure is and what kind of capability they can do and what
19 the current situation.

20 Also, we talk about the e-commerce team and also the e-
21 commerce team gave us a proposal, they can run their --
22 extend their existing business. And they gave us -- they
23 (indiscernible) exactly the seven -- you know, the people in
24 that team, the whole teams with a conference room. We have a
25 good communicate with them. And they show us exactly the

1 business plan and what happened and what will happen and what
2 kind of support they need. So we talk about that kind of
3 things.

4 Also, we talk the franchise team. And they have right
5 now there's about over 800 franchised dealers and also 100
6 international. So they have -- they also have their plan,
7 how can (indiscernible) it together and how they expand their
8 business after we take over. So we have exactly the -- the
9 overall pictures.

10 And, but also we think -- but also we fill out there's --
11 why they have the internal issue so far because
12 (indiscernible) after we take over what we should do. We,
13 you know, we pretty -- have a very clear picture because in
14 that (indiscernible) I bring my team. I'll go there and have
15 very nice conversation with them.

16 Q. Do you feel comfortable that Wonderland, if it were able
17 to purchase the assets, could manage the business that would
18 be required to deal with the dealers?

19 A. Yes. Not only dealer, also e-commerce. Also existing
20 stores. We have all the -- the core business plan.

21 Q. And do you have access to products from China that you
22 would intend to put into these stores?

23 A. And not only, but basically I'm -- we have the business
24 plan is right now not only focus sourcing, sourcing's the one
25 part, but it's not good for the future for the, you know,

1 RadioShack business. RadioShack business is (indiscernible)
2 since about 94 years, since 1921. At the very beginning,
3 this started from Boston. And then they -- the concept is a
4 DIY, do it by yourself. So that counts like as you, you
5 know, keeping this store right now. But so far, I actually
6 (indiscernible) I come here yesterday. I was visit to the
7 store (indiscernible) in California. And screening take
8 about one sort of a space. They bring a lot of new stuff in
9 their store. But RadioShack, there's all this new -- old
10 stuff in the TV, (indiscernible) everything, the adapter. No
11 new stuff come in. And, also, they have the -- the different
12 brand name in their store, but a very famous name. And -- but
13 after I, you know, we do some research on the conversation
14 with the franchise team and also global sourcing team, they
15 are not making money on the -- carry the brand name, the
16 other brand name. So it only three or four percent like,
17 something like that.

18 But I think sourcing is one part. But I think we need to
19 create a new image for the RadioShack business because if
20 there are no image so there's great difficulty for the future
21 because that created the culture of the RadioShack, you know,
22 so we need to have something, you know, on top of that. So
23 that's my thinking. If we take a -- you know, the IP, the
24 one people continually -- but most focus is how to create a
25 value for customers, how to create a value for the dealers.

1 That's what we need to maintain the business.

2 Q. When the auction occurred in New York on May the 11th,
3 who attended on behalf of Wonderland?

4 A. Me and (indiscernible) my colleague, and also my partner
5 Mr. Wong.

6 Q. And what is Mr. Wong's role in Wonderland, if you can --

7 A. Mr. Wong -- we have -- Mr. Wong have the experience for
8 the (indiscernible) business like more than 20 years. And he
9 know how to run a business. And we are -- I think we have
10 very good team. Also, he got a financial culpability.

11 That's the -- why I show the committee on that day we have
12 the -- at meeting, U.S. dollar available in cash. So that's
13 --

14 Q. How much available?

15 A. Eight hundred million.

16 Q. All right. And that -- those funds are available to
17 Wonderland for purchasing assets?

18 A. Correct. Yes. The same ownership. Yes.

19 Q. And did you make that -- make the committee and other
20 debtor professionals aware of that?

21 A. I can mention that, yes. Because we don't have, you
22 know, the -- enough cash here. But we have to show the
23 relationship and also the culpability to do that, yes.

24 By the way, also, we just did the deposit, the 15
25 percent, as 4.5 million in the company's account yesterday

1 for the (indiscernible) bid.

2 Q. So to be clear, you forwarded an additional deposit to
3 Hilco to bring your deposit to 4.5 million --

4 A. Correct.

5 Q. -- based on your thirty-million-dollar offer?

6 A. Correct. Yes. Yes.

7 Q. Now, at the auction, you -- you were present during the
8 auction. Is that correct?

9 A. Yes.

10 Q. And did you hear the announcements made early in the
11 auction with regard to the bidding procedure?

12 A. No. The procedures, I only to see it on the data room.
13 I see the procedures, called the incremental procedure.
14 That's only thing I know.

15 Q. Right. But at the auction, were you present when
16 debtors' counsel announced how the bidding would proceed with
17 the beginning bid or initial baseline bid of 12 million?

18 A. They start at 12 million. But it didn't -- just an
19 incremental bid. That's one procedure. I didn't -- I didn't
20 see they change the, you know, the procedure.

21 Q. Right.

22 A. So that's go forward. I just -- on the first day -- and
23 a little bit of background and (indiscernible). Mr. Peress
24 mentioned to the committee and we are not a (indiscernible)
25 in that time because we kind of -- you know, based on my

1 bidding experience, I just want to take a look first and what
2 is the highest bids go and how high it go. And that on the
3 first day I think it started on the 12 million in that time
4 go to the General Wireless. But they take about -- I don't
5 know how many hour for break to -- maybe about five hours for
6 the break. It's not in the record. And for the evaluate and
7 negotiate the contract so that the -- go and tell them --
8 they go up to the 15. So they kind of, you know, they ask
9 about the policy. So that's why and we try to
10 (indiscernible) the deposit for the next day bid.

11 Also I just want to mention because all the -- you know,
12 the -- we are running in California. So we extended the
13 money and -- to the -- Hilco's account by 9:15. That's
14 noontime, New York time. That's a time three hours
15 difference. I just want everybody know that.

16 Q. So you did -- are you saying that you moved to get the
17 supplementary deposit --

18 A. Correct.

19 Q. -- as directed by Hilco and the debtors?

20 A. But regarding the procedure, I didn't know anything, just
21 about the incremental procedure. That's the only thing I
22 know. Yeah.

23 Q. With regard to the bid of Wonderland for \$17.3 million,
24 what -- or why at that particular point in the bidding did
25 Wonderland enter into the bidding procedure?

1 A. Because there is no activity. It looks like the -- only
2 the two bidders -- actually, no, it's three bidders. But the
3 other two are not so active in that time. And I heard they
4 want to take a break. I say, okay, so we need to go to the
5 bid 17.3. That's before the break, so we offer this amount.

6 Q. And before the debtor announced that it was moving to the
7 sealed bid procedure, can you share with the Court what the
8 strategy was for Wonderland with regard to continued bidding?

9 A. Actually, when they go to the sealed bid, I -- first of
10 all (indiscernible) is not very fair for me because I'm ready
11 to incremental bid. I can go higher where I -- where it's
12 possible. But they go to the sealed bid. And then I go to
13 committee and talked with all the members and I think
14 everybody here know that. And I went (indiscernible)
15 objection. And I want to keep continually -- I want to also
16 question it's legally to do that, change the procedure during
17 the process of the bidding process. So they say it's
18 legally.

19 And so, also, I took to -- to committee into a room. And
20 they say that's the way. But even for that way, I already
21 clear to mention to the committee whatever is higher the bid,
22 I can increase hundred thousand on top of that. But they say
23 -- they are -- you are not allowed to do that. So -- so that
24 the situation. I have to go to the sealed bid.

25 Q. All right.

1 A. But definitely the committee clearly to know we want to
2 bid high.

3 Q. All right. Well, when the procedure was changed to a
4 sealed bid, did you actually go to the large room where the
5 debtor and its professionals were -- were meeting and request
6 a meeting with all of the key parties?

7 A. I'm sorry?

8 Q. Do you remember going to the room where the debtors'
9 professionals and the investment advisors were to express
10 your concern regarding the change in procedure?

11 A. Yes, of course. Yes. I talk about that. And also a
12 discussion, and also I go back to the committee, and also my
13 partner go with the counsel, go together, go to the
14 committee's room to announce objection on this issue.

15 Q. And what happened next with regard to Wonderland focusing
16 on making its sealed bid? Do you recall being told, get your
17 bid in immediately or you will not be able to bid?

18 A. Actually, at that time, we don't have enough time to
19 discussion. During the -- we are in all the committee room
20 and also there is some message came to the -- Mr. Peress. I
21 see that Mr. Peress got pressure from some bid already over.
22 They say, oh, 30 minutes already, 30 minutes already. So we
23 don't have enough time to think about and (indiscernible)
24 about that, what the real amount we need to offer. So kind
25 of like we don't have enough time to think about.

1 Q. All right. With regard to your intentions at the sale,
2 can you tell the Court at -- how high was the debtor --
3 rather, how high was Wonderland prepared to bid at that sale
4 if necessary to be the winning bidder?

5 A. We don't have a limit at that time. We just -- what --
6 whatever is highest. I already mentioned to the committee
7 earlier, it's the -- before the -- the sale bid procedure, we
8 also are clear to mention to committee I can go higher,
9 whatever the highest is.

10 Q. All right. After the sealed bids were opened, and of
11 course Wonderland was the second highest bidder, what was the
12 thought process of Wonderland With regard to next steps?
13 What considerations did you undertake with regard to whether
14 to come to this Court or to simply accept the results of the
15 bid?

16 A. Actually, you know, the -- for me, it's first time doing
17 the sale bid. And then I -- after the sealed bid, I just
18 take the Google search of the seal, what a sealed bid is.
19 And the definition is I find out it's a lot of common
20 contracts they use a sealed bid. It's not for the bidding
21 procedure to Chapter 11 case. And because the contract is --
22 got a (indiscernible), not higher, not lower, and because
23 there's a kind of a budget and to make sure that the contract
24 follow the rule -- follow the standard.

25 But on the incremental, because it's very clear they

1 adjusted whatever (indiscernible) highest available. That's
2 very simple. So I think it confuse me, very confuse me, the
3 sealed bid in this situation, you know, where they change the
4 bid procedure.

5 Q. Yes. Had you ever been involved in a sale with --

6 A. No, no --

7 Q. -- a sealed bid before?

8 A. No. That's why I needed to look at definition on the
9 sealed bid. What is procedure, I don't know. Even on a data
10 room, there's no definition to show the procedure, what it
11 will be and what apply for this bid.

12 Q. At this point, if the Court were to open the bidding,
13 does Wonderland have the ability of course to fund a thirty-
14 million-dollar bid or more, whatever is needed to acquire the
15 assets?

16 A. Yes. That's why we send the deposit already yesterday.

17 MS. GARDNER: That's all of my questions, Your Honor.

18 Thank you.

19 THE COURT: Okay. Mr. Clark?

20 MR. CLARK: Thank you, Your Honor.

21 THE COURT: Sure thing.

22 MR. CLARK: Very briefly, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. CLARK:

25 Q. Good afternoon, Mr. Luo.

1 A. Good afternoon.

2 Q. My name is Tony Clark. We haven't met before, have we?

3 A. No.

4 Q. I represent Salus Capital, just so you know where I'm
5 coming from. I just have a couple of questions.

6 A. Yes.

7 Q. Do you understand that if the auction process is reopened
8 as Wonderland has requested, that General Wireless and other
9 qualified bidders will be permitted to make further competing
10 bids in response to Wonderland's present thirty-million-
11 dollar offer?

