UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 26-10910-MBK
	.	(Joint Administration Requested)
	.	
MULTI-COLOR CORPORATION,	.	
ET AL.	.	402 East State Street
	.	Trenton, NJ 08608
Debtors.	.	
	.	January 30, 2026
. . . . .	.	1:05 p.m.

TRANSCRIPT OF FIRST-DAY MOTIONS
BEFORE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

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THE COURT: Okay. Good morning, oh good morning. Good afternoon everyone. I wish it were morning. This is Judge Kaplan and we'll be hearing the Multi-Color Corporation, et al., matters. This isn't an entirely remote hearing. I'll let parties adjust their screens as the Court does itself.

I see a lot of familiar faces. Unfortunately, even faces from yesterday. It's been a hectic week.

Let me start with a couple of words regarding this case in that there had been a request to reschedule the First-Day matters to Monday to afford more time for the parties. And I usually am all in favor of greater preparation and more time.

The reason the Court elected to continue and hear the matters on today in the afternoon, frankly, in large part is due to the uncertainty of the Government shutdown. It's very much up in the air what will happen. Our Court system does not have the benefit of the runway it's had in the past to continue operations necessarily as we normally do in a shutdown. There are limitations this year.

So because of that, I thought it best to move this forward and do the best we can. So I just wanted to place that on the record.

A few admonitions. It is, as I've indicated, a fully remote hearing. I understand we have objections. I understand

there's going to be witness testimony and cross examination. My goal is to move this as efficiently as possible, recognizing we are here on a Friday afternoon.

You all are in your offices. I'm here in the courthouse in Trenton on a Friday afternoon. For those who appreciate New Jersey, there's a rationale for getting out as soon as you can as we approach evening. So we're going to move this. I may take some liberal shortcuts in presentations or ask for abbreviated presentations as we go forward. Obviously, everybody will have their opportunity to be heard.

In that regard, if you wish to be heard, please use the raise-hand function. I will do my best along with my law clerks to identify who needs to be heard. And we'll start off now.

Given the number of participants, I'm not going to start. It'll take too long to hear appearances at the outset. As soon as you're going to speak for the first time, you can enter your appearances, both local and co-counsel, and we'll go in that pathway.

I do see our friend from the U.S. Trustee, Mr. Sponder. Good afternoon.

All right. Let me turn to debtors' counsel for first appearances.

MS. YUDKIN: Good afternoon, Your Honor. Felice Yudkin, Warren Usatine, proposed co-counsel to the debtors.

Your Honor, we're here today with our co-counsel, Kirkland & Ellis, and they are going to make the presentation before Your Honor today. Applications for pro hac vice have been submitted for all of the Kirkland attorneys that will be presenting today, and we would request the opportunity that they be heard.

THE COURT: Let me just address that.

There are dozens of applications for pro hac admission that have been filed and are pending across the board. Welcome virtually to New Jersey for today and we can continue.

MS. YUDKIN: Thank you very much, Your Honor. And we wanted to thank Your Honor and your chamber staff for accommodating the hearing today.

And with that, Your Honor, I will turn over the podium to Mr. Serajeddini, who will be kicking off the hearing today.

THE COURT: All right.

MR. SERAJEDDINI: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. SERAJEDDINI: Steven Serajeddini of Kirkland & Ellis, proposed counsel to the debtors. I'm here today with my partners, Rachael Bentley, Pete Candel, and Ashley Surinak, who will help take Your Honor through the first day of relief, as well as my partners, Josh Greenblatt, Jeff Goldfine, Casey

McGushin, and Kaitlin Sheehan on the litigation side because I know we have some evidence to get through at some point today.

But very good to be in front of Your Honor. So I want to thank the Court and chambers for accommodating us today. We know we dumped a lot of paper on you and we very much appreciate the audience on short notice.

I also want to thank the Office of the United States Trustee for working with us the past several days. We believe we've resolved everything with potentially one exception for today's hearing.

I'd like to give Your Honor just a brief presentation on the business to give you a sense of where we are before we move into the agenda. And to do that, I'd ask the Court to give electronic control to my colleagues in the video box titled K&E Presenter.

THE COURT: All right. I'll look to my law clerk who will get that done.

MR. SERAJEDDINI: Great. Thanks, Your Honor.

So, Your Honor, Multi-Color is the global leader and world's largest prime label provider. The company employs over 12,500 individuals with over 90 facilities in 25 countries and generated approximately 3.1 billion of revenue. Your Honor, this is a very large company.

We provide labels for some of the world's most iconic brands in food and beverage and blue-chip companies in the

automotive and pharmaceutical space. If I gave you a list, you'd know these here. You see our products almost every single day.

Our labels showcase and sell products and brands. We are what customers associate with those brands. And it's beyond just label-making. We have print technologies, manufacturing, and R&D that supports our operations.

Our business comprises six key label solutions. You can see here the different types. They go from here, largest to smallest component of our revenue with pressure-sensitive labels that form a bond with the product, cut-and-stack labels which are printed on large sheets or rolls and cut into the applicable shape, in-mold labels which you'd see on plastic containers, roll-fed labels which are applied to plastic bottles and beverage packaging, and shrink-sleeve labels that are slid over glass or plastic bottles. And last, radio-frequency identification, these adhesive tags you'll see from time to time.

Now, Multi-Color is the product of a company that started in 1916. Over the years, it's grown and evolved through numerous acquisitions as well as organic growth. Most recently, that includes the labels division of Constantia in 2017, which kind of gave us a much larger European footprint, as well as WS Packaging to further boost and bolster our label offerings domestically.

Multi-Color was acquired by the current owners, CD&R, in 2021. And following that, there were further acquisitions to expand our reach into some of the product lines I just covered with the Court.

Starting around 2021, the business began to face some headwinds. And like so many businesses that have been in front of Your Honor over the years, the COVID-19 pandemic was a partial cause of these challenges that resulted in initially heightened demand, but then also rapid cost inflation and significant raw material and labor constraints that followed the inflationary period we've been living in put real strain on the business.

And the company didn't sit still. It implemented pricing increases and reduced headcount to attempt to weather the storm. But all this resulted in a further decline in revenue nonetheless. And in 2023, customers started stocking less as inventory levels went down and folks were consolidating. And, finally, through some of these acquisitions, there's been challenges, including, with respect to Fort Dearborn and some of the other business segments in terms of integration.

The effect of all these things have really stressed the business. But, again, Multi-Color continued to work to try to stem the tide. That included upgrading talent, making operational improvements, and really transforming the cost

structure.

Specifically, the company hired a new management team and a new team of frontline leaders, and they've been focused on operational efficiencies and increasing customer loyalty by really focusing on what matters to customers. And that's resulted in significant protection of the degradation of the business.

Moreover, the company's also found 200 million in net cost savings opportunities, and that's across the entire business, including procurement, manufacturing, and other expenses. And today, we have an outstanding management team that's been assembled in recent times to take us forward. That includes Hassan Rmaile, our CEO, Kathleen Phelps, our CFO, Linn Harson, our Chief Legal Officer and Corporate Secretary, and Garrett Gabel, our Chief Restructuring Officer. Mr. Gabel is also the first-day declarant and is present on the Zoom today.

With all the challenges, not from what I just mentioned, but most importantly, for these purposes, the capital structure, liquidity, and upcoming maturities that the company was facing, they appointed two experienced disinterested directors, Roger Meltzer and Peter Laurinaitis. These disinterested directors, importantly, as it relates to some of the objections that have recently come in in the minutes before the hearing, Your Honor, they were delegated with complete authority vis-a-vis conflict matters and that

includes any aspect of any transaction that deals with insiders, as well as they had broad jurisdiction and delegation to weigh in on transactions generally. We've met with them dozens of times, and they're very active in this process for Your Honor today.

So in terms of the nature of those economic and capital structure issues I was mentioning, Your Honor, to give it a little bit more scope, you can see here that the company has roughly six billion in debt. And as you can see on here, the earliest maturities started to occur in 2027. Those are the unsecured notes at the bottom here. And, in addition to that, as I mentioned, liquidity, which is perhaps the biggest impetus behind the timing of this filing and why we're before Your Honor right now.

We took it all the way down to the end, and I'll explain why, really, to try to get the best possible transaction here. But, ultimately, that is why we are in Court today, and that is why we're proceeding on an emergency basis to obtain access to our DIP financing.

Multi-Color really took a proactive approach here, Your Honor, and retained professional advisors with the core group in terms of governance and the special committees to lead it through this process, and that includes Kirkland & Ellis, Evercore, and Alix. And those parties in particular went out and tried to create a process to really address all these

capital structure and liquidity issues. That started with our largest creditor. And I emphasize that point, creditor, and equity holder, CD&R, who is represented by Latham, Debevoise, and Moss.

We also reached out and organized ad hoc groups among our various funded debt constituents. That includes an Ad Hoc Group of Secured Lenders who is working with Mullis, PJT, and A&M. And then an Ad Hoc Group of Cross-Over Lenders that was historically represented by Jones Day and Guggenheim. And we understand, as of yesterday, potentially with respect to certain secured holdings, by Willkie Farr as well.

And we began with all these various groups to solicit financing proposals to address the issues that I've mentioned already. Because of the relative positions of the parties here, Your Honor, the types of transactions that each of them could offer were different. And over time, they coalesced into really two flavors. The Cross-Over Group, as well as third-party financing sources who we went out to, to a great extent to try to develop alternatives, were all focused on transactions that would have addressed that near-term maturity, that 2027 maturity, provide incremental liquidity, and give the company runway for at least a couple years to potentially stabilize and see what would come to pass by that time.

Whereas, the Ad Hoc Group of Secured Lenders, given the significant nature of their holdings and the importance of

their votes for plan voting requirements, were focused on a transaction that they could deliver through this type of process that would address the capital structure comprehensively. We all hear a lot about LME versus restructuring, and this is one of those cases where really the two paths were put up against one another and compared very rigorously.

I've run many competitive processes, Your Honor. This one was about the most competitive. And the good news is the ultimate beneficiary of that was the company. Both groups made proposals, improved their proposals over time, and even documented their proposals in a very robust fashion, again, driven by the liquidity constraints that we had, where we needed a solution one way or another by roughly this time. And both groups worked very, very diligently.

As I mentioned, as we entered January, liquidity became very acute. We entered into our grace period on January 15th. And in the days that followed, we attempted to get close on our various options to present to the Board and the Special Committee. The company didn't take entering Chapter 11 lightly here and certainly not modifying the rights of any creditor lightly as well. And as I said, we pushed very hard to find alternatives.

But, ultimately, in assessing the options, the kick-the-can options here that we would have developed, or that we

had developed, would have left the company with far more debt, far less liquidity, greater interest costs, and far less runway. And all of that, and most apropos to the folks that are running this business day-to-day, as well as our many customers, employees, and suppliers, would have been a drag on operations and a threat to the long-term viability of the business. So, ultimately, really driven by that basis, the company entered into a restructuring support agreement with the Secured Group, as well as CD&R, on January 25, 2026.

We commenced solicitation on January 27th and filed these cases soon thereafter, again, to get access to the DIP financing that the company really, truly needs at this point.

In terms of the overall restructuring support agreement, it's a prepackaged case, as Your Honor is aware. It results in a $3.9 billion reduction of debt, and that's through cancellation of existing first lien secured claims. And in exchange for that, those parties are receiving the right to participate in a preferred equity investment, the issuance of a set amount of preferred equity, certain cash consideration, and new warrants, and then also a $400 million new common equity investment that's being provided by the plan sponsor here in exchange for 64 percent of the new common stock.

In addition to that, Your Honor, we are obtaining significant exit financing to allow us to remain strong and healthy during the case and post-emergence, and that exit

financing is taking the form of 1.9 billion in new debt facilities that consist of a new term loan facility and new notes.

We also anticipate, and we're in active discussions with our ABL holders, we have come to terms on consensual cash collateral for the duration of these cases and we're in active discussions. And ABL lenders will have the option to continue to provide, and we hope will, exit liquidity in the form of the ABL financing.

The RSA also includes additional DIP financing of roughly 657 million. That breaks out into a few different categories. There's 250 million of new money DIP loans. There's a one-to-one roll-up here in terms of $250 million of secured claims that are going to be repaid with DIP claims. There's $7.5 million backstop premium and then there's roughly 150 in incremental new money loans that don't have economics and are really, for the purpose of implementation, at the back end of the case.

In terms of the other key terms of the plan that the company is soliciting, it does provide, as I said, 100 percent recovery to the holders of ABL claims through either cash or participation in the exit facility. It provides for the complete cancellation and no recovery on account of equity interests, and then it provides for payment in full of all trade, customer, employee, vendor, and supplier claims. That's

hugely important and valuable for our business.

Your Honor, as I mentioned, the restructuring support agreement and the plan that it embodied was the best option that was available to the company. It has the aforementioned reduction in debt in the business. It provides for almost 900 million of new money capital, will provide us with over 550 million of liquidity at closing, cash savings of approximately 350 million in debt service obligations, and a seven-year maturity runway, which in my experience is relatively unprecedented in large Chapter 11 cases in terms of the maturity of the new debt.

The only objectors we're really aware of are the Cross-Over Group, Your Honor. We appreciate very much their engagement in the days leading up to this process on alternatives. The company's liquidity, as I mentioned, required us to proceed with these cases very soon after we elected on a path in terms of the RSA. And because of the competitive process, we unfortunately didn't have a ton of time to find consensus with the Cross-Over Group around this plan. But our hope is that we can find some agreement potentially in the days ahead.

They're very educated on the business and the realities of the case so they should be well prepared to engage with perhaps a little bit further education, some of which will occur as soon as this hearing, in terms of the overall

transaction. But we intend to facilitate those discussions very much so and push the various parties to come to resolution on issues to the extent it's possible.

And Your Honor can see our proposed timeline here. We're incredibly proud of the overall outcome, and this will best position the business for success. But for the business to maintain stability throughout this process, it's really important that we move forward judiciously. And it should send great confidence to our customers, our suppliers, and our vendors that Multi-Color is in a stronger position than it ever has been.

Now, the timeline on the flip side does also provide full notice and provides parties-in-interest ample time to raise objections. The Cross-Over Group represents a voting minority in both our secured and unsecured debt. And while it's not an issue for today, the plan can be confirmed over their objection. To the extent they intend to contest that plan, as I mentioned, they've obtained reams of information and the parties should be very well prepared to proceed on this timeline. But, ultimately, Your Honor, for today, the purpose of a first day is about preserving and maximizing and stabilizing the debtors' business and operations and to give comfort to the people that make it all possible.

So with that, Your Honor, unless Your Honor has any questions for me, I'd like to turn to the agenda.

THE COURT: I have just some clarification questions.

MR. SERAJEDDINI: Sure.

THE COURT: There's been a lot of labels put on the various groups, and I want to make sure that I'm consistent. Because your papers refer to a group as the Cross-Over Group, but then their papers, the Jones Day papers, refer to a Cross-Holder Group. Are we talking about the same folks?

MR. SERAJEDDINI: That's correct, Your Honor.

THE COURT: Okay.

And then we have an Excluded Lienholder Group. That's the Willkie Farr group.

MR. SERAJEDDINI: Correct, Your Honor, which I believe represents a holder within the Cross-Over Group vis-a-vis their secured interests.

THE COURT: Okay. Good. That helps.

I did want to make a statement at the outset as well. I saw on the slide and in the papers a reference to Evercore as an investment advisor. I think it's important to put on the record, my son, Jonathan Kaplan, is a senior managing director and chief counsel at Evercore. In that capacity, it's all in-house. He doesn't interact or deal with the clients, the transactional work, or on any of the projects. His tasks are focused on Evercore itself as a corporate entity.

I don't see a conflict, but I want to at least have it out there so parties can gauge what's appropriate. I did

verify he's had no relationship to this case or to, I think, Mr. Banks, or any of the witnesses. So be that as it may, I just wanted it out there.

All right. Let's go to the agenda.

MR. SERAJEDDINI: Great. Thank you, Your Honor.

So, Your Honor, I want to address first a couple of the housekeeping matters before we turn to the DIP and our evidentiary support for the substantive first-day relief.

The first would be the joining --

MR. BENNETT: Your Honor?

MR. SERAJEDDINI: -- the -- excuse me?

THE COURT: Maybe if we could -- I think somebody wants to be heard. I can't see folks with the PowerPoint.

Do you still need the PowerPoint up?

MR. SERAJEDDINI: We don't, Your Honor.

THE COURT: All right.

There.

And, of course, I was going to raise, and I don't know if this is what Mr. Bennett's going to touch on. There's a motion brought on shortened time for dismissal based on the venue.

But let me just hear from Mr. Bennett. I believe you want to be heard.

MR. BENNETT: Yes, Your Honor.

THE COURT: There's some feedback.

MR. BENNETT: I've got an echo, so.

Okay. That should be good. No. I don't think we (Indiscernible).

THE COURT: I don't know if it's somebody in your room who has a -- I think it's somebody in your room who may have another speaker on.

MR. BENNETT: Why don't you turn the rest of them off?

Please turn the rest of them off.

If you have to turn the computers off, turn them off.

Okay. Your Honor, can you hear me?

THE COURT: I can. Thank you.

MR. BENNETT: Your Honor, can you hear me?

THE COURT: Yes. Yes, I can.

I guess the question is if you can hear me.

MR. BENNETT: I can hear you now, too. Okay.

THE COURT: Okay.

MR. BENNETT: Thank you, Your Honor.

I have two things I would like to raise with you at the beginning of the hearing. Your Honor is right. The first is the venue motion, and the second is I would like to make a statement briefly in response to the representations of counsel that you've just heard.

So first, if one of my colleagues who can put up a -- take the slides for a second. Can you put up a slide?

And I'd like to start with Slide Number 10.

THE COURT: While we wait, I see a hand raised, Mr. Sandberg.

MR. BENNETT: That's the person seeking -- there he goes.

THE COURT: There we go, okay.

MR. BENNETT: And if you'd go to Slide 10, please.

Your Honor, my most important point for you is that this is not a venue motion based upon the lack of convenience in this Court or any other court. And, frankly, while I've not been before you, many of my colleagues have and think this is a great place to have a Chapter 11 case. But, in fact, in this case, there is not valid venue.

And you don't have to take my word for it. When we turn the page, we are going to see that the debtors' own filing demonstrate that their venue subsidiary does not have venue in New Jersey.

So if we can go to the next slide, please.

This is a copy of the relevant part of the petition. You may have it as well. And you can see that this is MCC Norwood LLC. It was the only case filed that had venue allegations, other than a request to be recognized as an affiliate. The debtors' address is stated there. Principal place of business in Atlanta, Georgia.

And to the right, you will see the section that says

location -- to the right and a little bit down -- location of principal assets if different from the principal place of business, and that field has been left blank.

The only other place we need to look -- let's go to the next slide, please -- is where MCC Norwood is incorporated. MCC Norwood LLC is incorporated in Ohio. So it is not incorporated in New Jersey. So we have a principal place of business in Atlanta. According to this, incorporation in Ohio. And no principal assets disclosed as being in a location different than Atlanta.

Now, we didn't stop there. We looked carefully through the debtors' papers and noticed that they've recently opened some bank accounts in New Jersey. But we also have information that we received in due diligence and that the debtors have graciously allowed me to use today, but under very restrictive terms, that disclose that MCC Norwood LLC, which has been around for a long time, has assets. Which means during the 180 days before, or the 175 days before a bank account was opened in New Jersey, the principal assets were not in New Jersey.

So when we don't have venue, I don't think this Court can do anything, without the consent of the parties, other than dismiss the case or transfer it to a case with proper venue. And I also want to point out that procedurally, right now, you have before you a petition that was signed by an officer of the

debtors under penalty of perjury, that was affirmed by local counsel, and if anyone is going to try to change those allegations today, we want, A, to cross examine any witnesses who purport to bring forth evidence, and then we need to make arrangements for you to view the documentation that shows that Norwood has assets other than some bank account that may have been opened to try to establish venue.

We know, and this is one of the reasons why we wanted the case to go forward on Monday when we would have more time and could be before you live. I know this is going to be very difficult, but the law is the law and this is important. This is one of the -- I've never seen a case before where it's been started with no valid venue, and it has to be remedied. It has to be remedied now.

THE COURT: All right. And did you want to make -- you had another statement?

MR. BENNETT: Your Honor, if we're going to proceed, in addition to making clear my objection that we do anything more here today, why not talk about the case and talk about some of the things that weren't discussed by Mr. Serajeddini?

So if we can go back to my -- if you want to go there, I want to go back to my Slide Number 1.

THE COURT: If that's more of an opening on your end, I'll certainly give you the opportunity if we get to objections to the relief that are being sought. I saw there are other

participants. I'm going to ask if you would take down so I could see -- the PowerPoint, correct.

I thought I saw Mr. Sponder with a hand up.

MR. SPONDER: Yes, Your Honor. Good afternoon. This is Jeff Sponder from the Office of the United States Trustee.

Your Honor, the United States Trustee has the same concern about venue, especially in light of the fact that all the orders, the first-day orders, in the preamble, Your Honor is asked to make a finding that venue is satisfied for purposes of Sections 1408 and 1409 of 28 U.S.C. So, Your Honor, we were going to ask to reserve our rights, but we saw that a motion has been filed already.

But we do have grave concerns over venue, reserve our rights and rights of others as well, Your Honor.

Thank you.

THE COURT: All right. Thank you, Mr. Sponder.

Mr. Cohen.

MR. COHEN: Good afternoon, Your Honor. It's really nice to see you this afternoon. Thank you for your time.

Didn't realize Mr. Bennett was going to launch into his argument, so apologies for maybe being a little delayed.

We are co-counsel to CD&R referenced by Mr. Serajeddini in his presentation. And I just wanted to take this opportunity to introduce our colleagues at Latham & Watkins, in particular, Mr. Schrock, who will handle all

argument today.

THE COURT: All right. Thank you, Mr. Cohen. Good to see you.

Welcome, Mr. Schrock. Good to see you.

MR. COOPER: Thanks very much, Your Honor.

THE COURT: And anything else at this point?

MR. SCHROCK: Nothing further from me, Your Honor. We just wanted to introduce ourselves from Latham & Watkins. I've also got my colleagues with me, just very briefly. Candace Arthur, Ryan Dahl will be with me here today also handling argument. And we are very pleased to be before you. We're looking forward to moving these cases forward. We are one of the plan sponsors, and as Mr. Serajeddini mentioned, the largest creditor of these estates.

So, again, Your Honor, pleasure to be before you.

THE COURT: All right. Thank you, Mr. Schrock.

Counsel from Kramer, I believe.

MS. SADIGHI: Good afternoon, Your Honor. Sheila Sadighi with my colleague, Frank Catalina, of Rolnick Kramer Sadighi.

THE COURT: Rolnick Kramer, yes.

MS. SADIGHI: We are here with our co-counsel, Mark Stancil, and (audio skip) of Willkie Farr & Gallagher on behalf of the Excluded First Lien Lenders. That is the other group that has put in an objection, Your Honor, that's filed at

Docket 75, their preliminary objection to the debtor's DIP motion.

And Mr. DiPompeo, I believe, would like to join also with respect to the argument on venue that Mr. Bennett has raised. So, with Your Honor's permission, his and Mr. Stancil's pro hoc vice motions have been filed.

We appreciate, Your Honor, hearing them today.

THE COURT: All right. And needless to say, I will be going back to debtors' counsel, obviously, as a reply and in response to these arguments. But let me hear from you.

Welcome, Mr. DiPompeo.

MR. DiPOMPEO: Thank you, Your Honor. Christopher DiPompeo of Willkie Farr & Gallagher for the Excluded First Lien Lenders.

And, Your Honor, we join Jones Day's motion to dismiss or transfer venue. We share the same concerns. We also think, Your Honor, it is early in this case and it's time to deal with this issue now.

There's no prejudice, we think, from resolving these issues now. And we also think that it's very important that as this case gets started, the court that ultimately will be dealing with these issues be the court that resolves the first-day hearing.

THE COURT: All right. Fair enough. Thank you.

All right. Mr. Serajeddini.

MR. SERAJEDDINI: Yes.

THE COURT: Apologize. You're all making my pronunciation test today.

MR. SERAJEDDINI: Thank you, Your Honor.

So, Your Honor, Mr. Bennett obviously raised his concerns minutes before the hearing. That being said, the basis for venue is valid in this case.

MCC Norwood, the entity that he mentioned, has only one asset of any value, and that is two bank accounts that are held at ConnectOne Bank, which is a bank located in New Jersey. And those banks are funded with cash and also are the banks that we expect to use as our adequate assurance account for the purpose of the utility motion in these cases.

We're happy to put on testimony to that effect from Mr. Koza, Your Honor, if it would be helpful. But on that basis alone, we believe we've met the principal assets test. And if parties want to continue due diligence the United States Trustee said, or reserve rights vis-a-vis any venue issues until a final hearing, as well, we're happy to do it as well so that these issues can be fully fleshed out to the extent there are concerns.

THE COURT: All right. Thank you, Counsel.

Mr. Bennett?

MR. BENNETT: Your Honor, I appreciate the effort to add representations of counsel to a record that already

includes sworn filed statements. That's not adequate. It's not appropriate. And I think we need to hear testimony, and I think Your Honor has to see exhibits.

Remember the test is not whether there is an asset of the debtor in the jurisdiction. It's whether the principal assets within the greater portion of the preceding 180 days were in this district. Mr. Serajeddini just represented that there are no assets of this company. That's not true by their own documents.

We have to establish a factual record here. I want to establish a factual record here. This is an issue that will absolutely be appealed.

THE COURT: All right. Thank you.

Appellate intent aside, we have a Chapter 11 that's been initiated. We're not going to stop and start it at this point based on this record. And there's a limited opportunity this afternoon to undertake critical first-day matters that go to the viability of a reorganization and the viability of an entity, the lack of which won't assist anyone.

