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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

MULTI-COLOR CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No.: 26-10910 (MBK)

Judge: Michael B. Kaplan

**THE CROSS-HOLDER AD HOC GROUP'S OBJECTION TO FINAL
APPROVAL OF THE DEBTORS' MOTION FOR ENTRY OF FINAL ORDER
(I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING,
(B) USE CASH COLLATERAL, AND (C) GRANT LIENS AND SUPERPRIORITY
ADMINISTRATIVE EXPENSE CLAIMS, (II) GRANTING ADEQUATE PROTECTION
TO CERTAIN PREPETITION SECURED PARTIES, (III) MODIFYING THE
AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF**

¹ The last four digits of Debtor Multi-Color Corporation's tax identification number are 5853. A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://veritaglobal.net/MCC>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 3284 Northside Parkway NW, Suite 400, Atlanta, Georgia 30327.



The Cross-Holder Ad Hoc Group² hereby submits this objection (the “Objection”) to final approval of the Debtors’ Motion for Entry of Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief [Dkt. No. 26] (the “DIP Motion”). The Cross-Holder Ad Hoc Group re-asserts its objection that venue is improper before this court for the reasons set forth in its Motion to Dismiss or, in the Alternative, Transfer the Chapter 11 Cases [Dkt. No. 71]. In support of this Objection, the Cross-Holder Ad Hoc Group relies upon the Declaration of Benjamin Rosenblum in Support of the Cross-Holder Ad Hoc Group’s Objection to Final Approval of the Debtors’ Motion for Entry of Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief (the “Rosenblum Declaration”), and respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtors seek final approval of an insider debtor-in-possession financing facility (the “Insider DIP Facility”) with certain undersecured creditors (the “Secured Ad Hoc Group” or the “Favored Lenders”) and Clayton, Dubilier & Rice, LLC (“CD&R” or the “Sponsor”) that fails to satisfy the requirements of section 364 of the Bankruptcy Code and that improperly reallocates value from unsecured creditors to the Debtors’ controlling private equity sponsor and the Favored Lenders. The Insider DIP Facility is inextricably tied to the Restructuring Support

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Interim DIP Objection (defined below).

Agreement (“RSA”), which in turn dictates the related plan of reorganization (the “Plan”)—in tandem they are designed to rush through a restructuring outcome that was negotiated prepetition to reward the controlling-shareholder and Favored Lenders—all while depriving unsecured creditors of the protections guaranteed by the Bankruptcy Code and the value to which they are entitled.

2. The evidence obtained through discovery since the interim hearing vindicates the issues raised by the Cross-Holder Ad Hoc Group in its prior objections to the Insider DIP Facility and confirms that the DIP process was fundamentally flawed, deliberately exclusionary, and marred by misrepresentations and insider-dealing. The Debtors, the Sponsor and the Favored Lenders have attempted to inoculate the fundamentally flawed Insider DIP Facility through misrepresenting the extent of the Sponsor’s and Favored Lenders’ liens, a sham marketing process, and a meaningless comparison to market precedents that ignores the most important datapoint—the non-priming DIP with better terms and economics offered by the Cross-Holder Ad-Hoc Group. This Court must stop their attempt to abuse the bankruptcy system.

3. The Cross-Holder Ad Hoc Group offered an actionable, superior alternative DIP facility (the “Alternative DIP Facility”), which provides up to \$500 million of new money at lower cost, on better terms, without any roll-up of prepetition debt, and without the restrictive covenants that tie the Debtors to a predetermined plan of reorganization. Despite being in frequent communication with the Cross-Holder Ad Hoc Group in the lead-up to these chapter 11 cases, the Debtors deliberately excluded the Cross-Holder Ad Hoc Group from their DIP marketing process—however perfunctory—and refused to meaningfully evaluate this proposal, deeming it “inactionable” for legally irrelevant reasons.

4. Tainted to its core, the Insider DIP Facility cannot survive scrutiny under any standard. The transaction involves the Sponsor, a statutory insider of the Debtors, as a material DIP lender, current controlling equity holder, and proposed plan sponsor who exercised substantial control over the process from inception—requiring heightened scrutiny and the application of the “entire fairness” standard. Under this searching standard, the Debtors must demonstrate that both the process and the price are fair. They can prove neither.³

5. As further exposed by the evidence, the process was fatally flawed: the Debtors deliberately avoided a meaningful DIP marketing process. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED], the Debtors strategically delayed soliciting the Cross-Holder Ad Hoc Group’s DIP proposal [REDACTED] until January 25, 2026, after the Cross-Holder Ad Hoc

³ While the Debtors’ proposed professionals have not yet filed retention applications in this case pursuant to section 327 of the Bankruptcy Code, certain of the Debtors’ professionals appear to represent simultaneously the Debtors and the Sponsor. Indeed, it appears that the team working on a \$10.3 billion dollar transaction for the Sponsor include many of the same professionals working for the Debtors here. *Compare* Press Release, Kirkland Advises CD&R on Acquisition of Sealed Air (available at <https://www.kirkland.com/news/press-release/2025/11/kirkland-advises-cd-r-on-acquisition-of-sealed-air> (last visited March 10, 2026) with Rosenblum Decl. Ex. 33 (MCC_180066) ([REDACTED])).

Group itself asked to participate. That same day, the Debtors entered into the RSA, which required the Debtors to accept the Secured Ad Hoc Group and CD&R's proposed Insider DIP Facility and (absent this Court's intervention) sealed the fate of these cases. Unaware of this at the time, the Cross-Holder Ad Hoc Group diligently submitted the Alternative DIP Proposal the same day they received solicitation materials. Further evidencing that the Debtors had no intention of seriously considering the Cross-Holder Ad Hoc Group's proposal, [REDACTED]

[REDACTED]. The only reasonable conclusion that can be drawn from this exclusionary, unusual, belated, and abbreviated DIP "marketing process" is that the Debtors had already decided to approve the Insider DIP Facility before soliciting alternatives. The cursory, last-minute "marketing" was nothing more than an illusory box-checking exercise.

7. And as the Debtors and this Court know, every economic term of the Alternative DIP Facility is more attractive to the Debtors' estates than the Insider DIP Facility, including a lower interest rate, lower original issue discount, no backstop fee, longer tenor, and no roll-up component. Moreover, and just as important, the Alternative DIP Facility is non-priming and does not violate the protections afforded creditors under the Bankruptcy Code as does the Insider DIP Facility. As described in further detail below, the host of legal defects associated with the Insider DIP Facility and the evidence gathered by the Cross-Holder Ad Hoc Group reveal that the Sponsor and Favored Lenders hatched a completely self-serving deal and now want to improperly exploit the chapter 11 process, all at the expense of other creditors.

8. The \$250 million roll-up embedded in the Insider DIP Facility is particularly egregious. Based on the proposed Disclosure Statement, the roll-up would—by the Debtors' own

numbers—transfer \$133 to \$167 million of incremental value to the Sponsor and the Favored Lenders by elevating their substantial undersecured deficiency claims to superpriority DIP claims that must be paid in full, with interest if any plan is to be confirmed. Although the Debtors acknowledge that the Sponsor and other Favored Lenders are materially undersecured, they rely on overstated liens to argue that the admitted “uplift” associated from the roll-up is coming from, or mostly from, undersecured creditors, rather unsecured creditors. Once the true nature of the liens are established through an adversary process, it will show the precise amount transferred by the roll-up from unsecured creditors to the Sponsor and other Favored Lenders. In all events, this is precisely the type of arrangement courts have repeatedly refused to approve—one that converts the bankruptcy process from one designed to benefit all creditors, including unsecured creditors, to one designed for the unwarranted benefit of post-petition lenders.

9. Indeed, the Insider DIP Facility is so inextricably linked to the RSA and Plan that it predetermines the outcome of these cases and, thus, constitutes a prohibited *sub rosa* plan. The Debtors themselves concede that the Insider DIP Facility is “an inextricable part of the overall Restructuring Support Agreement.” *Declaration of Brent Banks in Support of the Debtors’ DIP Motion*, Dkt. No. 27 (the “Banks Declaration”), ¶ 28. In fact, the Debtors have structured the Insider DIP Facility to add multiple layers of protection guaranteeing (absent this Court’s intervention) that the Plan will be confirmed. To wit, to participate in the Insider DIP Facility, a lender must execute a joinder to the RSA, which binds it to, among other things, vote in favor of the Plan by the subscription deadline, which was a deadline set to expire prior to the final approval of the Insider DIP Facility. This subscription deadline operated as a form of coercive vote-buying—vote for the plan, waive the right to contest the Insider DIP Facility and get a lesser portion of the outsized-Insider DIP Facility economics or, alternatively, retain the right to vote and

get even worse economics under the Plan. As such, the Insider DIP Facility's vote-buying, maturity provisions, milestone requirements, and economic terms are all designed to ensure that the Sponsor's preferred outcome of remaining the owner of the Debtors survives to confirmation while creditors are stripped of the procedural and other protections guaranteed by the Bankruptcy Code.

10. Under these circumstances, the Insider DIP Facility violates section 364's good faith requirements, both in process and substance. The Debtors conducted a predetermined solicitation that favored the controlling-insider while misleading competing lenders and providing them no opportunity to compete. The resulting Insider DIP Facility weaponizes postpetition financing to inflate the recoveries of the undersecured Sponsor and Favored Lenders and forces other secured creditors to join and support the Plan lest they forego the opportunity to enjoy some (but not all) of these contrived benefits. The Insider DIP Facility also locks-in a pre-determined plan that transfers the exclusive opportunity to own the reorganized debtors to the Sponsor, which constitutes a distribution on the Sponsor's unsecured claims to the detriment of other similarly situated unsecured creditors.

11. As the facts demonstrate, the Debtors have ceded control of these chapter 11 cases to their out-of-the-money, controlling shareholder and abdicated their duty to maximize the value of their estates for the benefit of all creditors. The Secured Ad Hoc Group expressly recognized the Sponsor's improper control over the process and elected to leverage the tainted process for their own benefit. For all these reasons, the Court should deny final approval of the Insider DIP Facility.

FACTUAL BACKGROUND⁴

A. The Initial Phases

12. The Debtors formally engaged Evercore in October 2025. First Day Dec., ¶ 60.

[REDACTED]

[REDACTED]. Rosenblum Decl. Ex. 1 (CDR_0019689) ([REDACTED]
[REDACTED]); *see also* Rosenblum
Decl. Ex. 2 (CDR_0032368) ([REDACTED]
[REDACTED]); Rosenblum Decl. Ex. 3 (CDR_0032401) ([REDACTED]
[REDACTED]). [REDACTED]
[REDACTED]. Rosenblum
Decl. Ex. 1 (CDR_0019690) ([REDACTED]
[REDACTED]); Rosenblum Decl. Ex. 4 (CDR_0000004) ([REDACTED]
[REDACTED]). [REDACTED]
[REDACTED]
[REDACTED]. *See* Rosenblum Decl. Ex.
4 (CDR_0000004).

13. [REDACTED]
[REDACTED]
[REDACTED]

⁴ The objection deadline for the Motion falls before the close of discovery, including scheduled (or still open) depositions of key decision-makers or advisors who approved or recommended the Insider DIP Facility—namely, Special Committee members Peter Laurinaitis (March 12, 2026) and Roger Meltzer (March 11, 2026), Brent Banks, Senior Managing Director of Evercore (March 11, 2026), and Robert Volpe, Partner at CD&R (March 13, 2026). Accordingly, the Cross-Holder Ad Hoc Group expressly reserves its right to supplement this Objection to incorporate testimony adduced at these depositions or any other discovery received in connection with the Motion after the objection deadline.

