UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 25-23630-MBK
	.	
	.	Clarkson S. Fisher U.S. Cthse.
SITE SERVICES,	.	402 East State Street
	.	Trenton, NJ 08608
	.	
Debtor.	.	December 30, 2025
. . . . .	.	10:00 a.m.

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

APPEARANCES:

For the Debtor:	Cole Schotz, P.C. By: FELICE R. YUDKIN, ESQ. Court Plaza North 25 Main Street Hackensack, NJ 07601
	Milbank, LLP By: DENNIS F. DUNNE, ESQ. JENNY LEE, ESQ. 55 Hudson Yards New York, NY 10001

TELEPHONIC APPEARANCES:

For the Debtor:	Milbank LLP By: ANDREW M. LeBLANC, ESQ. 1101 New York Avenue NW Washington, DC US 20005
For the U.S. Trustee:	Office of the US Trustee By: SAMANTHA LIEB, ESQ. JEFFREY M. SPONDER, ESQ. One Newark Center, Suite 2100 Newark, NJ 07102
ECRO:	Linda Brakel

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J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com
(609) 586-2311 Fax No.

TELEPHONIC APPEARANCES (cont'd):

For the Ad Hoc Group:	Akin Gump Strauss Hauer & Feld By: ZACHARY D. LANIER, ESQ. 2300 N. Field Street, Suite 1800 Dallas, TX 75201
For CastleKnight:	Quinn Emmanuel Urquhart & Sullivan, LLP By: BEN I. FINESTONE, ESQ. 295 5th Avenue, 9th Floor New York, New York 10016
For Bank of America, N.A., as Prepetition ABL Agent and First-Out/Second-Out Agent:	Greenberg Traurig, LLP By: ALAN J. BRODY, ESQ. 500 Campus Drive, Suite 400 Florham Park, NJ 07932 Cahill Gordon & Reindel, LLP By: JOEL MOSS, ESQ. 32 Old Slip New York, NY 10005
For Certain First-Out Lenders:	Cleary Gottlieb Steen & Hamilton, LLP By: JOSHUA BRODY, ESQ. One Liberty Plaza New York, NY 10006

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THE COURT: Okay, good morning, everyone. This is Judge Kaplan, and the Court will hear the matters related to United Site Services. This is a remote hearing, so let me offer the usual admonitions.

If you wish to be heard and I haven't called upon you, please make use of the raised hand function, and I will be sure to call on you.

We have quite a few pending pro hac vice applications. Obviously, these matters were brought before the Court on a shortened time basis, and the pro hac processes take a little bit of time. So, what I will say is, just for the benefit of today, welcome to New Jersey. I'm not concerned about pro hac.

Please, when you request to be heard, please then introduce yourself. Enter your appearance, and that way I can get familiar with you all. I see some familiar faces and some new faces.

All right. Let me turn to debtor's counsel. I have a copy of the proposed agenda. Let me turn to either Ms. Yudkin -- are you going to lead off?

MS. YUDKIN: Yes. So, good morning, Your Honor. Felice Yudkin, Cole Schotz, P.C. on behalf of the debtors.

I'm in the courtroom today with our proposed co-counsel Milbank, and I'm going to turn the podium over to Mr. Dennis Dunne, but before I do that, I do want to just thank

Your Honor and your chambers for facilitating this expedited hearing today. I do know that it is a very busy time of year and we do appreciate Your Honor accommodating us today.

So, with that, Your Honor, I'm going to turn the podium over to Mr. Dunne who will kick off the hearing.

THE COURT: All right. You're welcome. Good morning, Mr. Dunne.

MR. DUNNE: Good morning, Your Honor. It's Dennis Dunne of Milbank, proposed co-counsel to United Site Services.

And I want to echo Ms. Yudkin's comments that we are extremely grateful for the attention of the Court and chambers and the U.S. Trustee's Office have given to this case at probably the absolute worst time of year between the December holidays and New Year's.

We know this is kind of an acute imposition greatly appreciated. But we wouldn't be here today if we didn't absolutely need the relief that we're requesting today for the company.

In terms of the run of show today, I would propose, subject to the Court's approval, of course, to provide some introductions and overview of the company's business, its history, the events that brought us to Your Honor's courtroom today and the proposed path forward, including a description of the RSA and the prepackaged plan, and then we would turn it to, you know, to the motions.

We did prepare a few slides to guide the presentation, Your Honor, and if you could grab screen sharing privileges to my colleague, Jenny Lee, we could go through the slides, if that's an acceptable sequencing for today.

THE COURT: That works for me. I know I believe all of the presentation authority has been granted. I think it's been tested, and what's a first day hearing without slides?

(Laughter)

THE COURT: So, let's have at it.

MR. DUNNE: So true, Your Honor, so true.

So, starting with Slide 4, let me introduce a few parties and individuals present at the hearing today.

First, we have USS's chief executive officer Bobby Creason, as well as its chief financial officer, John Hafferty, both in the virtual courtroom today. The company also has an independent director, Mike Wartell, its counsel, Pryor Cashman, is also in attendance today.

Cole Schotz, as you've heard from Ms. Yudkin, is the company's proposed co-counsel. We are extremely pleased to be working alongside Mr. Sirota and Ms. Yudkin.

From Milbank, I'm joined by my partner, Andrew LeBlanc, who will handle the DIP and the scheduling motions, and then there are various other Milbankers who will present certain motions today.

To finish off the company's professionals, we're

joined by a few people from Alvarez & Marsal, Brian Cejka and Chris Kelly. Mr. Kelly is a declarant. He has submitted a declaration in support of the first day relief.

With respect to our investment banker, it is PJT Partners, and in the courtroom today are Josh Abramson and Avi Robbins of PJT. Mr. Robbins has submitted a declaration in support of the proposed DIP financing which we'll hear more about later.

Let me spend one minute on some of the other key parties in the case whom the Court will hear from today or at future hearings. First, there's Akin Gump and Centerview Partners, our counsel and financial advisor, respectfully, to the Ad Hoc Group of United Site's senior secured term loans.

On a related note, Kirkland & Ellis represents Clear Lake who is a large individual member of the Akin and Centerview Ad Hoc Group. Cahill Gordon and FTI represent the company's asset-based lenders.

Latham & Watkins is counsel to the equity sponsor Platinum Equity. And Cleary Gottlieb is also on the line for certain first-out debt holders, and I'll explain what first-out is when we get to the description of the company's debt stack.

Your Honor, as you can see, a lot of people have worked very hard through the holidays to make today possible. We do have one party, CastleKnight, that has filed an objection which I'm sure Your Honor and chambers has seen, which we'll

directly address during the relevant motions.

THE COURT: Thank you.

MR. DUNNE: For a case overview, I'll say, Your Honor, the days, weeks and months spent in earnest and at times contentious negotiations prior to the filing means that USS arrives in court today with a suite of agreements with majorities of its creditors on the specific terms of a reorganization plan.

Specifically, we have finalized and executed the terms of a restructuring support agreement. I'll refer to that as the RSA. Pursuant to that RSA, the company has already commenced, prior to the filing of these cases, the solicitation of votes on the prepackaged plan.

The Court will hear more about the RSA, the plan of reorganization and proposed time line as we move through the first day motions, but let me just mention that the RSA also contemplates financing commitments to fund this path. The company has obtained commitments from the Ad Hoc Group to fund $120 million of DIP financing, subject to Your Honor's approval, and to backstop $750 million of new money exit financing.

The RSA and plan are overwhelmingly supported by nearly everyone in the capital structure. The level of support provides us the comfort to forecast that we believe all voting classes are likely to accept the plan.

One party, CastleKnight, objects to the release today. They hold less than two percent of the secured debt and nearly all of the unsecured bonds which are, unfortunately, out of the money.

CastleKnight did not participate in the recapitalization last year which I'll describe in more detail in a moment, despite having opportunities to do so. They held out -- Your Honor, they made a bet that the company would not be in Chapter 11 today and that by holding out they'd preserve their, kind of, NERA term maturity of their debt and again we paid a par without having to provide any discount that was requested in the 24 recap. That didn't pan out.

We've also been engaging with them for months, even under NDA, since October 17th, 2025, and eight proposals have been exchanged between them and the Ad Hoc Group and the company. We have currently delivered a settlement offer to them that is live and is outstanding. I will describe it later.

I will not get into the DIP or their out of protection arguments or their procedures time line objection during my remarks. That's all for when we get there in the relevant motion. But to the extent pertinent, I will reference their actions and their history with the company as we move forward during the slides.

Turning to Slides 6 and 7, let's talk about United

Site's business. USS is the United States' largest provider of portable sanitation systems and related site services which includes cleaning and maintaining those sanitation systems. To put it another way, the primary business is port-a-potties and other portable toilets, getting them where they need to be when they need to be there and keeping them clean.

They employ more than 3,000 people and serve over 70,000 customers. Some of those customers include the Super Bowl, National Home Builders, the Coachella Music Festival and FEMA. But the engine of the company's business model, Your Honor, is servicing customers in the construction industry.

USS operates in 47 of the 48 contiguous states in our country. Its strategic advantage over regional operators which are prevalent in the business is that USS can more effectively respond to a need for portable toilets at various and sometimes far flung locations across the company. USS possesses the trucking capacity and the logistics capability to transport and position them wherever they need to be.

Your Honor, over the years, the company has purchased many smaller local portable toilet businesses. USS's regional operations grew out of what were originally local enterprises. As a result, USS is still very much intertwined with the communities they serve, and that's true of one of USS's New Jersey affiliates, Johnny on the Spot and Russell Reid, which have operated locally in New Jersey for many years and those

are the entities that are responsible for us being able to be in this courtroom today.

Turning to Slide 8 for a second, this illustrates USS's corporate structure. There are 22 debtors in total and no non-debtor subsidiaries. As mentioned, USS operates across the United States and no foreign operations.

Turning to Slide 9, capital structure, and this is going to get a little intricate. The capital structure is more complex, Your Honor, than typical. The complexity flows in large part from a recap transaction effectuated in 2024. We will refer to that balance sheet recapitalization as the 24 recap. And I'll provide some more detail on it in a moment.

But let's go through the debt stack. The company has an asset-based revolving loan facility with the first lien on much of the shared collateral, including the company's cash and its portable toilet units.

Then, there are several facilities that share a first lien on substantially all the other assets and a second lien on the ABL priority assets. These facilities we collectively refer to as the first lien facilities. They can further be broken down into two buckets.

One bucket is the debt held by those parties who participated in the 24 recap, and the second category is held by those who did not participate in the 24 recap. So, on this page, you can see, for instance, a $46 million legacy first

lien term loan item, which we refer to as the legacy term loan. It's the relatively small amount of stub first lien debt that did not participate in the 24 recap, and it's held mostly by CastleKnight.

The vast majority of the secured debt is mostly related to the debt put in place during the 24 recap and not as secured pari passu with the legacy term loan. The 24 recap debt is subject to internal priority of payment intercreditor agreements that are new to us, referring to some first-out, second-out and third-out tranches of the 24 recap secured debt.

And, finally, Your Honor, there's unsecured notes in the amount of $133 million. The company has over 2.7 billion of secured debt and 133 million of unsecured debt.

The secured debt is the fulcrum class and will also have a large unsecured deficiency claim. I'm now going to describe, just because I think we need to get it out there though I don't expect anybody to fully grasp this because I certainly didn't in the first go-around, but the 24 recap created an interlocking net of intercreditor agreements, and let me just give a quick overview of it. It's at a high level, not unsurprising.

First, there's an intercreditor agreement that places the ABL in front of the other secured facilities on the ABL priority collateral which represents most of the company's assets.

Second, there's an intercreditor agreement that requires pro rata distributions between the legacy term loan on the one hand and the other first lien facilities on the other. The legacy term loan, and that's the debt that didn't participate and that's held by CastleKnight at the secured level, is roughly 1.78 percent of the whole amount of aggregate first lien debt.

So, you'll see that number 1.78 percent running through many of our documents which reflects the legacy term loan's entitlement to 1.78 percent of the distributions to first lien facilities.

The final waterfall within a waterfall intercreditor arrangement is at the various facilities that were created as part of the 24 recap, are subject to their own internal waterfall. Again, unsurprisingly, the first-out tranches have priority over the second and third-out tranches and the second-out tranche has priority over the third-out tranche.

One theme I want to mention here, Your Honor, is that we have taken great pains, and it's not obvious given the objection that we received today, but we've taken great pains and are continuing to, to try to limit the areas of potential dispute or litigation, and I want to share one example of that.

The company desired, and so did the RSA signatories, to craft a confirmable plan with as few areas of contention as possible in order to maximum the chance that we could have an

expeditious and successful pre-packaged case. This element relates to what's referred to in the industry as a double dip structure.

As part of the 24 recap, different, new borrowers were used. You can see them off to the side on the org chart slide. They were the two Cayman entities and they're also debtors.

The legacy term loan did not have guarantees from these additional borrowers. As a result of the flow of consideration during the 24 recap, an intercompany claim exists between those new borrowers and the original creditor obligors, and the result of that, net, net, is that those holders participating in the 24 recap benefit from twice the guarantee support as parties that held out, i.e. the legacy term loan and the unsecured notes held largely by CastleKnight.

The participating holders have a direct guarantee claim from their obligors on their term loans or bonds, while the new guarantors also have a pari passu claim through the intercompany claim, the value of which benefits those participating holders, and not the holdouts. That is the structure that's commonly referred to as a double dip.

But here, and this is the good news, Judge, is that the Court will not be asked to weigh in on or adjudicate the allowability of these claims or the propriety of the structure.

One of the major concessions embedded in the current

plan is the absence of any economic advantage on account of the participating holders' superior guarantee package. In other words, the distributions under the plan will ignore the double dip structure. This concession from the RSA parties is significant and hopefully further streamlines the path to confirmation and emergence.

Turning to Slide 11 for a moment, and this is probably both 11 and 12, let's discuss the macroeconomic developments and industry headwinds that constrained the company's profitability and ultimately impelled it to massively deleverage.

For manifold reasons, Your Honor, the construction industry has been in the middle of a downdraft for the past several years. A sustained drop in construction demand is a substantial negative for the company, because as we've mentioned, service at construction sites accounts for 70 percent of the company's revenue.

Making matters worse, on the cost side, profitability has been eroded by inflation, specifically rising costs of portable restrooms, supplies and wages.

Let's talk about the 24 recap. I think that's Slide 13.

These economic pressures, Your Honor, impelled the company to hire advisors, analyze the options and alternatives in '24, all with the goal of identifying ways to restructure

its debt and raise additional capital to fund its business plan. The company's objective was to weather the trough in the construction industry cycle and then see profitability pick up again when and as construction activity ramped back up.

A specific key to the company's profitability occurs when construction spikes in particular geographic regions. The more construction sites that are operational and leasing port-a-potties on a given route, the more profitable the route is for the company because its service personnel can hit more sites on one route, increasing productivity. A bump in geographic proximate construction activity can lead to a meaningful bump in revenue margins and profits.

Against this backdrop, Your Honor, USS was able to work with a group of lenders to structure a recapitalization transaction, the 2024 recap. As a result of this transaction, the company exchanged the vast majority of its secured and unsecured debt for new secured debt with extended maturities. It reduced its net debt by capturing $200 million in discount on those exchanges and raised $300 million of additional fresh capital.

The transaction was done in two steps. In the first, the lender group that structured the deal exchanged its debt and funded (indiscernible). After that, the company offered participation in the exchange to all other debt holders. In other words, the company made the opportunity available to debt

holders and made efforts to reach out and bring those debt holders into the transaction, and only a small number of institutions elected not to participate.

That outreach was a success because holders representing 94 percent of the company's funded debt participated in the 24 recap.

As I mentioned earlier, there was one main holdout, CastleKnight management. We don't why CastleKnight opted not to participate. Maybe they liked the inside maturity (indiscernible) on the company. It doesn't really matter. What is more relevant is our attempts to bring them on side and into the deal, both at the time of the 24 recap and during the past few months of negotiations surrounding the RSA.

At the time of the 24 recap, the company's advisors reached out directly to CastleKnight to solicit their participation in the deal. We understand CastleKnight indicated it would not participate in the exchange, even if offered the same, most favorable terms as the group that structured the deal.

Over recent months, CastleKnight has advised us they hold now nearly all of the debt that failed to participate in the 24 recap, the legacy term loan and unsecured notes.

The 24 recap was a comparatively vanilla transaction that sought and gained the support of nearly all lenders and bondholders. Although the transaction involved a double dip

component, the company and the Ad Hoc Group, as I mentioned, removed that issue completely by agreeing to forego any recovery on account of the second debt.

To the extent CastleKnight argues that the 24 recap involved the sacred right and needed their consent, and thus their nonparticipation in the 24 recap led them suddenly to be magically senior to the secured debt, all I can say is that they're on the wrong side of the law on that one, Your Honor.

The District Court in (indiscernible) recently categorically rejected those arguments, as has the Second Circuit in related contexts, but we'll get to those arguments in due course.

So, the 24 recap reduced significant pressure and provided additional liquidity to fund the company's business. But the expectations for the corresponding rebound failed to materialize.

The construction industry continued to languish. By June of this year, the company knew it would be forced to explore, at least, various solutions. It engaged with the Ad Hoc Group represented by Akin. With that group's support and with the support of its bank lenders, USS was able to execute forbearance agreements that created some breathing room to further negotiate the terms of the RSA that's before the Court.

At the same time as it was working with the Ad Hoc Group, the company was also engaged in active dialogue with

CastleKnight. The company wanted, and still wants, CastleKnight to be part of any restructuring deal. The company also facilitated discussions between CastleKnight and the Ad Hoc Group. Toward this end, CastleKnight signed an NDA in October of '25, and the company provided them with a substantial amount of information.

For the company, throughout this process and especially standing here today, the ultimate goal remains a global deal where all the significant stakeholders support the transactions. Many term sheets were exchanged between the Ad Hoc Group and CastleKnight, I believe eight in total.

Notwithstanding this level of engagement, however, it became evident several weeks ago that the Ad Hoc Group and CastleKnight would not be able to reach consensus. The company, faced with tightening liquidity and looming defaults, needed however to finalize a deal to have the RSA in place to address liquidity and to craft the terms of a confirmable plan, which brings us to Slides 15 and 16.

I'm going to talk now a bit about the RSA and the pre-packaged plan. Even without CastleKnight's current participation, Your Honor, the RSA is a resounding success. Nearly the entire capital structure including the bank lenders are party to the RSA.

Some of the noteworthy accomplishments of the pre-packaged plan include, one, it'll eliminate more than $2.4

billion of funded debt on the balance sheet, two, it'll provide for nearly $775 million of exit financing, which consists of $300 million of debt financing and up to $475 million of equity financing to be raised through a fully backstopped equity rights offer.

In addition, the existing bank lenders will roll into the new exit RCF and ADL facilities. The RSA also provides for access to a $120 million DIP facility to fund the Chapter 11 cases. My partner, Mr. LeBlanc, will address the DIP motion shortly.

Under the plan, the first-out facilities will be paid in full in cash. The second-out facility, which I mentioned is a first lien claim subject to the intercreditor arrangement with the first-out, the second-out facility will, alongside the legacy term loan, receive some cash equity and subscription rights for the equity rights offered.

Due to one of the interlocking intercreditor arrangements governing the 24 recap, however, the second-out will ultimately receive just equity and subscription rights, and not the cash. So, in effect, the second-out term loan, Your Honor, which the Ad Hoc Group holds over 90 percent of, is equitizing.

The third-out notes, unsecured notes, are far out of the money. Nevertheless, they will share in a $5 million cash pool in a class that will also include the deficiency claim of

the second-out and legacy term loan. All trade and other commercial creditors will ride through, ensuring USS that it can preserve those relationships and be best positioned for future performance in a highly competitive market.

The company's current private equity sponsor will receive no recovery on account of its equity or its shares. But one note here on the sponsor, Your Honor.

Slide 8 shows two top entities in gray, PCEF USS Holding Corp. and PCEF USS Intermediate Holding Corp. They are non-debtors. They are not part of the obligor group on the debt for borrowed money, nor are they owned or controlled by any of the debtors. They're outside of the debtor group. They are sponsor-controlled entities.

But for tax reasons, and to optimize a tax position, the Ad Hoc Group determined it would be useful to negotiate with the sponsor and agree on terms for the disposition and characterization of that equity, and the sponsor and the Ad Hoc Group did, in fact, reach an agreement on the terms for doing so and, in return for that agreement, with respect to the two non-debtors, the lenders will pay the sponsor 5.5 million plus up to $500,000 of reimbursement for legal fee coverage per that agreement.

Finally, as I mentioned, as a result of the compromises reached in the RSA, the 24 recap lenders are not going to receive any recovery on account of their additional

guarantee claims which is going to increase the recovery of the few lenders that did not and failed to participate in the 24 recap, namely CastleKnight. This plan was the product of months of very hard fought negotiations with various stakeholders and represents the best available option for the company under the circumstances.

Your Honor, turned to Slide 19, I want to stress one of the overarching objectives of the company, again. United Site would prefer a deal that has global consensus including with CastleKnight. With that goal in mind, the company negotiated in the RSA for the ability to offer CastleKnight the opportunity to receive their pro rata share of the DIP, the ERO, the equity rights offering backstop, and exit term loan facility on exactly the same terms as the Ad Hoc Group, and the company has, in fact, made that offer to CastleKnight. We did so yesterday.

In other words, CastleKnight, as was the case during the 24 recap, Your Honor, is not being excluded from participation and, in fact, is being given the opportunity to be treated on the same terms as if it were an Ad Hoc Group member.

The RSA permits the offer to remain open for five business days. We've not heard back from CastleKnight, Your Honor. I suspect it looks like they were busy with their objection, but hopefully we will hear back from them soon, and

the company would love nothing more than to bring them into the fold.

On a related note, Your Honor, prior to the filing, we did reach out to CastleKnight to ask whether they would be willing to propose terms for a DIP and exit financing to ensure ourselves that there was not a better deal out there for the company. In response, CastleKnight requested and received a lot of diligence and related information but failed to submit any proposals on those topics.

Your Honor, Slide 20 contains a proposed timeline for the case and these dates are animated by the company's need for a short stay in Chapter 11. A timely emergence from Chapter 11 will allow management to focus all of its time on operating the business. It would minimize reputational damage and would contain and cabin the administrative costs of the case.

Others will walk the Court through the specific proposed dates and deadlines when we get to the scheduling motion. The point I want to underscore is that we are not seeking with these proposed dates to deny anyone due process or circumvent any party's ability to raise and adjudicate challenges or issues. There will be sufficient time to accomplish all of that.

And as a side, we're completely confident in our substantive legal position but what we need to guard against, Your Honor, is a tactical play for delay and, unfortunately, we

are already witnessing one party beginning to run that play. Undue delay would hurt the company, increase the costs of the case unnecessarily and jeopardize our ability to access the deals and the capital that we have received from the Ad Hoc Group in the agreements reached to date.

Your Honor, that concludes the slides and my initial presentation. Unless the Court has any questions, we can move to Mr. LeBlanc and evidence or first day motions or however the Court would like to proceed from here.

THE COURT: All right. Thank you, Mr. Dunne. Quite a lot to absorb.

Before we go on, I see your raised hand, Mr. Finestone?

MR. FINESTONE: Thank you, Your Honor. Ben Finestone from Quinn Emanuel on behalf of CastleKnight. With the Court's permission, I'd like to offer some preliminary comments and, like Mr. Dunne did, reserve my arguments on the DIP financing motion and on the scheduling motion. But I would like to offer some preliminary comments that will probably take a fraction of the time that debtor's counsel took but, again, only if the Court is okay with proceeding that way.

THE COURT: And you're representing CastleKnight, correct?

MR. FINESTONE: Yes, Your Honor.

THE COURT: That's fine. I have no problem with

that.

MR. FINESTONE: Okay.

THE COURT: And then we will get into the heart of the motions.

MR. FINESTONE: Yes, thank you, Your Honor. I really will try to be brief.