Reserving all rights to pursue this down the road, there's not enough on this record today in front of me, and I understand there's a request to explore it further. But on this record today, to overcome the presumption that's recognized in our circuit, Third Circuit, in favor of the debtors' selection of venue, we're going to move forward with

this case, reserving rights, and the parties can undertake discovery, and we can, as part of the next hearing date, continue it.

I don't see timing as critical as those who have argued this afternoon that it has to be decided at this juncture. The relief, whether this Court is granting first-day relief or it's being done by a court 62 miles to the south of me, it doesn't help anyone if we're going to have a start and stop process. There's ample time to consider where this case should be heard. It's starting here. It may end here. Or it may end in another courthouse.

But for purposes of critical first-day matters, we're going to move forward today, reserving all rights, both Mr. Bennett, your client, and the other objecting creditors, and the U.S. Trustee, to further explore the issue. But with the limited time we have available and the critical issues that are in front of us, I intend to proceed.

You still have, Mr. Bennett, your hand?

MR. BENNETT: Your Honor, I just wanted to point out that the presumption that you noted exists with respect to cases filed in a valid venue. And the only material before you is their petition. And their petition reveals this is not a valid venue. That is your circumstance. It's unusual, I admit and agree. But under those circumstances, we will proceed if you order us to, but we object to any orders that are entered

here.

THE COURT: Objections noted.

Let's proceed, as I said, on the reservation of all rights. Mr. Serajeddini --

MR. SERAJEDDINI: Thank you.

THE COURT: -- I think you should, as part of direct examination, and it doesn't end today, amplify the record as appropriate.

MR. SERAJEDDINI: Absolutely, Your Honor. We appreciate it.

So turning to the agenda then, the first matter is the debtors' motion for joint administration at Docket Number 3. As Your Honor knows, we are requesting joint administration of the debtors' 56 cases under the lead Case Number 26-10910, captioned In re Multi-Color Corporations.

Absent any questions, we request entry of the proposed form of order.

THE COURT: All right.

Any objections? And please, we'll note a standing objection, Mr. Bennett and others, to any orders that are entered. I'm cognizant of that, based on the venue concerns.

But for purposes of today, are there any other objections?

MR. SPONDER: Your Honor, this is Jeff Sponder from the Office of the United States Trustee.

Your Honor, in all of these orders, as I said earlier, there is a finding that Your Honor is making that venue is proper. Based on what we've already discussed, I don't think it's appropriate to be in these interim orders and would suggest that the language just be changed to the debtors assert that venue is proper and we go from there.

If Your Honor decides that venue is appropriate, then I'm sure the final orders can say that. But at this time, I don't think it's appropriate for Your Honor to make such a finding with the venue issue still out there.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Sponder.

Mr. Serajeddini.

MR. SERAJEDDINI: Yeah. Your Honor, if I may, that's customary language. It's included in all first-day orders. The purpose of the relief today is to provide certainty to our various stakeholders and preserve the value of this company and pay critical claims. We don't think it would be helpful to any of those stakeholders to have qualifications in the first-day order as to the jurisdiction and venue of the Court.

We've stated on the record, and we're happy to follow up with an order to this effect, that the parties' rights vis-a-vis venue are reserved on all fronts. But we do need parties to know that if they're receiving payment under a first-day order, that that is with finality. So I would

request that we include the language, but reserve parties' rights on a final basis.

THE COURT: Thank you.

I'm going to overrule the objection. Until venue is changed, venue remains here in New Jersey, in this district, subject to further consideration and argument, consistent with the reservation of rights. The findings that I'm making today are like all findings. They are, as of today. They can be subject to change at a later point in time. But the findings will be for purposes of the entry of the orders today and limited to today's orders only, which are in order.

MR. SPONDER: Thank you, Your Honor. This is Jeff Sponder from the office of the United States Trustee.

And just to try and speed things up for Your Honor, the United States Trustee objections or red lines and whatnot, all of our issues have been resolved on all of the motions, with the exception of the DIP motion and DIP order. And my colleague, Jane Leamy, who's also on the Zoom call, she'll address that when we get to that point.

But if Your Honor doesn't want to keep going back and forth and asking me, they've already incorporated all of our requested revisions in the orders that were submitted to the Court.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Sponder. We've learned,

haven't we? Much easier. All right.

MR. SERAJEDDINI: All right.

THE COURT: Thank you.

MR. SERAJEDDINI: Thank you, Your Honor.

THE COURT: So we'll work on the assumption that at least from the U.S. Trustee's perspective, their language has been taken into consideration. I will ask all other counsel who have issues to use the raise-hand function. I won't go back to anyone unless I hear. And let's ensure, Mr. Serajeddini, that the -- I'm going to get better at the name -- that we have the proper reservation of rights language in all of these orders with respect to the venue issue.

MR. SERAJEDDINI: Understood, Your Honor. We can address that.

THE COURT: All right.

MR. SERAJEDDINI: So with that caveat, Your Honor, the next item on the agenda is the debtors' application for designation of a complex Chapter 11 case, Your Honor, as set forth --

THE COURT: But just for the record -- I'm sorry, the joint administration motion is granted. And we're going to mark all of these "order to be submitted" and essentially when they're all prepared, forward them down to chambers for entry.

MR. SERAJEDDINI: Understood.

THE COURT: Thank you.

And I'll also ask, given that it's Friday and it's ten to 2:00, you're going to have to tell us as we go along what's critical going forward.

MR. SERAJEDDINI: Understood, Your Honor. We will stage the hearing in that way.

THE COURT: All right. Thank you.

MR. SERAJEDDINI: So in terms of Docket Number 4, which is the application for designation as a complex Chapter 11, Your Honor, as set forth in the application, these cases check all boxes for a complex case. And, therefore, we request entry of the order designating these cases as complex cases.

THE COURT: All right.

Any objections?

(No audible response)

THE COURT: Motion granted.

MR. SERAJEDDINI: Okay, Your Honor. Next, we'll turn to Agenda Number 17, which is the debtors DIP motion. This is the basis on which we're going to make the payments that we are seeking today, so it is critical. It's filed at Docket Number 26. We filed a proposed form of order at Docket Number 36, as well as a related DIP credit agreement and no purchase agreement at Docket Number 48.

We filed a revised form of order at Docket Number 65, along with an attached red line. There are minor changes we

believe, Your Honor, to address the landlord's concern regarding the scope of DIP collateral, as well as some minor cleanup.

As Mr. Sponder noted, we've worked with the Office of the United States Trustee and we have their form of comments in there. And the only pending objection would be the one he reserved on vis-a-vis the roll-up and that of the Ad Hoc Unsecured Group, as well as potentially the Willkie Group that were filed momentarily before this hearing.

So, before we turn to the evidence for the motion, and we do intend to put on testimony today, I just want to give a little bit of introductory background as to the collateral package and the capital structure. I covered it briefly in my intro, but just to clarify.

Here we have an ABL that is effectively secured on ABL collateral, which would be the typical ABL collateral of inventory and receivables. It has junior liens on non-ABL collateral pursuant to an intercreditor. Separately, there are cash flow loans, as well as other non-ABL obligations that are secured, and those are generally the obligations held by the secured lenders we refer to in the case, that are first on non-ABL collateral and second on ABL collateral.

The ABL also has, and this is a unique feature and relates to the issue of unencumbered assets, which you may hear about. Over the course of this case, a lien on the assets are

guaranteed from certain first-tier foreign subsidiaries, as well. So, it structurally primes vis-a-vis certain foreign subsidiaries, as well.

Taking a step back, Your Honor, you'll have read in the pleadings, and you'll hear today from Mr. Koza, the debtors are in urgent need of new money financing. The DIP that's before the Court is the product of extensive, hard-fought negotiations between the company, Secured Ad Hoc Group, and CD&R. And those DIP discussions were coupled with value-maximizing transactions that rely on them in order to be implemented. And the DIP is the only actionable proposal we have that provides that viable path to emergence, which is critical to our business.

The DIP itself provides for a little over 650 million. I mentioned the components earlier, it's 250 million of new money financing, 150 million on an interim basis for today, a 250 million roll-up, which reflects a one-to-one ratio that's common and seen in many other cases, a backstop premium of 3 percent, which relates to roughly 7.5 million on account of the new money, as well as incremental DIP loans, which won't be issued now, they're issued at emergence for the purposes of implementation. They don't carry economics in the case.

Your Honor, the DIP is obviously critical to our business to provide a clear, strong message to our customers, vendors, employees, and contract counter parties that we have

the commitment and support of our lenders, as well as our new money plan sponsor, who intend to inject significant capital in the case. We need the DIP to meet our customers' needs, to compensate our employees, to pay our vendors, and otherwise manage our business.

And as we'll lay out in the evidence, Your Honor, we believe the DIP terms are fair and reasonable, they're customary, they'll maximize the value of the debtors, and they're a sound exercise of the debtors' business judgment. And as I said earlier, they're the best and only actionable source of financing that we have. And without the DIP financing approval today, the debtors will be immediately and irreparably harmed.

And in terms of the structural points of the DIP, Your Honor, the DIP is proposed to be secured by a first lien security interest on the collateral that is supporting the non-ABL secured debt, and in a priming position solely with respect to that debt. So the ABL debt is not being primed on any collateral in which it sits first in line.

And the DIP facility also includes customary junior liens on previously unencumbered assets, and, or sorry, assets that are collateral but have senior liens on them, and separately, customary first liens on unencumbered assets. Any liens on proceeds of avoidance actions are subject to final order as is customary.

There are releases of pre-petition secured parties under the DIP, but that's subject to a final order as well as the challenge period, which in terms of the timing of the challenge period, that's 75 days after entry of the interim order for the UCC and other parties-in-interest, and that incorporates the U.S. Trustee's comments.

We also have customary waivers marshaling inequities of the case that are subject to a final order. We also have terms contained within the DIP order on consensual use of cash collateral with our ABL lenders and non-ABL secured parties. And in connection with the DIP facility, we're seeking to provide those parties with customary adequate protection, including super-priority claims, replacement liens, and payment of professional fees.

With the ABL group, Your Honor, we have a 75-basis point consent fee, that's a consent fee, cash payment of default interest, and a true-up concept in the borrowing base that ensures that the ABL will be adequately protected on their collateral, as well as some other customary covenants as it relates to the ABL.

And last, Your Honor, the DIP is in the process of being syndicated and offered out to various potential secured parties that could be lenders and is being offered to all non-ABL secured lenders, subject to a 30 percent holdback, which is a subset of the loan that is being provided solely by

the parties that have effectively backstopped this DIP, which is customary and, again, was a term of the overall DIP facility.

And you'll hear about this in the testimony as well, but just to highlight it quickly, Evercore solicited alternative DIP proposals and we did not receive a single actionable alternative. Mr. Bennett noted in his pleadings that the Cross-Over Ad Hoc Group did provide a DIP proposal, but that DIP proposal, while it was larger in size, did not propose or even suggest or include or recommend a path to emergence that would be associated with that DIP proposal.

And from the company's perspective, and this was discussed by the special Committee as well, Your Honor, that DIP proposal would have led to an unclear message as to how we're getting out of bankruptcy and significant and serious degradation to the value of the business, and ultimately was not deemed to be superior in any way to the existing DIP financing.

So, as I mentioned, Your Honor, the DIP is supported by multiple declarations. The first is from Garrett Gabel, the company's Chief Financial Officer. The next is by Eric Koza of AlixPartners. And, finally, Brent Banks from Evercore.

So unless Your Honor has any further questions for me, I'll pass the virtual podium over to my partner, Mr. Goldfine, who will put on the testimony. And then we'll

come back and address the objections.

THE COURT: All right. Before we get there, Mr. Bennett?

MR. BENNETT: Your Honor, we'd like to invoke the rule and exclude the witnesses that aren't testifying from the testimony of each so that they don't hear each other's testimony.

THE COURT: I have no issue with that if we remove them until they're called upon to testify.

MR. BENNETT: And no one should have any communications with them about what happens in this courtroom?

THE COURT: I think that needs not be said, but I'm glad you said it. Thank you.

MR. McGUSHIN: Good afternoon, Your Honor. Casey McGushin from Kirkland & Ellis on behalf of the debtors. Can you hear me all right?

THE COURT: Yes, I can.

MR. McGUSHIN: And I will confess, we are not actually in the same room as our witnesses. We kept them in a separate room, but we will ensure that they do abide by the terms of the rule and none of the future witnesses are in a room that has a line to the Court.

THE COURT: Great. Thank you.

I'm sorry, can I have your last name again?

MR. McGUSHIN: Sure. McGushin, M-C-G-U-S-H-I-N, Your

Honor.

THE COURT: Great. Thank you.

MR. McGUSHIN: And before getting to some live testimony, we do intend to move into evidence the declarations of the three declarants. And then cognizant of Your Honor's comments, we have very, very brief supplemental directs, first from Mr. Koza and then from Mr. Banks. And with respect to Mr. Gabel, if there is any cross examination of him, although we don't intend to put him on for any supplemental direct, he will be available after Mr. Banks and Mr. Koza testify if that is acceptable to Your Honor.

THE COURT: That's acceptable. Thank you.

MR. McGUSHIN: Okay. Then, at this point, I would move the declarations into evidence.

The first is the declaration of Mr. Garrett Gabel, the debtors' chief restructuring officer. That is at Docket Number 23.

The second is the declaration of Mr. Brent Banks from Evercore. That is at Docket Number 27.

And the third is the declaration of Mr. Koza from AlixPartners. And that is at Docket Number 28.

As I mentioned, all three, although not in the virtual courtroom at this moment, are all available today for cross examination.

THE COURT: All right.

Let's start with each of them.

Are there any objections to the declarations? Gabel, I'm sorry, has been marked as D-1, the declaration of Mr. Banks is D-2, and the declaration of Mr. Koza is D-3. Are there any objections to the declarations?

(No audible response)

THE COURT: All right. I see nothing and hear nothing, so we'll accept the declarations into evidence marked as I've indicated.

*(Debtors' Exhibits D-1, D-2, and D-3 admitted to evidence)

MR. McGUSHIN: Thank you, Your Honor.

And at this point, the debtors would call Mr. Eric Koza to the stand for a brief supplemental direct.

THE COURT: All right.

Mr. Koza.

MR. McGUSHIN: I believe he's shifting from the room where they were listening to a room where he can testify on his own, Your Honor. So if we could just give him a brief moment to make that --

THE COURT: Yeah. I assume there'll be a little bit delayed if they're not part of this.

MR. McGUSHIN: Yes.

MR. KOZA: Here we go, can you see me, Your Honor?

THE COURT: Let's see, now I can. Thank you.

MR. KOZA: It says "Debtor Witness."

THE COURT: Yeah, now I can see you. Good afternoon, Mr. Koza. Let me --

MR. KOZA: How are you?

THE COURT: Fine. Thank you.

Let me have you raise your right hand.

ERIC KOZA, DEBTORS' WITNESS, SWORN

THE COURT: Is there anyone in the room with you?

THE WITNESS: There is not.

THE COURT: All right. And do you have anything in front of you apart from your declaration?

THE WITNESS: No, just my declaration.

THE COURT: All right. Then, let me allow your counsel to proceed.

MR. McGUSHIN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. McGUSHIN:

Q Good afternoon, Mr. Koza. Your declaration has already been admitted into evidence, so we're not going to go through any of your background.

But can you just remind the Court where you work and your current position, please?

A I'm the global co-leader of the turnaround restructuring practice at AlixPartners.

Q How long have you personally been working with the debtors?

A Since July of last year.

Q Can you tell us a little bit about sitting here today, the debtors' current liquidity position in terms of the liquidity available and the amounts that they have coming due for trade vendors and the like in the coming days?

A We have approximately $70 million available in the debtors. We have been running the business the last few weeks on fumes.

We have, you know, significant payment needs next week and over the next four weeks. To the extent that we don't receive the funds, we've got about, you know, I think it's $90 million worth of disbursements that are going out next week, operating disbursements. So we're at a point where, you know, obviously keeping the business in line, we have customers that are threatening not to ship, some not shipping, and creating stability right now is of the utmost importance for the business.

Q Just cutting to the bottom line, if the debtors do not receive interim financing, approximately how long can they continue to operate given the current cash available?

A We wouldn't make it next week.

Q Are you familiar with the DIP proposal that was provided to the debtors by what's referred to as either the Cross-Holder or the Cross-Over Group represented by Jones Day and Guggenheim?

A Yes, generally, I am.
Q And at a high level, how do the fees and costs available or proposed under that alternative DIP compare to the fees and costs under the DIP the debtors are here seeking approval of?
A The high level terms, interest rate, and other fees OID, are lower in the Jones Day, you know, DIP, vis-à-vis the DIP that we have now. However, important to note is, there is no clarity on path to exit with respect to that DIP. And as a result, you know, it could be significantly more expensive given the timing associated with a lack of a path and exit with respect to a Chapter 11.

MR. BENNETT: Objection to the second half of that answer which was non-responsive.

THE COURT: All right. I'm just -- I'm looking to see who made the objection.

MR. BENNETT: Mr. Bennett, Your Honor.

THE COURT: Oh, okay; sorry. Overruled, thank you.

Q Just to put a number on things, Mr. Koza, if we assume approximately a four-month case about how much would the debtors save in fees and interest under the alternative DIP as compared to the DIP in front of the Court today?
A I think it's somewhere around ten to 10-15 million dollars. But I think really important to note is our expectation is every month that these cases just simply we're probably going to be burning between 15 and 20 million dollars

in professional fees. So, that gets eaten up very quickly with extension of time.

Q And what is your --

MR. BENNETT: Objection to the second half of that answer which was also unresponsive.

THE COURT: Overruled. Thank you.

Q What is your expectation about what the overall costs of this -- these cases would be taking into account fees both for the DIP and professional fees under the DIP that the debtors are proposing versus the alternative DIP proposed by the Jones Day Group?

A It all depends on timing, right; our assumption in the DIP is we, we were expecting to be in and out very quickly, you know, in terms of these cases and that's -- that's how we developed the key assumptions here.

We sized it for four months. To the extent that it's extended beyond that time frame, it would be significantly more expensive. Let's just pick a number; you know, we've run some math and in incremental six months, you know, would be hundreds of millions dollars more.

Q And putting aside the direct costs of the case in terms of fees and interest, what is your expectation about the -- what the impact would be on the performance of the business if the alternative DIP were taken by the debtors?

A Yeah. The business plan was developed with the

understanding that there would a be a quick consensual resolution of the capital structure so, you know, we would be able to get out with very positive messaging to our customers, to our employees, to our vendors, you know, and in a way that was, you know, positive around not only the capital structure resolution but also, you know, some of the fragility that we see in the business today in terms of pressure from customers and vendors.

So, you know, I think, you know, as we think about the business and getting to your question, you know, all of our customers, you know -- well, many of our customers -- I can't say all. Many of our customers have alternative means of supply, so -- and many of them particularly the large ones have second and third sourcing so they don't have to do business with us and many don't have minimum commitment.

So, there are alternatives where they can go and do business. In addition, our vendors, they're not obligated to provide product to us and raw materials to us. These are things that, you know, they're doing, you know, as a result of our business relationship.

And I think, you know, from our perspective, AlixPartners' perspective, my perspective, you know, to the extent that we don't have a clear path of exit and there is extended time frame here, the business plan would look materially different to the negative and not to the positive.

Q Thank you.

MR. MCGUSHIN: That's all I had at this time, Your Honor.

THE COURT: All right, thank you.

Mr. Bennett?

MR. MCGUSHIN: And so, I apologize, Your Honor, but I'm going to remain standing just in the case of objections because where I was sitting there's not a camera. So, I apologize for that.

THE COURT: Yeah, that's fine. That's fine.

MR. BENNETT: No objection here either, Your Honor.

THE COURT: And, Mr. Bennett, you don't need to stand so, we're set.

MR. BENNETT: Thank you, Your Honor. Actually, I have a podium here if we needed to.

CROSS-EXAMINATION

BY MR. BENNETT:

Q Okay. Mr. Koza, first of all, did you participate in the process of soliciting bids for DIP financing?

A I was not involved in that process. I can tell you that my team supported some of the work product that was used as part of those discussions and in some of the diligence related to the process.

Q Okay. And -- but you did testify that you did some work to calculate the cost of both the DIP provided by the secured

creditors and the DIP offered by the Cross-Holder Group, correct?

A I did.

Q And when you did that work, did you make any calculation of the value to the roll-up recipients of the roll-up?

A The work I did was in terms of understanding the value to the incremental funding need related to the difference between the two DIP proposals.

Q So, you --

A That was the work I did.

Q -- okay. So, I want -- I'm going to have to zero in on this.

A Sure.

Q Did you do any work to calculate the value of the roll-up to the recipients of the roll-up, yes or no?

A I did not.

Q Okay. Did you do any work to ascertain the value of the roll-up -- excuse me, the cost of the roll-up to unsecured creditors?

A I did not.

Q You mentioned studying the DIP terms. Is it not the case that the plan of reorganization provides for the payment in full of the DIP loan in cash on the effective date of the plan?

A Can you repeat the question? Sorry.

Q Well, let me start with a more basic question. Do you

know how the DIP loan is to be repaid under the plan of reorganization that has been filed in this case?

A Yes.

Q How is the DIP loan to be repaid?

A It's going to -- the DIP loan will be part of the -- rolled into an exit.

Q Well, actually, why don't we take a look at the actual provision?

MR. BENNETT: Just give us a second, Your Honor. We have -- it's a little tough to get completely organized, but we'll put on the screen the relevant portion of the plan of reorganization maybe --

A Sure.

Q -- together. Okay.

MR. BENNETT: Could you put it on the screen, please?

Q Okay. I am looking, if everyone can see, under the DIP claims label, there's one paragraph that's pretty short, then there's another paragraph that's longer, and I'm going to go down, you know, basically three lines.

And why don't I let you read it to yourself? I'm really looking at the phrase in one little I there. And my question to you is going to be, does this refresh your recollection as to exactly how the DIP loan is to be repaid?

A No, it does not.

Q So, you did not know that the DIP loan would be paid in full, in cash, to the extent of the new money position?

A No, I know the DIP loan is being paid off. That's a requirement of exit.

Q Okay. And it's paid in cash, correct?

A Correct. That's what I see here.

Q Okay. Now, if the DIP loan is to be advanced in cash and paid in cash, how is it that the selection of this DIP loan as opposed to another -- the DIP loan proposed by the debtors, as opposed to another DIP loan, would affect the plan?

A I'm not sure what your question is. I apologize.

Q Let me repeat it one more time.

A Sure.

Q And if you're sure you can't answer it, that's fine with me. If the DIP loan is going to be advanced in cash, and if the DIP loan would be repaid in cash, how is it that the choice of a DIP loan would affect a plan?

A My focus has been on what the funding need of the business is. What I referred to in terms of comparison of the two DIPs was focused on that funding need as well as the cost of that, cost of the DIP.

MR. BENNETT: I have no further questions.

THE COURT: Thank you, Mr. Bennett.

Any redirect?

MR. MCGUSHIN: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. MCGUSHIN:

Q Mr. Koza, you were asked a question on cross about whether you had done any work to assess the impact on unsecured creditors of the roll-up. Do you remember that?

A Yes.

Q Have you and your -- I just want to clarify.

A Of the roll-up or -- yeah.

Q Of the roll-up. Have you and your team done any work?

A Yes. Sorry. Go ahead.

Q Okay. No problem. Have you and your team done any work analyzing the unencumbered assets of the debtors and how that might be impacted by the DIP or the roll-up?

MR. BENNETT: Objection, beyond the scope of cross.

THE COURT: I'll sustain if you want to refine the question.

MR. MCGUSHIN: If that's beyond the scope of cross, I'm quite fine to cease the redirect, Your Honor. Thank you. I don't have any further questions.

THE COURT: All right. Thank you, Mr. Koza, for your testimony. You're excused, at least as of the moment.

MR. KOZA: Thank you.

(Witness Excused)

MR. GREENBLATT: Good afternoon, Your Honor. Josh Greenblatt, Kirkland & Ellis for the debtors. Can you hear me?

THE COURT: Yes, I can. Good afternoon.

MR. GREENBLATT: Thank you, Your Honor.

At this point, we would call Mr. Banks for a short supplemental direct, again, mindful of Your Honor's preference for us to be brief.

THE COURT: All right. Thank you.

And we'll wait for Mr. Banks to appear. There you are.

MR. BANKS: Good afternoon.

THE COURT: Good afternoon, Mr. Banks. How are you?

MR. BANKS: Good, thank you.

THE COURT: All right.

MR. BANKS: Good to see you, Your Honor.

THE COURT: Let me have you please raise your right hand. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth under penalty of perjury?

MR. BANKS: I do.

THE COURT: All right. Is there anyone sitting in the room with you?

THE WITNESS: No, there's not.

THE COURT: And do you have anything in front of you apart from possibly your declaration filed in this case?

THE WITNESS: Just my declaration.

THE COURT: All right, that declaration has come in as D2.

Mr. Greenblatt, you may examine.

MR. GREENBLATT: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. GREENBLATT:

Q Good afternoon, Mr. Banks. Your declaration is in evidence. So, could you just please remind us of your job title and where you work?

A Right; good afternoon. My name is Brent Banks. I'm a senior managing director at Evercore, where I work in the restructuring group.

Q And what is Evercore's role in these Chapter 11 cases, Mr. Banks?

A We are the proposed investment banker for Multi-Color.

Q When was Evercore first engaged by Multi-Color, the debtors?

A We were engaged by the company in October of 2025.

Q And very broadly, what was Evercore's focus at the outset of its engagement by the debtors?