12 A. Yes.

13 Q. And if that happens, if General Wireless, for example,
14 comes in and makes a -- pick a number, 32, 33, thirty-four-
15 million-dollar bid, is Wonderland prepared to participate
16 further in a competitive bidding process?

17 A. Yes.

18 MR. CLARK: No further questions, Your Honor.

19 THE COURT: Cross-examination?

20 MR. GORDON: No, Your Honor.

21 THE COURT: Very well. Thank you, Mr. Luo. You may
22 step down, sir.

23 THE WITNESS: Thank you.

24 (Witness excused)

25 THE COURT: All right. Any other witnesses?

1 (No verbal response)

2 THE COURT: I'll take argument on this issue.

3 MR. GORDON: Not for the debtors.

4 Your Honor, I think I can be relatively brief. And I
5 guess I'll leave this part to the end. But I've been in this
6 business a while and I've been in a lot of transactions.
7 And, you know, this is a -- it's a difficult issue when you
8 have -- you know, we recognize that our goal is to maximize
9 the returns. But at the same time, we're concerned about the
10 integrity of the process and obviously accusations have been
11 made that we've breached our fiduciary duties and didn't act
12 properly and that sort of thing. But, to me, that is the
13 tension. And I want to come back to that.

14 But I want to start with maybe some of the easier
15 things first just to get them out of the way. One is the
16 bidding procedures. I mean, there's been suggestions made
17 that our actions were not in accordance with the bidding
18 procedures. And I think those are all -- those arguments are
19 all completely belied by the language of the bidding
20 procedures, and two parts in particular I just wanted to
21 emphasize for Your Honor, if I can find them again.

22 THE COURT: Paragraph 9?

23 MR. GORDON: Your Honor, you're always making me look
24 bad. Yes. Paragraph 9. Thank you, Your Honor. That's the
25 first one. The -- I guess it's really the fourth paragraph

1 down where it says, quote:

2 "The debtors, after consultation with the
3 consultation parties, may at any time adopt rules
4 for the auction that the debtors reasonably
5 determine to be appropriate to promote the goals of
6 the bidding process and not in conflict with these
7 bidding procedures, including one or more
8 adjournments of the auction."

9 And similar language appears in Paragraph 12 on Page 9,
10 modification of bidding procedures. And, quote:

11 "The debtors may, after consultation with the
12 consultation parties, amend these bidding procedures
13 or the bidding process at any time and from time to
14 time in any manner that they determine in good faith
15 will best promote the goals of the bidding process
16 and are not inconsistent with the terms of these
17 bidding procedures, including extending or modifying
18 any of the dates described herein." Close quotes.

19 So from my perspective, Your Honor, there's just no
20 question that the move to the sealed bid process was
21 permitted by these bidding procedures. And Mr. Peress
22 testified, I don't think it's unusual to see that type of
23 process invoked, particularly in a situation where an
24 evaluation has been made that, as Your Honor put it, the
25 auction's running out of steam. And I do think the evidence

1 was clear in that regard that that's the situation that we
2 were finding ourselves as we moved into -- you know, later in
3 the day in the second day of the auction.

4 The second thing I wanted to say, Your Honor, is that I
5 think the evidence was clear and undisputed that the auction
6 generally was conducted in a fair, open and appropriate
7 manner. I don't think there's any evidence to support the
8 idea that Wonderland was treated any differently than any
9 other party who participated in the process. And in fact, I
10 think Mr. Peress's testimony highlights the extent to which
11 the debtors and Mr. Peress bent over backwards, frankly, to
12 accommodate Wonderland and to assist Wonderland into getting
13 itself into a position where it was able to be an active
14 participant in the auction.

15 They were -- you know, they were late coming in. They
16 came in initially without a marked APA. Mr. Peress had to
17 urge Wonderland to retain experienced counsel. They, in
18 fact, did that. And then even during the course of the
19 process itself, significant breaks had to be made because
20 their asset purchase agreement wasn't as far along as the
21 asset purchase agreement -- agreements of the other parties.
22 And there had also been -- you know, there were serious
23 questions at that time about the financial wherewithal and
24 the like, and time had to be taken for that. And I'm not
25 complaining about that. I'm simply pointing it out, that

1 they were given the same opportunity as everyone else. And,
2 you know, we basically agreed to, you know, allow them slack,
3 frankly, to catch up so that they could be an active
4 participant and we could put them in a position in
5 consultation with the consultation parties to qualify them as
6 a qualified bidder so they can proceed.

7 And so the complaint really boils down to, again, the
8 shift to the sealed bids. I thought Mr. Peress's testimony
9 was very clear in that regard, that the debtors, with the
10 assistance of Mr. Peress made a business judgment at that
11 time, that for purposes of maximizing value it was
12 appropriate to shift to that format. The concern was that we
13 had two of the three bidders who appeared to be running out
14 of gas. And whether or not Wonderland was prepared to go to
15 \$30 million on the auction, on the day of the auction, I
16 don't think anyone really knows. But that wasn't necessarily
17 the concern. The concern was if we continued to proceed in
18 the smaller increments, we would never get anywhere close to
19 that because the other two bidders we were concerned would
20 drop out before we could get anywhere near a number like
21 that.

22 And so, after we conferred, and again, this was Mr.
23 Peress's testimony, we decided that was the appropriate time
24 to go to the sealed bidding. We consulted with all the
25 consultation parties including Salus, and everyone reached

1 the same conclusion.

2 And really, it was wildly successful. I think the
3 record reflects that it was a wildly successful result. I
4 mean, the bids jumped from 18 million to 26.2 million.
5 General Wireless itself, I think their bid went up \$9
6 million. I think we were all very pleasantly surprised that
7 that process yielded the result that it did.

8 And, you know, once we concluded that, we consulted, we
9 identified the successful bidders, we closed the auction and
10 then we moved on.

11 So, you know, where that leaves us I think is the issue
12 that Your Honor has to address which is process versus
13 result. And, you know, I've been on both sides of the
14 process -- or both sides of the issue and, you know, Mr.
15 Clark raised the Polaroid case. And I represented the losing
16 bidder in the Polaroid case. And I've actually given
17 presentations about the Polaroid case because, to me, it was
18 such a miscarriage of justice. And I'm obviously biased. I
19 readily admit that.

20 THE COURT: Sounds it.

21 MR. GORDON: Given --

22 (Laughter)

23 MR. GORDON: -- given who I represented. But it was
24 the most extreme --

25 THE COURT: This isn't therapy.

1 MR. GORDON: Yeah.

2 (Laughter)

3 MR. GORDON: I look for it anywhere I can get it, I
4 guess. I don't know.

5 But the point is, you know, there, it was just a
6 situation where the rules kept changing, they kept changing
7 and they kept changing. And, you know, we literally had
8 three rounds of bidding. The final round of bidding was in
9 the court with the judge sitting there and the rules
10 continued to be bent. And our client ultimately won, and
11 still wasn't selected as the winning bidder. I mean, that's
12 the way that went.

13 And, you know, the concern I always think that a Court
14 has to consider, and particularly I think in Delaware where
15 there's so many cases that involve these auctions, is are we
16 going to have a process that potential bidders can rely on or
17 they can't. And in this case, we had bidding procedures
18 order -- a bidding procedures order and bidding procedures
19 that were vetted by all the major parties in interest. The
20 order was entered by the Court. And we now have a party
21 coming in here today who I think has at a minimum a burden to
22 establish some basis to obtain relief from these procedures.
23 I think at a minimum there has to be some showing -- I
24 seriously disagree with the point of view that it's --
25 anything's fair game until the Court decides. To me, then,

1 you might as well not even have the auction. You might as
2 well just have everybody show up in court and submit one bid.

3 And if you look at the record, I mean, what evidence is
4 there in the record that would support the basis for some
5 relief from the Court's order that set forth the procedures
6 by which this process would be conducted? And I would submit
7 to Your Honor that there's nothing in the record. There's no
8 evidence to the effect that we didn't have sufficient time,
9 we needed more time to get our money together. There's
10 nothing like that. All I heard Mr. Luo say was, well, I was
11 confused.

12 Well, I think Your Honor's seen the auction transcript.
13 I think the sealed bid process is a relatively simple
14 process. I think we explained it both on the record, we
15 explained it off the record. And I think he, like the other
16 bidders, knew full well what the ramifications of the change
17 were, that you had one final chance to submit a bid under
18 seal, and the winning bid would win. And that was the end of
19 it. And for reasons that we'll probably never know, and it
20 doesn't matter, they chose, notwithstanding apparently the
21 ability to do otherwise, to submit a bid that was less than
22 the bid that was selected as the winning bidder.

23 And so from my point of view, there's just no basis in
24 the record on which this Court could find, you know, any
25 basis for relief from the order that was entered by the

1 Court. And, of course, you know, since the auction,
2 obviously, I have some sympathy for General Wireless. As
3 Your Honor knows, a lot of work was done by General Wireless
4 to work through a variety of objections that we've had. And,
5 you know, this thirty-million-dollar bid in some respects,
6 somewhat conveniently came in towards the tail end of the
7 completion of that process in large measure by General
8 Wireless.

9 So from the debtors' perspective, we feel we ran an
10 appropriate process. We think it was fair. We think it was
11 in accordance with the bidding procedures. Based on the
12 Court's order, we went ahead and finalized an APA with
13 General Wireless. We signed it. It's obviously subject to
14 Your Honor's approval. So it's ultimately Your Honor's call.
15 And, again, I get the idea. I understand 30 million is more
16 than 26 million. There's no question in that. But in my
17 mind, that in and of itself isn't a good enough reason to
18 basically reopen the process that was approved by Court
19 order.

20 THE COURT: Very good.

21 Mr. Galardi?

22 MR. GALARDI: I'll let Mr. Clark go. He was standing
23 up --

24 THE COURT: I'll hear from parties in support of the --
25 of the debtor, and then I'll hear from parties in opposition.

1 MR. GALARDI: Your Honor, I think Mr. Gordon covered
2 our points. We are -- we do believe we complied with the
3 procedures. We do believe there was no change in the
4 increments, that it was not, you know, allowed because it
5 still was -- everybody knew going into the closed bidding it
6 would still be over 100,000.

7 And simply, we were told, and we complied with the
8 request to put on your highest and best bid. I think the
9 evidence shows that they were strategically bidding just
10 \$100,000 higher and they didn't want to put the highest and
11 best bid, and there's no other explanation. And I think Your
12 Honor knows well about the procedures, is this is why you
13 have bid procedures order. They can close it. And absent an
14 irregularity in the procedures, you don't reopen it. The
15 judge can now determine whether to approve that bid. And I
16 don't think there is any evidence that there is an
17 irregularity in what was contemplated.

18 They were represented by counsel. They have the bid
19 procedures. Your Honor read two paragraphs. There's another
20 paragraph that talks about when you can open it up. The
21 auction was closed. We think that's the end of it, Your
22 Honor. And we would stand by our bid.

23 THE COURT: Very good.

24 MR. GORDON: Your Honor, can I add one thing? I'm
25 sorry.

1 THE COURT: Sure.

2 MR. GORDON: I'm sorry. There's one point that I
3 neglected to make, and it's fairly important. And I
4 apologize.

5 The one other thing I -- one other reason I think
6 process is important here is we're now proceeding with yet
7 another sale process with respect to the real estate that's
8 left. And we have stalking horse bids that were either
9 signed up or in the process of signing up. And I think there
10 should be -- the Court should consider whether there's a
11 potential precedent problem even with respect to sales
12 upcoming in this case in terms of whether bidders feel they
13 can rely on the bidding procedures or they can't.