Your Honor, I don't agree with much of what debtor's counsel said but it is true that we are holders/managers of $375 million of this company's funded indebtedness. So, the attempts to paint us as some sort of bad actor is -- it's just not true. We've been a big supporter of this company. And there was one comment that said that we -- that they learned of our holdings in the last couple months. That wasn't -- I'm sure that wasn't intended to be intentionally misleading but this was paper that we owned back from the first half of 2025 and in large part before the liability management exercise which is this double dip transaction.

So we are not, Your Honor, approaching the company on the eve of the bankruptcy in some attempt to take control of this company. That's not our business motto here, Your Honor. What we are is a creditor who, when presented with this liability management exercise transaction, and this liability management exercise was extraordinary, Your Honor. The debtors, in exchange for seeking to raise $300 million of new capital, most of which wouldn't end up on the balance sheet,

but let's give them the benefit of the doubt. Three hundred million dollars in new capital. They agreed to take $2.7 billion of debt and make it $5 billion of debt.

We can hire corporate attorneys to put different words around it, but that's what double dip means. It's not additional guarantee support, it's against one specific debtor and every debtor the creditors that participated get two claims and I was left with one if I don't choose to participate. That violated our sacred rights. It's one of the few things we have.

Mr. Dunne is right, we are small compared to Akin's clients. We own $47 million of that secured debt. But when you're small, you can rely on sacred rights. It's about all you have, Your Honor. And our sacred rights were very, very broad in this case. It doesn't matter but it's false to say we were offered Ad Hoc Group economics, they offered us reduced economics. But even if they did offer us Ad Hoc Group economics, it was within our right to say no and hold our paper and say don't violate our sacred rights.

Now, they proceeded anyway. The investment bankers made, I don't know how much money, a lot of money, and the debtors got their $300 million and I was swamped by $5 billion of new debt, Your Honor. The consequences of that, we believe, are that we remain the first lien creditor of this case because our lien was rented in 2021 and all of this fancy corporate

lawyering and investment bank machinery was done in 2024.

I don't expect Your Honor to agree with me today but this is a dispute that we have not been hiding from the debtors. It's a dispute we presented to the debtors. I believe it's grounded in very, very solid case law, Your Honor, just some of which we previewed in the objection that I had to scramble and file and draft and file yesterday, so I apologize if it was a little disjointed. But those claims, Your Honor, we believe have to be resolved and if it falls to us, it falls to us. We will file an adversary proceeding because there is a serious lien prior to dispute in this case, Your Honor.

There has been a lot of talk about pre-petition negotiations -- who left who or who did what. And usually, Your Honor, I tell my clients the bankruptcy judge doesn't care about that. He's got a case before him or her and he's focused on what the debtor in possession is going to do, not the back-and-forth. I think this case may be a little bit of an exception because one of the motions that the debtor in possession is presenting to Your Honor today, on our first day hearing, is to seek to have everything scheduled and resolved in about 40 days.

And so I think some of the evidentiary basis for that motion will be we spent a lot of time talking to CastleKnight. Certainly with a lot of what Mr. Dunne spoke about. And so let me just say two sentences on that. We submitted a proposal on

November 19th, more than a month ago, before Thanksgiving, to resolve this case consensually and Mr. Dunne is right, there was some back-and-forth before it but we submitted the last proposal. We never got a response to that. In fact, all of those prior proposals came from the Akin Gump group.

The debtor never independently responded to any of our proposals. They didn't believe they could do it without their lenders allowing them to do it, I imagine, but the bottom line is nothing for us from November 19th. I feel pretty foolish about that, Your Honor, because when I spoke to my client in between November 19th and Sunday night, we still thought we were getting a counter.

In fact, as of December 1st, we had a payment default on our term loans. Did we do anything about it? No. As of December 15th we had a payment default on our unsecured buys. Did we do anything about it? No, Your Honor, because we still thought we were seeking consensus and we still expected someone to reach out to us to continue the negotiations.

And so on that record, Your Honor, which the witnesses will confirm and -- look, Your Honor did not care about all of that, obviously, but it's very, very difficult for them to come to the Court and say we did everything we could to reach consensus with CastleKnight when they left us in the dark after November 19th and the ball was in their court. And we wanted consensus.

We've been open, Your Honor, about our position and they chose to instead go do this -- go file -- negotiate an RSA with the other creditors, not respect our first lien position in any respect, offer unsecureds nothing under the plan, while also providing for a $5.5 million payment to their sponsor. And I will just say, not to get stuck on that, Your Honor, Mr. Dunne said that payment is coming from the lenders. It's not what the first day declaration says. It's proceeds of the equity rights offering. That's capital provided to the debtor and the debtor is paying to the sponsor. I believe that's in a violation of absolute priority.

The last thing, Your Honor, then we can move to the motions -- I want to keep my promise -- Your Honor, I mentioned the adversary proceeding that, it seems, pursuant to Bankruptcy Rule 7001, will fall to us to file -- we will do that as soon as we can. We were ambushed by this filing. I didn't know it was going to be made. But for today's purposes at least, Your Honor, even under the debtor's view of the world, even under this liability management exercise that took $2.7 billion of debt and made it 5 billion, and they're saying they're not going to enforce it in bankruptcy, they're enforcing it in different ways but they did it anyway.

But the point is today, Your Honor, liability management exercises -- I find them painstakingly complex dealing with these 300 page credit agreements. Your Honor, one

thing though I think we can all agree is one thing they can't do, they can say a lot and they have a lot of provisions in there, but one thing they can't do is strip creditors' rights, their fundamental right to vote on a bankruptcy plan nor can they prevent a debtor from filing for bankruptcy, that's fundamental. But I think even no bank would agree, they can't strip my right to vote on a plan. But that's basically what they're doing in this case, Your Honor, even under their view of the world.

And you heard Mr. Dunne simplify things by saying, Your Honor, there's all these different labels of debt. And I'm sure I was sloppy with it in my objection that I filed last night, but he's right, we can put them in two buckets. There's debt before the August 2024 double dip transaction and then there's debt issued pursuant to that transaction. That's a pretty big dissimilarity, Your Honor, one is double dipped, one primed me effectively, deluded me by $5 million and then there's, basically, me and my smaller brothers and sisters out there who probably aren't hiring lawyers to fight this.

Your Honor, notwithstanding that big dissimilarity, I am placed into classes, again, under the debtor's view of the world, my secured debt is placed into a billion dollar class of people who are participating in that transaction so that I can't object to the plan and so that there will be no cramdown test. That's not the only thing they're doing. On my

unsecured debt, which also predated the LME transaction, they're placing me in a class with the deficiency claims from the LME transaction.

The consequence of all of that, we don't agree on everything but we agree on the numbers, I don't have 33 percent of either of these classes. It violates 1122, Your Honor, because we are very, very dissimilar and it's not just because I'm in one Mr. Dunne's bucket and not the other bucket but there's lots of other reasons. And the only reason I just want to preview that, Your Honor, it goes to the scheduling because I don't think this schedule works because I'm a first lien creditor, I need an adversary proceeding to resolve that and I need my due process.

But putting that aside, even under their view of the world, Your Honor, the only reason they can call this as a pre-pack is because of some of the most obvious gerrymandering that I've really ever seen to place me into classes with them. And it's not the -- you know, we see in the case law, Your Honor, gerrymandering discussed about taking the deficiency claim of a secured creditor and separately classifying it so they can have their impaired consenting class.

This is a different version of gerrymandering. This is taking the deficiency claim from this liability management transaction and swamping me, their only unsecured creditors in this case, to make sure that no one can object to the $5.5

million payment to Platinum, Your Honor, who, of course, is the sponsor here and who's getting a -- I just think it's an obvious violation of absolute priority. And so, even if that were the only issue on the case, this classification it can't be done in 40 days. It shouldn't be ordered to be done in 40 days at a first day hearing before any committee is appointed, before anyone else has had a chance to look at the hundreds and hundreds of papers and that will be the theme for our position today.

I'm sorry we didn't participate in the transaction. That was within our rights. Maybe that's an inconvenient truth for management and I'm sorry that we're here defending our rights, Your Honor. And I'm sorry that we're small compared to the armies and legions of people who are -- who did participate in the transaction and now are upset with me for standing on my rights. But the law is the law. I deserve civil process.

We've done nothing in bad faith. The evidence will show, if not today, during this case that if anyone was seeking consensus, it was us, Your Honor. Not the RSA parties who went dark for the last 45 days and now seek to steamroll our rights. And we appreciate the opportunity to be heard, including responding to the preliminary comments, Your Honor. Thank you very much.

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

Absent someone else wishing to make preliminary

comment, I think we should move on, as Mr. Dunne suggested, to the motions. And I'll turn to, I guess, Mr. LeBlanc?

MR. LeBLANC: Yes, Your Honor. Andrew LeBlanc of Milbank on behalf of United Site Services. Can Your Honor hear me okay?

THE COURT: I can, thank you.

MR. LeBLANC: Your Honor, I'm going to, with the Court's permission, I'm going to present, ultimately, the first three agenda items and the evidentiary presentation for the balance of the first day motions other than the claims agent motion, meaning the evidentiary basis for that and I'm not presenting the claims agent declaration.

Your Honor, I normally would ask the Court to enter joint administration. I appreciate that we do have a declarant for that so I can do that after I present the fact testimony. But, in fairness, I don't know that there's going to be an objection to joint administration or to complex case treatment, so I'd ask the Court to enter those two and then I'll move on to the evidence and then I'll argue the DIP if that's okay with the Court.

THE COURT: I think that's sufficient argument. Let me just start out at the outset. And I don't see if it's Mr. Sponder or someone else from the U.S. Trustee's Office. I'm looking -- there's Ms. Lieb. Good morning.

MS. LIEB: Hi and good morning, Your Honor. Samantha

Lieb on behalf of the Office of the U.S. Trustee. And I do have Mr. Sponder on the Zoom with me as well.

THE COURT: All right. Thank you both.

I'm going to proceed as I normally do with the first days and hope that it works for you as well that I'm going to assume you've worked out issues on various motions until you tell me you haven't. And use your raise hand function as we go forward. Obviously, I'm aware of certain areas there is not an agreement but absent you coming forward, I'll assume your issues and language, and I'll certainly hear from counsel for the debtor, have been addressed. Is that fair? Ms. Lieb?

MS. LIEB: Yes, Your Honor.

THE COURT: Okay.

MS. LIEB: Sorry, I wasn't sure if you were directing that to me or Mr. LeBlanc.

THE COURT: No.

MS. LIEB: I would just say that for the joint administration and complex case, the U.S. Trustee did have some minor revisions to both forms of orders but those were agreed to by the debtors.

THE COURT: Great.

MS. LIEB: So we have nothing further.

THE COURT: And that's all I want to hear or if there are issues rather than go back-and-forth. Thank you.

All right. Mr. LeBlanc, so you have joint

administration is granted subject to -- and with all the orders coming in today, I'll ask that debtors forward a complete set of final versions. We won't consider anything that's already been filed, we will wait for a final package if that works for you, Mr. LeBlanc.

MR. LeBLANC: Your Honor, that's perfectly fine. We'll send a consolidated version with any changes that are occasioned by the discussion today. So that, Your Honor, deals with Agenda Number -- Item Number 1 --

THE COURT: Right.

MR. LeBLANC: -- which is Docket Number 3 for the joint administration and also deals with Agenda Item Number 3, which is Docket Number 4 for the complex case designation.

THE COURT: Yes and that motion's an understatement.

All right. Go forward. Thank you.

MR. LeBLANC: Thank you, Your Honor. So, what I propose to do now, Your Honor, is to introduce our two witness declarations and some additional evidence. Your Honor, we did circulate to the Court this morning and eBinder of certain exhibits. I don't know if Your Honor received that?

THE COURT: We have, yes. Thank you.

MR. LeBLANC: Okay. So, what I propose to do is to introduce the witnesses and then I'll offer just a handful of the exhibits from that with respect to the DIP motion. And then as we go through the day, my colleagues may ask the Court

to consider other items that we had circulated to the Court in the e-binder.

But with respect to the evidentiary presentation, Your Honor, and my understanding is this is consistent with your Court's preferences not just for first day hearings but throughout the case. We intend to present our direct testimony by declaration and seek the admission of those declarations and then have those witnesses available for cross examination and, obviously, redirect to the extent necessary based on the cross. And, Your Honor, we propose to start and call as our first witness Chris Kelly of Alvarez & Marsal.

THE COURT: All right. Do I see Mr. Kelly?

MR. KELLY: Yes, can you hear me, Your Honor? Just came on camera.

THE COURT: Yes. Good morning.

MR. KELLY: Good morning.

MR. LeBLANC: Your Honor, Mr. Kelly's declaration was filed at Docket Number 15 and submitted in support of the first day relief. Mr. Kelly is here on the Zoom screen now and is available for cross. And so at this time, I'd move Mr. Kelly's declaration into evidence as his direct testimony.

THE COURT: All right. Thank you.

Let me first ask any other counsel, is there an objection to having the declaration coming in as Debtor's D-1?

MR. FINESTONE: Your Honor, Ben Finestone on behalf

of CastleKnight. You can hear me, Your Honor?

THE COURT: Yes, I can thank you.

MR. FINESTONE: Yes. Your Honor, I appreciate this is a first day hearing. The declaration is extremely long. it is replete with legal conclusions and it is replete with testimony for which the witness has no firsthand knowledge. With that said, provided the understanding is that the testimony is being admitted solely for today's hearing and that Your Honor will allow us to argue weight with respect to the testimony, then I have no objection to the testimony coming in on paper, Your Honor.

THE COURT: All right. Thank you.

Ms. Lieb?

MS. LIEB: Thank you, Your Honor. Samantha Lieb for the Office of the U.S. Trustee. The U.S. Trustee does not object to the introduction of the declarations but we similarly reserve our rights pending the final hearings as to all of the declarations that will be introduced.

THE COURT: All right. Thank you.

And I don't see any other hands.

The Court will admit into evidence the declaration of Mr. Kelly as D-1 and, yes, note that the declaration is being admitted for purposes of today's hearing only subject to additional testimony or cross examination either today or at another point in time.

Mr. LeBlanc, do you wish to offer the witness for cross examination?

MR. LeBLANC: Yes, Your Honor, we would tender the witness for cross examination.

THE COURT: All right. Is there counsel who wishes the opportunity to cross examine?

MR. FINESTONE: All right. Then let me first swear in Mr. Kelly.

C H R I S K E L L Y WITNESS, SWORN

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

THE WITNESS: No.

THE COURT: And do you have any papers in front of you apart from your declaration?

THE WITNESS: I have my declaration and a binder with some of the other filings in the case, but all court filings.

THE COURT: All right. When you need to refer to those documents, please let the Court know prior to answering any questions.

Mr. Finestone, you may proceed with cross examination.

MR. FINESTONE: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. FINESTONE:

Q Good morning, Mr. Kelly.

A Good morning.
Q Mr. Kelly, in Paragraph 9 you testify that you were retained in July of 2025, is that correct?
A That is correct.
Q You had no connection to the debtor prior to July of 2025, do you, sir?
A I did not have any connection to the debtor, no.
Q Okay. And you had no role in negotiating or formulating the August 2024 double dip transaction, correct?
A I did not, no.
Q Okay. In Paragraph 15 of your declaration, sir, you described the 2024 double dip transaction, do you not?
A If it's Paragraph 24 (sic), that may be the case. I don't know exactly what date --
Q Okay. In your declaration --
A Yes.
Q -- you do describe the transaction, correct?
A That is correct, yes.
Q And you testify that the transaction reduced the company's net debt by capturing $200 million in discount on those exchanges, correct?
A That is correct.
Q You don't mention anywhere in that paragraph about the incurrence of the additional $2.5 billion inter-company claim, do you, sir? And you're free to look at your declaration if

you'd like.
A Yes. Which paragraph was that? I'll take a quick look if I may.
Q Paragraph 12.
A Your Honor, can I reference the declaration at this point in time?
THE COURT: Yes. Proceed, please.
A And which paragraph was that? Sorry, Mr. Finestone.
Q Paragraph 12, Mr. Kelly.
MR. LeBLANC: Your Honor, I think --
THE COURT: No, I think it's Paragraph 15.
MR. LeBLANC: -- he said Paragraph 15.
THE COURT: Yes, I think it's Paragraph 15.
MR. FINESTONE: Thanks, Mr. LeBlanc.
Thanks, Your Honor.
A I do not see any reference to that in Paragraph 15.
Q Okay. And, Mr. Kelly, let me ask you to turn to Paragraph 74 which I can tell you is on Page 24 of your declaration.
A Okay.
Q Here, you try to describe the company's capital structure after the LME transaction was completed, correct?
A That is correct, yes.
Q And in this Paragraph 74, you also nowhere mention the incurrence of the $2.5 billion inter-company claim, correct?
A I believe that's correct. Let me just check this footnote

real quick. Yeah, it does not look it's referenced there.
Q And just so we're clear, did you hear Mr. Dunne's preliminary comments to the Court, Mr. Kelly?
A I did, yes.
Q And you've done some work to try and understand what the consequences of the 2024 LME transaction were, correct?
A Generally, yes.
Q Yeah, and you understand, do you not, that all of the creditors who participated in that transaction were, effectively, granted two claims. Were, effectively, granted $2 of debt for every dollar that the debtors owed them, right, at a high level, sir?
A Yes.
Q Okay. Mr. Kelly, in Paragraph 83, you can turn there if you want. I'm not trying to -- I'm citing the paragraphs for your assistance, not to test you on where you say something.
A No, thank you. Okay. Thank you.
Q But Paragraph 83 you testified that USS made every effort to achieve a fully consensual Chapter 11 restructuring that included CastleKnight's support, correct?
A I recall that, yes.
Q That's not based on your firsthand knowledge, is it, sir?
A And this is in reference to the discussions with CastleKnight preceding these Chapter 11 cases, not last year's transaction is your question in reference to?

Q Yes, sir.
A I would say I had some firsthand knowledge in that I did participate in some of the discussions with CastleKnight. But it was also based on discussions with counsel and PJT as well.
Q Okay. You never picked up the phone and called CastleKnight and had a conversation with them about resolving the disputes, did you, sir?
A No, I did not directly in the negotiations associated with that.
Q Okay. And in your declaration, you also testify about eight restructuring proposals being exchanged between CastleKnight on the one hand and the Ad Hoc Group on the other, correct?
A That is correct, yes.
Q The debtors themselves, they never provided any proposal to CastleKnight, correct? This was -- you testified that it's CastleKnight and the Ad Hoc Group, correct?
A That is my understanding, yes.
Q And do you understand, sir, that the last proposal that was sent was from CastleKnight to the debtors on November 19, 2025?
A Could you repeat that again from which side to which side?
Q The last proposal that was sent was sent on November 19th of 2025 from CastleKnight to both the Ad Hoc Group and the debtors, correct?

A Yes, that sounds familiar. I believe that's --
Q Okay. And the Ad Hoc Group, they never responded to that proposal, did they, sir?
A That I am uncertain of.
Q And the debtors, they never responded to that proposal, did they, sir?
A That I am uncertain of as well.
Q Okay. Well, you're not able to testify today that the debtors provided to CastleKnight any compromise, either before November 19th or after to try and resolve the lien disputes in this case, are you, sir?
A Was that question in reference to the company or to the Ad Hoc Group?
Q The company, sir, the debtors.
A I am uncertain of that.
Q Okay. In Paragraph 20 you say that the RSA respects CastleKnight's rights as a holder of secured and unsecured debt. Does that sound familiar to you, sir?
A Yes, it does sound familiar.
Q You're not a lawyer, right, Mr. Kelly?
A I am not a lawyer, no.
Q You're not a former lawyer, are you?
A No, I am not.
Q Okay. You don't really know whether or not the RSA respects CastleKnight's rights on its funded indebtedness, do

you, sir?

MR. LeBLANC: Object to the form, Your Honor.

THE COURT: Overruled. Continue.

A Can you repeat the question, please?

Q You don't really have an opinion as to whether or not the RSA respects CastleKnight's legal rights and legal claims against this debtor in bankruptcy, do you, sir?

A I personally do not have a legal opinion of that, no, but based on understanding of discussions with counsel.

Q Are you familiar with the classification scheme that's in the debtor's proposed Chapter 11 plan, sir?

MR. LeBLANC: Your Honor, I would object to this as outside the scope of the issues that are presented to the Court today.

THE COURT: I'm going to sustain the objection.

I understand, Mr. Finestone, where you're looking to go and I'll let you argue it again as part of the motion arguments. I don't think you're going to get much out of this witness on the treatment under the Code's mandate for a classification.

MR. FINESTONE: Okay. Thank you, Your Honor. And I think Your Honor knows this, the reason why I think it's all relevant is, admittedly, more for the scheduling motion than for the scheduling motion than for the DIP financing motion but I'm thinking this witness we should get him up and down.

Anyway, I will proceed, Your Honor.

THE COURT: Sure.

Q Paragraph 112 you testify about the adequate protection package that the debtors have provided to their various secured creditors, correct, sir? And I can give you a page --

A I'll take your word for it but I'm trying to get there. Give me a moment.

Q It's on Page 38 to 39.

A Yes. I'm not going to read the whole paragraph but, yes, I do recall that paragraph, yes.

Q Well, you can read the first sentence, right? The proposed DIP order, provide an adequate protection package dot, dot, dot --

A Yes.

Q And then at the end of the paragraph, let me ask you to read the last sentence, too, if you would, sir. You testify that in light of the existing lien structure and the expected use of cash as reflected in the approved budget, these measures are necessary to protect the applicable creditors against any diminution in value. That's your testimony, right?

A That is correct, yes.

Q And those measures that you testified today that are necessary to protect against diminution in value, they include the payment of post-petition interest at the contract rate to the first-out lenders, correct, sir?

A That is correct, yes.
Q And just for the Court's benefit, the first -- I use this defined term, first-out lenders, that's basically the lenders at the top of the -- let's call them the 2024 new debt, correct?
A Yeah. It's lenders in three segments of that. There's a revolving credit facility, a small portion of notes, and then a portion of term loans. Three different components to it, yes.
Q Right. But, the debtors are paying all of the first-out lender's post-petition interest or proposing to pay them post-petition interest subject to Judge Kaplan's approval, correct, Mr. Kelly?
A That is correct.
Q And you've testified that, to your view, that those measures are necessary to protect the applicable creditors against collateral diminution, correct?
A That is correct.
Q The debtors are not proposing to pay contract post-petition interest to the -- on the amended term loans, which is the secured debt that my clients hold, are they, Mr. Kelly?
A They are proposing to pay, yes, some interest, on account of the amended term loans.
Q They're proposing to pay a portion of the post-petition interest. But, unlike the other first-out creditors, they're not proposing to pay the contract rate of interest in full,

correct, sir?
A That -- yes, that is correct. I understand what they are proposing to pay, which is 1.78 percent of what is paid to the first-outs that you questioned me on before, is permitted under the intercompany agreement on what would be adequate for the amended term loan.
Q Okay. Forget your legal view for a second, Mr. Kelly. Just talking about facts though. The debtors are proposing to pay the first-out LME creditors in full post-petition interest at the contract rate, correct?
A That is --
Q The debtors -- and the debtors are not proposing to pay my clients in full post-petition interest at the contract rate, correct, Mr. Kelly?
A That's correct. They're proposing to pay 1.78 percent of what's being paid to the -- to the first-outs in the first lien facility.
Q Okay. Okay. And just so we're clear, Mr. Kelly, tell me if these numbers seem reasonable. The amended term loan, which is the pre-LME transaction debt that my clients own, accrues interest at roughly 8 to 10 percent per annum, does that sound familiar, Mr. Kelly?
A I will take your word on that. I don't know off the top of my head what that interest rate is. But, that's --
Q It's a couple million bucks. It's a couple million bucks

in post-petition interest that the debtors are not proposing to pay my clients. If you know, maybe you have no idea.

A I do not know specifically what that interest rate or how much it is.

Q Okay. Mr. Kelly, also in that big Paragraph 1.12 of yours, I guess some lawyers drafted that for you, Paragraph 1.12 about the adequate protection package, is that right?

A I drafted this in consultation with counsel and my team.