A We were looking to explore capital structure alternatives for the company to, amongst other things, address the company's upcoming maturities, deal with potential liquidity shortfall in early 2026, and attempt to de-lever the balance sheet. We also were charged with leading negotiations with the various creditor groups.

Q Thank you. On that first topic, how many parties did

Evercore originally reach out to to explore capital structure solutions or financing options?

A Sure. So, we in total probably reached out to nine different groups. On the one hand, we had a group of ABL banks. We reached out to the Secured Group, represented by Milbank.

We reached out to the Cross-Holder Group, represented by Jones Day. We also reached out to six sophisticated third-party investors.

Q Of all the parties you named, were there any particular constituencies who ultimately submitted proposals that the debtors deemed worthy of pursuing?

A Yes.

Q And who were those two constituencies?

A Ultimately, the Secured Group put forward a, you know, what I would consider a traditional restructuring proposal that we're talking about today.

The Cross-Holder Group, represented by Jones Day, put forward an out-of-court financing transaction that, you know, I think were, you know, the two actionable proposals we led with. The third-party proposals also -- third-party parties put forward proposals as well.

Q With respect -- thank you. With respect to the Cross-Holder Group, the Jones Day group, how would you describe Evercore's engagement with advisors to the Cross-Holder Group?

A Really commenced in October --

UNIDENTIFIED SPEAKER: (Indiscernible).

THE COURT: Why don't we just take a second. Continue, please.

A Sure. So, the engagement with the Cross-Holder Group, you know, commenced with organization of the Cross-Holder Group in October, into November. You know, we did intensive diligence with both Guggenheim and Jones Day.

You know, coming into the Thanksgiving holiday, we began exchanging proposals on a, you know, non-guarantor restricted subsidiary financing that, you know, proceeded throughout, you know, December and January with very active negotiations through those, you know, subsequent months.

Q And with respect to the Cross-Holder Group and the Secured Group, did the debtors ultimately select to pursue a path with one of those groups over another?

A Yes. I mean, we were on a very similar timeline with the Secured Group, you know, proceeding with diligence, proceeding with negotiations throughout the course of December into January, same sort of negotiation. Ultimately, the Special Committee selected the proposal put forward by the Secured Group.

Q And that is the, is that the transaction that's reflected in the RSA?

A That is correct.

Q Okay. And before we turn to that and we'll be brief, can you very briefly describe why the company did not select the Cross-Holder Group proposal?

A Look, I think the company proceeded with both proposals up till the very end. You know, I think we were very close but not final on the Cross-Holder Group proposal. But as the company evaluated, you know, the Secured proposal versus the Unsecured proposal, ultimately, the Special Committee determined that the Secured proposal was superior, you know, given the level of de-levering, you know, of over $3.9 billion of de-levering, the seven years of maturity runway, you know, the effect of having 550 million of liquidity at emergence.

You know, contrast that with the, you know, Cross-Holder Group proposal that, while, again, being very close to being actionable, provided, you know, less de-levering, approximately 450 million, runway through the end of 2028 and not necessarily a comprehensive solution.

Q Coming back to the negotiations with the secured lenders, how were they -- can you describe the negotiations with the secured lenders leading up to the RSA?

A Yeah. So, look, they were -- you know, long. I think we commenced in October with their advisor group. It was a very intensive diligence process, I think, throughout the course of December and January on a very similar path as the Cross-Holder Group; you know, we were negotiating on a nearly daily basis,

you know, hard-fought to arrive at the terms that we have today.

Q And is there a DIP facility that's connected to the RSA?

A There is.

Q At a very high level, can you just please remind the Court of the terms of the DIP facility?

A Sure. There's a $250 million new money component of the DIP. It's backstopped by the plan sponsors and the, you know, Ad Hoc Group of Secured Creditors. You know, the facility will have a one-to-one roll-up. The facility itself is available, you know, to -- 70 percent of it's available to all lenders.

There is a 30 percent hold-back. The interest rate, Mr. Serajeddini went through, but SOFR plus 675, three points of backstop fees, two points of fees -- two points of OID, excuse me. There's no exit fee, and there's a ten-month maturity date or ten-month duration to the DIP.

Q And based on Evercore's work here, do you believe that each of these terms are consistent with market ranges?

A I do.

Q Did Evercore compare these terms to other comparable DIPs in the market in other cases?

A We did.

Q Very broadly, can you describe the types of DIPs that you used for this comparison?

A We looked at funded term-loan DIPs over the past several

years of similar size.
Q And again, what was your conclusion from these comparisons?
A That the terms of the DIP facility were within the market.
Q Okay. Did you and Evercore ultimately recommend to the debtors that they pursue the DIP contained in the RSA?
A We did.
Q And what were your reasons for recommending this?
A We believe that this, you know, provides the best path, a swift path for the company to emerge from this bankruptcy proceeding. So, therefore, you know, the DIP, the RSA, provided great certainty for the company in an uncertain period for itself.
Q And why do you believe this DIP provides a clear exit path?
A Because it's supported by the Secure Creditors -- well, over 72 percent of the Secure Creditors.
Q And now, briefly, on the Cross-Holder DIP proposal, have you reviewed the terms of the Cross-Holder proposal from Sunday, January 25th?
A I have.
Q In a vacuum, how do these terms compare to the terms in the secured lenders DIP that you just described?
A In a vacuum, you know, there's a larger amount, 350 to 500. The interest rate is lower, and the fees are lower.

Q Why did you nonetheless, or Evercore nonetheless, advise the debtors to proceed with the secured lenders DIP facility?

A Just given the uncertainty, there was not a clear path to exit with the unsecured DIP facility. It lacked the support of the secure creditors, and therefore, you know, we viewed it as inactionable.

Q When you reviewed the Cross-Holder lenders DIP, what did Evercore do with it -- strike that. Did you take the Cross-Holder lender's DIP proposal to the secured lenders?

A We did.

Q And what did you do with it?

A Well, specifically, we spoke with the secured lender advisors and discussed, you know, the terms of the DIP, the existence of the competing DIP proposal. We requested that they improve upon their terms of the financing.

We asked to solicit to see if they would support the alternative DIP financing. They were unwilling to support the alternative DIP, and they were unwilling to improve upon the terms.

Q All right. A few final questions, Mr. Banks. Did Evercore engage in a marketing process with respect to the secured lenders DIP?

A We did.

Q Can you describe that marketing process briefly?

A Yeah. So I, you know, starting of Friday of last week, so

January 23rd, we began to make outbound calls to the same six sophisticated third-party investors who had been, you know, working with the company over the past several months on the NGRS financing, alerting them to the fact that we may be requesting a DIP financing in the coming days.

We were, you know, a little bit nervous, given we had not yet signed an RSA, that this would get out into the marketplace and cause harm to the business, and therefore, you know, did not send DIP marketing materials until Saturday, you know, had discussions with the third-party lenders about the collateral package, which was smaller but the same, you know, as was otherwise proposed in the NGRS financing months ago.

And then, you know, over the course of Sunday and Monday, received responses from the prospective lenders that they were unwilling to provide a competing DIP proposal.

Q So, just to be clear, did you receive any alternative DIPs from the third parties that you reached out to during this marketing process?

A We did not.

Q And do you believe there was a sufficient amount of time for Evercore to conduct the marketing process that you described?

A Given the extensive diligence that these parties did in November and December, I believe that there was sufficient time.

Q Last question, Mr. Banks. Do you believe it is in the debtor's best interest to proceed with the secure lenders' DIP facility in these cases?

A I do.

MR. GREENBLATT: No more questions. Thank you.

THE COURT: Thank you, Mr. Banks.

Let's hear from Mr. Bennett.

MR. BENNETT: Thank you, Your Honor. This will be somewhat longer.

CROSS-EXAMINATION

BY MR. BENNETT:

Q Mr. Banks, I want to start briefly just taking a quick look at your declaration you have in front of you, do you not?

A I do.

Q All right. Could you go all the way back to page 15, paragraph 32?

A I'm here.

Q And I just want to confirm that it's accurate that some of your reasons are based upon professional opinion. Do you see that in the first line?

A I do.

Q Okay. Is that correct?

A I believe it is.

Q Okay. Second, just before we move on, you testified several times about extensive due diligence information that

was provided to the parties, did you not?
A I did.
Q And some of that extensive due diligence information was provided to the Cross-Holder Group?
A It was.
Q All right. And you understand that when I use the word crossover work, you're referring to -- I'm referring to the Canyon and others in that group, correct?
A I understand. Correct.
Q Okay. All right. And so, all the due diligence information that you gave to people, was it reliable?

A To the best of my understanding, yes.
Q Look, did you find any inaccuracies in any of the due diligence material you reviewed?
A Sitting here today, to my recollection, not that I can think of.
Q Okay. And the trial balance for all of the entities at multiple dates, that was one of the important due diligence disclosures, wasn't it, Sir?
A I believe a trial balance was disclosed, yes. So, to say it was provided in diligence, I think that's fair.
Q Okay. And were there any inaccuracies in that document at all, to the best of your knowledge?
A I have not reviewed that specific document in detail, so

hard for me to say.
Q Did any person on your staff transmit to you any indication that anything in the trial balance documents were inaccurate in any way?
A I don't know.
Q Well, so I'm going to ask the question again.
A Yeah.
Q Can you remember any occasion where any person on your team, any of the people at Evercore, communicated to you that anything in the trial balance reports was inaccurate in any way?
A I do not recall receiving that information or that notification.
Q So, when you collected information from the company, did you ask for the company to make sure that the information that you gave you was accurate and complete in all respects?
A I mean, I would describe it, we worked closely with the Alix team and with the company to provide diligence information that we believe to be accurate.
Q Okay. So did anyone at the company at any time communicate to you that there were any inaccuracies in any of the trial balance reports?
A I do not recall ever being told there was inaccuracies.
Q And same question with respect to Alix, Sir?
A I do not recall.

Q Okay. Okay. In your declaration there is information about Evercore's experience, but I want to spend a few minutes talking about yours.

A Sure.

Q Will you agree with me that during your entire career you've been analyzing and understanding financial statements?

A That's correct, yes.

Q And you've been analyzing and understanding other kinds of financial reports?

A Sure. That's correct.

Q And you've been analyzing and understanding spreadsheets?

A Sure. Yeah, correct.

Q And even that you've been spending a lot of time in the insolvency and reorganization space, will you agree with me that we can consider you an expert at calculating recoveries on claims?

A It's up to the Court to decide, but yes, I'm familiar with recoveries and the calculations generally.

Q Okay. Are you comfortable reviewing credit documentation?

A Often I work with attorneys on credit documents, but I'm, you know, I have a good general awareness.

Q Did you review any credit documentation since you became involved with Multi-Color?

A In some capacity, yes.

Q Okay. And these were related to Multi-Color, not to other

people, correct?
A Correct.
Q And you signed your declaration, correct?
A I did.
Q Okay. Did you write it?
A I worked with the assistance of counsel to prepare it.
Q Did you prepare the initial draft?
A I did not.
Q Okay. Did you make any changes to the draft that was given to you?
A Yes.
Q What changes did you make?
A I do not recall sitting here today, but a variety of changes, you know, related to the process, et cetera.
Q Changes related to the process; do you remember any changes related to the process that you made?
A Well, just to provide more detail on what we've done, provide more detail on my professional experience, provide more detail as to how, you know, the last 12 months unfolded.
Q Okay. Are you aware that a disclosure statement was sent to creditors of Multi-Color on Tuesday, January 28, 2026?
A I am aware, yes.
Q And did you review the disclosure statement before it was transmitted to creditors?
A I did, yes.

Q And was Evercore the source of the information that deals with anticipated recoveries to creditors in the disclosure statement?

A We worked with, you know, the AlixPartners team and the company to help pull together that information.

Q Okay. When you reviewed the disclosure statement, did you see any inaccuracies in it?

A Sitting here today, not that I'm aware of.

Q Okay. And you testified extensively that you were involved in the process for obtaining a DIP loan for Multi-Color, correct?

A That's correct.

Q Okay. And did I hear you testify that that process started with solicitations on January 23rd?

A That is correct.

Q Okay. And from now on, if I use just January 23rd, you know I'm referring to 2026, correct?

A Yes, last Friday, yup.

Q Just to make it a little quicker. When was the first term sheet relating to a DIP loan for Multi-Color prepared?

A I don't recall, but I believe it was in January, earlier in the month.

Q Earlier in the month, meaning the first week in January, the second week in January, or the third week in January?

A I don't recall the exact date or the exact week.

Q Okay. Do you recall when the first time you saw a paper showing any terms for a DIP loan for Multi-Color?
A Well, we began discussing the DIP at some point early in January.
Q All right.
A Yeah, go ahead.
Q Did the company or a creditor representative prepare the first term sheet you saw relating to a DIP loan for Multi-Color?
A You know, it was left unaddressed for some period of time. I believe the first proposal was made by the Secured Group of creditors in our back and forth.
Q And when did that proposal arrive on your doorstep?
A I don't recall. Sometime in January.
Q Was it before January 23rd?
A It was.
Q Was it a week before January 23rd?
A I don't recall exactly when the DIP terms were negotiated and when we first saw a DIP proposal as part of the broader transaction term sheet.
Q Okay. Isn't it true that the Cross-Holder Ad Hoc Group sent Evercore a note asking to be included in a debtor's DIP marketing process?
A That is correct.
Q Do you know when the Cross-Holder Ad Hoc Group indicated

its interest in providing a DIP loan to Multi-Color?

A I believe that was last Friday, the 23rd.

Q Okay. Why don't we put up, I think it's Hayes Exhibit 1, the declaration that was filed near the beginning of the hearing. And I want to ask you, let's go to the next page, please. And if you want to see that the emails that are, I guess, below this, that predate it, I'm sure we can show them to you. I don't want to confuse you at all.

Okay. But is this the, in the second paragraph, is this the request to participate in a DIP financing process that came from the Cross-Holder Group, and in particular Stephen Preefer, on Friday, January 23rd at 3 o'clock p.m. Eastern?

A That's correct.

Q Okay. Now, your name didn't show up on this email. Just for purposes of our examination going forward, are you included in Project Monarch Rx, which is up there on the top, next to Mr. Cartis (phonetic) and Mr. Moss's name?

A That is correct.

Q So, anything that was sent to Project Monarch Rx was also sent to you, is that correct?

A That should be the case, yes.

Q All right. I guess at the time this email was received by Evercore, the debtor's DIP loan marketing process was already underway, am I correct?

A I don't recall exactly, but it's quite possible it was.

We were making outbound calls that afternoon to third-party investors; the six I mentioned before.

Q Okay. So, all right. Did you participate in formulating a response to Mr. Preefer's email?

A Can I just see the response?

Q Well, why don't I find out what you remember first, and then we'll get there.

MR. BENNETT: You can take down Exhibit 1 so I can see the witness's -- you can take down Exhibit 1. Thank you.

Q I want to understand what you remember, and then perhaps we'll go to the document. Did you participate in formulating a response to Mr. Preefer's email?

A I don't recall. I think it might have been one of my associates that responded to Mr. Preefer.

Q And that associate would be someone who reports to you, correct?

A That's correct.

Q You were in charge, correct?

A That's correct.

Q Okay. Do you know how Evercore responded?

A I don't recall.

Q You don't recall. Do you know when Evercore responded?

A Either the same day or the next day, I believe.

Q Okay. Why don't we take a look at Hayes Declaration, Exhibit 2? Now, same offer. If you want to see anything else

that's on the screen, we're absolutely willing to spend the time and let you see it. But this is an email from John Cartis to Mr. Preefer and Matt Moss, who's another representative of Guggenheim, and it includes Project Monarch Rx, which means it includes you, correct?

A Correct.

Q Okay. Why don't I read this out loud?

"Thanks, Steve. In connection with any DIP marketing process, the company intends to solicit DIP proposals from all key stakeholders, including your clients. We will share any DIP marketing materials with you for distribution to your clients." Do you see that?

A I do.

Q Okay. This is Saturday, January 24, 2026, and your DIP process has already started, correct?

A We've had conversations with third parties. We haven't yet distributed materials until some point, I think, Saturday afternoon to the third parties.

Q But you didn't invite any conversations with anyone at Guggenheim, did you?

A Not until Sunday; not until the following day did we have a conversation about the DIP solicitation.

Q Okay.

MR. BENNETT: We can take that down now.

Q So, to the -- if this email suggested that the DIP process

hadn't started yet, it's not accurate, correct?
A Can you pull up the email again, please?
Q Sure.
A I interpreted this to say, in connection with our DIP marketing process, we intend to solicit all participants, which included your group. We had not done so yet, but at this time, we had conversations with third parties at a high level, and on Saturday afternoon, you know, we had distributed DIP materials to third parties.
Q So, why were the words, any DIP marketing process, as opposed to the DIP marketing process, or the ongoing DIP marketing process? What was intended there?
A Tough for me to speak to the intent. I don't recall exactly.
Q But this document doesn't say, we started a DIP marketing process yesterday, does it?
A No.
Q It doesn't say, we started a DIP marketing process yesterday and would be thrilled if you could join it, does it?
A It does not, no.
Q It suggests that something might happen in the future, doesn't it?
A It does.
Q But it was already going on beginning the day before, correct?

A Correct. We're having discussions.
Q Okay.
MR. BENNETT: Could you take that down, please?
Q Do you know when the debtors advised, or the debtors or Evercore, or through Evercore, advised the Ad Hoc Group that a marketing process had started?
A We did not speak with Guggenheim, the advisors to the Cross-Holder Group, until Sunday with respect to the DIP marketing process.
Q And what do you remember about that message?
A We were not yet signed up to the RSA. You know, from our perspective, we wanted to be sure that the company had a solution to the liquidity need at the end of the month, and therefore, we continued with our competitive process, but felt like we needed to share with the Guggenheim team what the DIP marketing materials were.
Q Okay. Why don't we put up Hayes Declaration Exhibit 3, please? Is this the transmission of DIP materials to Guggenheim by your office?
A It is.
Q And you received this email, correct?
A I did.
Q Okay. And this is sent on Sunday, January 25th at 1:59 p.m. Eastern Time, correct?
A I can't tell. That number looks blotched out, but I'll

take your word for it unless it's relevant for something.

Q It is a bad copy for some reason. Mine is clear, and I think the one filed with the declaration is clear. Accept my representation it's 1.59 p.m.

A Okay.

Q 48 hours after Guggenheim first asked, correct?

A That's correct.

Q And 48 hours after you'd actually started your DIP process, correct?

A That's correct.

Q And how long was your DIP process going to last?

A I think when we started making calls Friday, we were both unsure as to when the company was planning on filing and whether or not we would get to a deal with the secured lenders.

So, in the first instance, I think we may have set a deadline at Sunday evening, so not long after this email was sent. And then, went out to all the parties and extended it by a day as it looked like the filing was unlikely to happen on Monday, and therefore, you know, we proceeded to give parties more time as we learned about the status of everything.

MR. BENNETT: Okay. You can take this email down.

Q Did anything else important happen on Sunday, January 25th, in this case?

A At some point during the day, and I can't recall exactly when, I think the company did enter into the RSA.

Q It did enter into the RSA?
A Yeah, correct.
Q Didn't the RSA require the debtors to accept the DIP proposal that was made by CDR and the other senior lenders?
A The DIP proposal was an integral part of the RSA.
Q Let me ask the question again. Did the RSA that was signed on January 25, 2026, on the very same day you started a DIP process with the Cross-Holder Group, include a provision requiring that the debtors adopt the DIP proposal from CDR and the DIP lenders?

MR. GREENBLATT: Your Honor, I'm going to object only insofar as Mr. Banks is not a lawyer, so if he's being asked to provide a legal interpretation of the document, it's objectionable. Otherwise, obviously, he can talk about his business understanding of what the RSA contains.

MR. BENNETT: Just seeking his very sophisticated business understanding.

THE COURT: Overruled, to that extent.

A Yeah, the RSA was entered into on Sunday. It was an integral part. I suppose entering into the DIP connection with the RSA, you know, would not surprise me.
Q Okay. Well, why don't we take a look, just as you aren't surprised in the future?
A Okay.
Q We're going to look at page 19 of the RSA, which appeared

in -- on page 223 of 326 of one of, I guess it was the disclosure statement filing.

And once again, my offer to go up or down or sideways to give you an ability to see more stands. And I want you to look at the top, which is commitments with 5.02, commitments with respect to Chapter 11 cases, and then item G and item H. Let me know when you're done.

A Okay, I'm done.

Q Now, does this either refresh your recollection or confirm your recollection that the RSA precluded the debtors from accepting any DIP proposal other than the DIP proposal by CDR and the secured lenders, and also required them to support approval of that same DIP?

A Looking at this, just this section in isolation, it appears to say that they will both support the DIP and not object.

Q And the DIP being referred to here is the DIP facility by CDR and other secured creditors, correct?

A That's correct.

Q And just to make sure, I think it's clear to everybody, CDR is the 100 percent equity owner of the company, correct?

A I don't know if they're 100 percent, but like the overwhelming majority of the equity, that's correct.

Q More than 95?

A Most likely. I can't speak to the exact amount, but for

this purpose, yeah.
Q Okay. Did you tell anyone that you'd already accepted a DIP proposal when you signed the RSA?
MR. BENNETT: You can take that away.
A What we communicated to third parties was that we were close to signing an RSA. We had not done it yet. I don't recall going back to, as an example, the third-party lenders and telling them that the RSA was signed.
Q What did you tell them?
A The third-party investors?
Q Yeah.
A That, you know, obviously we've been speaking with these folks for the last several months, that we were soliciting a DIP facility. We requested, you know, their willingness to fund on a priming basis, on a junior basis, as well as junior to the, you know, non-U.S. ABL collateral and, you know, certain unencumbered properties, and that, you know, we were close to an RSA, but not finalized. So, it was that speech.
Q It wasn't exactly accurate, was it?
A Well, we didn't communicate this until -- this was communicated Friday, it was communicated Saturday, et cetera. And then, we waited to see what, you know, kind of responses we got, and we chased throughout the day, Sunday and Monday.
Q Okay. And what did you tell the Cross-Holder Group?
A I believe we told them we were interested in, you know, a

similar proposal that we told the other third-party lenders.
Q Do you recall how the Cross-Holder Group responded to the invitation to participate that they received on that Sunday?
A I believe in eight hours, the same day, the Cross-Holder Group provided the company with a junior DIP against that, you know, same ABL collateral that we were just discussing a moment ago.
Q A junior DIP, correct?
A Correct.
Q Okay, no priming, correct?
A I believe that's correct. I mean, they were taking currently unencumbered collateral, but yeah, generally speaking, it was a junior DIP on the U.S. and non-U.S. guarantor entities.
Q Did the Cross-Holder Ad Hoc Group provide all of the information that the debtors in Evercore requested in its request for a proposal?
A With respect to the RFP we put out there, I believe that to be the case. They provided the key economic terms, et cetera, information about the financial covenant, et cetera. So, yes.
Q And were you given a copy of the response?
A Yes, I believe I received the response directly.
Q Okay. Why don't we put up Hayes Exhibit 4, please, and go to the first page. And same offer; if you want to go down

more, we're perfectly okay. But I want to just talk about the email that was on top.

So, you already testified that the DIP proposal was complete, and look at what the Cross-Holder Group had to say. Let me know when you're done.

A I'm finished.

Q Okay. So, after you got this, did you reach out to anyone at Guggenheim and say, guys, sorry you did all this work; we're already committed; we signed an RSA? This, of course, being a 10:37 p.m. email, so after you had signed the RSA?

A No, not on Sunday.

Q Not on Sunday. Why not?

A Well, we took the proposal and spoke with the Secured Group, meaning PJT, representing the secured group of lenders.

Q Okay. All right. So, this is we're now January 25th, Sunday, late at night. After this, did there come a time when the debtor responded to this proposal by asking about the maximum amount that the Cross-Holder Ad Hoc Group was willing to advance under its DIP loan proposal?

A Yes. At one point, I believe we asked if, are you looking to fund 350, 500, and what is the path to exit here. So, we're looking for further clarity on the amount.

Q And were you involved in making that request?

A I was.

Q Okay. And when you made that request, did you tell them,

we're already committed, but we're still curious?
A I do not recall saying that, no.
Q Okay. Why don't we take a look at what you did say?
A Okay.
Q Hayes Exhibit 7, please. This time you sent it?
A Correct.
Q Monday at 11:10 p.m.?
A 11:10 p.m.
Q All right.
A Looks right to me. Yeah.
Q Yup, pretty late in the day.
A Yeah.
Q Another whole day gone. Okay. You'd signed the RSA sometime the day before. Okay. "Thanks, Brendan. As discussed in our call earlier today, we're evaluating your client's DIP proposal. However, as you're aware, the quantum of the proposed filing is uncertain in light of the range included in your proposal." The proposal range was what?
A I believe it was 350 to 500 of new money.
Q Yeah. And how much new money is committed under the DIP that you're sponsoring?
A The Secured Group and the plan sponsor, you know, are providing 250 million of new capital.
Q Okay. And that was acceptable to you?
A Correct.

Q Okay. But you still wanted to know what was already an amount greater than that would come from the Cross-Holder Group?

A Correct, we were curious as to what the path to immersion was. And therefore, what's the plan behind it.

Q That comes later.

A Okay.

Q I should ask a question. Is the words path for immersion anywhere in this email, Sir?

A It is not.

Q Okay. So, when you sent this email, you already knew the range was between 250 and 500. You already knew that was bigger than the other one that you had, but you asked anyway. Why?

A I did. I did not know what the plan sponsor proposal attached with it would be. So, I was curious if there was an assumption there that was driving that range.

Q There's no -- where's the words that ask about the plan sponsor connection?

