Docket #0583 Date Filed: 5/12/2026

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 26-60110-5-wak
	.	
VANDERBILT	.	James M. Hanley U.S.
MINERALS, LLC,	.	Courthouse and Federal Bldg.
	.	100 S. Clinton Street
Debtor.	.	Syracuse, NY 13261
	.	
	.	
	.	Wednesday, May 7, 2026
. . . . .	.	11:01 a.m.

TRANSCRIPT OF:

MOTION TO SELL PROPERTY FREE AND CLEAR OF LIENS UNDER SECTION 363(f) (MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION FOR ENTRY OF ORDERS (i)(A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) AUTHORIZING THE DEBTOR TO ENTER INTO THE STALKING HORSE AGREEMENT AND TO PROVIDE BIDDING PROTECTIONS THEREUNDER, (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF AND (F) GRANTING RELATED RELIEF; AND (ii)(A) APPROVING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (C) GRANTING RELATED RELIEF). FEE AMOUNT $199. FILED BY VANDERBILT MINERALS, LLC (DOC. NO. 16)

MOTION TO OBTAIN CREDIT UNDER SECTION 364(b),RULE 4001 (b), (d) , MOTION FOR RELIEF FROM STAY (MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION PURSUANT TO SECTIONS 105, 362, 363, 503, 507 AND 552 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 4001, 6004 AND 9014 AND LOCAL RULES 2002-1, 4001-2 AND 9013-1 FOR INTERIM AND FINAL ORDERS (i) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (ii) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (iii) MODIFYING THE AUTOMATIC STAY, (iv) SCHEDULING A FINAL HEARING AND (V) GRANTING RELATED RELIEF). FEE AMOUNT $199. FILED BY VANDERBILT MINERALS, LLC (DOC. NO 17)

JOINDER OF SANDRA SCHREINER AND OTHER MESOTHELIOMA CLAIMANTS REPRESENTED BY MRHFM TO THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DISMISS THE CHAPTER 11. FILED BY SANDRA SCHREINER (DOC. NO. 240)

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MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION PURSUANT TO SECTIONS 105, 362, 363, 503, 507 AND 552 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 4001, 6004 AND 9014 AND LOCAL RULES 2002-1, 4001-2 AND 9013-1 FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO REFINANCE ITS POSTPETITION FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) MODIFYING THE AUTOMATIC STAY, FEE AMOUNT $199 (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF. FILED BY VANDERBILT MINERALS, LLC (DOC. NO. 554)

BEFORE THE HONORABLE WENDY A. KINSELLA
UNITED STATES BANKRUPTCY COURT JUDGE

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(Proceedings commence at 10:01 a.m.)

(Call to Order)

THE CLERK: You may be seated.

Thursday, May 7th, 2026, 10:00 a.m. calendar, Case Number 26-60110, Vanderbilt Minerals, LLC. We have several matters on.

Docket Number 16, motion to sell property free and clear of liens and related relief; Docket Number 17, motion to obtain credit, motion for relief from stay, and related relief; and Docket Number 510, motion to stay pending appeal.

Please note your appearances for the record.

THE COURT: So we have a full house today, both in court and on video. We will start with the appearances in court and counsel for the debtor.

MS. POSIN: Thank you, Your Honor, Kim Posin, Latham & Watkins, proposed counsel for the debtor. With me today are my partners Betsy Marks and George Davis.

THE COURT: Good morning.

MR. SULLIVAN: Good morning, Your Honor, Charles Sullivan, Grayson Walter, Bond, Schoeneck & King, co-counsel to the debtor.

THE COURT: Good morning.

THE COURT: Counsel for the independent manager.

MR. BARNOWSKI: Good morning, Your Honor, Dan Barnowski, Katten Muchin, for Ben Pickering, and with me is my

partner Marc Roitman.

THE COURT: Good morning.

And counsel for the Committee.

MR. JONAS: Good morning, Your Honor, Jeff Jonas from Brown Rudnick. With me today is my colleague Lydell Benson. Mr. Self, Lucas Self from the Caplin & Drysdale, our co-counsel, just steppe out, but we're here for the committee, Your Honor. Thank you.

THE COURT: Good morning.

Counsel for the U.S. Trustee.

MS. BARBARUOLO: Good morning, Your Honor, Paula Barbaruolo on behalf of the United States Trustee.

THE COURT: Good morning.

Counsel for Vanderbilt Holdings.

MR. HOWARD: Good morning, Your Honor, George Howard, Vinson & Elkins, on behalf of non-debtor parent R.T. Vanderbilt Holding Company, Inc., and the other non-debtor affiliates.

I think Paul Levine might be on the line with me this morning as well.

THE COURT: Thank you. Good morning.

MR. LEVINE: Yes, good morning, Judge, Paul Levine, Lemery Greisler, local counsel for Mr. Howard and the clients.

THE COURT: Good morning, Mr. Levine.

Counsel for Commodore.

MR. DOVE: Good morning, Your Honor, Jeffrey Dove of

Barclay Damon on behalf of the Commodore entities. Also on line is David Agay of McDonald Hopkins.

THE COURT: Good morning.

MR. DOVE: Thank you, Your Honor.

MR. AGAY: Good morning, Your Honor.

THE COURT: Good morning.

MS. DOYLE: Good morning, Your Honor, Lauren Doyle, Milbank LLP, counsel for VM Buyer, LLC, the successful bidder and the proposed DIP lender, and Riverspan Partners LLC. I'm joined by my partner Evan Fleck.

Your Honor, just one housekeeping matter that if I could bring to your attention? We submitted our *pro hac* request this morning with the Clerk and they've been docketed at Docket Numbers 559 and 560, and we just request permission to speak at today's hearing.

THE COURT: Permission is granted. Thank you.

MS. DOYLE: Thank you, Your Honor.

THE COURT: Let's see. Counsel for Fidelity & Deposit Trust Company?

(No audible response)

THE COURT: Counsel for United Steelworkers?

MR. STOLZ: Good morning, Your Honor. Matthew Stolz of Cohen, Weiss and Simon on behalf of the United Steelworkers Union.

THE COURT: Good morning.

Counsel for the PBGC?

(No audible response)

THE COURT: Counsel for the EPA?

MR. INDRISANO: Good morning, Your Honor, Matthew Indrisano for the United States on behalf of the EPA and Department of Interior.

THE COURT: Good morning.

Is there any counsel for talc claimants?

(No audible response)

THE COURT: Hearing none, I will now open it up to anyone else who wishes to note their appearance by video.

MR. HULL: Good morning, Your Honor, Nathaniel Hull here on behalf of Jungbunzlauer, and which I'll for the sake of convenience refer to as JBL, if that's okay with you, Your Honor --

THE COURT: That is --

MR. HULL: -- and I'm here on -- thank you, Your Honor.

THE COURT: That's okay. I was wondering how to pronounce that myself. Thank you.

MR. HULL: Thank you.

MR. LICHTENSTEIN: Good morning, Your Honor, Scott Lichtenstein from Chiesa Shahinian for Fidelity & Deposit Company of Maryland and Zurich North America.

THE COURT: Good morning.

Any other appearances?

(No audible response)

THE COURT: Okay. The Court is going to first issue its oral ruling on the stay pending appeal, then I would like to address the application for the shortening time for the interim DIP, replacement DIP financing, and then we will go into the sale hearing. It makes sense to me.

So, before the Court is the motion of the committee for a stay pending appeal, at Docket 510, that's been joined by certain talc claimants represented by Belluck Law LLP, at Docket 528, and Maune Raichle Hartley French & Mudd, LLC at Docket 538, along with the oppositions to the motion filed by Mr. Pickering, the independent manager, the response at Docket 531, R.T. Vanderbilt Holdings, at Docket 535, and the debtor at Docket 536 and 537.

The committee, joined by certain individual talc claimants, seeks a stay pending appeal of the order authorizing and approving the global settlement between the debtor and R.T. Vanderbilt Holding Company, Inc., and certain of its subsidiaries, and granting related relief, which I will refer to as the settlement order, at Docket 493. The committee asserts *inter alia* mistakes of law and fact in the memorandum decision on motion to approve the settlement at Docket 491.

The debtor's independent manager and sole member of the Independent Special Committee, Mr. Pickering, argues that

the stay pending appeal should be denied, which arguments are joined by the debtor and Holding. For the purposes of this ruling, the Court will refer to Mr. Pickering to differentiate his role with the debtor as independent manager and proponent of the settlement, and will refer to the debtor for those arguments advanced by the debtor through Bond, Schoeneck & King and Latham & Watkins.

At the outset, the committee argues statutory mootness under 363(m) would apply to this appeal. The Code states the reversal or modification on appeal of an authorization under section (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal, under 11 U.S.C. 363.

The Court agrees with the UCC that the structure of the settlement supports a finding that Section 363(m) does not apply to this case because the terms of the settlement do not contemplate a transfer of property of the estate under Section 363(b) or (c). Moreover, the Second Circuit has held that higher courts cannot take any action that affects the judicially authorized sale if the purchaser acted in good faith and no stay was granted, and that is In re Gucci, 126 F.3d at

389.

In Motors Liquidation, the Second Circuit specifically held that the Bankruptcy Court's determination on equitable mootness was an advisory opinion and thereafter vacated the decision as it pertains to that issue. Accordingly, to the extent there is some grounds to find Section 363(m) might apply, following the Motors Liquidation directive, the Court is explicitly barred from rendering a decision on the current hypothetical scenario.

Turning to the stay pending appeal. Under F.R.B.P. 8007, "a party must move first in the bankruptcy court for the following relief: (A) a stay of the bankruptcy court's judgment, order, or decree pending appeal."

The standard for granting a stay pending appeal is high. The party seeking a stay of a lower court's order bears the difficult burden. In re Golden, 671 B.R. 638 (Bankr. E.D.N.Y. 2025).

Stays pending appeal under Bankruptcy Rule 8007 are the exception, not the rule, and are granted only in limited circumstances. In re Stephen Carl Silverberg 2026 WL 994441 at *6.

The UCC as movant carries the burden of proof. The Supreme Court has established a four-factor test to determine whether to grant a stay pending appeal as follows: Whether the stay applicant has made a strong showing that he is likely to

succeed on the merits, whether the applicant will be irreparably injured absent a stay, whether the issuance of the stay will substantially injure the other parties interested in the proceeding, and where the public interest lies, and that's Nken v. Holder, 556 U.S. 418.

Previously, when considering the four factors in a test governing the granting of a stay pending appeal, some courts have required satisfaction of all four factors, while other courts more recently have utilized an approach that balanced the four factors. See In re Stephen Carl Silverberg, 2026 WL 994441.

Courts in the Second Circuit have treated these four factors somewhat like a sliding scale, citing approvingly other circuit's formulation that more of one factor excuses less of the other, and that is In re Endi Plaza LLC, 2026 WL 189891. Nevertheless, courts have stated that irreparable injury to the movant and likelihood of success on appeal are the two most critical factors. In re Eletson Holdings, Inc., 2025 WL 726248.

Regarding the first factor that the UCC is likely to succeed on the merits, the substantial-possibility-of-success test is considered an intermediate level between possible and probable, and is intended to eliminate frivolous appeals. That is In re 473 West End Realty Corp., 507 B.R. 496.

The probability of success that must be demonstrated

is inversely proportional to the amount of irreparable injury to the plaintiff who will suffer absent a stay. In re Sabine Oil & Gas Corp., 548 B.R. 674. The UCC must make a strong showing that it is likely to succeed on the merits of the appeal.

The UCC's argument regarding this factor is three-pronged. First, it argues that it's likely to succeed on the appeal as "Second Circuit precedent is clear that a tort victim has a right to a jury trial on a claim asserted against an alleged alter ego, and that this Court does not have the authority to abrogate a tort victim's right to a jury trial with respect to such victim's claim against a debtor, let alone a non-debtor that has not made its assets available for distribution to claimants." That's the motion at paragraph 41.

The UCC also moves on the ground that this Court ruled that an estate claim statement can bar actions seeking to impose liability on a third party in circumstances in which a plaintiff might have alleged that the third party was responsible for asbestos claims against the debtor on a piercing-the-corporate-veil theory where Section 524(g)'s requirements are not satisfied. That is the motion at 45.

In response, Mr. Pickering and Holdings argue that the UCC has completely failed to contend with HK Int'l Funds Invs. (In re Kwok), 172 F.4th 145; St. Paul Fire and Marine Insurance Company v. Pepsico, Inc., 884 F.2d 688; and In re

Nordlicht, 115 F.4th 90.

At the outset, the Court wishes to once again emphasize that direct claims against the debtor and non-debtor affiliates are not being released. The Court is concerned that the UCC has conflated, whether intentionally, unintentionally, or otherwise, the release of the alter ego claims with the release of direct personal injury and wrongful death claims. The Court noted at the hearing held on April 22nd, 2026, and in its memorandum and in the order approving the settlement, and will repeat once again, that direct claims held by claimants are not being released. The Court cautions UCC counsel on this distinction as the talc claimants and an appellate court may be misled by the UCC's statements. The talc claimants' rights to pursue direct claims and have a jury trial against the non-debtor affiliates are not affected by the settlement and releases. As a result, this settlement is not a Purdue end-around, and the claimants' jury trial rights in connection with direct claims against the non-debtor affiliates are preserved.

Turning to the merits. The UCC noticeably omitted any reference to In re Kwok. The recent Second Circuit Court of Appeals decision held that, as an initial starting point, under the Bankruptcy Code the bankruptcy trustee may bring claims founded both on the rights of the debtor and on certain rights of the debtor's creditors, and that is In re Kwok, 172 F.4th 145 at 153. Holding that Section 544(a) permits the

trustee to assert any generalized claims that would belong to a hypothetical high-priority lien creditor, the Kwok court, analyzing Delaware law, found that reverse veil-piercing claims belong to the estate.

Although the Kwok court dealt with reverse veil-piercing, its logic is instructive and precedential. First, the court looked to the state law to determine if a claim could be brought and then held, if a claim is a general one with no particularized injury arising from it and if that claim could be brought by any creditor of the debtor, the trustee is the proper person to assert the claim. This approach promotes the equitable distribution of assets among creditors by allowing the trustee to exercise the strong-arm power and recover corporate assets for the benefit of all creditors of the corporation, thus preventing a race for assets in which the savviest creditors would reap the greatest rewards, and that is Kwok quoting Nordlicht.

Kwok, decided only several weeks ago by the Second Circuit Court of Appeals, is on point here, and the Court must abide by this precedent, especially when the UCC has failed to distinguish how Kwok, St. Paul Fire, and Nordlicht are different from this case. In sum, once the bankruptcy case is filed, the alter ego claims are generalized claims that are estate property and, as such, they can be settled and released by the debtor.

At the hearing, the UCC appeared to concede that the Court did correctly follow Kwok, but that Kwok's own logic is faulty and that eventually the logic in Kwok will be overturned by the Supreme Court. This hardly meets the standard that the UCC has made a strong showing it is likely to succeed on the merits of the appeal. Indeed, this Court is bound to follow Kwok, and the UCC has not given any grounds to support that this Court's analysis and conclusion were in error.

The Court further notes that the UCC has cited the recent Third Circuit Court of Appeals decision in the In re Whittaker, Clark & Daniels, 2026 WL 1131929. The UCC has attempted to portray the ruling in Whittaker as recognizing that it could not rely on Section 544 of the Bankruptcy Code to treat claims based on the doctrine of successor liability as estate claims without contradicting the Supreme Court's holding in Caplin, and that is the motion at paragraph 43. However, this portrayal of the holding ignored the Third Circuit ultimately found that successor liability claims belong to the bankruptcy estate, as it followed the logic of In re Emoral, 740 F.3d 875. As a result, this argument pursued by the UCC fails.

Another argument advanced by the UCC is that the Court's application of a heightened scrutiny in finding the Iridium factors were met was a mistake of law, motion at paragraph 47. In opposition, Mr. Pickering argues that the

Court's decision approving the settlement is well within the range of reasonableness.

The Court rejects the UCC's argument that it failed to apply the Iridium factors correctly with a heightened standard. The Court noted in its memorandum that it applied the heightened standard in analyzing the Iridium factors. See memorandum at pages 11 and 12.

Although the UCC argues that the committee is unable to locate any case where a court has applied heightened scrutiny to an insider settlement, approved the insider settlement under the circumstances similar to those presented by the settlement motion, and that that decision survived appellate review. This is not sufficient to find a mistake of law or fact.

Moreover, the settlement was advanced by Mr. Pickering, the independent manager with no ties to the debtor or its affiliates, which mitigated the Court's concerns about the insider nature of the settlement.

Finally, the UCC argues it was denied due process. The UCC states, instead of holding the Special Committee to its burden of proof, the Court placed the burden of proving the merits of the various causes of action against the debtor's insiders and affiliates on the committee formed just six weeks before the Court's hearing on the settlement motion, before the committee could complete its investigation and meaningful

discovery could take place. That's the motion at paragraph 48.

This is a very strong allegation and entirely incorrect. The Court acknowledged the tight timelines of this case and settlement in its memorandum. It thoughtfully weighed this consideration and concluded that the UCC had appropriate time and engaged in sufficient discovery to assess the alter ego claims being released and other aspects of the settlement. The Court did not shift the burden to the UCC; instead, the burden rested with Mr. Pickering. The Court found his testimony credible and determined he satisfied his burden that the settlement was fair and equitable, as required by the heightened standard of review. That's the memorandum page 15 and 16.

The UCC was not required to prove the merits of the alter ego claims, but it did need to provide some basis to support its claims that the settlement and consideration paid was not fair and reasonable. In fact, the UCC did submit evidence that Holdings may have been, quote, "pulling the strings of the debtor," and the debtor may have been rubber-stamping Holdings' actions. However, Mr. Pickering reviewed that information and found the other evidence was to the contrary, and concluded it was not sufficient to support alter ego claims. The Court believed that testimony and found Mr. Pickering had overcome the UCC's objections in that regard.

In light of the above, the Court concludes that the

UCC as the stay applicant has not made a strong showing that it is likely to succeed on the merits.

Next, the Court considers if the UCC will be irreparably injured absent a stay. A showing of probable irreparable harm is the principal prerequisite for the issuance of a stay, and it must be neither remote nor speculative, but actual and imminent. In re Adelphia Communication Corp., 361 B.R. 337.