[REDACTED]. See Rosenblum Decl. Ex. 4 (CDR_0000004); Ex. 3 (CDR_0032401).

14. [REDACTED]

[REDACTED], see Rosenblum Decl. Ex. 4 (CDR_00000007) [REDACTED]

[REDACTED]), [REDACTED]

[REDACTED], *id.* ([REDACTED]

[REDACTED]). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* [REDACTED]

[REDACTED].

15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED]

B. The Real Value

16. [REDACTED]

[REDACTED]

[REDACTED] Rosenblum Decl. Ex. 5 (CDR_0008176) ([REDACTED]

[REDACTED]). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Rosenblum Decl. Ex. 6 (CDR_0025923). [REDACTED]

[REDACTED]

[REDACTED].

18. [REDACTED]

[REDACTED]

[REDACTED]. Rosenblum Decl. Ex.

5 (CDR_0008218-CDR_0008219) ([REDACTED]

[REDACTED]). [REDACTED]

[REDACTED]. *Id.*

(CDR_0008219).

19. [REDACTED]

[REDACTED]. *E.g., id.* (CDR_0008206); *id.*

(CDR_0008214-CDR_0008224). [REDACTED]

[REDACTED] *E.g., id.* (CDR_0008206); *id.* (CDR_0008232). [REDACTED]

[REDACTED].

20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* (CDR_0008188-
CDR_0008190).

21. [REDACTED]

[REDACTED]:

[REDACTED]

See id. (CDR_0008189).

22. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

23. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

24. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Rosenblum Decl. Ex. 6 (CDR_0025923).

25. [REDACTED]

[REDACTED]

Id. [REDACTED]

[REDACTED]

[REDACTED] *Id.*

26. [REDACTED]:

- [REDACTED]
- [REDACTED]
- [REDACTED];
- [REDACTED]; and
- [REDACTED].

See id. (CDR_0025927).

27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

28. [REDACTED]. Under the Plan structure, CD&R would contribute approximately \$400 million and receive approximately 64% of the common equity on that basis, plus 1.6% of common equity at “Plan Equity Value” (\$625,000,000), or \$10 million, on account of the “Plan Sponsor Equity Investment Commitment

Premium”. Plan, § I.A.180, 182-183. The Sponsor would also participate in the new preferred stock under the Plan, as well as receive equity on account of certain of its claims, meaning that post-emergence the Sponsor would hold roughly 70% of the reorganized equity. [REDACTED]

[REDACTED]. This opportunity to purchase this equity at a discount is a distribution that belongs to creditors, not the out-of-the-money Sponsor. That it has been reserved for the Sponsor, whose equity is subordinate to creditors and whose unsecured claims are in the same class as the Cross-Holder Ad Hoc Group’s unsecured claims, is improper. In addition, this Plan structure raises serious concerns about how the Sponsor has leveraged its insider status throughout this process to retain control of the Debtors post-emergence.

C. Timeline of Negotiations, DIP Proposal Submissions, and RSA Execution

29. [REDACTED].

Prior to the Petition Date, beginning around October 2025, the Sponsor, the Secured Ad Hoc Group, other interested third parties. *Declaration of Garret Gabel, Chief Restructuring Officer of Multi-Color Corporation and Certain of its Affiliates, in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings*, Dkt. No. 23, ¶ 8-9. However, these negotiations were not conducted at arm’s length by the Debtors or their “Special Committee” but instead at the direction of the Sponsor.

30. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Rosenblum Decl. Ex. 7 (CDR_0027218). [REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]. *Supra* ¶ 12. [REDACTED]

[REDACTED]

[REDACTED]. Rosenblum

Decl. Ex. 8 (CDR_0022637).

31. [REDACTED]

[REDACTED]. Rosenblum

Decl. Ex. 9 (CDR_0024404). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.*

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Rosenblum Decl. Ex. 10

(MCC_186863). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* ([REDACTED]).

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Rosenblum Decl. Ex. 9 (CDR_0024403-CDR_0024404). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* (CDR_0024404). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

34. [REDACTED]

[REDACTED]

[REDACTED]. Rosenblum Decl. Ex. 11 (MCC_129511). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Rosenblum Decl. Ex. 12 (MCC_092781) ([REDACTED]).

35. In a calculated but halfhearted attempt to inoculate the Insider DIP Facility from attack, in the late afternoon and early evening of January 22, 2026, Evercore, on behalf of the Debtors, began a sham marketing effort reaching out to the third parties who had previously engaged on the out-of-court restructuring and who were already subject to non-disclosure agreements. *See, e.g.*, Banks Decl., Dkt. No. 27, ¶ 17; Rosenblum Decl. Ex. 13 (MCC_094173) ([REDACTED]); Ex. 14 (MCC_094194) ([REDACTED]); Ex. 15 (MCC_094223-MCC_094224) ([REDACTED]); Ex. 16 (MCC_094132) ([REDACTED]); Ex. 17 (MCC_094326) ([REDACTED]); Ex. 18 (MCC_102611) ([REDACTED]).

[REDACTED]. *See, e.g.*, Ex. 19 (MCC_094157) ([REDACTED]).

[REDACTED].

36. [REDACTED]
[REDACTED]:

[REDACTED]

Id. (MCC_094161). However, the Insider DIP Facility then under consideration contemplated a senior, priming lien on Term/Notes Priority Collateral (as defined in the Interim DIP Order) in addition to these junior liens.

37. [REDACTED]

[REDACTED]. That requirement only came later when the Cross-Holder Ad Hoc Group offered a DIP financing that was even better than the proposal the Debtors requested in their DIP solicitation materials.

38. Meanwhile, though omitted from this solicitation, the Cross-Holder Ad Hoc Group learned that the Debtors were evaluating a chapter 11 bankruptcy and, on January 23, 2026 at 2:59 P.M. (ET), advisors for the Cross-Holder Ad Hoc Group communicated to the Debtors an interest in participating in any DIP solicitation process, stating: “[W]e understand that the company is evaluating a chapter 11 filing, we ask that you please share all materials being used to solicit DIP financing proposals with us and our clients. To the extent that chapter 11 is pursued, our clients

have significant interest in providing the company with DIP financing.” Dkt. No. 77-1. Although Evercore had already participated in DIP marketing calls with other potential lenders by this time, Evercore responded the following day, on January 24, 2026 at 11:49 A.M. (ET), stating that: “in connection with *any* DIP marketing process, the company *intends* to solicit DIP proposals from all key stakeholders, including your clients.” Dkt. No. 77-2; *see also* Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr’g Tr. 73:15-74:1) (cross-examination of Mr. Banks at First Day Hearing reviewing January 24 email to Guggenheim: “[Mr. Bennett] Q. But this document doesn’t say, we started a DIP marketing process yesterday, does it? [Mr. Banks] A. No. [Mr. Bennett] Q. It doesn’t say, we started a DIP marketing process yesterday and would be thrilled if you could join it, does it? [Mr. Banks] A. It does not, no. [Mr. Bennett] Q. It suggests that something might happen in the future, doesn’t it? [Mr. Banks] A. It does. [Mr. Bennett] Q. But it was already going on beginning the day before, correct? [Mr. Banks] A. Correct. We’re having discussions.”). And though such materials had already been prepared and shared with other third parties on January 24, 2026, Evercore did not provide these materials to advisors for the Cross-Holder Ad Hoc Group until January 25, 2026 at approximately 2:00 P.M. (ET):

[Mr. Bennett] Q: Why don’t we put up Hayes Declaration Exhibit 3, please? Is this the transmission of DIP materials to Guggenheim by your office?

[Mr. Banks] A: It is.

[Mr. Bennett] Q: And you received this email, correct?

[Mr. Banks] A: I did. [Mr. Bennett] Q: Okay. And this is sent on Sunday, January 25th at 1:59 p.m. Eastern Time, correct?

[Mr. Banks] A: Okay.

[Mr. Bennett] Q: 48 hours after Guggenheim first asked, correct?

[Mr. Banks] A: That’s correct.

[Mr. Bennett] Q: And 48 hours after you'd actually started your DIP process, correct?

[Mr. Banks] A: That's correct.

Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr'g Tr. 74:17-75:10); Dkt. 77-3.

39. Later that day on January 25, 2026, the Debtors entered into the RSA with the Sponsor and the Favored Creditors, which precluded the Debtors from supporting any DIP proposal other than the Insider DIP. *See infra*, ¶¶ 46-50.

40. On January 25, 2026, the same day the Cross-Holder Ad Hoc Group received solicitation materials, it submitted to Evercore the Alternative DIP Facility, which provided all information that Evercore requested. Dkt. 77-4; Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr'g Tr. 75:15-21) (“[Mr. Bennett] Q: Did the Cross-Holder Ad Hoc Group provide all of the information that the debtors in [sic] Evercore requested in its request for a proposal? [Mr. Banks]: A With respect to the RFP we put out there, I believe that to be the case. They provided the key economic terms, et cetera, information about the financial covenant, et cetera. So, yes.”).

41. The Alternative DIP Facility contemplated a \$350–500 million new money financing facility at a rate of SOFR + 5.50% and included a 1.0% original issue discount. Rosenblum Decl. Ex. 20 (MCC_093002) ([REDACTED]). Consistent with the solicitation materials, the Alternative DIP Facility would be non-priming—specifically, the liens securing the proposed Alternative DIP Facility would be junior liens on ABL Priority Collateral and first liens on all unencumbered property. *Id.* The Alternative DIP Facility would have an 18-month tenor, with no RSA requirement or similar early maturity triggers. *Id.* As reflected in the chart below, the Alternative DIP Facility is superior to the Insider DIP Facility in all economic terms:

Term	Insider DIP Facility	Alternative DIP Facility
Size	\$507.5mm (including \$250mm roll-up)	\$350-500mm (100% new money)
Roll-up Feature	\$250mm roll-up of undersecured debt	None
Interest Rate	S + 6.75% Cash	S + 5.50% Cash
OID	2.0% Cash	1.0% Cash
Backstop Fee	\$7.5mm	None
Tenor	10 months (with early maturity triggers)	18 months (no RSA/early maturity triggers)

42. The advisors for the Cross-Holder Ad Hoc Group, without knowledge that the Debtors had already entered into the RSA obligating them to pursue the Insider DIP Facility, continued to follow up with the Debtors' advisors concerning the Alternative DIP Facility. Dkt. No. 77-5. Evidence adduced at the first day hearing, held on January 30, 2026, established that even while continuing to communicate with the Cross-Holder Ad Hoc Group, the Debtors concealed the fact that they had already signed the RSA. Indeed, Mr. Banks, witness for the Debtors' financial advisor, Evercore, testified that even after signing the RSA the Debtors continued to "pester" the Cross-Holder Ad Hoc Group for more information about their proposal, including to confirm how much new money would be offered despite the fact that the low-end range of new money under the Alternative DIP Facility (\$350 million) was \$100 million more than the new money under the Insider DIP Facility. Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr'g Tr. 81:13-25). This additional "solicitation" did not request a proposed path to emergence from chapter 11. *Id.* at 82:4-10 ("[Mr. Bennett] Q: Is the words [sic] path to immersion [sic] anywhere in this email, Sir? [Mr. Banks] A: It is not.").

43. Despite having already entered into the RSA, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Rosenblum Decl. Ex. 20 (MCC_092996) ([REDACTED])

[REDACTED]

[REDACTED]); DIP Motion (filed on January 29, 2026 at 10:28 A.M. (ET)).