Q Okay. There's another measure of adequate protection that you testify about in Paragraph 1.12, and it's the payment of fees to the secured creditors, correct, sir?

A I do recall that, which is probably on the prior page here.

Q If you look at the sentence on Page 38.

A Yeah, towards the bottom of Page 38 there, is that correct?

Q Yeah.

A Yep. Document (indiscernible). Yes, I see that.

Q Okay. So, you're -- the debtors are proposing to pay reasonable and documented pre and post-petition fees for the following secured lenders, pre-petition ABL agent. That's LME debt, correct, sir?

A Yes, the ABL did participate in the transaction last year.

Q Pre-petition first-out, second-out agent, that's Bank of America on the LME debt, correct, sir?

A That is my understanding, yes.
Q The Ad Hoc Group and their advisors, that's Akin Gump and Centerview, that's the group that's -- that's the group that holds all kinds of debt. But, certainly, the second-out debt under the LME, correct?
A That is correct. (indiscernible) second-out debt, in addition to other tranches. But, yes, you are correct on that.
Q Okay. So now the debtors are proposing to pay adequate protection to, not even the first-out on the LME debt, but the second-out debt, correct, sir? At least as it relates to professional (indiscernible).
A I don't know what that payment is on account of. I know that those advisors are representing their clients in varied tranches of debts. I don't know what --
Q Including --
A -- that payment can be attributed to.
Q Include -- you do know that they hold a lot of second-out paper, correct, that's equitizing under the RSA that you negotiated and signed?
A I do understand that, yes.
Q Yeah. And just to go back, you're also paying the pre-petition second-out agent, Bank of America, which you testified about just immediately proceeding, correct?
A Yes. Yes.
Q Okay. And you're not just actually -- your testimony's a

little bit incomplete here because you're not -- you're not only paying Akin Gump and Centerview, those advisor, you're also paying the professional fees for the largest creditor in that second-out group. Clearly, you're paying Kirkland & Ellis' professional fees, aren't you, for adequate protection?

A I believe that's the case. I know that they're representing Clear Lake. I am not -- I believe that is the case, yes.

Q Okay. And you heard me say earlier that my client owns $370 million of debt issued by your client?

A Yes, I recall something in that range.

Q And you understand that my client owns, like, 97 percent of the secured debt that was left behind in the LME transaction, the amended term loan?

A Amended term loan.

Q Yeah.

A I believe I've heard that -- or, yes, I understand that's a representation.

Q And it's the debtor's view that the amended term loan, my client's paper, is not subordinated to anyone else's paper, it was diluted by this double-dip transaction. But, there's no one that we have to pay over to, correct, the amended term loan, in your knowledge?

MR. LeBLANC: Object to the form, Your Honor.

Q If you understand the terms.

THE COURT: Can you answer the question?

A If you could repeat the question, I can -- I don't know for sure actually, I wasn't --

THE COURT: Try to rephrase it.

Q You understand, Mr. Kelly, that the amended term loan, in the debtor's view, is of equal ranking with all of the LME first lien debt, correct?

A Yes. Yes.

Q And not withstanding that, you're not proposing to pay my client's advisors professional fees as a measure of adequate protection, correct?

A That is correct.

Q And so let me just ask you, sir, at the end of Paragraph 1.12, you testified that these measures are necessary to protect the applicable creditors against any diminution of value. What are you proposing to protect my client against diminution in value, if anything, if you can identify anything?

A I do not know.

Q Okay. Thank you, sir. Can I ask you, do you -- could I ask you to look -- Mr. LeBlanc, does Mr. Kelly's binder have a table of contents in it?

THE WITNESS: No, it does not. No.

MR. FINESTONE: Do you know if the DIP motion is in there, Mr. LeBlanc?

MR. LeBLANC: I don't know --

MR. FINESTONE: Okay.

MR. LeBLANC: -- what the binder has.

Q Mr. Kelly, do you have in that binder, a copy of the 13-week cash flow that is the predicate for the -- the predicate for the debtor's DIP motion?

A It is not in this binder. It is in another set of materials over here that I just want to make sure only includes publicly filed documents.

Q Well, you don't have to share it on the screen.

MR. FINESTONE: Your Honor, may I ask Mr. Kelly to look for the 13-week --

THE COURT: Yes, please.

MR. FINESTONE: Thank you.

THE COURT: If you could find it --

MR. FINESTONE: If you have other stuff, you don't have to show it on the screen, Mr. Kelly. We're both looking at the DIP budget. And for Your Honor's benefit, Your Honor, the DIP budget is at, at least where I find it is at Docket Item 13PF150 out of 312. That's the DIP motion. I can say that again if --

THE COURT: That's all right. I have it. Thank you.

THE WITNESS: I have it here. Yes.

Q Okay. And, Mr. Kelly, you were involved in the preparation of this 13-week cash flow, were you not?

A Yes, I was.

Q This is -- you actually have first-hand knowledge of these projections, correct?

A Correct.

Q Do you see, Mr. Kelly, that the first bold -- excuse me, the first bold line, operating cash flow?

A The first bold line. My eyesight's bad, but yeah, I was looking -- yeah, I see it now, operating cash flow.

UNIDENTIFIED SPEAKER: Yep.

Q Yeah. So, at the end of 13 weeks, this debtor, without taking into account any extraordinary items, but just on operations, is going to be negative approximately $7 million, correct?

A That is correct. That's what -- yes.

Q Yeah. So, putting aside administrative expenses and, as I said, extraordinary items, the value of this business, at least during your view of the pendency of this bankruptcy case, it's not going up, is it?

MR. LeBLANC: Object to the form, Your Honor.

THE COURT: Sustained.

Q Mr. Kelly, there's no other operational cash that's not included on this 13-week cash flow that you reasonably project, is there? This is complete work, is it not?

A Yes. This is complete work. I will note one thing with respect to this. The beginning cash balance of -- what was it, $5.6 million, is actually slightly higher, just associated with

some payments that were not made prior to the case. But, it's just -- it's just a shift in timing. But, no.

Q Is it -- how much higher should we adjust these numbers?

A $14 million.

Q Higher?

A Not $14 million higher, $8 million more.

Q Okay. So, is it fair to say that you would project at the end of the 13-week cash flow that the -- operationally, the debtors will be plus a couple million bucks?

A No. I think it's just simply timing during the case. I think --

Q Okay.

A -- there were some payments that were not made on Friday pre-petition that expect will be made during the pendency of the case. In fact, in the early portion of the case here. So, I don't think it changes the projected (indiscernible) and that it increases the disbursements in the first week or two of the case.

Q Okay. Thank you, sir. So, operationally, you project the debtor to be losing $7 million, correct?

A Starting with about seven, eight million more. And then operational cash flow. Actually, operational cash flow, some of those are related to restructuring fees. I think only probably two of that may be related to operating cash flow. So, operating cash flow during the pendency of the case, you

know, may be $2 million more negative.
Q Okay. So, it's worse than this? You think it's, like, a negative $9 million dollars at the end? We're talking about before we get to the restructuring line.
A Exactly. Yeah, that's probably about right. Seven, yeah, $9 million negative, I would say. Yeah.
Q All right. And the situation then gets worse because you're projecting $35 million of restructuring expenses. That's the next line item, correct?
A Yes.
Q And then -- and you have a footnote here, it says there's even some additional professional fees that were accrued that will be paid upon emergence. How much -- how much is that? That Footnote 1? It doesn't quantify a number.
A Yeah. Give me one moment.
Q An estimate would be fine.
A Yeah. I think roughly, based on (indiscernible) maybe $40 million, approximately.
Q In addition to the -- so, $75 million in administrative expenses for the case?
A That is correct, roughly speaking.
Q Okay. Mr. Kelly, is that -- and you understand, do you not, that my client's security interest is going to be primed by the proposed DIP financing, correct?
A Yes.

Q Okay. Thank you. We can put this away, sir. One last question. Mr. Kelly, are you familiar with -- just recently, right or around before Christmas, the debtors told my client that they discovered some unencumbered assets. Do you have any understanding of that?

A I do.

Q And those were some vehicles, is that right?

A That is correct, yes.

Q All right. Is that -- do you have an estimate as to the value of those unencumbered assets?

A We've been trying to get a better understanding of that. I think the best estimate would probably be somewhere in the range of $17 to $22 million, I think where we sit today.

Q Okay. And is there is any reason why the debtors couldn't provide my client, the amended term lenders, with a lien on those assets, to the extent of collateral diminution?

MR. LeBLANC: Objection, Your Honor. Calls for a legal conclusion.

THE COURT: Sustained.

Q Okay. Let me just ask you factually, Mr. Kelly, you're not aware of -- you're not currently offering my client a lien on those unencumbered assets to the extent of their collateral diminution, are you, sir?

A No, I don't believe so.

MR. FINESTONE: Okay. Nothing further, Your Honor.

Thank you.

THE COURT: Thank you, Mr. Finestone. Ms. Lieb, did you want to take an opportunity to cross examine the witness?

MS. LIEB: No, Your Honor.

THE COURT: All right. Thank you. Then, Mr. LeBlanc, do you have any redirect?

MR. LeBLANC: Your Honor, I do. I want to -- I want to do one housekeeping thing and then I'll do a brief redirect, Your Honor, on one topic.

THE COURT: Sure.

MR. LeBLANC: Your Honor, I would first, I'd like to offer the document that Mr. Finestone just went through with Mr. Kelly, that is the 13-week cash flow that's attached as Exhibit 3 to the DIP motion filed at Docket Number 13. Your Honor, on our exhibit binder we sent over, it's at Exhibit Number 8 there. But, I'd offer it as Debtor's Exhibit 2.

THE COURT: All right. Any objection?

MR. FINESTONE: No objection, Your Honor.

THE COURT: All right then. 13-week projection comes in as D-2.

MR. LeBLANC: And, Your Honor, I'd like to offer -- Exhibit 6 on our binder that we sent over is the amended and restated first lien intercreditor agreement dated August 22nd, 2024. And I would offer that for admission for today's hearing as D-3.

THE COURT: Any objection?

MR. FINESTONE: No objection, Your Honor.

THE COURT: All right. Then as D-3 is the amended and restated creditor agreement.

MR. LeBLANC: Inter -- that's the intercreditor agreement.

THE COURT: The intercreditor agreement.

MR. LeBLANC: And then lastly, Your Honor, what's in our exhibit binder as Exhibit 30, the credit agreement dated as of December 17th, 2021, as amended restated supplement, supplementary or otherwise modified from time to time, the amended term loan credit agreement we'd offer as D-4.

THE COURT: I'm sorry. What document on the exhibits?

MR. LeBLANC: On our binder, it's Number 30, Your Honor. I apologize.

THE COURT: That's all right. And this is Amendment Number 3 to the creditor agreement?

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

THE COURT: Any objection?

MR. FINESTONE: No objection, Your Honor.

THE COURT: Okay. It comes in as D-4.

MR. LeBLANC: And, Your Honor, with the Court's indulgence, I'll just cover one topic with Mr. Kelly on redirect.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. LeBLANC:

Q Mr. Kelly, you were asked some questions about what Mr. Finestone has coined the double dip, do you recall those questions?

A I do, yes.

Q And he talked about the creation in the recapitalization transaction in 2024 of a $2.5 billion intercompany claim, do you recall that?

A I do, yes.

Q And what he described -- he described it in his words as those creditors getting $2 of claims for every dollar of debt, do you recall that question?

A I do, yes.

Q Could those creditors that participated in the 2024 recapitalization have been paid more than $1 on their dollar of debt?

A No.

Q And so what -- what is the purpose, or what was the effect of having the second claim, the double dip claim, as he described it?

A It gave a additional guarantee and basically it recycled the distributions back to first-out creditors, a portion of it.

Q Mr. Finestone showed you in your declaration where you

described the 2024 restructuring -- I'm sorry, recapitalization transaction, as having reduced indebtedness. Is it accurate to say that because of the discounts taken as part of the 2024 recapitalization, that it actually did in fact reduce indebtedness?

MR. FINESTONE: I'll object as leading and seeking a legal conclusion, Your Honor.

THE COURT: Rephrase the question, Mr. LeBlanc.

Q What was the impact on the company's indebtedness to the participants who exchanged in the 2024 recapitalization?

A It was reduced approximately $200 million.

Q And for those creditors who didn't participate, what was the impact on what they were owed by the company?

A It remained in tact. (indiscernible) --

Q Mr. Finestone -- I apologize. Please finish your answer.

A There was no reduction for those.

Q Mr. Finestone described his clients as a small part of the first lien indebtedness. Prior to the 2024 recapitalization, what was the relative size of the first lien indebtedness at that time?

A If they represent today that they own the majority of $46 million, I think it was $51 million at the time. There's been some amort paid since the transaction. It would be a very small portion of, I think at the time was $1.8 billion of first lien secured debt.

Q And what -- what tranche of debt did first lien indebtedness that Mr. Finestone's clients shared? When those first lien lenders exchanged -- what tranche of debt did they exchange into?

A I'm sorry. Could you repeat the question?

Q What tranche of the company's current capital structure did the first lien indebtedness that existed prior to the 2024 recapitalization, what did that transfer -- I'm sorry, exchange into?

A For the participating --

Q Yes.

A -- lenders?

Q Yes.

A For the first lien indebtedness, it transferred into second-out debt.

MR. LeBLANC: Okay. No further questions for this witness, Your Honor.

THE COURT: Mr. Finestone?

MR. FINESTONE: Your Honor, a very limited recross, please?

THE COURT: Yes, please. Go ahead.

RECROSS EXAMINATION

BY MR. FINESTONE:

Q Yeah. I think something's getting confused here, Mr. Kelly. So, let me just go back. You weren't testifying that

-- let me take a step back. You testified in your declaration about an intercompany credit agreement loan in the approximate amount of $2.5 billion, correct?

MR. LeBLANC: Objection, Your Honor. I thought Mr. Finestone said that -- that intercreditor agreement -- intercompany claim wasn't included in his declaration.

THE WITNESS: Yeah, I was about to say the same, but, yeah.

MR. FINESTONE: No. If we can argue about that, he omitted it from his description of the capital structure. But, Footnote 2 on Page 13, you have a footnote here that says the principal amount of the intercompany credit agreement loans is approximately $2.51 billion.

THE COURT: Continue with your inquiry.

Q Forget -- forget what you have in your declaration. The debtor incurred $2.5 billion of these intercompany loans pursuant to the LME transaction, did they not, Mr. Kelly?

A Yes.

Q And that amount is -- and that amount is duplicative, dollar for dollar, of all of the new debt that the debtor incurred in the LME transaction, correct, Mr. Kelly?

A That is my understanding. Roughly equivalent, but, yeah.

Q Okay. And unless the debtor is paying off debt 100 cents dollars, which this debtor is not doing, if these claims were enforced, creditors that participated could recover, say 50

cents on one claim and 50 cents on another claim, while my client just recovers 50 cents, isn't that the way it was supposed to work, Mr. Kelly?

MR. LeBLANC: Objection, Your Honor.

THE COURT: What's the objection?

MR. LeBLANC: It calls for speculation. It calls for a legal conclusion.

THE COURT: Overruled. Overruled.

MR. FINESTONE: This witness has no first-hand knowledge about the transaction. They put him up about it. He seems to be an expert in restructuring, Your Honor, because he works at A&M.

MR. LeBLANC: Your Honor, I don't know what this is at this point.

THE COURT: Mr. Kelly, can you answer the question?

A Could you repeat the question, please, just to make sure I understand it?

Q Mr. Kelly, what's your testimony to the -- explain to the Court the purpose in this LME transaction, back when it was done, of this duplicative $2.5 billion intercompany claim? Was it done for tax purposes or was it done so creditors could receive double the distributions that non-participating creditors like my client might receive?

A I do not know. I cannot say for sure what the intent of it was.

Q Okay. One final question. Can you offer the Court any legitimate business reason for the incurrence of the $2.5 billion of intercompany credit agreement loans, on top of all the new debt, that was issued and incurred under the LME transaction? Any legitimate business reason?

MR. LeBLANC: Objection, Your Honor.

THE COURT: Sustained.

MR. FINESTONE: Okay. Nothing further, Your Honor.

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

MR. LeBLANC: No further redirect of the witness.

THE COURT: Thank you, Mr. Kelly, for your time.

MR. FINESTONE: Thank you, Mr. Kelly.

THE WITNESS: Thank you.

MR. LeBLANC: Your Honor, again, Andrew LeBlanc of Milbank on behalf of USS. Your Honor, at this point, we'd like to move into evidence the second of our witnesses, and that is Mr. Avram Avi Robbins of PJT. Your Honor, his -- Mr. Robbins' declaration was filed at Docket Number 14. I believe Mr. Robbins is on the Zoom line and available for cross.

THE COURT: I see Mr. --

MR. ROBBINS: I'm here. Good morning, Your Honor.

THE COURT: Good morning, Mr. Robbins. All right. Mr. LeBlanc, you're offering the declaration in?

MR. LeBLANC: I am, Your Honor.

THE COURT: It would be coming in as D-5. Is there

any objection?

MR. FINESTONE: No objection, Your Honor. Same terms as with respect to the prior declaration.

THE COURT: All right.

MR. FINESTONE: Thank you, Your Honor.

THE COURT: The declaration comes in under the same terms and conditions as the prior declaration was admitted.

MR. LeBLANC: And, Your Honor, with that as Mr. Robbins' direct testimony, I will reserve my right to redirect. But, we will tender the witness for cross examination.

THE COURT: All right. Thank you. Mr. Robbins, I'm going to ask you raise your right hand.

AVRAM AVI ROBBINS, WITNESS, SWORN

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

THE WITNESS: There is not.

THE COURT: All right. And do you have any materials in front of you, any paperwork?

THE WITNESS: I have a clean copy of my declaration and the DIP motion.

THE COURT: All right. Just let us know when you're referring to that document in advance of testifying.

THE WITNESS: Sure.

THE COURT: Mr. Finestone, do you wish to cross examine?

MR. FINESTONE: Yeah, it'll be a more limited cross examination, Your Honor. But, yes.

THE COURT: All right. You may proceed.

MR. FINESTONE: Thank you, Judge.

CROSS EXAMINATION

BY MR. FINESTONE:

Q Mr. Robbins, good morning. How are you, sir?

A Good morning, Mr. Finestone.

Q Great to see you.

A Likewise.

Q Mr. Robbins, in your declaration, you testified that the debtor started to look for post-petition financing in November 19th of 2025, correct?

A That's correct. We started to look for third party DIP financing in mid-November.

Q And that was also the date that CastleKnight submitted a proposal for a consensual restructuring of the debtor's balance sheet, isn't that right?

A It was the date that they submitted one of their proposals. There were multiple proposals exchanged.

Q Yeah. It was the date that CastleKnight's last proposal was submitted to both your firm that represents the debtor and Centerview, that represents the Ad Hoc Group, correct?

A That is correct.

Q And were you in the courtroom, Mr. Robbins, I think you

know what I mean by courtroom, but were you in the courtroom when Mr. Kelly provided his testimony?

A I was, yes.

Q Yeah. The debtors never responded to the November 19th, 2025 proposal from CastleKnight, did they, sir?

A No. We never provided a subsequent proposal. There were multiple e-mails checking in and multiple discussions and proposals traded leading up to that however.

Q Okay. So, let's break that up. First, let's talk about leading up to that. You said there were multiple e-mails leading up to it. All the proposals that CastleKnight received were actually from Centerview on behalf of the Ad Hoc Group, isn't that right, sir?

A They may have submitted the proposals themselves. But, the debtors was -- debtors were engaged in extensive discussions with both sides.

Q Whether before or after November 19th, the debtors never submitted any independent proposal to CastleKnight to -- to -- to achieve a consensual restructuring of their balance sheet, correct?

A No, we did not send a company proposal. We engaged in discussions with CastleKnight, as well as the Ad Hoc Group, encouraging them to reach consensus.

Q Right. But, consensus would have had to been reached between CastleKnight and the Ad Hoc Group. The debtors never

sent any proposal to CastleKnight that wasn't cleared with the Ad Hoc Group, is that right, Mr. Robbins?

A That's correct.

Q And now -- I said unpackaged, now post-November 19th, for a consensual restructuring, the debtors, they never sent any proposal in response to CastleKnight's November 19th proposal, correct?

A No, we never sent a proposal. We did ask CastleKnight if they wanted to propose anything.

Q Well, we did propose on November 19th. We'll talk about DIP financing later. But, for now, Mr. Robbins, I'm talking about consensual restructuring. So, just so the testimony's clear, post-November 19th, nothing was sent from either the debtors or the Ad Hoc Group, to CastleKnight, correct? With respect to a consensual restructuring?

A No restructuring proposals were sent to CastleKnight following the 19th.

Q Okay. Instead, it is true though, you did ask and solicit CastleKnight to propose post-petition financing and other financing to the debtors, correct?

A Yes, we requested of CastleKnight that they -- if they were interested, provide DIP financing proposals, exit financing proposals, and/or equity rights offering proposals.

Q And in connection with that, you on behalf of the company, you had uploaded a -- the debtors had uploaded a pro forma

capital structure to the data (indiscernible), correct?
A The debtors provided a significant amount of information. I believe that included a capital structure.
A And it's not -- and am I right, there is the dispute between the debtors and CastleKnight in terms of what the capital structure of this company looks like in terms of lien ranking, do you have that understanding, Mr. Robbins?
A I understand that CastleKnight has made certain allegations about the capital structure.
Q Well, let me just ask you. I mean, Mr. Robbins, as a representative of the debtor, you don't agree with my client that the amended term loan is the first in time, first lien, secured paper on the debtor's capital structure, correct?
A That's correct.
Q And you don't -- you also -- you also -- the debtors, you don't believe that the unsecured creditors are entitled to receive anything more than .3 cents on the dollar, not -- like, three pennies on the dollar, correct?
A Based on discussions with counsel and the advice of counsel, yes, that's correct.
Q Yeah. And that's -- even though you recently uncovered $25 million of unencumbered assets, correct?
A I don't believe that we've -- we've discovered $25 million of assets. They may have a book value of $25 million, but I don't think that necessarily approximates their market value or

their orderly liquidation value.

Q Yeah. Whatever the value of those assets were, the discovery of those assets just prior to Christmas, it doesn't change the debtor's view that unsecured creditors should receive substantially nothing in this Chapter 11 case, correct?

A At the advice of counsel, that's correct, yes.

Q And the debtors also believe that their owner, Spot (phonetic) Platinum, they should be allowed to sell their equity interest in the -- in the debtor's non-debtor parent for $5.5 million, isn't that also something that the debtors believe should occur in this Chapter 11 case?

A That's correct.

MR. LeBLANC: And, object, Your Honor. My objection is just the scope. None of the relief that's requested today has anything to do with that. But, the question's been answered, so I'm fine moving on. I just want to make sure we're only going to stick with things that are actually up for consideration before the Court.

THE COURT: Fair enough.

MR. FINESTONE: If I could just briefly respond on relevance, Your Honor, even though I'm basically finished. Your Honor, there's been a lot of argument by the debtors that we didn't submit a DIP financing proposal after they didn't respond to us on consensual restructuring.

Q And my only point is that, Mr. Robbins, the debtors, they

never solicited a DIP finance. When the debtors solicited a DIP financing proposal from us, you were asking us to fund a Chapter 11 case that was -- that was positioned to basically zero out my client's unsecured note claims and not respect my client's first lien paper. There were significant differences in our view of the capital structure and yours, Mr. Robbins, were there not.

MR. LeBLANC: Objection, Your Honor.

THE COURT: Sustained. That's more argument -- the Court understands.

Q Okay. Last question, Mr. Robbins. You testify about a $25 million minimum liquidity covenant in the -- is that in the proposed debtor in possession financing?

A That's correct.

Q Yeah. And at the end of the 13-week cash flow, you and the other professionals are forecasting $70 million of cash on the balance sheet, correct?

A Can I pull up the DIP forecast?

Q Of course.

A Can you remind me, Mr. Finestone, the page number of that?

Q Yeah, do you have the DIP motion, Mr. --

A Yeah, I do have the DIP motion here.