The Court wants to stress for those listening that the term irreparable harm as used to consider a stay pending appeal is not being used in the same context when discussing the talc claimants' injuries. For those talc claimants who have suffered terribly from life-altering illnesses, diseases, and death, the irreparable harm in this context is not meant to undermine the gravity of the harms that you have suffered; instead, it is strictly a legal term used when considering the current motion.

A majority of courts have held that a risk of mootness standing alone does not constitute irreparable harm. In re Sabine Oil & Gas Company, 548 B.R. at 682.

In the Northern District of New York, irreparable harm should only be found where there is a risk of mooting significant claims of error. That's Levine v. B and R Acquisition Partners, LLC, 2024 WL 3829567.

The Court finds in light of the Second Circuit

precedent that allows the debtor to settle its alter ego claims and the Court's heightened analysis of the Iridium factors, the UCC has not raised significant claims of error which give rise to the level of irreparable harm.

The third factor is whether the issuance of a stay will substantially injure the other parties interested in the proceeding. The party seeking a stay must also establish that the non-moving party or other parties will not suffer substantial harm, and that is In re 473 West End Realty Corp., 507 B.R. at 507.

In evaluating the prospect of such injury, the measure is not irreparable harm, but instead substantial harm, which is of a lower standard compared to the showing that a movant will suffer irreparable harm in the second factor. That is US Bank National Association v. Triaxx Asset Management, 2020 WL 359907.

When applying this factor, courts have considered whether the debtor's ability to prosecute a plan and emerge from bankruptcy will be completely constrained, and the debtors would be forced to incur the expense and bear the uncertainty of maintaining their Chapter 11 cases while waiting in appellate limbo. And that is In re Sabine Oil & Gas Corp., 548 B.R. at 683.

The UCC argues that no substantial injury will occur to the interested parties because the settlement by its own

terms is not yet final and it cannot be consummated until the order approving it becomes a final, unappealable order. The UCC also argues that Commodore, as the stalking horse bidder and DIP lender at that time, is not prejudiced by a stay pending appeal because it knew the settlement would not be consummated until the settlement order becomes a final, unappealable order.

Mr. Pickering responds that the settlement is essential for any sale of the debtor's assets as a going concern and, as the debtor details in its own filing, it cannot endure a prolonged bankruptcy; it will run out of liquidity, which will force a value-destructive fire sale of constituent parts that will ultimately destroy the value of the estate, to the harm of all its constituents. And that is the debtor's response at paragraphs 34 and 36.

The debtor's representative, Mr. Vomero, testified the Section 363 sale is contingent on the inclusion of the settlement assets that will not close if a stay is imposed. As a result, the debtor would not collect any sale proceeds or receive further DIP financing. The debtor would run out of cash and cease operating as a going concern within approximately a month, 125 jobs would be lost, and the debtor likely would be forced into a liquidation, to the detriment of all of its stakeholders, including the talc and non-talc creditors. As a result, this factor weighs against the

imposition of a stay pending appeal.

Turning to the final factor, where the public interest lies, which considers the interest of third parties who act in reliance on the Bankruptcy Court's ruling. That's Beneficial Home Service Corp. v. Moreau, 135 B.R. 209.

Courts have held the law permits the stay pending appeal of an order where the high standards for a stay are met, but where those standards are not met a stay pending appeal would injury the interests of sound case management in the bankruptcy process and, as a consequence, would also injure the public interest. That's Levine v. B and R Acquisition Partners, LLC, 2024 WL 3829567.

In general, courts recognize that the public interest disfavors stays because the public interest favors the expedient administration of the bankruptcy proceeding. That's G.L.A.D. Enterprises, LLC v. Deutsche Bank, 2023 WL 5127835.

The UCC argues that this element is met as tort victims lose their right to appear, to be heard, and to seek just compensation in the civil justice system against wealthy non-debtors. That's their motion at 77. The debtor responds that the public interest of bankruptcy discussed above weighs against the granting of a stay.

Again, the Court reiterates that the talc claimants' direct personal injury and wrongful death claims against non-debtors are not being released. Imploding this case and

sending this debtor into liquidation harms the very claimants that this bankruptcy process is designed to protect. The third parties relying on the settlement approval would also be significantly harmed, and the millions of dollars in estate resources for administering this case up until this point would be wasted.

The Court therefore concludes that the public interest lies in denying the stay.

In weighing the factors above, the Court denies the motion for a stay pending appeal. Because it denies the stay, the Court need not reach Mr. Pickering's argument regarding whether a bond should be required, and the Court will look to the committee for an order on its motion.

I apologize. At the beginning of the statement, apparently I made an error and said the UCC argues 363(m) applies, they argued it did not apply. So, to the extent that I just corrected that on the record, I apologize for the lengthy reading and for that error.

I understand at the beginning of the calendar there was an issue with some microphones and the PBGC would like to note its appearance. So, why don't we just do that, and then we will turn to the DIP shortened time application.

Would counsel for the PBGC like to note their appearance for the record?

MR. ROBERTSON: Yes, good morning, Your Honor, this

is Dan Robertson appearing for the PBGC. Thank you and apologies for the technical difficulties.

THE COURT: Thank you. Your appearance is duly noted.

The Court before we get to the sale hearing would like to discuss the application for the substitute DIP financing on shortened time.

MR. JONAS: Your Honor, if I may, thank you.

THE COURT: Certainly.

MR. JONAS: Jeff Jonas from Brown Rudnick for the committee. Just three quick comments, Your Honor, relating to that.

First of all, I just want to say, Your Honor, I may not like your decisions, but it's obvious how much time and effort you put into it and that's certainly appreciated. So, thank you.

Second, I'll let Mr. Molton know I have a bone to pick with him that he came here to argue, he left, and he left me to bear the brunt of your decision today, but I'll take that up with him.

THE COURT: Absolutely.

MR. JONAS: Third, Your Honor, I would ask and I'm duty bound to ask if we -- if the existing stay with respect to the settlement could continue for a short period of time. We intend to -- obviously, we filed an appeal, and our next step

is to seek a stay at the District Court, which we intend to do. We'll be ready to do that very soon, but it's not in the next few minutes.

So, I don't know whether -- I haven't -- since we didn't know where this was going to go, I haven't had a chance to discuss this whether there would be any issues with respect to a short, we're talking about a matter of days or a week, I suppose, continuation of that stay. So, I haven't raised that, I want to be fair about that --

THE COURT: Yes.

MR. JONAS: -- but it is something I wanted to, if necessary, put before the Court.

And that's all I have to say and thank you, Your Honor.

THE COURT: Thank you, Mr. Jonas.

And the Court will hold on that request and give the parties --

MR. JONAS: Understood.

THE COURT: -- when we take a break an opportunity to discuss that to see if there's some logistics that can be worked out that -- before issuing a ruling in that regard.

Thank you.

MS. POSIN: Your Honor, Kim Posin of Latham & Watkins, proposed counsel for the debtor. I apologize for not getting our documents on file sooner last night. We certainly

anticipated and hoped that we would be able to do so, but I assure you that all of the parties are working very hard to get them finalized in a matter of a few days.

So, we do have a DIP motion that was filed late last night admittedly, and we have requested an order shortening time to allow that DIP hearing to go forward today, if possible. I think our explanation as to why we think it should is -- for one thing, it's necessary to avoid irreparable harm to the estate, but we had already intended to have a final DIP hearing with respect to the existing DIP facility and the new DIP facility, the replacement DIP facility is substantially similar to the existing DIP facility. So, any issues with that, you know, DIP would presumably be the same issues that any party would have to the replacement DIP.

THE COURT: Thank you. I did want to hear from the committee and the U.S. Trustee on that, recognizing that that was a 2:00 a.m. filing, and I just wanted to hear -- I recognize that things have not been circulated, but notice and opportunity to be heard is critical. So, why don't we hear from Mr. Self.

MR. SELF: Thank you, Your Honor, Lucas Self, Caplin & Drysdale, on behalf of the UCC.

So, we were consulting with our financial adviser. We didn't get it previewed last night, you know, we saw it when it was filed. So, our financial adviser is going through it as

quickly as they can, but at this point, short of just reserving all our rights on everything, I don't know that we're in a position to go forward with argument on it.

THE COURT: My thought was -- I'm not quite sure how long we envision the sale testimony, but my thought was to perhaps set it for 2:30 this afternoon to give the -- I know you have teams working behind the scenes while you're in court, which is very helpful, but -- or we can do tomorrow if we need to do tomorrow, but the Court has been incredibly accommodating on this case to give its constituents sufficient time, but the Court also needs time to consider these things, the committee needs time, the U.S. Trustee needs time. So, filing at 2:00 a.m. with a 10:00 a.m. request for a hearing just isn't sufficient, recognizing that there's significant overlap with the prior DIP, recognizing tomorrow is a DIP milestone, but the Court isn't going -- I'm very sensitive to time-sensitive matters, but the Court is not going to be pressured to make rulings or make the committee -- I think a global reservation of rights probably does the DIP lender more harm than good. If we can give a few hours, sufficient time for the committee to review and identify issues, or we will figure out the other options for having that heard on a timely basis.

MR. SELF: And, Your Honor, I'll talk to my team during the sale hearing and see where -- if we think 2:30 we can go forward with that or if we may need more time.

THE COURT: Understood.

MR. SELF: Thank you.

THE COURT: Your rights are preserved to object, I just wanted to throw out some potential times, also recognizing another hearing tomorrow, the estate resources are going -- a lot of times being dedicated for travel and overnight and court hearings and things and, if that's going to be an evidentiary hearing, we have witnesses here today, but recognizing lack of notice for the committee and the U.S. Trustee is problematic with that.

MR. SELF: Thank you, Your Honor.

THE COURT: Thank you.

Ms. Barbaruolo, did you want to weight in on that?

MS. BARBARUOLO: Thank you, Your Honor. I'm a team of one, so I have not had a chance to review; I have seen them, I was able to print them before I traveled here today. So, I respectfully request that I will review, I will speak to the committee, I will speak to counsel, but I would appreciate the adjournment at least until 2:30 to weigh in.

THE COURT: Yes, we will. And the Court has not entered an order on that because I wanted to have this conversation before we --

MS. POSIN: I appreciate that, Your Honor. Certainly 2:30 would work for the debtors. I did -- or tomorrow, if that works for all the parties and the Court -- I did want to note

that we do have a witness today who we expect to testify with respect to both the sale motion and the DIP, Mr. Mendelsohn, who is not available tomorrow. So, in the event the hearing is pushed to tomorrow, we would ask to allow the testimony to proceed today, if possible.

THE COURT: Yes, there's been a lot of overlapping testimony, Mr. Mendelsohn has testified several times before the Court, which is already on the record here. So, I don't think the committee would have any issue with that.

Mr. Jonas, is that --

MR. JONAS: I think -- I'm guessing this is all going to be much about nothing, Your Honor, but it's hard to say without knowing what the issues are going to be. So I would respectfully suggest, Your Honor, we carry it, let's get through the sale, and I think we'll be in a better position in a short period of time.

Thank you.

THE COURT: That makes complete sense. Thank you, Mr. Jonas. Thank you.

MS. POSIN: Your Honor, with that, we'd like to proceed with the sale motion, and we would prefer to start with evidence, if that works for the Court.

THE COURT: It does.

MS. POSIN: I turn the podium over to my partner Ms. Marks.

MS. MARKS: Good morning, Your Honor, Betsy Marks from Latham & Watkins, proposed co-counsel for the debtor.

THE COURT: Good morning.

MS. MARKS: Your Honor, the debtor does have an exhibit list. What we'll try to do is parse through which exhibits are for the sale and which are for the DIP, and I'll move in the sale exhibits. I think I'll do the -- I think we're still working on that list, so I'll put on our first witness and then move in the exhibits at the end.

THE COURT: Thank you. And, Ms. Marks, just for the record, if there is a document or an exhibit that you want the Court to pay attention to a particular part of, the Court expects witness testimony on that. The Court will not independently review the documents that are submitted into evidence.

MS. MARKS: I do have one exhibit to show, and I have hard copies to pass out.

THE COURT: Thank you.

MS. MARKS: So the debtor would like to call Eric Mendelsohn of Greenhill.

THE COURT: Thank you.

THE CLERK: Raise your right hand. State your full name and spell your last.

ERIC MENDELSOHN, DEBTOR'S WITNESS, SWORN

MS. MARKS: And just so the Court is aware and the

parties are aware, his direct exam will address the DIP as well. Understood if he needs to come back for cross-exam, but since the issues are so overlapping, we thought it was most efficient to do one direct.

MR. JONAS: No objection.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MS. MARKS:

Q Good morning, Mr. Mendelsohn.

A Good morning.

Q You and Greenhill are the debtor's investment banker?

A Yes.

Q How long have you been the investment banker?

A Since August of 2025.

Q Over the course of your career --

THE COURT: I'm sorry, would you pause for one minute?

MS. MARKS: Of course.

THE COURT: We need to disconnect -- or pause the video participation.

(Pause)

THE COURT: Okay, please proceed. I apologize, Ms. Marks.

MS. MARKS: Sure.

BY MS. MARKS:

Q How many 363 sales would you say you've worked on?
A I've worked on dozens of 363 sales.
Q And how about DIPs, how many DIP financings have you worked on?
A Dozens as well.
Q Have you already testified before the Court in prior hearings regarding the debtor's marketing process for its assets and for DIP financing?
A Yes, I have.
Q So, I would like to cover those topics again, but I'll be brief and at a high level since we're all familiar with that already.
A Thank you.
Q Greenhill oversaw the debtor's marketing process?
A Yes, we did.
Q Let's talk about the marketing of the assets first. Prepetition, how many potential buyers did Greenhill reach out to?
A We reached out to 120 potential buyers prepetition.
Q And of those 120, how many signed an NDA?
A Thirty.
Q Of those, how many conducted meaningful due diligence prepetition?
A Between ten and 20.
Q Did any of them submit an indication of interest?

A Yes.
Q How many?
A So, we had five indications of interest for substantially all of the debtor's assets, an additional three for smaller parts of the debtor's assets.
Q Of the five who were interested in substantially all of the debtor's assets, were they interested in purchasing solely the debtor's assets?
A No.
Q What were they interested in?
A They were also interested in certain non-debtor assets that came to be called settlement assets.
Q And, generally, what are the settlement assets?
A So, generally, they are a processing plant in Murray, Kentucky that processes raw materials into the VEEGUM products, that's one; second is the Lyles mine, which provides input into the VEEGUM products as well, smectite to be particular; and then, third, there's some equipment as well associated with VEEGUM.
Q What is your understanding of why potential buyers wanted the settlement assets in addition to the debtor's assets?
A The VEEGUM products are really critical to the company's financial performance, it's approximately a third of the revenues and an outsized portion of the profits, and a lot of the bidders also felt like that was the future growth engine of

the company. They also felt that they wanted to control the production of that critical family of products and not have that outsourced to a third party.

Q Based on your discussions with potential buyers during the prepetition marketing process, did you form a view as to whether the debtor would be able to sell its assets without the settlement assets?

A Yes.

Q What was your view?

A My view was that the ability to sell the debtor's assets would be very compromised if we couldn't also include those certain non-debtor assets that I just described.

Q And let's talk briefing about the marketing process for the DIP financing next. During the prepetition marketing process, did Greenhill reach out to potential DIP lenders?

A Yes, we did.

Q How many?

A Seventy.

Q And were there any lenders interested in providing DIP financing on a stand-alone basis without also purchasing the assets?

A There was one that expressed an initial indication of interest on that basis.

Q And was that a viable DIP proposal?

A It was not.

Q Why not?

A So that bidder had a number of problems. First, it was an initial indication, so this is just sort of a two-page term sheet prior to any real diligence. They required that the company have a separate stalking horse bidder, they required that the settlement assets, what became known as the settlement assets be contributed as well because they were very concerned about lending into a liquidation. So, both of those factors went to that point. They also were extraordinarily expensive, they required exclusivity, and they required full reimbursement of expenses.

Q Did any of the prepetition indications of interest you received for the assets include a DIP financing proposal as well?

A Yes.

Q How many?

A I'd say three of the five expressed an interest in providing DIP financing.

Q And of the three, was Right Lane ultimately selected as the stalking horse bidder and the DIP lender?

A Yes.

Q How did the debtor decide to select Right Lane out of the three?

A Sure. Out of the three, first I would say that one terminated their interest post-due diligence. So all of these

five that I'm describing are just very much first round indications of interest prior to full due diligence. And then it came down to two parties and, as we were going through diligence and documentation and negotiations with those two parties, Right Lane's proposal was superior, so that's why we were going forward with them; they provided more value to the estate.

Q In your opinion, could the debtor have obtained stand-alone DIP financing without an asset sale?

A No.

Q Let's talk about post-petition now. Post-petition, did the debtor continue marketing the assets?

A Yes.

Q Did Greenhill continue reaching out to additional potential buyers?

A Yes, we did.

Q And did the committee suggest potential buyers?

A Yes, they did.

Q How many additional post-petition buyers were reached out to?

A Approximately 30, that's the number that the committee came up with.

Q And did any new potential buyers emerge from that outreach?

A A handful did engage post-petition and diligence.

Q When was the bid deadline?
A It was April 24th.
Q How many qualified bids did the debtor -- or had the debtor received as of that date?
A So, there were two qualified bids, and then there was a third bid for a small parcel at the Gouverneur site.
Q Who were the two qualified bids from?
A Can I name them? I guess I can name them publicly, Right Lane and Riverspan.
Q The cat is already out of the bag on that.
A Yes.
Q Based on your experience, how would you describe the robustness of the debtor's marketing process to solicit bids in advance of the auction?
A I would characterize it as very robust. We went out to 150 different parties. That was a long list. We provided many, many opportunities for parties to do diligence, to engage. We went out to every single party multiple times to try to re-engage, even those that hadn't engaged. So I would say it was a very robust process and we canvassed the market.
Q Same question regarding the DIP, how would you describe the debtor's marketing process for DIP financing?
A I would also call that robust. I typically would not go to 70 parties for DIP financing. In recognition of some of the unique factors of this case, we wanted to go to a very broad

universe of potential investors to do the DIP and, similarly, I feel like we canvassed the market.

Q Did the debtor hold an auction?

A Yes.

Q That was Monday?

A That was Monday.

Q Did you attend?

A Yes, I did.

Q Was the committee in attendance at the auction?

A Yes, they were.

Q Which potential buyers were at the auction?

A We had Right Lane and Riverspan, and then the third party that was interested in the parcel of land.

Q Could you describe how the bidding progressed at the auction?