A There's a reference in the previous email on Sunday that a plan sponsor proposal was forthcoming. And part of my confusion as to the range, given they didn't respond to the 250 and the RFP, was there must have been some linkage to the plan sponsor proposal that the Guggenheim team had been contemplating.

Q Okay. But you don't say here, we've already signed an RSA?
A I do not. No.
Q But you're still pestering them for more information, correct?
A Yes, we were pestering them.
Q You're trying to suggest that your process is still ongoing, aren't you?
A I didn't -- I don't think we're trying to suggest anything. I think we were genuinely interested in what their proposal was and wanted to educate the Special Committee on what this plan sponsor proposal was.
Q But you were already committed?
A We had signed the RSA on Sunday, correct.
Q Why don't we just take a look at Exhibit 8 very quickly for completeness. Is this the response you received to your inquiry?
A It is. Sorry, I'm just reading it.
Q That's okay.
A Right.
Q And that was pretty prompt, right? You sent your response at 11-something p.m. the prior night, and Brendan Hayes gets back to you at 9:13 the next morning, right?
A It was the next morning, sure. So prompt, that works.
Q Okay. Now, the disclosure statement mentions many

pre-petition events, doesn't it?
A It does.
Q And -- but the disclosure statement, well, let me ask you this way. Does the disclosure statement mention that the Cross-Holder Ad Hoc Group offered an alternative DIP loan?
A I don't recall. My declaration does. I don't recall if the disclosure statement includes that.
Q Okay. Now, we're going to shift gears a little bit. Do you know that the debtor's plan that was sent to all creditors on Tuesday, January 27th, provides, has provisions concerning how the DIP loan will be paid under the plan?
A That sounds right to me.
Q How is it paid under the plan?
A The $257-million portion of the DIP will be, you know, repaid in cash. The DIP roll-up, the $250 million DIP roll-up will be converted into take-back debt on the company post-emergence.
Q Okay. And you understand that the roll-up portion is not a new money loan to the debtors, correct?
A Correct.
Q Okay. So, now we're going to confine ourselves to the new money loan part of the DIP and the fees connected with it. The debtor's proposal, which has other elements, is basically that it will borrow cash that the debtor needs for its operations during the Chapter 11 case, and it will pay back those loans

with interest and fees in cash when the case ends, correct?
A That is correct.
Q Okay. Do you agree that it makes absolutely no difference to the debtors as a financial matter who loans the cash and who the debtors pay back?
A Well, I think it matters only insofar as the key advantage of the DIP that we had from the Secured Group was the clear path to emergence, and therefore, you know, what we believe is the best path for the company to emerge from bankruptcy in a short period.
Q Okay. I heard your testimony about clear path to emergence. I'm asking an additional question.
A Sure.
Q As a pure economic matter concerning the DIP, do you agree that it makes absolutely no difference to the debtors as a financial matter who loans the cash and who the debtors pay back when we're dealing with a loan that requires an advance of cash and requires the repayment of cash?
A Looking in isolation at only who provides the loan, I don't think it matters now.
Q Do you have any basis to doubt the creditworthiness or ability to perform of any member of the Cross-Holder Ad Hoc Group that have delivered commitments to make a financing to the debtors?
A I have no reason to doubt their ability to fund.

Q Has Evercore provided that advice to the company?
A We had a discussion with the Special Committee where we talked about the benefits of the secured proposal versus, you know, the Cross-Holder Group proposal, and I don't think at any point did anyone doubt the ability of your client's ability to fund here.
Q Okay, now I want to turn to the disclosure statement a little bit to cover some structure points.
A Okay.
Q We're going to start on Page 31. And so I understand that there's an ABL and we're not talking about that. I understand that there's a cash flow loan and that it's similar to the secured notes, but I don't want to bother talking about that separately if I don't have to. If you want me to, I will.
And then there's what the Debtor calls secured notes and unsecured notes in Paragraph 3 and 4 here. Are you familiar with these paragraphs?
A Generally speaking, yes.
Q Okay. And do you know if they contain any inaccuracies as far as you're concerned?
A Would you mind if I read them quickly?
Q No, I don't. And frankly, I only am interested in the sentences and secured notes that start kind of near the bottom, "The secured notes are guaranteed" and everything that follows it. And with respect to the unsecured notes, I'm only

interested in the similar sentence, the carryover sentence that ends on the next page, 33.

A Okay. So beginning with the "The secured notes are secured by liens unsubstantially?"

Q Yes.

A And then, sorry, on the unsecured notes, is there a similar place I should be looking? I'm --

Q Yeah, actually, before you leave the secured notes --

A Yeah.

Q -- I misspoke, go to the sentence just before it, "The secured notes are guaranteed by Holdings and each wholly-owned U.S. restricted subsidiary of the parent subject to certain exceptions." That line right there.

A Okay.

Q Okay. And then when you get to unsecured notes, can we go up to the next page, do you see, I think it clicked over, but the sentence that starts there, "The unsecured notes are guaranteed." What I want you to just to confirm to me is that, for the first question, are the guarantees for the unsecured notes and the secured notes exactly the same?

A Apologies. Would you mind just going up again to the previous?

Q Not at all.

(Pause)

A That would appear to be the case, or at least it's the --

I'm obviously not a lawyer, but that seems to be what this says.

Q Well, this isn't written -- supposed to not be written for lawyers. But --

A Yeah, understood.

Q But thank you. They look the same to me.

A Yeah, me too.

Q Let's go back to the question where it says, "The secured notes are secured by liens on substantially all the assets and property of such guarantors." Do you see that?

A I do.

Q Do you think that's true?

A Again, I'm not a lawyer, but if it's in this document, I believe it to be true. Yes.

Q Did you do any work to determine whether it was true or not true?

A Personally, I did not do work to determine the validity of this.

Q Is the entire disclosure statement prepared based up on this assumption being true?

A I don't know the answer to that.

Q Is every calculation performed by Evercore that appears in this disclosure statement grounded on this particular assumption?

A The calculations performed by Evercore were done in

connection with speaking with Kirkland and the AlixPartners team and specifically, as we think about the secured claim, considered, you know, the collateral that we understood to be, you know, collateral securing the secured term loan and notes.

Q Okay. So now we're talking about what collateral you considered to secure the secured notes. The disclosure statement which is in the same document as your work --

A Uh-huh.

Q "The secured notes are secured by liens on substantially all the assets and property of such guarantors." What I'm asking you is when you prepared your calculations that are included in this document that includes this statement --

A Uh-huh.

Q -- did you assume that the secured notes were secured by liens on substantially all the assets and property of such guarantors? Yes or no?

A I believe that to be the case, yes.

Q Did you read any relevant credit documents to determine whether or not the secured notes were secured by liens on substantially all the assets and property of such guarantors?

A I did not, no.

Q And your understanding is totally based upon advice from Kirkland and no other source?

A Well, that's correct. We worked with Kirkland and with Alix to figure out the necessary inputs into the disclosure

statement.
Q Okay. What did Alix tell you about this issue, if you can remember?
A So my recollection was that the security in the company, you know, the guarantors, the U.S. guarantors, included things like intercompany receivables as an example as part of the intangibles and, therefore, was picked up in collateral for purposes of this calculation. And intercompany notes.
Q Did you read any collateral descriptions in any loan documents?
A I did not, no.
Q Do you know whether or not it's true that only two-thirds of the shares of the foreign subsidiaries are pledged to secure the secured debt?
A I have a general understanding that, yes, that to be the case.
Q Okay. Is it true that the Debtors own real property?
A It is true, yes.
Q Isn't it true that none of the Debtors' own real property is pledged to secure the secured debt?
A That is my understanding, yes.
Q Okay. Do the Debtors lease real property in the United States?
A I believe they do, yes.
Q And they have something like 35 separate facilities,

correct?
A I'll take your word on it. That sounds directionally correct. I don't know, to be honest with you.
Q Is it more than 20?
A I believe that's the case, yes.
Q Okay. And so all of the Debtors' U.S. facilities sit on owned or leased real property, correct?
A Would you mind repeating the question? I'm sorry.
Q Is it the case that all of the Debtors' U.S. facilities sit on owned or leased real property?
A I believe that is the case, yes.
Q Do you know if any Debtor has executed any leasehold mortgages for any U.S. property?
A I do not know.
Q Did anyone ever show you a leasehold mortgage applying to any of the Debtors' U.S. properties?
A I do not recall that ever being shown to me.
Q Did anyone ever refer to any leasehold mortgage being executed with respect to any of the U.S. properties?
A I don't recall.
Q Do you know what a fixture is?
A An improvement to a building and the like.
Q It's something attached to the building.
A Yeah.
Q Of all the machinery used by the Debtors in their

business, do you know what proportion are fixtures and what proportion is equipment?

A I do not.

Q Did you ever have a discussion with anyone about the proportion of the machinery used by the Debtors in their business is between fixtures and what proportion is equipment?

A Look, we discussed this generally with Kirkland and Alix related to the security package. I don't recall myself specifically talking to anyone about an allocation or specifics sort of that you're describing.

Q Can you tell me everything you remember about your conversations with Alix on this subject?

A I don't know standing here today I can recall everything I told to Alix, but --

Q What did they tell you, sir?

A So for purposes of the disclosure statement and establishing the claims, that intercompany notes exist and are part of collateral and intangible assets in the U.S. And therefore, you know, the effect of a waterfall is such that, you know, value is brought back to the U.S. and then supports the conclusions of the analysis that we put into the disclosure statement.

Q But no one ever talked to you about -- you don't remember any advice at all from Alix about what proportion of the Debtors' machinery is fixtures and what proportion of the

Debtors' machinery is equipment, did you?
A I don't recall discussing that, no.
Q And you know that there are several financings of leasehold improvements and, I guess for lack of a better word, machinery that's also on the Debtors' balance sheet, correct?
A I don't know that to be true, but I'll take your word for it. There's been a lot of leasing activity over the past 12 months.
Q I don't want to take your word for everything, and I need to build a record. So why don't we go back --
A Sure.
Q -- to the disclosure statement.
A Okay.
Q And I think I want to go pretty close to where we were before.
A Okay.
Q Why don't we take a look at Page 33 of the disclosure statement, the very next page. Finance leases and other funded debt. Respecting the Court's interest in trying to expedite things --
A Yeah.
Q -- I want to note that it's equipment leases -- if you can stay with me.
MR. BENNETT: And, Your Honor, if you want me to slow down, please tell me.

THE COURT: No, I'm with you.

BY MR. BENNETT:

Q With respect to equipment leases, at first line of the first paragraph, last line, approximately 56 million on account.

A I see it, yep. Makes sense.

Q Hear this before?

A I don't recall specifically this amount but, yes, it's -- it's likely accurate in here.

Q And this -- there's no lien of the secured creditors on this property, is there?

A I don't know. But if it's leased, that seems like a reasonable assumption.

Q Building finance leases, last line -- next paragraph, sorry, building finance leases, 66 million at the bottom. Again, I don't want to discourage you from reading anything you need to read. Hear about these before?

A Yes. Finance leases on the buildings, yes.

Q None of these are part of the collateral package for the senior notes, are they?

A I, again, not a lawyer, but it would be -- it would surprise me if they were.

Q Other funded debt, next paragraph, 32 million at the bottom. Again, not discouraging you from reading anything you want to read, hear about these before?

A Not specifically, no.
Q Okay. And you note that this too is a sale and master lease agreement, correct?
A Correct.
Q Any part of this a senior notes collateral package?
A I don't know for certain, but I would be surprised if it was.
Q Okay. Last paragraph, second master lease agreement, three lines from the bottom -- actually, I'm sorry, at the very bottom, 72 million. Did you ever hear of this one?
A Not specifically, but same answer.
Q And the secured notes don't have a lien on this property, do they?
A I don't know for certain, but I'd be surprised if they had a lien on this.
Q Okay. Are you aware that the loan -- or strike that.
Did anyone make you aware that the loan documents for the secured debt also exclude other property that would otherwise be covered by a broader grant of collateral?
A My understanding is real property in the U.S. may be excluded. That's the one thing that comes to mind.
Q Are there other exclusions?
A I'm sorry, in the collateral package of the secured notes is the question?
Q Yes.

A You know, my understanding is that there's a 65 percent equity pudge of the foreign subsidiaries and you know, therefore, the 35 percent would be excluded.

Q Did anyone make you aware of any other exclusions in connection with your making the calculations you made that appear in the disclosure statement?

A Not that I can think of at the moment.

Q Okay.

MR. BENNETT: Your Honor, I could use a bathroom break. I do have unfortunately about 15 to 20 minutes more, but I can keep going or we can take a break.

THE COURT: Let's see if -- well, if you need a bathroom break, I don't want to stop you. So why don't we stop. Let's see, the time is 3:17. Let's reconvene at 3:30.

MR. BENNETT: And can we instruct the witness not to discuss his testimony or his cross-examination with anyone during the break?

THE WITNESS: Understood.

THE COURT: You heard the admonition of Mr. Bennett. It works as well --

THE WITNESS: I'll sit here quietly.

THE COURT: All right.

MR. BENNETT: Thank you, Your Honor.

THE COURT: Thank you, folks. We'll be back at 3:30.

THE WITNESS: Thank you.

(Recess at 3:18 p.m./Reconvened at 3:31 p.m.)

THE COURT: All right, we are back, folks. Wait, let's get everybody back on their screens. We haven't lost anybody.

MR. BENNETT: Okay, thank you very much, Your Honor, for the break.

THE COURT: You're welcome.

BY MR. BENNETT:

Q So we're going to move on to talk about the roll-up. And you testified that the numbers in the disclosure statement were partly, at least partly and I think almost exclusively the result of your efforts, correct?

A The numbers in the disclosure statement, it was a collection of efforts from the company, the Alix team and the Kirkland team.

Q Did you prepare the recovery estimates?

A Under my supervision, my team worked with Kirkland and Alix.

Q Okay. Did you review the final results?

A I did.

Q Did you sign off on the final results?

A I believe I did, yes.

Q And you stand by your company's work?

A I do.

Q Okay. So -- and I'm going to go through some numbers and

we can go look at the document if we need to for --
A Okay.
Q -- any particular one. But again, I'm trying to abide by the Judge's wishes that we wrap up.
A Okay.
Q But, unfortunately, I've got a lot to do. You're aware that the disclosure statement and plan sizes the secured claim of the secured debt at roughly 1.952 billion. Is that true?
A I believe that's true.
Q And again --
A That sounds right to me.
Q -- if you have any doubt, we can look at the document.
A Okay.
Q Okay. Was that amount calculated assuming that the secured debt was collateralized by substantially all of the assets of the Debtors?
A No.
Q Okay. What was the assumption made in -- what were the assumptions made -- well, let me start from the beginning.
A Sure.
Q How did you calculate the number?
A We started with the midpoint of the Evercore valuation range, 3.15 billion. We reduced, you know, the amount by the company's drawn ABL, by the DIP facility and the roll-up, as well as the capital leases, I believe.

Q Okay. So when you determined the 3.15 billion number, that was a total business value, wasn't it?
A The 3.15 was the midpoint of the valuation range.
Q For the -- was --
A For the enterprise value of the company.
Q For the enterprise value of the company?
A Yes.
Q Doesn't that necessarily conclude all of its productive assets?
A It does.
Q And doesn't that include its necessary cash balances in order to operate its business?
A It does.
Q It includes everything it needs to run its business, whether it's collateral or not, correct?
A That is correct.
Q Okay. So if it turns out that the secured debt is not secured by substantially all of the assets of the Debtors, this number is not correct?
A I don't think that's necessarily the case.
Q Is it -- well, is it necessarily still correct?
A In the arrival of that claim, you know, the methodology that we used was to reduce value from the DIP as an example, which you know includes unencumbered collateral.
Q Okay. But it was the -- I was talking about the 3.15

billion --
A That's true.
Q -- the first number.
A Okay.
Q And you testified that the first number includes every single business asset of the company and the cash needed to run the business. Is that correct?
A Yeah. It's the enterprise value of the business. Correct.
Q Is there anything else I'm missing? Is that everything that's in enterprise value?
A That should be it.
Q Okay. So you didn't exclude any property, any unencumbered property from that calculation whatsoever?
A Look, working with the other advisors, we did not exclude any other property. No. We started with the enterprise value of the company.
Q Okay. And you started with something about other advisors? What is it about other advisors that I need to know?
A We worked with the Kirkland team and the Alix team to put this analysis together.
Q And they agreed with your methodology? Or did you not tell them about your methodology?
A No. We discussed the methodology.
Q Okay. Okay. So next, you had to calculate -- well, you

didn't directly calculate, but it was the result of your calculations. And, again, we will look, if you want to look, that the unsecured deficiency claim of the secured creditors is $1.992 billion. Correct or incorrect?

A That sounds correct to me.

Q Okay. And the disclosure statement calculates the range of recoveries for secured creditors at between, and I'm rounding, 41 percent to 50 percent. Is those correct?

A I don't think that's correct.

Q Okay.

A I'm sorry. You're looking at Class 4 or Class 5? Sorry.

Q I'm talking about the class of secured debt, the impaired -- the amount of the secured claim -- the net recovery for secured creditors after applying your calculation of 1.952 and then you have a range of recovery on account of that 1.952 and the range nets to a total recovery for the secured creditors based upon their secured portion of between 41 percent to 50 percent.

A Sorry. I'm getting tripped up because I think in the class it was like 83 to 97 percent in the disclosure statement, and then you're applying this to both the claim on the encumbered as well as the claim on the unencumbered?

Q Exactly.

A Yeah. I don't have the exact calculation at my fingertips. Directionally that sounds right, but I can't

confirm that at the moment.
Q Okay. Do we have those for -- well, we'll get to them. You know something, we'll have a chart with it later.
A Okay.
Q But you agree that that's in the right ballpark, correct?
A That should be in the right ballpark.
Q Okay. And the DIP proposal includes a one-to-one roll-up of 250 million of prepetition debt held by secured creditors. Is that correct?
A That's correct.
Q Okay. And the debt being rolled up is a portion of the secured debt that includes both the secured and the unsecured portion, correct?
A The debt being rolled up both in the methodology that we used in purposes of preparing this disclosure statement to reduce the value of the company and also reduce the claim. So for purposes of calculating that Class 4 claim, it comes off the top and the bottom, if that makes sense.
Q Okay. So let me just make sure I understand that with some numbers.
A Yeah.
Q Okay. If the disclosure statement estimated a recovery of 41 percent, which was the lower end of the range, for any roll-up, and the roll-up would be paid in full, meaning 100 percent --

A Yeah.
Q -- would you agree with me that the difference is 59 percent of the claim?
A Yeah, assuming that math is right, I agree.
Q Okay. And at the higher end of the range, if we're starting with a recovery of 50 percent before the roll-up, and the roll-up will then be paid in full in cash, as we learned, will you agree with me that the difference is 50 percent of the claim?
A Yeah, assuming that number is correct again, yes, I agree.
Q Okay. So I wish I could give you a calculator, but you're probably pretty good with numbers. The low end of your range for secured creditors involves a 59 percent uplift on the claim as a result of the roll-up. That's $147.5 million, isn't it?
A Say that one more time, please.
Q If we start out with an estimated recovery on secured claims, both the secured and unsecured portion, of 41 percent, roll it up so that it's going to get paid 100 cents. The uplift is 59 percent, and 59 percent of 250 is 147.5.
A That sounds correct, yes.
Q Okay.
A Assuming that 41 percent number is correct.
Q Right. And that comes, and your math showed, 100 percent out of the height of unsecured creditors.
A Again, I don't know that that's coming out of the

unsecured creditors specifically. I'm not sure I follow the question.

Q Well, you said you subtracted the DIP from your enterprise value in netting down to the secured and unsecured groupings. So isn't the effect of that taking it out of the height of the unsecured creditors?

A The effect of the DIP was, you know, in this allocation was to reduce the value of the enterprise. It was applied against unencumbered collateral, whatever number that is, to get to this, yes.

Q So, again, at the lower end of your valuation range, in addition to all the other costs you mentioned, there's an additional $147.5 million benefit of the roll-up going to the lucky participants in the DIP roll-up.

A Yes, that is going to the secured lenders and to the backstop parties, the roll-up feature.

Q And that includes CDR.

A That does include the plan sponsor.

Q Okay. And if it turns out your disclosure statement at the high end of the range of 50 percent before any roll-up, okay, then the uplift is only 50 percent and the cost is only an additional $125 million, correct? That math's easy.

A Correct.

Q Now, your declaration doesn't attribute a value to the roll-up feature, does it?

A It does not, no.
Q Did you calculate it before you prepared your declaration?
A You know, we considered the cost of the roll-up generally, that there would be a cash cost to the company and that we would be rolling up claims of impaired secured creditors, yeah.
Q That wasn't my question. In colloquial terms, did you run the numbers?
A We did run the numbers on the recovery of the secured creditors in a somewhat different way because we gave them credit for the roll-up, you know, but we did, you know, yes, consider that.
Q When we get the board package before the final hearing, is it going to include a calculation of the value of the roll-up?
A It will not, no.
Q And it won't calculate the value of the roll-up that benefits CDR, does it?
A It will not, no.
Q Don't you think the board should know those kinds of numbers?
A Look, I think from the company perspective, it was an attractive DIP facility and, again, provided a path to emergence. And the DIP is a feature that we see relatively frequently in this market. The DIP roll-up, excuse me, I said just the DIP.
Q And can you name a single one of the cases that you

thought about as your comparables that involved a roll-up of a facility that was under-collateralized by between 50 to 59 percent?

A Not -- Like At Home would be one to consider, but, you know, we did consider some of the other cases with DIP roll-ups and the circumstances there.

Q But of all the other ones, you can't name another one that involved a roll-up that involved an uplift of 50 to 59 percent?

A That specific number, no.

Q Just to cut at this another way, is $147.5 million a material number to you?

A It's material to the extent, you know, the calculation is accurate, and that is, in fact, unencumbered collateral.

Q And $125 million is also material, even though it's somewhat smaller?

A Yeah. Again, I think it depends on if this is unencumbered collateral. The reality is the secured lenders, as an example, are sharing in this roll-up equally. They're being given the opportunity to roll up for 70 percent. So, you know, it depends on what is coming out of the unencumbered pool of that recovery.

Q But this increase in recovery to the secured creditors of 147 million -- excuse me, this uplift for the roll-up creditors of $147.5 is material to them, isn't it?

A It is. It's shared with, you know, 70 percent of the

secured -- you know, of the DIP can be shared across all the secured creditors. But --

Q This is Willkie's issue, and I'm sure they'll talk about it.

A Yeah.

Q But that's one of the reasons why 30 percent is reserved, is it's a really good deal for secured creditors, isn't it?

A Look, it was an important feature of the RSA, and the roll-up was an important feature of the negotiation.

Q How often have your clients been offered a roll-up with an opportunity to increase the value of their claims by 100 percent or more than 100 percent?

A Look, it's not their claims in its entirety. It's a portion of their claims, right, that is getting some economic benefit for providing this new money for doing the months of work that's leading up to it.

So if your question is in other situations, you know, we've seen roll-ups where, you know, the value is such that the collateral or the value of the company leaves the first-in creditors impaired.

Q Oh, by the way, in those cases, did the secured creditors have all-encompassing security interests?

A I don't know specifically sitting here today. It depends.

Q You don't know in any of those cases whether there was any damage to unsecured creditors, do you?

A I don't know specifically sitting here today.
Q But here there is?
A I suppose that depends on what the unencumbered collateral is and what is left.
Q There is some damage to unsecured creditors. You just don't know how much.
A The DIP being provided by the secured lenders or by your group both encumber currently unencumbered collateral. So I don't know the calculation would be different across either.
Q Oh, really? I'm going to give you one chance to reconsider that answer.
A Okay.
Q Is there a roll-up in the proposal by the unsecured creditors?
A There is not, no.
Q The numbers that we just calculated are 40 percent small if we're just focusing on the effect of the interim roll-up, correct?
A That should be correct, yes.
Q So the interim roll-up is still more than $100 million under the low case, correct?
A Again, depending on what the unencumbered collateral is.
Q We're talking about $100 million today, aren't we? I'm talking about to the roll-up benefit today, January 30th.
A Yeah, I think it depends on what the unencumbered

collateral is.
Q I didn't ask that part. I asked is there a benefit to the roll-up creditors of more than $100 million on your low case for value today?
A Again, it depends on what is unencumbered and what is benefitting the roll-up.
Q Okay. Is the roll-up getting an uplift of more than $100 million if the interim order is entered today?
A It depends on what the unencumbered collateral is and what the uplift is accordingly.
Q I'm just looking at the roll-up piece. You calculated the recovery based upon substantially all assets at 41 to 50. The difference was 147.5 for the full 250. All I'm asking is, is what's 60 percent of that?
A Yeah.
Q You're good enough to do that.
A Yeah, but again, I think if you're saying we're taking away from the unsecured, the theoretical uplift could -- amongst secured creditors, yes. Amongst secured creditors, one could look at the 30 percent and say that's the uplift.
Q So it's almost $100 million on your low case.
A Well, again, from a secured lender perspective, 70 percent is shared, obviously. There would be uplift for the 30 percent that is not shared.
Q Okay, but if you look at all of them together -- I'm sorry

we're going to go over this over and over again, but looking at all of it together, just as a result of the interim order, the debt, the $250 million is being rolled up, $150 million of it as of the interim order. The total benefit for 250 we've both agreed is 147.5.

How much is going of that 147.5 is going to hit the roll-up lenders if the interim order is entered just today?

A So assuming the calculation is right and based on my previous points, right, that this is obviously shared across the secured lenders, there is the 125 to 147 million of uplift. And 30 percent of that is enjoyed by the backstop parties. And then sitting here today, I don't know what the unencumbered value is. It's not how this analysis was put together.

Q I just want to get to a different number completely. We're at the interim stage, not the final stage.

A Okay.