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* [REDACTED]

[REDACTED]

[REDACTED]. *Id.* This is perhaps unsurprising, as the Debtors had already rejected the Alternative DIP Facility as “inactionable” prior to the Special Committee even having this meeting. First Day Dec., ¶ 18 (filed January 29, 2026 at 7:56 a.m.) (“[S]uch Proposal was ultimately unactionable because it did not have the support of the Secured Ad Hoc Group and, most importantly, was not coupled with a viable chapter 11 plan”).

44. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Rosenblum Decl. Ex. 21 (Gabel

Dep. Tr. 160:8-17). [REDACTED]

[REDACTED]. *Id.*

45. [REDACTED]

[REDACTED].

Rosenblum Decl. Ex. 22 ([REDACTED])

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

D. The RSA Foreclosed Evaluation of Alternative DIP Financing

46. That the Debtors, the Special Committee, and their respective advisors did not seriously evaluate the Alternative DIP Facility nor any other DIP proposal is unsurprising. Once the Debtors signed the RSA early on in their DIP “marketing” process, they were precluded from considering alternative DIP facilities. “Consenting Lenders,” including the Secured Ad Hoc Group, were similarly “locked up” in supporting the Insider DIP Facility and the Plan. Among other things, the RSA requires the Debtors to prosecute the Plan and related transactions, including the Insider DIP Facility. RSA § 7.01(a); *see also id.* at §§ 7.01(b)-(e) and 7.03(b). The RSA also prohibits the Debtors from “seek[ing] or solicit[ing]” any alternative Chapter 11 plan other than “a sale or disposition of the assets” of the Debtors. *Id.* § 7.02(g). The Debtors are obligated under that agreement to provide any “Alternative Restructuring Proposal[s]” promptly to the Sponsor and the Secured Ad Hoc Group. *Id.* § 8.02. If the Debtors accept any Alternative Restructuring Proposal by exercising their “fiduciary out,” this constitutes a termination event under the agreement. *Id.* § 12.01(g). Even if the RSA is terminated with respect to the Debtors, the RSA contains a provision requiring the Secured Ad Hoc Group and Sponsor to hold a blocking position and continue to cooperate to support the Plan for a period of 120 days. *Id.* § 5.01(c); *id.* § 14.19 (providing that the lock-up provision survives termination of the RSA).

47. Though the RSA contains a supposed “fiduciary out,” it is illusory by design. Section 12.03(b) of the RSA permits the Debtors to terminate the RSA if “the board of directors, board of managers, special committee, or such similar governing body of any Company Party determines in good faith, after consulting with counsel, that proceeding with any of the Restructuring Transactions would be inconsistent with the exercise of its fiduciary duties or applicable Law.” *Id.* § 12.03(b). This provision is designed to appear to give the Debtors a meaningful exit mechanism should a superior transaction emerge or the current transaction contravenes applicable law—*e.g.*, the Bankruptcy Code. But due to the lock-up provision, *id.* § 5.01(c), the provision is a paper right only. That is, for 120 days after the Debtors exercise the fiduciary out, the Secured Ad Hoc Group cannot support, vote for, or even discuss any alternative transaction. The fiduciary out thus provides exit from the RSA in name only, while substantively foreclosing any possible alternatives.

48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Rosenblum Decl. Ex. 23 (CDR_0013344). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

[REDACTED]

Id.

49. [REDACTED]

[REDACTED]:

[REDACTED]

Id. (CDR_0013345).

[REDACTED]

[REDACTED]. *E.g.*, Rosenblum Decl. Ex. 24 (MCC_070045) ([REDACTED]).

50. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]:

[REDACTED].

[REDACTED].

[REDACTED].

[REDACTED]

[REDACTED].

Rosenblum Decl. Ex. 21 (Gabel Dep. Tr. 118:21-119:22) (emphasis added).

E. The Cross-Holders' Interim DIP Objections, the First Day Hearing, and the Settlement DIP

51. After the Petition Date, on January 30, 2026, the Cross-Holder Ad Hoc Group filed an objection to approval of the Debtors' DIP Motion on an interim basis [Dkt. No. 74] (the "Interim DIP Objection"), raising several grounds for denial, including that:

- (i) the Insider DIP Facility violated section 364(d)(1) of the Bankruptcy Code because a non-priming alternative was available;

- (ii) the entire fairness standard—rather than the business judgment standard—should govern approval of the Insider DIP Facility and it should be denied under this standard as the Debtors failed to establish that both the process and the price were fair;
- (iii) the roll-up of prepetition debt improperly transfers between \$133 million and \$167 million of value from unsecured creditors to the Sponsor and Favored Lenders by elevating their undersecured deficiency claims to superpriority DIP claims payable in full;
- (iv) the \$7.5 million backstop premiums were unreasonable and unnecessary given that the Sponsor and Favored Lenders already represented over 70% of secured claims and had 30% of DIP commitments allocated through the DIP Holdback;
- (v) the Insider DIP Facility constituted an impermissible *sub rosa* plan because it was “inextricably” tied to the RSA, which locked in plan terms before creditors could vote or object; and
- (vi) the Insider DIP Facility was not proposed in good faith.

[Dkt. No. 74].

52. At the initial first day hearing held on January 30, 2026 (the “First Day Hearing”), the Court heard extensive testimony and argument on the DIP Motion. The Debtors presented testimony from Eric Koza of AlixPartners, the Debtors’ proposed financial advisor, regarding the Debtors’ liquidity needs and from Brent Banks of Evercore, the Debtors’ proposed investment banker, regarding the DIP marketing process.

53. Counsel for the Cross-Holder Ad Hoc Group cross-examined both witnesses, eliciting testimony that (i) the DIP materials were provided to the Cross-Holder Ad Hoc Group’s advisors on the same day the Debtors executed the RSA—after the Debtors had already committed to pursuing the Insider DIP Facility, (ii) the Special Committee was never informed of the value shift of the roll-up to CD&R and the Secured Ad Hoc Group—specifically, the estimated \$125 million to \$147.5 million transfer of value depending on collateral valuation, and (iii) no calculation of the roll-up’s cost to the Debtors’ estates or unsecured creditors were ever shared

with the Special Committee. Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr’g Tr. 105:12-17; 110:6-13; 74:17-75:25).

54. At the conclusion of the initial First Day Hearing, the Court did not immediately rule but instead authorized limited emergent DIP funding and use of cash collateral up to \$45 million to bridge to a continued hearing on February 2, 2026. Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr’g. Tr. 186:18-21).

55. On February 2, 2026, the Cross-Holder Ad Hoc Group filed a further objection to the proposed form of order approving the DIP Motion on an interim basis (the “Interim DIP Order Objection”). Dkt. No. 105. This objection challenged numerous factual findings in the proposed interim order that lacked evidentiary support, including, among others, that the prepetition liens were “valid and continuing” despite no prepetition debt documents being filed on the docket, that CD&R owed no fiduciary duties to the Debtors despite being a controlling shareholder, and that section 364(e) protections applied. *Id.*

F. The Court Grants the DIP Motion on an Interim Basis, Subject to Modifications

56. On February 2, 2026, the Court issued an oral bench ruling overruling the Cross-Holder Ad Hoc Group’s objections and approving the Insider DIP Facility on an interim basis, subject to certain modifications.

57. The Court credited the testimony of Mr. Koza regarding the Debtors’ urgent liquidity needs and found that without the DIP facility, the Debtors’ liquidity would be exhausted within the first week. The Court also credited Mr. Banks’s testimony that the Debtors and their advisors conducted “an extensive, arms-length and good-faith marketing and financing process.”

58. On the section 364(d)(1) issue, the Court rejected the Cross-Holder Ad Hoc Group’s argument that a non-priming alternative must be accepted before a priming DIP can be

approved, reasoning that “the exhaustion of Section 364(c) opportunities is of less import given that the policy concern of protecting unwilling secured creditors is absent” because the priming was being consented to by the lenders whose liens would be primed. Rosenblum Decl. Ex. 35 (Feb. 2, 2026 Hr’g Tr. 25:9-11). The Court found that a “constrained reading” of section 364(d)(1) that would require a debtor to forego financing based on a consensually subordinated lien in favor of financing secured by unencumbered assets “is to this Court value destructive and would produce policy adverse results.” *Id.* at 24:24-25:5.

59. On the entire fairness question, the Court declined to apply heightened scrutiny, finding “nothing in the record to evidence any conflicted positions or actions on the part of the disinterested directors or Special Committee.” *Id.* at 22:7-9. The Court acknowledged that Mr. Banks did not review with the Special Committee “the specific range of potential dollar recoveries due to the roll-up,” but found that “there is nothing in the record that suggests that the board was unaware that a roll-up of \$250 million was part of the finance package.” *Id.* at 22:9-14.

60. The Court found that the Debtors “properly exercised their business judgment in rejecting the alternative proposal advanced by the Cross-Holder Ad Hoc Group” because the alternative “did not provide comparable certainty of execution, did not carry sufficient lender support, and was not coupled with a viable executable Chapter 11 plan.” *Id.* at 15:19-23.

61. With respect to the roll-up, the Court stated it had “some concerns” given that first lien claims faced a recovery in the range of approximately 42 to 50% based on the Disclosure Statement, and that “the extent and value of the collateral securing these claims remain unresolved.” Invoking “rough justice” principles, the Court stated it was “unwilling to approve the roll-up in its entirety” and instead authorized only a \$125 million roll-up on an interim basis and deferred approval of one-half of the backstop fee pending the final hearing. *Id.* at 27:9-23.

(Prior to the Court’s ruling, the Debtors voluntarily reduced their requested interim draw from \$150 million to \$125 million and, thus, the roll-up was nonetheless approved on a 1:1 basis).

62. The Court also rejected the *sub rosa* plan argument, finding that the DIP facility “does not impermissibly dictate plan terms but instead provides a necessary framework to stabilize the debtors’ operations and preserve enterprise value.” *Id.* at 28:17-22.

63. Lastly, the Court ruled that the Insider DIP Facility was negotiated in good faith and at arm’s length. *Id.* at 20:12-18.

64. On February 2, 2026, the Cross-Holder Ad Hoc Group appealed the Court’s decision to the District Court. Dkt. No. 107. That appeal remains pending.

ARGUMENT

I. THE DIP FACILITY IS UNLAWFUL

A. The Insider DIP Cannot Be Approved Because a Non-Priming DIP Was Available.

65. The Debtors have failed to satisfy the unambiguous statutory requirements of section 364(d) of the Bankruptcy Code. DIP financing that includes a priming lien may be approved “only if” the debtor “is unable to obtain such credit otherwise.” 11 U.S.C. § 364(d)(1)(A). In other words, a priming DIP facility is permissible only if the Debtors demonstrate that a non-priming DIP facility is unavailable. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 312-14 (Bankr. D. Del. 2011) (denying debtors’ motion for approval of secured post-petition financing where “a better and unsecured loan” was available from an alternative lender); *In re Laffite’s Harbor Dev. I, LP*, Case No. 17-36191-H5-11, 2018 WL 272781, at *3 (Bankr. S.D. Tex. Jan. 2, 2018) (debtor failed to demonstrate compliance with section 364(d)(1) before seeking approval of priming transaction); *In re Morgan & Co., Inc.*, No. 08-05066-8-ATS, 2008 Bankr.

LEXIS 2654, at *6 (Bankr. E.D.N.C. Sep. 16, 2008) (denying DIP approval where court was not persuaded that none of the interested parties would provide financing on a non-priming basis).