A Yes, there were multiple rounds of bidding. I would say it was lively, vigorous, and robust, went through many rounds, and we were able to significantly increase the purchase price.

Q Did you encourage all bidders to submit their highest and best bids?

A Yes.

Q Who was selected as the winning bidder?

A Riverspan.

Q And what was the amount of the winning bid?

A That was $64 million.

Q Did Riverspan's bid include the settlement assets?
A Yes, it did.
Q Is there a backup bidder?
A Yes.
Q And who is that?
A That is Right Lane.
Q And what was Right Lane's bid?
A Sixty two million, four hundred thousand.
Q Why did the debtor select Riverspan over Right Lane?
A It provided -- primarily, it provided greater value to the estate through the higher purchase price.
Q Were any members of the debtor's board present at the auction?
A Yes.
Q How many?
A Three.
Q Three out of four?
A Three out of four.
Q And was the independent manager, Ben Pickering, there?
A Yes, he was.
Q Did the directors and the independent manager, were they involved in evaluating the bids both at the auction and during the marketing process?
A Yes, they were.
Q Does Riverspan's bid also agree to supply a DIP?

A Yes.

MS. MARKS: And at this point I would like to move into evidence Exhibit -- I guess it would be Exhibit 1 for this hearing, this would be Docket Entry 554-2, and this is the Riverspan DIP term sheet that was filed last night.

MR. JONAS: No objection.

MS. MARKS: May I approach to pass up copies?

THE COURT: You may.

(Pause)

THE COURT: Thank you.

MS. MARKS: We'll eventually get an extra copy.

UNIDENTIFIED SPEAKER: Excuse me, Counsel, is that the document that was filed at 554-2 on the docket?

MS. MARKS: Correct.

UNIDENTIFIED SPEAKER: Thank you.

BY MS. MARKS:

Q Mr. Mendelsohn, what is this document?

A This is a term sheet summarizing the DIP loan from Riverspan.

Q Okay. Will this DIP serve as a replacement for the existing DIP facility with Right Lane?

A Yes.

Q What is the amount of the DIP facility Riverspan has offered to fund?

A Twenty million dollars.

Q And did Right Lane ever agree to increase its DIP funding to 20 million to match Riverspan's offer?

A No.

Q What are the fees under the Riverspan DIP facility?

A There are no commitment fees and there's an exit fee of $1.25 million that is waived if the sale transaction goes through and closes.

Q How do those fees compare to the fees under the Right Lane DIP facility?

A The Right Lane DIP facility had fees of one and a half percentage points of $50 million, and that was a combination of a commitment fee and the exit fee, and then there was an additional $500,000 fee that they received through the process of various interim DIP orders and our request for additional financing beyond what was in the initial interim authorization.

Q What is the interest rate on the Riverspan facility?

A It is seven and a half percent.

Q And how does that compare to the Right Lane facility?

A It's the same.

Q Does the Riverspan DIP facility address the defaults under the Right Lane facility?

A Yes.

Q Can you summarize the milestones under the Riverspan DIP facility?

A Yes, there are a handful of milestones. By May 8th, both

the sale order and the interim order for the DIP need to be entered, and then before the outside date the sale order shall be a final order and the outside date my understanding is June 23rd. The final DIP order should be entered by May 29th and you have to consummate the sale by June 23rd.

Q Are these milestones achievable, in your view?

A Yes.

Q Do you believe Riverspan's winning bid is a good deal for the debtor?

A I do.

Q And, based on your experience, does this sale represent the best available path to maximize value for the estate?

A Yes.

Q In your opinion, are the terms of the Riverspan DIP fair and reasonable?

A Yes.

Q Is the approval of the Riverspan DIP in the best interest of the estate?

A Yes.

Q And do you believe it is in the best interest of the estate and all stakeholders to close as quickly as possible?

A Yes, I do.

Q Why is that?

A Two reasons. First, the longer the time period between now and closing, the more risk there is to a close for a matter

of reasons; and, second, the longer the process takes, the more professional fees and administrative claims, just a bigger burden on the estate.

Q Thank you.

MS. MARKS: No further questions.

(Pause)

MS. MARKS: So I think for the sale motion we would like to move in Exhibits 1, 2, 7, and 11, and I'll read out the docket entries for those.

THE COURT: Do we have copies of those to be marked by the Clerk?

MS. MARKS: Yes, although it -- would the committee have any -- just so we can be efficient, would the committee have any objection and the U.S. Trustee if we get organized with our exhibits and do this at the end of the witness -- at the end of cross-exam?

MR. JONAS: No, no problem with that.

MS. BARBARUOLO: No objection.

MS. MARKS: Okay, why don't we do that so we can be more efficient. Thank you.

THE COURT: Before Mr. Jonas begins, I just want to make sure I understood your testimony, Mr. Mendelsohn.

THE WITNESS: Sure.

THE COURT: The outside date, because in the summary that was just defined as the outside date, your understanding

is that's June 23rd of 2026?

THE WITNESS: I believe that is June 23rd, 2026.

THE COURT: Thank you.

THE WITNESS: I'll look to counsel for confirmation.

THE COURT: Thank you.

THE WITNESS: Yes, thank you.

THE COURT: Go ahead, Mr. Jonas.

MR. JONAS: Thank you, Your Honor. Jeff Jonas, Brown Rudnick, for the committee.

CROSS EXAMINATION

BY MR. JONAS:

Q Good morning, Mr. Mendelsohn.

A Good morning.

Q Hopefully, just a couple quick questions for you.

You described the aggregation -- that's my word, not yours -- of the debtor and the non-debtor assets because I think you said buyers wanted to be able to control the business and not be dependent on third parties, is that generally correct?

A Generally correct. I think the production, that it's a very important product for the company's profitability. So, certainly with respect to that product and production of that product, they did not want that outsourced.

Q Okay. And so is it the case that going forward the buyer here, now Riverspan, it won't be relying on Holdings or its affiliates going forward once it closes?

A Well, there's TSAs and other ways that the companies will interact with each other going forward.

Q And when you say TSAs, I'm sorry?

A I'm sorry, a transaction support agreement. So there are certain services that the parent will continue to provide the buyer and which is typical in a carveout situation.

Q And if you could give us an example of a TSA?

A Sure. There may be, for example, certain accounting functions that historically been provided by the parent and will -- may need to be provided for a period of time.

Q Okay.

A Accounting systems would be another example.

Q But those would be typically a short period of time as the -- is the T for transitional or something like that?

A Uh, actually, whether it's transition or transaction, I actually am drawing a blank.

Q Okay, but that's the point, those services are for a short period of time in order to afford the buyer -- you know, not to have to start from scratch, but ultimately I thought the whole point of the aggregation of the assets was so that the buyer, especially this buyer, a new buyer, would effectively be separate and distinct from Holdings and the affiliates, and it would be running its own business and not need product or other things from those entities, is that right?

A I'd say as best as they could they'd want to have a

separation and control that production. Again, it's a carveout. In these companies, there are intercompany sales between them. So, there are commercial arrangements; how long those last, that's really between the buyer and the parent.

Q Okay. But, again, I thought the whole point of the aggregation at the beginning was ultimately because buyers wanted to be separated, didn't want to be relying on Holdings and its affiliates going forward. At some point, whether it's a week, a month, two months, they'll be separated and distinct, and they'll control their own destiny and they'll be able to make their own determinations of where the products are going to go and marketing, and all those types of things, is that right?

A Yeah, I'd draw a distinction. I think that the production facility at Murray is a really core part of the value chain and the company's profitability. So that is something every single buyer that gave us an indication of interest said they wanted to control.

Q Okay.

A There may be other aspects that perhaps there's a commercial arrangement that goes on for longer. As an example, they share distribution centers. So, might there be a commercial arrangement around that that extends beyond a few months? That's possible. It's not necessarily a mission-critical part of the company's business.

Q Okay. The buyer here doesn't care if Holdings or its affiliates or other insiders get a release of alter ego, piercing-the-corporate-veil, or successor liability claims, correct?

A I have not asked this buyer that question.

Q They haven't conditioned their sale on that, have they?

A The sale, as I understand it, is conditioned on receiving the settlement assets into the estate and for those to be part of the package of assets that are acquired. I do not have knowledge as to -- to answer your specific question with that.

Q Okay, but when you say the settlement assets in connection with the sale to this buyer, the only assets they care about are the business assets, right? The plant, et cetera, et cetera. They're not buying or care about whether or not Holdings, its affiliates, or other insiders get the releases in question, is that right?

A I don't know that to be true, I have no knowledge of that and haven't asked the purchaser that question.

Q You haven't talked to them about that? It's been a central issue in this case and you've never talked to the buyer about these particular issues?

A The central issue in the sale is what assets will be sold, from my perspective. So, once those settlement assets come into the estate and the estate -- we are capable of delivering those assets, that is very core; as to whether the buyer cares

about the releases, that's a question for the buyer.

Q Okay. Thank you.

MR. JONAS: No further questions.

THE COURT: Thank you, Mr. Jonas.

Any redirect?

MS. MARKS: No redirect, Your Honor.

THE COURT: Thank you.

Is there anyone else who --

MS. MARKS: The debtor does not have any further witnesses in its case in chief.

THE COURT: You may be excused.

THE WITNESS: Thank you.

THE COURT: Thank you, Mr. Mendelsohn.

(Witness excused)

MR. JONAS: No witnesses here, Your Honor. We're ready to argue it. I would ask if we could just take a short break before we argue.

THE COURT: Okay.

MS. MARKS: Your Honor, before we break, I just wanted to get some clarification on the exhibits. Was the statement that you made at the outset that you would not consider any exhibits not used with a witness?

THE COURT: That's correct, I'm not going to drill down. I could take judicial notice of what's on the docket, but if there wasn't an actual inquiry regarding the substance

of the documents on the record, the Court isn't going to independently review hundreds of pages with respect to those documents. I'm not sure what you were introducing and for what purpose. So --

MS. MARKS: So the documents that we were going to introduce largely were the motion, the motion for the sale, pleadings filed on the docket, but one of the exhibits is the APA itself. Would it be -- I think that's attached to the motion and it will be attached to the filings, but if it would be helpful for the Court, we could call Mr. Mendelsohn back just to introduce the APA.

THE COURT: Again, it's your burden on the 363. So, to the extent I'm aware the APA has been filed and the APA was entered into, according to the filings, but to the substance of it, if there's particular provisions that you would like the Court to take note of, I would certainly suggest that testimony be provided.

MS. MARKS: Your Honor, why don't we caucus during the short break, and then when we come back we'll proceed or not.

THE COURT: Thank you.

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

THE COURT: So, it's about 11 o'clock. Mr. Jonas, did you have proposed -- how much time did you need, 15 --

MR. JONAS: I just want to assemble, having heard the

testimony, Your Honor, just five or ten minutes.

THE COURT: Okay, why don't we break until 11:15.

MR. JONAS: Okay. Thank you, Your Honor.

THE COURT: Thank you.

THE CLERK: All rise. Court is adjourned until 11:15.

(Recess at 10:59 a.m./Reconvened at 11:24 a.m.)

THE CLERK: All rise. You may be seated.

Continuing with the 10:00 a.m. calendar.

THE COURT: Thank you. Ms. Marks.

MS. MARKS: Thank you, Your Honor, for your patience with the exhibits. Before we close the evidence, the debtor would like to move in certain exhibits in connection with its sale motion. May I approach?

THE COURT: You may.

MS. MARKS: And, before I approach, I'll tick through what the exhibits are.

THE COURT: Thank you.

MS. MARKS: The debtors are going to move in the notice of successful and back-up bidders, that's at Docket 552; the APA with Riverspan, which is at Docket 552-1; the declaration of Eric Mendelsohn in support of the sale motion at Docket 542; the declaration of Eric Mendelsohn in support of the bidding procedures and DIP financing motion at Docket 18; and then the winning bidder declaration from Riverspan at

Docket 557.

THE COURT: And those are Exhibits 3 -- I'm sorry, 2 through --

MS. MARKS: These are Exhibits 2 --

THE COURT: Through 6?

MS. MARKS: -- 8, 9, 10, and new Exhibit 12 is the winning bidder declaration. That was not -- was just filed at the time we served our witness and exhibit list, so it wasn't on there.

THE COURT: Thank you.

MS. MARKS: May I approach, Your Honor?

THE COURT: You may.

(Pause)

MS. MARKS: And, with the Court's permission, we would call Mr. Mendelsohn back for very short, I'll call it redirect on the APA.

THE COURT: Thank you.

First, Mr. Jonas, did you have any objection to the exhibits?

MR. JONAS: No, Your Honor, no objection.

THE COURT: Thank you.

Mr. Mendelsohn. I'll remind you you're still under oath.

THE WITNESS: Yes.

THE COURT: Thank you.

REDIRECT EXAMINATION

BY MS. MARKS:

Q Thank you, Mr. Mendelsohn, for coming back.

A Of course.

MS. MARKS: May I approach the witness with the APA?

THE COURT: You may.

THE WITNESS: Thank you.

BY MS. MARKS:

Q And, Mr. Mendelsohn, this is Exhibit 10 on the debtor's list. What is this document?

A This is the asset purchase agreement that was recently entered into between the debtor and an affiliate of Riverspan.

Q And does this agreement reflect the terms of the deal with Riverspan?

A Yes.

Q And some of those terms you testified to on direct exam, the total purchase price, so I will not repeat those questions, but I did want to ask you about two specific provisions.

A Okay.

Q Could you please turn to Section 4.4(g) -- or Section 4.4 to start?

A Okay.

Q Do you have that --

A I do.

Q -- do you have that handy? Okay, thank you.

Mr. Mendelsohn, does this provision contain certain termination rights for Riverspan?

A Yes, it does.

Q And could you explain what termination right is reflected in section (g)?

A Sure. If there's a -- (i) is, if the sale order is not entered by the sale order deadline that we spoke about earlier; second is if there are subsequent changes to the sale order following its entry that are not consented to by the purchaser; (iii) is, following the entry of a list of orders, including the sale order, the bidding procedures order, intercompany settlement order, sale order, and -- I guess bidding procedures orders -- oh, if those are stayed without the prior written consent of the purchaser, then there is a termination right.

So if, for example, the intercompany settlement order is stayed, then they have a termination right.

Q Okay. Thank you.

And let's turn to the closing conditions --

A Yes.

Q -- and I'm specifically going to point you to 9.1(g). And I don't have the page number, but if you could help us out with it when you find it.

A That's all right, I'll get there. Okay, on page 49.

Q 49.

MS. MARKS: Is the Court there as well?

THE COURT: I am.

MS. MARKS: Okay.

BY MS. MARKS:

Q So this section, generally are these the closing conditions for the sale?

A Yeah, these are the conditions to the obligations of the purchaser.

Q And does Section 9.1(g) reflect that the settlement assets must be transferred free and clear before the sale will close?

A That is correct.

Q Okay. Thank you.

MS. MARKS: No further questions.

THE COURT: Mr. Jonas, did you have questions?

MR. JONAS: No questions, Your Honor.

THE COURT: You may be excused. Thank you.

THE WITNESS: Thank you.

(Witness excused)

MS. MARKS: And I think that finally concludes the debtor's presentation of evidence, Your Honor. Thank you.

THE COURT: Thank you, Ms. Marks.

MS. POSIN: I think it's still morning. Good morning, Your Honor, Kim Posin of Latham & Watkins --

THE COURT: If we can just ask you to hold one minute, Ms. Posin, until we open up the video.

(Pause)

THE ECRO: We're ready.

THE COURT: Thank you.

You may proceed. Thank you.

MS. POSIN: Good morning, Your Honor, Kim Posin of Latham & Watkins, proposed counsel for the debtor.

Your Honor, on the petition date the debtor filed a motion seeking approval of bidding procedures and the sale of substantially all of the debtor's assets. Certain relief with respect to the sale motion has already been entered by the Court. On March 5th, the Court entered an order authorizing the debtor to enter into the stalking horse agreement and approving certain bid protections, and then on March 26th the Court entered the bid procedures order, which approved the bidding procedures for the sale process.

In advance of the bid deadline, which was extended from its originally requested date of March 26th to April 24, the debtor received three qualified bids, which include the stalking horse bid. On May 4, as you heard from Mr. Mendelsohn this morning, an auction for the debtor's assets was conducted in New York by the debtor's professionals. All three qualified bidders, the debtors, and each of the consultation parties, including the committee, were present at the auction.

At the culmination of the auction, the debtor selected VM Buyer, LLC, which I will refer to as the buyer today, a subsidiary of Riverspan, as the winning bidder,

determining that the buyer's final bid of $64 million was the highest and otherwise best bid elicited at the auction.

The buyer's bid contemplates the purchase of both substantially all of the debtor's assets and the assets that certain non-debtor affiliates have agreed to transfer to the debtor pursuant to the settlement that was approved by the Court. And I'll refer to those assets collectively as the purchase assets today.

The buyer's bid amounts to a $14 million increase to the stalking horse -- in relation to the stalking horse bid, and the stalking horse bidder will now serve as the back-up bidder with a purchase price of $62.4 million.

As Mr. Mendelsohn and Mr. Vomero have testified, the debtor's business was thoroughly and extensively marketed to a wide range of potential strategic and financial buyers prior to the petition date, and was also subject to a second marketing process post-petition, and that ultimately led to a very robust and competitive auction. In all, over 150 potential purchasers were contacted, including approximately 30 that were suggested by the committee. There could be no greater market check.

The sale process was conducted in good faith, it adhered to the Court-approved bid procedures, and the asset purchase agreement that the debtor seeks approval of today was the product of good faith, arm's length negotiations; there is zero evidence to the contrary.

The debtor was ultimately successful in its efforts to run a sale process that allows the debtor to achieve maximum value for the purchased assets under the circumstances of this Chapter 11 case and is pleased with the results of the auction. At the hearing today, the debtor seeks the Court's approval to proceed with a sale of the purchased assets to the buyer.

This bankruptcy case was filed almost three months ago on February 16th as a result of mounting talc-related litigation costs that put extreme pressure on the debtor's liquidity and threatened the debtor's continued operations. The proposed sale permits the business to continue to operate as a going concern and allows approximately 126 employees to remain employed. There is no dispute that the debtor does not have sufficient liquidity to continue to operate its business in Chapter 11 for any amount of -- any extended period of time, and the debtor's estate will benefit greatly from the proceeds of the sale that will allow the debtor to pay off its DIP loans and to fund administrative expenses, so that the debtor can pursue an expeditious plan process that we hope will have the support of the debtor's creditors.