Q We're not talking about 147.5. We are actually talking about a little bit smaller number.

A Okay.

Q We're talking about 60 percent of 147.5 because the interim roll-up is $150 million, which is 60 percent of $250 million.

A That is the portion, you know, again, of whatever the uplift is for the parties providing it.

Q The roll-up -- the fund managers that are going to be in

the roll-up, they're going to write a memo to their boss that they're entitled to a big bonus, aren't they?

MR. GREENBLATT: Objection, Your Honor.

THE COURT: Sustained.

BY MR. BENNETT:

Q Okay. Let's go to the other case, the 50 percent case.

A Okay.

Q That's only, only $125 million uplift for the entire 250. If only 150 is approved today, how much of the 125 is going to hit the roll-up creditors, whether they're the 30 or the 70? It's 60 percent of 125, isn't it?

A I believe that to be the case.

Q Okay. I'm not going to ask you to do the number -- get to the numbers.

Okay. And none of these numbers were shared with the board of directors, were they?

A The uplift calculations, no.

Q Did you share the results of the uplift calculations with anyone at Kirkland? Yes or no question. I don't want to know exactly what you said.

A No.

Q Did you share the results of this calculation with anyone else in this case?

A Honestly, like, we're just doing this live, so no. We're --

Q So you didn't say to the roll-up lenders something to the effect of, are you kidding me? Your roll-up demand is going to benefit you to the extent of $147.5 million. That didn't happen?

A No. We had conversations around the term specifically and its existence in other similar cases.

Q And you never had a conversation on the other side, the $125 million, to the effect of you guys are getting at least $125 million of uplift with respect to the rolled-up portion, whether it's the 30 percent or the 70 percent, and that's a lot you ought to take less. No conversation like that?

A No.

Q So there was no real conversation or negotiation about the roll-up at all. They asked, and you said okay.

A It was an integral part of this deal. They requested a roll-up. At points in time, we talked about a larger roll-up, and we held firm at one-to-one.

Q I want to show you an exhibit. It's one of our demonstratives. It's Exhibit 10 to the Hays Declaration.

A Okay.

Q And I need to go to Page 5 this report. And I'm going to ask you, sir, to the best of your ability, whether this accurately depicts, with this time not rounded, with the actual decimal places, the testimony that you've been giving for the past 15, 20 minutes.

(Pause)

A This is consistent with what we've been discussing.

Q Do you see any mistakes?

A No.

Q Okay.

A Other than the fact that we're relying on the 41 percent and the 50 percent, obviously.

Q Right. I understood that.

A Yeah, okay.

Q And that's right there. I called it 41, I guess. My rounding was an error and --

A Sure.

Q And 50.2, but --

A Yeah.

Q Okay? That's it, just the rounding, right?

A Yeah. Okay. But it's assuming that I haven't validated the 42 or the 50.2, but this is consistent with what we discussed.

Q Okay. Those are taken -- A, B, and C all came from the disclosure statement. Would you like me to point them out to you, or are you satisfied that they're pretty close to right?

A Again, the 41.7 and the 50.2 I have not validated, but --

Q All right. We'll move on.

A Okay.

Q All right. I want to change subjects, and this part will

be very short. Does the DIP term sheet include any releases of claims Multi-Color may have against any of its lenders?

A Does the DIP term sheet in the RSA?

Q Uh-huh. I'm sorry, I'm talking to the RSA DIP term sheet now.

A Okay.

Q You're right.

A I don't know.

Q Okay. So did anyone ask you to value any potential claims that were released as a consequence of the release provisions of the DIP term sheet?

A No.

Q You attended a board meeting at which the DIP loan was described. You testified about that, correct?

A I did.

Q And the DIP that the Debtor sponsored has released -- well, you don't know. Do you remember anyone discussing the fact that the DIP loan term sheet or the DIP loan terms include releases of claims against Multi-Color's lenders?

MR. GREENBLATT: Objection, Your Honor. To the extent this is getting into a privileged discussion of board meetings?

MR. BENNETT: Just a topic question, perfectly acceptable.

THE COURT: Repeat the question.

BY MR. BENNETT:

Q During your board meetings at which the DIP loan was presented, the company's DIP loan proposal was presented to the directors. Do you remember any discussion at all, yes or no question, of releases that are included in the DIP term sheet?

THE COURT: You can go ahead and answer.

THE WITNESS: Yes, I guess it was not a board meeting. It was a special committee meeting, and I don't recall releases being discussed one way or another. I just don't recall the conversation.

BY MR. BENNETT:

Q Okay. Does the DIP term sheet, or do you know if the DIP term sheet includes any waivers of rights Multi-Color may have against creditors concerning the conduct of the case going forward?

A I do not know.

Q During the board meeting you attended, do you remember -- excuse me, during the special committee you attended, do you recall any discussion whatsoever concerning waivers of rights Multi-Color may have to recover from secured creditors certain expenses during the bankruptcy case?

MR. GREENBLATT: Objection, Your Honor, on the same basis.

THE COURT: You can go ahead and answer. Objection noted.

THE WITNESS: I don't recall that being discussed one way or another.

MR. BENNETT: Pass the witness, Your Honor.

THE COURT: All right, thank you. Counsel on redirect?

MR. GREENBLATT: Yes, Your Honor. Just a few short questions.

THE COURT: All right.

MR. GREENBLATT: Again, Josh Greenblatt, Kirkland & Ellis.

REDIRECT EXAMINATION

BY MR. GREENBLATT:

Q Mr. Banks, Mr. Bennett asked you just now a series of very protracted, detailed valuation questions on the fly here. Do you recall those?

A I do.

Q Okay.

MR. BENNETT: Objection. Leading.

THE COURT: Overruled.

BY MR. GREENBLATT:

Q Mr. Banks, did you and Evercore value the whole company in this case?

MR. BENNETT: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: We did value the whole company.

BY MR. GREENBLATT:

Q And did you provide this valuation to the team and AlixPartners?

A We did.

Q And did AlixPartners use this valuation to create a recovery waterfall?

A They did.

Q And did they allocate the recoveries?

MR. BENNETT: Objection. Beyond the scope of cross.

THE COURT: Overruled.

THE WITNESS: Again, we worked together with the Alix team. So they helped with the waterfall, they helped with the claims, and then my team helped them with establishing the recoveries or the different forms of consideration for the secured creditors.

MR. GREENBLATT: No more questions, Your Honor. Thank you.

THE COURT: Mr. Bennett?

MR. BENNETT: No -- no more questions.

THE COURT: All right. Thank you, Mr. Banks. I appreciate your time today, this afternoon.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're welcome.

(Witness excused)

MR. BENNETT: Your Honor, they said they had a third

witness, but according to the witness list, there was no other witness listed for the DIP.

THE COURT: I would assume they were speaking about Mr. Gabel?

MR. BENNETT: They were, but their witness list says -- the witness list for the DIP only was the two witnesses we've already heard from. Look, I'm okay, but there will be another long cross-examination if we're going to change the rule.

MR. GOLDFINE: No, no. I'm going to make things easier. Mr. Gabel's declaration has already been admitted into evidence. We don't intend to do any short direct. We're going to rest on his declaration. So I don't think there's any need for cross unless, of course, Mr. Bennett wants to take up some more time.

MR. BENNETT: Can I have five minutes to decide? I may well decide I don't need to talk to him.

THE COURT: Absolutely.

MR. BENNETT: Okay.

THE COURT: Well, let me ask, before we take five minutes -- well, you can think about it. With respect to the DIP, is the Debtor putting in any other evidence, apart from argument?

MR. GOLDFINE: I think Mr. Bennett's suggestion

for five minutes is a good one. We might have some rebuttal evidence we put forward. It would not come from Mr. Gabel, but that's something we need to talk about.

THE COURT: Then everybody, we'll see you all in five minutes.

MR. GOLDFINE: Great. Thank you.

THE COURT: You're welcome.

(Recess at 4:02 p.m./Reconvened at 4:10 p.m.)

THE COURT: Okay, we are back again. I'll return to Mr. Bennett.

MR. GOLDFINE: If there's no further testimony, we'll pass cross-examination. If there is further testimony, there will be lots of cross-examination.

THE COURT: The gauntlet's been thrown down, yes.

MR. GOLDFINE: Yeah, in my haste to move this along, I neglected to introduce myself, Jeff Goldfine, Kirkland & Ellis, for the Debtors. Good to be before you again, Your Honor.

Mr. Gabel will not be testifying live, and we have conferred and have no further rebuttal testimony. So if okay with Your Honor, I will pass the mic to one of my colleagues, or I guess to Mr. Serajeddini, who will be doing closing argument.

THE COURT: All right. I have some questions, but

I'd prefer to hear an oral argument first.

MR. BENNETT: Okay.

THE COURT: Okay, Mr. -- there you are, Serajeddini.

MR. SERAJEDDINI: Good afternoon again, Your Honor.

THE COURT: Good afternoon again.

MR. SERAJEDDINI: For the record, Steven Serajeddini of Kirkland & Ellis on behalf of the Debtors.

So, Your Honor, I'm going to try to quickly tick through the objections that were raised in the papers and the evidence that's before Your Honor on these various issues for the purpose of today's hearing.

So the first objection, Your Honor, was an objection contained in the Cross-Holders Group's papers regarding whether the Debtors are obligated to accept any DIP that is a non-priming DIP. And I think, Your Honor, that's a misstatement of legal standards. The question that 364 asks, first of all, is whether credit can be obtained. The term credit implies the terms on which that credit is being offered, and the purpose of that credit. The credit must be fit for purpose, put differently.

Here, the Debtors are seeking a DIP financing to implement a restructuring and consider all the terms and other factors associated with that piece of credit. Moreover, the credit here, Your Honor, is being -- the priming, rather, is

being consented to. The documents here allow these lenders to prime. So we're not seeking per se to prime or use the Bankruptcy Code's powers to prime. We are priming based on what the documents allow. And so I think, Your Honor, that objection can be easily dismissed.

There is a separate objection that the DIP should be rejected because it's an insider DIP and somehow should be held to a standard of entire fairness. Your Honor, first of all, as a general matter, the standard by which the Court approves a DIP is not the standard for Delaware corporate governance. Obviously, the Debtors here did apply correct corporate governance and, even under the most strict regime, the DIP here was delegated to, because it involved insider transactions and was a conflict matter, and approved and analyzed by the Special Committee of the Debtors' disinterested directors, all of whom have no economic interest at all or other interests, and no conflict of interest has been asserted as to their approval. So that would meet the Delaware standard for application of the business judgment rule.

Moreover, Your Honor, the fact that it's an insider DIP, again, doesn't change the fact that the DIP here, first of all, was negotiated at arm's length with a host of non-insider parties, specifically the secured Ad Hoc Group. And it was a process, it was the result of a rigorous process, which you heard about not only as it relates to the DIP itself, but in

terms of the overall restructuring that preceded the DIP, as well as, as it relates to the DIP, solicitation of various alternatives.

There was a lot of back and forth with the witnesses about responses in and around a couple -- time period of a couple days. Your Honor, we -- there was no issue with the Cross-Holder Group providing a DIP proposal. They provided a proposal. We got it, we got it in time to analyze it, and we gave them feedback on it before we got to this point. So, there's no here nor there.

Obviously, at and around the time that this DIP process started, the company determined to start the process before it had a solicited or agreed-upon RSA. So, it was a very sensitive time in and around those days, and the parties were obviously all running in a million different directions to evaluate and negotiate and continue to exchange documents around various potential transactions.

And the passage of simple hours over the course of a day or a day in terms of delivering documents doesn't change the fact that this was a competitive process, and the company solicited proposals, including from the Cross-Holder Group, and ultimately concluded for very valid reasons that we've talked about, that that proposal was not suitable for the Debtors because it would not have provided any path to emergence and did not come with any kind of either restructuring or even a

notion of what that path might be.

Next, Your Honor, the roll-up, there's a lot of talk about the roll-up. Let me just say a few things about that. A roll-up is a customary term. A one-to-one roll-up is customary. A roll-up where a secured lender is the fulcrum creditor is also customary. You heard that from Mr. Banks. To the extent the roll-up recovers from unencumbered assets, there was no attempt to establish that is in fact the case.

The Debtors' view is that the DIP itself is obviously, consistent with case law offered by the Cross-Holder Group, first goes to unencumbered assets or is able to take a lien on unencumbered assets. And the notion and the extent to which the roll-up itself is benefitting on unencumbered assets was not established at all here today.

At confirmation, we'll discuss the extent, exact value, and amount of the unencumbered assets. AlixPartners is the party that analyzed those. And it's a party, as you heard on redirect, is the party that constructed that waterfall. So there's going to be a lot of discussion on that in the future. But there was no evidence today that there was any uplift vis-à-vis those unencumbered assets from the roll-up.

What Mr. Bennett put on that slide, I want to be very clear about it, it's misleading in the sense that much of that, quote/unquote, uplift is vis-à-vis the DIP lenders themselves. For example, if there is zero in unencumbered assets, those DIP

lenders who could be, let's assume all lenders participate in the DIP, 70 percent of that is going to be applied pro rata against the term loan. And the remaining 30 percent vis-à-vis the holdback, yes, that would go to the parties that backstop the DIP. But the economics of that would be much -- a tiny fraction of that number that he put up.

And given the fact that he didn't establish how much of the roll-up went against unencumbered, I don't think there's anything you can take away in terms of the cost of the roll-up vis-à-vis specifically unsecured creditors. And so, again, Your Honor, this is the way DIPs work. They take liens against unencumbered.

And the fact that this DIP includes a one-to-one roll-up, in our mind, is completely unremarkable. And the fact that Mr. Bennett didn't establish in any way today that how unsecured creditors specifically were harmed by that roll-up, I don't think there's anything we can take away from that other than the fact that there will be a dispute potentially about unencumbered assets in the future in this case, and evidence will be put forward, and both parties will make whatever arguments they want to make.

The roll-up here, to be clear, is subject to the same challenge rights as the rest of the first-lien loan. And so if the first lien is found not to have valid claims, that roll-up is also invalid. So, again, Your Honor, I think the roll-up

here and how it relates to unencumbered, again, is unremarkable. If we want to talk about the roll-up, and this was an argument raised in the Wilkie objection, and how it relates vis-à-vis other term loan lenders, our view, Your Honor, is the roll-up is in exchange for those term loans, and the term loan documents permit that exchange to occur.

Moreover, the inter-creditor agreement that the Willkie Group refers to, the party under that inter-creditor agreement that has the rights to raise these types of arguments is Barclay, who is the controlling collateral agent. And Barclay has not objected. So individual creditors don't have a basis to object under that inter-creditor agreement. And Barclay's here is consenting to the roll-up in effect being an exchange of a subordination of liens under the inter-creditor agreement.

There was an objection raised in the papers about the backstop premium. I didn't hear a whole lot come out in the testimony relative to that. The backstop premium here is modest and simply $7.5 million, and that was reflected in the Banks Declaration.

Next, Your Honor, there's an argument that the DIP is a sub-rosa plan. The DIP is not a sub-rosa plan. The Debtors have entered into an RSA and are soliciting a plan. That RSA includes a full fiduciary out for the Debtors to terminate that RSA should something come up that is higher or better than what

the RSA proposes.

So to the extent the Cross-Holder Group, and they're free to continue to do this, can come up and truly believe, for example, Your Honor, in the significant value of the unencumbered assets here, they would have to put forward a proposal that can take out the secured lenders insofar as their claims are secured.

And by the way, the roll-up doesn't change that math. Insofar as they're secured, they will have to make a proposal to take out the secured lenders and submit their own proposal that provides us a path to exit. We as Debtors will be free to evaluate that. Now, obviously, we'll have to evaluate that in light of the process and the fact that it would require resolicitation and all of that, but certainly the opportunity is going to be there to provide that plan.

And we basically invited the unsecured creditors numerous times before the filing date and are inviting them again here today that if they believe that to be the case, they should put their money where their mouth is and put forward a plan that addresses secured claims and provides a path to exit that is backstopped by their unencumbered assets.

They haven't done that. They provided a DIP to nowhere, and that's all we have from them to this point. And I think, Your Honor, we're perfectly valid in exercising our business judgment to conclude that the DIP that we have that

provides a consensual prepack vis-à-vis a voting majority of all our classes is the appropriate path here.

There was a throwaway comment in the objection about the DIP not being provided in good faith. You heard from the various parties in the declarations that this DIP was solicited in good faith. There's been no evidence suggested that it was anything other than good faith and Debtors easily meet that burden.

And last, Your Honor, there was an objection -- again, it wasn't really raised in the testimony -- about fees being paid to certain secured creditors. I know Your Honor has heard argument on this in the not-too-distant past, and fees and payments to secured creditors are a standard form of adequate protection.

And to the extent Mr. Bennett is trying to, once again, preserve some kind of re-characterization argument under 506, he's free to assert at confirmation that any of those adequate protection payments should reduce the amount of the secured claims on account of the fact that they're undersecured. He's free to do that.

So with that, Your Honor, we think we've met our burden in terms of the DIP being absolutely necessary to the operation and success of this business. We've met our burden that it's the best available financing, it's the only financing that provides us the ability to preserve value here and has a

path to emerging from Chapter 11. And we request that the objections be overruled and that the DIP be approved.

THE COURT: Thank you, Counsel.

We'll start with Mr. Bennett.

MR. BENNETT: Thank you, Your Honor. I think you should be able to see me because I started talking, but I'm not sure. My video is on. There we go.

THE COURT: There you are.

MR. BENNETT: All right. So I want to just -- I'm going to take a lot of time because I had some comments that I wanted to start with but didn't get to. We have some slides. Before I get to the slides, it is interesting that in responding to the sub-rosa plan argument, Mr. Serajeddini decided to say that the DIP wasn't intricately intertwined with the plan, that it was somehow separate and therefore it was not a sub-rosa plan.

But then, as you will see in their papers and in some of the quotes I'm going to show you, they say the DIP has to be considered in the context of the plan and it's part of the plan and it's inseparable from the plan. It can't be both. That's Number 1.

Number 2, big point. There was a little bit of testifying going on with Mr. Serajeddini, and the Court is definitely skilled enough to understand the difference between facts coming from the mouth of a witness and facts coming from

the mouth of counsel in argument.

During the testimony, if there was one thing that was crystal clear, Mr. Banks testified that there was at least some portion of the roll-up that was being financed by effectively cutting the recoveries of unsecured creditors, coming out of the recovery by the secured creditors. At the beginning, he even admitted that it was all, and then later he cut it back to say, well, he wasn't sure how much. But, the harm to general unsecured creditors was clearly established by the testimony, and by the way, it's all.

And the idea that -- I just want to, you know, start with this. I'm probably going to end with this. And I'm going to say it five times or so during the argument. The idea that today, as a consequence of this hearing on the first day, that we are going to hand somewhere between $80 million to $100 million of value to the -- to the roll-up creditors, from wherever it came from, although some of it, I think all of it, but at least some of it, is coming out of the unsecured creditors and where a major participant of that loan is the -- is the owner, CDR, is just outrageous. There is no other way to describe it. It should not happen. By the way, particularly in a case that's venued in the wrong spot.

So, let me turn on to Page 3, which is where my text starts. Everything in this presentation is supported by the testimony of the witness. These are my assessment of the most

important features of this Chapter 11 case.

These debtors have significant unencumbered assets, and no secured creditor has liens on substantially all assets. They're kind of cut up among secured creditors, and then there's unsecured assets, unencumbered assets, all over the place. That means no secured creditor can claim a lien on the business and the RSA creditors know this.

That the only valuation the debtors have done is based upon the idea that there's a unified security interest covering all the assets of the debtors is crazy. It does not comport with the facts that exist in this case as testified by the witness and is shown by the documents.

The RSA creditors in their plan admit the existence of value for unsecured creditors, but they mightily try to minimize the extent of the unencumbered assets. And they know they got a problem, that's why through the DIP motion the RSA creditors try to seek to expand their liens on an expedited basis by seeking to roll-up significantly undercollaterized debt.

And remember the testimony with respect to comparables. There was one name, and I can't check the name now, but I can between now and a continued hearing on Monday or another time. One name, where they thought there was a roll-up of this much unsecured deficiency claim in the constructs of a roll-up. There's -- there's no case that I've ever heard of

that involves this. And I don't think Your Honor's ever seen it either.

Page 4. The Cross-Over (sic) Group has submitted it's filed a committed, non-priming DIP facility, we call it the alternative DIP facility, in an amount that exceeds the new money provided by the debtors' recommended facility. The one that includes CDR, the debtors' private equity sponsor. That's not a priming DIP. It's a non-priming DIP. It has zero, zero roll-up. We have already made arrangements with the debtors' fronting bank, Jefferies, so that we are in a position to fund when it needs to be funded.

Now, by the way, we haven't even -- their order came around today. We haven't been through it yet. And so there's going to have to be negotiations of orders in any event. So, no one is funding tomorrow. And it's a weekend anyway. But, we're there. There's no question. So, there is a substitute. They don't like it, but it's there.

And a substantial legal impediment to approving the priming DIP where an alternative DIP which doesn't include priming is actionable and available is the law. I've read Section 364. You've read Section 364. There are no exceptions. It does not say that you can -- that a consensual priming, which they said isn't consensual. They're using the -- a voting power, and they're going to ask for an order of the court saying there is a priming. There is no provision in 364

that says it's okay if some of the lenders consent. It's just not there.

We're going to be more detailed about this. It's an insider DIP facility. And CDR is absolutely interested. And by the way, we'll get there in a few minutes with a special slide, everyone on the board of CDR, whether or not designated independent for some purposes, are not independent about CDR's effort to keep the company. Those directors want to keep their jobs.

There is absolutely interest here that cannot -- there is no one that's truly independent at this point in time on the debtors' side. And besides, one of the times when you defer to a determination by the debtors' board and directors is when they're fully informed. If anything was clear from the testimony from Mr. Banks, this board and its special committee was not fully informed. I've actually never seen a case where that kind of testimony came up quite that clearly.

And this will be -- I'm sure Willkie will talk more of this than me, but it affects the unsecured creditors just as much as secured creditors. The debtors' proposed plan includes property and rights that are not severed to a market test. Are not distributed based on classes of creditors. But are instead reserved before and distributed to specific favored parties, including CDR.

I'm going to skip the slide 5 and let's go directly

to slide 6. This is a reminder to Your Honor of this testimony that all of the meaningful debt, for purposes of this case today, the cash flow facilities which are really small, the secured notes which are really big, and the unsecured notes which are really big, are all guaranteed by the same universe of entities. And so the only difference is about the secured status.

And when we turn the page to 7, the difference in recoveries for the two classes of debt depends on what liens really exist. And this is what the disclosure statement and the first day declarations say. And this is the basis on which the disclosure statement was prepared. You heard that. It says, the cash flow facilities are secured by liens on substantially all the assets and property of the borrowers and guarantors.

Nothing can be further than the truth. It says, the secured notes are secured by liens on substantially all assets and property of such guarantors. This statement is also inaccurate.

Let's go to the next page. Here's a summary. And I apologize. There's a typo in the box on the right. That word, and, on the first line shouldn't be there. We were in a rush. This is a summary, okay? This is what could be included in the RSA creditor lien package. And I keep -- this is the debtors' burden when they want to assert that there are secured liens.

Actually, it's the secured creditor's burden.

Nobody attempted to meet the burden of defining the security interest in this case. And we'll be putting it to them. The next step in this case, wherever we wind up, there's going to be an adversary proceeding to determine secured status, which is the way these things are determined.

So, in any event, what is their collateral? Well, some machines, okay? And it seems not very many. Two thirds of the stock of certain direct foreign subsidiaries. There's exceptions. Junior liens on current assets. And some U.S. intellectual property.

What's not included, okay? Well, one third of foreign subsidiary equity. All owned, leased real property and fixtures. Every single business premises cannot, none of them, can be seized by secured creditors and sold in their foreclosure sale. None.

To exercise their remedies against the machines, they got to line up the machines in front of an auctioneer and sell them. That's their remedy. They do not have the ability to move the business. They don't have liens on any vehicles. Sometimes a trivial category. But, one of my colleagues looked at the website and looked at the insides of factories, and it looks like there's lots of trucks lying around. Not a single one is collateral.

And then we saw that they've separately financed

several batches of equipment in huge deals. None of them can be lined up by the secured creditors and sold.

So, the secured package, it's piecemeal collateral. It's old fashioned UCC security interest on particular assets. They do not have an all encompassing security interest. They do not cover the entire business. You heard the testimony. They've treated that case -- this case differently as if there was an all encompassing security interest benefitting the secured creditors from the get-go, including throughout their disclosure statement. We'll talk about the disclosure statement process later on today or tonight, I guess.

I don't want to use the word dishonest yet. I definitely want to use the word inaccurate.

Page 9. I said before, I'm sorry to repeat, first point, determining what collateral actually does secure the secured debt requires an adversary proceeding. This is not controversial. The scope of liens that secure the secured debt is not determined by a creditor vote. There's a case we've cited here. There are many more.

For this reason, we'll come back -- we object to other parts of the different things that are going to come. I didn't mean to include that here. I'm going to skip over the venue points that I made earlier today. They've been made.

And I want to now turn to Page 14, which we now are turning directly to the financing motion. And in case Your

Honor didn't know where I was going, the financing motion should not be approved. It can't be approved. The debtors have alternatives.

The Cross-Holder Ad Hoc Group has made a proposal. It's been transmitted to the debtors and filed. The commitment letters are there. The alternative DIP facility is non-priming. Less fee exposure. No roll-up component. As the Court will see, the proposal has been made notwithstanding that the debtors' process was anything but robust.

Indeed, the debtors seemingly worked hard to discourage any competition at all. And, in fact, had made a deal and continued to lead the Ad Hoc Group, the Cross-Over Ad Hoc Group, along. We will get into it in more detail.