14 THE COURT: So noted.

15 Mr. Clark?

16 MR. CLARK: Thank you, Your Honor. Briefly, Mr. Gordon
17 says he's got great sympathy for General Wireless. That's
18 been apparent throughout this process. But he wants to pay
19 for that sympathy with \$4 million of Salus's value. He says
20 that there's some concern that whatever you do here today
21 might somehow, the suggestion is, adversely impact on the
22 real estate sale that's going on and will be up for approval
23 by the Court in approximately a month from now. Well, that's
24 our collateral, too. And we're concerned about getting the
25 greatest value there as well. And notwithstanding that, in

1 fact because of that, we want to get the greatest value for
2 our collateral here, too.

3 I'm going to let -- because I'm sure that they will.
4 I'm going to let Wonderland's counsel speak to the problems
5 they see with the process. The only thing I'll say about it
6 is that regardless of what Your Honor rules here today, this
7 isn't about setting rules for all 363 sales in futuro
8 regardless of what Your Honor decides here. And it is very
9 important to us because it is a lot of money. But the sky
10 isn't going to fall one way or the other. 363 sales will go
11 forward. People will show up. There have been 363 sales in
12 the past where Mr. Gordon's counterpart in that auction said,
13 auction's over. People came into court, circumstances had
14 changed, and the Court said, well, no, the auction isn't
15 over, we're going to reopen it up. And, yet, people still
16 show up for auctions. In fact, they showed up for this one.

17 Your Honor, process is important. But maximizing value
18 is more important. And the competing offers now are
19 Wonderland's \$30 million versus General Wireless \$26 million.
20 Under those circumstances, \$30 million maximizes value. And
21 Wonderland's -- Mr. Luo has indicated that they're prepared
22 to go higher if anyone else, including General Wireless,
23 chooses to put in a competing bid. And I don't hold it
24 against Mr. Galardi or his client that they don't want to do
25 that. Obviously, as a buyer, they want to pay as little as

1 possible, and as a seller, at least my client as a seller,
2 wants to get as much as possible.

3 Everybody agrees that the Court has the discretion to
4 reopen the bidding here. And Mr. Gordon, he sort of hedged
5 his bet on this a little bit in his closing comments earlier
6 in the hearing, he admitted it's the debtors' burden here,
7 the burden's on them to get the relief that they're seeking.
8 But they didn't put in any evidence whatsoever that a proper
9 exercise of their business judgment is to not open -- reopen
10 the auction, even with a new bid of \$30 million that's \$4
11 million higher than what was on the table previously.

12 There's no evidence that reopening the auction would
13 lead to any harm, prejudice or delay. It will only result in
14 more value. And so, Your Honor, Mr. Gordon says that this
15 auction process was -- that yielded this twenty-six-million-
16 dollar General Wireless proposal was wildly successful.
17 Well, a thirty-million-dollar deal is even more wildly
18 successful. And I have some optimism that that number is
19 going to be even higher if Your Honor allows the competing --
20 competitive process to go forward. And we urge that you do.

21 Thank you, Your Honor.

22 THE COURT: Very good.

23 Mr. Indyke?

24 MR. INDYKE: Thank you, Your Honor. Very briefly.

25 The evidence presented doesn't alter the committee's

1 original position. We would like to see the auction opened
2 up to maximize value. We would note that we've heard
3 comments from Salus about it being their collateral and so
4 forth, and we have issues regarding allocation and
5 unencumbered assets. So we see some of that perhaps floating
6 in different directions.

7 So, again, the more money we have the better. Again,
8 just noting in the testimony adduced by Mr. Clark from Mr.
9 Luo where he indicated that they could go even higher, this
10 could have a truly significant benefit to the estate if the
11 auction is opened up. We don't see -- you know, we
12 understand the process arguments. Understood. So it's not
13 an easy issue. But we see that there could be potentially
14 tremendous upside here for the estate.

15 Thank you.

16 THE COURT: Thank you.

17 Ms. Gardner?

18 MS. GARDNER: Thank you, Your Honor. Mr. Clark made
19 excellent arguments, and I won't repeat them. I'll adopt
20 them all. I think they were excellent.

21 One of the comments by Mr. Gordon really caught my
22 attention as he was arguing. And that comment was that they
23 felt that the incremental bid process was running out of
24 steam and that that was one of the reasons for changing to
25 the sealed bid process. And that's honestly the exact

1 opposite of where things were. I think, in fact, my clients,
2 the steam was just beginning to come into play.

3 They had been wanting to observe the bidding and to
4 make an informed bid based upon the bids of other parties.
5 They were ready to continue bidding. And they had not run
6 out of steam. They still had ample funds to bid and were
7 prepared to do that, Your Honor, which again, I think created
8 the frustration and, again, confusion and consternation of my
9 client at this change at the point where it felt it was
10 getting to the point it would have -- could have a meaningful
11 impact on the bidding procedure.

12 Unfortunately, the consternation With the change and
13 the time spent on that consumed most of my client's time and
14 it had to rush in probably less than one minute to put a bid
15 in the envelope for the sealed bid. It made its decision
16 based on its best decision at that moment. We've heard
17 testimony that the thoughts were that a twenty-million-dollar
18 bid would be a good bid. And of course no bidder wants to
19 bid without some framework for what value is. And that was
20 tough in this case. It was a very difficult asset to value.
21 We simply wanted a framework within which to place our bid
22 which I do not think is unfair and does follow from the
23 bidding procedures that were established.

24 I want to say that I think that the professionals that
25 were at the auction did accommodate Wonderland. I greatly

1 appreciated that in light of the fact that I was brought in
2 at the last minute. We had a lot of catching up to do. You
3 know, I think we were -- we were sort of an outsider. We
4 haven't been involved in the case. There's so much we don't
5 know that happened in this case that I couldn't possibly
6 learn within a few days. And we appreciated the efforts made
7 by people to get us up to speed.

8 But, yet, I think there were still some things we just
9 could not have learned from the data room, and we had to
10 learn during the process. And we tried to react as quickly
11 as we could under the circumstances.

12 The parties were tired. They were frustrated. Tempers
13 were beginning to flare the second night. I don't think
14 anybody wanted to stay there another night or day. But it
15 just seemed an abrupt end to the process.

16 So, Your Honor, we would ask you to please consider our
17 objection to the sale and motion and reopen to give our
18 client an opportunity to bid.

19 THE COURT: Very good.

20 MS. GARDNER: Thank you.

21 THE COURT: Okay. All right. As I said hours ago, I
22 have some time restrictions. So it would be my preference --
23 those of you that have spent time in my courtroom know this.
24 It would certainly be my preference to take a half an hour
25 and put together my notes prior to ruling. But my own

1 schedule doesn't permit it. I believe that the record is
2 sufficiently developed. So I will give you the most coherent
3 ruling I can in -- from my notes and then stream of
4 consciousness. So I beg your indulgence in that respect.

5 But what I have before me is the debtor's request to
6 sell and transfer certain intellectual property and related
7 assets. And I'm dealing specifically with the objection
8 raised by Wonderland as a potential bidder for those assets.
9 Wonderland has requested to reopen the auction and that's
10 supported by Salus as well as by the Official Committee. And
11 the record today reflects that the debtor and Cerberus have
12 opposed that request, and of course General Wireless does as
13 well. And they seek a ruling from this Court that the
14 auction concluded and should not be reopened to permit
15 submission of an improved bid from Wonderland.

16 For the reasons that I will provide, I will overrule
17 the objection of Wonderland and I will deny the request to
18 reopen the auction process. As I will state, I do not do so
19 lightly.

20 The operative facts, though, are not in material
21 dispute. The debtor filed its sale motion and sought
22 approval of bidding procedures at a hearing held on the 28th
23 of April. The record reflects that among other objections,
24 the debtors' motion drew objections from Attorneys General
25 from over 30 states. And in response to those objections,

1 which focused on consumer privacy and related issues, the
2 debtors came up with a strategy to get the sale process
3 underway. And, basically, the debtors I believe at the
4 urging of specifically the Texas Attorney General proposed
5 that all rights to object to the sale on consumer privacy
6 grounds would be preserved and that the parties would propose
7 to go to mediation after the auction once a winning bidder
8 had been identified in an effort to resolve the pending
9 consumer privacy concerns and objections prior to coming to
10 this sale hearing today on May 20th.

11 And the undisputed record does reflect that an auction
12 commenced in debtors' counsel's office in New York City on
13 Monday, the 11th of May, and that there were at least three
14 or four bidders who attended and participated in that
15 auction. And the transcript from that auction was prepared
16 and is admitted as Exhibit 1.

17 The auction carried over into Tuesday, May 12th, and
18 consistent with the bid procedures approved previously by
19 this Court, the auction proceeded in hundred-thousand-dollar
20 increments, and by Tuesday night had risen to approximately
21 \$17.3 million after many rounds of bidding and what appear to
22 have been many delays and conferences.

23 On Tuesday evening, at Pages 63 and 64 of the auction
24 transcript that's been admitted as Exhibit 1, counsel for the
25 debtors announced that the increment bidding would stop and

1 bidders would be afforded an opportunity to submit a final
2 sealed highest and best offer. And the debtors rely on
3 specifically Paragraph 9 of the Court-approved bidding
4 procedures to authorize the sealed bidding process. That
5 paragraph, there are several different provisions of it, but
6 I'll rely at least in one part on language that provides,
7 quote:

8 "The debtors, after consultation with the
9 consultation parties, may at any time adopt rules
10 for the auction that the debtors reasonably
11 determine to be appropriate to promote the goals of
12 the bidding process and not in conflict with these
13 bidding procedures, including one or more
14 adjournments of the auction." Close quote.

15 Now, at the auction, the record does reflect that
16 debtors' counsel announced the change in the format and
17 advised parties in no uncertain terms as to how the auction
18 would conclude. And I will make a reference or two to the
19 transcript, specifically at Page 63. I believe it's Mr.
20 Gordon advises at Line 20:

21 "We would like to stop with the sequential bids
22 based on the hundred-thousand-dollar bid increment
23 and go to a final round of bidding in a sealed bid
24 format."

25 Carrying over to Page 64 of the transcript at Line 7,

1 Mr. Gordon continues on:

2 "Each of those parties shall submit a final bid in
3 whatever amount they want to submit it, but the idea
4 would be that we will take each of those bids and
5 look at them, and the highest bid will prevail."

6 And then at Page 65, again in the same colloquy, Mr.

7 Gordon noted:

8 "So I have up here at the table envelopes, and any
9 party who wishes to participate in this final round
10 of bidding and submit a sealed bid should come up to
11 the front and take one of the envelopes," et cetera.

12 Concluding that paragraph at Line 19:

13 "We will return here. We will unseal the bids and
14 pick the winner and the backup bidder."

15 That is from Paragraph -- Page 65 of the transcript.

16 The auction transcript does not reflect any objection
17 raised by any of the bidders to the change in format, and
18 indeed, all three bidders did in fact submit sealed bids.

19 The record also reflects that General Wireless's bid
20 was opened and was declared highest and best. The auction
21 concluded on Tuesday evening at approximately 9:45 p.m.
22 according to the transcript. And I note that Salus did in
23 fact reserve its rights at the conclusion of that auction.

24 The record further reflects that in reliance upon the
25 announced result of the auction with General Wireless as the

1 winner, many parties traveled to Texas for what was
2 ultimately a successful effort to mediate the numerous and
3 significant consumer privacy issues and Attorney General
4 objections that I referenced a moment ago.