66. The Debtors cannot satisfy their burden here because they failed to conduct a meaningful market test for the Insider DIP Facility and, more importantly, a non-priming DIP facility (with other materially better economics) was, in fact, available. The Cross-Holder Ad Hoc Group offered the Debtors an actionable, more economical, and non-priming DIP proposal. The Debtors, however, deemed the Alternative DIP Facility “inactionable because it did not have the support of the Secured Ad Hoc Group, and, most importantly, was not coupled with a viable chapter 11 plan.” Mot., ¶ 8.⁵ Not only are these justifications legally irrelevant and an attempt to inoculate the Debtors’ sham DIP marking process, they are meant to justify blatant violations of creditor protections mandated under the Bankruptcy Code.

67. *First*, the lack of support from the Secured Ad Hoc Group is unsurprising—those parties have every incentive to oppose alternatives that would diminish their preferential treatment. The Debtors’ claim that any DIP is unactionable without the support of the Secured Creditor Group is tantamount to a claim that the only viable DIP provider is the Secured Ad Hoc Group itself. Allowing the proposed DIP Lenders the ability to veto competing DIP proposals is itself an indicia of a lack of good faith. Further, it belies the reality that the Insider DIP is, in fact, a *sub rosa* plan. See *infra* Section I.D. The Debtors’ stated reasons for deeming the Alternative DIP Facility inactionable shines a light on the conflicted nature of the Insider DIP Facility and reinforces the need for entire fairness review.

⁵ The Debtors do not argue that the Alternative DIP Facility is inactionable due to the Cross-Holder Ad Hoc Group’s ability to fund the Alternative DIP Facility. See Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr’g Tr. 85:21-25) (“[Mr. Bennett] Q: Do you have any basis to doubt the creditworthiness or ability to perform of any member of the Cross-Holder Ad Hoc Group that have delivered commitments to make a financing to the debtors? [Mr. Banks]: A.: I have no reason to doubt their ability to fund.”).

68. *Second*, neither section 364 nor the Debtors' own DIP marketing materials required that DIP financing be coupled with an exit facility, plan of reorganization, or lender support. There is no exception in section 364 permitting a debtor to ignore an actionable, alternative junior DIP proposal because it is not supported by existing secured lenders or not coupled with a plan proposal. Importing such a requirement into section 364 would (and has here) negate any reason to follow the dictates of the statutory scheme, which requires priming "only if" no other alternatives are available.

69. The DIP motion's reliance on *ION Media* is misplaced. *In re ION Media Networks, Inc.*, No. 09-13125JMP, 2009 WL 2902568 (Bankr. S.D.N.Y. July 6, 2009). In that case, the competing DIP proposals at issue were both priming DIP facilities. *Id.* at *1. A priming fight is not at risk here, as the Alternative DIP Facility did not purport to prime the Favored Lenders. *ION* does not stand for the proposition that the Court can ignore the requirements of section 364 of the Bankruptcy Code and approve a priming DIP when a non-priming DIP is available. Indeed, the *L.A. Dodgers* decision is informative on this point. There, the debtor took the position that it did not have to engage with Major League Baseball on a junior DIP because it had an "unworkable relationship with Baseball which will be harmful to reorganization efforts." *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011). Despite this explanation, the Court denied the DIP motion because the debtor could not show that a junior DIP was unavailable. *Id.* at 312. The Debtors similarly must comply with section 364 here.

70. Moreover, under the Debtors' proposed Plan, the new money component of the Insider DIP Facility will be paid "in full in Cash" on the Effective Date, meaning the Debtors do not intend to use or need any of the new money contemplated under the Insider DIP Facility after emerging from these chapter 11 cases. Plan, § II.C. The Insider DIP Facility is only intended to

provide the Debtors with funding to support operations during these chapter 11 cases. The Alternative DIP Facility would do the same, but with additional availability and on better economic terms. Thus, the purported critical need for any DIP proposal to be coupled with a viable plan was mere pretext to protect the Sponsor's and Favored Lenders' preferred outcome. Dkt. No. 27, ¶ 16

B. The Debtors Cannot Rely on Consent to Avoid Section 364(d)'s Requirements

71. In overruling the Interim DIP Objection, the Cross-Holder Ad Hoc Group respectfully submits that the Court incorrectly focused on consent to circumvent section 364(d)(1)'s statutory requirement that priming DIP financing can be approved "only if" a non-priming alternative is unavailable. The Court's ruling on the Interim DIP Objection disregarded the statutory text and determined "the exhaustion of Section 364(c) opportunities is of less import given that the policy concern of protecting unwilling secured creditors is absent." Rosenblum Decl. Ex. 35 (Feb. 2, 2026 Hr'g Tr. 25:10-11). But the statute does not contain such an exception, and the Debtors do not rely on consent; rather, they rely on section 364(d) for priming. Interim DIP Order, ¶¶ 7(b)-(c).

72. In any event, the Debtors did not actually establish that consent existed, and the filings made subsequent to the first-day hearing show that the requisite consent did not exist. Specifically, the Rule 2019 Statement filed by the Secured Ad Hoc Group [Dkt. No. 206] discloses the holdings of each member of the Secured Ad Hoc Group as of January 25, 2026—the day after the Secured Ad Hoc Group signed on to the RSA of which the Insider DIP Facility was a critical component. The Rule 2019 Statement reflects that the Secured Ad Hoc Group did not have the necessary votes to direct the applicable collateral agents. Dkt. No. 206. [REDACTED]

[REDACTED], e.g., Rosenblum Decl. Ex. 25 (CDR_0018308-CDR_0018309), nor even if they did

would it have been enough. At the hearing Barclays Bank PLC indicated that it was directed to consent. Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr’g Tr. 168:1-11) (“MR. MOSS: On the cash flow side Mr. Serajeddini said that Barclays is the only party that can “consent” to a DIP. Barclays very much supports the Debtors’ reorganization efforts and obviously understands and supports the idea that the Debtors need a path out for -- of bankruptcy. Barclays, however, is in -- in the capacity as agent had no role in negotiating this DIP facility. We are effectively taking direction from the term loan lenders who represent the required lenders. Barclays is not consenting to the DIP of its own agency, it had no role in that process.”). But since the DIP financing was non-*pro rata*, [REDACTED]. See *Excluded First Lien Lenders’ Preliminary Objection to the Debtors’ DIP Motion*, Dkt. No. 75, ¶ 22; First Lien Intercreditor Agreement §§ 2.01, 2.05(b), Rosenblum Decl. Ex. 26 (MCC_184570-MCC_184571); *id.* (MCC_184574-MCC_184575). The Court’s reliance on consent as a factor was, thus, premised on incomplete statements of counsel at an emergency hearing and without the benefit of the underlying quantum of holdings, any actual written consents or even the debt documents being in evidence.

73. Accordingly, the Debtors have never sought to rely on contractual consent to effect the priming contemplated by the DIP Motion and the proposed order does not rely on contractual priming either. DIP Mot., ¶¶ 51-52. The relief sought explicitly invokes section 364(d)(1) of the Bankruptcy Code, which permits priming “only if” the debtor demonstrates it “is unable to obtain such credit otherwise.” 11 U.S.C. § 364(d)(1). Such extraordinary relief is available only as a “last resort.” *Suntrust Bank v. Den-Mark Constr., Inc.*, 406 B.R. 683, 693 (E.D.N.C. 2009). Because the Cross-Holder Ad Hoc Group offered an actionable, non-priming DIP facility on

superior economic terms, the Debtors cannot satisfy this statutory prerequisite or appeal to a misleading consent argument.

C. The DIP Motion Should Be Denied Because the Insider DIP Facility Is Deficient, Both in Terms of Price and Process

1. The Insider DIP Facility is Subject to Heightened Scrutiny

74. The entire fairness standard governs approval of the DIP Motion. The Sponsor is a statutory insider of the Debtors, 11 U.S.C. § 101(31), all while serving simultaneously as (i) the Debtors' private equity owner, a person in control of the Debtors; (ii) the proposed plan sponsor (*i.e.*, the Debtors' proposed future majority owner and controller); (iii) one of the largest creditors of the Debtors; and (iv) a material proposed DIP lender. In each of these capacities—as DIP lender, existing sponsor, prepetition lender, and “Plan Sponsor” under the RSA—the Sponsor is a party to the proposed transaction.

75. Though courts will ordinarily defer to a debtor's business judgment in obtaining postpetition financing, this deference does not apply if the financing involves an insider. *See In re LATAM Airlines Grp., S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020) (“By definition, the business judgment rule is not applicable to transactions among a debtor and an insider of the debtor. Those kinds of transactions are inherently suspect because they are rife with the possibility of abuse.”). Instead, where the transaction includes an insider, courts apply heightened scrutiny, often referred to as the “entire fairness” standard, even if other parties are also involved in the transaction. *Id.* at 772 (applying entire fairness review to both insider and non-insider DIP tranches); *L.A. Dodgers*, 457 B.R. at 313 (“[T]he Court must review Debtors' decision to accept the [insider financing] applying the entire fairness standard.”); *see also Pepper v. Litton*, 308 U.S. 295, 306 (1939) (insider's “dealings with the corporation are subjected to rigorous scrutiny”); *Schubert v. Lucent Techs., Inc. (In re Winstar Commc'ns, Inc.)*, 554 F.3d 382, 412 (3d Cir. 2009)

(dealings between a debtor and an insider must be rigorously scrutinized by the courts); *In re UCI Int'l*, Case No. 6-11354 (Bankr. D. Del. July 12, 2016), Rosenblum Decl. Ex. 27 (Hr'g Tr. 199:10-17) (applying entire fairness standard over debtors' objection and denying approval of DIP financing provided in part by controlling shareholder, reasoning that "I think I must start with what the appropriate standard is, and I think it's the entire fairness standard, not the debtors' business judgment, for a number of reasons, not simply the fact that one of the lenders in the DIP is an insider, but give[n] the history of transactions that have occurred in this case, not simply in the bankruptcy case, but pre-bankruptcy" and denying roll-up of insider debt where alternative DIP from ad hoc group was available); *In re Bidermann Indus. U.S.A. Inc.*, 203 B.R. 547, 551 (Bankr. S.D.N.Y. 1997) (noting that insider transactions "are rife with the possibility of abuse").

76. When a controlling shareholder is a beneficiary of a transaction, courts have held the entire fairness standard governs regardless of the appointment of an independent committee. *See, e.g., Quadrant Structured Prods. Co. v. Vertin*, 102 A.3d 155, 194 (Del. Ch. 2014) ("[E]ntire fairness governs interested transactions between a corporation and its [controlling shareholder] even if a special committee of independent directors or a majority-of-the-minority vote is used, because of the risk that when push comes to shove, directors who appear to be independent and disinterested will favor or defer to the interests and desires of the majority stockholder."); *Holten v. Standard Parking Corp.*, 98 F. Supp. 3d 444, 455 (D. Conn. 2015) (applying Delaware law; controlling shareholders must demonstrate their utmost good faith and the most scrupulous inherent fairness even if a committee of independent directors is used to approve the transaction); *Weaver v. Kellogg*, 216 B.R. 563, 581 (Bankr. D. Kan. 1997) ("[E]ven when an interested . . . transaction receives the informed approval of a majority of minority stockholders or an independent committee of disinterested directors, an entire fairness analysis is the only proper

standard of judicial review.”) (quoting *Kahn v. Lynch Communication Systems, Inc.*, 638 A.2d 1110, 1115, 1117 (Del. 1994)).

77. Even though the Court declined to apply entire fairness at the interim hearing (which determination is the subject of appeal), the Cross-Holder Ad Hoc Group respectfully submits that the Court should apply heightened scrutiny now for several reasons.