In all, the debtor received four objections to the bidding procedures and to the sale. Certain law firms and the Office of the United States Trustee each filed an objection on March 3rd; the committee filed two objections, one on March 11 and a second on April 27.

The vast majority of the issues that were raised by the certain law firms and the United States Trustee related to the bidding procedures, which have since been approved by the Court. Both parties also objected to the inclusion of avoidance actions and insurance policies in the purchased assets, but that issue was resolved in an amendment to the stalking horse purchase agreement, which carried over to the buyer's purchase agreement, which can be found on the docket at Docket Number 552-1.

In its initial objection at Docket Number 162, the committee confirms that it doesn't object to a sale of the debtor's assets, and instead focuses the objection on the bidding procedures and the releases that were provided to the debtor's affiliates under the settlement agreement. But of course the settlement and the bidding procedures have now been approved by the Court, mooting those objections.

With respect to the objection that was filed by the committee on April 27, the settlement and any releases contained therein has already been approved by this Court, is on appeal, and is not before the Court today. However, for the avoidance of doubt, the debtor denies any and all allegations that the sale, the only matter that is before the Court today other than perhaps the replacement DIP, is intended to effectuate a scheme to abuse the bankruptcy system, as is asserted by the committee.

Moreover, in the Court's opinion on the settlement motion, the Court referenced Mr. Pickering's thorough analysis, credible testimony, and arm's length negotiations, and rejected the committee's allegation that the settlement was the result of a sham investigation.

The committee initially argues in its objection that the debtor cannot consummate the proposed sale because the settlement provides that the settlement assets will not be transferred to the debtor until the settlement order becomes final. But as the Court heard yesterday, in the notice of waiver of condition precedent for effectiveness of global settlement, which was filed at Docket Number 544, the non-debtor affiliates have consented to waiver of the final order condition as a condition precedent to the effectiveness of the settlement agreement upon, among other conditions, approval of the sale.

With respect to the contract and sale order objections that were filed on the docket or that the received informally, in addition to what the committee filed, as noted in the chart that we filed with our reply brief at Exhibit A, we believe we have received resolution with respect to each or most of those objections. I did want to point out to Your Honor that there was a supplemental objection, I believe, that was filed by JBL. I know their counsel is on the line, I think that was filed yesterday. We are working through those issues

that are set forth in that supplemental objection with JBL and its counsel. The expectation and hope is that we'll resolve those issues. If we are not able to resolve those issues, we will come before the Court and ask for a separate cure hearing; however, we do not -- it should not hold up approval of the sale, if the Court is inclined to proceed.

Okay. Section 363(b)(1) of the Bankruptcy Code permits a debtor to use, sell, or lease, other than in the ordinary course of business, property of the estate. Courts routinely authorize a sale if it is based upon the debtor's sound business judgment. There is no basis to apply a heightened standard here, as the committee suggests, because the debtor is not affiliated with the buyer and the sale is not to an insider of the debtor.

The committee's reliance on In re Flour City Bagels is misplaced. In that case, the Court did apply heightened scrutiny to the fairness of a transaction because the sale was to an insider of the debtor; here, the buyer did not have any preexisting relationship with the debtor. And this is substantially different from the Special Committee's request to approve a settlement between the debtor and non-debtor affiliates, with respect to which the Court did apply such scrutiny and approved the settlement regardless.

Here, again, the sale is being consummated to maximize value for the debtor and the purchaser is not an

insider of the debtor. But even if a heightened standard was required, the sale should be approved because it is the direct result of a robust and Court-approved auction process that any qualified bidder could participate in, and none of the bidders that participated in the auction have an insider relationship with the debtor.

The debtor exercised sound business judgment in pursuing a sale of its assets and ultimately selecting the buyer as the winning bidder after a well-organized and very thorough sale and auction process.

As the MF Global court noted, if a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate. The burden of rebutting that presumption falls to parties opposing the transaction. Here, there is unquestionably a sound business justification for the sale of the purchased assets, and the committee and the U.S. Trustee have provided no evidence to rebut the presumption of good faith.

An orderly and expeditious sale of the debtor's assets is critical to preserving the business as a going concern, value-providing continuity with customers, suppliers, and a skilled workforce, and maximizing recoveries for the estate. There is no viable alternative path that will provide the same or greater value to the debtor's stakeholders,

especially given the debtor's present liquidity position.

The sale to the buyer includes assets that are currently owned by non-debtors, but are required to be transferred by those non-debtors to the debtor pursuant to the terms of the settlement that was approved by the Court. It appears to be the fact that the sale includes non-debtor assets as provided for in the settlement agreement that is the main thrust of the committee's objection today. By focusing on the settlement, which this buyer had no involvement in whatsoever, and the settlement release in its objection, the committee seeks to re-litigate the Court's order approving the settlement, a matter that has already been resolved, is not before the Court today, and has been appealed to the District Court for further consideration.

Despite the substantial value that was created at the auction and that will benefit the committee's constituency of all unsecured creditors, which includes vendors and employees, as well as tort claimants, the committee argues that the entire sale process is tainted because no bidder submitted a bid for substantially all of only the debtor's assets. In its initial objection, again, at Docket 162, the committee confirmed that it, quote, "does not object to a sale of the debtor's operating assets." Instead, the committee demands that the Court require the debtor to, quote, "conduct a new sale process that is divorced from the procurement of an insider release," yet the

committee provides no explanation as to; one, how that process would be any different than the marketing process and the sale process that has already been conducted, which did allow for bids on all or any of the debtor's assets pursuant to the bidding procedures; and, two, how such sale process would be funded.

To be clear, Section 1 of the bidding procedures provides that a bidder may bid on all or any combination of the stalking horse assets. Both the stalking horse bid and the winning bid were conditioned on purchasing both the debtor's property and the settlement property, which is integral to the debtor's operations. Given the importance of the non-debtor assets to the debtor's business, as Mr. Vomero testified yesterday, it should be no surprise that a buyer would insist upon ownership of the entire value chain of the business.

Moreover, the fact that one qualified bidder that participated in the auction did seek to purchase only a portion of the debtor's assets, evidence is that the debtor sought out debtor-asset-only bids separate and apart from the non-debtor assets to be contributed as part of the settlement, but the debtor did not receive any bids for substantially all of the debtor's assets on a stand-alone basis, let alone one that was higher or better than the buyer's bid or the back-up bid.

Other factors that courts have considered in determining whether to approve a sale include whether adequate

and reasonable notice of the sale was provided to interested parties, whether the sale will produce a fair and reasonable price, and whether the parties have acted in good faith. Under similar circumstances, courts in this district have also focused on whether the asset is increasing or decreasing in value and the proceeds to be obtained from the disposition vis-a-vis any appraisals.

With respect to the notice of the sale, the Court already approved the debtor's proposed notices and noticing program in the bid procedures order, and affidavits of service evidencing service of all applicable sale-related notices have been filed on the docket and are identified in our sale reply brief that was filed on May 5th at Docket Number 541.

The sales, marketing, and auction processes, both pre and post-petition, have ensured the best possible purchase price for the purchased assets under the circumstances of the Chapter 11 case because, as the Court observed at the March 4th hearing in this matter, an auction and marketing process is generally the best indication of value.

Here, the bidding procedures encouraged and facilitated a robust and competitive bidding process, and facilitated a fair and transparent sale process, with respect to which the committee was a consultation party, and the auction resulted in a purchase price that is significantly superior to the stalking horse bid. Although the committee

concedes in its objection that it is generally accepted that the best indication of value is the behavior in the marketplace, it goes on to argue that the marketplace cannot provide a true indication of value where the debtor's assets were not marketed for sale on a stand-alone basis and, therefore, the debtor has not shown that fair and reasonable consideration is being provided for the debtor's assets.

The committee argues that the debtor should have valued the debtor's currently owned assets on a stand-alone basis, completely separate and apart from the non-debtor settlement assets, but any such valuation would be both expensive and meaningless because neither the winning bidder nor the back-up bidder expressed any interest in pursuing a sale without the non-debtor-affiliated assets.

The committee surmises in its objection that perhaps the reason why no one wanted only the debtor's assets is because the debtor's professionals, quote, "signaled to the market that only combined bids would be considered, or years of restructuring transactions created the necessity of a combined sale." But after months of intense investigation, the committee has provided no evidence to support these baseless accusations, and this speculation belies the clear terms of the bidding procedures that allowed for bids on any or all of the stalking horse assets and partial bids on individual assets.

That no one wanted to purchase the debtor's assets on

a stand-alone basis does not mean that the sale process was flawed or that the debtor is not receiving a fair and reasonable price for its assets. Quite the opposite, it leads to the only logical conclusion that the settlement aided the debtor in being able to achieve a successful and value-maximizing sale of the debtor's assets that the debtor could not have achieved without access to the non-debtor assets.

With respect to good faith, the carefully crafted and Court-approved bidding procedures ensured that the sale process was conducted in good faith. While the committee makes certain blanket accusations in its sale objection, there is no evidence at all of any fraud or collusion with respect to the sale process. The asset purchase agreement with the buyer was negotiated in good faith and at arm's length. The committee argues that the buyer or at least the stalking horse bidder, which is now the back-up bidder, is not entitled to the protections of a good faith purchaser under Section 363(m) of the Bankruptcy Code which protects a good faith purchaser by providing that a sale, once consummated, cannot be reversed or modified on appeal unless the purchaser fails to act in good faith.

To establish good faith, the sale must be negotiated at arm's length, it must be free from fraud or collusion, and the purchaser must pay a fair value. The record supports a finding that the sale is a product of transparent, arm's length

negotiations.

First, the occurrence of an auction with three qualified bidders, only one of which the committee continues to argue did not act in good faith, albeit without any evidence to substantiate those accusations, that lasted an entire day with multiple bids being made and a final price that exceeds the stalking horse by $16 million is the very best evidence of a process that is not fraudulent or collusive, and that delivered fair value for the debtor's assets.

The bidding procedures were specifically designed to promote transparency, good faith, and fairness for the entire sale process, and to engage with all bidders on an arm's length basis in an effort to improve the quality of each bid where possible.

Second, the committee's focus on Abbotts Dairies to purportedly support its argument that the buyer did not act in good faith is misplaced. In Abbotts Dairies, the taint was an informal and undisclosed agreement between the purchaser and the debtor's CEO, under which the latter would retain his position at his current salary for five years and be relieved from personal liability on several of the debtor's obligations if the purchaser prevailed in the auction. Here, the committee does not allege the existence of any secret and undisclosed agreement between the buyer and any of the debtor's officers that could have chilled bidding. The committee has provided on

evidence at all that the debtor's marketing process was not a reliable indication of value; merely repeating that sentiment repeatedly in its objection and other filings doesn't make it so.

Finally, the buyer filed a declaration under penalty of perjury in support of the sale at Docket Number 557 that confirms the following.

First, the purchase agreement and related documents were negotiated and entered into by the buyer in good faith, without any collusion, fraud, or attempt to take unfair advantage of any party, including any other potential purchaser. Second, the purchase agreement is the result of hard-fought, arm's length negotiations between the buyer and the debtor, each of which was represented by separate and sophisticated counsel and other advisers. And, finally, the buyer has not engaged in any collusion or other similar conduct that would cause or permit the sale to be avoidable under Section 363(n) of the Bankruptcy Code.

Neither buyer, Riverspan, nor any of their respective affiliates, officers, directors, managers, or members is an insider or affiliate of the debtor, and no common identity of directors or officers exists between buyer and debtor. Other than the lender/borrower relationship between the DIP lender and the debtor pursuant to the replacement DIP facility, there is no relationship between the buyer and the debtor outside of

their relationship under the purchase agreement.

In In re Gucci, the Second Circuit defined the good faith standard under Section 363(m) as prohibiting fraudulent, collusive actions specifically intended to affect the sale price or to control the outcome of a sale. Here, there is no evidence in the record of any fraud, collusion, or any attempt to take advantage of other bidders.

In making its argument against Section 363(m), the committee argues that the stalking horse bidder is an interested party and lacks good faith because it expressed an interest in ensuring that the non-debtor affiliates remain viable and available to provide transition services post-sale, but this does not elevate an arm's length sale process to a scam or a scheme or constitute bad faith. It is commonplace for a buyer to require transition services in the context of the sale of a going concern. That the buyer has an interest in the party providing those services, surviving so that it can receive the services needed to ensure that the business continues to thrive post-closing is not surprising or indicative of bad faith.

However, the stalking horse bidder was not selected as the winning bidder, and the committee has provided no evidence of any supposed alignment between the buyer and any non-debtor affiliate. The committee does not assert or allege because it cannot that the buyer was complicit and/or

participated in the, quote, "other two legs of the stool," the existing DIP facility or the global settlement, which completely undermines the main thesis of the committee's objection, which is that the debtor cannot show good faith because of the non-debtor releases that are contained in the settlement.

The committee also argues that the buyer cannot be considered a good faith purchaser, arguing that an appeal placing good faith at issue cannot be mooted under Section 363(m). Not only does this argument misstate the applicable law, it's premature. Under Gucci, an appeal is not mooted by Section 363(m) to the extent that the appeal places good faith at issue, but Gucci does not hold that a sale must be denied at the outset because a future appeal might challenge the buyer's good faith. If the buyer's good faith were to be challenged on appeal, it would be up to the appellate court to determine the merits of that appeal and the applicability of Section 363(m) in light of those assertions.

With respect to the last two factors considered by courts, delaying the closing of the sale will only decrease the value of the purchased assets given the debtor's liquidity constraints and the deadlines and DIP milestones to which it is bound. In addition, delays threaten customer and supplier relations, and risk employee and bidder attrition.

As the Court heard yesterday, the alternative here is

bleak, a fact that the committee chooses to ignore. The committee argues that the sale was not in good faith, but has no evidence to substantiate those assertions, nor has the committee proposed an alternative path if the sale is not approved that would provide greater value to any creditor. It is this reality that compels the debtor to seek exigency, not an effort to avoid transparency.

Finally, the structure and timing of the sale process, as well as the bidding procedures, were calibrated to maximize proceeds from the sale and the auction, following a broad marketing process for the assets, to ensure that the debtor will receive fair value.

The debtor also seeks approval from the Court to sell the purchase assets free and clear of liens, claims, interests, and other encumbrances pursuant to Section 363(f) of the Bankruptcy Code. Here, the debtor's only secured lender, which is expected to be the buyer under the proposed replacement DIP, will consent to the sale. In addition, while no other putative lien holder has objected to the sale, any such lien holder, to the extent that they do exist, could be compelled to accept a money satisfaction of its interest.

Accordingly, the Court should approve the sale of the assets free and clear of liens, claims, interests, and encumbrances to the full extent permitted by Section 363(f).

In its objection, the committee argues that the sale

cannot eliminate the ability of claimants to assert claims against the purchaser based on successor liability, but sales under Section 363(f) permit a debtor to sell free and clear of all interests, including successor liability, and I would cite the Court to In re Trans World Airlines, In re K & D Industries, and several other cases that we have cited in paragraph 35 of our reply brief at Docket Number 541.

Indeed, if a sale by a debtor could not be made free and clear of successor liability claims, the value of those assets would be significantly diminished to the detriment of the debtor's estate. The successor liability findings, including the sale order, are standard provisions that are routinely included in 363 sale orders, including in Chrysler and in Motors Liquidation.

The debtor does not seek a declaration from the Court on an abstract legal construct, and it's not even requesting an advisory opinion, but instead seeks to define the scope of the relief being granted in the context of a concrete transaction that has been put to the Court for approval. Importantly, as noted in the buyer declaration, the buyer would not have entered into the asset purchase agreement absent the free-and-clear provisions in the sale order.

Finally, the committee argues that the sale order cannot bind future claimants to any free-and-clear ruling. The debtor has taken extensive efforts to provide the best notice

practicable of the sale process by serving written notice of the sale on all known creditors and parties in interest, and caused publication notice to be made in several publications, including USA Today, and certain local newspapers where the debtor operates. Any due process concerns that may arise in the future would only affect the enforceability of the sale order with respect to that particular claimant who is later deemed not to have received sufficient notice of the sale, and it is not a basis for denying the sale.

In making this argument, the committee focuses on the question of whether a holder of a future claim holds a claim, as that term is used in the Bankruptcy Code, but under Grossman's, individuals exposed to the debtor's talc products, even if an injury has not yet manifested, would constitute current claimants, and the debtor stopped selling talc in 2008, so there can't be any new exposures to the debtor's talc in the last approximately 18 years. Even if a particular claimant did not have an injury or a claim as of the date of the entry of the sale order, it doesn't necessarily mean that they didn't nevertheless receive sufficient actual or constructive notice of the sale process and an opportunity to object. But if a claimant's due process rights were violated, it would be up to another court at a later time to make that determination and fashion an appropriate remedy at that time, it is not a ruling that can be made in the abstract.

Finally, Your Honor, the debtor seeks a waiver of the stay of effectiveness of a sale order under Bankruptcy Rules 6004(h) and 6006(d). The waivers requested here are due to the debtor's precarious financial condition and its consequent need to proceed with closing the sale as expeditiously as possible to maximize value for the estate, and to avoid unnecessary administrative expenses associated with the business operations and the administration of this Chapter 11 case. In addition, the aforementioned robust marketing, sale, and auction process weigh in favor of the requested waiver.

Your Honor, for all of these reasons, as set forth on the documents filed on the docket and the record before the Court, the debtor requests that the Court overrule any remaining objections and enter the sale order.

THE COURT: Thank you.

MS. POSIN: Unless the Court has any questions, I'm happy to cede the podium.

THE COURT: I do not. You hit on the one -- the declaration of Mr. Gilligan from Riverspan Partners that was filed at Docket 557, and you just put on the record there was no preexisting relationship with Riverspan and the debtor or any of the affiliates, is the Court's understanding, correct?

MS. POSIN: That's correct, Your Honor.

THE COURT: Thank you.

MR. ROITMAN: Good morning, Your Honor, Marc Roitman

of Katten Muchin Rosenman on behalf of Ben Pickering, the independent manager.

THE COURT: Good morning.

MR. ROITMAN: Mr. Pickering fully supports the entry of the sale order and submitted a statement in support at Docket Number 546. I just want to make three brief points today.

First, there's been some discussion in the court about Mr. Pickering's fiduciary out, which would allow him to terminate the settlement even after Court approval if a superior alternative became available to the debtor. The fiduciary out is a right that Mr. Pickering bargained for to protect the debtor's estate, it's simply backward to suggest that this right should somehow be an impediment to closing a value-maximizing sale.