Q Okay. Well, can I give you a PFD page number. It's 150 --

A That'd work.

Q -- 150 of 312. That should be a good estimate for you.
A 50, hold on. Here we go. Sorry. Can you repeat the original question?
Q Yeah. I'm just -- at the end of this forecast, at the end of the 13 weeks, when all is said and done, if this DIP is approved, the debtors are forecasting $71.5 million in cash, correct?
A I'd call your attention to the number below, the total net liquidity is actually $69 million. But, close.
Q Well, because $2 million is restricted. But, okay, so $69 million of free cash, correct, sir?
A Correct.
Q Yeah. And that's significantly greater than $25 million, is it not? That's mathematics. I'll withdraw the question. Nothing further, Your Honor.
THE COURT: All right. Thank you, Mr. Finestone. Is there anyone else who wishes to examine the witness?
(No audible response)
THE COURT: Mr. LeBlanc, do you have any redirect?
MR. LeBLANC: Very briefly, Your Honor.
THE COURT: Sure.
REDIRECT EXAMINATION
BY MR. LeBLANC:
Q Mr. Robbins, you were asked some questions by Mr. Finestone about engagement prior to November 19th when the last

proposal came, I do not want you to get into the substance of any of the proposals that were made back and forth, but what conclusions did you reach around that time about the ability to bring the two parties that were negotiating with each other together after that point?

A Sure. There were, I guess, eight different term sheets that were exchanged. And there was, even at the end of November, I guess it was the November 19th date, a significant bid-ask spread between CastleKnight and the Ad Hoc Group as to what those two parties were willing to do. And we concluded that that bid-ask spread was too significant to narrow.

Q You were asked a number of questions about whether you had made any subsequent proposals to CastleKnight with respect to restructuring. After the filing of the case, have any proposals been made to CastleKnight with respect to participating in the restructure?

A Yes. Pursuant to the terms of the RSA, we reached out to CastleKnight yesterday to offer them the ability to come into the Ad Hoc Group transaction, where they could participate in the DIP backstop, the ERO backstop, as well as the exit financing, on identical terms to the Ad Hoc Group.

Q And even before that proposal was made, I think Mr. Finestone acknowledged that there was some communication to CastleKnight with respect to the -- certain unencumbered assets that were identified just before Christmas. Do you recall

being asked questions about that?
A I do.
Q Yeah. And so, what -- in what context were there communications with CastleKnight with respect to that issue?
A They were communicated over, you know.
Q And what -- what was that related to? Was that in connection with your request to see if they wanted to provide DIP financing?
MR. FINESTONE: Objection, leading.
Q What was that in relation to, Mr. Robbins?
THE COURT: Thank you.
MR. FINESTONE: Objection.
THE COURT: Overruled.
A It was related to determining if they were interested in providing DIP financing.
Q And did you stay in regular contact with CastleKnight throughout the entire period from -- let me withdraw that, if I can, Your Honor? When did CastleKnight first become restricted?
A I believe it was mid-October, and then they received a management presentation around October 20th or 22nd.
Q And have you been in regular communication with CastleKnight throughout the point -- throughout the period in time that they've been restricted?
MR. FINESTONE: Objection, vague.

THE COURT: Overruled. You may answer.

A We've been in regular contact, whether or not that's phone calls, Zooms, or e-mails.

MR. LeBLANC: No further questions, Your Honor.

THE COURT: Recross?

MR. FINESTONE: Very limited, Your Honor. Thank you.

RECROSS EXAMINATION

BY MR. FINESTONE:

Q Mr. Robbins, you testified about the proposal that is currently pending. And you described it as CastleKnight will be entitled to participate to the same extent as the Ad Hoc Group. The proposal doesn't offer CastleKnight any consideration with respect to the -- the proposal doesn't offer to pay the amended term loan in full, does it?

A No, it does not.

Q It doesn't offer to pay the amended term loan in full the way the first-out double dip debt is being paid in full, does it, sir?

MR. LeBLANC: Objection. I'll withdraw the objection, Your Honor.

THE COURT: Can you answer the question?

A Sorry. Could you repeat the question, Ben? Mr. Finestone.

Q You understand that the -- you understand that the first -- it's fine if you call me that. You understand that the

first-out debt under the RSA, from the LME transaction, the debtors are proposing to pay 100 cents on the dollar, correct, Mr. Robbins?

A That's correct. The first-out debt that's part of the 2024 recap is being paid in full hundred cent dollars due to the turnover provisions.

Q Right. I'm just -- I'm just being -- I just want to clarify, you're not offering to pay the amended term loan 100 cent dollars, correct?

A No, the plan does not contemplate that.

Q Right. Instead, your -- I'm sensitive to Your Honor's direction before. I just have one further question. The -- this proposal that you're offering CastleKnight, you're offering them to participate on the same terms as the Ad Hoc Group, because they actually own some of the second-out debt, correct, sir?

A They're receiving the ability to participate on the same terms as the Ad Hoc Group. Not only because they own some second-out debt, but also on account of their amended term loan that they hold.

Q Right. Which, in your view, is equal ranking to all of the first lien debt from the LME transaction, correct, Mr. Robbins?

A It's (indiscernible) with all of the 2024 recap debt, not the first-out.

Q Right. But, you're not offering them payment in full on the first -- you're not offering them payment in full. You're just offering them the same treatment as the second-out debt on the LME, correct?

A No, that's incorrect.

Q What are you offering?

A We're offering pro rata treatment with all of the currency, cash, or otherwise that's being received by the 2024 recap debt, which includes both the first-out debt, as well as the second-out debt.

Q And --

A They just get their pro rata share.

Q Yeah. Yeah. You understand, Mr. Robbins, you're not a lawyer, but you do understand the Bankruptcy Code does require similar treatment for similar creditors?

MR. LeBLANC: Objection, Your Honor.

THE COURT: Sustained.

MR. FINESTONE: I have nothing further, Your Honor.

THE COURT: All right. Thank you. Mr. LeBlanc, anything else?

MR. LeBLANC: No. Not for Mr. Robbins, Your Honor.

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

THE WITNESS: Thank you, Your Honor.

THE COURT: You are excused. All right. Mr. LeBlanc?

MR. LeBLANC: Yes, Your Honor, that concludes our evidentiary presentation with respect to the DIP. Obviously, we'll have some additional information that we would propose to submit potentially in connection certainly with the claims agent motion. But, I'm prepared to turn to argument on the DIP.

THE COURT: Let me first ask Mr. Finestone or Ms. Lieb. Are either of you intending to present any witnesses?

MR. FINESTONE: No, Your Honor.

THE COURT: Ms. Lieb?

MS. LIEB: No, Your Honor.

THE COURT: All right. Then we can proceed to argument.

MR. LeBLANC: Thank you, Your Honor. And may I proceed, Your Honor?

THE COURT: Yes.

MR. LeBLANC: Thank you. Again, Andrew LeBlanc of Milbank on behalf of United Site Services. Your Honor, let me start with what you haven't heard. And it's a little bit unusual. You have not heard that this debtor doesn't need a DIP financing. You have not heard any complaints about the pricing of the DIP facility. You've not heard an argument that this has an unfair roll-up. You've not heard an argument that this doesn't offer participation to anybody. Because those things don't exist in this DIP.

The terms here, and this is confirmed in the witness testimony that Your Honor admitted in the declarations, this is right down the middle of the fairway in every respect. It is a moderately -- a moderately expensive DIP proposal for a case that we certainly expect will run for a short period of time given the level of support that we have filed the case with. It is all of those things.

Typically, and I do -- I oftentimes am asked to argue the DIP motions in connection with company cases that we file, including from time to time, against Mr. Finestone. And in each of those cases, I frequently expect him to come in and make arguments about the terms, that it wasn't offered to his clients. But, all of those things, none of that is the case here.

There's nothing about this DIP that is remarkable in any respect. Or the debtor's need for it. There's no argument being made that the debtors don't need this financing facility. Or that the amount of the interim draw is inappropriate. Your Honor was shown the -- Your Honor, the questions asked about the 13-week cash flow, obviously, the 13-week cash flow runs and there's exit payments that have to be funded that Mr. Kelly spoke about that's an additional $40 million.

Importantly, Your Honor, it also is -- if -- if CastleKnight thinks this DIP is too pricey for the debtors, they have the ability to participate in it on a pro rata basis.

That has been offered to them and they can accept that offer if they choose to. So, there's nothing about this DIP in any respect that is untoward.

Instead, what Your Honor has heard from Mr. Finestone, and what I suspect you'll hear from him in argument, is a number of arguments about an LME transaction from last year, about his legal contentions which I'll talk about them in brief, but are truly -- and I will say this, Your Honor, truly extraordinary. And they're not extraordinary in that these types of things don't exist in the world. It's extraordinary that somebody would be making these types of arguments. And I'll walk the Court through that in a little bit.

But, what I will say about those issues, Your Honor, is, none of them are ripe for today. Because there is no objection to the quality of this DIP. It's an appropriate DIP financing facility. The only argument seems to be the scope of the adequate protection package that's paid to them, and that's where they try to rope into this the arguments that they have with respect to the 2024 recapitalization transaction, which I will, again, touch upon.

But, I think that should stay where it should be, which is at our confirmation hearing. That can be his objection to confirmation. And if he prevails, he prevails and Your Honor will have to figure out what the remedy is for that. And I'll touch upon that in a second.

But, it's important to contextualize just how small a piece of this capital structure CastleKnight represents. Yes, they have large amounts of other pieces of the capital structure. But, as it relates to this amended term loan piece, Your Honor, it's $46 million, out of -- it's 1.76 -- 78 percent of the total first lien indebtedness. It's that small. And, Your Honor, that's not a new phenomenon.

I tried to -- I elicited this testimony from Mr. Kelly, and Mr. Dunne showed this. If Your Honor looks at Slide 13 that Mr. Dunne used, just as a demonstrative, and this is the capital structure is still -- this is the capital structure that preexisted the 2024 recapitalization. The $46 million of debt that Mr. Finestone had is $46 million out of $1.95 billion of term loan debt that existed at that time.

Now, the overwhelming majority of that term loan debt agreed to an exchange transaction that had a number of puts and takes, gives -- gives from them and concessions from them and goodies that they got. And let me just, at a high level, describe it. They agreed to exchange at a discount, Your Honor, it's reflected in the chart at 80 to 95 percent discount. So, there was a reduction in the principal amount of their claim. That's why the first lien term loan goes from -- the portion of that exchange went from 1.904 to 1.795. So, there's a reduction in the aggregate indebtedness.

With respect to the -- the first lien term loan

becomes the second-out term loan. So, Mr. Finestone's claims became a larger portion of that amount of indebtedness. And then there was the additional funding and the other exchanges. But, I want to just focus on that. Mr. Finestone, prior to the recapitalization, his clients were a very small piece of a very large capital structure. And after the recapitalization, they continued to be a very small piece of a very large capital structure.

And, in fact, others, and the comparison here is, compare their treatment to that of the second lien, the second-out lenders. The second out lenders are not being paid current interest, Your Honor. But, Mr. Finestone wants to be paid current interest. He is actually being paid some amount of interest, but the second-out lenders are not as adequate protection. And that is the class that he was a part of before the exchange occurred.

So, he is doing better because his clients held out of the exchange. His clients also didn't have to reduce the principal amount of their debt, because they didn't participate in the exchange. So, they have the full amount of the principal of their debt.

So, again, Your Honor, I think we need to step back, and I do want to talk about the specific arguments with respect to adequate protection. But, I do think it's important to contextualize just how small a piece of this capital structure

the Castle -- CastleKnight claims are.

So, I want to talk about the specific issues, Your Honor, as to adequate protection. There seems to be, through the questioning, there was a lot of argument that his clients are not being adequately protected because they're not being provided the same thing that other people are being provided, namely, they're being paid an amount of interest consistent with the intercreditor agreement, but not the full current amount of their debt. And their argument is that they should be paid the full current amount of their debt, consistent with the first-out lenders. Again, not -- not to be confused with the second-out lenders that they were part of prior, who are not being paid any current interest.

He also argues that they're entitled to be paid fees. The reason they are not being paid those, the reason that adequate protection package is not being offered to them, Your Honor, has not been offered to them, is because they have consented to the DIP loan and the priming of their liens without those payments.

And I want to be clear about this, Your Honor, their consent comes in the form of the intercreditor agreement that we admitted, Your Honor, as -- as Exhibit D-3. Your Honor, in the intercreditor agreement, and I don't think this is disputed by Mr. Finestone, that pursuant to that intercreditor agreement where the majority of the first lien term lenders have agreed

to something, that carries the day. So, we have received the consent of the first lien term loan lenders. That carries the day. That means that that whole class has consented.

Now, Mr. Finestone's argument is not that the intercreditor agreement doesn't say what I just said. It's that he's not bound by it. The argument they make in their pleading that was filed overnight with the Court is that, they are not bound by it because CastleKnight didn't sign it and UMB, an agent who was appointed sometime in the last two weeks, also didn't sign it.

It's not relevant, Your Honor. Because the agent of the first lien, the term loan debt at the time, in fact, signed that agreement. So, the agent for Mr. Finestone's clients, you can't look at that intercreditor and see any lender signing it. Their agent signed that document, which means they are bound to it. That agreement, that intercreditor agreement that's admitted at D-3, says that they consent where the -- the majority of the secured creditors consent, that they are dragged through with their consent.

Now, that's at a high level, Your Honor, the issue of consent. But, I will say, Your Honor, there's two other arguments, I think if we get into the specifics with respect to it. Well, actually before I do that, they -- they -- as I understand Mr. Finestone's argument, he's going to say, well, that was void because my sacred rights were violated when you

did that 2024 recapitalization transaction.

Your Honor, I think that's wrong on many different levels. Now is not the time to litigate that issue. There -- we'll -- we'll gladly litigate that issue if we have to. But, I will say the following. Their interpretation of sacred rights is the most expansive interpretation one has ever argued. Every court that's decided these types of issues, and in particular, the most recent decision, and Mr. Finestone's partner was my co-counsel on and prevailed in, in Incora, was crystal clear about the scope of the sacred rights. The Court should not expand those sacred rights.

Mr. Finestone's clients were not protected from the incurrence of the additional indebtedness. They weren't protected from any of the things that happened in that recapitalization pursuant to a sacred right. And, more importantly, they were offered the opportunity to participate in that recapitalization. This is not a situation where a non-pro rata transaction was done. They were offered that opportunity.

Second, even if he is right, that there was a breach of that contract in August of 2024, the remedy for that is a contract breach claim, which means that he could accelerate his debt, demand payment of his debt. It does not mean anything more than that. We think he's simply wrong. And this is the other holding of Incora, again, that Mr.

Finestone's partner was my co-counsel in arguing.

The Court there was crystal clear. Judge Crane said crystal clearly, and this is the same holding that Judge Lopez reached in Robertshaw, the remedy for a breach of contract is a breach of contract claim. It is not recision. It's not invalidation. It's not nunc pro tunc unwinding of it.

So, at the end of the day, Your Honor, even if he is correct, which we -- which we're confident he will not be, his remedy is not to unwind the imposition of the intercreditor agreement, which is what drags his consent along. It is a contract damage claim. But, again, those are issues that we can tackle when we get to it.

But, I would say the following, Your Honor. The reason you really you don't have to tackle this issue today is because, if you listen to Mr. Finestone's argument, even if he is right, he is not entitled to adequate protection beyond what's being provided to him. And why is that? Mr. Finestone contends that he is -- he and he alone, his client, is alone, the senior most piece of our capital structure, behind the ABL debt.

So, if Your Honor approves the DIP, this company's going to have a super priority DIP of $120,000,000. It's going to have ABL financing of $153 billion, which has first lien claims on certain of the debtor's collateral. And then Mr. Finestone's client's going to sit there with a $46 million

island as the very next thing that our balance sheet has to cover before it then goes to everybody else.

So, if he's right in his arguments, as long as the value of this company is more than $280 million, he's going to get the next $46 million until he's paid in full. And so -- and I cannot believe that Mr. Finestone would suggest that the value of this company is anything less than $500 million dollars. And I'm picking that number out of thin air, Your Honor, because the company has submitted a valuation.

I've not -- I didn't -- I consciously don't want to get into a valuation dispute today, but I can't imagine Mr. Finestone's going to say, the PJT valuation is more than twice $500 million. If the company is worth $500 million, he collects from $280 million to $326 million, Your Honor. That is a more than sufficient equity cushion. Even if he's right in his arguments, which he is not.

And so, Your Honor, there -- there's no risk to him if he's right. And if he's wrong, as we believe he is, then he has consented and he's entitled to nothing more than what he's been provided.

Let me talk about -- the two elements I believe he's most focused on with respect to adequate protection. And I'll obviously reserve a small amount of time to reply if other things come up. But, we understand his focus is on arguments with respect to the payment of fees and the payment of

interest. And let me address those in turn.

So, we have agreed to provide fee coverage to the members of the Ad Hoc Group and to certain of the -- and to CastleLake (sic), who's the largest holder of that group, and I believe the largest creditor of these -- of these estates. We have not agreed to provide fee coverage to all of the lenders. Mr. Dunne mentioned that Cleary represents some holders. They're not being provided fee coverage. Just like Mr. Finestone is.

Now, the -- we have agreed, Your Honor, and we had a request from two additional trustees. Well, one trustee, one agent. So, the amended term loan lender agent, that's UMB, has requested that we provide fee coverage in the DIP facility for them. We've agreed to provide that fee coverage for UMB's work in capacity as a trustee. So, we would -- we will propose to add that to the facility.

And similarly, with respect to Wilmington Trust, who is the note's trustee for the first-out notes. And so, the trustees, who obviously don't have, other than through charging liens, don't have the ability to collect from anywhere. But, what we are not prepared to do, Your Honor, is to pay fees for somebody who's going to try to blow up our plan and to litigate against us.

That's where, Your Honor, there's -- there's just fundamentally a different question. And we don't think they're

-- they're not entitled to it because they've granted consent. And they're not entitled to it, Your Honor, because I think what Mr. Finestone's made clear in his presentation today is that, he's not interested in being treated the same as everybody else. He wants to get something greater than everybody else. And that's not something that we are obligated to or should be required to pay fees in respect of.

And so, the other -- the other -- the other issue, Your Honor, is that the primary party that's going to be getting paid fees here is the Akin Group. They are our DIP lender. They also are our exit facility backstop party. They are -- the plans -- effectively, the plan sponsor, although we're not seeking approval of the RSA, they are the ones who are providing us all of that value. They're also the reason that we have consent to our DIP.

We provided and we negotiated a package of adequate protection for them that we think is appropriate, right down the middle of the fairway, to gain their consent. We've gained their consent. We shouldn't have to pay other people whose consent is not required because it's already been given.

Lastly, Your Honor, with respect to interest. They are not entitled to interest payments as adequate protection. As I've said before, their consent's already been given. What they are entitled to, and what they are being paid, Your Honor, they're being paid interest under the intercreditor agreement.

What the intercreditor agreement says is that, to the extent payments are made to the -- to the other term loan lenders who are parties to the intercreditor agreement, that the amended term loan lenders will receive 1.78 percent of those payments.

And so we have structured -- we've agreed with the consenting creditors and our DIP lenders to pay them interest at their contract rate. And we are funding to the amended term loan lenders an amount equal to 1.78 percent of what we were paying to the amended term loan -- I'm sorry, to the remaining term loan lenders. That's entirely consistent with the contractual agreements, Your Honor. And therefore, we think it's entirely consistent with our obligations under the intercreditor agreement.

We are not obligated however to do anything more than that. And Mr. Finestone, I think from his questioning of Mr. Robbins, his argument is going to be, well, I'm not adequately protected, or I guess, Mr. Kelly, I'm not adequately protected unless you make those payments to me.

And that is untrue, because he has consented. When one has consented, they are entitled to what the cost of that consent was. Mr. Finestone already incurred that cost when that intercreditor agreement was entered into.

So, Your Honor, I'm happy to address any questions. There's obviously a lot in the DIP facility. But, I wanted to just focus us on the contest -- what I believe to be the

contested issues. And then respond to any other issues that come up from Mr. Finestone or any other party objecting. But, I'm happy to answer any questions Your Honor may have with respect to the DIP facility.

THE COURT: All right. Thank you. Now, my questions are being answered as I listen to the arguments. Let me turn -- before I go back to Mr. Finestone, let me turn to others. Mr. Brody, good morning, or now it's almost afternoon.

MR. A. BRODY: I think you have one more minute to say good morning, Your Honor. Your Honor, Alan Brody, Greenberg Traurig, on behalf of Bank of America as the pre-petition ABL Agent and First-Out/Second-Out Agent. With me today is my colleague, Charlie Liu, as well as my co-counsel from Cahill Gordon & Reindel, Joel Moss, Jordan Wishnew, and Matthew Catone. All of these folks, we have filed pro hac vice motions for, which are pending.

With Your Honor's permission, I would like to cede the podium to my co-counsel at Cahill Gordon, Joel Moss.

THE COURT: Mr. Wishnew, I see you speaking, but your mic is not on.

MR. A. BRODY: I think, Jordan, you need to put your mic on.

MR. MOSS: It's Joel Moss.

THE COURT: Okay.

MR. MOSS: Hi. I inadvertently -- I don't know why

his name is under mine. It shouldn't be. But, it --

THE COURT: I didn't think so but --

MR. MOSS: It is Joel Moss. Hi. You know, he's the more handsome version of me, but I'll gladly speak under his name.

THE COURT: We'll take what we can get. Go ahead.

MR. MOSS: Exactly. It's a pleasure to be before you, Your Honor. Couple points, you know, I don't want to belabor this. Joel Moss, on behalf of Bank of America as ABL agent and agent for the term loan and the revolver and the first-out, second-out debt.

I want to underscore the fact that this DIP and adequate protection proposal was very much the product of very thoughtful, hard fought negotiations in terms of adequately protecting my client's interest as ABL lenders and also as first-out RCF lenders. I want to echo Mr. LeBlanc's comments regarding the intercreditor agreements because I think that that's a very important point. You know, Mr. Finestone cannot ignore the language of the intercreditor agreements. They have consented. Moreover, they have agreed not to challenge liens.

I want to address, -- I don't concede that any of our collateral is unencumbered. However, to the extent that it is, it is part of our adequate protection package. That's part of going to be what supports our diminution in value claim as ABL lenders and first-out revolving lenders depending on the

characterization of that collateral.

3) whether or not it's perfected, Mr. Finestone's clients are subject to the intercreditor agreement and subject to the turnover provisions of that intercreditor agreement, meaning he doesn't get the benefit from the value of that collateral at all. And 4) to the extent that he's relying on the fact that he has a $46 million secured claim as Mr. LeBlanc underscored, he's more than adequately protected by an equity cushion based on the value of this company. 5) we'll get to the plan later, but in terms of where we are and where my clients sit, there was significant compromise my clients made to support the expeditious reorganization of this company, agreeing to roll their ABL for five years on the back end.

MR. FINESTONE: Well, Your Honor, --

MR. MOSS: Well given --

MR. FINESTONE: -- I just have to object. None of this is in the record. He didn't participate in the evidentiary portion. He's not allowed as a lawyer to stand up here and start testifying --

MR. WISHNEW: Your Honor --

MR. FINESTONE: I don't even know if it's relevant, but it's certain. --

MR. WISHNEW Your Honor, it's argument, it's argument. Mr. Finestone had his way --

THE COURT: Objection overruled. Just, -- I'll hear

the argument.

MR. MOSS: You've talked a lot, Ben. We can speak. So the bottom line is there's been significant compromise. My clients have agreed to roll their ABL for a period of five years.

In addition, notwithstanding my client's ability under the intercreditor agreements that were agreed to as part of the 2024 transactions to insist on full payment of their RCF and not continuing the RCF on the back end upon emergence, they're agreeing to continue it on a first-out basis post exit, which we expect and hope to happen expeditiously.

Moreover, any recovery to my clients on the basis of their status as first-out lender is coming from the 90 plus percent of the creditors that have agreed via the intercreditor agreement to turn over any payments pursuant to the robust intercreditor protections that were agreed as part of the 2024 transactions.