78. *First*, while the Court rejected resort to Delaware law, *see* Rosenblum Decl. Ex. 35 (Feb. 2, 2026 Hr’g Tr. 21:22-23:6), the Special Committee is a special committee of the Board of Directors of LABL, Inc., a Delaware corporation. In that context, bankruptcy courts have sometimes applied Delaware law directly. Other courts have applied Delaware law by analogy. *See In re SPAC Recovery Co.*, No. 25-12109 (JPM), 2026 WL 18778, at *7 (Bankr. S.D.N.Y. Jan. 2, 2026) (applying entire fairness standard under Delaware law). Regardless of whether Delaware law applies directly, by analogy or not at all, the reasoning of these decisions—that a transaction with a controlling shareholder deserves heightened scrutiny—is sound and, indeed, necessary. *LATAM Airlines Grp., S.A.*, 620 B.R. at 771 (applying entire fairness standard where proposed DIP lenders were two of the debtors’ largest shareholders); *L.A. Dodgers*, 457 B.R. at 313 (“[T]he Court must review Debtors’ decision to accept the [insider financing] applying the entire fairness standard.”); *see also In re UCI Int’l*, Case No. 6-11354 (Bankr. D. Del. July 12, 2016) (Walrath, J.), Rosenblum Decl. Ex. 27 (July 12, 2016 Hr’g Tr. 199:9-24) (applying entire fairness standard to proposed DIP where DIP lender was an insider and such insider’s prepetition actions pushed the debtor into bankruptcy).

79. *Second*, there is now substantial evidence that, while different transactions types were contemplated, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Supra* ¶¶ 12-28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Supra* ¶ 33. [REDACTED]

[REDACTED]

[REDACTED] *Supra* ¶ 33.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

80. In sum, the Sponsor's fingerprints are found at every step of the reorganization and its influence undermined the Special Committee's independence.

81. *Third*, there is substantial evidence of structural conflicts that warrant entire fairness review. CD&R, as a controlling shareholder, chose and chooses the Debtors' officers and directors pre- and post-emergence, and those officers and directors—including the Special Committee members—are dependent on CD&R for employment. [REDACTED]

[REDACTED]

[REDACTED]. Rosenblum Decl. Ex. 28 (CDR_0034934) ([REDACTED])

[REDACTED]

[REDACTED]; Ex. 29 (CDR_0034917) ([REDACTED])

[REDACTED]; Ex. 30 (CDR_0034919) ([REDACTED]); Ex. 31 (CDR_0034912) ([REDACTED]). This structural dependence creates a conflict under the case law where the Special Committee members must consider their ongoing business relationships when evaluating transactions that affect CD&R's interests.

82. These structural conflicts create precisely the dynamic that Delaware courts have recognized warrants heightened scrutiny:

[E]ntire fairness governs interested transactions between a corporation and its [controlling shareholder] even if a special committee of independent directors or a majority-of-the-minority vote is used, because of the risk that when push comes to shove, directors who appear to be independent and disinterested will favor or defer to the interests and desires of the majority stockholder.

Quadrant Structured Prods. Co. v. Vertin, 102 A.3d 155, 194 (Del. Ch. 2014) (emphasis omitted); *see also In re UCI Int'l*, Case No. 6-11354 (Bankr. D. Del. July 12, 2016) (Walrath, J.), Rosenblum Decl. Ex. 27 (July 12, 2016 Hr'g Tr. 199:9-24) ("You can't screw up the debtor completely, and then appoint an independent director and make everything all right, by letting the independent director have free reign in doing what it can to clean up the mess."). When a controlling shareholder participates in a DIP financing that is "inextricably" tied to a chapter 11 plan that transfers a controlling stake in the company's equity back to such insider, heightened scrutiny is certainly warranted under both the Bankruptcy Code and Delaware law. *Quadrant Structured Prods.*, 102 A.3d at 194; *L.A.s Dodgers*, 457 B.R. at 313 ("[T]he Court must review Debtors' decision to accept the [insider financing] applying the entire fairness standard.").

83. *Fourth*, the RSA promises the Special Committee members broad releases as part of the insider transaction. RSA, § 5.02(b); Plan, I.A.198, I.A.199, Art. VIII.C, D, E and F. A

director's receipt of a release in a transaction itself renders the insider interested. *See, e.g., Chrystall v. Serden Techs.*, 913 F. Supp. 2d 1341, 1354 (S.D. Fla. 2012) (applying Delaware law to find director obtaining a release from personal liability through a corporate settlement creates a material personal interest).

84. *Finally*, any suggestion that the Special Committee was adequately informed of the differences between the Insider DIP Facility and the Alternative DIP Facility is belied by the record. [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

Dkt. No. 1 (chapter 11 petition filed on January 29, 2026 at 1:01 A.M. (ET)); DIP Motion (filed on January 29, 2026 at 10:28 A.M. (ET)); Dkt. No. 27 (Banks Declaration in support of DIP Motion filed on January 29, 2026 at 10:30 A.M. (ET)); *supra* ¶ 43 ([REDACTED] [REDACTED]). This sequencing directly undercuts the

representations made to this Court on the first day of the case that the Special Committee had been delegated exclusive decision-making powers, as it is clear that someone other than the Special Committee determined to reject the Alternative DIP Facility.

85. The notion that the Special Committee was “aware” of the \$250 million roll-up conflates awareness of the roll-up’s existence with essential understanding of its significance. All relevant testimony established that the Special Committee was never informed of the impact of the roll-up—*i.e.*, the transfer of \$133 to \$167 million of value from creditors. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Rosenblum Decl. Ex. 21 (Gabel Dep. Tr. 160:2-17).

[REDACTED]

[REDACTED]. Rosenblum Decl. Ex. 32 (Koza Dep. Tr. 178:15-20). And, as the Court acknowledged, Mr. Banks of Evercore confirmed at the First Day Hearing that he did not review the impact of the roll-up on potential recoveries. Rosenblum Decl. Ex. 35 (Feb 2, 2026 Hr’g Tr. 22:9-14). Knowing that a \$250 million roll-up exists is not the same as understanding its implications for estate value and creditor recoveries—and the current record is clear that the Special Committee was never informed of the latter. This was an abdication of the Special Committee’s duty to scrutinize the proposed transaction for fairness.

86. Because heightened scrutiny applies to the Insider DIP Facility, the Debtors bear the burden of demonstrating the “entire fairness” of the proposed transaction. This requires showing that both (a) the process leading to the transaction and (b) the price and terms of the transaction “not only appear fair but are fair.” *LATAM*, 620 B.R. at 769 (quoting *In re Innkeepers USA Tr.*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010)); *see also L.A. Dodgers LLC*, 457 B.R. at 313 (insider DIP financing “requires proof of fair dealing and fair price and terms”). The Debtors cannot show that either the price or process of the Insider DIP Facility were fair.

2. The Debtors Cannot Show that the Price of the Insider DIP Facility is Fair

87. The proposed DIP financing should not be approved because the pricing is not fair and reasonable under the circumstances. *First*, the unfairness of the proposed financing terms is underscored by the fact that the Debtors received, and rejected, the Alternative DIP Facility which had materially more favorable terms. The existence of a cheaper financing option itself demonstrates that the market would support a DIP facility without the onerous conditions demanded by the Sponsor and the Favored Lenders.

88. *Second*, the proposed roll-up of existing debt as a condition of the DIP Facility will confer a windfall upon the Sponsor and the Favored Lenders at the expense of other creditors. The simple math on the roll-up shows, whatever the source, that the roll-up is an enormous economic benefit to the Sponsor and Favored Lenders under the Insider DIP Facility.

89. *Third*, the backstop fees demanded by the Sponsor and Favored Lenders are unjustified. The Debtors have not demonstrated any market need for a backstop commitment, nor have they shown that the financing would be unavailable absent such fees. As with the other components of the Insider DIP Facility, the backstop arrangement serves primarily to extract additional value from the estate rather than to address genuine financing risk.

90. Indeed, the Sponsor and the Favored Lenders do not particularly attempt to hide this fact. At the February 2, 2026 hearing, the Court had to witness counsel for Sponsor and the Favored Lenders bicker over who would get a larger allocation of the Insider DIP Facility. *See* Rosenblum Decl. Ex. 35 (Feb 2, 2026 Hr’g Tr. 10:5-13) (counsel for Secured Ad Hoc Group arguing that, since the DIP draw was reduced, it should get a larger allocation of the DIP than the Sponsor in order to preserve the Secured Ad Hoc Group’s economic deal) and 12:1-3 (counsel for Sponsor disagreeing). The Insider DIP Facility’s pricing is unfair—the whole point of it is to overcompensate the Sponsor and Favored Lenders to the detriment of the estate.

i. The Alternative DIP Proposal Demonstrates the Insider DIP Facility’s Price is Unfair

91. The price of the Insider DIP Facility is unfair—whether analyzed under the entire fairness or the business judgment standard—because the Alternative DIP Facility is superior in every respect. The comparison chart set forth in paragraph 41, *supra*, demonstrates that every economic term of the Alternative DIP Facility is more favorable to the Debtors’ estates.

92. Given these materially superior terms, the Insider DIP Facility cannot satisfy the requirements for approval under section 364 of the Bankruptcy Code. *See L.A. Dodgers LLC*, 457 B.R. at 313–14 (concluding fair price requirement was not satisfied where alternative DIP financing offered more favorable terms).

93. DIP financing, and other transactions, are shopped precisely because the market is the best indicator of value. The Debtors’ experts can put on whatever evidence they desire regarding financings in other cases. But they cannot avoid that a superior DIP was available.

ii. The Roll-Up Unlawfully Enhances the Sponsor’s and Favored Lenders’ Recoveries to the Detriment of Unsecured Creditors.

94. The Insider DIP Facility should be denied because it is structured to benefit the Sponsor and the Favored Lenders at the expense of the Debtors’ estates. Rather than providing necessary liquidity to stabilize operations, the facility’s central feature is a case-defining roll-up of prepetition debt that would transfer \$133 to \$167 million in value from creditors to the Sponsor and Favored Lenders.

95. Courts consistently refuse to approve DIP financing that “convert[s] the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender.” *Laffite’s Harbor Dev. I, LP*, 2018 WL 272781, at *2-3; *see also In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) (“credit should not be approved when it is sought for the primary benefit of a party other than the debtor”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990) (“[A] proposed financing will not be approved where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate.”); *In re Tenney Vill. Co., Inc.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (refusing to approve financing that “would pervert the reorganizational process from one designed to accommodate all classes of creditors”). Several courts have questioned or rejected roll-ups entirely. *See In re Saybrook Mfg.*

Co., 963 F.2d 1493, 1494–96 (11th Cir. 1992) (holding cross-collateralization not authorized by section 364); *Reynolds v. Servisfirst Bank (In re Stanford)*, 17 F.4th 116, 128 (11th Cir. 2021) (Jordan, J., concurring) (describing roll-ups as “formally distinct but functionally similar” to cross-collateralization). Where, as here, the roll-up would elevate an undersecured creditor’s deficiency claim to superpriority status, courts have found such arrangements “patently unapprovable.” *In re Wildcat Met Mining, Inc.*, No. 22-10080, 2024 WL 1025002, at *11 (Bankr. S.D. W. Va. Mar. 8, 2024); *see also In re Willingham Investments, Inc.*, 203 B.R. 75, 79 (M.D. Tenn. 1996); *In re FCX, Inc.*, 54 B.R. 833, 840 (Bankr. E.D.N.C. 1985) (“If an undersecured creditor can obtain unencumbered assets as security for all of its prepetition claims, that creditor is being preferred to the detriment of other unsecured claimants.”).