Counsel to the creditors committee mentioned yesterday that the fiduciary out will terminate when the sale closes. Once the sale closes and the proceeds of the settlement assets are in the estate, there's simply nothing left for the settlement fiduciary out to protect, so it's logical for the fiduciary out to terminate at that time.

And I would just like to be very clear for the record, Mr. Pickering participated in the auction, he believes that the proposed sale to Riverspan is the best path to maximize value for the estate, and he has no intention of

exercising his fiduciary out.

Second, the final order condition precedent that you've heard discussion about, Ms. Posin mentioned this and we believe it's a moot point now, so I don't want to belabor this, but Mr. Pickering made the judgment in negotiating for that waiver that getting that closing certainty in advance of the auction was going to be value-maximizing and in the best interest of the estate. The notice of the waiver is at Docket Number 544. We believe that the auction result, which increased the sale price by over 25 percent, vindicates Mr. Pickering's judgment to obtain that waiver ahead of the auction.

Third, looking ahead, Mr. Pickering's mandate as independent manager has now been expanded and it now includes oversight of all restructuring matters, including after the sale development of a Chapter 11 plan, and he intends to engage collaboratively with all parties in the plan process, including the creditors committee, with the same independence he has brought to the case to date. We want to say that directly in open court for all parties to hear that Mr. Pickering intends to work collaboratively and constructively with everybody.

I'm happy to answer any questions Your Honor may have.

THE COURT: I don't have any. Thank you.

MR. ROITMAN: Thank you.

THE COURT: Anyone else in support of the sale?

(No audible response)

THE COURT: Mr. Jonas.

MR. AGAY: Your Honor, David Agay from Commodore, can I speak in support of the sale?

THE COURT: You may.

MR. AGAY: Okay. Thank you for allowing me to appear online. This is what you get when you lose the auction, now you're on the Zoom penalty box.

So, the -- we fully support the sale. I think Ms. Posin's comments were very helpful in framing the process. I would just like to reserve comment, if the Court is inclined to approve the sale and enter the sale order, there are aspects of it that -- where I need to speak up at that time, so I just want to reserve comment on that in terms of like the details of the sale order.

THE COURT: Thank you, Mr. Agay.

MR. AGAY: Thank you.

THE COURT: Anyone else by video in support of the sale?

(No audible response)

THE COURT: Hearing none, Mr. Jonas.

MR. JONAS: Thank you, Your Honor. Jeff Jonas, Brown Rudnick, for the Official Committee of Unsecured Creditors.

Your Honor, we have filed objections to the sale, and

I incorporated those and, frankly, the entire evidentiary record in the case to date now for purposes of my argument.

Judge, I want to cut to the chase. At this point, our fundamental objection to the sale is not the sale itself, it is the effect or the collateral damage of the sale, and that effect or collateral damage is to jeopardize and prejudice the committee's appeal of your decision approving the global settlement, which, as we all know, included releases for the debtor's parent, Holdings, affiliates and -- I'm sorry, the debtor's parent, Holdings, affiliates, and insiders for, among other things, alter ego, veil piercing, and successor liability claims.

Judge, I may not agree with your decision, but I'm not -- I respect it and I'm not here today to take issue with it, that's for the -- that's what appeals are for, and here where -- however, here where my constituents, talc claimants and other unsecured creditors, but in the case of talc claimants have had more than $500 million of their claims out from under them for nothing, that appeal right should be respected and preserved, and that's really all we ask. It's just too important to victims who have been severely harmed and have now lost their rights to recourse, including fundamental constitutional jury trial rights.

The sale prejudices the committee's appeal because if and when the sale closes the debtor and its parent, Holdings,

will assert that the appeal has been mooted. So, I'm not here today complaining about the actual sale process or result, I wish the buyer well, I just don't want this sale to insulate a global settlement which we believe an appeals court eventually will find to have been improper and illegal. If there is a way for the sale to be approved and the committee's appeal rights regarding the global settlement, specifically the insider releases to be preserved, then this can be a very short hearing or could have been a very short hearing.

And I raised that with the debtor and suggested some language -- I'll just read it to you, just so you know where we're coming from, Your Honor -- quote, "Notwithstanding anything herein to the contrary, nothing in this order or in the implementation of the transactions contemplated hereby shall in any way prejudice, impair, or derogate the committee's appeal of the settlement order and/or any rights relating thereto." A little piece of language that would have made my constituents step back, let the sale close, let the sale go forward, but we felt important so that our appeal could go forward.

I don't think -- I'm hearing a little bit of a different story. We were asked -- with respect to the declaration of the buyer, we were asked if the buyer could be excused from coming for cross-examination, and of course we wanted to respect that and we did, but we asked for certain

language to be added to the declaration, which included language that Riverspan is aware of the order, the settlement order and the committee's appeal therefrom, but Riverspan is not required a final, non-appealable settlement order as a condition precedent to closing.

It's kind of what I was getting at with Mr. Mendelsohn. If we say the sale is okay and the sale can go forward, and we don't have a problem, frankly, in and of itself with the good faith of this particular buyer, we wish them well, that's wonderful, and I don't think the buyer cares. That was the whole point of where we started months and months ago, the whole point of the aggregation of assets here -- and you heard Mr. Mendelsohn say this -- was to allow a buyer to separate itself from the rest of the organization, if you will, and so that would be fine.

Well, the response I got to our language was that Holdings, the parent, rejected the language, which is exactly what I would have expected because that's what we are saying and have said from day one, the whole point of this case is to get the non-debtor, the parent, Holdings, and its affiliates and its insiders releases.

So, I just want to be very clear, Your Honor. We heard a lot about our objections, and obviously things have changed and I respect that, and I'm not trying to get in the way and we're not trying to get in the way of the sale. So, I

just want to be very clear, but if we can't figure this out, that is if we can't figure out a way to let the sale *qua* sale close and go forward, but yet be sure that our appeal rights are fully preserved and not mooted so that effectively our sale rights are -- our appeal rights are lost, then I have to express, and I'm going to, a full-throated objection to the sale, and I'll tell you why.

And it really -- ideally, Your Honor, we would hear the motion to dismiss before the sale hearing and, if that can be facilitated, great; maybe it can't, that's okay because I can make my arguments today. And the reason I say that, Your Honor, is because, as you know, our motion-to-dismiss arguments substantially sound in -- there are other arguments, but substantially sound in a lack of good faith in this case, and that in fact the case was a litigation tactic, et cetera -- I think we've learned a lot of facts since the beginning of this case that not only support that, but support other elements of a lack of good faith, and I'll get to that in a minute. And on that basis, Your Honor, on the basis that we believe there has been an utter lack of good faith and that in fact, if the Court were to hear our motion to dismiss tomorrow and we're ready to go forward or the next day, that the Court would be compelled to approve the motion to dismiss and dismiss the case.

And if that's the case, Your Honor, if in fact there's a lack of good faith in this case, then I don't think

the sale can go forward because the underpinnings of everything in this case are rotten. And you can't say -- and while I take no issue with this particular buyer who showed up and paid more money, that's great, and I don't take issue with this buyer's good faith in and of itself, but if the sale is tainted -- if the whole case is rotten, then the sale is rotten and the sale can't go forward. And --

THE COURT: Mr. Jonas, let me --

MR. JONAS: Yes --

THE COURT: -- interrupt.

MR. JONAS: -- please.

THE COURT: The motion to dismiss was your motion that the Court understood was kind of in suspense pending a further scheduling order.

MR. JONAS: Understood, Your Honor.

THE COURT: So, if that was what the committee wanted, why didn't we have that heard today?

MR. JONAS: I understand that, Your Honor, and I'm not taking issue, I'm not trying to go back and take issue with the scheduling. I don't think I need the motion to dismiss to be heard today to make my arguments with respect to the sale, I'm just trying to express, Your Honor -- well, let me say this. I think -- and I'll get to some of this in a minute -- I actually think the sale hearing, including as evidenced by the fact that we were getting new sale orders and new DIP orders in

the middle of the night, I think it would be appropriate to continue the sale hearing for a short period of time and then we could hear the motion to dismiss, and then we could revisit or take up the sale hearing, of course all subject to the Court's schedule. And, again, I'm not taking issue with the fact that we're not here arguing the motion to dismiss today, I'm just making the point, Your Honor, that substantially all of the arguments we would have made in a motion to dismiss really relate to good faith and I think I can -- and I'll get to the record in a minute, Your Honor, because maybe people are surprised we didn't do a lot of cross exams today or yesterday, but -- and the reason is I don't think we need to, but the point is I think there's a record, a robust record -- and I think in your heart of hearts, Your Honor, you know this too, I think it's the reason Jones Day wasn't approved in part, because I think you know there has been a lack of good faith in this case, and I'm going to get to some of the specifics.

We keep being accused of making things up and telling a story. I don't think we're telling a story, I think we're just repeating -- and I'm going to do it in a minute quickly -- I think we're just speaking to the facts that have now been proven in this case by the documents that have been introduced into evidence and by the testimony we've had from witnesses. So, let me get to that, Your Honor.

The debtor has been the puppet of the parent,

Holdings -- and I say puppet because those are the words of the most senior director, officer, owner of both the Holdings and the debtor itself, Mr. Johnson. As you heard, he said pulling the strings, to me that's a puppet -- the debtor has been the puppet of the parent, Holdings, and rubber-stamping whatever Holdings wanted, that's the evidence, for years. Jones Day represented the debtor and its parent, Holdings, and its affiliates for years. At least as far back as late 2024, Jones Day hatched a plan for this profitable and cash-flow-positive debtor a bankruptcy plan for the purpose of addressing talc liabilities, again, a litigation tactic.

Then Holdings and Jones Day brought in Mr. Vomero under the guise of dealing with, quote-unquote, "intercompany transactions." They engineered a multitude of transactions to best position the debtor for bankruptcy.

When I say best position, I mean advantage the parent, its affiliates, and insiders, and disadvantage talc claimants. These transactions included in March of 2025 the netting transactions, as you've heard a lot about, the result of which was that my debtor, the debtor, lost $125 million. In July of 2025, there were numerous amendments of intercompany notes, of intercompany agreements, some of which had been in place for ten or 15 years that all of a sudden in the summer of 2025 had to be amended. And, again, the only plausible explanation, Your Honor -- I couldn't quite get anybody to say

it just that clearly, but the only plausible explanation for all of these transactions, the netting, the pre-bankruptcy amendments and whatnot, is that this was pre-bankruptcy planning, and that's exactly what it was.

Of course, Mr. Mr. Vomero and Jones Day then switched sides and they went to work for the debtor so that they could best implement the bankruptcy strategy that had already been planned and laid out. They dressed everything up with Mr. Pickering as a special committee of one, but the result was preordained.

The debtors filed bankruptcy with everything wrapped up in a bow. A DIP with ridiculously short milestones and trip wires, and no funding for the committee to carry out its fiduciary duties and protect unsecured creditors. A global settlement, among other things, releasing the parent, affiliates, and insiders, including from alter ego, successor liability, and piercing-the-corporate-veil claims. A sale, apparently, initially at a bargain price. That's what I learned today. I know everybody is trumpeting the great price that we had, but what I learned was they did a deal, including wrapping our settlement into the deal, apparently at a bargain price when they did it initially. And it was a sale conditioned on a global settlement.

There's the three-legged stool, but what we've learned, Your Honor -- and, again, everything I've just gone

through, I don't think any of that is disputed -- maybe my characterizations will be disputed, but the actual facts are in evidence. And that's why I didn't feel the need to put any more evidence on today or cross-examine witnesses, it's already all there. So, while it's been called the three-legged stool, I've got a new name for it, it was a box or a trap which talc claimants haven't been able to escape.

The bankruptcy was a litigation tactic, its purpose was to stop talc victims' litigation and cram a very bad result on them to the benefit of the debtor, the parent, affiliates, and insiders.

So, again, Your Honor, where I come back, now that I hope I've summarized the facts -- again, maybe I've characterized them a little bit, but I think the facts are the facts and ultimately you get to make those determinations, but I think that if the facts are as I've stated them, the underpinnings of this case, there is a lack of good faith, there has been for a long time, whether it's the conflict of the professionals in the case, whether it's the transactions that were done. And, again, I'm done -- I'm not going to disparage Mr. Pickering, maybe he found or maybe he -- obviously the Court believes he settled what he settled, I'm not here again to take issue with those, but the fact of the matter is that that can't clean the bad faith or the lack of good faith that has always existed in this case, meaning if the

professionals were conflicted and if there were transactions that were done that were improper and that -- everything that was done leading up to and through the case, that lack of good faith can't be cleaned up. And that's why I think we'd win on a motion to dismiss and that's why I think that, if we have to take up the sale -- again, I wish we didn't, Your Honor, it's why in the middle of the night when I saw the sale order come across at 2:30 or whatever it was -- and I was awake -- I said let's see of we can land this plane in a way that's reasonably good for everybody. So I came up with maybe 25 words that would do that, but of course Holdings rejected that.

So, here I am and I have no choice, and I have to come back to what I believe to be a principal, fundamental argument, lack of good faith, I don't think the sale can go forward on that basis, and that's our fundamental argument today, Your Honor.

We do have a number of issues with the order and I understand other parties do as well. And again, in light of the timing, maybe we could take a few minutes to see if we can work through some of those, but I wanted to make my fundamental argument first and see if the Court had questions or whatnot.

THE COURT: I do not.

MR. JONAS: Okay. Thank you, Your Honor.

THE COURT: Well, I guess I spoke too soon. The committee's intention is to appeal the sale order as well to

correspond with the settlement order, or are you able to --

MR. JONAS: Well, I -- I'm going to -- I'll come back to your question, but I want to say first, Your Honor, that -- and this is one of the -- it's an order issue, but I might as well speak to it now because it also picks up on the issue I raised at the very beginning of these hearings today, which is one of the provisions in the order is a waiver of the 14-day stay that is imposed by Rule 6004(h), and we would vehemently oppose that, Your Honor, so that at least we have time whether we take up an appeal or not. And it's kind of tied in some ways to the stay of the settlement because if -- it's not complicated, but for example if we -- if Rule 6004(h) is respected and we get the 14-day stay, I think it would be a lot easier for the Court to say, well, I'll give you the same -- I'll continue the existing stay with respect to the settlement for 14 days because I don't think -- it won't matter, nothing is going to happen that would require that the settlement not be stayed for that same period of time because the sale is not going to close, nothing is going to happen.

So, it's all tied together, Your Honor. I can't tell you as an absolute that we're going to appeal the sale. I could think of a number of permutations. For example, if we run up to the District Court and they give us a stay with respect to the settlement, I'm not so sure we need to appeal the sale, but we'll have to see how that all plays.

So, I hope that's responsive, Your Honor.

THE COURT: It is, thank you.

MR. JONAS: Okay.

THE COURT: And to circle back with your statement to extend the further -- the stay that was in the sale order, that was until I ruled today, I don't know that I have jurisdiction now that I've ruled that the stay -- I've ruled against the stay pending appeal. I think that since the appeal is filed, I don't think that I have an ability to further modify that order, but I throw that out there for consideration because obviously I need to be very respectful of the jurisdictional concerns and limitations that I have when these things go up.

MR. JONAS: Yes. Well, I hear you, Your Honor. I'm going to think on that a little bit, but again, for example, if we're able to get the 14-day stay -- again, which is the rule, I'm not asking for anything except respect for the rule -- if we're able to get that, it might be a distinction without a difference because nothing is going to happen and we'll have effectively got the benefit of it.

So we do intend, Your Honor, to move very quickly, within the next day or two-ish, and then obviously we'll have to see what the District Court does. Thank you.

THE COURT: Certainly. Thank you.

Oh --

MR. HOWARD: Sorry, Your Honor, can I just address

the comments from Mr. Jonas about this requested change to the sale order that he says we rejected?

THE COURT: Certainly, then I'll hear from Ms. Barbaruolo.

MR. HOWARD: Just for the record, George Howard, Vinson & Elkins, on behalf of R.T. Vanderbilt Holding, Co.

Your Honor, all we said was that, if there's going to be reservation-of-rights language in the sale order, it should be reciprocal, and that if the committee is going to have all of their rights reserved as to the settlement and the appeal of the settlement that our rights should be reserved and, frankly, the debtor's rights should be reserved. And I sent around language and I'm happy to read it to Your Honor, but effectively it said just that.

It just said, in addition to the committee's language, add a romanette (ii), that nothing in the sale order will modify, reverse, vacate, or stay the settlement agreement, the settlement order, the settlement approval opinion, or change or limit any rights, remedies, and arguments that the debtor or the Vanderbilt settlement parties have or may have under the settlement agreement, the settlement approval order, and/or the settlement approval opinion, including with regard to the future potential mootness of the settlement appeal. Because I think that's what they're trying to do, they're trying to shoehorn language into the sale order that they're

going to turn around and rub in our face at the appellate court and try to make arguments that somehow we don't have rights to argue what we might or might not argue on appeal.

And, again, that's all for the future, but if there's going to be a reservation of rights in the order, everybody's rights should be reserved. The settlement order is done, we don't need to modify it, we don't need to clarify it, it is what it is, the parties rights are what they are.

So, anyway, I just want to be clear on that point. I'm happy to answer any other questions Your Honor has, but that's it.

THE COURT: No, thank you.

MR. HOWARD: Thank you.

THE COURT: Ms. Barbaruolo?

MS. BARBARUOLO: Thank you, Your Honor.

Thank you, Your Honor. Paula Barbaruolo on behalf of the United States Trustee, very briefly.

The United States Trustee's concern is that the allowance of the sale -- not necessarily the sale itself, Your Honor, but the allowance of the sale could prejudice the rights of the claimants as they assert going forward and potentially in an appeal. So, if the sale goes forward, in essence, we could moot their rights on appeal, but if it's done and it's a done deal.

The U.S. Trustee echos many of the concerns of the

committee that have been set forth before this Court, and my understanding is Ms. Champion has seen the language suggested by the committee and does in fact support it and would request that the Court entertain it in an order. But also, Judge, the urgency of this entire proceeding has been the creation of the debtor, the debtor set this pace. And so we have been proceeding in a manner that was staccato, if you will, and taking the motion to dismiss and putting it here because of a decision here and a stalking horse stepping on everybody's throats here, et cetera -- figuratively, of course, Your Honor -- so now we're in a situation where we have a winning bidder and everything needs to move by tomorrow again and still.