Mr. Finestone has no standing to take a shot at that. So with that, I'll conclude my remarks. But that's the perspective that I bring to the table for my client, BofA, as agent on the ABL, as well as BofA as agent on the first-out, second-out facility. And I echo Mr. LeBlanc's excellent comments. He's spot on on all the points he made.

THE COURT: All right. Thank you, Mr. Moss. Mr. Brody.

MR. J. BRODY: Thank you, Your Honor. Josh Brody from Cleary Gottlieb on behalf of, certain first-out lenders.

I want to say, Your Honor, just to start, the issues that I want to raise are much less high level, I think, and less important to my clients, of course. But I don't want to interrupt the flow with Mr. Finestone and Mr. LeBlanc and the like, because my issues are a little bit off to the side. But I thought now is a good time, -- it should be relatively brief, but I thought now is as good a time as any to raise them.

THE COURT: Go ahead.

MR. J. BRODY: Thank you, Your Honor. So first, I thank Mr. LeBlanc for raising some of the issues that I want to talk about. But one thing that has not been discussed yet is the syndication of the DIP to the other first-out lenders. And we just actually, while the hearing was going on, got a copy of the syndication procedures themselves. And there are one or two things in there, Your Honor, that I, again, I'm just raising them in real time. I wanted to bring to Your Honor's attention.

So first is the deadline of January 5th to subscribe to the DIP, which given the intervening year's holiday is a fairly brief period of time. So I think that's issue number one, from Your Honor's perspective is that timeline can be extended. But I think also number two is in order to participate in the DIP, a lender is required to sign up to the

RSA, which is something I, again, I understand having done it the way myself before.

However, in this situation, Your Honor, my clients would not have any sort of rights under the RSA with respect to amendments to the RSA. And essentially, while their treatment currently as provided in the RSA is as unimpaired, if they signed up to the RSA, as I understand it, I'm happy to be disavowed if I'm wrong on this one. But as I understand it, they will be required to basically sign up to the RSA and have no say themselves, whether or not there are any changes to the RSA, including changes to their treatment, which I think is a little bit inappropriate at this stage to be forced to lock into that in order to participate in the DIP.

And so those are the two issues, again, much smaller I wanted to raise to Your Honor -- The other thing I would say, and I'm not asking for this today, but because Mr. LeBlanc raised it, obviously recognize it and that my fees are not getting paid by the company currently. But it's something that I did not want to let go unnoticed or unmentioned, it something I may come back on later.

THE COURT: All right. Thank you, Mr. Brody. Ms. Lieb.

MS. LIEB: Thank you, Your Honor. Samantha Lieb for the Office of the U.S. Trustee. Just as a general note, I would say that the debtor in possession financing should only

be approved for what is necessary during the interim period. That being said, the U.S. Trustee has no objections as to the amount sought by the debtor. We did go back and forth with the debtor and counsel from Akin about the form of order, and we were able to significantly resolve most of the drafting and revision proposals this morning before the hearing.

But there are two paragraphs that the U.S. Trustee has further proposed red lines on that the Court will need to weigh in on. And then I just wanted to make a note about paragraph 16. So I'm not sure if Your Honor wants me to do that now or wait for Mr. Finestone to chime in on the more substantive issues.

THE COURT: Well, let me hear from you now.

MS. LIEB: Okay. Your Honor, first, on paragraph four, this is the paragraph about the DIP super priority claims. In this paragraph, it provides for several sections of the bankruptcy code that would not have priority over the pre-petition lenders and the DIP lenders. The U.S. Trustee has requested that the debtors strike from this list sections 326 and section 726 from the list because that goes beyond what's allowed under section 507B for adequate protection claims.

Section 507B does not provide for adequate protection claims to have priority over administrative expenses of a Chapter 7 or 11 trustee, trustee commission, or distribution of property of the estate, which is what those sections pertain

to. So we requested that those be removed. And the debtors did not agree -- Do you want me to continue going through the order?

THE COURT: Yes.

MS. LIEB: Okay. On paragraph 16, I did have a chance to briefly review the addition of UMB and Wilmington Trust to paragraph 16E. The U.S. Trustee is fine with the fees being paid so long as those lenders are oversecured and the underlying agreements allow it. And then on paragraph 16, we just wanted noted on the record that the carve-out has priority over the pre-petition secured parties. That was another bone to pick regarding drafting. And there is a sentence near the end of the first part of paragraph 16 that says that the pre-petition secured parties are subject to the carve-out, but we just wanted that confirmed on the record.

And then the final paragraph that the U.S. Trustee has an issue with is paragraph 26 related to the length of the challenge period. I believe that the debtors have it as no later than the earlier of 75 days from the interim order or the date on which the objection to the plans are due. The U.S. Trustee requests that the challenge period be the earlier of 75 days from the date of entry of the final order or the date of the confirmation hearing.

I believe that the debtors will argue that the confirmation hearing is too late, especially if the plan is

otherwise ready to be confirmed. But if there is, for some reason, a lien challenge on that date, then we could just adjourn the confirmation hearing to let that play out. And so that is additional language that we would want changed in the DIP order.

THE COURT: All right. Thank you, Ms. Lieb. Mr. Lanier? I think you have to be unmuted.

MR. LANIER: -- hear me now, Your Honor?

THE COURT: Yes.

MR. LANIER: Thanks. Good morning, Your Honor. Zach Lanier, Akin Gump Strauss Hauer Feld on behalf of the Ad Hoc Group.

Quickly, I don't know if you want DIP lenders' response to the U.S. Trustee's comments, but I'm happy to provide those if you wish.

THE COURT: Why not? Now's the time.

MR. LANIER: All right. On paragraph four, I think there just may be a misunderstanding. This is about the claims created in section 364C1, the DIP super priority claims, not the adequate protection claims. I, fortunately in my career, have never had a DIP that was part of a converted case, but I think it's fairly standard. And there are opinions to this effect that a DIP super priority claim under 364C1 can also be senior to claims under section 326 and section 726. I don't think that is controversial. And, you know, as the DIP

lenders' counsel, we would prefer that protection and certainty that if this case, God forbid, were converted, you know, our DIP loans would still be senior in that circumstance.

THE COURT: All right.

MR. LANIER: I will briefly touch on the challenge period. I expect that debtors will also respond on this as well. I think it will be challenging for this company and the overall process if, you know, any type of complaint is, for lack of a better word, laying in wait until we're all prepared to go forward on confirmation. And then we're in a position where we're adjourning confirmation.

I think the issues that Mr. Feinstein and I have raised, we are all well familiar with them. And our view is those should be heard as soon as possible and not delay the confirmation hearing. So we are happy to take Your Honor's direction on the challenge period, but we do think it will be administratively difficult and burdensome for the company if any type of challenge is not filed until the actual day of the confirmation.

THE COURT: All right. Is there anything else you want to add? I know Ms. Lieb has her hand raised. And then eventually I'll get back to Mr. Finestone. Ms. Lieb?

MS. LIEB: Thank you, Your Honor. As to paragraph four with the DIP priority, that isn't standard to keep those sections in. There are other cases within this district where

the Court has entered DIP orders or cash collateral orders removing sections 326 and 726. I know Mr. Sponder and I routinely request that as a red line to the DIP orders. So just as a matter of course, we would request that that be removed from this order as well.

Additionally, in terms of the challenge period and potentially delaying confirmation, the debtors and the lenders created this timeline and have proposed this specific confirmation timeline and parties shouldn't be harmed because of the debtors' decisions to create this condensed timeline or give them a reduced challenge period. Again, the challenge period 75 days from the final order is another standard request in the district. So we would ask Your Honor to modify the challenge period to provide for that.

THE COURT: All right, thank you. Mr. Finestone?

MR. FINESTONE: Thank you, Your Honor. Ben Finestone on behalf of CastleKnight.

Your Honor, let me start with the argument that before we walked into Your Honor's Court today that we consented to whatever DIP financing motion the debtors saw fit to negotiate with the ad hoc group. And I'll just say before we look at the document because the document is going to control. Mr. LeBlanc is right that my -- because they violated the sacred right in the LME, it is our position confidently that the intercreditor agreement is null and void.

But I did not come into court today, Judge Kaplan, and expect you to say, to bang the gavel and say, I agree with you. And that's why you didn't consent under the intercreditor agreement. It's true. And I'm disappointed that they -- I would have had liked to tee that up had they give me some notice of the case. But they outstrategized me on that. So I'm not asking Your Honor -- I don't expect Your Honor to rule on something that I'm also telling you requires an adversary proceeding. That's not my way out today. That's not my way out.

What you heard Mr. LeBlanc say, he started off by saying we consented under the intercreditor agreement and we should be duct taped today. Then when he came back to the end of his argument, it was a little bit different and it was quite a concession. He was saying what the intercreditor agreement says is that I get the same adequate protection that other secured creditors get. And that is, in fact, what the text says. And I could, -- this was admitted into evidence, Your Honor, I could give you a page or I could share my screen, whatever is easiest for Your Honor. I think it was referenced as Exhibit D maybe. But I, -- that could be wrong. It's the maybe Exhibit 3. I'm just going off memory. It's the pre-petition first lien intercreditor agreement that I do think is null and void. But I'm not asking Your Honor to accept that today.

THE COURT: All right. I can pull it up.

MR. FINESTONE: Thank you, Your Honor. Look, it's just one sentence I'm going to read. But basically the paragraph that all of these well-suited individuals are telling me means that I can't have a say today ends with the following. Provided that the first lien secure -- I'm on page 17 as it bleeds into 18, Your Honor -- provided that the first lien secured parties receiving adequate protection shall not object to any other first lien secured party, me, receiving adequate protection comparable to the adequate protection.

And that is why, Your Honor, that, you know, Mr. LeBlanc started off by saying I'm not objecting to the DIP financing at more than just demanding equivalent adequate protection. There's a reason I'm here with modest asks today, Your Honor. It's because I'm sort of forced to pay respect to this intercreditor agreement for the time being, at least, Your Honor.

And so that is why, Your Honor, that is why that what we're demanding in terms of adequate protection is the same thing they gave to everybody else. Post-petition interest at the contract rate and payment of professional fees, Your Honor. I'm allowed to do it under the intercreditor agreement that I think is null and void.

So there's no consent argument here under the text of that intercreditor agreement. And just because I anticipate

the way he has done with me, I can anticipate what he's going to maybe think about saying, that language that I read, Your Honor, says the first lien secured parties cannot object. It doesn't say the debtor cannot object. But that is because when you go to the first page of this intercreditor agreement, this is an intercreditor agreement, -- it's an agreement between me and the other creditors.

They're the only people that can object. The debtor, it says at the end of the first blob paragraph on the front page says, and the debtors acknowledge and agree. They're not even really a party here.

They don't have, they did not get out of the requirement under the bankruptcy code to provide me adequate protection. And so, I hope that that's an issue swept to the side, Your Honor, both by my concession that I'm not asking, Your Honor, to today hold that the intercreditor agreement is null and void, but also that is not a get out of jail free card for the debtors or anybody else.

Your Honor, the testimony is clear. They are paying post-petition interest at the contract rate to the other secured creditors who are at the top of that capital, that bucket two, Mr. Dunne's bucket two. And they're not paying it to me at my contract rate. And I'm at the top of the original bucket, Mr. Dunne's bucket one. Nothing else they can say about that. And the testimony is also clear from the debtor's

lead witness, Mr. Kelly. He testified these measures are necessary to protect the applicable creditors against any diminution in value.

It's about diminution in value. It's not about where the money comes from. The testimony is that to protect against diminution in value, they decided they had to pay those creditors post-petition interest. They decided they don't like me and they're not paying it to me. But there's no reason why Mr. Kelly's conclusion shouldn't apply with equal force to me. And as I said, Your Honor, this is a couple of million bucks.

I also elicited testimony just to show that there is real risk here, Your Honor --

THE COURT: Mr. Finestone, let me interrupt you for a second, because --

MR. FINESTONE: Of course.

THE COURT: -- I noted this. When he said a couple of million bucks, are you talking about over the year? Because we're talking about a post-petition period, which if the debtor pursues the timeline that they're seeking is a couple of months post-petition. So what are we talking about dollars?

MR. FINESTONE: It's a million dollars a quarter. It's just under a million dollars a quarter. So I really hope Your Honor doesn't approve that schedule. But you have the facts now and it's a good point of clarification, it's a million dollars a quarter. Under a million dollars a quarter.

Your Honor, there is no -- If the debtors believe, and this is the guy that understands the business and we saw the businesses break even at best. Without the priming and without the $75 million of admin expenses, it's break even at best. If the debtors believe they had to pay those other creditors post-petition interest, they have to pay us to guard against collateral diminution. Mr. LeBlanc's a great lawyer. And he's got human clients, and they are management. All he wants to do is get the financing and run the company.

Collateral diminution and adequate protection, that's not something that is considered under the is this best for the company perspective. I am a countervailing force here. This is something that he has to provide to me despite whether he wants to do it. He has to do it because of my constitutional rights and he has to do it because of federalism. Because I have state law rights to the property and the bankruptcy code is not going to infringe on them. He's got to give it to me. He doesn't have to like it. It doesn't have to be something that he thinks is good for the restructuring. It doesn't have to be anything, Your Honor. It's my right. And he's not giving it to me even though the testimony says that he has to.

And I would be asking for a lot more, Your Honor, because we saw from that cash flow, there's a real chance that I'm going to be significantly hurt by this priming and the $75 million of admin expense. But I'm here with the modest ask

because of this intercreditor agreement that I believe is null and void, but I haven't been able to establish that with Your Honor. So it's a modest ask.

He unveiled some new facts that weren't in evidence. He says, we agreed to pay the agents some fees. And I think one of those agents might have been my new agent, UMB. He didn't agree to pay UMB. All he did, if I'm going to make an educated guess that he's not going to disagree with, is that he agreed to pay UMB some fees to monitor the case, but not to assert the rights and to defend against diminution of my property interest.

In fact, he even said, I'm not going to pay Mr. Finestone fees to blow up this plan. I understand that. I understand him and his client saying, they don't want to pay my fees to blow up the plan. But this isn't about what's good for him. It's about what he owes me under my constitutional rights and my property interest. I know he's not going to like it. I'm sorry. It's one of the costs of Title 11. He gets a lot of benefit out of Title 11. Half of his creditors agreed not to assert a ridiculous $2.5 billion claim already. He gets to modify contracts. He has to pay me, Your Honor, what the Constitution and then Congress says he has to pay me.

And Your Honor, he's paying fees to like everybody, not just the people at the top of bucket two, the way I am at the top of bucket one. He's paying it to all the friends who

agreed to the plan. Again, he's paying it to the people he likes, not the people he doesn't like. It's Okay if he doesn't like me. He has to pay me under the Constitution.

Your Honor, I'm going to be brief on this because I said I'm not relying on it today. But Mr. LeBlanc waded into the waters on the double DIP transaction. I said, I'm not asking Your Honor to rule in my favor today. That's not why the intercreditor agreement doesn't apply. But I disagree completely. He says, he can't believe, he insulted me personally. He said he can't even believe I'm making the arguments.

Your Honor, my sacred right was violated if this transaction had the effect of subordinating me. And I just want to call out two things, just for credibility's sake with Your Honor, because I'll be back. In his own plan, he's got me classified with creditors who are payment subordinated in bucket two. In his own plan that he and his partners drafted and I'm now presented to Your Honor under as a debtor in possession. So I think I was subordinated, effectively subordination. It's not crazy at all.

And also he said, even if Mr. Finestone's right about the breach of contract, that's all he's got. He could have accelerated his debt. You know what's funny about that? I couldn't have, -- I could, it's true, I could have accelerated my debt and it would have been like me screaming in the forest

and no one listening. Because you know what else they did in that LME transaction in this intercreditor agreement? Is they basically said that if I do, if I accelerate my loans on a breach, my agent, it was WSFS (phonetic), now it's UMB, can't do anything about it. My liens are absolutely useless until Bank of America, the agent on that other facility, decides that it's good for Bank of America to enforce rights. My liens were subordinated as a practical matter.

And what did Bank of America do in the last month and a half while I was facing payment default? They negotiated a plan that crushes me and I had to sit back and do nothing. So he unwittingly made another point as to why my liens were subordinated. I couldn't do anything about the payment subordination. Sure, I could have yelled in the forest. Could have said trees are falling and they would have done nothing about it. I couldn't have enforced rights and gotten to Your Honor quicker because this intercreditor agreement strips every single right I have, it rendered my liens completely useless. It put the power to do something with my liens and someone else, who actually got up here today a couple of minutes ago and told me to basically be quiet. That's my agent, Bank of America. That's who controls my liens. He stood up and raised his voice and said, I have no right to any of this. And I think he's wrong about that, Your Honor.

So yes, my double DIP claim is very, very real.

Again, Your Honor, it's not the basis upon on which asking you to rule that the intercreditor agreement is null and void today. But in this case, yes.

And finally, he said, if I truly believe in my argument that I'm first in the capital structure here, because everybody else did something unlawful, then what do I care? There's a serious equity cushion. Well, I agree with Mr. LeBlanc, if I'm first in line, there's a serious equity cushion.

But it's not the case they put on today. And it's not the case they ever intend to put on. In fact, as a fiduciary of this estate, they filed a plan that says I get 27 percent and they jammed me into a class with second lien creditors. So please, I really don't think that's an argument that he can assert against me when the law is clear. It's his burden to establish adequate protection. I don't think he can satisfy that burden by saying there's an equity cushion while at the same time having a plan on file that says I don't get to vote and I get 27 cents on the dollar because I'm classified with second-out creditors. That is rich, even for the most aggressive of debtor attorneys, Your Honor.

So there's money in the budget to pay us post-petition interest. There's money in the budget to pay us fees. If they don't pay us fees, there's a good chance there's no adversarial process in this case. There's a good chance.

And all it means is that adequate protection, let's come up with a new term for it because, we all know the protection is supposed to protect the creditors. I'm not gonna be able to do it on the fly. There's probably something clever I can come up with, but his view of adequate protection is debtor reorganization facilitation. And that's misunderstanding what 361 is about. It's misunderstanding the roots of where 361 came from when Congress codified it. It's about me and my state law rights. And Your Honor, I have to ask for them to be respected today. So thank you very much for the opportunity to be heard.

THE COURT: All right. Thank you, Mr. Finestone. Mr. Moss, very quickly.

MR. MOSS: Yes. Obviously, I just wanted to speak only to respond to a couple of things. Bank of America has studiously fulfilled its role as agent. It has no liability of any sort. It did not negotiate this DIP financing to quote unquote, crush Mr. Finestone. It's not even the one providing the DIP financing. What it is providing is an expeditious way to you know, emerge from bankruptcy. And that's in its lender capacity, as well as the other ABL and RCF lenders. I just want to make the record very clear.

And in terms of the intercreditor, you know, any amendments to any intercreditor and any pre-existing intercreditors were clearly permitted. And, you know, I'll obviously leave whatever adequate protection he's entitled to

to Mr. LeBlanc and the company's business judgment. In the first instance, the company is entitled to give different creditors in their business judgment, adequate protection. I am not objecting to Mr. Finestone's adequate protection request. I take no position on it, but the company can in its business judgment decide what adequate protection to provide.

And there are different forms that can be provided to different creditors. I just wanted to underscore again, my issues with his comments were primarily directed at the unencumbered property point. I'm not conceding any unencumbered property here at all. But to the extent that there even was, and it was ABL collateral, the pre-existing intercreditor agreements, which really didn't change to do with this transaction, clearly provide that he can't challenge those liens, whether they're perfected or not perfected. That's the very point of an intercreditor agreement.

And at the end of the day, those intercreditor agreements can and must be respected under Section 510 of the Bankruptcy Code. In this case, at the DIP stage, at the plan stage, at any stage, and I'll just leave it at that. Obviously, I get where Mr. Finestone's coming from. I get his grievances. He's an incredibly fierce and excellent advocate. But that's all I was trying to say. Bank of America didn't negotiate anything to crush anybody. And we fulfilled our duties as agent to the letter.

THE COURT: All right. Thank you, Mr. Moss. Mr. LeBlanc, --

MR. LeBLANC: Yes, Your Honor.

THE COURT: -- a couple of questions. I'd like to understand what the debtor intends as far as timing. This is an interim, given the schedule that's been requested, we'll get to the schedule. What does the debtor foresee for a final hearing? And also, what does a debtor believe is meant by the language in the intercreditor agreement as far as comparable treatment?

MR. LeBLANC: Yes, Your Honor. Let me address them in that order. And actually, I'm glad you asked the second question. My colleague, Jenny Lee, will, in a moment, pull up the intercreditor agreement so we can look at it together, because I think it's just a fundamental misreading of it. But let me address the first question.

So, Your Honor, we are going to look to the court with respect to the scheduling issue. If Your Honor agrees with us with respect to the timing of the confirmation hearing, then I suspect that we would likely try to work with the lenders, the DIP lenders, to get an extension of the milestone so that we could simply do the final DIP hearing coterminous with confirmation. I think we have cash sufficient to get through to that point on an interim. We'll have to work it out.

But what we would do is likely that, that's not, that

doesn't work under existing milestones, because I think it's a 35-day milestone under the DIP agreement. But we'd work with them if we have a confirmation hearing 43 days from filing, so 40 days from now, to see if we could just extend that and have one hearing. That's what our intent is to do, Your Honor, is to try to move as expeditiously as possible.

THE COURT: All right.

MR. LeBLANC: That's what we'd like to do. Now, -- yes, sorry, Your Honor.

THE COURT: No, no, continue on with the second --

MR. LeBLANC: Yes, let me, and I think this is really important, because I think it's just, I was actually surprised to see Mr. Finestone actually cite that language, because I think it says almost exactly the opposite of what he hopes it says. I'm going to ask my colleague to pull up section 2.05B of the intercreditor agreement. Okay.

So, Your Honor, the language that Mr. Finestone referred to begins at the bottom of this, it provided that. But I want to look at the language that clearly indicates consent is, it appears five lines down from the top. So, and this all falls under a section about certain agreements with respect to bankruptcy or insolvency proceedings. The language begins with, each first lien secured party agrees. And I don't know if Your Honor sees where I'm, I can't mark on it, unfortunately, or highlight. But it's five lines from the top. Each first

lien secured party --

THE COURT: I see it.

MR. LeBLANC: -- agrees that it will raise no objection to any such financing or to the liens on the shared collateral securing the same and/or to any use of cash collateral that constitutes shared collateral, unless the controlling collateral agent opposes or objects to such DIP financing or such DIP financing liens and or use of collateral. And it goes on, there's a long parenthetical there, none of which is implicated by what we're doing. I don't think Mr. Finestone's even suggesting that it is.

So what this says is, if the controlling collateral agent consents to a DIP, and in this instance provides a DIP, or consents to the use of cash collateral, then that governs. And each first lien secured party agrees that it will raise no objection to such financing or to the use of cash collateral. Your Honor, that's the provision of this intercreditor agreement that obligates their consent to this, because the controlling collateral agent has consented.

Now, Mr. Finestone cited to the proviso at the end, and let me just explain, I think it's a complete misreading of that proviso. And if we can highlight that, Ms. Lee, provided that the first, yes. So what that says is, provided that the first lien secured parties receiving adequate protection shall not object to any other first lien secured party receiving

adequate protection comparable to any adequate protection granted to such first lien secured parties in connection with the DIP financing and/or use of cash collateral.

Mr. Finestone says, that means you have to give me the same thing. This says something quite different from that. This says that if the debtors decided to give, Mr. Finestone, adequate protection, that the other first lien parties, Mr. Moss, Akin Gump, couldn't come before you and object as long as what we were providing him was comparable to what was being provided to them. We have not decided to provide them adequate protection because we don't have to, because the language previous to this shows that they've consented to it. And that's the issue. So this simply is a protection so that a lender, -- he can make a request, except for the fact that he's consented. And another first lien lender couldn't come in and say, you can't give him the same thing I've gotten. And I don't believe that any of them have done that today.