96. That is precisely what is occurring here. The Disclosure Statement values the Debtors’ implied equity at approximately \$2.9 billion to \$3.4 billion, while the Debtors entered these cases with \$4.5 billion in secured debt—meaning, as the Debtors acknowledge, the non-ABL secured creditors are undersecured by a substantial margin. Dkt. No. 18, Ex. D. The Disclosure Statement states that the non-ABL secured lenders have a lien on “substantially all the assets[.]” *id.* at 32, and the Debtors confirmed that the numbers reflected in the Disclosure Statement were prepared on that basis. But the testimony under oath at the interim hearing regarding the scope of the asserted liens was substantially different: Mr. Banks admitted that, in reality, 35% percent of the Debtors’ equity in their foreign subsidiaries and all of the Debtors’ real property in the United States is excluded from the secured lenders collateral package. Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr’g Tr. 89:5-96:7). These disputed issues are currently the subject of the adversary proceeding filed by the Cross-Holder Ad Hoc Group that seeks to determine the scope of the Favored Lenders’ liens, the value of the collateral encumbered by these liens, and the value of the

Debtors' unencumbered assets. Case No. 26-01041, Dkt. No. 1 (the "Adversary Proceeding").⁶ If that proceeding confirms that the collateral is less extensive than and worth materially less than the Debtors have advertised, the reallocation of value effectuated by the roll-up from unsecured creditors will be even greater.

97. As described in the Adversary Proceeding, the subject liens do not encumber a substantial portion of the Debtors' assets, including: (i) at least one-third of foreign subsidiary equity and all assets held by those subsidiaries; (ii) all US owned and leased real property, including manufacturing facilities; (iii) all US fixtures located on owned real property and on leased property where the fixtures are owned by the landlord; (iv) all foreign intellectual property; (v) equipment subject to purchase money obligations, financing leases, or sale-leasebacks—and this is a very material portion of the US Debtors' equipment; (vi) all vehicles; (vii) joint venture interests; and (viii) commercial tort claims. Given the Debtors' status as a manufacturer, these exclusions—particularly the foreign assets and manufacturing facilities—represent a material portion of enterprise value available to unsecured creditors, as will be demonstrated in the Adversary Proceeding. The non-ABL secured creditors hold only a second-priority lien on ABL collateral at domestic obligors and no lien on ABL collateral held by foreign entities. Because of the material gaps in the asserted collateral and the fact that other secured parties have liens on assets that are material to the business, the non-ABL secured parties have no security interests in substantial assets that are of critical importance to the Debtors' ability to operate and do not have claims to the enterprise or going concern value of the Debtors. *See, e.g., In re Chateguay Corp.*,

⁶ While various parties have sought, or have stated their intention to seek, to stay the adversary case, there is no doubt that if the Cross-Holder Ad Hoc Group did not commence the adversary proceeding, every party allied with the Sponsor (including the Debtors who should have a duty to maximize returns to unsecured creditors) would have asserted that the Cross-Holder Ad Hoc Group forfeited any opportunity to challenge the claims that the Secured Creditors' liens are substantially all encompassing.

154 B.R. 29, 34 (Bankr. S.D.N.Y. 1993) (“To the extent that the going concern value of a particular facility is enhanced by or attributable to assets in which the J&L Bondholders do not have an interest, such value will not be credited towards ‘the value of such creditor’s interest.’ Therefore, just as § 506(a) instructs a court to value the collateral in light of its proposed use, it also makes plain that a creditor shall not have a secured claim to the extent that its claim exceeds the value of its interest in the collateral.”); *In re Oklahoma City Broad. Co.*, 112 B.R. 425, 429-30 (Bankr. W.D. Okla. 1990) (refusing to value secured claim to include debtor’s going concern value where the “security interest in Debtor’s assets does not include Debtor’s broadcasting license, and a television station without a broadcasting license is not a going concern”; holding that a proper valuation was “the market value of only those items which constitute [the lender’s] Collateral”).

98. In short, the proposed roll-up relies on fictitious blanket liens to elevate partially secured claims to fully secured status, over-allocating substantial value to the Sponsor and Favored Lenders at the expense of unsecured creditors, including the Cross-Holder Ad Hoc Group.

99. Lastly, [REDACTED], the roll-up is not market in light of the Sponsor and Favored Lenders’ being undersecured by over 50%, according to the proposed Disclosure Statement. Dkt. No. 18 at 11-12; Ex. D. [REDACTED]

[REDACTED]. At the interim hearing, this Court recognized that the Sponsor and Favored Lenders have material undersecured claims and that the additional recovery they would receive at the expense of unsecured creditors is a legitimate concern. Rosenblum Decl. Ex. 35 (Feb. 2, 2026 Hr’g Tr. 27:9-18). In light of the material deficiency claims and the Cross-Holder Ad Hoc Group vigorously opposing the Insider DIP Facility, this roll-up is an outlier from other cases and commits serious harm to unsecured creditors.

As such, to preserve the protections afforded to unsecured creditors under the Bankruptcy Code, and to promote an appropriate balance of interests between the parties, this Court should deny the roll-up.

iii. The Backstop Premium is Unfair.

100. The backstop terms included in the Insider DIP Facility are similarly improper. The Insider DIP Facility includes a “Backstop Premium”—a fee equal to 3% of the \$250 million in new money commitments, amounting to \$7.5 million paid to a group that already represents over 70% of the secured claims and to which 30% of the DIP commitments have been allocated pursuant to the “DIP Holdback.” The Court should deny this “Backstop Premium” because it is unreasonable and unnecessary to approve a fee for the Sponsor and the Favored Lenders to backstop their own commitments. *See Momentive Performance Materials Inc.*, No. 14-22503-RDD (Bankr. S.D.N.Y. June 19, 2014) (denying request for backstop fees as a matter of fairness where the backstop fee was sized based on amounts that were already committed).

101. The so-called “Backstop Premium” is no “backstop” at all—it is merely an additional mechanism to improperly increase the recoveries of the Sponsor and the Favored Lenders at the expense of the estate. *See In re Pac. Drilling S.A.*, No. 17-13193 (MEW), 2018 Bankr. LEXIS 3024, at *5, *15 (Bankr. S.D.N.Y. Oct. 1, 2018) (questioning “why there was a need for a backstop at all, since the parties in front of me seem to be fighting for the chance” and raising the possibility that a “backstop fee is really just an extra payment and an extra recovery rather than a reasonable, stand-alone financing term”).

102. Not only are the Sponsor and the Favored Lenders backstopping their own commitments, but they expressly reserved for themselves an exclusive 30% holdback of the DIP commitments. This demonstrates that the Sponsor and Favored Lenders are not concerned with

an inability to fully fund the DIP but instead are concerned with unfairly increasing their own recoveries. There is no justification to approve the Backstop Premium under these circumstances.

3. The Debtors Failed to Show that the Process for the Insider DIP Facility is Fair.

103. The Debtors were required to meaningfully shop both the DIP financing and the plan sponsorship, yet they did neither. *See In re Innkeepers USA Tr.*, 442 B.R. at 231 (declining to approve insider plan support agreement where term sheet was not “shopped” prior to signing); *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 553 (S.D.N.Y. 1997) (holding insider sale cannot be approved under entire fairness standard absent a “concerted effort to shop the debtors before the debtors selected a purchaser”); *VTX Commc’ns, LLC*, 2020 WL 4465968, at *18 (“Fair dealing” concerns “when the transaction was timed, how it was initiated, structured, negotiated, disclosed[.]”); *L.A. Dodgers LLC*, 457 B.R. at 313–14 (finding debtors could not prove entire fairness when director controlling debtor would have suffered economic consequences had debtors accepted alternative DIP).

104. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Supra* ¶¶ 12-15. [REDACTED]

[REDACTED].

Supra ¶ 30. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED] *Id.*

105. The latest step in this tainted process was the DIP marketing and approval process, which was insufficient for additional myriad reasons, including the following:

- [REDACTED]
[REDACTED], *supra* ¶ 35;
- [REDACTED]
[REDACTED], *id.*;
- [REDACTED]
[REDACTED] *supra* ¶ 36;
- [REDACTED]
[REDACTED] *supra* ¶ 37;
- The Debtors conveniently failed to notify the Cross-Holder Ad Hoc Group of the DIP solicitation notwithstanding the fact that the Cross-Holder Ad Hoc Group was actively engaged in restructuring proposals with the Debtors during this time, *supra* ¶ 38;
- After the Cross-Holder Ad Hoc Group proactively asked to be included in the DIP marketing process, the Debtors delayed sending marketing materials to them until the same day that the Debtors signed the RSA, which bound the Debtors to the Insider DIP Facility, *supra* ¶¶ 38-40;
- The Debtors concealed the existence of the RSA while continuing to solicit information from the Cross-Holder Ad Hoc Group, *supra* ¶ 42;
- [REDACTED]
[REDACTED], *supra* ¶ 43; and

• [REDACTED] , *supra* ¶¶ 44-45.

106. Further, any claim that the abbreviated (and feigned) DIP marketing process was justified by the exigencies of the case ignores the fact that any such exigency was by design—a direct result of the Debtors’ strategic decision to substantially lock in the Sponsor’s and Favored Lenders’ preferred outcome [REDACTED]

[REDACTED].

107. Accordingly, the Debtors cannot demonstrate that the Insider DIP Facility satisfies the exacting standard of entire fairness review because neither the price nor the process was—or is—fair. Even under a business judgment standard (which does not apply here), the Debtors would fail to carry their burden. The business judgment rule requires that directors be fully informed before their decisions receive deference. The undisputed testimony establishes that the board was not fully informed (and may in fact have been misadvised by their advisors) about the costs and implications of the roll-up, the waivers, or the releases.

108. Even if the Special Committee and the Debtors engaged in a fair process (they did not), they incorrectly rely on the proposition that the Insider DIP Facility provides a potential path to emergence as justification for approval of the Insider DIP Facility. In reality, however, although the Insider DIP is bound together with the RSA and a plan, there is no credible path to emergence from these cases because the Insider DIP Facility supports an unconfirmable plan that contravenes the Bankruptcy Code’s objective of equal treatment of creditors classified in the same class.

109. For instance, the roll-up opportunity offered exclusively to the Secured Ad Hoc Group amounts to unequal treatment of claims prohibited by section 1123(a)(4) of the Bankruptcy

Code. The recent decision in *In re ConvergeOne Holdings, Inc.*, Case No. 4:24-cv-02001, Dkt. No. 54 (S.D. Tex. Sept. 25, 2025), is directly on point. In that case, the U.S. District Court for the Southern District of Texas reversed a bankruptcy court's confirmation order where favored lenders were given a non-marketed exclusive opportunity to backstop an equity rights offering, resulting in higher recoveries for their claims compared to minority lenders in the same class. The court held that this exclusive opportunity, without a market test, violated § 1123(a)(4).

110. The *ConvergeOne* court articulated three critical principles. *First*, an exclusive **opportunity** resulting in disparate values qualifies as “treatment for a claim” under § 1123(a)(4), and offering an investment, backstop or financing opportunity to some members of a class “free from competition,” but not to all class members, violates the statute. *Id.* at 13-16. *Second*, consideration for the benefits received does not cure the defect unless there was also consideration for the opportunity itself. *Id.*, at 20-21. Citing *Bank of America National Trust & Savings Association v. 203 N. LaSalle St. Partnership*, 526 U.S. 434 (1999), the court held that “Debtors would have to show consideration for the opportunity to backstop the equity-rights offering to justify the exclusive opportunity.” *Id.* at 21. *Third*, a market test is required for exclusive opportunities that result in enhanced recoveries. *Id.* at 13-19.

111. On this last point, the Court rejected the notion that merely permitting excluded creditors the ability to propose an alternative plan after the deal was already locked up constituted an adequate market test: “There was never any incentive for Debtors or Majority Lenders to consider any alternative plan, and they had no need to do so—the proposed pre-packaged Plan was basically finished, satisfied the needs of the Debtors, and permitted the in-group to recover more at the expense of the out-group.” *Id.* at 17. “As such,” according to the Court, “any ‘opportunity’ to propose an alternative plan was illusory at best.” *Id.* The similarities to this case are striking.