I do agree that Section 6004 -- Rule 6004 should remain, this is a sale, and I think that it would resolve a lot of issues if the stay under 6004 remains in effect.

Thank you, Your Honor.

MS. POSIN: And for the record, Your Honor, Kim Posin of Latham & Watkins, proposed counsel for the debtor.

Your Honor, just a few points in response to that, I'll take maybe in reverse order. The first is with respect to the request for an additional informal stay. I agree with the Court, I think the Court doesn't have jurisdiction to modify an order that's already up on appeal and the Court is correct about that. I also am not sure I fully understand this -- if there is no stay of the settlement order, then the settlement

order can be finalized, the settlement can be finalized. So the 14-day stay, if it is applied to the sale, has really nothing to do with whether the settlement can proceed.

So, two different issues and I don't think it makes sense to further stay the ability of the settlement to proceed.

Second, I just wanted to note that the argument -- I think all of the arguments that Mr. Jonas raised today really go to their argument that the case was not filed in good faith and, therefore, should be dismissed. That's not before the Court today, obviously, and in fact the committee, as the Court is well aware and noted, agreed to push off that motion to dismiss while we could try to see if we could reach a resolution. This is the first I'm hearing from Mr. Jonas this morning that he wants to put the hearing back on the calendar today. I was not aware that that was going to be requested by the committee, but we can certainly discuss that with them.

But in any event, none of those allegations that Mr. Jonas just raised have anything to do with the motion that's before the Court today and the good faith of this buyer. I didn't hear him say anything about Riverspan or VM Buyer and the good faith of that entity.

And then, finally, I just wanted to respond to the comment about the parent not agreeing to the language and I want to clarify what occurred since Mr. Jonas has raised it, and what occurred was Mr. Jonas and Mr. Molton and I spoke

yesterday about this proposal. It was an amorphous concept at the time, I asked for specified language because I frankly didn't fully understand what was being requested. I was told that they would think about that and I was asked to reach out to Holdings, and that's what I did at their request. I didn't get the language until I woke up this morning and headed over to court. And when I spoke with Mr. Jonas this morning, I didn't tell him that, well, I wouldn't agree to it because Holdings didn't, that wasn't the gist of the conversation, but that was in addition to the debtors having concerns because I think the language proposed, for one thing, I don't really understand putting in a sale order language with respect to a different order, like that doesn't make any sense to me, and I'm frankly not sure what the language means. If I'm asked by the appellate court, as I explained to Mr. Jonas this morning, what did you mean by this language, I'm not really sure I could articulate that, Your Honor, and that's concerning to me. And I also have the same concern as Mr. Howard in that if they're going to put that -- if Your Honor is going to agree to put something like that in the sale order, it should be reciprocal.

That's it. Thank you -- oh, actually, I did want to note, I do have -- we file an amended APA and an amended sale order. I have redlines. Maybe we need to take a break, but I just want to let the Court know that I have redlines. I am happy to flip through them, I'm happy to give the Court a

summary of changes, whatever the Court prefers.

THE COURT: Are they different than what was filed late last night?

MS. POSIN: I think -- they are not, but I think the -- we filed a redline -- we filed a clean of the APA, but not a redline, which I -- but I do have a copy of a redline -- we filed a redline of the order.

THE COURT: The order.

MS. POSIN: So that is on the docket, but this one is not.

THE COURT: And that was at like 2:00 a.m.?

MS. POSIN: Yes, that sounds about right.

THE COURT: Okay. It wasn't since I've taken the bench, was it?

MS. POSIN: Yes, that's true, nothing has been filed since we've been here.

THE COURT: Okay. I do have a copy of the redline.

Is there anyone else who wishes to be heard?

MR. HULL: Good afternoon, Your Honor, Nathaniel Hull here from Merrill Dana on behalf of JBL, if I may just briefly have an audience with you.

THE COURT: Certainly.

MR. HULL: Thank you, I appreciate it. I will be brief.

And I appreciate Attorney Posin's presentation with

respect to JBL and I agree with it. I only rise today just to be -- to offer a bit of clarity in light of the revised APA that was filed. That revised APA -- this is the one that was filed yesterday -- or this morning at 2:00 a.m. -- that APA has an Exhibit 2 to it, which are the purchase contracts. I only wish to clarify that with respect to my client a couple of 2026 agreements are identified at 104 and 105, and then a trade agreement that's unnumbered, the cure amount that's listed there says per separate stipulation, and I just wish to be clear that JBL remains open and is looking forward to working in good faith towards a stipulation, but as we sit here today that stipulation has not been reached.

And so what I understood Attorney Posin to say was that we would work in good faith to try to get to a stipulation, which we would present to Your Honor for approval, and in the absence of that we would return on a specific cure hearing at a later date. That all works for my client, of course, but I just wish to be clear that nothing that the Court is doing today is necessarily going to approve the assignment and assumption of any of JBL's executory contracts absent a future stipulation and order from this Court or further hearing.

THE COURT: Thank you, Counselor. That is certainly the Court's understanding with respect to JBL, Fidelity, Zurich, the PBGC, the EPA, and the United Steelworkers, is that

correct that those are all in the works, or a couple of those have actually been resolved by the language that's been included?

MS. POSIN: Yeah, I want to kind of separate apart. We have certain folks, many of which you named, that had issues with the sale order, I believe all of those have been resolved and those are reflected in the order. JBL has a cure objection. So we had a limited, maybe three or four cure objections, and that's really the bucket that I'm talking about. Those are the ones that if we aren't able to resolve them, and I hope we will, we will bring back to the Court, but the sale order objections have been resolved, to my knowledge.

THE COURT: Okay. Thank you.

MR. HULL: Thank you, Your Honor. I really appreciate the time this afternoon.

THE COURT: Thank you, and your rights are reserved. Dually noted. So, in thinking this -- is there anyone else that wishes to be heard before the Court kind of walks through what I'm thinking?

MR. STOLZ: Your Honor, Matthew Stolz, from Cohen, Weiss and Simon, on behalf of the United -- on behalf of the United Steel Worker's Union. If I could have maybe two minutes to make a comment?

THE COURT: Certainly.

MR. STOLZ: I appreciate it. The Steel Worker's

understand that this has been a very difficult case for all parties involved, and we are, you know, not the least, the Court, and we are very pleased that the Steel Worker's members will have continuing work opportunities at the Dixie Clay, the Gouveneur Minerals, and at the Murray, Kentucky VEEGUM facilities that are being purchased by Riverspan, and the Steel Worker's hope to have, you know, a good working relationship with Riverspan going forward.

You know, all that said out of an abundance of caution. We just always like to note that, you know, we would -- the Steel Worker's would like to reserve all rights concerning post-closing, post-sale, conducts and obligations under Federal Labor Law, which you know we understand not to be under the purview of the Bankruptcy Court, but we'd like to make it known, and we hope that, you know, this is never an issue in the future and that we have a great working relationship going forward.

THE COURT: Thank you, Counselor. Is there anyone else on video who wishes to be heard?

MR. INDRISANO: Good afternoon, Your Honor. Matthew Indrisano for the United States on behalf of the EPA and Department of Interior.

THE COURT: Certainly.

MR. INDRISANO: Your Honor, Ms. Posin did correctly state that we had reached an agreement with the revised sale

order. There was a footnote that was added that just indicates that we had not reached an agreement with Commodore, and it seems that we may have to have an emergency hearing if they end up being the backup bidder, and so I just wanted to reserve rights, as the order seems to otherwise indicate that our objection has been resolved. That may contradict that footnote, so I just wanted to bring that your attention.

THE COURT: Thank you. It seems like that might be something that we would want to add in case that comes up in the next couple of months, that that's top of mind, instead of digging through the record, so that certainly makes sense to the Court. Thank you, sir.

MR. INDRISANO: Thank you.

THE COURT: Is there anyone else on video who wishes to be heard?

MR. ROBERTSON: Good morning, Your Honor. Dan Robertson on behalf of the PBGC. Just reiterating Ms. Posin's point, that, yes, we have reached an agreement on the language that we worked with them and reviewed the sale order that was filed late last night and it complies with everything that we had requested, so we have no further objections.

THE COURT: Thank you. Well, let's turn -- let's turn first to the sale order. The Court is going to need some time to review that. The Court was preparing for all of this from early this morning and wants to make sure. I've got a

copy of the redline, so I will certainly go back and do that. I think we do need to make it clear, if there's an issue with the backup bidder, that that is dually in a footnote or something like that, that they reserve all rights to object to a closing at that point if that agreement has not been reached.

A couple of things. One is for the purposes of the parties meeting and conferring, because it sounded like Mr. Jonas was suggesting that perhaps that the Court needed a little bit of additional time, that perhaps some agreements could be worked out, and I know that there was also ongoing review of the DIP documents that were filed that the Court has not yet scheduled, but tentatively looking at 2:30 for that, this afternoon.

I will tell you for the purposes of getting together to meet and confer to determine if there is in fact a mutual reservation of rights, I do share Ms. Posin's concerns in having them read at me. It was kind of hard to digest what exactly was being answered, but it was kind of a notwithstanding the sale order, all of the rights are preserved in the appeal of the settlement order.

I have concerns. I'm not necessarily opposed to that, if that gets everybody on the same place and just has a level playing field, for all intents and purposes, the Court would certainly consider something like that. I will tell that, in light of the closing in June, the Court will not be

waiving the 6004(h) provisions. I don't think that that really impacts the Committee's rights in light of the late closing date, that nothing is being transferred tomorrow. I don't think that that jeopardizes the sale or puts the buyer in any more precarious position, and I don't know if you want to appeal the -- kind of the sale order, just so those things both go along together.

Obviously, the Committee is well aware of the risk of that and the financial stakes here, as well as the workers in the various areas, as well as the continuation of the debtor's business going forward and the loss of $64 million in sale proceeds, so the Committee has made it very well aware in its prior presentations that it's well aware of the risks and its constituents are well aware of the risk, that the Committee may be the dog that caught the car if it gets all of the relief that it requested, and this may be converting or otherwise having tremendous negative consequences for all of the constituents involved.

So, for those who may have not participated in the other hearings, Mr. Jonas has made those representations to the Court on numerous occasions, that it is aware of the risks if the sale doesn't proceed, and to the extent that it is willing to pursue its appeal rights and its stay rights on those, it is willing to accept that risk.

So, what the Court was going to suggest, it's 12:30.

The Court needs to review its notes, its rulings. It needs to review the redlined sale and recognizes that it can do an oral ruling and then follow up with the sale and make any changes, but also recognizing that it might have some impact on the new successful bidder, Riverspan.

So, the Court was going to suggest giving the parties an opportunity to regroup, perhaps have some additional language that could be agreed upon, or the Court will certainly be prepared to rule when it regroups. I was going to suggest maybe an hour to 1:30. That gives us a chance to finalize the sale issues, for the Court to issue a ruling with respect to the sale, and then maybe take a brief break on the DIP. If the parties that aren't in the courtroom are working on the DIP, interim DIP, replacement DIP, it seemed like a lot of the terms were consistent with what was previously approved by the Court on a very interim basis, and I would ask you to see what that very interim basis is.

The Court does have a regular calendar on May 13th, which is next Wednesday. So, to the extent if we can work anything out among the parties to buy out the Commodore DIP, or get rid of the Commodore DIP, have the replacement DIP in line, and then perhaps if there's any problematic or interim issues that can be held til that party's rights reserved to kind of get us over these 24 hour deadlines.

As I indicated, the Court is willing to work through

the night and weekends, but we also need to have the U.S. Trustee and the Committee an opportunity to thoughtfully consider and see if there's any -- I'm not seeing any significant changes from the Court's prior position, but I need to confirm that and be comfortable with whatever orders are being entered here. Does that make sense to the Debtor?

MS. POSIN: It does, Your Honor. Thank you.

THE COURT: Okay, does that make sense to the --

UNIDENTIFIED ATTORNEY: Yes, Your Honor. Thank you.

THE COURT: Okay. So, it's 12:35. Why don't we adjourn to 1:30. We'll come back on the sale hearing and then figure out next steps for the DIP, and if there's any testimony or anything else that needs to be taken in connection with that. And, hold on one minute. I'm getting a question from my law clerk.

THE COURT: So, we will enter -- if it's acceptable, we will enter the order shortening notice on the DIP for 2:30, just to have the record clear on that, recognizing that we may not get through all of that and that may be continued, just so we have something on the docket with respect to that.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

THE COURT: Thank you.

COURTROOM DEPUTY: All rise. Court is adjourned until 1:30.

(Court recess)

COURTROOM DEPUTY: All rise. You may be seated. Continuing with the 10 a.m. calendar.

THE COURT: Ms. Posin, did you want to provide the Court with an update before proceed?

MS. POSIN: Absolutely. Your Honor, thank you for the break. We had a chance to talk to the United States Trustee and to the Committee with respect to the sale order. The Committee had one comment that the U.S. Trustee has agreed to it and the debtors have agreed to it. I'm getting it right now in real time and I can read it into the record for the Court, and the Committee can let me know if I get this wrong. This is in Section 32 of the sale order. It was filed at Docket 553. And essentially, what we have agreed to is at the very end of that paragraph, which currently reads -- the sentence that's already there reads, for the avoidance of doubt, the injunctions set forth in Paragraphs 31 and 32 of this order extends the talc liabilities. It ends there.

THE COURT: Yes.

MS. POSIN: We are adding a proviso that it says, provided that this order shall not enjoin any talc liability claims with respect solely to the debtors and their affiliates. That's the only change that the Committee had, Your Honor.

MR. JONAS: Your Honor, Jeff Jonas Brown Rudnick, for the Committee. I just want to be clear, Your Honor. We're

standing on our substantive objections.

THE COURT: Yes.

MR. JONAS: However, on a language basis, we're not -- we're okay with that form of order on a language basis. But again, we do stand on our substantive objections. Thank you.

THE COURT: Understood. Thank you, Mr. Jonas. And was that your understanding as well, Ms. Barbaruolo?

MS. BARBARUOLO: Yes. Thank you, Your Honor.

THE COURT: Thank you. Well, turning to the sale hearing that's before the Court this morning. Section 363 of the Code provides that after notice and a hearing, the debtor-in-possession may use, sell, or lease, other than in the ordinary course of business, property of the estate. Although Section 363 does not specify the standard for determining when it's appropriate for a Court to authorize the use, sale, or lease of property of the estate, bankruptcy courts routinely authorize sales of debtor's assets as long as they can articulate a sound business justification for doing so.

A debtor's business judgment is entitled to great deference, and if the debtor offers a sound business justification, the Court will not second guess that business judgment in making that decision, provided that the Board of Directors of the corporation acted on an informed basis, in good faith, and with the honest belief that the action taken is in the best interest of the company.

As the Second Circuit stated in Lionel, when considering a sale under 363, the Court must consider all salient factors pertaining to the proceeding and accordingly act to further the diverse interests of the debtor, the creditors, and the equity holders alike, and that is In re Lionel Corp., 722 F.2d 1063.

The Court must expressly find from the evidence presented a good business reason to grant such a motion. The Lionel Corp. analysis involves a number of considerations. The proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the affect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of the sale, use, or lease the proposal envisioned, and most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

Other Courts have added additional factors to that list, such as whether adequate and reasonable notice had been provided to the parties in interest, including full disclosure of the sale terms and the debtor's relationship with the purchaser, whether the sale price is fair and reasonable, and

whether the proposed buyer is proceeding in good faith, and that is Flour City Bagels, 557 B.R. at 77-78.

Importantly, Section 363(b) should be interpreted liberally to provide a bankruptcy judge with substantial freedom to tailor his orders to different circumstances.

The Court finds, based on the record before it, that the Lionel standards established by the Second Circuit in determining whether the sale of property of the estate outside of the ordinary course of business have been satisfied, as follows.

With respect to the proportionate value of the assets of the estate as a whole, the Court recognizes that the operating assets are a large part of the estate. However, the record reflects there are numerous insurance policies that should provide an additional source of recovery for the estate.

The Court notes that not a lot of time has elapsed since the filing and the sale, and the sale was expedited. However, the pre-petition sale efforts also ensured the highest and best offer was received.

Regarding the likelihood that a plan of reorganization would be proposed and confirmed in the near future, with the liquidation of all operating assets, a liquidating plan to address the creditor constituencies should be proposed in the near future.

In reviewing the effect of the proposed disposition

on future plans of reorganization, the sale maximizes the likelihood of a confirmable plan and avoids the liquidation of the debtor, with all non-DIP proceeds going to the estate.

When comparing the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, the Court found the testimony of Mr. Mendelsohn credible as to the valuation of the assets and that the assets were fully exposed to the relevant marketplace to ensure a highest and best offer was made. The robust auction increased the proceeds in excess of what was originally contemplated by $14 million.

In exploring the alternatives of use, sale, or lease, the proposal envisions, here, the testimony of Mr. Vomero and Mr. Mendelsohn confirmed the sale is the best option for the debtor. Whether the assets are increasing or decreasing in value, in light of liquidity concerns and the debtors' diminishing reserves, as Mr. Vomero previously testified about, along with the possibility of a liquidation that would result in less proceeds going to the estate, the value of the assets are depreciating and the sale is the best option to maximize value.

Whether adequate and reasonable notice has been provided to parties in interest, including full disclosure of the sale terms and the debtors' relationship with the purchaser, the Court finds the notice was sufficient and complies with the Code and the bid procedures order, which

provided for widespread dissemination of the sale procedures. In addition, it was undisputed at the hearing today that the successful bidder had no prior relationship with the debtor or its affiliates.

In considering whether the sale price is fair and reasonable, as noted, the sale price was fully evaluated by the marketplace and reflects the highest and best offer for the assets, well in excess of the stalking horse bid.

When considering whether the buyer is proceeding in good faith, the record reflects the proposed buyer has no prior relationships with the debtor or its affiliates and is proceeding in good faith, and that the transaction is at arm's length. In light of the above, the Court finds the Lionel factors have been satisfied.

Further, 11 U.S.C. 363(f) states that the property may be sold free and clear of any interest in such property of an entity other than the estate, if such entity consents, or such interest is not a bona fide dispute, or if such entity could be compelled in a legal or equitable proceeding to accept a money judgment satisfying such interests.

Here, the DIP lender, as the only known lien holder, has consented, and to the best of all the parties' representations, there are no other liens impacted by Section 363(f).