We, however, the debtor, is not prepared to give Mr. Finestone that same adequate protection because he's consented to the DIP and the cash collateral order. And Your Honor, again, this is why I started my argument by trying to contextualize. Imagine a world in which every 1.78 percent holder of a secured credit facility came in and got all of their fees paid and told you that if you didn't pay my fees, I wouldn't object to this plan.

We don't have an obligation to pay their fees, Your Honor. They have consented to the DIP facility and the adequate protection provided therein in the language that I just showed you. If we did decide to provide it to them, then the other lenders can't come in and say, as long as it's not better for them than it is for me, I can't object to it. That's what those lenders have agreed amongst themselves. But in that prior language, in the same provision, he has consented to it. That's the issue, Your Honor and it's fully consistent. This is a contract that his client validly entered into. And I appreciate him saying that he is not going to try to ask Your Honor today to abrogate this contract.

And when he does, we will argue that. But this contract precludes him from objecting to this credit facility. It frankly precludes him from making the objection he has. We're not trying to enforce that, Your Honor. We're just saying it has to lose because he's already consented.

And Your Honor, I wanted to address your question, I want to make one point and I'll be very, very brief in it. This is what to me is remarkable about the argument about the double DIP. Your Honor doesn't need to pull it up. Mr. Dunne referred to there being 22 debtor entities. 20 of those debtor entities are guarantors on the debt. Using Mr. Finestone's logic, you would say that this company has 1.7 billion times 20, $34 billion worth of debt.

Because those guarantee claims, like the double DIP claim that he likes to refer to, have claims at every entity in the full amount of their debt. That is the Supreme Court's decision in Ivanhoe. And that's not an unusual situation. It doesn't mean that this company has $34 billion of debt to those lenders. It owes those lenders $1.7 billion. They happen to have two claims for it, just like any creditor with guarantees has multiple claims for it. That why it's not, there's nothing untoward or unusual about this. I just needed to say that. I know that's not an issue for today, but that's what I mean when I say that it's a remarkable argument in a relatively unremarkable situation.

And Your Honor will hear a lot more about that as we go forward. But Your Honor, I think with respect to Mr. Brody's -- Does Your Honor have questions with respect to Mr. Finestone's argument? Otherwise, I'll address the other arguments that were made.

THE COURT: No, please continue then.

MR. LeBLANC: Okay. So with respect to Mr. Brody, Your Honor, I'd like, if possible, I'd like to take a short break or while Your Honor's handling other motions, just talk to him because I think there may be some confusion about what they're obligated to do to participate as a DIP lender. But if possible, Your Honor, I'd like to just table that issue, Mr. Brody's issue, and come back to the Court with an agreed

resolution or ask Your Honor to rule on it.

And then with respect to the U.S. trustees' issues, I think we may want to do the same. Although the one issue I want to make sure there's no -- Let me address the challenge period and the payment of fees. Our proposal, and as we've amended Paragraph 16, is to pay those trustee fees to parties. I'm not -- I don't think we're prepared to say that all of those parties are over-secured. I do believe all of them are entitled to payment of fees under their documents, but they're not all over-secured. That's being paid as adequate protection payments. And these are obviously, these are the trustee type of fees. Mr. Finestone is correct. And actually, Your Honor, I'll just ask Ms. Lee, she can take down the 2.05. Mr. Finestone's correct. We're not agreeing to pay UMB's fees to litigate against the debtor on behalf of 1.78 percent holder of our debt. But I think, to be clear, we do --those parties, we're not conceding that all of the trustees are over-secured. They're just parties that are entitled to be paid.

And as Your Honor probably knows better than anyone, creates enormous complications if those payments can't be made and you have to do charging liens with respect to get those relatively small dollar amounts to be involved in the case. And then with respect to the length of the challenge period, I think Akin addressed this, but I'll reiterate, Your Honor.

Our issue is we've asked for the earlier of 75 days.

I'm sort of agnostic, depending on what Your Honor rules with respect to the schedule, but we think the controlling number there is going to be the confirmation hearing. We've asked for it to be triggered off of the objection deadline so that we can address at confirmation any issues that are raised.

Your Honor, and I'll talk about this at the schedule, when we talk about scheduling, but we're prepared to go -- We've litigated issues like this, including against Mr. Finestone, on schedules that are equally as short as this, and we're prepared to go. But we do need to know what we're addressing.

So what I don't want to do is show up at confirmation hearing and have somebody drop a complaint on us as we're walking in without an ability to address it. So what we've requested is a challenge period that expires on the earlier of the objection deadline, or the 75 days.

THE COURT: And 75 days running from --

MR. LeBLANC: Our proposal is from the interim, Your Honor. It's obvious that the DIP lenders would have to consent to me. They would have to consent, not to me, but to the request to move it to the final. I don't know that that matters as much because that's really not what we hope we'll be controlling here, as opposed to the confirmation schedule.

THE COURT: All right. Thank you.

MR. LeBLANC: Thank you, Your Honor.

THE COURT: Folks, my staff certainly needs a break. I could use more aspirin. So we will, let's take a, -- Let's return at 1 p.m.

MR. MOSS: Thank you, Your Honor. May I have the opportunity to respond when we get back?

THE COURT: Do you have a lengthy response?

MR. MOSS: No, no, it's brief.

THE COURT: Let's get it in now, so I can consider it.

MR. MOSS: Thank you, Your Honor. So I guess we're not reading the right contract here. The same contract, Mr. LeBlanc and I, but the reason that the proviso says that the other creditors shall not object to me receiving the same adequate protection is because those are the only parties that I, quote, consented to. This agreement is an intercreditor agreement. This is not a contract in which obligations are extended to the debtor. I'm allowed to demand adequate protection and as long as -- And the other creditors can object. But as long as the adequate protection that I demand and receive from the debtor is comparable to them, the same, then they have no objection.

This agreement is not about consent to the debtor and it's not about the debtor, -- That's why the provision doesn't say anything about the debtor. I go back to what I said before.

He doesn't, the debtors, conveniently, they don't really understand. Debtors don't give away adequate protection. They never want to give adequate protection. They only give adequate protection if a demand is made. It's never good for the estate. A debtor in possession should never want to give adequate protection. So the interpretation that has been offered to the Court is that this makes sense where the debtor has agreed voluntarily to give me adequate protection, then the other lenders can object. That's an absurd interpretation. It's devoid from the bankruptcy code and devoid from all the cases that are before Your Honor every day, Your Honor. So I think this is pretty clear. I get the right to demand and I think the evidence is pretty clear that they haven't provided me anything. They haven't even provided me with the same thing that they've testified to be equivalent, Your Honor, with the other side.

So I'm glad that they conceded that whatever they're paying my agent is not to give any balance to this case and it's not to protect the first lien lender's rights, Your Honor. He keeps saying I'm small. He keeps saying I'm small. It obviously doesn't matter under 361, but I'm a first lien lender under their view of the world, ratable with those other first lien lenders, and I'm the ultimate first lien lender under my view of the world, which will be litigated in this case, Your Honor. Either way, I just want my adequate protection so that

we can respect Congress.

Thank you for the opportunity, Your Honor.

THE COURT: All right, thank you.

MR. LeBLANC: Your Honor, I just have two comments. One, to make it very clear, Bank of America in its capacity as agent under the ABL and under the first-out, second-out, consents to the DIP financing in accordance with the intercreditor agreement. And to be very clear, the revolving lenders and the ABL lenders do not object to Mr. Finestone's request for any adequate protection.

However, it seems that Mr. LeBlanc's client, the company, has decided in its business judgment not to give him comparable adequate protection. And the intercreditor does not require, it's not a mandate on the debtor to give any adequate protection.

So, you know, the debtor has basically decided in its business judgment it's protecting him a different way versus our clients. And that's the long and short of it. All right. Thank you.

THE COURT: All right, thank you. On this motion, the argument has ended. Court will take a short recess. We'll return at 1 p.m.

ATTORNEYS: Thank you, Your Honor.

(Recording paused @ 12:45:50)

(Recording resumes 1:05:22)

THE COURT: All right, as they say, welcome back. Let me wait for those who want to adjust their screens. Okay. Needed a break.

Mr. LeBlanc, did you have any continued discussions either with Ms. Lieb or Mr. Brody?

MR. LeBLANC: So we did with Mr. Brody, and I know Mr. Brody spoke with us and with the Akin group. Let me just see if he's jumping on, but that issue is resolved.

THE COURT: Okay. I see Mr. Brody.

MR. J. BRODY: Your Honor, yes, Judge, thank you, Josh Brody from Cleary Gottlieb on behalf of Certain First-out lenders. Just to memorialize what we agreed to.

So, Your Honor, our concern was that if my clients subscribe to the DIP and they're required to sign up to the RSA, that there could be changes to their treatment that they would have no way to sort of deal with, and that we thought was a little bit unfair. And so what we've agreed to with the debtors and with the Akin group is that if my clients subscribe to the DIP and join the RSA, if there is either a change to the current treatment of the First-out loan under the plan where it's currently unimpaired, or if there's a dispute around what unimpaired or paid in full actually means, we still retain our rights to object or raise those issues with Your Honor, and it wouldn't be a breach of the RSA, which solved our concern.

THE COURT: All right thank you. Thank you,

counsel. Absent any further discussion, I'm ready to rule.

So let me focus first on what doesn't seem to be in dispute. It's always better to start that way. What doesn't seem to be in dispute is that this debtor has a substantial need for additional funds through DIP financing. One just has to take a cursory look at what's been marked as D-2, the 13-week projections, as far as net cash flow without any financing.

This is a debtor that has come into this Chapter 11, I believe, with roughly $6 million or so in cash, notwithstanding the fact that there's been substantial forbearance as of late in secured lending obligations, $88 million or so in trade debt. It needs additional funding to make this workable.

There also doesn't seem to be any dispute as to the efforts of the debtor, as outlined in the declaration of Mr. Robbins, to pursue DIP financing from other sources. I believe Mr. Robbins' declaration reflects that he sought proposals from at least 13 third-parties, in addition to seeking proposals from CastleKnight. So whether this debtor looked to its current lenders or looked to outside lenders for DIP financing, nothing materializes. And I believe, as Mr. Robbins testified in his declaration, no one wanted to address lending on a junior lien basis. No one was content with looking simply to unencumbered collateral, and nobody was content with any of the remedies

available under 364C1. And nobody wanted to pursue a lien priority priming issue.

So the pathways for this debtor to secure financing were certainly limited. This Court believes that the pursuit of this finance transaction was undertaken in good faith by the proposed DIP lenders, and would so make a finding under section 364E that the terms are reasonable.

In fact, no one has challenged the amount of the financing, the division in different draws, between the first and second draw, the amount of the fees associated with the DIP financing. What has been at issue is the adequate protection package for one objecting creditor, and the timeframe for challenges that would fall within the final DIP order.

In my view, it would be appropriate to have a final hearing on this matter in advance of the confirmation hearing. I think it's more consistent with the milestones that are in place, and also it probably will assist in addressing some of the issues that are being identified as being in dispute with respect to the proposed plan. So I am prepared to approve the financing as presented.

Now I'm doing it on an interim basis. I'm going to be doing so in an effort to try to not address the lien priority issues that have been raised that would be, that Mr. Finestone has suggested would be the basis of an adversary complaint. I am certainly not going to address the merits of the 2024

recapitalization, that transaction, I think they go hand-in-hand. I don't need to do that at this stage.

I'm approving the DIP finance on an interim basis with a final hearing scheduled for Monday, February 2nd at 10 a.m. I hope my math works out, but that falls within the 35-day period. It also is in advance of even the debtor's proposed schedule for confirmation.

As far as the adequate protection issues, I am going to defer and allow the parties to supplement the argument with respect to whether or not the intercreditor agreement mandates differing treatment. The reality is that we're not talking about a large sum of money that would be coming due in a short timeframe, and that if this court were to find that by the time of a final hearing that Mr. Finestone's client is entitled to more, there's an avenue for which they can be compensated. I'm not going to direct the payment of any differing adequate protection payment as of now. I'm not going to authorize or direct the payment of fees for CastleKnight, rather, professionals at this juncture. It could be addressed as part of the final hearing, unless the parties were to come to an agreement in advance of that.

Right now, I see no reason to take a position that differs or enter a ruling that differs from the position taken by the parties that there has been consent under the intercreditor agreement, and that the adequate protection

package that's being offered suffices certainly to get us to a final hearing. But I'll allow the parties additional time for briefing, and I would ask if you would make simultaneous submissions no later than January 28th.

I'm not going to open up the, -- I don't see a need to reopen the evidentiary record. This would simply be based on readings of the intercreditor agreement or any other argument in that regard that was presented initially today.

As far as the challenge period, I agree with the debtor that it's better to have these issues brought out at the forefront, and that the challenge period should coincide as of now with the objection deadline for the plan, or 75 days from entering the interim order, approving the financing.

Again, the appropriate time for this court to address the validity and priority of the liens resulting from challenges to the recapitalization transaction, as well as the classification issues and the treatment under the plan, are just that, they're appropriate for the confirmation hearing, not at this juncture for interim financing, which all parties agree is critical for this debtor to be able to go forward.

With respect to the U.S. trustee's concerns on certain language, I agree with the U.S. trustee with respect to Paragraph 4 and striking the references to Section 326 and 726. That's been my approach in prior matters where those issues have been raised.

Again, pragmatically, given the amounts at issue with the DIP compared to the debtor's assets, I don't think this is even truly an issue.

That's the only adjustment that I intend to make with respect to any of the issues raised by the U.S. trustee.

Now, are there any concerns that I can address? First, Mr. LeBlanc.

MR. LeBLANC: This is the most of minor things, Your Honor. Is there any chance that the third would be available instead of the second? If not, we'll make the second work. It's just Mr. Dunne and I will be traveling on the first and just trying to make sure we can accommodate a schedule. Although if it's not evidentiary, it's probably fine.

THE COURT: I anticipate a remote hearing. The third works for me as well.

MR. LeBLANC: We can take it offline and work with the parties then, Your Honor, if that's okay with you.

THE COURT: Why don't you discuss this with other counsel as well?

I'm also going to, -- and we can address this when we get to the scheduling, but I think it's important to address now. When I heard references to the bid and the ask and how far the parties were apart, too far apart, what it tells me is that there would still be a benefit to more discussions by and among the parties, between counsel and the ad hoc group and the

debtor. And I'm going to direct the parties because I think if we can avoid litigation and the filing of adversary complaints and the discovery that will be attendant to it and the motion practice and everything that we all see in every case, it just puts more dollars in everybody's pockets rather than wasting it.

I'm going to direct the parties to meet and confirm as to whether or not they can agree to mediate and on a mediator. I'm thinking of a one-day mediation just to see if there can be a resolution, a bridging of the gap between the bid and the ask before you get too far along the pathway. If not, I'm not directing mediation at this point. Listen, all of you are far, are experienced professionals. You know what the issues are. You've been engaged in this transaction longer than from the petition date, longer than from me.

So I think it would make sense to have a conversation. If you could do it without a mediator, even better, but I don't see that happening. If a mediator would be amenable to all sides, I always throw out one of my colleagues as judges. I offer them up. But if you can spend a day, and I don't think it would be more than a day, addressing the issues, maybe we avoid a lot of dollars and a lot of time and energy down the road.

So what I will do is simply ask if by the middle of next week, close of business on Wednesday, just if the parties

can advise the Court, I'll ask debtor counsel to report back to the Court and chambers, just whether or not the parties have been able to agree on the process and on a mediator. That's it. And if you need my assistance, we can always have another call to address any specifics in that regard.

But now let me go back with respect to the DIP, and obviously I'm approving use of cash as well, and I'm making on an interim basis the 364E findings that are required. Is there anything else the parties need with respect to the DIP motion before we move on to the other matters? Ms. Lieb, I see your hand.

MS. LIEB: Yes, Your Honor. Samantha Lieb for the Office of the U.S. Trustee. I would like to reserve the rights of the committee if one is formed to seek to extend the challenge period.

THE COURT: That's fine. I have no problem with that. Thank you.

MS. LIEB: Thank you.

THE COURT: All right. Mr. LeBlanc?

MR. LeBLANC: Yes, Your Honor. I have nothing further with respect to the DIP.

MR. LEBLANC: Yes, Your Honor. I have nothing further with respect to the DIP. My colleague, Dan McCarthy, is going to take up the next item on the agenda. I will be

back, though, unfortunately, for you, Your Honor, with respect to scheduling at the very end of the day.

THE COURT: All right. Thank you.

MR. LEBLANC: Thank you, Your Honor.

THE COURT: Good afternoon, Mr. McCarthy.

MR. MCCARTHY: Good afternoon, Your Honor, Daniel McCarthy of Milbank, LLP, for the debtors. We propose to proceed, now, with the remainder of the first-day relief. With the Court's permission, I'll proceed to agenda item four, which is the motion to authorize the retention of the claims and noticing agent.

Your Honor, I'll try to be brief on this motion, but I will need to begin with the evidentiary components of the motion that Mr. LeBlanc alluded to earlier. On that, we have two declarations. I'd ask that they both be moved into evidence as direct testimony. I did see earlier that both affiants have dialed into the Zoom hearing should any parties wish to cross-examine them.

The first that I'd like to introduce is the document titled affidavit of Evan J. Gershbein. That is Exhibit B to the motion. Mr. Gershbein is the executive vice-president of Veritas, which -- which affidavit addresses Veritas' disinterestedness and its qualifications to serve under Section 156(c). And I'll just offer, the second is the affidavit of Jeffrey Dunlop. That would be Exhibit C. Mr. Dunlop is the

vice-president and general counsel of United Site Services. His affidavit addresses the competitive solicitation process and also the need for Veritas' retention as claims and noticing agent. So, Your Honor, we respectfully request that both affidavits be admitted as the affiants' respective direct testimony.

THE COURT: All right. Ms. Lieb?

MS. LIEB: Thank you, Your Honor, Samantha Lieb for the Office of the U.S. Trustee. The U.S. Trustee has no objection to admitting the two affidavits, and all of our requested revisions are incorporated in the order.

THE COURT: Great. I appreciate --

MS. LIEB: And they followed the new form of order set forth in the proposed Local Rule.

THE COURT: That's right. This may be the first case under the new Local Rule.

MS. LIEB: I believe so, Your Honor.

THE COURT: All right. Any objections to the affidavits coming in? They would be coming in as, I believe, Exhibit D-6 and D-7.

(No audible response.)

THE COURT: All right.

MS. LIEB: None from the U.S. Trustee.

THE COURT: Thank you. So the declaration and affidavits come in as D-6 and D-7 respectively. Does anyone

wish an opportunity to cross-examine either of the affiants or the declarants?

(No audible response.)

THE COURT: All right. We can continue without the testimony -- quite a relief.

All right.

MR. MCCARTHY: Thank you, Your Honor.

THE COURT: Please continue, Mr. McCarthy.

MR. MCCARTHY: I promise to be brief. I just wanted to --

THE COURT: Well, I'm going to hold you to that.

MR. MCCARTHY: Well, Your Honor, as detailed in the motion, and you'll see it in the Dunlop declaration, as well, the debtors ran a competitive process and selected Veritas, based on their experience and pricing. We think that Veritas' retention will relive the Clerk of a significant administrative burden, will expedite case administration and, being brief, we would respectfully request entry of the order substantially in the form attached. That is at Docket Number 22, again, and we will include that in order consolidated submission of orders in chambers.

THE COURT: All right. Thank you.

Anyone wish to be heard?

(No audible response.)

THE COURT: And seeing no one, the Court is familiar

with Veritas, has no issue and welcomes them aboard and grants the motion.

MR. MCCARTHY: Thank you, Your Honor. With the Court's permission, I will turn to agenda item five, and that is coincidentally also Docket Number 5. It is the consolidated creditor matrix, top 30, also a redaction motion.

Your Honor, on that, we are seeking two primary forms of relief. The first is a single -- the use of a single consolidated creditor matrix and a consolidated top 30 unsecured creditors' list in the lead case, as permitted by this Court's complex case procedures. The debtor's creditors, as explained somewhere in the motion, number in the thousands, and there is a need to avoid duplicative or otherwise error-prone work across multiple debtors with, we think, substantially overlapping creditors.

The second component of that is the redaction of home and email addresses of individual creditors and other natural persons to protect those individuals from identity theft, scams, harassment, and there are appropriate safeguards to allow disclosure, where necessary, of that information.

Your Honor, we intend to serve redacted individuals through the claims and noticing agent, Veritas. We will provide unredacted versions of any such documents to the Court, to the U.S. Trustee and any official committee that may be appointed during these cases, and, also, to other parties in

interest upon reasonable request.

So, with that, Your Honor, we would respectfully request entry of the interim order, which, again, we will send to chambers in our consolidated submission that the Court requested earlier.

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

Ms. Lieb?

MS. LIEB: Thank you, Your Honor, Samantha Lieb, for the Office of the U.S. Trustee. The U.S. Trustee has no objection to the entry of this order, as all of our requested revisions are incorporated.

THE COURT: All right. Absent other objections, which I don't see, the motion will be granted.

Thank you.

MR. MCCARTHY: Thank you, Your Honor. We will proceed to agenda item six, that is the utilities motion, also, again, at Docket Number 6. We are seeking interim relief, Your Honor, prohibiting utilities from altering, refusing or discontinuing service due to the filing of these cases or unpaid pre-petition amounts. We are seeking the approval of the deposit of adequate assurance and, also, establishing additional assurance procedures, should the utilities demand them.

There is a need, during this case, to insure uninterrupted utility service, so that operations and

facilities can continue without disruption. Your Honor, I won't belabor the point. I'm sure you've seen plenty of these motions in other large Chapter 11 cases. I will just say, briefly, that we will fund a segregated DIP account at a U.S. Trustee-authorized depository. It will be funded equal to about one-half of the debtor's average monthly utility spend, net of any existing deposits, and we will maintain that for the benefit of the utilities throughout the cases.

Of course, there are also the provisions of additional assurance procedures for utilities that believe that more protection is required than as originally set out in the order. And, again, I will not belabor the point or detail those procedures for purposes of this hearing, unless the Court would prefer that I do so. Just moving past that, we would just respectfully request, again, in our consolidated submission, entry of the interim order.

THE COURT: Ms. Lieb? Thank you, Mr. McCarthy.

Ms. Lieb?

MR. MCCARTHY: Thank you, Your Honor.

MS. LIEB: Thank you, Your Honor, Samantha Lieb, for the Office of the U.S. Trustee. The U.S. Trustee has no objection to entry of this order, as our revisions were incorporated.

THE COURT: All right. Thank you. Again, seeing no objection, the motion is granted.

MR. MCCARTHY: Thank you, Your Honor. I will turn to agenda item seven here. That is the cash management motion. That is also Docket Number 7. Your Honor, through the cash management motion, we seek authority to continue the existing centralized cash management system. We think, Your Honor, there is a critical need to avoid disruption to collections, payroll --

THE COURT: Mr. McCarthy, let me just --

MR. MCCARTHY: Yes, Your Honor?

THE COURT: -- interrupt you. I'm sorry. The utilities motion, that has a final hearing date, correct?

MR. MCCARTHY: Yes, Your Honor, we're seeking a final hearing on that, as well.

THE COURT: Yes, just so that it's included, but we're going to put that on for that February 2nd date at 10:00 a.m.

MR. MCCARTHY: Yes, Your Honor, that works.

THE COURT: Oh, I'm sorry, we're on February -- I think February 3rd.

MR. MCCARTHY: Or the third, whichever it may be.

THE COURT: Whichever date you land on. You just let us --

MR. MCCARTHY: We can make both work, Your Honor.

THE COURT: All right. That'll be the second-day hearings for going forward for any other motions. I just

wanted to get that -- now, we can go back to cash management.

MR. MCCARTHY: Thank you, Judge, I will do so. I believe I was about to move onto a very brief again, explanation of the bank accounts. There are 21 bank accounts. I'm pleased to report that all of them are held at U.S. Trustee authorized depositories. Those are J.P. Morgan, Bank of America and Comerica.

The debtors will, within five business days, (indiscernible) these accounts coded as DIP accounts, and we will work to insure Section 345(b), collateralization above FDIC's limits.