5 And I would observe from our hearing today that at
6 least Mr. Morris and presumably other Attorney Generals has
7 stated that the resolution of their objections with -- to the
8 transaction that was achieved through the mediation is not or
9 may not be available if the buyer is an entity other than
10 General Wireless. And, again, quoting from Mr. Morris, Mr.
11 Morris stated earlier that the resolution with General
12 Wireless was achievable in his words, in large measure
13 because those Attorneys General looked to General Wireless as
14 essentially a successor in -- to RadioShack in a brick-and-
15 mortar sense.

16 Now, well after the auction closed and General Wireless
17 was declared the bidder, Wonderland submitted its objection
18 with a new improved bid of \$30 million, which is obviously
19 materially higher and superior to the General Wireless final
20 bid of 26.2 million. And Wonderland, as I said, seeks to
21 reopen the auction, submit its bid at \$30 million and invite
22 other bidders to appear and to top that bid. And as I noted,
23 both Salus and the Official Committee of Unsecured Creditors
24 support that request.

25 I stated earlier today that I'm satisfied that

1 Wonderland is proceeding today in good faith and has
2 challenged the fairness and sufficiency of the auction
3 process, and in particular the switch to the sealed bid
4 procedure. So I have ruled and will confirm that Wonderland
5 has standing to appear and be heard today in this court. And
6 I don't believe that Wonderland has tried to game the system
7 or sandbag parties by strategically laying in wait. As I
8 noted earlier, if I believed that that were the case, this
9 would have been a much shorter hearing.

10 But I nevertheless will not reopen the auction. I've
11 read the transcript. I've listened carefully to the
12 testimony of Mr. Luo and Mr. Peress. The switch to sealed
13 bids I believe was permissible under the broad latitude and
14 discretion that was afforded to the debtors and the
15 consultation parties under the bid procedures. And I don't
16 believe that it is even remotely inconsistent with the
17 Court's experience and with the parties' expectations.

18 Mr. Peress testified credibly that the consultation
19 parties and their professionals, all of whom are seasoned
20 bankruptcy professionals, made a judgment call during the
21 auction that the momentum of the auction was fading and that
22 a change of procedures was necessary in order to maximize
23 value. I will not second guess that decision.

24 While the testimony, and specifically the testimony of
25 Mr. Peress and Mr. Luo reflect that Wonderland did express

1 concern and dissatisfaction with the switch in the bidding
2 process, the fact remains that no party formally objected on
3 the record and each bidder in fact actually complied with the
4 change and submitted sealed bids without reservation.

5 General Wireless's bid of \$26.2 million was over \$8
6 million over the prior round of bidding. And Mr. Peress's
7 testimony today was, quote, "That result speaks for itself."

8 I need to be clear, and it's probably no surprise to
9 anyone. I do not lightly preclude further bidding here,
10 particularly where there is a substantial improvement for the
11 taking. And I am sympathetic to the position of -- and the
12 frustration, frankly, of Salus and the Official Committee of
13 Unsecured Creditors. However, I find that the undisputed
14 record reflects that the auction was openly and fairly
15 conducted, that all parties were fully informed as to the
16 process, and that all parties had a chance to bid and an
17 opportunity to win the auction.

18 The auction concluded with General Wireless as the
19 winning bid. And I'm not satisfied that there are grounds to
20 disturb that result.

21 And I have to say I respectfully disagree with the
22 positions that have been articulated by Salus and by the
23 committee as to when a Court-approved auction process closes.
24 I don't think that bidders are free to come to the podium and
25 make an offer at a sale hearing. I believe that an auction

1 closes when the debtor, after consultation, identifies a
2 winner as the highest and best bid. And that auction remains
3 closed until and unless I say it's open again. And here,
4 there are no proffered grounds for me to reopen the auction
5 except, frankly, for an improved bid.

6 And I recognize that Wonderland's bid is a substantial
7 improvement. It moves the needle, to use Mr. Indyke's
8 phrase. And Mr. Clark is absolutely correct that a stated
9 purpose of Section 363 of the Code is to maximize value. But
10 an equally significant consideration for the Court on an
11 institutional basis and as considering my statutory
12 obligation is fidelity to a Court-approved process and
13 honoring the expectations of participants in auctions in our
14 cases. We oversee many, many sale cases in this jurisdiction
15 and the concept of finality of a proper auction is a bedrock
16 principle.

17 You're right. I have on many occasions, or at least a
18 number of occasions, sent parties back to the auction table.
19 In each instance, however, I was satisfied that the auction
20 had in fact not concluded or that there was a defect or a
21 flaw in the conduct of the parties or the auction such that
22 the Court could not have confidence in the result or outcome
23 of the auction up to that point. Those considerations are
24 not present here.

25 And it is an understatement to say that I would vastly

1 prefer to bring in an additional \$3.8 million to this estate
2 and perhaps more. The bottom line is that a bidder's
3 willingness to pay more money, even a lot more money, is not
4 a basis to undo an auction that was otherwise properly
5 conducted and concluded. So the objection of Wonderland will
6 be overruled and I will not reopen the auction.

7 I believe we have run through a number of pending
8 objections that have been resolved, Mr. Gordon. But I
9 believe there's at least the issues raised by Mr. Hill and
10 there may be other open issues which you may have a better
11 handle on than I.

12 MR. GORDON: Thank you, Your Honor.

13 From our perspective, I think the objection of Mr. Hill
14 is the lone objection that's remaining. Obviously, there are
15 counsel present and on the phone who could indicate
16 otherwise. But that's my understanding.

17 We indicated in our reply that we think the position
18 taken by Mr. Hill is clearly contradicted by his employment
19 agreement and some related agreements tied to the specific
20 patents in which he contends he has a right, an ownership
21 right. We have the agreements here in the court today.
22 We're prepared to hand them up to Your Honor. We think they
23 should be handed up in confidence because the one in
24 particular is an employment agreement that has compensation
25 terms in it and the like, and these are personal to this

1 gentleman -- to Mr. Hill. But I don't know whether Mr. Hill
2 is on the line or in the courtroom. You may want to hear
3 from him before we do that.

4 THE COURT: I certainly would.

5 Is Mr. Hill present in the courtroom, or is anyone here
6 today on his behalf?

7 (No verbal response)

8 THE COURT: Is anyone on the phone today for Mr. Hill?

9 (No verbal response)

10 THE COURT: All right. Then here's how we'll proceed.
11 I will take the documents that you've identified -- that you
12 identified. I will review them in camera and I appreciate
13 the consideration that goes to not broadcasting personal
14 private information of a participant in these proceedings.

15 Obviously, I think I need to look at them. I
16 understand clearly the debtors' argument that these patents
17 are the subject of valid assignments and that the release
18 operates to preclude it. But I would need the opportunity to
19 review them.

20 So I will take that issue under advisement, and I will
21 today review them in chambers in order to deal with that
22 issue.

23 Mr. Gordon, I would ask whether or not there are other
24 objections or other remaining matters that we need to deal
25 with in the context of the sale.

1 MR. GORDON: Your Honor, if I could just defer that for
2 a second and just tell you what I have here, and then --

3 THE COURT: Okay.

4 MR. GORDON: -- I'll provide these so we finish the --
5 or complete the record with respect to Mr. Hill. So I have
6 his initial employment agreement which has language with
7 respect to his lack of rights to patents.

8 I have three particular assignment agreements with --
9 that relate specifically to the patents at issue that
10 indicates that they were assigned with his consent to
11 RadioShack.

12 And then I have a separation agreement between him and
13 the company where he releases all claims against the company,
14 and the company releases all claims against him as well.

15 Yeah. And then the last document, Your Honor, is an
16 award policy which is the -- I provide this so that you have
17 a full record with respect to this issue. This is the
18 document on which Mr. Hill is relying. And this, from our
19 perspective, is just a policy. It wasn't binding. It didn't
20 continue throughout. But we think, whether you look at it
21 that way or not, it's overtaken by the specific agreements
22 that were assigned to him and for which he received
23 consideration as well, as reflected in these documents.

24 THE COURT: Okay. I will take each of those documents.

25 MR. GORDON: May I approach, Your Honor?

1 THE COURT: Sure. Thank you.

2 MR. GORDON: So, Your Honor, to our understanding,
3 there are no remaining objections. We did indicate, and as
4 Your Honor is aware, we have some issues that are going --
5 will carry over to the 27th, including the issues with AT&T
6 and Verizon and the like that have to be worked out. But I'm
7 not aware of any other objections that have not been
8 addressed.

9 THE COURT: I would ask first for parties in the
10 courtroom, and then I'll open it up to parties that are
11 participating by phone. Are there any parties with pending
12 objections that have not been the subject of discussion or
13 presentation today?

14 (No verbal response)

15 THE COURT: All right. I would open it to parties on
16 the phone, whether or not there are any parties with
17 objections or issues that have not, again, been the subject
18 of discussion, resolution or presentation today.

19 (No verbal response)

20 THE COURT: Very well.

21 Where that leaves us, then, is that the debtor, as I
22 said, has moved for authority to sell certain intellectual
23 property and related assets. I have ruled with respect to
24 the Wonderland objection and I will overrule that objection.

25 I think the record reflects that all other objections

1 have been consensually resolved with the exception of Mr.
2 Hill. And as I said, I will take that matter under
3 advisement because I think I need to make sure that I can see
4 the documents that were referenced in the debtors' reply and
5 ensure that they do provide as indicated.

6 In the event that I have additional concerns with
7 respect to Mr. Hill's objection, I will get the parties on
8 the phone promptly. But I believe that I can move forward
9 with the process.

10 Subject to issues relating to Mr. Hill being taken
11 under advisement, given the resolution of the objections and
12 disposition of the Wonderland objection, I would simply find
13 that the operative standard is Section 363. Its theories and
14 its progeny reflect that a debtor is obliged to demonstrate
15 that the sale proceeds in good faith and that it represents
16 the exercise of the debtors' reasonable judgment.

17 I am satisfied that these debtors have carried their
18 burden with that respect, that the sale itself is proceeding
19 in good faith, and that the transaction represents again the
20 exercise of the debtors' reasonable business judgment.

21 I do understand that there are a number of moving parts
22 and I would expect the parties to work through those
23 ultimately to achieve a final form of order. I know that we
24 have the Verizon and AT&T issues that are the subject of
25 ongoing practical or business inquiries, and if we need to

1 deal with that again, I will be available.

2 But other than that, I am satisfied and I would approve
3 and authorize the relief requested.

4 Mr. Gordon, do we have anything further today? A good
5 answer is no.

6 (Laughter)

7 MR. GORDON: I was going to point out, Your Honor, that
8 I will be out of the country next week. So you'll see how
9 much better things go when I'm not here.

10 But, no, I don't think there's anything else, Your
11 Honor.

12 THE COURT: All right. Very well. We will stand in
13 recess. I appreciate everyone's time today. Thank you.

14

15 (Proceedings concluded at 3:11 p.m.)

16

17

18

19

CERTIFICATE

20

21 I certify that the foregoing is a correct transcript from the
22 electronic sound recording of the proceedings in the above-
23 entitled matter.

24

25 /s/Mary Zajackowski
Mary Zajackowski, CET**D-531

May 21, 2015
Date

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EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: . Case No. 25-14861-MBK
NEW RITE AID, LLC, . Clarkson S. Fisher U.S.
et al., . Courthouse
Debtors. . 402 East State Street
Trenton, NJ 08608
. June 30, 2025
. 11:34 a.m.
.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

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- - -

I N D E X

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WITNESS

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C-1 Declaration of Saul Rostamian 14 14

C-2 Declaration of Joey Separzadeh 14 14

C-3 Declaration of Jeremy May 15 15

1 THE COURT: Okay. Good morning, everyone. This is
2 Judge Kaplan and we'll be addressing a variety of the New Rite
3 Aid matters this morning on a reduced agenda. Let me give
4 everybody an opportunity to adjust their screens.