But, Mr. Serajeddini said that we had introduced absolutely no events of bad faith. To the contrary, the only evidence before the Court is actually bad faith in the context of this proceeding. Lying to people during competition is bad faith. Committing yourself to do a deal before the commission even -- the competition even got started is bad faith. Lying about when the process started is bad faith.

There is bad faith all over here. And it might additionally include bad faith in not calculating the cost of their deal. Not even looking at the cost of the roll-up, whoever is paying the cost. But, the unsecured creditors are paying a significant chunk of the cost.

Where is this Court -- is this Court stuck? No, this Court isn't stuck. As the Court in the Office Properties Income Trust case dealt with a problem a few days ago, didn't like the DIP, it said, I'll approve a DIP that's modified thusly. And then, obviously, very expectedly, the DIP lenders agreed to every change the judge wanted and funded the DIP.

That's one of the things the Court can do. The Court can say it'll approve our DIP on an expedited basis, and we will be there with the money. And the Court may be compelled to say no, that sometimes it's too much. That sometimes it's just piggish. And sometimes it's not fair. And sometimes the law doesn't support what's being asked for. But, the company isn't going to suffer.

And I'll make another point. They talk about -- and I'll make it again later. They talk about their concerns about publicity. They have, I hope, very well qualified PR people who presumably can make an awfully good case that the company's future is pretty well assured when it was offered two enormous DIP packages, each one from very well funded backers.

Next page, 15. These are the people behind the Cross-Holder DIP. Your Honor has heard of all of them or at least most of them. These are sophisticated and agile fund managers with substantial amounts under management who are committed to providing an alternative DIP immediately.

Your Honor heard the testimony. No one, not even the

debtors' investment banker, doubts the ability of these entities to perform.

Next chart. We're going to have several charts. But, this one is kind of where we're going to start. Which is kind of an all-in comparison. Not just the roll-up numbers which Your Honor will see, you know, on the company terms. Kind of, you know, these are -- this is the fee spread. You can line them up directly. And by the way, if Your Honor is going to consider this under submission, we will send you the charts so that you have them and can go through them.

But, you can see the additional recovery on DIP roll-up between $125 and $146 million. Obviously, the latter number's a little bit different because of my rounding. I apologize. I just thought it would be a little easier. But, the witness has confirmed that these numbers are right. And we've here included all of the other fees.

There's another point that we didn't -- that I didn't make with the witness, but it's clear from the documents and the term sheets, so it's covered by the evidence. Which is in addition to the cost of the roll-up itself, because the roll-up bears interest, take a look at the line roll-up interest that's kind of, you know, kind of to the right of total cost on the left hand side.

And you'll see that the roll-up interest goes from $9 to $22 million, depending upon, you know, different things that

happen. So, there's this additional cost, interest on roll-up, that I wasn't accounting for in the $125 to $146. It's directly additive. So, the numbers are even higher.

I'll make one more point too. If you think that the recovery numbers for the secured debt that were specified by Evercore and included in a disclosure statement are too high because of their assumptions with respect to what the collateral package included, then their recovery on a secured claim is lower, and their additional recovery on the roll-up, their uplift, is even higher.

So, that's another way of saying, the $125 to $146 numbers are higher when interest included, and they're even higher if you think the debtors' numbers are too optimistic because they overstate the collateral package for the secured facility.

Next chart. This is my point about deference. As we've indicated, everyone in this case on the shareholder's side -- excuse me, or on the company's side, is interested because they're trying to perpetuate control of the company. Absolutely everyone. Moreover, and it would be enough if this were the only fact, CDR is one of the DIP lenders.

I am really good at remembering proceedings that I lost. In re LA Dodgers, I lost the DIP hearing. And the competing DIP was approved. Precisely because a total fairness test was applied and the Court said that Major League

Baseball's DIP, which was a little bit cheaper and had about similar terms, was better for the debtors and we had to take it.

It wasn't the end of the world. We took the DIP. They funded the DIP. We performed the DIP. And as everybody, I think knows, the LA Dodgers case was an enormously successful reorganization. Set the record for prices for baseball teams that lasted for many, many years. And I'm not even counting the fact that they have two consecutive world championships where we sit today.

It can work. A competitive DIP can work and it can facilitate a successful reorganization.

Page 18. We've said this already. 364(d)(1)(a), a Court can approve a priming lien only if the debtor was unable to obtain such credit otherwise. I don't see the word non-consensual. And I'm absolutely certain that the proposed order that they have submitted to the Court has the Court effectuating a priming, whether or not they also have consent. This alone is a clear, legal reason why this DIP cannot be approved on an interim or final basis.

Next page. At some point, and this is in the first day declaration, and it was later, another bad faith point I will point out. They all of a sudden, after they understood that the DIP that was being proposed by the secured lenders was a DIP that was bigger than theirs and cheaper than theirs, they

then started talking about.

It did not have the support of the Secured Ad Hoc Group and was not coupled to a viable Chapter 11 plan. That only came later when they knew they were in trouble on an apples to apples comparison. And then they said, this will send a negative signal to customers, suppliers, and the debtors' over 9,000 vendors regarding the go-forward viability of the business.

On the next page, we start responding to this. First, under the proposed plan, as the witness testified, as the plan itself provides, the new money component of the insider DIP facility will be paid in full, in cash on the effective date. Thus, someone's going to put money in and somebody's going to get money out. Those are the terms of the debtors' DIP. Those are the terms of our DIP. Any potential leakage between the plan -- the DIP and the plan for emergence is irrelevant. Not a dollar of DIP funding will continue post-emergence.

By the way, there's an option exercisable by lenders to take their payment in a different way or to apply the payment to other obligations they have. But, the obligation of the company is paid in full, in cash, okay?

Second, Section 364 says nothing about requiring a debtor to condition entry into a DIP facility on such facility's connection to a proposed plan of reorganization.

And, in fact, if you make too tight a connection, you have a sub rosa plan, and it would be rejected for that purpose too.

There's no exception in Section 364 permitting a debtor to ignore an actionable alternative DIP proposal that's not supported by existing secured lenders. Look at the bottom of the page, these paragraphs are out of order. The company's claim that any DIP is unactionable without the support of the Secured Creditor Group is tantamount to a claim that the only viable DIP provider is the Secured Ad Hoc Group itself.

Such assertion shines a light on the conflicted nature of the DIP facility and reenforces the importance of entire fairness without deference analysis of the competing proposals. Their position is absurd. Why would he even bother having a competition if no one was going to make it but them?

Finally, how could the fact -- and I think this is incredibly important, Your Honor, how could the fact that the debtors are considering two viable and enormous DIP facilities be considered a signal to the vendor, customers, and suppliers that the debtors will be stranded in bankruptcy? That is absurd.

This is, you know, back when I started practicing, we talked about trophy DIPs. Part of the purpose of DIPs was to give people confidence. Two DIPs. Two large DIPs are a greater symbol of confidence than one. And a decent PR plan can deal with that and exploit it.

Page 22. As I said before, the proposed roll-up is an improper device designed to expand the security interest that cover pre-petition debt.

And the next paragraph is important. There is no issue with securing new money with liens on unencumbered assets. That's okay. But, in this case, there is no reason to secure pre-petition debt with liens on unencumbered property post-filing, okay? Our DIP facility has no roll-up. Theirs does. Another reason it should be rejected.

And by the way, as I talked about before, is especially true when existing collateral is not a lien on a business, but just on a portion of the property used in a larger business. Because they're not really priming themselves. They're priming the -- priming's the wrong word. They're not -- they're encumbering unencumbered assets to improve their distributions.

And that doesn't make a difference if it's a true all encompassing security interest where the secured creditors have everything anyway. That's why some roll-ups go by without too much commentary. This case is truly, genuinely different.

I think the testimony was crystal clear about the math that leads to the conclusion of exactly how $140 -- between $126 and $149 million, plus interest, is the cost of the roll-up and the benefit of the roll-up to the lucky parties who get to participate in it, including the sponsor.

Okay. The next pages are the buildup, step by step, followed what happened in the testimony. So, I'm going to flip through the pages very quickly. As is indicated here and why this may be useful to the Court when making its decision, we have put on the bottom of every page the source of every single number.

They come from the disclosure statement or it's math from the disclosure statement that Mr. Banks and I did together. As I said before, I am guilty of rounding. But, I thought it would make it a little bit easier. These numbers are without the rounding. So, Page 23 was part of our discussion.

Page 24 was part of our discussion. There's where you can see, he didn't quite remember it, but his recovery bracket for secured creditors is 81.6 to 98.4. There it is. The first lien deficiency claim numbers are kind of irrelevant to this. We were really focusing on the secured part and the blending between the two.

The blending between the two gets to the 42, 41.7, or I think it was 41 in my imperfect rounding, and 50 to the right. That's what that page does. And, again, cited below, so that if the Court needs to build it up or wants to build it up itself, these are the steps.

Page 25. This is where you see the uplift. If you take a look at the total first lien claims line in the middle

of the page, 3994 is the full secured debt, secured and unsecured portion. The recovery, when you do the multiplication against just the secured portion, and then apply it to the entire claim, you get the 42 or 41.7 and 50.2. And that gets uplifted from 41.7 to 100 on the low side, from 50.2 to 100 on the high side.

And you see underneath that, we talked about the fact that it gets improved by somewhere between 50, which is the 49.8, and 59 percent, which my defective rounding on, you know, 58.3. And then in the lower right hand corner, that's the percent uplift. And then we calculated on the right hand side, highlighted in yellow -- well, it's on mine it's highlighted yellow, it's in a red box on yours, Your Honor, is the 146 and 125 numbers.

These are not just my numbers. As Your Honor saw, the debtors' financial advisor calculated these numbers with us. These are now the debtor's numbers. There was zero -- there was zero redirect on any of the calculation.

So, remember I talked about the fact that on an interim basis, the 146 and 125 aren't the right numbers. It's more like 190, something like that. It's 60 percent of each of those two numbers, you know, plus the interest number, plus the potential, you know, upside from there.

And that's what's happening today. Today we're talking about almost $100 million just today. None of this

cost, whoever it's attributable to, was included in any of the debtors' calculations. I was astonished that the declarations did not include any effort to show this cost.

I am flabbergasted that they didn't show the numbers to the directors. I am flabbergasted that they didn't calculate the numbers for purposes of negotiating with the creditors who are asking for this much. It seems they never really figured it out. But, it would probably take more discovery to figure that out.

Next page, 26. And this is just the backup for the other -- shows the adding of the incremental interest by reason of the larger DIP loan, by reason of the roll-up. Just a separate, you know, calculation so that you have it handy.

Next page, 27. The DIP marketing process was anything but robust. In fact, every step of the way it is evidence of bad faith. The debtors in their -- one of their declaration that went in said, they were talking with the Cross-Holder Ad Hoc Group daily concerning the out-of-court transaction.

The debtors determined to market the DIP only to the lenders under the insider DIP facility, including the debtors' controlling insider, and they didn't bother telling us. Or maybe anyone else. The debtors only engaged with the Cross-Holder Ad Hoc Group when the group proactively reached out to the debtors. And then they lied, which we'll get to in a

second.

After limited discussions over a handful of the days, the debtors ceased discussions with the Cross-Holder Ad Hoc Group, notwithstanding the group's continued outreach and their superior proposal.

So, I'm going to review the evidence. On January 23rd, 2026, the first time the Cross-Over Group understood the debtors were evaluating filing for Chapter 11. Guggenheim contacted Evercore to express the Cross-Holder Group's interest in providing a DIP facility and requested the materials.

Guggenheim's DIP solicitation materials -- excuse me, Evercore didn't send them until January 25th, 2026, okay? And as we're going to go through the e-mails, we're going to see that even between the 23rd and the 25th, they were less than completely truthful. We'll go through it.

On the 25th, the same day, the first time Evercore got around to sending DIP solicitation materials to the Cross-Over Group, the debtors entered into the RSA. That's even before they got an answer. They didn't tell anyone. And the RSA, of course, we demonstrated includes the requirement that the debtors accept the secured creditors in CD&R's proposed DIP facility.

We talked about this e-mail. Page 29. This is the request. On the 23rd, on the date that Mr. Banks testified, their DIP process had started and they were already talking to

other people. They get this request from us. They respond not until the next day, on the weekend.

And this, this e-mail, Mr. Banks tried to reinterpret. Steve, In connection with any DIP marketing process. What do you mean any DIP marketing process? On the 24th, there was a DIP marketing process. Any DIP marketing process suggests there wasn't one yet. The company intends to solicit DIP proposals from all key stakeholders.

That statement isn't even true. They have solicited DIP proposals from key stakeholders. But, not including our clients yet. Okay? We will share any DIP marketing materials with you for distribution with your clients. That was true, but it wasn't exactly going to be very timely.

About a day later, they actually send us the materials. But, they don't say that we've already signed the RSA. This is not exactly good faith. This is bad faith. The same day they receive a proposal from us. We don't have the proposal on these pages, but it was one of the attachments, okay? And the testimony was, was that the proposal covered every single field. Every single point that they wanted information on, we hit it.

That same day, the RSA was signed. We say that. And then -- then they don't tell us. They assume we're working away. And about a day later they say, we're following up on the DIP proposal, okay? Or we say -- I'm sorry, we say, we're

following up on the DIP proposal. We're willing to do our thing.

We got your DIP proposal 24 hours ago. This is us, again, trying to get more response from Evercore that same night. Finally, there's a response. Again, after they've already signed. It's the following Monday after they sign the RSA. Could you please confirm the amount of DIP financing that your clients are willing to fund? And please share your proposed -- plan sponsored proposal as soon as you are able.

They knew and they're worried. They knew our amount was greater than the amount that they were getting from CDR and the secured creditors. They're now scrounging for something else. And they want to say we have to have a plan proposal too.

Here's the response on Page 36. We say $500 million. They knew it was $500 million. Theirs, by the way, two fifty plus the additional one fifty. That's only four hundred. This is still bigger.

And we addressed their plan's sponsorship proposal. We say they -- they're going to run a marketing process to verify that the insider transaction is at the right price. And so we said, you got some materials? Help us. By the way, we're in a process of doing exactly this. But, that's not the only kind of alternative plan that has to be considered here.

We have proved that their disclosure statement

numbers are all inaccurate. That unsecured creditors have been under -- under treated, and that the division between secured and unencumbered property is just dead wrong. A different plan, even if it's with the same equity sponsor, has to right that. A DIP can facilitate too. We're supposed to be trying to do some justice here and get the priorities right.

By the way, still no suggestion that they've already signed someone up and they're just playing with us. More bad faith. Six hours later, still more conversation. This is from them. They want to understand their path for emergence. They're worried about funding the company through a proposed exit. But, the DIP doesn't fund the company through a proposed exit. Theirs doesn't. Ours doesn't. It's paid in full on the effective date of the plan.

What is he talking about? This is gibberish. What's not here? No statement that they're already committed. You guys are wasting your time. More bad faith.

Then Kirkland joins the party. They know our DIP proposal's better. By the way, they sat through a board meeting where no one actually quantified the roll-up. I don't understand that either. But, that seems to be the testimony. We encourage your client not only to deliver a junior DIP proposal, but a complete restructuring proposal, or otherwise provide support the company will emerge from Chapter 11 (indiscernible) DIP financing.

Again, I have read 364 two additional times in the last 48 hours. I already knew what it said. And I have a hard time finding anything about a complete restructuring plan being part of a DIP, particularly with a DIP that's being funded in cash, paid in full in cash, and where there's absolutely no commitment from anyone, either under the CD&R and their secured creditor partner's DIP or our DIP to do anything for post-emergence financing.

39 is -- I think I've covered already. So, I'm almost done. There's a lot more wrong with this case, Your Honor. There's certain things that are distributed to classes under the plan. But, frankly, there are more categories of value, rights, and property that are being distributed to other people outside of the class system. And it has the effect of creating distinctive treatment to people in the same class.

And there's been a recent case out of the Dallas District Court that covers this issue. I keep forgetting the name. But, this to me is one of the most important principles in the entire Bankruptcy Code. That people within a class, everyone in the class, gets treated the same. You can't have it any other way.

It's any other way, you're not going to have just committees. We're going to have every single person that's got to show up in a case to protect themselves because they can't count on any virtual representation in any part of the process.

And maybe we're already there. But, it's not good. This is a fundamental principle and this plan violates it in countless ways. I will leave to Willkie a further discussion of this. It's as much their issue as mine.

And Page 41 is about what's going to come next in the case. Not really relevant to what we're talking about today.

In summary, on Page 42, the Court should not approve the insider DIP facility. There's no good course for the roll-up regardless of whether other financing is available, but other financing is available. It's better. It's much less expensive. It can be implemented immediately or at the same pace because there's the whole problem with getting an order done.

There's no cause, another point at the very end of the testimony, the board doesn't seem to have considered, there's no cause for any waiver of the debtors' ability to charge secured creditor collateral for the cost of preservation. After all, we are dealing with piecemeal collateral in the usual UCC sense. And, frankly, it sounds like this case is doing a lot to preserve the collateral for the secured creditor, again, at the expense of unsecureds.

And also, we pointed out there are waivers of claims against the secured claims. I understand that they can be traditional. But, the idea was, was that the other was someone independent. They talk about the independent committee and

Quinn Emanuel is, I'm sure, excellent work.

But, for some reason, the special committee never heard about this as an issue. Again, unbelievable. Further evidence of bad faith somewhere. Your Honor, if you have any questions, I'm available.

THE COURT: Thank you. I assume the case you referenced was ConvergeOne, out of the Southern District or --

MR. BENNETT: Thank you. Thank you, Your Honor.

THE COURT: I'm familiar with it. Let me turn to the other raised hands. I do ask that all PowerPoints that have been used, both in openings and as part of examinations, be forwarded to my chambers directly. Mr. Stancil?

MR. STANCIL: Thank you, Your Honor. Mark Stancil, Willkie Farr & Gallagher, and as our colleagues have referenced, we represent the Excluded First Lien Lenders Group. So, we are -- those funds currently (indiscernible) is funds, affiliates of Canyon, that are only first lien holders, but are not RSA parties.

And so you've heard a series of references today to your 30 percent set aside for this and that. I want to very briefly, Your Honor, identify a fundamental problem with this proposed first day relief even as to -- among the first lien lenders.

So, Mr. Bennett and I would not agree on a lot of things. But, I think that his presentation underscores what

I'm about to tell you, which is the deep and profound greed and unfair treatment, even among first lien creditors that's embodied in this plan.

And we filed our objection. I will keep it super short, Your Honor. I will not repeat. Every lawyer promises that. Few deliver. But, I'm going to try to surprise you on a Friday. I'm just going to focus on --

THE COURT: It's still Friday?

MR. STANCIL: -- two main --

THE COURT: Go ahead.

MR. STANCIL: -- on our two main points. First, Your Honor, this pro rata treatment requirement. There's no dispute, and I heard no dispute from counsel, that the other first lien lenders are, by the terms of their intercreditor agreement, entitled to pro rata treatment upon repayment of their loans.

There's the passing reference to this not being implicated because it's an exchange. That's not what it is. And I refer Your Honor respectfully to, not only the recent action in American -- I keep wanting to call it American. But, it's American Tire Distributors before Judge Goldblatt down in Delaware where he said quite explicitly on analogous circumstances that he wasn't going to approve a DIP with a roll-up unless it had a carve-out for exactly the violation -- the ability to pursue relief for the violation we're talking

about here.

It is taking one subset of secured claims that are entitled to pro rata treatment and giving them, paying them off with new consideration. And I think he said it better than I did. He just said, in describing the roll-up, he said, it seems to me what the roll-up is, is a draw on the DIP to pay down the pre-petition credit agreement. It's no fancier than that. We take -- we take DIP money. We pay off and get rid of a first lien debt. And now you've got, you know, that's how it works in my wallet at least.

Moreover, if there's any reference, I'm going to try to make their argument for them, and maybe they're thinking when they said exchange, that this has something to do with 11.6(g) of the credit agreement. That applies only to open market or other private negotiated purchases. This is not a purchase. This is definitely not an open market. The simple fact is it's a pay down of debt and they have to do it pro rata.

So, Your Honor should follow that example from American Tire, or Your Honor probably doesn't read ahead in his adversary docket. But, earlier this week in your Del Monte case, there's an adversary proceeding raising exactly this claim. This is a valid claim. Even granting the interim relief today without the carve-outs that we've mentioned would be deeply prejudicial. They have no response to those

arguments.

And I do want to just briefly explain why it's so deeply non-pro rata. So, there's a reference to a 30 percent hold back of -- of this for the RSA parties. But, the RSA parties also get to participate in the 70 percent that is distributed to everybody. So, I don't think it would be appropriate to do any roll-up.

But, you certainly shouldn't -- you can't double dip on the roll-up, set aside 30 percent for yourself, and go to the trough and share the 70 percent with everybody and call that pro rata. It's just not how the math works.

I'm going to briefly, very briefly, talk on a second line of, what I would just bluntly characterize as greed. And just describe -- we walked through two different sort of, I think baked-in egregious fees that divert value away from non-participating first lien lenders to the RSA parties.

But, I'm going to focus only on the second because it doesn't take me very long and I can explain it. I do not have the math skills that Mr. Bennett does. But, even I can get this one right.

There is a $1.565 billion new term loan baked into the proposed plan. And the RSA parties say, they're going to get a premium of 8 percent against that $1.565 billion new term loan that'll be there at exit. In exchange for backstopping the cash-out option.

So, you can either, under their world, you can either take back -- as a first lien creditor you can either take back their new paper, or if you want to, you can take cash at 80 cents on the dollar. And so they pay themselves 80 percent -- pardon me, 8 percent of the $1.565 billion for being ready to stand in and pay the cash-out.

Now, 8 percent of $1.5 billion, it's a lot of money. But, that's -- it's way worse than that. The -- first of all, the most cash in even in a theoretical world, whatever we paid out under the cash-out option, would be just 80 percent of the term loan. So, it's really not 1.5, it's 1.25.

But, that's not the real offensive part. The really offensive part is, every RSA party is required to take term loan and not cash. And so, here's the math I was able to do myself. When you say $1.56 billion, and only 80 percent of that could be cash, that's 1.2. But, 72 percent of first lien lenders are required to take the term loan option.

So, what are we really talking about as the cash backstop here? If every single non-RSA first lien lender says, I want the cash, not the term loan, they'd have to backstop $350 million of cash. Okay? And for that, they're going to pay themselves $125 million of new term loan. That is outrageous.

And that is one way, and I think I'll just leave it there, Your Honor. I think that's enough to tell you what's

going on in this plan, and it's not remotely fair. Even leaving aside everything else you heard today, it's not remotely fair within the 1L class. And unless the Court has questions, I will hand the podium over.

THE COURT: All right. Thank you, counsel. Keeping going down my list. Mr. Dahl?

MR. DAHL: Good afternoon, Your Honor. Ryan Preston Dahl of Latham & Watkins on behalf of the CD&R entities. I am an advocate for the DIP, so I'm happy to --

THE COURT: All right.

MR. DAHL: -- until the objectors have said their --

THE COURT: Yes.

MR. DAHL: -- piece. But, appreciate the opportunity to speak at that time.

THE COURT: I appreciate that. Yes, I'm looking for those on the objecting side. Let me -- but I'm not going to guess. Let me just go down my screen. Ms. Leamy?

MS. LEAMY: Yes. Good afternoon or good evening.

THE COURT: Good evening.

MS. LEAMY: Jane Leamy for the United States Trustee. I'm going to be brief because I know the parties have gone on at length, and I'm covering one of the items that the other parties have spoken about. But, essentially, we're concerned with the roll-up loan and the expansion of the collateral package.

A 1-1 roll-up may not be unusual for a DIP loan or a roll-up loan. But, what is not typical here is the request to expand the collateral package. The roll-up loan here seeks liens today on previously unencumbered assets. In reviewing the DIP order, the term "excluded assets" was used multiple times. We reached out to counsel, said, you know, what are the excluded assets?

And based on that response, it's the U.S. Trustee's understanding that the unencumbered assets include, among other items, owned real property, foreign -- certain foreign property, foreign intellectual property. And this is objectionable on the first day.

So, if Your Honor is inclined to approve the roll-up loan and request to expand the collateral package for the roll-up loan to the previously unencumbered assets, we would request be deferred until a final hearing, and not approved today. Thank you.

THE COURT: All right. Thank you. Mr. Fleck?

MR. FLECK: Good afternoon, Your Honor. Evan Fleck of Milbank on behalf of the Secured Ad Hoc Group. We are here in support of the motion. I'm not sure -- I think Mr. Moss is as well.

THE COURT: Right.

MR. FLECK: I'd encourage him to be. But, that's his call. So --

MR. MOSS: Yeah. I'll have a few things to add, Your Honor and Evan, when we get there.

THE COURT: All right. Well, let me get to that side of the table in a couple of moments.

Mr. Walsh, too, what side are you coming down on.

MR. WALSH: We're co-counsel with the Secured Ad Hoc Group, Your Honor. So, I just wanted to introduce Mr. Fleck and his colleagues from the Milbank firm.

You know, and based upon Your Honor's comments at the outset of the case welcoming all the attorneys to New Jersey, when it's his turn to speak, I will just let Mr. Fleck handle it. Thank you, Your Honor.

THE COURT: All right. Thank you. Well then, it looks like we're ready for the flip side. So, let me go back where I started. Mr. Dahl?

MR. DAHL: Thank you, Your Honor. And for the record, Ryan Preston Dahl of Latham & Watkins on behalf of the CD&R entities. And also with me is Mr. Schrock. There are a number of things to respond to directed towards my clients. I'm certainly not going to restate all the points raised by Mr. Serajeddini.