Your Honor, I'd just like to briefly turn to some of the critical programs that we're seeking to continue to pay through the cash management motion. We're seeking authority, specifically, to continue payment channels and card programs that we think are essential to the debtor's operations. There are two main categories that we've described in the motion. The first is the J.P. Morgan purchasing card or P-card program. The other one is comm-data fuel cards. And, also, authority to pay ordinary course fees that may have come due shortly before filing these Chapter 11 cases that remain outstanding to avoid any interruptions of services.

Just to give one example, USS's employees, its drivers, specifically, require functioning fuel cards to purchase fuel and complete routes on time, so we just think

that this order is quite time sensitive and is quite important for the continued operations of the debtors.

So, again, I would just move to the order, Your Honor. We would respectfully request entry of the interim order, as modified through U.S. Trustee comments, and we would propose to have that order in the form substantially attached to the filing package that we intend to send to chambers after this hearing.

THE COURT: Ms. Lieb, any objections?

MS. LIEB: No objection, Your Honor.

THE COURT: All right. Motion will be granted, including the language agreed upon by the U.S. Trustee.

MR. MCCARTHY: Thank you, Your Honor. With that, I would cede the podium to my colleague, Rupsha Basu, to present items eight and nine of the agenda.

THE COURT: All right, great. Thank you.

MR. MCCARTHY: Thank you, Your Honor.

THE COURT: You're welcome.

Counsel?

MS. BASU: Good afternoon, Your Honor.

THE COURT: Good afternoon. Could I have the spelling of your name? I'm going to need it.

MS. BASU: Sure. First name Rupsha, R-U-P-S-H-A, last name Basu, B-A-S-U.

THE COURT: Great. Thank you. Continue, please.

MS. BASU: Okay. I'll be presenting the debtor's insurance and customer programs motions. The insurance motion is agenda item number eight, and was filed at Docket Number 8.

The debtors are seeking authorization to continue, maintain and renew USS's existing insurance programs, including each of USS's insurance policies listed in Exhibit B to the motion, their premium financing arrangements, certain credit support arrangements, payment of insurance broker and claims administration fees, continuation of worker's compensation practices, and, finally, their surety bonds, which are listed in Exhibit D to the motion.

USS's insurance programs cover all manner of liability, including general, automobile, environmental site, property, flood, railroad, professional and B&L. Maintaining this coverage is crucial to their company being able to continue operations throughout these Chapter 11 cases, especially given the nature of the company's business dealing with biohazardous material. The number of vehicles in the company's fleet and their critical use in the debtor's operations delivering equipment and providing services from site to site, as well as the requirements and laws of the jurisdictions in which the company operates.

While we don't believe that any of the relief requested in the motion is out of the ordinary, including the request to be able to renew and enter into new policies,

premium financing arrangements and credit support in the ordinary course, we want to bring the Court's attention to a matter that we have not been able to resolve with the U.S. Trustee.

The timing of the filing of the cases for the company is somewhat unique in that it pertains -- in the way it -- as it pertains to insurance, because the commencement of these Chapter 11 cases coincided with the company's process of renewing and binding new insurance policies for 2026, which is quite literally happening as we speak, which includes procuring new premium financing arrangements and additional credit support. Some of the 2026 policies have already been bound, while others will be finalized as soon as tomorrow or very early in January. These policies are all listed in Exhibit C to the motion.

The U.S. Trustee takes issue with our request to renew or, better said, enter into new premium financing arrangements or obtain additional credit support for USS's insurance policies without a further motion and order of the Court pursuant to Section 345 of the Bankruptcy Court. So that is the overarching issue, but it pertains to three different paragraphs in the interim insurance order.

Although the debtors have tried to accommodate the U.S. Trustee's request, because of the timing of USS's current renewal process, which, as I stated, they are in the midst of

doing right now, and will need to bind in the next 24 hours, it would not permit the debtors sufficient time to bring another motion under 354 in addition to the relief that we're requesting today with the insurance motion.

The relief to renew and enter into new premium financing and credit support, even on an interim basis, is absolutely critical to the first-day relief that the debtors are requesting. So, to address the U.S. Trustee's concerns, the debtors have done their best to include as much information as we know today as possible in the motion about the 2026 insurance landscape.

Specifically, the most significant change between 2025 and 2026 is in USS's auto liability structure, a decision that was motivated by cost savings, primarily. In 2025, USS paid around 12-and-a-half million dollars in premiums for auto liability insurance, and in 2026, it will pay around three-and-a-half million.

In connection with obtaining these significant benefits with respect to premiums, one of the debtor's auto insurers at the primary insurance level is requiring an additional $6,000,000 in letters of credit that will be issued in early January. These letters of credit will be issued under the existing pre-petition ABL facility, in accordance with the terms of the interim DIP order and the initial DIP budget. The exiting ABL will then be paid down from DIP proceeds. So,

this means that if these LCs are drawn, there is no additional collateral being granted, and the obligations of the company are the same as under the DIP order.

With respect to the new premium financing arrangements, it is entirely customary in the industry and in line with USS's historical practice to arrange financing in January of the same year for which the associated insurance policy will provide coverage, in this case, 2026. USS expects that the 2026 premium financing arrangement will be on substantially similar, if not better, terms to the 2025 premium financing arrangement, save for any annual increases to rates and fees. The debtor's broker has also told us, their insurance broker, has told us that they even intend to try to shop the existing premium financing arrangement to see if a better arrangement can be obtained.

Not having authority to obtain and enter into new premium financing for 2026 today, obtain the new letters of credit necessary to support the 2026 renewals or enter into these renewal programs would be pretty catastrophic to this business, which simply cannot operate without these insurance policies and will have insufficient funds to pay premiums that would not -- that would not require such support. USS does not expect any additional credit support to be required in connection with the 2026 insurance policies, by which I mean in addition to the $6,000,000 in letters of credit, which I just

discussed and was disclosed in the motion.

In the first quarter of 2026, insurance policies for flood, cyber, railroad and property liability will be up for renewal, none of which USS expects to require additional credit support. So, the premiums for certain of these policies are expected to be financed through the new 2026 premium financing arrangements on similar terms to 2025.

In an attempt to resolve the UST's concerns, we have included in the proposed order that other than as described in the motion, with respect to the 2026 policy year, we are willing to seek new relief to obtain new premium financing arrangements or obtain additional credit support, and this is specifically in paragraph six, seven and nine of the interim order, which I am happy to go to, specifically, if Your Honor would like, after I am finished.

THE COURT: No, that's all right, thank you.

MS. BASU: All right. Finally, we'd just like to reiterate that, at this precarious time, when the company is just entering Chapter 11, it is difficult to overstate how essential it is that the company has appropriate insurance policies in place, starting in 2026, which is why we believe that the relief requested in the insurance motion is proper under the circumstances. So, with that, and absent any comments from Ms. Lieb or questions from Your Honor, we ask that the Court enter the interim order.

THE COURT: Thank you, Counsel.

Ms. Lieb?

MS. LIEB: Thank you, Your Honor, Samantha Lieb on behalf of the Office of the U.S. Trustee. Your Honor, the debtors are requesting through this motion that Your Honor grant them future relief to preapprove insurance financings that have not been attached to the motion and that the debtors represent may be substantially similar or better, but the parties have no way of knowing that. Creditors have no way of knowing that. And so, that's why the U.S. Trustee requests that, for any new policies from post-petition on, that the debtors file separate motions under Section 364, seeking an order to approve those individual policies.

In terms of -- there is no issue with the policies that are already bound. The issue is the post-petition financing and credit support without filing the motions and providing notice to all creditors. The U.S. Trustee has not been provided any agreements to review in advance of today's hearing, so it's really unclear what the terms of each of the insurance agreements is that the Court would be approving today in a blanket manner.

Additionally, with respect to paragraph nine, specifically, paragraph nine requires -- or has the debtors using -- pledging collateral to obtain new insurance financing or credit support, and that is something that the U.S. Trustee

has not seen in any order before, so that's part of why we are requesting that this relief be separately sought and not just granted prematurely.

If Your Honor is inclined to grant interim relief today, the U.S. Trustee would request that the debtors file the agreements as they receive them with an opportunity to review and object.

THE COURT: All right. Thank you.

I appreciate the U.S. Trustee's concerns, however, I am going to overrule the objection. I can't imagine any scenario in which this Court would not approve the debtor's exercise of their business judgment to pursue premium financing on terms -- on the best terms that it could obtain in order to insure that all of its vehicles are properly protected and the company and the debtor's Estate is properly protected.

I understand it is somewhat unusual to give advance authorization, but within the scheme of the dollars at issue versus the potential for liability, the Court wants to err on the side of authorizing the debtor to pursue -- to take the steps necessary to pursue the appropriate insurance and to have it in place and recognize that market forces don't necessarily allow for the additional timing of seeking separate relief. Plus, quite frankly, in cases where dollars are at a premium, the expense associated with filing separate motions is unsupportable. So, I'm going to overrule the Trustee's

objections. Thank you.

MS. LIEB: Thank you, Your Honor.

MS. BASU: Thank you very much, Your Honor.

I'll now move onto the customer programs motion, which is agenda item number nine and filed at Docket Number 9, and I promise to keep it brief. You're welcome to hold me to that.

USS is seeking authority to honor the customer programs described in the motion on a post-petition basis and to honor any pre-petition obligation fees in accrued customer credit program and a volume rebate program, as more fully described in the motion. Most of these transactions are effectuated through issuing credit rather than paying cash. And USS expects that will remain the case throughout these Chapter 11 cases.

So, absent any objections or questions, we ask that the Court enter the interim order for the customer programs motion.

THE COURT: Any objections?

MS. LIEB: Ms. Lieb -- or, Your Honor, Ms. Lieb, for the U.S. Trustee's Office. For customer programs, we have no objection to entry of the interim order. The revised order has our comments.

THE COURT: All right. Thank you. Then the motion is granted. Thank you.

MS. BASU: Thank you, Your Honor. I will now cede the virtual podium to my colleague, Mr. LaGinestra.

THE COURT: Good afternoon.

MR. LAGINESTRA: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. LAGINESTRA: Nick LaGinestra of Milbank, LLP, on behalf of the debtors.

THE COURT: Well, if I didn't know how the last name was spelled, I have no idea how yours is spelled.

MR. LAGINESTRA: Would you like me to spell it, Your Honor?

THE COURT: Yeah, please.

MR. LAGINESTRA: L-A, capital G, I-N-E-S-T-R-A.

THE COURT: Great, thank you.

MR. LAGINESTRA: Thank you, Your Honor.

Next on the agenda is the debtor's motion to pay taxes and fees, which was filed at Docket Number 10. Your Honor, the debtors are seeking authority to pay or use credits to offset, in the ordinary course of business, a variety of their various tax obligations, which include Federal, State and Municipal taxes, sales and use taxes, real and personal property taxes and franchise taxes, as well as certain regulatory assessments, charges and fees on a pre and post-petition basis.

As of the petition date, the debtors estimate that there is, in the aggregate, approximately 9.5 million dollars in unpaid taxes and fees. Payment of the taxes and fees will benefit the debtor's estates and creditors by permitting the debtors to continue operating their business without interruption, avoiding interest, late fees, penalties and other charges and, also, avoiding the initiation of audits by the applicable authorities, which would unnecessarily divert their attention from the tasks required at such a critical time.

Accordingly, Your Honor, the debtors seek authority to pay all taxes and fees on both a pre and post-petition basis. The U.S. Trustee reviewed the motion and provided comments to the proposed orders. After filing, we had received additional comments from the United States Trustee, which we have implemented and which have now been resolved. And we will submit the revised orders accordingly.

Therefore, unless Your Honor has any questions, and absent any objections, we respectfully request that the Court grant the relief requested in the motion.

THE COURT: All right. Thank you. Absent any objection, Ms. Lieb?

MS. LIEB: No further objections, Your Honor.

THE COURT: Great. The motion will be granted, thank you.

MR. LAGINESTRA: Thank you, Your Honor.

I will now turn to the wages motion, which was filed at Docket Number 11. Your Honor, as of the petition date, the debtors employ approximately 3,209 employees, 3,192 of which are full-time employees, 17 of which are part-time employees. The debtors also supplement their work force with independent contractors and temporary workers through third-party staffing agencies from time to time.

And, as more fully discussed in the motion, the debtors offer various compensation and benefits programs, and while I wont go into the details of these specific programs that we've described in the motion, unless Your Honor has any questions, at a very high level, these programs include regular salaries and wages, sale commissions, expense reimbursements, incentive programs, as well as several benefits programs, such as health and welfare programs, a 401K retirement plan and employee-leave benefits, among others.

Your Honor, the debtors have interim amounts coming due in connection with these obligations and programs and are seeking authorization to continue to maintain these programs in the ordinary course, as well as pay pre-petition amounts owed in connection therewith.

The employees, Your Honor, are the lifeblood of the debtor's operations, and without the ability to provide these programs, the debtors are likely to face severe hardship to the successful operation of their business. Also, many individuals

rely on these benefits and programs, and without these programs and benefits, they would be exposed to severe financial difficulty.

For the avoidance of doubt, Your Honor, the debtors are not seeking authority to make payments to insiders pursuant to Section 503(c) of the Code and will not be making payment to any employee that exceeds the statutory cap.

The U.S. Trustee also reviewed this motion, provided us comments to the proposed orders, which have been implemented, and, therefore, unless Your Honor has any questions, and absent any objections, we also request that Your Honor grant the relief requested in the motion.

THE COURT: All right. Ms. Lieb, all in order for you?

MS. LIEB: Yes, Your Honor, no further objections.

THE COURT: Great. Motion is granted. Thank you.

MR. LAGINESTRA: Thank you, Your Honor. I will now cede the virtual podium to my colleague, Mr. Schak, who will proceed with the rest of the agenda.

MR. SCHAK: Good afternoon, Your Honor. My script says good morning, but good afternoon.

THE COURT: Yeah.

MR. SCHAK: Benjamin Schak of Milbank, LLP, for the debtors. Last name is spelled S-C-H-A-K. And I will be addressing the trade claims motion, which is number 12 on the

Docket, and also number 12 on the agenda.

On this one, Your Honor, this motion would allow USS to pay its vendor base in the ordinary course of business. These are the hundreds of suppliers, waste disposal services, equipment lessors, auto repair shops and so forth that USS's thousands of locations depend on day in and day out. This motion would allow USS to pay each of them, as payments come due in the ordinary course, to insure the ongoing provision of goods and services, especially in this critical initial stage of the case.

The reality, Your Honor, here, and Your Honor mentioned the $6,000,000 that the debtors entered the case with, that's the result of, in the lead-up to bankruptcy, USS has had to stretch payments to some of its vendors, and there are now about -- about $32,000,000 of obligations that are due today or due for payment over the next three weeks. That is not a normal working capital position for this company, and we don't think it's in the company's interest to maintain that kind of payment backlog to its business partners going forward. It's a fragile vendor base, and already, some vendors have started to either cut USS off or to threaten that they'll do so.

The most significant creditors in these cases, Your Honor, were the ones with the super majority of the overall debt to support the full payment of trade creditors on this

basis, because it will help get the AP position back on track and get the assurance of ordinary payment terms from the vendor base. That's why they've stepped up to fund a DIP that, under the budget, will, in fact, be used in large part to pay claims under this very motion.

The other comment I'll make, Your Honor, is that this sort of relief is not uncommon for a pre-pack case, where the debtors are proposing to keep trade creditors unimpaired at the end of the case. We've cited some examples of that in our brief, and, just two weeks ago, Judge Shannon, down in Delaware, granted a similar motion in the iRobot pre-pack. That one, for example, had a $24,000,000 cap on interim payments on a company that only has about a tenth of the debt stack as USS does.

So, with that, Your Honor, I'll also say we have had discussions with the U.S. Trustee on this. I think we've narrowed the issues that the Office of the Trustee initially had substantially. I don't think we've quite gotten there, but we have accommodated a request for reporting, twice in the first month, then monthly afterwards. We've made a variety of other edits, and at this point, we do want to move forward with the motion.

I believe the two outstanding issues between ourselves and the U.S. Trustee's Office are, one, the amount during the interim period. We originally proposed $37,000,000.

Our latest numbers for the next three weeks suggest that about $32,000,000 would cover that, and then you have about a run rate of about $4,000,000 needed for each week thereafter. And looking at a second-day hearing of February 3rd, we think that something like the originally proposed cap of, I believe it was 37.2 or 37.4 million would be appropriate here. Again, in light of the size of the business, the size of the cap structure, the benefits to the Estate, we think that's appropriate.

The other remaining issue between ourselves and the Office of the U.S. Trustee is -- has to do with the monthly reporting requirement. We would like that reporting to be limited to payments that are over a certain floor. We think a $20,000 payment is about the right number for that. That would land on reporting about the top 20 percent or so of payments under this motion. That accounts for something like over 80 percent of the dollar amounts, but 20 percent of the line items, and we think a 20/80 rule kind of makes sense here to minimize the burden on the Estate.

That's not to say that payments will never be reported. They will, of course, be reported on the monthly operating reports, but for the specific expedited reporting procedure that we're going to propose under the motion, we think it makes sense to limit that to just the substantial payments that a creditor or another interested party indicates

would be -- would be most interested in looking at.

So, I'll pause there, Your Honor, and I would ask that the Court grant this motion on an interim basis, including to authorize the debtors to pay the pre-petition trade claims up to the cap originally proposed.

THE COURT: All right. Thank you.

Ms. Lieb?

MS. LIEB: Thank you, Your Honor, Samantha Lieb, on behalf of the Office of the U.S. Trustee. Your Honor, as to the amount to be paid during the interim period, the amount that the debtor proposes, $32,000,000 instead of the $37,000,000 as sought in the motion is approximately 70 percent of all of the trade claims.

The debtors have the burden to prove that but for these payments, the creditors would stop working with them or they won't be able to operate, and the debtors haven't met that burden today. There is no information in the record about the identities of the creditors to be paid, how old any of these debts are, what percentage or which specific creditors are allegedly threatening to stop providing goods or services to the debtors, whether any of the -- whether the debtors are insiders with any of the creditors and whether any of the vendors alerted the debtors that they plan to withhold services if their pre-petition claims weren't paid in full.

I do appreciate the discussions that we have had with

Mr. Schak's office on this point, but the debtors haven't proven they need to pay 32 or $37,000,000 on an interim basis in order to retain these trade vendors, so the U.S. Trustee would ask that the Court further reduce that amount to be paid on the interim basis.

Just more generally, allowing the debtors to pay nearly all of its trade claims at the outset of the case benefits one group of unsecured creditors at the expense of other groups. This case was filed yesterday, so creditors haven't had a sufficient time to review and object. And the U.S. Trustee only received the list of about 800 creditors, without any details about insider status or the age of the payments, this morning.

Additionally, we are soliciting for a Committee. So, if -- so, that's why the Court should approve a smaller payment to trade claims on an interim basis with, you know, potential input from a Committee to revisit the debtor's request at the final hearing. In terms of paragraph ten and putting a cap on the payments that will be reported in the matrix or schedule, the debtors are proposing a $20,000 cap. It's the U.S. Trustee's position that every payment of a pre-petition claim should be included in the matrix and schedule. The debtors concede that this payments will be reported eventually on monthly operating reports, so why not just provide that information now, in accordance with an interim order?

We had some further redlines on paragraph ten. We wanted more information about the manner and then type and categories of payments to be listed. I believe before the hearing, we had revisions floated that set forth -- or will set forth that the type will be included, but I'm not sure if the debtors have fully agreed to include, like, the manner of payment, and then the category, in addition to the type.

THE COURT: All right. Thank you, Ms. Lieb.

It's clear to the Court that parties that have an economic interest in this debtor and in its -- the use of its cash, meaning the DIP lenders, the other existing secured lenders, want to see this debtor succeed or else they wouldn't be putting at risk substantial sums of money going forward.

Any prospect of interfering with vendor relationships undermines that goal. And when those that have the economic interests in the cash that's being spent support the debtor's use to satisfy its pre-petition vendors to assure continued availability of services and products and materials, it's nonsensical to interfere with that prospect. And I don't see any Committee undertaking that route, even if a Committee is formed in this case. More often than not, the Committees would like to see unsecured vendors paid. They become the lifeblood of any continuing operation.

I am going to authorize the prepayment, as I've done in other cases, as other courts within this District, within

this Circuit and, actually, within the country have done in similar situations. But I am not going to put a minimum on reporting. I agree with the U.S. Trustee that all reporting of any pre-petition payments to the vendors should be included. It's a fair trade off that we have the transparency, if we're allowing the dollars to be spent.

So, in that regard, authorization is given for the payment of pre-petition trade claims, but the reporting that goes with it will also have to be undertaken.

MR. SCHAK: Thank you, Your Honor. We'll circulate a revised version to the U.S. Trustee's Office that we're submitting those reports, and I believe I will now turn it over to Mr. LeBlanc, again, for the scheduling motion.

THE COURT: All right. Thank you. Thank you, Ms. Lieb.

And, just in general, and I'm sure I'm going to say this again, I want to thank the U.S. Trustee's Office and Ms. Lieb and Mr. Sponder, in particular, for their efforts on very short notice in going through all of these motions and the language of the various proposed orders on an expedited basis. Your office always seems to amaze me in how it can handle the volume, but it's appreciated by the Court. Thank you.

MS. LIEB: You're welcome, and thank you, Your Honor.

THE COURT: Mr. LeBlanc?

MR. LEBLANC: Yes, Your Honor, Andrew LeBlanc, of

Milbank, on behalf of United Site Services, Your Honor. Your Honor, we're blissfully at the final motion on the agenda, and that is the scheduling motion. I -- Mr. Schak, hopefully, didn't go too far from the podium, because I'm going to cover the general schedule that we're looking for. I'm happy to address any questions, but if -- if Your Honor has specific questions about any individual item, I may phone a friend and ask Mr. Schak to respond to some of those.

But, just generally, Your Honor, I think Your Honor has a sense of this already, this is -- the debtor's evidence with respect to this issue comes in the form of Mr. Kelly, which was submitted as debtor's Exhibit 1, paragraphs 189 through 194. You may recall, Mr. Kelly was not even cross-examined with respect to those issues. And in those -- in his testimony, Mr. Kelly lays out the need for the debtors to move expeditiously through this process and to get to a confirmation hearing as quickly as possible.

There is -- I know that pre-packs, Your Honor, are not something that the District of New Jersey has seen in -- at least in any numbers and have happened in many other places. I, personally, have been a part of a number of pre-packs that have been done on a single day. We appreciate this is not that, and we're not asking for that.

Instead, Your Honor, what we have asked for is a schedule that is entirely consistent with the Bankruptcy Code.

I think, as you look at the schedule that we proposed, on pages three to four of the motion, the schedule does not ask for any reduction in the time, with one exception, I think, Your Honor, and that is, I know, typically, Your Honor would get a confirmation brief three days before the confirmation hearing, and we've asked if we could submit it two days before. So, the only person we're actually asking to compromise time is the Court.

We are not asking, importantly, for any of the Bankruptcy Code or Rule provisions to be modified. We're not asking for expedited treatment. And we think it's imperative that this case move expeditiously to confirmation. Your Honor, I couldn't agree more with Your Honor's admonition earlier that the parties should continue to talk, and, hopefully, try to come to a resolution and avoid having a contested confirmation hearing in 40 days. But if we have to, the important thing for us is that -- is that we move through expeditiously, and we don't have, you know, when people are planning the next Super Bowl or the next Coachella that they're not looking for an alternative supplier for the services that USS provides, because we continue to be mired in bankruptcy. That would be to everyone's detriment.

And, so, Your Honor, we have proposed a schedule that I think is appropriate. It doesn't ask for compromises on any of the times. We are also prepared to move as fast as

possible. In fact, I was just talking to my team, while others were arguing. We're prepared to make a production, even though we don't even have a document request. We're prepared to make a production to Mr. Finestone and his team today of documents relating to the 2024 restructuring -- recapitalization transaction.