The record also reflects the notice of sale was

properly disseminated in accordance with the bid procedures order. The evidence demonstrated a robust auction was conducted with competing bids, increasing the purchase price from the $50 million stalking horse bid to $64 million, and a successful bidder was selected in accordance with the bidding procedures. The auction was fair in substance and procedure, and the consummation of the sale contemplated by the successful bid will provide the highest and otherwise best value for the purchased assets, and is in the best interest of the debtor, its creditors, and the estate.

As a result, the Court will approve the sale as outlined on the record, with the sale to VM Buyer, LLC, Riverspan Partners Fund, LLC, as the successful bidder, and will approve the backup bid of Commodore Materials, LLC, as identified at Docket 552.

The Court also finds the record supports a good-faith finding under Section 363(m), but will not grant the relief requested with respect to a waiver under Rule 6004(h), as previously indicated.

In accordance with Exhibit A to the debtor reply in further support of the sale motion at Doc 541, the Court understands the objections filed by Fidelity, Zurich, the PBGC, the EPA, and the United Steelworkers have been resolved with the additional language as contained in the proposed sale order that was filed late last night. And with respect to the part

of the sale motion that addresses the assumption of executory contracts and leases, those issues to which ongoing discussions are occurring remain subject to resolution or agreement with the various counter-parties, where they will be heard by the Court at a future date. So that is the Court's ruling in granting the sale.

The Court had an opportunity during the recess to review the proposed redline order at Docket 553-2, and I'm not sure the reservation of rights language presented by Mr. Jonas and agreed to by Mr. Jonas in that Section 32 addresses all of the Court's concerns, so I would like to have, while I have you before the Court, the Court would be interested -- there are several references to affiliates, some of which are not concerning to the Court. But there are other concerns the Court has where specifically -- there's a couple different groups of issues the Court has concerns with, and that is directing holders of encumbrances against the debtors' affiliates to release liens and things like that, when those affiliates are not before the Court, recognizing all these transactions contemplate a transfer from the affiliates to the debtor, and then the debtor selling free and clear. But the Court's understanding has always been whatever -- or liens attached to the affiliate's assets coming to the debtor, those are being paid. I don't know that I have jurisdiction to direct any liens or encumbrances as against debtors'

affiliate's assets to be released, and that is in several areas throughout this order.

I wanted to hear from the debtor on the explanation for that. I can give a couple different references on that particular one, and then I have one or two other issues.

MS. POSIN: If I can confer with my -- with Counsel for just a minute, Your Honor?

THE COURT: Sure. Do you want me to get -- would you like me to give you all the concerns and then --

MS. POSIN: Oh, yes. That would be great. Absolutely.

THE COURT: -- perhaps we can -- let's --

MS. POSIN: I was hoping it was just the one.

THE COURT: And again, this is my -- these are my concerns, so I apologize if I miss anything, but just so you generally understand the concerns. I certainly understand the conclusions reached that the purchaser is not being deemed a successor interest to the debtor or its affiliates. I don't have an issue with that type of finding. I have an issue -- let's see, where's the first one? Page 22, and again we're talking about Docket 553-2. It's hard to tell what section that is, but there's several references to Section 363(f), satisfying or, you know, compelling the affiliates in a legal and equitable proceeding to accept satisfaction. That's a couple sections there.

MS. POSIN: I'm sorry, Your Honor, could you repeat that? I'm not sure I was --

THE COURT: Sure. On page 22. I'm not -- it's the paragraph above redlined R, so I guess --

MS. POSIN: You're looking at the redline, 22 --

THE COURT: I'm looking at 553-2, the blackline, Exhibit B, C & D 553-2 filed at 1:49 last night. I think you had an extra copy you were going to --

MS. POSIN: Yes. I got it, Page 22.

THE COURT: Okay. So Page 22, the paragraph directly above R, the new R, has affiliates and multiple language.

MS. POSIN: Affiliates language.

THE COURT: Okay. So, let's see. I think that's the same situation on Page 27 under, Binding. The first two affiliates I think are okay, but it has any affected third parties, including but not limited to all holders of encumbrances against the debtor, its affiliates. Again, I don't think I have any jurisdiction over those people unless I'm missing something.

I believe that is the same concern on Page 31, which is under Paragraph 12, the direction to creditors. We have affiliates towards the latter part of the paragraph on Page 31, right above the direction to recording officers. And, I think that's the same issue on Page 32, But I'm unconditionally releasing, discharging, and terminating as to the debtor, its

affiliates, and estates. Again, I may be missing -- and that's the same issue on Page 33, we're directing the recording officers to terminate encumbrances against the affiliates. And then,, I think that's the same issue, we'll go to Page 47, Paragraph 44, to quiet title.

MS. POSIN: Yes.

THE COURT: And then, I guess, that addresses -- and generally understand what I'm trying to get at --

MS. POSIN: Yes, we --

THE COURT: -- just with respect to the affiliate's encumbrances and the secured lenders, or whoever might remain out there, that the Court has no jurisdiction over. And, I guess I was -- I'm not convinced that the language agreed to by the Committee and the U.S. Trustee in Paragraph, in Page 44, the releases and the injunctions. I mean, we have everybody's permanently enjoined from asserting, prosecuting, directly or indirectly, against the debtor or any of its affiliates, predecessors, successors, members, partners, principals. It seems that we are eliminating direct actions left and right in that paragraph. It seems very broad.

And as indicated, we certainly didn't mean this sale order to trump the inter-company settlement order, so those are the concerns that the Court had with this. And again, I might have missed a couple provisions given the time constraints, but

I certainly will allow you to confer on those issues. I don't think that those should be anything to blow up a sale under any stretch, but that's certainly the Court's concerns.

So before, if we take another recess on that, I just wanted to understand, are we proceeding with the DIP and evidentiary hearing? Did you have a chance to meet and confer on all of that at 2:30, just so that the Court has some understanding?

MS. POSIN: I will give you where I think we are. We're sort of working on emails right now, so my friends over here might have an update, but I think we're very close on the DIP. I think that we would, like the debtors, all things being equal, would like to proceed today. We're all here. Our witnesses are here. We do need imminent funding, as the Court has heard. We are asking for $18 million on the interim basis. Happy to explain to the Court why we think we need that magnitude. Obviously, most of it is to pay off the existing DIP lender. I think we have -- there was one issue that we were working on. Do we have agreement yet or --

UNIDENTIFIED ATTORNEY: (indiscernible)

THE COURT: Okay. Maybe we could use a recess, Your Honor. But there was one issue that we're trying to work through with our colleagues that are not in attendance with us today, and I think that that could resolve the DIP, and I haven't heard from anybody else that there's any issues with

the latest DIP order that we circulated.

THE COURT: Okay. Does it make sense to --

MR. AGAY: Your Honor, David Agay on behalf of the Commodore entities. Can I raise one issue that kind of connects the DIP order and the sale order?

THE COURT: Certainly.

MR. AGAY: Okay, and I apologize for interjecting. I wanted to just raise it before it got away from us. I've mentioned at the outset that we supported the sale, and but we had concerns around the sale order. Your Honor, neither the sale order, nor the proposed DIP order, addressed the DIP disposition of our termination fee under the APA and the DIP, and specifically I mean, a breakup fee and expense reimbursement.

In addition, the DIP order would purport to grant a super-priority claim that would prime our super-priority DIP claim that we were granted on account of our termination fee under the Court's prior order giving the debtor the authority to enter into the stalking horse agreement and giving us our bid protections.

I have been in communication with the debtor while this hearing has been going on about some of these issues on the DIP order. I'll also say, Your Honor, as we speak, the existing DIP with Commodore is in default, as you know, on account of the milestones, and we had to go ahead and terminate

the existing DIP just to prevent a situation where things went sideways in today's hearing and we were somehow compelled to go ahead and fund under a final DIP. That triggered a termination, Your Honor, of our stalking horse APA, which triggered a provision in our stalking horse APA making our termination fee due and payable within five business days of that termination.

I've raised these issues with the debtor, Your Honor, and we're happy to work through them or try to work through them as part of the proposed orders that ultimately get submitted to the Court, but I didn't want to sort of leave anybody under the impression that we had resolved any of these issues. And these are not just technical issues, Your Honor. Now that the sale closing has been pushed back potentially until July, maybe longer if the Committee appeals the sale order, we may be left in a situation where we're waiting for our breakup fee and expense reimbursement under the APA long after what was originally contemplated on the original time line on the case.

So, I don't say that asking for a ruling for Your Honor. I just didn't want to -- I need to reserve my rights on behalf of my client and express the hope that I can work these issues out with the debtor and the other parties in the meantime.

THE COURT: Thank you. Go ahead.

MS. POSIN: Your Honor, again, Kim Posin, proposed counsel for the debtor. Your Honor, I do believe that my colleagues are speaking with Mr. Agay while we've been in Court, so I need to catch up with them. One of the reasons why we are requesting $18 million today or in the short term is because of this exact issue.

I want to say that we don't concede that Mr. Agay is correct on this point. We believe that because the bid protections approved Right Lane as a backup bidder, that they just can't terminate -- they can't just terminate their stalking horse agreement as a backup bidder.

But, I think in the interest of the issue, we can try to resolve that in the next couple of days. If we are unable to do so, we would like to have the funding to be able to pay them if we decide that's the right path, and if we can't reach agreement, we'd like to come back before the Court and ask the Court to perhaps resolve that issue. But we're hoping that we can try to resolve it consensually first.

THE COURT: Certainly. And again, to the extent if there's an interim reservation of rights, bare bones, that may make everybody's temperature go down a little, Mr. Agay, if your clients get that 8.5 plus repaid, that may make the -- the narrow the issues until next Wednesday or whenever we come back. So to the extent I know we're all on tight time constraints and working with courtroom and outside. So, does

it make sense to adjourn at 2:30 when the DIP hearing -- and if you need more time, please let courtroom staff -- and I don't know, I'm sure people have flights, but this is what it is. The good news is it's sunny in Syracuse.

MS. POSIN: It's a beautiful day. Beautiful day.

THE COURT: It's a beautiful day. We don't have any snowstorms, so -- but again, I'm here to facilitate getting these transactions wound up and certainly can enter the sale order tomorrow, I believe the deadline under all of that, to the extent that we're still tweaking and adding some EPA footnote or whatever else. I realize that things fall through the cracks when we're doing these on a shotgun basis here. So does that make sense?

MS. POSIN: It does, Your Honor. Thank you very much. We appreciate all of that. Give us, I think, a half an hour. Nobody's yelling at me, so I think in a half an hour we can look at these sale order issues and try to get those resolved, hopefully resolve the DIP with the Committee, and hoping we can come back at 2:30 and tell you that we're fully resolved, and maybe we can figure out a reservation of rights with Mr. Agay.

THE COURT: Certainly. And if you need longer than that, I did enter the order shortening time to have the DIP start at 2:30. So to the extent there was anybody else who

wanted to call in, we probably should reconvene at 2:30 anyway just so they know what's happening.

MS. POSIN: Great.

MR. JONAS: And, Your Honor, Jeff Jonas, Brown Rudnick. I just wanted to confirm, I forget your practice, whether you're going to take their order. But in any event, you're going to strike the Rule 6004(h), the 14-day stay, I take it?

THE COURT: My expectation would be for debtors' Counsel --

MR. JONAS: Okay.

THE COURT: -- to submit an order with --

MR. JONAS: Understood.

THE COURT: -- the changes on the record and whatever reservations --

MR. JONAS: Understood.

THE COURT: -- of rights we need to address the EPA, include the 363(m) and get rid of -- or the Court --

MR. JONAS: Thank you, Your Honor.

THE COURT: And to the extent that we take a Word document by email for the Court clerk, Mr. Sullivan, I'm sure I can give you that information, so if the Court had any other -- again, I wouldn't change anything substantively without making sure I'm not blowing up a deal behind the scenes when the order gets docketed, but sometimes that makes it easier for the Court

to do that.

MR. JONAS: Thank you, Your Honor.

THE COURT: So, does that answer everyone's question?

MR. JONAS: That's helpful.

THE COURT: Okay. So we will -- it's 1:58, 1:59. We will reconvene at 2:30, and then again, if the parties need more time, we'll just go on the record and then we can break again.

COURTROOM DEPUTY: All rise. Court is adjourned until 2:30.

(Recess)

COURTROOM DEPUTY: All rise. You may be seated. Continuing with the 2:30 calendar.

MR. WALTER: Good afternoon, Your Honor. Grayson Walter, co-counsel for the debtor. Your Honor, we're in the middle of continuing to discuss some of the DIP issues. I think we are making some progress, but we have some initial conversations that need to take place. If we could have another half hour or so and be back here at a little after 3:00 or 3:15, if that would work for the Court?

THE COURT: Certainly. Before we do adjourn, though, is there anyone who didn't appear earlier today who wishes to note their appearance on the order shortening time scheduling the debtor-in-possession financing motion for 2:30 this afternoon? Okay, hearing none. Why don't we go til 3:30 and

if you need additional time, just report back. So for anyone on video, this might just kind of be a rolling time slot, but we'll shoot for 3:30. Is that --

MR. WALTER: That should be plenty of time.

THE COURT: Again, I know this breaks the momentum of that, but if you need more time, please just let the courtroom staff know and we'll give you as much time as you need.

MR. WALTER: Thank you, Your Honor.

THE COURT: Okay, thank you.

COURTROOM DEPUTY: All rise. Court is adjourned until 3:30.

(Recess)

COURTROOM DEPUTY: All rise. You may be seated.

MS. MARKS: Good afternoon, Your Honor. Betsy Marks from Latham & Watkins, proposed co-counsel for the debtor. I'm going to turn it over to my colleague to address the DIP, which I know is at everyone's top of mind.

I did just want to clarify the record with respect to the exhibits from earlier. I think there was -- I might have mis-spoken about an exhibit number. So, we have or will file our exhibit list on the docket, and I wanted to confirm that during today's hearing, we moved for admission into evidence Exhibits 1, 2, 8, 9, 10, and 12 from that exhibit list.

THE COURT: Thank you.

MS. MARKS: Thank you.

THE COURT: Mr. Jonas, do you have any objection to the admission of those?

MR. JONAS: No objection, Your Honor.

THE COURT: Okay. The Court will admit those.

(Exhibits 1,2,8,9,10,12 admitted into evidence)

MS. MARKS: Thank you.

THE COURT: And you will file that hopefully this afternoon or tomorrow?

MS. MARKS: Yes. Thank you, Your Honor.

THE COURT: Thank you.

MR. JONAS: Your Honor, I apologize. I'm looking at -- we just got a redline, excuse me, of the sale order. I am paying attention --

THE COURT: I understand.

MR. JONAS: I'm just trying to, you know—

THE COURT: A lot of moving parts that we're trying to resolve.

MR. JONAS: Yes.

THE COURT: I appreciate your efforts very much.

MS. POSIN: Good afternoon, Your Honor. Kim Posin, Latham & Watkins, proposed counsel for the debtor. Your Honor, I just want to speak quickly to the sale. We've made all the changes we believe that the Court had requested. We took out the Rule 6004 waiver.

Mr. Jonas just pointed out one additional change to

me in Paragraph P, which provides that the debtor and the purchaser would not have entered into the APA, would not consummate the transactions absent approval and consummation of the inter-company settlement pursuant to a final order. That pursuant to a final order should be struck, so we'll take that out. That was not the intent.

And then, there's one paragraph that Mr. Jonas was also just looking at that was added. I'd just like to read it into the record so that -- and the Court should take a look at it as well, of course. This is new Paragraph 31, and this is something that was just agreed to over the break, and it says as follows.

Enforcement of inter-company settlement. Upon the occurrence of the closing, the purchaser shall have the right automatically, without any further action or notice, and in its name or in the name of the debtor, to enforce the inter-company settlement and all rights and remedies of the debtor thereunder, including by delivering any notices, consents, demands, or elections, and to take any action incidental or necessary thereto, in each case, on such terms and at such times, as the purchaser may reasonably determine in its sole discretion.

That was added as a concession between the buyer and the parent who is going to be delivering the non-debtor assets to make sure that there is a smooth transition. That was the

intent of it. The debtor is okay with it. Mr. Jonas may have some comments on it, but I just wanted to make sure that the Court is aware of the --

THE COURT: I appreciate that because I would not have known where that came from.

MR. JONAS: Thank you, Your Honor, Jeff Jonas, Brown Rudnick. As to the two points we just discussed, and I'll start at the last one. All I'll ask, Your Honor -- I obviously I'm just seeing things for the first time. I just want to make sure that that language, which gives the buyer rights under the inter-company settlement, doesn't in any way impair our appeal. I assume it doesn't make them an appellate party, and now we -- I don't know what it -- I don't know the full impact of it. I don't think that's the intent at all, and I don't know if we need language or just a representation that all the parties understand this isn't intended to in any way impair the appeal or our rights with respect to the appeal. I guess that's fine, but that's my reaction to that.

THE COURT: I understand, and obviously we're all going on the fly here, so --

MR. JONAS: Yes, Your Honor. And again, apologies for the phone, Your Honor.

THE COURT: That's okay.

MR. JONAS: But in O, and this was not a redline, so

this was in there. It came across at night, and I didn't raise us before. I just wanted to -- and again, if the Court enters it, it enters it, but I wanted to alert the Court to it, which is what was corrected. There was a mistake, which is acknowledged, and I appreciate that, in P. It's in P, Your Honor, and you'll see that the debtor is removing at the end where it says pursuant to a final order.

THE COURT: Yes.

MR. JONAS: But we do take issue, Your Honor, they're asking you to make a finding that the APA, the transactions, and the inter-company settlement, constitute an integrated, interdependent, and in-severable transaction, and each component thereof is a material and essential element of the overall transaction. The debtor and purchaser would not have entered into the APA and would not consummate the transaction absent approval and consummation of the inter-company settlement.

I don't -- I'm not sure we have evidence on that, Your Honor. But in any event, I think that's a clear intent to get at the mootness issue and be able to show this later to a Court and say, oh, look, you can't unscramble the egg, you can't take one piece and not the other. And, I don't know that it's necessary for you to make that particular finding. I take issue with it. Again, Your Honor, I appreciate you're going to do what you're going to do, but I wanted to make that

objection.

THE COURT: Actually, Mr. Jonas, I had concern. IF you'll notice my little sticky tabs there, but since so one else had raised it, the Court did have concerns on that exact thing.

MR. JONAS: Consider it raised, Your Honor.

THE COURT: And I wasn't sure if your reservation of rights that got put on later on, you know, gave the Committee comfort that wasn't going to be the case, but I don't think that's integrated. I don't believe that's a finding that the Court needs to make. I don't believe that the record today, or the record of the past, was sufficient for the Court to make that as a finding.