5 MR. MITCHELL: Good morning, Your Honor. Sean
6 Mitchell from Paul, Weiss on behalf of the debtor. See if you
7 can hear me.

8 THE COURT: We can. Thank you.

9 MR. MITCHELL: Terrific. Your Honor, I will be
10 starting us off today on the sale hearing, and then I will turn
11 it over to my co-counsel, Ms. Yudkin, to take up the balance of
12 today's agenda.

13 THE COURT: All right. Thank you. Let me just give
14 the usual admonitions. Those who wish to be heard, please make
15 use of the raise hand function so I can call upon you. All
16 right. Thank you, Mr. Mitchell. You may continue.

17 MR. MITCHELL: Thank you. Thank you, Your Honor.
18 So, the debtors are before the Court today seeking approval of
19 (indiscernible) sale transactions. The first is the sale of
20 the Thrifty Ice Cream business and related assets to Hilrod
21 Holdings for \$19.2 million. And the second is the sale of
22 certain pharmacy assets to KPH Healthcare Services. So here at
23 the outset, I would like to move a few declarations into
24 evidence.

25 THE COURT: All right.

1 MR. MITCHELL: So, the first is a declaration of Adam
2 Rifkin. It is at Docket 1160. Second is a declaration of Marc
3 Liebman at --

4 THE COURT: Well, let me just -- all right, we'll
5 mark that D-1. Second is --

6 MR. MITCHELL: Declaration of --

7 THE COURT: Mr. Liebman?

8 MR. MITCHELL: -- Marc Liebman.

9 THE COURT: Yes.

10 MR. MITCHELL: Yeah, Mr. Marc Liebman at 1162.

11 THE COURT: That'll be D-2.

12 MR. MITCHELL: Second (sic) is the declaration of Mr.
13 Hilton Schlosberg at Docket Number 1159.

14 THE COURT: All right. D-3.

15 MR. MITCHELL: Third -- or fourth, excuse me, is the
16 declaration of Ms. Elise Frejka at Docket Number 1150.

17 THE COURT: D-4. Thank you.

18 MR. MITCHELL: And the fifth is the declaration of
19 Sean Mitchell at Docket Number 1161.

20 THE COURT: All right. And D-5. So, with respect to
21 D-1 through D-5, various declarations in support of the
22 proposed sales, are there any objections to the admission of
23 these declarations into evidence?

24 (No audible response)

25 THE COURT: Does any party or -- well, any counsel on

1 behalf of any party, wish the opportunity to cross examine any
2 of the declarants?

3 MR. KUPETZ: Yes, Your Honor. David Kupetz, Troutman
4 Pepper Locke, appearing for Skyline Rocky Road Acquisition,
5 LLC. My partner, Deborah Kovsky, who moved from my pro hac
6 vice admission apologizes to the Court. She had a conflict
7 where she was not able to attend today, and asked me to convey
8 that apology.

9 Your Honor, we did file, as the Court probably is
10 aware, a limited objection Friday, and submitted various
11 declarations in support of that objection.

12 THE COURT: I did have an opportunity --

13 MR. KUPETZ: In the objection --

14 THE COURT: Yes. I did have an opportunity. I did
15 review the objections and the supporting declarations.

16 MR. KUPETZ: And I don't have any -- or my client
17 doesn't have any objection to the admission of these
18 declarations that were filed this morning. But, we would like
19 the opportunity to cross examine.

20 THE COURT: Can you identify which witness that you'd
21 like to cross examine?

22 MR. KUPETZ: Yes, Your Honor. Mr. Liebman and -- it
23 may just be Mr. Liebman, Your Honor. I think the declarations
24 are in conflict with the -- to some extent with the other
25 declarations. But, in terms of cross examination, it would be

1 Mr. Liebman.

2 THE COURT: All right. Mr. Mitchell, do you want to
3 be heard on that?

4 MR. MITCHELL: I would, Your Honor. I would say this
5 is part of our argument. But, Mr. Kupetz -- excuse me for the
6 pronunciation, client does not have standing here, Your Honor.
7 They're the typical disappointed bidder. They're not --
8 they're not -- they're not a party in interest here.

9 THE COURT: Mr. Kupetz, you want to address that
10 argument?

11 MR. KUPETZ: Yes, Your Honor. On a couple of -- a
12 couple of grounds. One is, our client did acquire, now
13 granted, just within the last couple of days, an interest in
14 the administrative claim of Kelstar (phonetic), LLC, so the
15 client does hold an administrative claim. The limited
16 administrative claim would be a party in interest on that kind
17 of technical basis.

18 In addition, really, Your Honor, based on -- while
19 we're not as the papers I think accurately characterize, we're
20 not really challenging per se the integrity of the process.
21 What happened here is reflected in the declarations submitted
22 in support of the limited objection is that the auction went
23 off the record. Became kind of ad hoc and murky. And really
24 ultimately our suggestion really is, as we think this through
25 is, in order to maximize recovery for the estate, that the

1 process just be reopened for the parties on a limited basis,
2 and it wouldn't create any negative ramifications in the --

3 So, we don't -- we're really not asserting any rights
4 as a disgruntled bidder. I mean, as set forth in the
5 declarations, our client heard from counsel for OIG that a
6 joint bid had been invited, and submitted the bid, and it's the
7 highest bid. And we look at Mr. Liebman's declaration and see
8 his concerns as identified, they're really focused on ability
9 to perform to close, which our client believes it presented
10 evidence that shows they have at least on hand twice as much in
11 terms of funds as is needed to close both the purchase price
12 and the cure amount.

13 So, we do think if the technical issue of standing is
14 raised, that we've satisfied that because technically we hold
15 part of an administrative claim.

16 THE COURT: Mr. Mitchell?

17 MR. MITCHELL: Your Honor, if I --

18 THE COURT: Yes?

19 MR. MITCHELL: Yeah, if I may, Your Honor? To the
20 points there, first, there's nothing in the record supporting
21 that -- that his client has indeed acquired an administrative
22 claim.

23 And the second, I think he said it in maybe the first
24 part of his remarks, is that, he's not here challenging the
25 fairness of a process. And that's the one exception to the

1 disgruntled -- disgruntled bidder standing. So, I would
2 reiterate that I do not believe his client has standing here.

3 THE COURT: All right. I think the process will be
4 furthered by allowing -- Mr. Kupetz, I'm going to allow a
5 limited cross examination. A party in interest is one thing.
6 You still have to have actual injury. Even Truck (phonetic)
7 never addressed that aspect of standing. So -- and the -- your
8 injury as an administrative creditor is questionable at this
9 point.

10 But, I think it's more prudent for this Court to
11 allow the limited cross. I'm going to allow limited argument.
12 And let's see where we go. Mr. Mitchell, do you wish to simply
13 put Mr. Liebman up at this juncture?

14 MR. MITCHELL: Yes. Yes, Your Honor.

15 THE COURT: All right. Mr. Liebman, good morning.

16 MR. LIEBMAN: Good morning.

17 THE COURT: I'm going to ask you -- I think we've
18 done this in the past. Please raise your right hand.

19 MARC LIEBMAN, WITNESS, SWORN

20 THE COURT: Is there anyone in the room with you at
21 this point in time?

22 THE WITNESS: There's not.

23 THE COURT: All right. You have had the opportunity
24 to read your declaration, which has been marked D-2, prior to
25 filing with the Court?

1 THE WITNESS: Yes, I have.

2 THE COURT: And if you were to offer your direct
3 testimony, would there be any variance from that that is
4 contained in D-2, your declaration?

5 THE WITNESS: No, there would not.

6 THE COURT: In other words, everything in your
7 declaration is truthful and accurate to the best of your
8 knowledge?

9 THE WITNESS: It is, Your Honor.

10 THE COURT: And it is complete?

11 THE WITNESS: And complete, yes.

12 THE COURT: All right. Mr. -- and I'm going to
13 apologize if I mispronounce it, Cupitz (pronouncing)?

14 MR. KUPETZ: Kupetz.

15 THE COURT: All right. Mr. Kupetz, you wish to cross
16 examine?

17 MR. KUPETZ: Yes. Thank you, Your Honor.

18 MR. CLAREMAN: Your Honor, if I may just briefly
19 before --

20 THE COURT: Yes.

21 MR. CLAREMAN: -- Mr. Kupetz starts. This is Billy
22 Clareman from Paul, Weiss on behalf of the debtors. I'll be
23 handling the examination portion of this for the debtor. So,
24 if I object, I didn't want --

25 THE COURT: Thank you.

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11

1 MR. CLAREMAN: -- to cause any confusion.

2 THE COURT: No. I appreciate. Thank you. You may
3 proceed, Mr. Kupetz.

4 MR. KUPETZ: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. KUPETZ:

7 Q Mr. Liebman, I'm looking at your declaration, and in
8 Paragraph 13, you say, Second, the debtors did not have much
9 confidence in Skyline's ability to close the transaction at its
10 purchase price. Was that a material issue in your decision?
11 When I say your, the debtor's decision, as far as you're
12 concerned, your view, to reject the Skyline bid in terms of not
13 seeking to have the fiduciary out-exercised?

14 A It certainly was one important consideration, yes.

15 Q And if Skyline had provided -- if you -- to your
16 satisfaction, if there was evidence provided that could show
17 that Skyline had the ability to close the deal, would that
18 possibly have changed your conclusion?

19 A If we had more certainty with respect to the financial
20 wherewithal of the buyer, that would have been important
21 knowledge for us to have. However, there's a sequencing issue
22 here. And the process itself where Skyline and OIG, you know,
23 were essentially working together to, you know, in this
24 process, which is a violation of our bid procedures.

25 And, you know, our -- what we had as, not just as

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1 professionals, as the company, and based on legal counsel, real
2 concerns about what allowing those two parties to work together
3 would do to -- with our bid procedures and the ramification of
4 violating the bid procedures, which is inherently what would
5 happen if we allowed collusion on our -- on the bid that we had
6 in hand from the Hilrod Group.

7 MR. KUPETZ: Your Honor, I would simply --
8 recognizing this is not a jury trial, Your Honor, I would move
9 to strike all of that answer beyond the part that responded to
10 the question, which simply was whether it would have impacted
11 their decision. But, I do recognize that that's part of their
12 arguments and he's making that argument in the testimony.

13 THE COURT: And it would come out on redirect in any
14 event. Overruled. Thank you.

15 MR. KUPETZ: Your Honor, I don't have anything
16 further for this witness.

17 THE COURT: Thank you, Mr. Kupetz. Mr. Clareman, any
18 redirect?

19 MR. CLAREMAN: No, Your Honor.

20 THE COURT: All right. Then, Mr. Liebman, thank you.
21 You may virtually step down.

22 THE WITNESS: Thank you.

23 THE COURT: All right. And, Mr. Kupetz, is there any
24 other cross examination?

25 MR. KUPETZ: Well, Your Honor, it's a little bit

1 strange, so I'm not sure. I'll tell you my thought and Your
2 Honor can tell me what the Court wants to do.