I want to say at the outset, there is probably no bigger fan of Bruce Bennett in this courtroom than myself. He's a tremendous lawyer. He's a tremendous advocate for his client. And he is a tremendous story teller, as any good

advocate should be.

But, there are certain instances where the stories we would like to tell are not consistent with the facts. And they're certainly entertaining, but they are not the facts. And I think in many substantive respects, that is the case here.

Because stepping back, the question for the Court is fundamentally, whether the debtors have exercised their business judgment in pursuing the DIP that is presented for approval, as opposed to the alternative that Mr. Bennett is advocating for.

And here, I'm going to pick up Mr. Bennett's endorsement of LA Dodgers, where, and I quote, "Debtors correctly posit that courts will almost always defer to the business judgment of a debtor in the selection of a lender," end quote. And I'll come back to Mr. Bennett's point about why apparently the business judgment rule shouldn't apply here.

But, to that point, what we've heard a lot about are frankly in the light most favorable to the competing proposal. Big relative differences between the two proposals. Whether one proposal is a hundred basis points better than that proposal. Whether the debtors are within their rights to pick a proposal that provides a path to an exit than another proposal.

These are quintessential business judgments. And I

don't think there was any dispute there. But, what I think we do take issue with first is this notion that unencumbered property is somehow protected or unavailable to secure post-petition financing or adequate protection. And it's almost taken for granted that unencumbered assets are unavailable. And that frankly turns the Bankruptcy Code on its head, Your Honor.

364(c)(2) is -- I know the Court knows, in fact, requires that, that unencumbered assets be used precisely for this purpose. And that's exactly what's happening here. I know Mr. Bennett made a great deal about a OPI. An OPI is an example of a DIP, and a DIP process should be followed.

In fact, that's exactly what occurred. An OPI. Including with the interim order, as my colleague, Mr. Schrock, who leads that case, can advise.

Speaking of OPI, I know Mr. Bennett has also made a great deal about how a DIP can be denied and the parties can simply go in the hallway and settle it. And therefore there's no risk to be taken associated with that. And again, I would note, the choice to avoid that risk is again a fundamental business choice that the bankruptcy court affords to the debtor.

But, even in OPI, that did not happen in the context of an emergency hearing at the first day of a Chapter 11 case. Again, as Mr. Schrock could advise, that happened at a final

hearing where the cases had had the opportunity to stabilize, to get on their own two feet, to allow the process negotiation that Mr. Serajeddini identified at the outset of this hearing to occur. But, the context that Mr. Bennett I think is somewhat glibly referring to, that this can all just get sorted out, simply isn't the facts that ground at OPI.

And this then, I think gets to the point that Mr. Bennett raised about entire fairness. Because I think fundamentally, the objections to the DIP, at least that I have heard, really boil down to this notion that entire fairness should be applied, and not the business judgment rule. Because, again, the Bankruptcy Code requires unencumbered assets to be used, as are being proposed to be used here.

So, the question then is, does this objection just fall apart if we are not in a world where entire fairness applies? And it does. Because, again, then we are talking about, important to us, but fundamentally relative distinctions between financing proposals. The discretion to choose which one to the debtor.

So then the question is, did entire fairness make any sense here? And here, Mr. Bennett says LA Dodgers, LA Dodgers, LA Dodgers. And, again, accepting as true that LA Dodgers should apply, I think it's very important to remember the actual facts of that case. Because there is no evidence that Mr. Bennett identified suggesting that the debtors' board

process was conflicted.

My clients, CD&R, have been out of the boardroom for an extended period of time. The unrebutted testimony in the first day declaration, I'd refer to you Paragraph 62, is the debtors had fully delegated decision making authority to their independent special committee. And the process or on the selection of a DIP, and who the DIP provider would be, and the terms of that DIP, (indiscernible) the special committee.

And CD&R was not involved in that process. We haven't been involved in that process. Yes, we are a DIP provider. But, we didn't control the DIP. And I think that's a fairly fundamental point given that the entirety of Mr. Bennett's argument around entire fairness comes down to this notion that this is LA Dodgers.

But, when you look at the facts of that case, and what the Court actually said in that case, is important. Because in LA Dodgers, there was no delegation of authority. As I'm sure Mr. Bennett would recall, the decision making process when LA Dodgers filed for bankruptcy was controlled by its controlling shareholder. A gentleman by the name of Mr. Frank McCourt.

Mr. McCourt didn't delegate authority. Mr. McCourt controlled the DIP process. And here, Mr. McCourt not only controlled the DIP process as a controlling shareholder, the evidence showed that he had a personal liability due if he

didn't select the DIP that was presented to the Court, but ultimately denied under an entire fairness standard.

And here, I quote, "The evidence shows that a debtor as controlled by Mr. Court (sic) did not seek court approval for the Highbridge loan, Mr. Court would personally owe $5.25 million to Highbridge. Such personal potential liability clearly compromised debtor's, Mr. McCourt's, independent judgment. Therefore, debtor's decision is not entitled to review using the business judgment standard." Period. And that's at 313 of that case, Your Honor.

Clearly, we're in a very different world from LA Dodgers. Again, the unrebutted testimony is that this decision making process was handled by an independent special committee delegated with authority for a considerable period of time. My client had nothing to do with that process. We're not in the boardroom in that process. We are not Frank McCourt.

So, accepting as true then Mr. Bennett's proposition that LA Dodgers controls, we are back as we should be where I started, which is that courts must always defer to the business judgment of the debtor in the selection of the lender.

We do think we have the best proposal, Judge. I want to be clear about that. We do think it was the best proposal for the estate. But, fundamentally, that's the debtors' choice. They made it through an independent arms-length process.

And we've heard a lot of rhetoric from Mr. Bennett about how apparently everybody in this process is a bad person or dishonest or misleading the Court. Or I think the phrase Mr. Bennett used is, I'm not going to say the word dishonest, but I am going to say misleading.

But, I think it's certainly fair to say that the characterization that we heard earlier of LA Dodgers is fundamentally misleading about the process, the fundamental point, the decision before the Court.

Judge, I'm happy to answer any other questions that the Court may have. But, otherwise, I would cede the virtual podium.

THE COURT: Thank you for your input. Mr. Moss?

MR. MOSS: Good afternoon, Your Honor. Great to be before you again.

THE COURT: Thank you.

MR. MOSS: Joel Moss representing Barclays Bank PLC, as Administrative and Collateral Agent under the ABL Credit Agreement, as well as the Cash Flow Credit Agreement.

Let me start with the easy part first. There were extensive hard fought negotiations with the debtors on an adequate protection package for the ABL secured lenders. Most important to us (indiscernible) have to be expended first, and basically we get a 7.5 percent cushion in terms of a top up, basically if excess availability falls below that level,

the Debtors have to top that up.

And amounts included in -- for purposes of determining the borrow base for that purpose include DIP cash which is subject to our lien, as well as various termination events and whatnot, as well as the payment of default interest. These were essential core items for our lenders and fortunately I can say that the ABL lenders and the agent support what was a very hard-fought negotiated adequate protection package on the ABL credit agreement.

I also want to make very clear as far as the ABL, I heard Mr. Serajeddini's presentation at the beginning, my understanding is the ABL lenders are being asked to potential provide a new facility, the current facility is terminated. But if they don't provide it, they're going to be paid in full in cash.

There is no requirement that the ABL lenders roll into a new facility, though the hope is there can be a negotiation around that as a part of the path to exit. But that's obviously up to every lender and there's no requirement of it. This is not a cram up case, this is not a reinstatement case with respect to the ABL.

I'll pause there, but I just wanted to make those points on the ABL side which I think is the easiest part of this.

THE COURT: All right.

MR. MOSS: On the cash flow side Mr. Serajeddini said that Barclays is the only party that can "consent" to a DIP. Barclays very much supports the Debtors' reorganization efforts and obviously understands and supports the idea that the Debtors need a path out for -- of bankruptcy. Barclays, however, is in -- in the capacity as agent had no role in negotiating this DIP facility.

We are effectively taking direction from the term loan lenders who represent the required lenders. Barclays is not consenting to the DIP of its own agency, it had no role in that process. So I just want to make that very clear.

The other point that I want to make very clear that Mr. Stancil seems to misapprehend, is the intercreditor agreement with respect to a DIP. The intercreditor agreement, and I -- you know, we can talk about the rollup in a second, there intercreditor agreement sets forth the various requirements under which each secured party basically is required to consent to a DIP and can't object. It does not say that if you do not meet those requirements, Your Honor cannot approve the DIP.

I leave it to Your Honor as to whether to approve the DIP, but I want to make that very important distinction because the intercreditor is not a check on can you approve the DIP or not. We have been directed to consent to the DIP, we leave it to Your Honor's good auspices to determine whether the Debtors'

exercised their business judgment with respect to the DIP and whether it otherwise complies with the requirements of the intercreditor agreement, though we would take the position that the intercreditor agreement itself isn't a block, it's just a block on who can object and when.

I would also take the (skip in audio) and Barclays in its (skip in audio) lender along with all of the other revolving lenders and all of the other non-ad hoc group lenders to the extent that Mr. Stancil on behalf of Canyon and his clients get better treatment with respect to the rollup and get to participate without the hold back and get to participate on better terms, I would want and expect the revolving lenders, who have very discreet and specific pro rata protections for their own benefit in the credit agreement, as well as other lenders to be able to get to participate on the same terms.

In other words, Canyon can't waive the treatment on a pro rata basis, cut a sweetheart deal for itself and then expect us and other lenders not to get the same treatment, that would not be fair.

So those are the points that I had. I'm open to any questions, but, Your Honor, I kept it brief and I know it's getting late, so thank you.

THE COURT: All right. Thank you, counsel.

I see no, luckily no more raised hands. So --

MR. FLECK: Your Honor -- Your Honor, if I may, I

apologize, I had been called on earlier so my hand came down. Evan Fleck of Milbank.

THE COURT: Oh, I'm sorry, Mr. Fleck.

MR. FLECK: Is that okay?

THE COURT: Yeah, that's fine.

MR. FLECK: Thank you, Your Honor. I appreciate the time.

As I said, for the record Evan Fleck on behalf of the secured ad hoc group. It won't surprise Your Honor to hear that I would -- if I were going to go into the full argument, I would echo a lot of the comments that Mr. Serajeddini, as well as Mr. Dahl made. I won't -- I won't go over that territory again.

I do think though a few minutes hopefully will be helpful to the Court. Now we as practitioners are oftentimes reminded by judges that it's really difficult in your position to understand what's really happening behind the scenes. And so I think maybe a bit a perspective from our group will be useful to the Court. I hope it will be.

This case is marked -- and I'll say what's not extraordinary about it, a lot of it is not -- what was extraordinary is the extent of the negotiations that took place with the parties, that includes Mr. Bennett's client, including Mr. Stancil's new client, but I guess it's the same client or some of the same clients, that went on for months in extreme

detail, in person, over Zoom, one-off calls.

This process, which by the way it has to be -- as we all know, in order to have an effective pre-pack negotiations need to take place over the course of time. And --

THE COURT: Hold on one second.

Mr. Bennett?

MR. BENNETT: This is testimony. If he wants to make legal argument, he should make legal argument. He's testifying. I object.

THE COURT: All right. Overruled. Well, let me have the argument at this point. Thank you.

MR. FLECK: Thank you, Your Honor.

Over the course of weeks and months those negotiations took place. Everybody who argued today was given the right to participate and actively participated. These were hard-fought negotiations. Nobody could seriously contend that it was anything other than that. Everyone had an opportunity to put their best foot forward, and that's what -- that's what bankruptcy, at least in the context of a pre-pack should seek to promote.

Everybody negotiated, there was no thumb on the scale, finger on the scale or otherwise. The Debtor did their job, much to our frustration. Mr. Bennett was frustrated, we were frustrated as well. And I've never seen a process before -- he's been doing this longer than me, but I've been

doing it a while as well at this point, I've never seen a process marked by so much investment of time and energy by sophisticated investors who came before the Debtor and did their very best to effectively sponsor the deal that they were advocating for.

Their deal was an out-of-court transaction. To the extent that they were successful, maybe there would be litigation in a different court. They weren't. Our transaction with the Debtor was the one that prevailed. It went right down to the wire. Unfortunately we are now at the end of that process, the company is in extremis from a cash flow perspective, and we have come forward to provide a solution.

Mr. Dahl is 100 percent correct, as Your Honor knows. There is one motion before this Court that provides a solution to the company's liquidity needs. That is the motion that should get an up or down decision from the Court, and it is supported by the Debtors' reasonable business judgment.

There is no credible suggestion, certainly no evidence to suggest that anything other than that took place. There was a responsible and adult process that took place by the Debtors through a special committee. Nobody has even tried to suggest the special committee didn't do its job. It was well-advised by professional advisors, and by individuals who have done this before with great success. The process is

clean, Your Honor, and the result of that process is a DIP financing that our clients are leading.

So I want to talk about -- you know, there's a lot of hyperbole, a lot of big language that Mr. Bennett used. But again, those are not the facts. This is not a remarkable case for the terms that are coming before Your Honor. And that was intentional on our part because we were competing, we wanted to win the transaction.

So there was a natural discipline that was imposed on us. We couldn't seek terms that were aggressive. This is a down the fairway DIP financing, it's nothing aggressive, I think everybody who does this knows, and Your Honor hopefully recognizes as well. And it was -- and it was stated on the record.

We did push at times for other terms and it was very clear to us that we had to discipline ourselves, and the Debtors did it to us as well. So, yes, there was discussion of a rollup that was -- that was greater than 1-to-1. And we ended at a place, again, that is very much customary. Even the US Trustee argues that that -- that a 1-to-1 rollup is not unusual at all.

So what are the things that the objectors are taking issue with with respect to the DIP? The first, at least -- and there's lots of arguments they made but I'm obviously going to distill it to those that I think need to be responded to

independently -- the first is that it's an insider DIP. It's not, Your Honor. Let's just -- let's just actually cut through the -- what is being used for advocacy and what are the facts.

CD&R is participating in our DIP. Their role in the DIP is less than 15 percent. Okay. That wasn't said before obviously by Mr. Bennett because it doesn't help his argument. Less than 15 percent of the dollars being put forward in the DIP are being provided by the existing sponsor. The rest of the money, more than 85 percent, and it was led by our group, independent financial institutions who are entitled a debtor's reasonable business judgment, and that's what it's supported by. So I think that first argument is debunked.

Secondly, they argue that, well, we didn't -- we're not -- we didn't put enough money forward. They're offering more money to the Debtor. I know Mr. Bennett repeatedly said it's fully committed, good to go, they're ready to sign, they even talked to our fronting bank. But the reality is, the only reason why their DIP needed more money was because it was funding a path to nowhere. It's funding a case that has no exit.

And I guess Mr. Bennett finds that to be an unconvincing argument, but judges repeatedly find as an attribute to a DIP financing when it comes along with a confirmable plan. And that's what we delivered along with our DIP, our DIP financing. That's not something that should be

counted against us. It actually is a sign of a responsible debtor that understood that taking on the burden of a significant DIP financing has to come along with a path of how to get out of the Chapter 11 case, or at least it should.

So, no, we didn't need to provide more money to the Debtor in order to loan them more money to be a more attractive option. The fact that they may actually have been willing to do that, we don't know, there's really no commitment on their part. But the fact they may have been willing to do that is of no moment. The Debtor didn't need more money. If they needed more money, they would have come to us, we would have provided it.

And the last, Your Honor, much ink has been spilled over the question of a rollup. I'll just endorse the comments from counsel to the agent, Mr. Moss, this rollup is permitted by the documents. We know that -- we know that the objectors would prefer not to be in this court and they found a case that they think help -- is helpful in Delaware, that happens to not be where we are.

But in any event, we believe that the intercreditor agreement is clear the rollup is not a payment. We think it's permitted and it is, as I said earlier, a customary form of consideration as part of a DIP financing which we think is supported by the market. Importantly, Your Honor, on the concept -- on the topic of the DIP, it is being syndicated, the

DIP is being syndicated and the rollup is available to all 1st lien lenders who want to participate.

So, you know, Mr. Stancil's here on behalf of, you know, the other half of Canyon, or maybe some of the same Canyon parties, they're welcome to participate, they're encouraged to participate, they will get the same benefit of any other non-steerco (phonetic) member of the 1st lien group and get the rollup.

And so why is there a difference? You know, I was deliberate in saying non-steerco member because there is a steering committee of lenders and initial RSA parties who have been working tirelessly, literally tirelessly through the holidays over months to try to construct a viable transaction. And as we all know, there is compensation generally provided to those parties. So, yes, there's a difference with respect to the treatment that is received on account of the backstop, but again, the DIP is being broadly syndicated to all 1st lien lenders and everybody does get the right to participate in the rollup.

So, Your Honor, obviously our group supports the DIP, we believe it was the product of a fair process, one that actually, you know, produced -- you know, a lot of people say when both parties are unhappy, that's a sign of a good process. We're not happy either, Your Honor. There was a suggestion that the we -- there's some windfall effect here or that the

recoveries are so generous to our group. There's significant impairment all around here.

So we're satisfied with the process that produced a responsible DIP financing for a company that clearly needs financing, and a path to an exit. We want to see this company be successful. It clearly needs the financing, that's uncontroverted by the evidence. And therefore, Your Honor, we respectfully request that the Court approve the Debtors' motion. I'm happy to take any questions with respect to any aspect of our presentation, or the DIP itself.

THE COURT: No, thank you, Mr. Fleck.

All right. I see --

MR. MOSS: Your Honor --

THE COURT: -- I'm going to go back to Mr. Moss and then Mr. Bennett for very brief comments.

MR. MOSS: Yes, Your Honor. Hi, it's Joel Moss again. I just wanted to correct something that Mr. Fleck said. Barclays and myself didn't say that the rollup was permitted. We were just outlining how the intercreditor agreement and the credit agreement work. I'm not taking a position as to whether the rollup is or isn't permitted.

I will certainly acknowledge that a rollup is a very commonplace feature in many DIPs these days, and this was something that obviously the ad hoc group bargained for and we weren't in the room for it, but it's a 1-for-1 rollup. But not

taking a position on that point. And obviously to the extent that Mr. Stancil's clients get any economics, we want them for the benefit of our revolving lenders as well.

THE COURT: Disclaimer noted.

All right. Mr. Bennett?

MR. BENNETT: Your Honor, I will be very brief, because I think in our slides we've covered, you know, kind of all the territory, and I do hope and I do expect you're going to focus on the evidence. But there's one part of the evidence that didn't make it into my slides because I was actually surprised, and that's the evidence that the special committee actually isn't entitled to the business judgment rule because it didn't inform itself about the rollup, about the waivers, about the releases.

That was undisputed testimony from a person who was in the room. There was no rebuttal, there was no recross. That's the facts of this case. The requirements of the business judgment rule were never met. So even if, and I'm -- look, I think that, what, a 97 percent or 90 -- I don't know, more than 95 percent controlling shareholder who can replace all the directors. Even though they hand it to people who are supposedly independent, but not in a case where there are at stake based upon the outcome of the case.

That's enough to put you into the total fairness realm. But you also don't get to assert the business judgment

rule when you don't inform yourself about what's going on. And the undisputed testimony was they had no idea, no one told them that they were talking about a rollup that was going to cost the company more than, depending upon the valuation assumption, 146 million or $125 million, whatever it was costing.

And by the way, no -- in addition to not telling the board, none of the declarations, the application for the -- for approval of the loan, none of those papers say a word about the cost of the rollup. I don't -- that would be enough. It has to be denied. Thank you, Your Honor.

THE COURT: All right. Thank you.

Thank you all, counsel. Tremendous arguments, and I respect the professionalism you've shown the Court and each other.

Mr. -- I'm sorry I keep butchering it -- Serajeddini -- it's just so late -- give me a sense of what the Debtor was looking for as far as second day. In other words, I understand there's 2 fundings, 150 and 100. I want to get a sense of what's needed to get to the second day, to get to the final, I want to get --

MR. SERAJEDDINI: Yes, Your --

THE COURT: -- it done in the time frame. And I'm going to --

MR. SERAJEDDINI: Yes, understood, Your Honor.

THE COURT: -- and I'm going to be very clear, I

want to approve only what's necessary to get there. I think that's our task as judges. I also want to be clear in that I haven't heard that an order has to be entered today. We have other matters to -- that we have to complete and address, the scheduling for the disclosure statement and the combined hearing, et cetera.

In fairness to the Court and in fairness to the parties, all the parties, I want the opportunity to digest and consider everything you all have thrown at me in the last 5 hours. And I would look to have a continued hearing on Monday at 11:30. That gives me a weekend to digest.

I haven't heard, and I'm going to look to you to tell me, that that doesn't jeopardize or prejudice continued operations, you know, what we usually hear, you know, a payroll has to be made. It's already 5:45 on a Friday evening, so I'm hard-pressed to understand that the Court can't be given the latitude of being able to digest this, and look into all this over the weekend.

I'm going to ask you all, either now or at some point before we pick up again, to advise the Court what's truly necessary to get to a final hearing should I approve the DIP and the scheduling. My thinking is to have -- I understand there's a March 17 hearing date for a combined hearing, I'm looking to have a second day hearing, I think it would make sense. It also serves as an opportunity to visit -- to revisit

where we are all at around March 9. That's roughly 4 to 5 weeks. Does that make sense?

So what is -- what I'm going to tell all the parties now is that I'm going to continue on the DIP. I'll give a ruling on Monday at 11:30. What I'm going to suggest to all counsel is you all work as hard as I will this weekend, and your clients respectfully, and continue discussions on seeing if there's a pathway where there can be more of a global resolution.

They say that -- you know, we hear the phrase used disparagingly that law firms have playbooks. Well, Courts have playbooks too. Mine has always been to try to get the parties to reach a resolution through mediation. I used it somewhat recently in *USS*, United Service Port-a-Potty case where retired Judge Drain helped reach the parties into -- on an emergent basis reach an accord.

So on Monday I'd like to hear if the parties think that that would be a viable pathway. If you can't do it on your own, to seek some outside assistance in trying to get to what everybody needs are. It doesn't mean you're going to. And as I said, I'm prepared to rule on Monday, unless you all say, Hold up. We'll finish up today with what we need to do, but I'm going to look to you to give me a time frame.

MR. SERAJEDDINI: Yeah, so, Your Honor, the challenge with respect to the DIP funding, you're absolutely correct that

we cannot fund and close today. We're after -- we're after business hours as you know.

In order to be able to fund and close on Monday, and we absolutely have payments and I could, with a recess, get Your Honor even more specificity on this, in order to get payments out, critical payments out on Monday, my understanding is we need the fronting agent to be aware today that the loan has been approved so that they can get to work and hit the ground running first thing Monday morning, and 11:30 Monday would be too late in order for them to be able to do that.

So that's kind of my current understanding based on what I know. But we can also confer if it would be helpful on this issue to give you a little bit more specificity.

MR. BENNETT: Your Honor, the papers said the Debtors have $67 million worth of cash in the bank and --

MR. SERAJEDDINI: Excuse me, Mr. Bennett --

THE COURT: What --

MR. SERAJEDDINI: -- you've made a bunch of absurd comments today and we've let it go. Can you please stop interjecting --

THE COURT: Let's have colloquy, only direct -- let's have discussions directed to the Court. I appreciate it. I'm going to take a few minutes right now. We're closed on oral argument as of now on the DIP. We'll pick up with everything else. It's -- and I need to give staff a break -- it's 5:45,

I'm going to come back at 6:00 o'clock.

My goal here is to be done for today by 7:00, giving you a sense -- let you have a -- get a sense of what you can do as far as Monday, and let's be realistic about it. So I'll leave it at that. All right, folks, see you at 6:00.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

THE COURT: You're welcome.

UNIDENTIFIED ATTORNEY: Thank you, Judge.

(Recess at 5:47 p.m./Reconvened at 6:04 p.m.)

THE COURT: Okay. Folks, we're back. Let me turn back to counsel. Mr. Serajeddini, what --

MR. SERAJEDDINI: Yes, Your Honor. Go ahead.

THE COURT: What do you have for me?

MR. SERAJEDDINI: So here's what I've been able to learn in 15 minutes, Your Honor. So we have roughly 90 million in payments going out in the first part of next week. Among other things there's about $1 million for Australia, New Zealand and Mexico payroll that's payable on Monday, or getting funded on Monday, and as well as rent for a variety of locations that are due on the 1st of the month.

And then in addition to that a lot of our vendor relationships are spot relationships and there's 30 million in spot vendor risk that we're hearing from procurement. If we don't have the hearing until 11:30 Monday, because of the steps required to close the risk is significant that we will not be

able to close the DIP on Monday, and that will push us into Tuesday, and as I said, that would delay payroll and some of these other payments.

And so -- and it's -- we'll adjust -- obviously the DIP order doesn't cover just the DIP financing, it also covers cash collateral use, and those would be the 2 sources -- well, in the first instance, as Mr. Moss laid out, the DIP funds must be used as part of our arrangement, but it would prohibit the use of either.

THE COURT: So is there a way of approving limited use of cash or a limited portion of the DIP to get us to 11:30?

MR. SERAJEDDINI: To get us to 11:30 Monday?

THE COURT: Yes.

MR. SERAJEDDINI: Yeah --

THE COURT: All right.

MR. SERAJEDDINI: -- I see no issue with that, Your Honor, if we had the authority --

THE COURT: So what kind of numbers are we -- we needing?

MR. SERAJEDDINI: I don't have an exact number for you. As I said, it's 90 million in the first part of the week. I can get an exact number for you in terms of what we could close Monday to get it out.

THE COURT: I'm prepared to give you some more time. As I said, I don't -- I'm not in a position to render a ruling

on the entire request.

MR. SERAJEDDINI: Understood.