MR. JONAS: Thank you, Your Honor.

THE COURT: But the Court certainly can say the debtor and the purchaser would not have entered into it without approval of it because --

MR. JONAS: Understood.

THE COURT: So that piece, I'm okay with, and we'll get rid of pursuant to a final order, but I don't believe the first part of that section, that was a revised P, is necessary for the sale, and I do believe, again, knowing that my District Court colleagues are not in the weeds in the bankruptcy, that that may be a flag for them.

MR. JONAS: Yes.

THE COURT: That they wouldn't understand the rest of the record here, so the Court --

MR. JONAS: Thank you, Your Honor.

THE COURT: The Court will honor you that request and --

MR. JONAS: Do you have any more stickies there, Your Honor?

THE COURT: Hopefully the rest of them have been resolved.

MR. JONAS: Okay.

THE COURT: But I appreciate you bringing that to the Court's attention.

MR. WALTER: Good afternoon, Your Honor. Grayson Walter, Bond, Schoeneck & King, co-counsel for the debtor. I guess that leaves me for the DIP if there's nothing else. Again, I'd like to thank the Court for its indulgence in both hearing this motion on very short notice and allowing us some time to try to resolve the issues. I believe at this point we have agreement of all the parties on how to move forward on the DIP.

As Counsel mentioned earlier, we are actually modifying our request slightly from what was filed to request an interim draw of $18 million today, with a final hearing in 14 days or so for the final DIP order. I'm just going through

my notes here. I'm trying to be as brief as possible.

As the Court is aware, Riverspan was the successful bidder at the auction. Has agreed as a condition of their bid to provide a new $20 million DIP facility takeout to take out the prior DIP from Commodore. Excuse me, Your Honor, I'm just trying to go through my notes.

Your Honor, the new DIP facility is necessary for a number of different reasons. First, the time line for this case has been extended beyond what was originally contemplated, in part to accommodate some, I'll just call it, spirited litigation over the inter-company settlement, which has now been approved. The debtors' cost of remaining in the Chapter 11 case longer than anticipated has accordingly been increased, and the original DIP facility is now insufficient to cover these increased costs.

Additionally, as Your Honor heard from Mr. Agay a little while ago, Commodore has alleged that the debtor is in default under certain milestones of the existing DIP and has taken the position that it's no longer obligated to fund the existing DIP and that new funding is now terminated.

Commodore did provide the debtor with a termination notice, I believe it was yesterday, and has issued an enforcement notice, which would trigger its ability in three business days to start exercising remedies.

We did get a payoff letter from Commodore, which had

both a number for the payoff of the existing DIP as well as a request for the recovery of its breakup fee and expense reimbursement as a result of the termination of the -- or Commodore's alleged termination of its APA. We've engaged in some discussions with Commodore, which I'll put on the record here in a little bit, but I think we've got at least a path forward on that.

Before I get to that, just to walk Your Honor through some of the highlights with respect to the replacement DIP. You already heard a lot of the details from Mr. Ericson (sic) --

THE COURT: Mendelsohn.

MR. WALTER: -- or I'm sorry, Mr. Mendelsohn earlier. You know, among the terms that have not changed, the interest rate, the material conditions to borrowing, with the one covenant that Riverspan has required as a condition to the initial borrowing that the sale order be entered before we could borrow. The collateral package and liens haven't changed and there's been no new events of default.

Key changes do include an extended maturity date, a waiver of the requirement that the inter-company settlement approval order be deemed a final order on or before April 22. That was one of the defaults that Commodore had invoked, and a resetting of milestones, as Your Honor has previously heard. I can go through this again if you'd like or --

THE COURT: No. I have this right here.

MR. WALTER: Okay. Your Honor, Commodore has consented to, as I understand it, and I'm going to put this into the record kind of conceptually, and I believe there's been language circulated that has been agreed to or that will be agreed to before the order is uploaded. But conceptually, the parties have agreed that Commodore's liens will remain in place until its DIP obligations have been paid off and until it receives -- and I believe it's nine million, four-hundred thousand and change to satisfy those DIP obligations.

Upon satisfaction and receipt of payment, those Commodore's DIP liens will terminate. Commodore is reserving rights, and all parties are reserving rights, through the final or any interim DIP hearing on the entitlement of Commodore to payment of that termination fee and expense reimbursement. And Commodore is retaining its super-priority claim for its termination fee, and that super-priority claim would be pari passu with the Riverspan DIP super-priority claim.

With respect to the Committee, Your Honor, the Committee voiced some concerns about how the professional fee escrow account is to be allocated among professionals. I believe for purposes of today's hearing, everyone has just agreed to reserve rights on that and no one is making any claims one way or the other on that. Mr. Jonas, did I --

MR. JONAS: I'll address it.

MR. WALTER: Okay. Mr. Jonas can correct me if I'm

wrong, but there's been a budget shared in draft. I believe we're still awaiting final sign off on that, but that will be appended to the interim order when it's uploaded to the Court.

Your Honor, as mentioned, the debtor has a present need for additional financing to avoid being in default under the existing DIP and avoid Commodore's remedy -- exercising its remedies. There's no financing available on other more favorable terms. We believe that entry into the takeout DIP facility being offered by Riverspan is a reasonable exercise of the debtors' business judgment, and we would respectfully submit that the Court should approve the Riverspan DIP on an interim basis today in the amount of $18 million and ask the Court to set a further hearing within approximately 14 days for a final DIP order. And Your Honor, the reason for the increased request today is that we have some witness and availability issues next Wednesday, so we'd prefer not to be back before the Court next week if that's possible.

THE COURT: Well, the Court is a little confused as from how we got from $9.4 million, and recognizing we have a tremendous amount of money flying around for professional fees, that the Court would also ask just location of that. I do have the prior DIP budget with the breakdown, but how did we get from 9.4 to 18?

MR. WALTER: Your Honor, so 9.4, and it's a little -- it's 9.44 -- I don't have the number exact --

THE COURT: Commodore's payoff.

MR. WALTER: It is exactly what Commodore is owed today to pay off thei4 DIP. The additional amount would be to fund ongoing expenses over the next few weeks until we can get to a final DIP hearing, and that includes funding the professional -- continued funding to the professional fee escrow account, as well as other operational expenses.

THE COURT: How much of that is for professional fees out of that additional 8 or $9 million, 8.6?

MR. WALTER: Your Honor, if I can have one minute to confirm with Mr. Vomero?

THE COURT: Sure.

MR. DOVE: Your Honor, while this is going on, perhaps I can speak for just a moment?

THE COURT: Would you identify yourself for the record, please?

MR. DOVE: Certainly. Jeffrey Dover, Barclay Damon, on behalf of Commodore entities.

THE COURT: Thank you.

MR. DOVE: Mr. Agay is having difficulty coming off moot and getting on video, but he asked me to relay to the Court that he agrees with everything that Mr. Walter has said.

THE COURT: Wonderful. Thank you.

MR. DOVE: Thank you.

THE COURT: I don't need exact, just ballpark.

MR. WALTER: So, Your Honor, so the budget, at least in draft form, contemplates about $800,000 a week for this week, and then about 1.4 million for the next three weeks to professional fees, or to restructuring expenses, which is inclusive of professional fees and some other expenses.

THE COURT: Okay, so I -- because there was no budget attached, obviously, to the application last evening, so I'm still confused how we are going from 2.2 plus 9.4 to 18. I understand your witnesses have already testified, but do we have that much of a shortfall on the budget? This debtor was operating at a break-even without its restructuring expenses.

MR. WALTER: So, Your Honor -- and, Your Honor, I'm happy to share the draft budget if it would be helpful to the Court to see it?

THE COURT: It would. Again, my goal on such short notice was to have the bare minimum as to what gets us through to get Commodore out, to get the professionals paid through the next couple of weeks, and to maintain operations recognizing we need a cash balance, but that's a bit -- I'm missing a few million dollars.

MR. WALTER: May I approach, Your Honor?

THE COURT: Certainly.

MR. WALTER: I hesitate on an interim basis to do 18 on 20 million when we were looking at 15.

MR. WALTER: Understood, Your Honor.

THE COURT: Thank you.

MR. WALTER: So, Your Honor, this budget was also, as my colleague just recalled or reminded me, this was prepared with the contemplation that there would be a potential that the debtor would have to pay the $3 million breakup fee and expense reimbursement, so you'll see in the DIP pay-down line, there was a $12 million --

THE COURT: Yes.

MR. WALTER: -- draw-down. So that was -- but even with that, in the next few weeks, the debtor is starting to run somewhat low on cash.

THE COURT: I just need a minute to digest this. It takes me -- when were you looking for your next hearing?

MR. WALTER: Your Honor, I think, we were thinking to a final hearing two weeks out, which I think is the minimum amount of time that the Court can go before holding a final hearing, but if we need to do another interim, we can. We were just having some issues getting people here on Wednesday next week.

THE COURT: Yes, okay. And that's fine. Again, I'm not -- I mean, we have a calendar on the 20th, but that doesn't get us to our 14 days.

MR. WALTER: Then, Your Honor, I believe the 29th is the outside date under the DIP agreement for the final order to

be entered.

THE COURT: Understood. And I don't think I have a regular calendar on the 27th, because that's Memorial Day weekend, kind of that week. We certainly -- again, I don't know who's going to be objecting, but make it the 21st. Ms. Griffith is grabbing my phone. But my question is, I mean if we get 3 million, I hesitate to do 18 out of 20, recognizing the witness situation and understanding if -- the budget is the budget. I understand that. We certainly have had enough testimony from Mr. Vomero, but I guess I would ask -- she's not getting my phone. I thought I was wise enough to bring it out. Let me just double check here on the --

MR. WALTER: One moment, Your Honor.

THE COURT: Certainly.

MR. WALTER: Your Honor, Mr. Vomero advised me that, so long as we're reducing the Commodore pay-down to the 9 million and change instead of the 12 million, we can limit the request to 15 million for today.

THE COURT: And that certainly seems more palatable to the Court, in light of the fact that the final DIP on Commodore for 15 million was on, so if people had a concern beyond that, that's preserved. Again, I'm just concerned with the shortened time of literally no notice to all the parties in interest are here, but I never like to go beyond them --

THE COURT: Understood, Your Honor.

THE COURT: Okay, so if we reduce that request to 15 and that still pays off Commodore on DIP liens with a reservation of rights and the pari passu super-priority of claims, and then obviously whatever budget that you finalize to attache is fine with the Court. Was there anything else that you needed to make a record of with respect to the DIP?

MR. WALTER: Your Honor, I think that's all for the debtor, unless you have any additional questions. It sounds like Mr. Jonas wants to weigh in.

THE COURT: Yes, I do have a question though for -- and I know Mr. Agay is the lead counsel, Mr. Dove. And it doesn't have to be resolved necessarily today, because obviously there's still a payout that's going to be made. They're still involved. The Court just wasn't sure if the interim order is an interim order and Commodore is fine with that, or am I looking for some type of a backdated final order from Commodore? I do see Mr. Agay is there. I'm just not sure if his -- so I just --

MR. AGAY: Yeah. Hi, Your Honor. Hi, Your Honor. It's David Agay from Commodore. I was unable to unmute.

THE COURT: Great.

MR. AGAY: I appreciate Mr. Dove stepping up also. You know, at the end of the day, I think what's important here is that our payoff occurs contemporaneous with the new DIP falling into place. So whether that occurs under the existing

fourth interim order, this new first interim order, or some final order, I think we're indifferent, Your Honor. I think it's pretty clear from the record what's occurring here.

THE COURT: Okay, that's fine. I just wanted to -- again, I just was trying to make my list of what orders I'm expecting and in the event there's any dispute. So, obviously you can always -- if there's an issue with that, Mr. Agay, you know you can always file a letter on and we can always have a telephonic or --

MR. AARON: Yeah.

THE COURT: -- video conference if the parties aren't able to work out whatever language. So thank you.

MR. WALTER: Thank you.

THE COURT: Okay, Mr. Jonas?

MR. JONAS: Yes, Your Honor. I'll be very brief. Jeff Jonas, Brown Rudnick for the Committee. Your Honor, there was some concern that either prior orders or even leading up and through this order, there was some, I'll call it, a governor or a specific limitation to Committee professionals, and I'm told that's not the case. I think that's a general agreement with the parties. And frankly, Your Honor, let me just say, I think we're all appreciative of your admonitions and understanding about it's been a very expensive case. Understood. And, there will obviously come a time through fee applications and whatnot when that will be the right place and

time for review of that. I understand that.

I just wanted to make sure, and I didn't want to just leave it as a reservation in case I've got this wrong, that because we would be opposing the order if somehow that's continuing through the orders, that only the Committee is facing some special line-item budget limitation or whatnot. I'm told that's not the case and that if the sale doesn't happen, and I think this is only relevant if the sale doesn't happen and there are insufficient funds to fund professionals, effectively, that pain or that burden, will fall on all professionals and everybody will have to deal with it. As long as that's generally the understanding, Your Honor, we're fine with the DIP.

THE COURT: And that would certainly be the Court's recommendation or understanding, that certainly we don't want to go down there, but that it would just fall on the Committee --

MR. JONAS: Correct.

THE COURT: -- as taking that hit.

MR. JONAS: Correct, Your Honor. Thank you, Your Honor.

THE COURT: Thank you. So with that said, do we expect an order between today and tomorrow on the DIP and the sale? And at the time those were submitted, I will assume if they come from the debtor, all parties will have signed off on

those, and if there's anything outstanding disputes that hit at midnight tonight, file your letter with your competing language, and the Court will resolve that, and if we need to have a telephonic hearing tomorrow, we would do that, but the Court certainly doesn't -- I'm guessing many of you will still be traveling tomorrow at this point.

MS. POSIN: That certainly works for the debtor, Your Honor. I think we're very close on both documents. We're hoping we get them both to you this afternoon, but we will certainly let you know if there's any issues that arise. Thank you.

THE COURT: Okay, and the deadline is tomorrow, so I don't need to keep court staff late on that. So with that said, let me double check my notes on the DIP. The Court probably needs to make a finding on the 364 that, that financing would only be approved if it's in the best interest of the general creditor body, and that's In re Roblin Industries, Inc., 52 B.R. 241. In general, in determining whether to grant the DIP financing, the following five factors are reviewed, that the proposed financing is an exercise of sound and reasonable business judgment, that it's in the best interest of the estate and the creditors, that a credit transaction is necessary to preserve the assets of the estate and is necessary, essential, and appropriate, for the continued operation of the debtor's businesses, that the terms of the

transaction are fair, reasonable, and adequate, given the circumstances of the debtor borrower, and the proposed lender, and that the financing agreement was negotiated in good faith and at arm's length between the debtor, on one hand, and the lenders on the other, and that is In re Mid-State Raceway, Inc., 323 B.R. 40.

The Court's previously approved debtor-in-possession financing in this case pursuant to those factors and found that all of them have been satisfied. In light of the terms essentially mirroring that of Commodore, the prior DIP lender, the Court will grant the financing and will look to you for an order with the budget attached per the prior discussions.

MR. WALTER: Thank you, Your Honor. Did Your Honor -- I may have missed it, but did Your Honor set a date for the next hearing?

THE COURT: Well, I mean, we usually set these -- let's see. I mean, May 21st is a solid two weeks. It doesn't give people a lot of opportunity. We can go out beyond that if we need to. You know, I can have it on during the week of the, you know, let's see, 27th. I see that that is a holiday, or the 28th. I'm not sure how many people are coming. Obviously, if it's a further interim or a final, we can -- most can participate by video if that's the only thing on. Did you have a preferred --

MR. WALTER: Your Honor, Mr. Vomero has confirmed

that he's available on the 21st. I think he may be unavailable and on vacation the following week.

THE COURT: I guess my question is, does the 14 days start from today?

MR. WALTER: I believe it does, Your Honor.

THE COURT: I'm getting a --

MR. WALTER: I believe it starts from the day of service, which would be today.

THE COURT: There may be some other mailings. Yes, that's probably true. Okay. Why don't we look at the 21st at 10:00 a.m., and if for some reason the Court determines that that needs to be a further interim, as opposed to a final, based on the mailing, we can do a further interim and then go for a final the next week or whatever is required.

MR. WALTER: Thank you, Your Honor.

THE COURT: Okay. I would request in that order that any responses then be due, since it's such relatively short time, why don't we just make it noon on the 20th. Again, we've kind of hashed out all those issues out in the prior Commodore orders, but we can certainly -- you never know when someone steps up.

MR. WALTER: Thank you, Your Honor.

THE COURT: Thank you. So I think that was it for -- we have the exhibits are resolved. Those will be filed here. We have the sale order issues resolved. I would ask that you

submit that to Chambers in a Word version to Ms. Griffith just in case there is anything that we need to resolve or revise. I will redline that so the parties are aware of that. I would expect that it will be in proper form, but we've got a lot of moving parts here today. And then, I do know we have two pro hac vice applications that I think we are waiting on the fees to be paid for Milbank's admission. And, is there anything else that the parties anticipate the Court should be aware of for scheduling or other -- I know we have the motion to extend the time to remove actions or something that's on a regular motion, but was there anything else from the debtors' perspective that the Court should --

MR. WALTER: Nothing that I'm aware of, Your Honor.

THE COURT: Nothing, okay. Mr. Jonas, I know you're still going back and forth, but is there anything else from the Committee's perspective that you'd like to give the Court a heads up on that should be coming down the pipe?

MR. JONAS: No, I don't think so. Thank you very much, Your Honor.

THE COURT: Thank you. Mr. Barbaruolo, anything from you?

MS. BARBARUOLO: No, thank you, Your Honor.

THE COURT: Thank you. Anything from anybody else in the courtroom? Anybody by video before we adjourn? Okay, hearing none. We'll see everyone -- to the extent people could

participate by video --

UNIDENTIFIED ATTORNEY: Yes.

THE COURT: -- the Court does not take offense to that at all, recognizing estate resources are being utilized. So we'll see everyone on the 21st.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

THE COURT: Thank you.

COURTROOM DEPUTY: All rise. Court is adjourned.

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

We, TRACEY J. WILLIAMS and WENDY ANTOSIEWICZ, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Tracey Williams

TRACEY WILLIAMS

/s/ Wendy Antosiewicz

WENDY ANTOSIEWICZ

J&J COURT TRANSCRIBERS, INC. DATE: May 11, 2026