3 There is conflicting testimony presented by
4 attorneys. So, OIG's counsel, Mr. Saul Rostamian, put in a
5 declaration about his discussion with Mr. Mitchell. Mr.
6 Mitchell put in a declaration. I do have a question for Mr.
7 -- or a few questions possibly, for Mr. Mitchell. But, I don't
8 know if the Court wants to go down that road.

9 THE COURT: I think not. I'm going to allow you to
10 make the argument, point out discrepancies. I think that'll be
11 the fairest and most expedient way of handling it. I won't
12 accept any objections based on it not being part of the record.
13 I'll give a little leeway with the argument.

14 MR. KUPETZ: Thank you, Your Honor.

15 THE COURT: All right then. Mr. Mitchell, is there
16 any other additional evidence that the movant wishes to put in?

17 MR. MITCHELL: No, Your Honor. Not at this time.

18 THE COURT: All right. Then let's proceed to
19 argument on the merits of the sale. Mr. Mitchell, will that be
20 your undertaking?

21 MR. MITCHELL: It will indeed, Your Honor.

22 THE COURT: All right. Thank you.

23 MR. KUPETZ: Your Honor, could -- I apologize --

24 THE COURT: Yes?

25 MR. KUPETZ: -- for interrupting. Can I ask one

1 question? Is it appropriate at this time, since there is the
2 objection to move for admission of the declarations in support
3 of the objection?

4 THE COURT: Yes. We can -- before I close the
5 record, have oral argument. Absolutely. So, do you want to
6 identify again the declarations?

7 MR. KUPETZ: Yes, Your Honor. So, there's the
8 declaration of Saul Rostamian, which was attached to the
9 objection, which is Docket -- Document Number 1132. It was
10 attached as Exhibit A, and I'd like to move to have that
11 declaration admitted.

12 THE COURT: All right. Well, let's -- let's have
13 them -- well, any objection to Exhibit A coming in, Document
14 Number 1132?

15 MR. MITCHELL: No objection.

16 THE COURT: All right. It'll be deemed admitted, and
17 we'll mark it C-1. Mr. Kupetz, additional declarations?

18 MR. KUPETZ: Yes, two more, Your Honor. The next is
19 the declaration of Joey Separzadeh, which was Exhibit B, is
20 Exhibit B to that same document, 1132. I'd move to have that
21 admitted.

22 THE COURT: Any objections?

23 MR. MITCHELL: No objection.

24 THE COURT: Deemed admitted as C-2.

25 MR. KUPETZ: Your Honor, the final declaration is the

1 declaration of Jeremy May. It was attached to Exhibit C, the
2 same document. I would ask that that be admitted.

3 THE COURT: All right.

4 MR. MITCHELL: No objection.

5 THE COURT: So, it'll be marked as C-3, and it's so
6 admitted. Let me afford the same opportunity to movants. Do
7 you wish to cross examine any of the declarants?

8 MR. CLAREMAN: No, Your Honor.

9 THE COURT: All right. Now, we'll say the record's
10 closed and we'll proceed to oral argument.

11 MR. MITCHELL: Thank you, Your Honor. I want to
12 refocus on the Thrifty asset sale. So, the Thrifty asset sale
13 was (indiscernible). In connection with the sale process, the
14 debtors commenced an auction, had six qualified bidders
15 participate. The auction was highly competitive, with the
16 winning price of \$19.2 million. This more than doubled the
17 initial starting bid of \$8 million.

18 And, of course, the bidding procedures and the
19 auction rule contain a customary prohibition on debtor to
20 bidder communications, without debtor consent. And every
21 bidder was required to affirm their compliance on the record,
22 and each bidder did so. And this was incredibly important to
23 the process, to maintain the integrity of the process there.

24 And after the debtors adjourned the auction, the
25 debtors executed an asset purchase agreement with Hilrod

1 Holdings, which provided a purchase price of \$19.2 million,
2 assumption of certain liabilities and payment of cure cost. It
3 also required Hilrod to make a \$4 million non-refundable
4 deposit and pay the balance -- a non-refundable deposit on the
5 execution date and pay the balance of the outstanding amount on
6 July 2nd. And the debtors have indeed received that \$4 million
7 non-refundable deposit.

8 As set forth in the Rifkin declaration, the debtors
9 believe that the bid represented by -- represented --
10 represented the highest or otherwise best offer. And no party
11 objects to the selection of Hilrod as the highest or otherwise
12 best at the time the debtors adjourned the auction.

13 Here, the one objection is that of Skyline, who was,
14 as I mentioned before, is a disappointed bidder. And Skyline
15 demands that the Court compel the debtors to exercise their
16 fiduciary out, terminate the Hilrod bid, and instead enter into
17 an asset purchase agreement with it. But, of course, the
18 debtors disagree.

19 So, a few points on the timeline and the debtor's
20 decision making here that I think are important to highlight.
21 So, at the time that the debtors had received the Skyline, the
22 quasi-Skyline and OIG bid, the debtors had already entered into
23 the purchase agreement. The debtors had consulted with the
24 consultation parties and their advisors and made that fiduciary
25 decision.

1 Some of the reasons -- some of the reasons for that
2 are set forth in the Liebman declaration. And include the
3 greater certainty of closing with Hilrod, the \$4 million
4 deposit already made by Hilrod, the lack of clarity that the
5 debtors had with respect to Skyline's financial wherewithal.
6 And, of course, the inappropriate behavior of Skyline in
7 coordinating with OIG, as described in the more detail in the
8 reply declarations filed with the Court.

9 But, even given that, Your Honor, the difference here
10 between the two purchase price is \$850,000, which is less than
11 five percent of the total purchase price. And the debtors have
12 determined that pursuing such bid does not outweigh the risks
13 of closing certainty and auction integrity, as well as a return
14 of the \$4 million deposit, which the debtors do have right now.

15 So, I would submit, Your Honor, that the record here
16 is clear. That the debtors exercised good business judgment to
17 both select Hilrod as the winning bidder at the adjournment of
18 the auction, and more importantly, to continue as Hilrod --
19 continue with the Hilrod sale before Your Honor today.

20 Turning very briefly to the Skyline objection itself.
21 Of course, Your Honor, as I mentioned before, we do not believe
22 Skyline has standing as a disappointed bidder. But even more
23 so, the process here was fair, it was competitive, and it was
24 transparent. There's no allegation. Yeah, it was fair,
25 transparent, and competitive.

1 And it is our view that Skyline and OIG's post-
2 auction conduct violated the auction procedures, and that not
3 only, that underscores the wisdom of the debtor's decision to
4 decline to exercise their fiduciary out and continue with the
5 Hilrod bid.

6 So, for those reasons, Your Honor, the debtors
7 respectfully request that the Court enter the -- enter the sale
8 orders. And with that, I'll pause for any questions Your Honor
9 might have.

10 THE COURT: All right. Thank you. Mr. Kupetz?

11 MR. KUPETZ: Yes, Your Honor. Thank you. David
12 Kupetz of Troutman Pepper Locke for Skyline. Your Honor, some
13 disagreement with the argument. Number (1), it seems to
14 Skyline, and as reflected in the declarations submitted with
15 the objection, that the record is far from clear. That at
16 best, it's very murky and inconsistent.

17 And while we didn't try to label things as unfair,
18 facts may -- depending on how someone reaches a conclusion
19 based on the facts, I think it could be concluded that it's
20 unfair. We didn't attack the integrity, because we don't
21 believe there was an intention necessarily to run an unfair
22 process. But, that doesn't mean the result didn't end up being
23 unfair and/or countered to maximizing value for the estate.

24 As reflected in the Separzadeh declaration, during
25 the afternoon of June 24th, the debtor changed -- the debtors

1 changed the format of the auction, asked OIG for the best and
2 final offers. And at that point, they went off the record.
3 And the balance of the auction was conducted in an ad hoc
4 manner through phone calls and e-mails with the parties and
5 their counsel. And that's reflected both in the Separzadeh and
6 the Rostamian declarations.

7 So, shortly after going off the record, the debtors
8 called OIG and conditionally approved OIG as the successful
9 bidder, with OIG having agreed on the call to specific
10 conditions. This is in the Separzadeh declaration, which
11 included signatures on the APA and a deposit of \$4 million
12 funded in 48 hours. And those terms were agreed to.

13 And the debtors then came back again to OIG and
14 further conditioned the bid on paying the balance of the
15 purchase price by July 2nd. OIG requested that such conditions
16 be reflected in the APA, and was prepared to move forward. And
17 then following that discussion, this is all in the Separzadeh
18 declaration, the debtor's professionals notified OIG, which I
19 believe came as a shock to them, that Hilrod had increased its
20 bid, and the debtors would accept the new bid.

21 So, this is after having said to OIG that the
22 auction's closed, you're the winner, here's some conditions,
23 OIG saying we'll agree to those conditions. And thereafter as
24 reflected in the Rostamian declaration, counsel for OIG
25 discussed the bid process with counsel for the debtor, and

15 Even during the live auction, Your Honor, that was on
16 the record, the rules changed, and it's not to say that they --
17 we're not accusing the debtor or its professionals of violating
18 any requirement, because they have the ability to change the
19 rules, and they did. But, it became confusing and impeded. We
20 believe the auction, while it was live they went from doing
21 full rounds to doing immediate overbids, and it confused and I
22 think undermined the process while it was live.

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1 said, hey, they reached this final bid and there were no
2 objections, I don't know that any parties were involved to
3 object at that time. I mean, I'm not really sure what he's --
4 when he's referring to that. There was no record as far as we
5 knew, or as far as I believe OIG knew, at that time. And
6 that's reflected in the declaration of OIG's counsel, Mr.
7 Rostamian.

8 Counsel did ask for -- when they -- when counsel
9 invited, at least as far as counsel for the debtor, invited the
10 joint bid, that was at least Mr. Rostamian's interpretation,
11 that it was invited, they said, go ahead and make it. They
12 didn't say they were accepting it. But go ahead and present
13 it. He invited that bid. He also said, hey, the new bid would
14 need to include releases waiving any objections to any
15 improprieties in the auction. And that's in Mr. Rostamian's
16 declaration.

17 And, again, OIG was in agreement that all along this
18 off the record kind of discussion of the continuing but not --
19 maybe adjourned, I'm not sure, but not closed auction, had a
20 lot of ad hoc action. So -- but they agreed. They had agreed
21 to it.

22 So, this joint bid was submitted, Your Honor, under a
23 Skyline APA. It is \$850,000 higher than Hilrod's bid. We
24 believe that in every other aspect, it is essentially identical
25 to Hilrod's bid. And we also believe that with the Jeremy May

1 declaration, there's evidence to show that there's funds on
2 hand more than adequate to close this. And Mr. May would
3 certainly testify to that effect.

4 This bid, all the terms were equivalent to the Hilrod
5 bid. And the financial capacity of Skyline to perform under
6 this final bid, which is how it was perceived by the parties
7 submitting at OIG and Skyline, that's the primary focus, it
8 appears to me, of the decision not to move forward as reflected
9 in the Liebman declaration and as reflected in part in Mr.
10 Liebman's testimony.

11 Although he then went on, you know, to make some
12 arguments in terms of the process and the concern as reflected
13 in .3 in the Liebman declaration that's towards the very end of
14 the declaration. He has three major points, 1) That Hilrod,
15 they believe, can readily perform, 2) That they purport to have
16 concerns about Skyline's ability to perform, and 3) That
17 they're concerned that Hilrod would have some sort of claim if
18 the bid was awarded to Skyline.