THE COURT: I think it's inconceivable that this Court is going to leave the Debtor adrift and not be in a position to honor its obligations. That doesn't help anybody. But I want to approve just what's necessary. Is it worth it if I give you some more time to come up with a number that's approved?

MR. SERAJEDDINI: I actually just got a text with a number, Your Honor, so --

THE COURT: Oh.

MR. SERAJEDDINI: -- 35 million for Monday.

THE COURT: All right. Mr. Bennett, would you write a check?

MR. BENNETT: On our DIP absolutely, Your Honor. And by the way, their declaration, and I don't appreciate Mr. Serajeddini's prior comments, I know he's a little upset, but I -- their declaration says they have $67 million in the bank today. So they've got to cover -- they can cover the 35.

THE COURT: All right.

MR. BENNETT: It's their declaration. I'm not making up the number. It's in the first day declaration.

THE COURT: Thank you, Mr. Bennett, and obviously I was speaking tongue-in-cheek to a degree.

MR. BENNETT: But we're ready, and we would do it

with no roll up.

THE COURT: Well, I understand. That's not what I'm asking though. I appreciate -- I'm prepared to approve on an interim basis until Monday, and I'll give you some slack if you're -- you're telling me it's 35 million, we'll go to 45 million to approve cash and to approve a pro rata portion of the DIP under the current motion to get us to 11:30 on Monday.

MR. BENNETT: No roll up, Your Honor?

THE COURT: I would say a pro rata portion of it. So it's getting -- it's smaller and smaller, but, yes, to the extent there's a roll up, I'll approve it on 45 million until we get to --

MR. BENNETT: We've had no opportunity to see their -- their order was filed today.

THE COURT: Well, that's what the weekend will be for.

MR. BENNETT: We're not ready for the order at all.

THE COURT: I'm not entering an order today. I'm entering a bench order that -- if I can give comfort to those who need it, that I'll authorize use of cash and DIP finance up to $45 million. I'll prepare to enter an order if you all can agree to language on the weekend, and I'll have it entered on -- before 11:30 to approve it.

Mr. Stancil?

MR. STANCIL: Yes, Your Honor. Yeah, I mean my

carve-out request stands. If there's any roll up, that would be baked in there, and if I heard the argument correctly, they don't think there's anything to worry about. If what I am saying is not permitted under the debt documents, if I'm wrong, carving it out doesn't do any harm to them. So I would like -- if there is any roll up that incrementally, even on this interim basis, we would like a carve-out for a cause of action to pursue our pre-petition agreement rights.

THE COURT: All right. I'm going to deny that request for now. I'll consider the carve-out on the bigger picture, so to speak, when we get to that point.

So, let me hear from debtors' counsel. What do you need from the Court, and what do you need for the rest of this evening?

MR. SERAJEDDINI: Yeah, Your Honor, I think from there what we'd propose is let us go back with Your Honor's limited ruling and just figure out because, again, this is -- there's massive complexity of even closing this DIP with respect to fronting and the third party -- and the various parties that we need to fund.

So let us -- if we could just pause and then return on the DIP with any updates in terms of any implementation issues based on what Your Honor has said. We would very much appreciate the accommodation vis-a-vis Monday, and we'll work on that in the interim.

In the meantime, I'll turn the podium over to Ms. Bentley to continue as I -- while I go work on that to continue to take us through the key first day relief that we need here and vendors and other parties have been clamoring for.

MR. MOSS: Your Honor, Joel Moss again. Obviously we support the limited use of cash subject to our cash collateral protections that we fully negotiated. We're not going to approve or consent to a blank check use of cash, we just can't.

THE COURT: All right. You're not opposed to the use of cash.

MR. MOSS: On the terms we've negotiated, including our very carefully negotiated adequate protection, which I don't think anybody is really taking issue with.

THE COURT: All right. I think that's workable under what I'm proposing, which is just --

MR. MOSS: Yeah.

THE COURT: -- a percentage of the overall request and --

MR. MOSS: Sure.

THE COURT: -- a percentage of the overall rights under that.

MR. MOSS: Sure. It's just whatever order is entered would need to incorporate our protections.

THE COURT: That's fine.

MR. MOSS: Thank you, Your Honor.

THE COURT: All right. Then let's proceed. So, parties -- Becca, we could -- they could the same link for --

COURT CLERK: Yeah, absolutely.

THE COURT: We'll have the same link available. We'll schedule this at 11 -- the continuation of the DIP motion and anything else that we have -- we don't complete today we will address at 11:30 on Monday, 11:30 a.m., use the same link. Now, I have no issue with -- let's move forward and see what we can knock off.

MR. SERAJEDDINI: Your Honor, is 11:30 all remote or is 11:30 in your courtroom?

THE COURT: Oh no, all remote. I wouldn't do that to anybody. It's worked out so well so far.

Debtors' counsel? Ms. Bentley?

MS. BENTLEY: Good evening, Your Honor. Can you hear me?

THE COURT: I can. Good evening. And --

MS. BENTLEY: Rachael --

THE COURT: I'm sorry. Go ahead.

MS. BENTLEY: Oh no. Rachael Bentley of Kirkland & Ellis, proposed counsel for the debtors.

THE COURT: All right. Ms. Bentley, with respect to what I would assume to be mostly unobjectionable first day matters, I'm going to ask your indulgence and just let's just go over them on a very short shrift basis, knowing that the

U.S. Trustee has essentially signed off on language on I think all of it.

Obviously, I'll hear from any party that does want to be heard on any specific motion, but I don't need the what I would ordinarily hear on a first day matter when we having been here seven hours already the expanded version of each motion.

MS. BENTLEY: Of course, Your Honor.

THE COURT: Thank you.

MS. BENTLEY: I'll get right to it. So, I'm now at Docket Number 15, which is Agenda Item 13. This is the all trade motion. In the interim period the debtors are seeking to receive 140 million of availability with respect to vendors, 503(b)(9) and lien claimants. We bucketed those in the motion, and I think there is sufficient and adequate evidence to support payment of these in the first day declaration of Garrett Gabel.

Your Honor, just quickly, the biggest thing here is this really is critical. We've got 9,000 vendors, 5800 of which are foreign vendors. We did file an auto stay motion, but of course we need to make sure that we continue to receive (indiscernible) goods and services from these vendors.

Last think I'll note just to be brief, but we have a lot of sole source suppliers. Our materials and services are subject to strict scrutiny with our customers and to how these products must be made. The loss of any of these suppliers

would be critical and have a devastating impact on the business.

THE COURT: All --

MS. BENTLEY: Your Honor, I'll pause to see if you have any questions, but it's pretty clear in the motion.

THE COURT: I have no questions. Are there any objections?

(No audible response)

THE COURT: Then we'll mark this granted, order to be submitted.

MS. BENTLEY: Thank you, Your Honor. Your Honor, in the interest of time, I'm going to turn the podium over to Ms. Surinak to flip through the other motions with respect to the relief that we're seeking here, and I will come back to do DS scheduling at the end.

THE COURT: That's fine. Thank you.

MS. SURINAK: Good evening, Your Honor.

THE COURT: Good evening.

MS. SURINAK: For the record, Ashley Surinak of Kirkland & Ellis, proposed counsel for the debtors. To Ms. Bentley's point, I'll do rapid fire first days for Your Honor.

THE COURT: Thank you.

MS. SURINAK: The first is the cash management motion. That's Docket Number 13, Agenda Item Number 11. The debtors' cash management system is pretty expensive, but

customary for an international business. We're seeking to continue to utilize corporate credit cards, use our bank accounts and, you know, continue to engage in our intercompany transactions. The order filed with the motion at Docket Number 13 is the current order, and unless any questions, we'd request entry of that order.

THE COURT: All right. Mr. Sponder, if you're still with us, I'm still working under the assumption if I don't hear from you, the UST has worked out its language.

MR. SPONDER: Jeff Sponder from the Office of the United States Trustee. I'm still here, Your Honor, and what I said in the beginning of the hearing still applies. All of our revisions have been incorporated in these orders. Thank you, Your Honor.

THE COURT: Great. Thank you. All right. Motion is granted, mark OTBS, order to be submitted.

MS. SURINAK: Thanks so much, Your Honor. Next is the wages motion. This is Docket Number 12, Agenda Item Number 10. As the motion states, the debtors seek authority to continue their compensation and benefits programs.

It's worth reiterating, just taking a pause, that the 9500 employees that the debtors have are one of the most important resources. It's 54 or -- excuse me, yeah, 54.4 million due as of the petition date, 41.7 which is due during the interim period, which we did size for about 30 days. So

just wanted to put the numbers out there.

No outstanding comments on the order that we're aware. So we would request that the Court enter the order filed at Docket Number 12.

THE COURT: All right. No objections. Motion is granted, order to be submitted.

MS. SURINAK: Thank you, Your Honor. Next is the debtors' automatic stay motion. That's Docket Number 11, Agenda Item 9. As Ms. Bentley noted, the debtors does have an extensive foreign vendor base. We're seeking merely entry of an order to reinforce the automatic stay. We would request that the Court enter the order filed at Docket Number 11.

THE COURT: All right. Again, I see no objection. I always enjoy entering worldwide -- orders that have worldwide impact. Granted, OTBS.

MS. SURINAK: Thank you so much, Your Honor. Next is the debtors' taxes motion. This is Docket Number 5, Agenda Item Number 3. $30.1 million of taxes due and outstanding as of the petition date. These are ongoing obligations entitled to full payment. Unless Your Honor has any questions, we would ask that you enter the order filed with the motion at Docket Number 5.

THE COURT: Our government needs these funds. Motion granted.

MS. SURINAK: Thank you so much, Your Honor. Next is

the debtors' NOL motion. This is Docket Number 14, Agenda Item Number 12. This merely seeks to establish procedures with regard to equity holders that debtor Labels Buyer, LLC. Unless any questions, Your Honor, we request that you enter the order filed at Docket Number 14 with the motion.

THE COURT: And this was what number on the agenda?

MS. SURINAK: This was Agenda Item Number 12.

THE COURT: Twelve. All right. I see no objections. Motion granted.

MS. SURINAK: Thank you, Your Honor. Next is the insurance motion. This is at Docket Number 6, Agenda Item Number 4. The debtors pay $11.5 million in annual premiums, obviously not all due and outstanding at this time, seeking to continue our insurance program in the ordinary course. We would request that Your Honor enter the order filed with the motion at Docket Number 6.

THE COURT: Motion granted. Thank you.

MS. SURINAK: Thank you. Next is the debtors' customer programs motion. This is Docket Number 8, Agenda Item Number 6. There is $9.5 million outstanding tied to discount programs that the debtors employ in the ordinary course of business. We would request that Your Honor enter the order filed at Docket Number 8 with the motion.

THE COURT: Again, no objections. Motion granted. Thank you.

MS. SURINAK: Thank you, Your Honor. Next is the utilities motion. This is Docket Number 7, Agenda Item Number 5. By this motion seek to continue paying utility providers. We put or will put $1.2 million within the adequate assurance account within 20 calendar day of entry of the order. Unless Your Honor has any questions, we would request that you enter the order filed at Docket Number 7.

THE COURT: All right. Now, with this, and I don't know if we missed it on others, this is an interim order. Do we have a date for a final hearing which we're going to need to include in these orders?

MS. SURINAK: We had proposed February 27th, Your Honor, which is approximately 30 days after the petition date, which is -- it also lines up to our DIP budget and DIP sizing. It's a Friday.

THE COURT: Bear with me. Yes, I am out of the state on the 27th. I do not return -- I fly back to -- the first day I'm back is March 3rd.

MS. SURINAK: Okay. I think that should be fine, Your Honor.

THE COURT: Mr. Sponder?

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of the United States Trustee. I just want to clarify one comment that was just made. I believe that it's 20 days from the petition date, not 20 days from the date of entry

of the order. I think that was a change that we requested that's included in the utilities motion, pursuant to 366. Thank you.

MS. SURINAK: I might have misspoke. I agree that what the order says is what we're prepared to do. I think the funds might already be in the account quite honestly.

MR. SPONDER: That's fine. Thank you, Your Honor. Again, Jeff Sponder from the Office of the United States Trustee.

So that Your Honor is aware, a committee solicitation just went out because I know we're talking about a second day hearing, and questionnaires, if anyone is interested, are due back in our office on February 6th. So if we were to go out to March 3rd, there's certainly more than enough time to get a committee selected if that's the way -- if there's interest. Thank you, Your Honor.

THE COURT: All right. Thank you. Yes, just looking at my calendar, I think that's the workable date March 3rd. So we'll use that as a second day hearing date. We'll put it on for 10 a.m.

MS. SURINAK: That works, Your Honor.

Two more matters, the debtors' creditor matrix motion. This is Docket Number 10, Agenda Item number 8. By this motion we seek to filed the consolidated top 30 list, redact certain personally identifiable information, natural

persons and customers and serve the -- or creditor matrix, which is 125,000 parties over e-mail. Unless Your Honor has any questions, we request that you enter the order filed with the motion at Docket Number 10.

THE COURT: All right. I have no questions. Motion granted, OTBS. Thank you.

MS. SURINAK: Thank you, Your Honor. Last for me before I cede the podium back to my partner Ms. Bentley is the claims and noticing agent application at Docket Number 9, Agenda Item Number 7. Attached to that application as Exhibit B is the declaration of Evan Gershbein, executive vice president at Verita in support of that application. Mr. Gershbein is present today on the Zoom, and we'd like to admit that declaration into evidence for purposes of this application.

THE COURT: All right. Declaration is admitted absent any objection, which I see none. No objections to the retention. Welcome aboard claims agent. Motion grant. Application granted.

MS. SURINAK: Great. Thank you so much. My goal was seven minutes, and I think we beat that, so thank you, Your Honor. I'll cede the podium back to Ms. Bentley.

THE COURT: If all the others were as efficient as you. Thank you.

MS. BENTLEY: Your Honor, Rachael Bentley of Kirkland

& Ellis --

THE COURT: Yes.

MS. BENTLEY: -- back at the podium. The last item on the agenda, Your Honor, is the DS scheduling motion. That is at Docket Number 16, Agenda Number 14.

MR. BENNETT: Your Honor, this one we do object to, and, frankly, I don't think there's any urgency for it, and perhaps this could be better taken up on Monday.

THE COURT: Let me hear your objection.

MR. BENNETT: Well, first of all, we think they should be preparing schedules of statement of affairs. One of the principal issues that will come up in this case is exactly what is secure -- what is collateral and what is not collateral, and a decent place to start would be honestly prepared schedules that describe that.

THE COURT: I'm just at a loss because what we're discussing is the scheduling of the disclosure statement, correct?

MR. BENNETT: But they've asked for it to be -- they basically want to be relieved from --

THE COURT: Right.

MR. BENNETT: -- an (indiscernible).

THE COURT: Oh, I see. Yes, relieved of the 341 and the --

MR. BENNETT: Yes, Your Honor.

THE COURT: -- and the other obligations.

MR. BENNETT: Yes, Your Honor.

THE COURT: Although I'd doubt what would -- any resolution of lien disputes is going to rest on the debtors' schedules.

MR. BENNETT: It's not going to rest on it, but it's a starting place. Experts are going to need the information to figure out what's there, and so I think they're essential.

I would also point out that we don't think you should be conditionally approving the disclosure statement. You heard today testimony that it's grossly -- excuse me -- inaccurate, and it is inaccurate.

And so I do think that this requires a little bit more careful attention when we're all more wide awake, and I don't think there's any particular urgency to do it tonight.

THE COURT: All right. Fair enough. Does counsel wish to respond?

MS. BENTLEY: Thank you, Your Honor. Grossly inaccurate. We will meet our burden to support the plan at confirmation, but I do just want to clarify the standard for approval with respect to the disclosure statement, particularly on a conditional basis, has to do with whether or not the plan is patently unconfirmable.

1129 issues are confirmation issues. 1129 also picks up 1122 and 23, which is the points that Mr. Bennett is making.

There is precedent to suggest that confirmation-related arguments alone should not dictate whether or not a disclosure statement is approved. We still bear the burden to demonstrate confirmation of the plan at the confirmation hearing.

We've started solicitation pre-petition. We should be permitted to continue on that path. This is a DS scheduling motion. I have a timeline I can show you. There is nothing that came up in today's hearing that should suggest that we need to slow down this process.

MR. BENNETT: Your Honor, I will prepare briefing over the weekend that -- and if we can get a transcript, figure out how to do it, we'll go through the testimony, and I -- and we want to be heard on a reasonable time on the adequacy of the disclosure statement. I'm not talking about confirmation issues. I'm talking about disclosure statement adequacy issues. There is no basis for conditional approval, especially after the record developed today, none.

THE COURT: All right.

MS. BENTLEY: May I respond, Your Honor?

THE COURT: Yes, you may.

MS. BENTLEY: With respect to adequacy of the disclosure statement, I can reference, I'm not going to because I think you're well aware, Your Honor, 1125 is met. The inaccuracies that Mr. Bennett is speaking about do not dictate whether or not we have satisfied our burden with respect to

delivering an adequate disclosure statement. Every factor the courts often consider are contained in our disclosure statement.

THE COURT: All right. Mr. -- well, I see another hand. Mr. Dahl?

MR. DAHL: Yeah, Your Honor, I just had a question for Mr. Bennett. If he was proposing he needed additional time for briefing, I assume he also meant that he would include proposed language to resolve his concerns about the adequacy of disclosure, but before I make that assumption I think that would be helpful.

MR. BENNETT: If we have the information to offer, we absolutely will, and if we don't, we'll ask the questions and someone else will have the answer or not.

MR. DAHL: So that's a no though in terms of the briefing that you (indiscernible).

MR. BENNETT: No, a combination of the two, Mr. Dahl. In some instances we'll be able to do it, in some instance we may not, and we'll explain each one.

MR. DAHL: Thank you for the clarification.

THE COURT: All right. Counsel may not agree with the Court, often that's the case these days. I've never been and I've said this before sanguine about the relevance of a disclosure statement. I've always -- and I'll repeat it, I always believe creditors want to know how much they're going to

get paid, when they're going to get paid and how they're going to get paid, and usually in the 400 pages of disclosure statements that gets lost.

There's ample information already contained in this disclosure statement. What I would be approving is on a conditional basis the adequacy of the disclosure statement.

It's the plan proponents who run the risk that at the confirmation hearing I find that the disclosure statement was inadequate, in which case I do send all the parties back, if the plan proponents are comfortable with that risk. At this point I think those that are on this call probably have the information or access to the information that they're going to need. They're not going to be relying on the disclosure statement. I tend to believe that that's the case more often than not.

So I'm prepared to approve the disclosure statement. That doesn't mean if you can agree on some additional language before it gets -- well, I'm not even sure that that would be even relevant at this point. I'm going to agree to grant the motion on the timeline that's been requested. We're far from that point. There's ample opportunities to raise the appropriate objections at confirmation, and the Court has that opportunity to revisit the content of the disclosure statement, again, at the potential prejudice to the plan proponents when we get there.

Mr. Rosenblum?

MR. ROSENBLUM: Good evening, Your Honor. Benjamin Rosenblum from Jones Day. I just wanted to call out in our filing we had a handful of other issues with this motion beyond disclosure. As the Court referenced, the waiver of the schedules, statements, we have requested some information rights that the statutory committee would get or the U.S. Trustee would get, and we had a question. We just don't understand frankly how the tabulation works.

So part of our request -- we can work with the debtors over the weekend, but part of our request is driven on not only by straight disclosure issues, but sort of discrete issues in terms of the waivers and just mechanically how the debtor is proposing the tabulation to work.

THE COURT: Counsel?

MS. BENTLEY: Your Honor, I just will say I'm sure where you were going, the entrance of the DS scheduling motion does not prohibit us to be requested to provide documents to Mr. Rosenblum. I feel like we are sufficiently prepared to go forward. We agree with you, we are in a position to take on the burden to demonstrate at confirmation. We are not prohibiting them from submitting further information requests.

And with respect to the waivers, they are conditional. We have timelines by which we need to obtain confirmation of the plan. To the extent we do not, the

reporting obligations come back.

THE COURT: Has the U.S. Trustee's Office agreed with the timeline?

MS. BENTLEY: We -- I'm sorry. I'm sorry, Mr. Sponder.

MR. SPONDER: Thank you, Your Honor. Jeff Sponder from the Office of the United States Trustee. Your Honor, the timeline is a lot better than it was and what we just did in United Site Services.

THE COURT: That's what I thought.

MR. SPONDER: And we did discuss the waiver, and I know Your Honor approved it just recently in the United Site Services case. We just did get some more clarifying language that it's actually has to be -- the plan has to be confirmed and go effective within a certain amount of time, I think it's 75 days from the petition date, or then schedules have to be filed and the 341 to be set. So we -- a little bit different than United Site Services, but we -- based on that, we are in agreement with the timeline, Your Honor. Thank you.

THE COURT: All right. I thought the timeline was a little bit broadened. All right. Thank you, counsel. I am granting the motion. We'll mark it order to be submitted. Thank you. In that regard, I'm overruling the objections.

MS. BENTLEY: Thank you, Your Honor. We very much appreciate the time. I know it's been a very long evening for

everyone, but thank you.

THE COURT: You're welcome.

MS. BENTLEY: Greatly appreciated.

MR. SERAJEDDINI: And, Your Honor, if I may briefly on the DIP.

THE COURT: Yes.

MR. SERAJEDDINI: So, Your Honor, what our plan is is because we're dealing with real major financial institutions they do need an order in order to fund. And so what we would propose is taking our interim order, adjusting the amount based on Your Honor's ruling on the record today and submitting it to chambers, subject to any other comments we get from creditors say, you know, in the next 24 hours, and we're happy to circulate it, but -- and by that I mean the parties that are actually executing the transaction vis-a-vis the DIP and submit it to chambers. If it can be entered over the weekend so that it's entered by the time we get to open up business overseas is key.

THE COURT: So you're saying that it has to be entered before Monday morning.

MR. SERAJEDDINI: Correct.

THE COURT: Let me look over at staff.

COURT CLERK: I mean (indiscernible) tell them how do it, but we can find someone to enter (indiscernible).

THE COURT: All right. We'll find somebody who can

enter it on Sunday.

COURT CLERK: And we might not be getting paid (indiscernible).

MR. SERAJEDDINI: Okay. We very much appreciate that.

THE COURT: As they've just noted, even though they may not be getting paid, but we'll have them do that. What I'm going to ask though is that you circulate it to the objectors and to those who raise concerns, and let's get the cleanest, simplest order that's necessary to keep this going forward.

MR. SERAJEDDINI: Understood, Your Honor. We will do so.

THE COURT: Mr. Moss?

MR. MOSS: Your Honor, we have no objection to that as long as it has all of our protections in it for use of cash collateral. I mean and honestly we support simplicity, but these orders tend to be longer for the sake of being specific, et cetera and spelling out the --

THE COURT: It's understood. I'm just --

MR. MOSS: -- priorities and what not.

THE COURT: It's not the --

MR. MOSS: I think Mr. Serajeddini's --

THE COURT: It's not the simplicity --

MR. MOSS: Go ahead.

THE COURT: -- I'm concerned about. It's the lack of

controversial provisions that --

MR. MOSS: Yeah, the --

THE COURT: Let's just us to the 11:30 hearing and do what's necessary to fund what's needed.

MR. MOSS: Sure. Well, as long as our protections are in there we're good.

THE COURT: Good.

MR. MOSS: So we'll figure them out.

THE COURT: Thank you, Mr. Moss.

So, Becca, where should they e-mail this to make --

COURT CLERK: Directly to me.

THE COURT: All right. I'm going to ask counsel when the order is ready to e-mail it directly to my career law clerk Becca Earl who's going over and above, as she usually does. Ms. Yudkin has her contact information. She can share it, and we'll make sure that we ruin their weekends. All right.

MR. SERAJEDDINI: We apologize, Your Honor, on behalf of all the parties and very, very much appreciate the accommodation.

THE COURT: Absolutely. All right. Anything else I need or you wish to address? Also, on Monday let's also circle back to the venue issue and see what's required as far as discovery or further hearings. All right.

MR. SERAJEDDINI: Understood. Thank you, Your Honor.

THE COURT: All right.

COURT CLERK: Wait.

THE COURT: Wait.

COURT CLERK: Are there any orders that must be entered tonight?

THE COURT: The question has been asked are there any orders that must be entered tonight?

MR. SERAJEDDINI: I presume, Your Honor, the alternative would be to have them entered over the course of the next couple of days as with the DIP.

COURT CLERK: But like joint administration we can do that Monday morning.

THE COURT: Well, that's what -- most of those I would think could be done on Monday morning, joint administration. In other words, get to us for Sunday entry those orders that really can't wait until Monday morning.

MR. SERAJEDDINI: Understood.

THE COURT: All right.

MR. SERAJEDDINI: Will do so, Your Honor.

THE COURT: All right, folks.

MR. SERAJEDDINI: Okay. Thank you.

THE COURT: Keep on talking, please. Please feel free to reach out for the Court if I can assist in any way. Otherwise, I look forward to seeing you all again at 11:30 on Monday.

MR. SERAJEDDINI: Thank you very much.

UNIDENTIFIED ATTORNEY: Thank you, Judge.

THE COURT: We are adjourned. Thank you.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

UNIDENTIFIED ATTORNEY: Have a good night.

* * * * *

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

We, KAREN WATSON, TRACY VERGOLLO, DIPTI PATEL, KIM WEBER, TERRI STARKEY and COLETTE MEHESKI, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Karen Watson

KAREN WATSON

/s/ Tracy Vergollo

TRACY VERGOLLO

/s/ Dipti Patel

DIPTI PATEL

/s/ Kim Weber

KIM WEBER

/s/ Terri Starkey

TERRI STARKEY

/s/ Colette Meheski

COLETTE MEHESKI

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