We'll obviously, as soon as we get requests, will move expeditiously on that. We'll serve our own requests very soon. We will do -- we will move Heaven and Earth to meet this schedule. And, Your Honor, we've done, and I think I've mentioned this before, about this time last year, actually, tomorrow, one year ago, Mr. Finestone and I were on a Zoom hearing getting a ruling from Judge Lopez in Texas on a case that he and I had filed, and one month later, we were in a confirmation hearing. And while it is an enormous pain, we know how to get this stuff done. I think both firms do, if we have to do it.

And it really is important. The evidence, in supporting this request, Your Honor, is uncontroverted. No questions were asked of Mr. Kelly. There is a complete and obvious need for speed here, and given the creditor support, we think it's utterly appropriate. So, I'll pause there, Your Honor, and save any comments on reply. Obviously, if there is specific issues, I may tag team it with Mr. Schak, if the Court is okay with that.

THE COURT: Fair enough. Let me, first, hear from -- well, Ms. Lieb has her hand up. Ms. Lieb?

MS. LIEB: Thank you, Your Honor, Samantha Lieb, for the Office of the U.S. Trustee. Just to correct one thing from Mr. LeBlanc's intro on this motion, the debtors and the U.S. Trustee did further revise the scheduling order, some paragraphs of it, so with the reply brief or the response brief, rather, the debtors did agree to change that in the scheduling order to be four days prior, not two days prior, which is consistent with the Local Rules.

Additionally, Your Honor, the U.S. Trustee objects to paragraphs 19 through 21 of the scheduling order. Your Honor, the debtors, here, are requesting to waive the Section 341(a) meeting of creditors and to also waive or defer the filing of the schedules and the statement of financial affairs. The U.S. Trustee objects to that, because the debtors have not shown cause under Section 341(e). This is a partially prenegotiated case. It doesn't seem like it's a true pre-pack, as there's not an indication of how many creditors will vote to accept the plan.

The debtor solicited acceptances of the plan, pre-petition, by only one day, December 28th, and so, that's not sufficient time for them to request waiver of the 341 meeting and filing of the schedules under 341(e). As Your Honor knows, the U.S. Trustee is soliciting for a Committee pursuant to

Section 1102. We sent the solicitations out yesterday.

If there is a Committee formed, we will, of course, want them and other creditors to participate in a 341 meeting, and the U.S. Trustee requests that the 341(a) meeting occur prior to the confirmation hearing. So, that's the bulk of our objection as to this motion.

THE COURT: All right. Thank you, Ms. Lieb.

Mr. Finestone?

MR. FINESTONE: Thank you, Your Honor, Ben Finestone, on behalf of CastleKnight. As Your Honor knows, bankruptcy is a collective action. It's not an ex parte action, no matter how much management and debtors-in-possession might, at some times, like it to be. They filed this case yesterday morning. There has been 24 hours. There is no Committee appointed, to state the obvious. We have, as Your Honor acknowledged, an Office of the United States Trustee doing yeoman's work, but it's not enough. And it is too much burden. The motion should be denied until a Committee is formed.

Your Honor, the counsel to the debtors said that the evidence was uncontroverted. I chose not to cross-examine the witness on it, because I think the witness provided no basis -- no evidentiary basis whatsoever to establish the sort of irreparable harm that would justify this kind of ex parte relief. And if you look at paragraph 191, which is the only potential evidence in the record that suggests, that could even

be pointed to, as some sort of bad thing that's going to happen if this debtor stays in bankruptcy beyond where the debtor wants it to emerge from, it's all speculation and uncertainty, Your Honor. There is always uncertainty. There is always uncertainty, and that's all that this man testifies about.

He doesn't testify about any threats from customers, vendors or employees. He doesn't say anything is -- he really doesn't testify about anything bad happening if we stay in bankruptcy beyond where the debtor wants to stay in bankruptcy. And, Your Honor, there's just nothing there, whatsoever. And to the extent there was any concern at all, I think that Your Honor eliminated that concern by overruling the United States Trustee's objection on the last motion, giving this debtor authority to pay off vendors and customers, et cetera.

And so, now, the only reason -- I mean, this debtor already filed for bankruptcy, rather than try to negotiate consensus. They filed for bankruptcy. The news is out. There is -- I don't even know how a lawyer can argue that if the debtor has to give 28 days notice on a disclosure statement, allow for a Creditor's Committee to be formed, gives 28 days notice for a confirmation, how that's going to create irreparable harm. It's not an argument that can be made in good faith. It's not any testimony that anybody gave. And it makes no sense.

And I'll also be a little paternalistic for the

debtor, here. One other thing about the evidence, Your Honor, we saw in the 13-week cash flow, there is $70,000,000 sitting on the balance sheet at the end of their 13-week cash flow. So, it's not at all that the debtor is in need of some emergency DIP part two at the end of the thirteen. There is just no drop of evidence, whatsoever, that something bad is going to happen in February.

Your Honor, they say it's a pre-pack. I thought Ms. Lieb's comments were directly on point, in pointing out that this is not a pre-pack. And I'll also just point out the evidence, like, something is not a pre-pack because debtor's counsel files a plan and says, all classes are going to approve this plan. I mentioned it earlier, Your Honor, but the evidence has been consistent with this, I'm surprised they're going to go forward with this classification. I have not seen more obvious gerrymandering than what the debtor is filing here.

And so, if this debtor-in-possession is really concerned about something bad, is really concerned about avoiding something bad happening, then it should redo the plan. It should focus on mediation. It should redo the plan, because if it goes forward on its schedule or another schedule, classifying all of the pre-LME debt with all of the LME debt, in the hope that they can just silence all of the pre-LME creditors, there is no -- that's just obvious gerrymandering,

and that's a sure fire way for a confirmation not to be approved. And that's when you can create irreparable harm.

That's a debtor taking a gun and shooting itself in the foot, because it's so focused on emergency that doesn't exist. And so, that would be the really bad thing. And, Your Honor, just to put a little bit more meat on the bone on the gerrymandering, because if you look -- forget the unsecureds. They put my unsecureds with all of the deficiency claims to silence all of the unsecureds. That seems to be gerrymandering enough, as I said. That's pre-LME debt versus LME debt. That argument speaks for itself.

But on the secured debt, they actually had two options. They could take my pre-LME secured debt. They had two places to put it, because in the LME-secured debt, they have two classes. Class one is the first out debt. They weren't going to put us there, in that class, because they're proposing to pay the first out debt in par, 100 cent dollars. They don't want to pay me in par, 100 cent dollars, even though both of those creditors are first out creditors.

The answer, to me, is that you don't -- you can't -- you're not similar to that first out, because you don't have the vertical pay over from the second out and the third out benefits. Okay. Let's accept that for the time being. But then, they put me in a class with the seconds outs and the third outs, and then, they're ignoring that those creditors,

who have to pay over to the first outs, I don't have any pay over obligations. I am just at the top of the pre-LME structure, by myself.

So, we said this in their papers. They can't have it both ways. The pay over provisions in this new LME debt, and, again, this is not assuming any success on my adversary proceeding, which I expect there to be some success if we don't mediate this, Your Honor. But it's either okay to classify me -- to not classify me with the first outs off the LME debt, because I don't have the benefit of a pay over. Maybe that's okay. But then, it's not okay to classify me with the creditors who do pay over. It's really the most obvious gerrymandering that I've seen in a long time. And that's another reason why, even if there wasn't a complete absence of an evidentiary basis, here, an absence of cause, to set confirmation for 45 days out, less than 45 days out, before there is a Committee, this is just the debtor and management wanting to get in and out of bankruptcy as soon as possible, blunt due process as we said, and bankruptcy is not the boogie-man, Your Honor, as Your Honor knows better than anybody.

Title 11 is a good thing. It's something that -- that requires parties to work together. It's something that parties require -- that requires parties to discuss. It's a collective action. It's not just management dip your foot in, and dip out as soon as they can and get their bonuses and get

their new equity holders and modify contracts. It comes with a cost.

Your Honor, this motion should be denied, without prejudice, to a Committee being formed. The debtor can try to negotiate consensus with the Committee. We'll, obviously, be happy to negotiate it with them. They didn't talk to us about it all. But to put this plan, a plan like this, with obvious gerrymandering issues, and my lien dispute that we're going to put on file, if we don't reach a consensus on mediation, I think it makes no sense, whatsoever, from a debtor-in-possession perspective. And I think there is no evidentiary basis for it, Your Honor.

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

Mr. LeBlanc?

MR. LEBLANC: Thank you, Your Honor. With all due respect to Mr. Finestone, we'll obviously decide what we think -- we'll advise our client what we think is best for the debtor and the debtor-in-possession, and we will present to the Court arguments we think are clear and compelling.

I continue to be a little confused, Your Honor, because this is a scheduling motion. We are not asking you to shorten notice on anything. We're asking you to set a confirmation hearing. There are -- with respect to the U.S. Trustee, we have asked for conditional extensions of certain deadlines. To the extent that the confirmation doesn't happen,

then, obviously, you know, then we could do things like filing schedules and SOFAs and having a 341.

I don't -- so, I don't understand Mr. Finestone's position, because we are not asking you to shorten time. So, he described it as an emergency and extraordinary -- he described it, I think, as ex parte. I think, by definition, the fact that we filed a motion, and I'm here before Your Honor in a virtual courtroom, and he is responding, means it is not ex parte. I don't understand what he's arguing.

This is a scheduling motion. We've presented evidence. He questions the evidence, but chose not to cross-examine the witness with respect to it. But what the evidence shows, Your Honor, is that there is a real concern about what will happen to this debtor if it stays in bankruptcy. By definition, it is predictive. You can call it speculation, but if you're predicting what would happen if we stay in bankruptcy longer, that is always predictive.

And Mr. Kelly outlines, in his declaration, between 191 and 194, why he has concerns about this company staying in bankruptcy. So, Your Honor, there is -- and I don't know what Mr. Finestone's argument in response to that is, because he chose not to cross-examine the witness.

And, so, the issue is, Your Honor, we're not asking for extraordinary relief. We're not asking for emergency relief. We're asking Your Honor to set a confirmation schedule

consistent with the one that has been asked for by not just the debtor-in-possession, but those parties who hold the overwhelming majority of the debt.

Now, I won't respond to the classification arguments. I don't think it's relevant to this issue, to the scheduling motion, but I will make this point, Your Honor, that's exactly what the confirmation hearing is going to be for, all of the issues that he's raised. If he thinks he is misclassified under our plan, Your Honor can resolve that at the confirmation hearing. If he thinks he is mistreated under our plan because he stands alone as a secured creditor, if he thinks that 90-plus percent of our debt holders agreed to a recapitalization, and therefore, move themselves to the second out position, that he no longer should be -- that it's unfair to classify him with them, he can make that argument. That is an issue that we should address at confirmation.

If he wants to file an adversary proceeding, he can certainly do that. We will likely move to stay that, because if Your Honor confirms the plan, it's going to resolve these issues. We can litigate these issues at confirmation to the extent they have to be litigated, and we should do it there. That's exactly the place to do it.

And, so, Your Honor, and I'm a little worried, his repeated -- we are -- Your Honor, I have never said no to mediating something, including with Mr. Finestone. I am

prepared -- we always are willing to talk to our clients about mediation, but that cannot be a cudgel to keep us in bankruptcy longer and to impose the costs and harm to us that comes from that.

And, so, I'm a little worried, given his -- the references to it. But, Your Honor, we're not asking the Court to do anything other than set a schedule consistent with the Bankruptcy Rules. And we'd ask Your Honor to do that, recognizing the unique situation in this case, where it doesn't make sense to have schedules filed, if we're going to have a plan that pays all of the trade creditors in full, confirmed in 43 days. That's all.

So, I think the relief -- as to Mr. Finestone, I don't think we're asking for any relief. We're not asking to deviate from the Rules at all. As to the U.S. Trustee, I appreciate that we are, but it fits under these particular circumstances, Your Honor. So, we'd ask the Court to enter the order as it is.

THE COURT: Mr. LeBlanc or, maybe, Mr. Schank -- and Mr. Finestone, I'll give you a chance to respond.

MR. FINESTONE: Thank you.

THE COURT: For clarification, with respect to filing the schedules, there was a failsafe in the event that the plan is not confirmed. What was the time frame for that, again?

MR. LEBLANC: Your Honor, I --

THE COURT: How many days, 75 days?

MR. LEBLANC: -- I think that's right. It's actually Mr. Porat, actually, I think, has taken the podium for Mr. Schak.

MR. PORAT: For the record, Daniel Porat, of Milbank, LLP, on behalf of the debtors. Yes, Your Honor, it is March 14th would be the date by which confirmation had to -- the plan had to be confirmed. Otherwise, we would have 90 days from the petition date, so another 15 days to file the schedules and SOFAs. That's the conditional favor we're asking for.

THE COURT: Okay. So, if a plan is not confirmed by March 14th, then we start counting from 90 days from the petition date?

MR. PORAT: Right, which is March 14th would be 75 days --

THE COURT: Okay.

MR. PORAT: -- so, we'd have an additional 15 days, subject, of course, to requesting further extension, but we would have to come and ask for that.

THE COURT: All right. Let me go back, first, to Mr. Finestone?

MR. FINESTONE: Thank you, Your Honor. The reason I described the motion as ex parte, I think, is obvious, but it's because they filed it yesterday. And, Your Honor, I had to spend all day filing an objection. Not everybody had the day

free yesterday. An official statutory committee certainly didn't have the day free yesterday, and they didn't have any -- it's just unreasonable. It is, effectively, an ex parte motion. And that is why all first-day relief is supposed to be supported, if it's going to be granted, on a constructive ex parte basis, requires a showing of irreparable harm.

They failed in their burden. There is no evidence, whatsoever. I'll tell you some countervailing evidence that came out today, as well, Your Honor. You heard PJT testify about a couple of days before Christmas, which is just about a week from -- less than a week from today, they uncovered unencumbered assets. They had never unencumbered before. They don't know whether they were worth $17,000,000/$25,000,000, but this debtor doesn't even know what this Estate has. And the debtor doesn't seem to care.

I do think they're asking to modify the rules, Your Honor, because they're asking for to overlap the disclosure statement notice and confirmation in the same 28 days. But whether I am right or wrong about that, there's another issue that Mr. LeBlanc is missing completely. There is a lien dispute issue in this case. Again, that's a real property rights issue. You can't resolve it in a contested matter. It doesn't matter. So, no, it cannot be resolved in 30 days. It cannot be resolved in 28 days. You can't take my property rights that way. If he cared about timing, he would have filed

an adversary proceeding. He would have prepared that in the last 30 days and filed it on the petition date. I would have done it if I knew it was coming. I didn't know it was coming, so we're working to file it. But that needs to be resolved by an adversary proceeding. And you can't have confirmation in 30 days. It's just a waste of money. It's a waste of the Estate's money, and I don't know why he continues to go forward like a bull in a china shop.

I can also guarantee it's going to mean they're not going to focus on mediation. So, he keeps saying, I'm getting concerned; I'm getting concerned about mediation. Well, he should just tell the Court right now if he doesn't want to mediate, because he certainly didn't want to negotiate consensually before, and, now, all he wants to do is put confirmation on in 30 days. It doesn't make any sense.

Somebody needs to stop this, Your Honor. It's an ex parte motion. There is no Committee formed. All of the evidence shows there is nothing going to happen in February. They have $70,000,000. He just got authority to pay off all the creditors in full, and things can slow down, and we can process -- if he's as confident as he claims he is on substance, he would put his faith in process.

If he is as confident, as he claims he is on substance, he would allow our votes to be considered on a plan and not try to silence them with clever lawyering. The truth

seems pretty apparent to me, Your Honor. I'd ask the motion be denied without prejudice.

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

Ms. Lieb?

MS. LIEB: Your Honor, just to clarify, the motion requests a waiver of the 341(a) meeting and filing of schedules, so we don't fully agree with the debtor's characterization that that's not what they're doing here. In terms of the conditional extensions of the deadlines for the 341 meeting and schedules in paragraphs 19 and 20, the confirmation hearing is scheduled for February 10th or the debtors are requesting that it be scheduled for February 10th. If the plan doesn't confirm on that date, then the debtors should file the schedules immediately and not 30/45 days after. And the U.S. Trustee should schedule the 341 meeting immediately to occur when the schedules are filed.

So, the time frames in paragraphs 19 and 20 are too extended in the even that there isn't a plan confirmed on February 10th, if that's the confirmation hearing date that Your Honor is going to set.

THE COURT: All right.

MR. LEBLANC: Your Honor, can I respond to both --

THE COURT: Yes.

MR. LEBLANC: -- just briefly?

THE COURT: Yes.

MR. LEBLANC: So, with respect to Ms. Lieb, I think, if I understand correctly, I think that's relief that we could agree to that if -- if we have a confirmation hearing, and it isn't successful, it shouldn't be immediate, obviously, because we -- that would, otherwise, mean we'd have to be working on the schedules in advance of that, so that we could file them immediately if the confirmation hearing -- if we weren't successful. But I think we could negotiate a period of time. I think we have 15 days, right now, if we had a confirmation hearing as late as the 75th day. I think we could probably live with that, Your Honor, subject to Mr. Porat or someone else jumping up and overruling me.

But if that's the concern, I think we could live with something like that, that just says, you know, no later than 90 days or, you know, 15 days after a confirmation hearing, if confirmation is denied. That, I think, if I understand that to be the request, that we could live with that.

On the rest of it, Your Honor, again, all of the insults aside, I'll take it at face value, Rule 6003 does not require a showing of irreparable harm for a scheduling motion. We are not asking, as I think everyone knows, we are not asking for Your Honor to shorten time. The Bankruptcy Rule -- this is fully consistent with the Bankruptcy Rules.

What Mr. Finestone continues to describe as a lien challenge, if somebody is simply saying, I think I am the

senior-most lien in your capital structure meant that you had to put a hold on everything, it would be utter chaos, Your Honor. That is not the law. What we -- we can deal with this -- what is at issue, here, is a contract interpretation dispute. We can deal with this at confirmation. We are prepared to do it.

And he's right, we're taking the chance. We are taking the risk, we, and the creditors who are supporting us, are taking the risk that we will prevail in that. And if we don't, if Your Honor bangs the gavel and says, we misclassified this case, we -- this is the most outrageous gerrymander in history, things I do not anticipate Your Honor will say, but if you were to say that, that is on us. That is at our risk. And, Your Honor, we are prepared to take that risk. We have done so consciously. And I just -- I don't understand -- I could understand if we were asking for actual relief. We are not asking you to shorten time. We're asking you to set a schedule, which 6003 does not require immediate irreparable harm to be shown.

THE COURT: All right. Thank you.

Ms. Lieb, I'll give you one last opportunity.

MS. LIEB: Thank you, Your Honor.

The U.S. Trustee does not agree or consent to any conditional time frame for the filing of schedules and conducting the 341(a) meeting. To the extent that the Court

finds that the debtors have shown cause under Section 341(e), that's fine. Your Honor can overrule us. But I'm just putting it on the record that we do not consent to that.

THE COURT: It's acknowledged. There is no U.S. Trustee consent. Thank you.

All right. Thank you, folks. As I don't need to say, I think you all appreciate it's been a long morning and afternoon, and I appreciate all the advocacy. Very well argued.

This is not a case that really began on December 20 -- yes, it was filed, I don't know, midnight or 11:58, whatever it was, on 12/20. But for all intents and purposes, this is a case that goes back at least to the Fall of 2024, if not before that. The parties have been engaged since that point in this -- in the restructuring of the debtor.

All of the parties who have an interest in the debtor's future operations or ability to honor its secured obligations, had an awareness of the issues, have been engaged in discussions and proposals and are certainly cognizant of the issues that have been presented. So, this is not a case that this Court views as suddenly going from start to finish in 30-odd days/40-odd days. There is a history to it.

Because of that, this Court has the confidence that the parties can, indeed, move this forward in the time frame proffered by the debtors with certain provisos. This Court

cannot stress its preference for the parties to undertake mediation in the short term, in the near term and will follow-up with the parties next week and maybe even go further steps, because, in the end, I think it makes the most sense, as all counsel have recognized.

But this Court does not believe there is a basis, now, to dislodge the debtor's pathway -- or proposed pathway with respect to seeking what our Local Rules allow and the courts have permitted in this District and outside this District, as far as having a combined disclosure statement and hearing. It's actually a process that I would advocate for every case. But nobody seems to want to take me up on that.

In so doing, there is risk to the debtor. There's always the risk to the plan proponents that you can actually lose ground if the evidentiary showings aren't there. There is risk that has to be taken. I'm going to approve the time frame, as it's been proposed, recognizing that we're coming back on February 2nd or 3rd, when you all tell us, and that schedules always retain some degree of flexibility.

I have yet to have a case that has always stuck to the schedules from the get-go. But I don't see a basis, now, to deviate from what the debtor seeks to accomplish with the plan proponents and what the majority of the creditor body seeks to accomplish. So, we'll pursue -- we will continue with the schedule. It calls for a confirmation hearing on February

10th. I have no doubt that, on February 2nd or 3rd, we will be discussing preconfirmation issues.

I am going to grant, in part, the motion to extend the time for the debtor to file schedules and for the U.S. Trustee to schedule a 341(a) meeting. They go hand in hand. You can't give one relief without the other. I don't think it's an effective 341(a) without having the schedules done. And, by the same token, I understand that, again, that's a considerable administration expense associated with filing schedules that may be mooted out if there is a consensus, an agreed plan or the debtor is able to overcome objections or the plan proponents can overcome objections.

So, I think it has to be a tighter schedule. So, I will require that -- I will extend the time for the debtors to file schedules to 15 days -- the later of 15 days following denial of confirmation or March 13th, whichever is later. And that will keep this case on track.

The parties are free to seek relief from those deadlines on either side, depending upon how things progress.

Are there any other issues the Court can address?

Mr. LeBlanc?

MR. LEBLANC: Nothing from the debtors, Your Honor.

THE COURT: Mr. Finestone? Ms. Lieb? Anything?

MR. FINESTONE: None for me, thank you.

THE COURT: Okay. And I did want to note, too, while

it's unusual to not have a debtor complete the schedules, given the volume -- the anticipated volume of information that's going to be produced as part of discovery in advance of any confirmation hearing, I don't think we're going to be short of information on the debtor's capacity and financial wherewithal.

So, I appreciate everybody's participation this morning and afternoon and professionalism. Again, if the Court can be of assistance with respect to either selecting a mediator or facilitating mediation, please feel free to reach out to the Court.

The Court is also available for any emergent relief that's required as you parties joust. So, beyond that, I would expect our chambers to be sent a package of orders when the language is finally completed.

Ms. Yudkin, did you want to be heard?

MS. YUDKIN: Your Honor, just with respect to the submission of the orders, we are going to forward to Your Honor's chambers the cash management order in advance of the other ones, because there is a little bit more time sensitivity there with respect to making sure that the bank accounts remain open, so that one will come separate from the larger package of orders.

THE COURT: That's fine. Just go directly -- don't send it to the general mailbox. Send it directly to chambers or at least copy chambers.

MS. YUDKIN: Will do.

THE COURT: You know how to do it.

All right, folks --

MR. LEBLANC: Your Honor --

THE COURT: -- again, thank you --

MR. LEBLANC: -- thank you so much. I just wanted to thank you, again. Mr. Dunn -- so he doesn't have to come back on camera -- but I know how much we appreciate Your Honor's willingness to accommodate us on this schedule, so thank you very, very much, Your Honor, for taking the time.

THE COURT: All right, folks, take care. Be well. We are adjourned.

(Proceedings concluded, 2:36 p.m.)

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

We, STEPHANIE SCHMITTER, ALYCE STINE, KIM WEBER, TRACY GRIBBEN AND JACQUELINE MULLICA, 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 on December 30, 2025.

/s/ Alyce Stine
ALYCE STINE

/s/ Stephanie Schmitter
STEPHANIE SCHMITTER

/s/ Kim Weber
KIM WEBER

/s/ Tracy Gribben
TRACY GRIBBEN

/s/Jacqueline Mullica
JACQUELINE MULLICA
J & J COURT TRANSCRIBERS Date: December 31, 2025