19 So, here, we're in a position where the estate does
20 have an opportunity to maximize recovery. We believe that
21 there's unconditional financial capacity dramatically greater
22 that's been demonstrated for Skyline to perform, greater than
23 needed to perform this transaction at almost double in price,
24 and we believe those are unrestricted available funds. The
25 guarantee would cover those funds coming in. If the debtor

1 wanted, we can put those funds into some kind of account, right
2 away Skyline could.

3 And it just doesn't seem based on this murky kind of
4 ongoing adjourned, but not closed, auction with no record at
5 least transparent to others, and with an invitation, at least
6 as understood by the bidders, for Skyline and OIG to make a
7 joint bid, to then reject that bid in a context where
8 previously OIG had been advised at least twice that it was the
9 winning bidder. And just, you need to do A and B. And they
10 said, we'll do it, no problem. And then they come back later
11 and say, oops, now we've now decided to go with Hilrod.

12 So, under the -- all of these circumstances combined,
13 it seems to me that actually the integrity of the process is
14 advanced by reopening and allowing the estate to actually get a
15 higher price for these assets. Hilrod -- let Hilrod come in
16 and bid again if they want to bid more. There was no, as I
17 said, no intent to violate any rules. There were
18 communications with counsel.

19 Maybe there was a misunderstanding. There appears to
20 be conflicting testimony of OIG's counsel, Mr. Rostamian and
21 Mr. Mitchell. Again, uncomfortable lawyers shouldn't be
22 testifying. But, their declarations are in, and I'm not -- I'm
23 not trying to say anybody did anything inappropriate by
24 submitting their declarations. It's just an uncomfortable
25 situation that we think can be really cleansed by opening up

1 the process.

2 What's the harm really when this wasn't a -- I don't
3 think anybody could argue this was a perfect process. Again,
4 we don't think there was intent to vio -- by the professionals
5 in any regard to run a process that lacks integrity. And
6 that's why we haven't made that accusation and we wouldn't make
7 that accusation.

8 We would simply ask that the Court reopen the --
9 allow the process to be reopened and the highest bid that can
10 perform, we believe evidence has been presented of the ability
11 to unconditionally and immediately close under the terms of the
12 APA by Skyline. Really, there's more harm done to the
13 integrity of the process by not allowing that, based on what's
14 gone on here.

15 And when you look at the testimony of both Mr.
16 Separzadeh and Mr. Rostamian, and then combine that with the
17 declaration of Mr. May that submits evidence that shows they
18 have the funds to be able to close, if there's additional
19 evidence that's needed, that could be provided today.

20 So, Your Honor, I'd ask that the Court not approve
21 the sale as it is now, but allow us to hopefully very quickly
22 conclude a sale, whether it is to Hilrod or to Skyline.

23 THE COURT: All right. Thank you, Mr. Kupetz. I
24 have just a couple of questions. Mr. Kupetz, you are
25 representing Skyline, correct? You're not representing OIG?

1 MR. KUPETZ: I'm not representing OIG.

2 THE COURT: And you didn't --

3 MR. KUPETZ: OIG's counsel did submit a declaration.

4 THE COURT: You didn't --

5 MR. KUPETZ: But, I'm not representing them.

6 THE COURT: You didn't represent OIG during the
7 course of the bidding? You were representing Skyline, correct?

8 MR. KUPETZ: That's correct, Your Honor.

9 THE COURT: But -- and Skyline stopped bidding at
10 \$14.5 million. The last bids that were accepted were OIG's bid
11 and -- and the bid of Hilrod, correct?

12 MR. KUPETZ: Your Honor, that's correct.

13 THE COURT: Before the adjournment? And then after
14 the adjournment, it was both OIG and Hilrod were asked to make
15 their highest and best, correct?

16 MR. KUPETZ: Correct. And that's why OIG's counsel
17 reached out to Paul, Weiss and asked, can we submit a joint bid
18 with Skyline? That's -- Your Honor's correct.

19 THE COURT: All right. But, at this point, Skyline
20 is here because they were a participant with the OIG bid. They
21 weren't -- they're not here on their own.

22 MR. KUPETZ: Well, right now they're a participant
23 with OIG. Correct.

24 THE COURT: Okay. All right. Mr. Mitchell, any
25 response?

THE COURT: Thank you, Mr. Kupetz.

Further to that point, Mr. Kupetz's argument, you
highlights this attack on the -- on the integrity of the
He was -- he was reciting the declaration from an OIG
about the conduct of the auction, not from his
So, this is just further evidence that the parties
just coordinating.

And here, Your Honor, we are at -- we're at the end

1 of the road. We're at the sale hearing. We have assigned up
2 APA with the bidder that the debtors are comfortable with
3 moving forward with. And there -- there's real risk. There's
4 real risk that if the debtors exercise their fiduciary out,
5 that party -- that party -- that party walks, because of the
6 termination of the agreement. And the debtors are not
7 comfortable making that decision at this -- at this point.

8 THE COURT: All right. Does --

9 MR. MITCHELL: Um --

10 THE COURT: Okay. Yes?

11 MR. MITCHELL: We just -- just one -- one further
12 very quick point, Your Honor. We think it's -- we think it's
13 important to maintain the current course of action here,
14 because the debtors do have additional auctions coming up. And
15 this, in the debtor's view, has the potential to threaten the
16 integrity of those auctions and the ability to debtors to get
17 the highest price in those auctions. Thank you.

18 THE COURT: Thank you.

19 MR. KUPETZ: Your Honor, if I -- if I may be allowed
20 just very, very quickly?

21 THE COURT: I will. I'll come back to you. But, I
22 just wanted to give anybody else an opportunity to be heard on
23 this who wishes to be heard. Mr. Kapur?

24 MR. KAPUR: Your Honor, Teddy Kapur of Pachulski
25 Stang Ziehl & Jones on behalf of Hilrod Holdings, LP. I'm

1 joined here, Your Honor, with Steven Golden, my colleague, as
2 well as Hilton Schlosberg, Rodney Sacks, and Danny Rothenberg,
3 on behalf of Hilrod Holdings.

4 I just want to reiterate a couple points. One, that
5 the buyer, Hilrod Holdings, remains very interested in closing
6 this sale. It already has paid its \$4 million deposit. It
7 stands ready on Wednesday to wire the balance of the purchase
8 price, \$15.2 million. And we'll work diligent to close this
9 transaction by July 22nd.

10 Mr. Kupetz asked, what's the harm to reopen the
11 process? It poses great danger, as Mr. Mitchell has stated.
12 We had court approved bid procedures here. They were followed
13 by Hilrod Holdings. It was declared the winning bidder by the
14 debtors on the Court's docket. Reopening the auction would
15 violate those procedures. It appears that the procedures have
16 already been violated, and the objection and the new bid that's
17 being made by really a wholly new entity, not a prior buyer,
18 it's a new entity that's trying to join forces in violation of
19 the bid procedures.

20 And lastly, that it would call into question the
21 integrity of future sales. And that would invite other
22 disgruntled buyers to second guess bid procedures and finality
23 of these auctions that are so important in this case, but in
24 any future cases as well. So, we hope that Your Honor will
25 approve the sale to Hilrod. Thank you.

1 THE COURT: Thank you, Mr. Kapur. Ms. Graber?

2 MS. GRABER: Good afternoon, Your Honor. If I may be
3 heard? Jessica Graber of Willkie Farr & Gallagher on behalf of
4 the proposed counsel to the Committee. I'm joined here today
5 by Brett Miller, Todd Goren, and Jim Burbage. We would like to
6 briefly note that the Committee is supportive of this sale. We
7 believe the sale is value maximizing and a proper exercise of
8 the debtor's business judgment.

9 We were in attendance at the auction and believe it
10 was run fairly, efficiently, and in accordance with the bidding
11 procedures. We are comfortable with this process that's been
12 outlined and we are comfortable with the debtor's exercise to
13 proceed today with the proposed sales. Thank you, Your Honor.

14 THE COURT: Thank you, Ms. Graber. All right. Mr.
15 Kupetz?

16 MR. KUPETZ: Thank you, Your Honor. The main problem
17 with the auction, I think the Committee didn't have a chance to
18 see, because it was off the record ad hoc and no transparency.
19 So, we're not -- we're really not asserting that the auction
20 was run inappropriately before it went off the record.

21 My client's prepared to wire the full purchase price
22 today, just to be allowed to participate in a further auction.
23 I know that Mr. Liebman's declaration focused on the big
24 concern that he apparently had about ability to perform. We
25 thought we had solved that with the May declaration. But, they

1 have the ability to perform. They're prepared to wire all the
2 funds today.

3 Again, the integrity of the process here, this was
4 really kind of a busted process as it was, in terms of the
5 post-on the record auction and how it went. And I think it's
6 -- parties could disagree, but I think it's -- advances the
7 integrity of the process here to allow the highest and best bid
8 to win this process when it's really lacked in transparency and
9 then, you know, run off the record.

10 THE COURT: All right. Thank you, Mr. Kupetz.

11 MR. KUPETZ: Thank you, Your Honor.

12 THE COURT: The Court is prepared to rule. The Court
13 has reviewed the declarations that have been placed into
14 evidence, both in support of the motion, seeking approval of
15 the sale. As well as the declarations in support of the
16 limited objection that has been filed. This Court has
17 jurisdiction under 28 U.S.C. Section 1334. This is a core
18 matter under 28 U.S.C. Section 157(b)(5).

19 The following reflects the Court's findings of fact
20 and conclusions of law, limited in the nature of a oral
21 opinion. At the outset, the Court does not accept that Skyline
22 maintains standing to pursue the objection as a disappointing
23 bidder. The Court follows the case law that's been cited in
24 the debtor's supporting memorandum, and this Court has followed
25 that approach in prior cases.

1 Nearly acquiring an administrative claim cannot serve
2 as a veneer to cover the insufficiency of standing facing a
3 disappointed bidder. Besides standing under -- statutory
4 standing under 1109(b), I think all courts are in agreement,
5 there still must be Article 3 standing, which requires an
6 injury.

7 An administrative claimant certainly doesn't in and
8 of itself estab -- the status of an administrative claimant
9 doesn't in and of itself establish there is an injury in this
10 matter that would support the ability to object to a sale.
11 Indeed, administrative claimants are to be paid in full under
12 any confirmed plan. So, there should not be an injury.

13 Putting standing aside, even on the merits, this
14 Court is not prepared to sustain the objection. The Court is
15 being asked to compel the debtor to exercise a fiduciary out
16 that was built into the APA and built into the bidding process.
17 Fiduciary outs are warranted in many situations to enhance the
18 recovery for the bankruptcy estate as a whole. But, in this
19 Court's view, they should be used in limited circumstances.

20 And the Court must take into account the full
21 context, which would be the enhanced return that would come to
22 the bankruptcy estate as a result of exercising the out and any
23 concomitant harm that would also come to the bankruptcy estate
24 by -- based on a deviation from the approved bidding
25 procedures.

1 Skyline here, in essence, was a participant in a
2 reformulated bid after OIG was given ample opportunity, and
3 Skyline, to present its highest and best bid. Either entity,
4 OIG or Skyline could have presented a higher bid on its own
5 without contravening the terms of the bidding process, which
6 was clear in its prohibition on any form of communication,
7 collusion, or cooperative effort by bidders. But, that is what
8 we had here. A cooperative effort to put forward a higher bid
9 after the close of the process.

10 The Court has reviewed the mechanics of the sale and
11 finds that it was undertaken in a fair and transparent manner
12 and produced competitive results. Both OIG and Skyline and the
13 winning bid, Hilrod, had the same opportunities to make
14 individual bids in compliance with the bidding procedures.