112. Here, the Bankruptcy Code and the sound reasoning of the *ConvergeOne* court squarely foreclose what the Debtors, CD&R and the Secured Ad Hoc Group attempt to accomplish in this case. The Debtors offered the roll-up and backstop opportunities exclusively to the Sponsor and Favored Lenders “free from competition,” there was no consideration for these exclusive opportunities, and there was no marketing test for these opportunities that result in enhanced recoveries of hundreds of millions of dollars for the Favored Lenders. And, just as the court determined in *ConvergeOne*, that the Debtors perfunctorily considered the Alternative DIP Facility *after the Petition Date* was meaningless as there was “never any incentive for Debtors or Majority Lenders to consider any alternative [DIP proposal]” given the RSA was already in place and the fiduciary out was illusory. *Id.* As such, the Debtors have not shown that opting for the Insider DIP Facility as a path to emergence meets the entire fairness (or even the business judgment) test, especially where the Plan is unconfirmable.

D. The Insider DIP Facility Constitutes an Impermissible Sub Rosa Plan.

113. The Insider DIP Facility is not merely a financing mechanism—it is a case-determinative instrument designed to ensure that these chapter 11 cases sprint across the finish line to the Sponsor’s and the Favored Lenders’ preferred outcome, all while stripping unsecured creditors of the procedural protections guaranteed by the Bankruptcy Code.

114. The RSA obligates the Debtors to pursue the Insider DIP Facility and, in turn, the equally flawed Plan. The Insider DIP Facility also enables the Sponsor and the Favored Lenders maintain their tight grip on every aspect of these cases every step of the way. To participate in the favorable economics of the Insider DIP Facility—albeit on terms less favorable than those afforded to the Sponsor and the Favored Lenders—a party must execute a joinder to the RSA after the interim DIP order is entered, thereby committing to granting a third-party release in favor of the Sponsor and the Favored Lenders, voting in favor of the chapter 11 plan, and agreeing not to

contest, among other things, the final DIP. This arrangement constitutes impermissible vote-buying and ensures that the Insider DIP Facility, rather than the creditors' statutory rights under the Bankruptcy Code, dictates the terms of the Debtors' reorganization. *See In re Pac. Drilling S.A.*, 2018 WL 11433322 (Bankr. S.D.N.Y. Oct. 1 2018) ("The Bankruptcy Code does not permit the unequal treatment of creditors in the same class; it also does not permit the payment of extra compensation to large creditors in exchange for their commitment to vote for a plan.").

115. Such arrangements are precisely what the prohibition on *sub rosa plans* is designed to prevent. "[S]ub rosa plans are prohibited" to prevent "transactions that will, in effect, short circuit the requirements of chapter 11 for confirmation of a reorganization plan." *In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007). Courts have consistently rejected DIP financing that amounts to a disguised plan of reorganization. *See Laffite's Harbor Dev.*, 2018 WL 272781, at *3 (denying DIP motion where financing terms would grant lenders excessive control over the debtor, leverage the bankruptcy process, and unduly prejudice the rights of other parties in interest); *LATAM*, 620 B.R. at 816 (explaining that the touchstone inquiry is "whether the proposed terms would prejudice the powers and rights that the Code confers for the benefit of all creditors and leverage the Chapter 11 process by granting the lender excessive control over the debtor or its assets as to unduly prejudice the rights of other parties in interest"); *In re Cont'l Airlines, Inc.*, 780 F.2d 1223, 1227–28 (5th Cir. 1986) ("Undertaking reorganization piecemeal pursuant to § 363(b) should not deny creditors the protection they would receive if the proposals were first raised in the reorganization plan.").

116. The Insider DIP Facility exhibits each hallmark of a *sub rosa plan*: it (i) grants the Sponsor and Favored Lenders excessive control over the Debtors; (ii) subverts the chapter 11 voting process by forcing creditors to adhere to an agreement that obligates them to vote a certain

way; and (iii) dictates the terms of the Debtors' reorganization outside the plan confirmation process, even to the point of increasing the Sponsor's and Favored Lenders' recoveries on account of their material deficiency claims while shafting other unsecured creditors in the same class. Accordingly, the Court should deny the Insider DIP Facility as a prohibited *sub rosa* plan. *See Cont'l Air Lines*, 780 F.2d at 1226 ("When a proposed transaction specifies terms for adopting a reorganization plan, the parties and the district court must scale the hurdles erected in Chapter 11."); *In re Biolitec, Inc.*, 528 B.R. 261, 271-72 (Bankr. D.N.J. 2014) (finding arrangement "resembles an impermissible sub rosa plan" where the settlement affected parties' rights by assigning rights and interests without providing disclosures or the opportunity to negotiate or vote).

117. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Supra* ¶ 48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Supra* ¶ 49.

118. In sum, the Sponsor and the Secured Ad Hoc Group seek through the Insider DIP Facility to cement their economic deal and lock-in the Sponsor's continued control of the Debtors on a post-reorganization basis. This is the very definition of a *sub rosa* plan: a transaction

structured to eliminate creditor choice while maintaining the façade of procedural compliance. The Court cannot allow this abuse of the system.

E. The Insider DIP Facility Violates the Good Faith Requirements of Section 364.

119. “Good faith” in the context of DIP financing means “honesty in fact in the conduct or transaction concerned.” *See Unsecured Creditors’ Comm. v. First Nat’l Bank & Tr. Co. of Escanaba (In re Ellingsen MacLean Oil Co.)*, 834 F.2d 599, 605 (6th Cir. 1987). Good faith is lacking where, for example, lenders extend financing or credit for an improper purpose (*e.g.*, to gain advantage in litigation) or fail to reveal material facts to the court. *See In re EDC Holding Co.*, 676 F.2d 945, 948-49 (7th Cir. 1982) (credit extended with “ulterior purpose” is not in good faith); *In re Grand Valley Sport & Marine, Inc.*, 143 B.R. 840, 852 (Bankr. W.D. Mich. 1992) (“[T]his court will not authorize postpetition financing pursuant to § 364 where a creditor leverages a debtor in possession into making a concession unauthorized by, or in conflict with, the Bankruptcy Code as a condition for the requested credit.”).

120. The Insider DIP Facility violates section 364’s good faith requirements. The entirety of the Insider DIP Facility is designed to circumvent the protections of the Bankruptcy Code and advance an insider’s interests, on an unequal basis and without any meaningful market test. The fees, various unlawful provisions, including the roll-up, and the coercive solicitation mechanics are designed to weaponize the Insider DIP Facility against unsecured creditors. The Insider DIP Facility is further tainted by a fundamentally flawed and feigned DIP solicitation process that was not conducted in good faith.

121. The evidence of a lack of good faith permeates every step of the DIP solicitation process:

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Supra ¶¶ 12-15, 31-33.

Supra ¶ 35.

Supra ¶ 36. Further, the Debtors argue that the Cross-Holder Ad Hoc Group's failure to submit an RSA or plan with its Alternative DIP Facility makes it less attractive than the Insider DIP Facility. *Supra* ¶ 66.

Deliberate Exclusion of the Cross-Holder Ad Hoc Group. Despite being in active negotiations with the Cross-Holder Ad Hoc Group concerning an out-of-court restructuring, the Debtors conveniently failed to notify the Cross-Holder Ad Hoc Group of the DIP solicitation. When the Cross-Holder Ad Hoc Group proactively reached out on January 23, 2026, expressing "significant interest" in providing a DIP facility and requesting solicitation materials, the Debtors delayed sending materials that [REDACTED] until January 25, 2026—

the very day they signed the RSA that bound them to the Insider DIP Facility. *Supra* ¶¶ 38-40.

- *Concealment of the RSA.* The testimony adduced at the First Day Hearing established that even after signing the RSA on January 25, 2026, the Debtors continued to communicate with the Cross-Holder Ad Hoc Group without disclosing that they had already committed to the Insider DIP Facility. *Supra* ¶ 42. Mr. Banks testified that Evercore did not tell anyone that the RSA had been signed. *Supra* ¶ *id.*

122. Misrepresentations during a competition are not good faith. Committing to an outcome before the competition even begins is not good faith. Concealing that commitment from competing bidders is not good faith. *See In re Innkeepers USA Tr.*, 442 B.R. at 231 (denying insider plan support agreement where, among other things, debtor and favored creditor did not disclose their deal to other parties). Rather than conducting a robust and transparent solicitation process, the Debtors, Sponsor and Favored Lenders engaged in conduct that can only be characterized as lacking good faith. They blocked the Debtors from accepting alternative financing through the RSA, and alternative financing sources were misled about the Debtors' ability to consider competing proposals. Accordingly, a good faith finding is not appropriate here.

F. The Debtors Have Abdicated their Fiduciary Duty to Maximize Value of their Estates for Unsecured Creditors.

123. In addition to the Insider DIP Facility and Plan contravening fundamental provisions of the Bankruptcy Code, the Debtors have abdicated their fiduciary duty to maximize value for and act in the best interests of all creditors.

124. It is well-established that debtors-in-possession owe fiduciary duties to *all* creditors, not just controlling favored secured creditors or postpetition lenders. *See, e.g., In re Whittaker Clark & Daniels Inc.*, 152 F.4th 432, 452 (3d Cir. 2025) ("As debtors-in-possession, they owe fiduciary duties to *all* creditors . . . to maximize the value of the estate.") (citing *In re Marvel Ent. Grp., Inc.*, 140 F.3d 463, 471 (3d Cir. 1998) (emphasis added)); *In re Diocese of*

Camden, New Jersey, 653 B.R. 309, 346 (Bankr. D.N.J. 2023) (“[I]t is Bankruptcy 101 that a debtor and its board of directors owe fiduciary duties to the debtor’s creditors to maximize the value of the estate, and each of the estates in a multi-debtor case.”) (quoting *In re Innkeepers USA Tr.*, 442 B.R. 227, 235 (Bankr. S.D.N.Y. 2010)). Accordingly, courts consistently refuse to approve debtor-in-possession financing arrangements that “convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender.” *Laffite’s Harbor Dev. I, LP*, 2018 WL 272781, at *2–3.

125. Here, through the Insider DIP Facility—including the \$250 million roll-up that shifts between \$133 million and \$167 million of value from creditors to the Sponsor and the Secured Ad Hoc Group—the Debtors have attempted to abuse the chapter 11 process to favor the Sponsor and Secured Ad Hoc Group over unsecured creditors. The Debtors have sought to accomplish this through a fundamentally flawed and unfair DIP process and a prepackaged plan that was designed for this purpose.

126. As acknowledged by the Debtors, the “[Insider] DIP Facility is an inextricable part of the overall Restructuring Support Agreement.” Banks Declaration [Dkt. No. 27], ¶ 28. The RSA includes a fiduciary out (however constrained) under section 12.03(b), permitting the Debtors to terminate the RSA should something come up that is “higher or better” than what the RSA proposes. RSA, § 12.03(b). As discussed above, the Alternative DIP Facility offered by the Cross-Holder Ad Hoc Group is demonstrably superior to the Insider DIP Facility on every economic term and comports with the Bankruptcy Code. *Supra* ¶ 41. The Debtors’ refusal to exercise their fiduciary out and pursue the superior Alternative DIP Facility constitutes a breach of their fiduciary duties to their estates. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Supra* ¶ 33; Rosenblum Decl. Ex. 9 (CDR_0024404). The same principle applies to approval of the Insider DIP Facility.