15 No entity was deprived of such an ability to make a
16 last and final bid that would serve as the basis for court
17 approval. The fact that there was a joint bid presented to
18 the debtor and to this Court does not require this Court to
19 accept such a bid. It simply provides more information or more
20 opportunity.

21 This Court is determined to defer to the business
22 judgment as set forth at length in Mr. Liebman's declaration
23 and underscored by his testimony this morning, that it is in
24 the debtor's best interest to accept the Hilrod bid based on
25 the debtor's view as to Hilrod's ability to close and fund the

1 transaction in an expeditious manner. And the importance, and
2 this is equally important, that in light of potential future
3 auctions that the debtor demonstrate adherence to the approved
4 bidding process in order to ensure the integrity of future
5 auctions and the desire of other participants to engage in
6 future auctions.

7 The Court finds that the debtor has exercised its
8 reasonable and sound business judgment that the price reflects
9 the highest and best offer made under the circumstances, taking
10 into account the ability to fund and close and the timing of
11 such closing. There is no question that the debtor has pursued
12 a legitimate business purpose in pursuing the sale. The Court
13 also finds that the purchasers, the winning bidder, Hilrod, has
14 undertaken the sale in a good faith manner. The Court is
15 satisfied with the opportunity and sufficiency of the marketing
16 and due diligence that was made available to bidders.

17 And, in sum, the Court is prepared to approve the
18 sale as presented. The Court recognizes that the OIG/Skyline
19 proposed bid would bring in \$850,000 above and beyond the
20 current prevailing bid. The Court takes into account that
21 figure as compared to the overall purchase price, and doesn't
22 believe that \$850,000 -- and does not find that \$850,000
23 presents a sound basis to override the specific bidding
24 procedures that were repeatedly noticed to all the bidders,
25 both involved in this transaction and in possibly future

1 transactions.

2 Counsel for Skyline indicated what's -- asked
3 rhetorically, what's the harm? And the harm could be that we
4 have a proposed sale that started out at \$8 million, that ended
5 more than double, over \$19.2 million. And I have seen both in
6 my -- both as a judge and my prior experience as a bankruptcy
7 trustee, that when you reopen bidding, it doesn't always mean
8 that everybody comes back to the table. And that suddenly
9 there could not be competitive bidding. And the return that's
10 available now to the estate just isn't there.

11 For all of those reasons, the Court is approving the
12 sale, making the good faith determinations as to the purchaser,
13 Hilrod, sufficient for purposes of 363(m). The Court will
14 waive the requirements under Rule 6004(h) and 6006(d) for the
15 -- 6000 for the -- based on the representations and needs of
16 the case as set forth in the underlying declarations.

17 And I think that should cover it. Mr. Mitchell or --
18 well, let me go to any counsel wish to be heard, have I missed
19 anything?

20 (No audible response)

21 THE COURT: And that's almost rhetorical, but go
22 ahead.

23 MR. MITCHELL: No, Your Honor, I don't believe you
24 missed anything. I just have a housekeeping matter for Ms.
25 Yudkin.

1 MR. KUPETZ: Your Honor, could I --

2 THE COURT: Before we get that, Mr. Kupetz?

3 MR. KUPETZ: Well, I recognize Your Honor's decision.

4 I would just say, in terms of the fear that this Court
5 expressed towards the end, again, my client's prepared to wire
6 the money today, non-refundable. So, I don't think that fear
7 would materialize. I recognize the Court's not hanging its
8 decision on that particular point necessarily. But, to the
9 extent that's significant, I just wanted to restate it.

10 THE COURT: I appreciate it. I'm basing my decision
11 on the record that I have. Representations to what might
12 happen is anybody's guess. But, I thank you for your -- for
13 making that point.

14 MR. KUPETZ: Thank you, Your Honor. Thank you.

15 THE COURT: Ms. Yudkin?

16 MS. YUDKIN: Yes, Your Honor. I wanted to move on to
17 the next agenda item.

18 THE COURT: Before we get to that, my apologizes.
19 With respect to the sale, will this -- will we -- should we be
20 expecting a new form of order?

21 MR. MITCHELL: Yes. Yes, Your Honor. We've made a
22 few tweaks that we've circulated with the relevant parties. We
23 will be circulating that to your chambers.

24 THE COURT: All right. Thank you.

25 MR. MITCHELL: That's the first housekeeping piece.

1 Second housekeeping piece, Your Honor, is the debtors intend to
2 notice a further auction. And then have a further sale hearing
3 on July 23rd, which I believe we have down as an omnibus
4 hearing. So, that -- that notice will be forthcoming. We'll
5 file it on the docket.

6 THE COURT: Just -- I should also note that I didn't
7 make any reference to the sale of the assets to KPH. They
8 weren't essentially the subject of contest. But, the Court
9 does approve the sale of those assets based on the proffer that
10 had been submitted as part of the declarations.

11 MR. MITCHELL: Thank you, Your Honor.

12 THE COURT: All right. Ms. Yudkin?

13 MS. YUDKIN: Yes, Your Honor. I wanted to move on to
14 the next agenda item, which was a motion for relief from the
15 automatic stay that was filed by Danita and Donald Brown --

16 THE COURT: Yes.

17 MS. YUDKIN: -- at Docket Number 657. Your Honor,
18 the other stay relief motion, I understand from communications
19 with chambers this morning, is being adjourned to July 23rd at
20 the request of the movement, Mr. Landrum. So, we only had one
21 remaining agenda item today.

22 THE COURT: Correct.

23 MS. YUDKIN: Your Honor, I'm happy to offer the
24 debtor's view in opposition to the motion, unless you'd like to
25 hear from the movant first.

1 THE COURT: Let me hear from the movant. Thank you.
2 Mr. Clarke, good morning.

3 MR. CLARKE: Good morning, Your Honor. Don Clarke,
4 Genova Burns, for Danita and Donald Brown. I was going to
5 interject. I think I can streamline this. We -- we did try
6 and reach out to debtor's counsel, you know, to try and see if
7 we can reach some consent. We were brought in a little late.
8 We weren't involved in the first Rite Aid case.

9 My understanding based upon the debtor's objection, I
10 understand that the stay would be enforceable against New Rite
11 Aid of DC, who is the -- one of the named defendants in the DC
12 state court litigation. And so I was really just going to
13 appear today to tell Your Honor that it's our intention to
14 proceed with that litigation with the understanding that
15 perhaps the litigation trust should be substituted as the
16 defendant in that matter, and that the stay in this case
17 shouldn't have any effect.

18 Part of my client's underlying concerns was how other
19 litigants in that state court might try and use this matter to
20 impede their ability to pursue their rights in that state
21 court. Based upon my understanding out of the pleadings that
22 I don't think that that should be an issue. But -- so I just
23 wanted to put that out there. I think that -- that that should
24 satisfy the debtors, I understand it.

25 But, I know someone from my office is also trying to

1 get in touch with debtor's counsel to just kind of clarify, you
2 know, how to approach that litigation trust. So, you know, we
3 can -- we can pursue -- we can talk about that more offline.

4 But, as far as, you know, the stay relief versus the
5 New Rite Aid for Washington, DC, which we understand is the
6 debtor in this proceeding, you know, we're no longer pursuing
7 that relief as it doesn't appear we'd be entitled to it anyway.

8 THE COURT: Ms. Yudkin?

9 MS. YUDKIN: Yes, Your Honor. I'm not entirely sure
10 I'm following Mr. Clarke. But, just to be clear with respect
11 to this lawsuit and the relief that's being sought, especially
12 as it relates to relief as to the insurance proceeds, the
13 insurance policies were assigned to the trust. There is
14 unequivocal language in the plan and the confirmation order
15 that enjoins any attempts to go forward with respect to any
16 claims that, you know, arose before the bankruptcy filing and
17 any actions, vis-a-vis those insurance policies are also
18 enjoined under the terms of the plan.

19 So, I'm not sure Mr. Clarke's representation that
20 they intend to move forward with the litigation and that it
21 doesn't impact these debtors is entirely accurate. And it's
22 certainly not consistent with the terms of the plan that was
23 confirmed in the first case. I'm happy to have a conversation
24 with Mr. Clarke about it. But, for purposes of the motion
25 today, I believe that the motion should be denied.

1 THE COURT: Mr. Clarke, let --

2 MR. CLARKE: Judge, just to clarify. My
3 understanding based upon the response was that the litigation
4 trust has the rights to the insurance policies and the proceeds
5 of the insurance policies. So, to the extent my client is
6 looking to enforce rights under a claim that arose for this
7 bankruptcy that would have been, you know, enforceable against
8 those policies, the litigation trust is who -- is the party we
9 should be pursuing.

10 And that was my -- that was simply what I was trying
11 to say was that, that's who, I guess, we would name in that
12 state court lawsuit.

13 THE COURT: The Court's understanding, essentially,
14 and you'll correct me if I'm wrong, Mr. Clarke, is, you are
15 withdrawing the stay relief motion, because you're not pursuing
16 stay relief in this case. That you believe you are entitled to
17 pursue the trust as part of the state court matter in DC. You
18 may have to take steps to do so.

19 MR. CLARKE: Correct.

20 THE COURT: But, you don't believe you'll -- you
21 would be violating the stay by substituting the trust in for
22 New Rite Aid, is that a fair assessment?

23 MR. CLARKE: Correct. That's -- that was my
24 understanding based upon the objection, so that the stay
25 shouldn't apply to us trying to enforce rights against that

1 trust.

2 THE COURT: All right. I'm going to mark the motion
3 as withdrawn. I'll mark it without prejudice. But, we
4 understand that the parties recognize what the realities are as
5 far as who you can pursue and who you can't pursue without
6 further relief from this Court. And then we'll let Mr.
7 Clarke's client take the steps. And then -- and maybe you'll
8 continue to have a dialogue outside of court. So --

9 MR. CLARKE: Thank you, Your Honor. That works for
10 the Browns.

11 THE COURT: All right. Ms. Yudkin, I did want to
12 make a note. I heard before July 3rd is a date for something.
13 At least I thought I heard that there was a potential new sale
14 or did I mishear that? Mr. Mitchell?

15 MS. YUDKIN: Mr. Mitchell?

16 MR. MITCHELL: Yeah, Your Honor. I was saying we
17 plan to notice an auction with a sale date of July 23rd.

18 THE COURT: Oh, 23rd?

19 MR. MITCHELL: The next omnibus.

20 THE COURT: Okay.

21 MR. MITCHELL: Yes.

22 THE COURT: I heard -- I was getting -- all of a
23 sudden everybody was looking up here in chambers that, we're
24 not here July 3rd. So, we'll -- we'll -- with that correction,
25 I feel better. Anything else that I can help the parties with?

1 MS. YUDKIN: That concludes the agenda for today,
2 Your Honor.

3 THE COURT: All right. Then I don't see any raised
4 hands. So, I wish everybody a happy, healthy 4th. And I'll
5 see folks on July 8th. All right.

6 MS. YUDKIN: Thank you, Your Honor.

7 MR. MITCHELL: Thank you, Your Honor.

8 THE COURT: Thank you. Take care.

9 * * * * *

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

12 I, KIM WEBER, court approved transcriber, certify
13 that the foregoing is a correct transcript from the official
14 electronic sound recording of the proceedings in the above-
15 entitled matter, and to the best of my ability.

16

17 /s/ Kim Weber

18 KIM WEBER

19 J&J COURT TRANSCRIBERS, INC. DATE: July 1, 2025

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