II. DEFICIENCIES IN PROPOSED DIP ORDER

127. The Cross-Holder Ad Hoc Group respectfully reserves its right with respect to any proposed form of order. The interim order contained numerous factual findings that are not supported by the record and provisions that are contrary to law or otherwise inappropriate that should not be entered on a final basis.

A. Unsupported Factual Findings

128. Section 506(b) Findings. The interim order contains findings that the adequate protection payments comply with the Bankruptcy Code, including section 506(b). However, it is undisputed that non-ABL secured debt is undersecured. Accordingly, the payment of interest and fees to such non-ABL secured lenders is not consistent with sections 502(b)(2) and 506(b) of the Bankruptcy Code. 11 U.S.C. § 502(b)(2) (disallowing a claim for unmatured interest); *id.* § 506(b) (allowing interest on an allowed secured claim only where such claim is oversecured).

129. Prepetition Debt Document Findings. The interim order contains findings—not just stipulations—concerning aspects of the scope of prepetition liens and that the prepetition liens are valid and continuing. This is disputed and are precisely the matters required to be determined in an adversary proceeding and not as part of a contested matter such as this one. FED. R. BANKR. PROC. 7001 (requiring adversary proceeding to “determine the validity, priority, or extent of a lien or other interest in property.”). The interim order also contained findings of compliance with the prepetition debt documents. There is no evidence in the record to support either of these findings; indeed, the Debtors have not submitted their prepetition debt documents into the record or filed them in these chapter 11 cases.

B. Improper Provisions

130. This Objection reincorporates the arguments raised in the Interim DIP Order Objection concerning offending provisions that should not be approved on a final basis, including:

- allowing amendments to the DIP documents without Court oversight;
- overly broad and unsupported indemnification provisions;
- delinking the Insider DIP Facility with the RSA;
- the retention by prepetition lenders of certain rights after termination of the Debtors' use of cash collateral;
- the improper attempt to specify the impact of it being reversed or vacated on appeal;
- the determination of credit bidding rights prior to resolution of the Adversary Proceeding; and
- that the Sponsor and other DIP Lenders do not have control of the Debtors.

131. In addition to these offending provisions, the Cross-Holder Ad Hoc Group objects to the following:

132. Liens on or Superpriority Claims against Avoidance Actions or Recovery Actions and their Proceeds. The Third Circuit has held that avoidance actions are not property of the estate, but rather a construct of bankruptcy law for the benefit of unsecured creditors. *See In re Cybergenics Corp.*, 226 F.3d 237, 243–44 (3d Cir. 2000) (holding that the power to avoid the debtor's prepetition transfers and obligations to maximize the bankruptcy estate for the benefit of creditors is not a debtor's asset); *see also* 5 COLLIER ON BANKRUPTCY ¶ 541.14 at n.1 ("The avoiding powers of a debtor in possession granted in chapter 5 of the [Bankruptcy] Code are not property of the estate but statutorily created powers to recover property.").

133. As a result, avoidance actions and their proceeds are primarily intended to ensure equitable distributions of a debtor's estate for the benefit of unsecured creditors—not secured

creditors. *Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm L.P. IV*, 229 F.3d 245, 250 (3d Cir. 2000) (“[A]ny recovery [under avoidance powers] is for the benefit of all unsecured creditors, including those who individually had no right to avoid the transfer.”). For precisely that reason, courts often restrict debtors from pledging avoidance actions and the proceeds thereof as collateral. *See, e.g., In re Integrated Testing Prods. Corp.*, 69 B.R. 901, 905 (D.N.J. 1987) (finding a secured creditor lacked a perfected security interest in preference actions because, “to allow [a secured creditor] to claim these preferences would frustrate the policy of equal treatment of creditors under the Code” and because “the debtor never possessed the right to institute a preference action, [and thus the secured creditor] could not have ‘acquired’ the [right]”); *Official Comm. Of Unsecured Creditors v. Goold Elec. Corp.*, No. 93-4196 (SBC), 1993 WL 408366, at *3–4 (N.D. Ill. Sept. 22, 1993) (vacating DIP financing order to the extent that the order granted the lender a security interest in the debtor’s preference actions).

134. Thus, liens on or superpriority claims against Avoidance Actions, Recovery Actions, and the proceeds of such actions should not be approved, particularly where there has been no investigation into the potential value of these claims, either by the Debtors or the yet-to-be-appointed unsecured creditors’ committee.

135. Waiver of Debtors’ Rights under Section 506(c) of the Bankruptcy Code. The Interim Order, subject to entry of a final order, waives the Debtors’ right to surcharge the prepetition collateral and the DIP Collateral pursuant to sections 105(a) or 506(c) of the Bankruptcy Code. This waiver should not be granted without an evidentiary showing that it is appropriate under the circumstances of these cases. The waiver benefits only the Sponsor and the Favored Lenders at the expense of the estates and unsecured creditors.

136. Bankruptcy Code section 506(c) provides in relevant part: “[t]he trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.” 11 U.S.C. § 506(c). A motivating principle behind recovery under section 506(c) is that assets of the debtors which would otherwise inure to the benefit of unsecured creditors should not be depleted solely to improve the recoveries of secured creditors. *See, e.g., In re Visual Indus., Inc.*, 57 F. 3d 321, 325 (3d Cir. 1995) (“[S]ection 506(c) is designed to prevent a windfall to the secured creditor.”); *Kivitz v. CIT Group/Sales Fin., Inc.*, 272 B.R. 332, 334 (D. Md. 2000) (“the reason for [section 506(c)] is that unsecured creditors should not be required to bear the cost of protecting property that is not theirs”). This principle applies with force where a postpetition lender is seeking liens on unencumbered property. *In re AFCO Enters., Inc.*, 35 B.R. 512, 515 (Bankr. D. Utah 1983) (“When the secured creditor is the only entity which is benefited by the trustee’s work, it should be the one to bear the expense. It would be unfair to require the estate to pay such costs where there is no corresponding benefit to unsecured creditors.”). Recoveries under section 506(c) are also appropriate when a secured creditor is undersecured if unencumbered assets are used to improve its recovery. *In re Neu-Deli Corp.*, 19 B.R. 175, 176 (Bankr. S.D. Ala. 1982) (where trustee expended unencumbered assets to sell undersecured creditor’s collateral, holding that the trustee was entitled to recover such expenditures under 506(c)). A debtor’s management should not concede its recovery rights under section 506(c) absent compelling reasons. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 12 (2000) (noting that a debtor’s decision to waive section 506(c) must be made in a manner consistent with its obligations “to seek recovery under the section whenever his fiduciary duties so require”).

137. Notably, courts have found that section 506(c) waivers are *per se* unenforceable. *See, e.g., In re Hen House Interstate, Inc.*, 150 F.3d 868, 872 (8th Cir. 1998) (deeming a section 506(c) waiver “unenforceable”), *vacated on other grounds*, 177 F.3d 719 (8th Cir. 1999); *In re Ridgeline Structures, Inc.*, 154 B.R. 831, 832 (Bankr. D.N.H. 1993) (deeming a section 506(c) waiver “against public policy and unenforceable per se”). Other courts view such waivers with skepticism and reject them absent committee consent. *See, e.g.,* Hr’g Tr. at 21:7–13, *In re Mortg. Lenders Network USA, Inc.*, No. 07-10146 (PJW) (Bankr. D. Del. Mar. 20, 2007) [Dkt. No. 346] (“If the Committee doesn’t agree with the waiver, it doesn’t happen.”).

138. Here, a 506(c) waiver is particularly inappropriate because there are significant unencumbered assets that will become subject to first-priority DIP Liens under the Insider DIP Facility, improving the recoveries of the Sponsor and Favored Lenders whose secured claims are already inflated to include such assets as collateral. Interim DIP Objection, ¶¶ 38-39; Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr’g Tr. 98:6-9, 100:13-17) (“[Mr. Bennett] You’re aware that the disclosure statement and plan sizes the secured claim of the secured debt at roughly 1.952 billion. Is that true? [Mr. Banks] I believe that’s true. . . . [Mr. Bennett] [Y]ou didn’t exclude any property, any unencumbered property from that calculation whatsoever? [Mr. Banks] Look, working with the other advisors, we did not exclude any other property. No. We started with the enterprise value of the company.”). The Debtors and other parties in interest should have the right to recover from collateral the Debtors’ expenses incurred in appreciating the value of such collateral.

139. The waiver should also be denied because the record contains no evidence that the Special Committee meaningfully evaluated the waiver of the Debtors’ rights to recover from secured creditors under section 506(c). Rosenblum Decl. Ex. 34 (Jan. 30, 2026 Hr’g Tr. 115:17-

116:2) ([Mr. Bennett]: “[D]uring the Special Committee you attended, do you recall any discussion whatsoever concerning waivers of rights Multi-Color may have to recover from secured creditors certain expenses during the bankruptcy case? Mr. Greenblatt: Objection, Your Honor, [on the basis of privilege.] [Mr. Banks]: I don’t recall that being discussed one way or another.”). Moreover, an unsecured creditors’ committee has not yet been appointed or consented to the waiver. *Mortg. Lenders*, Hr’g Tr. at 21:7–13, No. 07-10146 (PJW), [Dkt. No. 346].

140. Importantly, “[b]efore the bankruptcy case is filed, the debtor does not have the capacity to waive the rights bestowed by the Bankruptcy Code upon a Chapter 11 debtor in possession.” *In re Trans World Airlines, Inc.*, 261 B.R. 103, 114 (Bankr. D. Del. 2001). Moreover, “a waiver by the debtor cannot bind third parties.” *Id.* The RSA-connected Insider DIP Facility contravenes this fundamental principle of bankruptcy law and should not be countenanced. Here, the DIP Term Sheet attached to the RSA obligated the Debtors prepetition to pursue a 506(c) waiver. Dkt. No. 18, at 259. This cannot stand, particularly where the Favored Lenders are undersecured.

141. Waiver of Section 552(b) Equities of the Case Exception. The proposed waiver of the “equities of the case” exception under section 552(b) of the Bankruptcy Code is inappropriate and should not be approved. Section 552(b) allows the Court to exclude postpetition proceeds from prepetition collateral on equitable grounds, including to avoid using unencumbered assets to appreciate the value of collateral. *In re TerreStar Networks, Inc.*, 457 B.R. 254, 270 (Bankr. S.D.N.Y. 2011) (equity exception in section 552(b)(1) may apply in situations where collateral has appreciated in value through the use of unencumbered assets); *All Points Capital Corp. v. Laurel Hill Paper Co. (In re Laurel Hill Paper Co.)*, 393 B.R. 89, 93 (Bankr. M.D.N.C. 2008) (“The cases involving section 552(b)(1) appear to place the most weight on whether a debtor expended

unencumbered funds of the estate, at the expense of the unsecured creditors, to enhance the value of the collateral.”) (citations omitted); *In re S & Z International Management, Inc.*, 10 B.R. 580, 582 n.1 (Bankr. S.D. Fla. 1981) (“Subsection 552(b), does provide that the court, ‘based on the equities of the case’, may order ‘otherwise’, but the legislative history indicates that this is to make provision for an increase in the value of collateral created by the estate at the estate’s expense, and which thus depletes the fund available for general unsecured creditors.”); *see also In re Muma Servs., Inc.*, 322 B.R. 541, 559 (Bankr. D. Del. 2005) (recognizing the equities of the case exception applies where unencumbered assets are used to appreciate the value of collateral but denying its application because secured creditor had liens on all assets of the debtor). This exception gives courts broad discretion “to limit any post-petition security interest in proceeds where the equities of the case demand such a result.” *In re Topgallant Grp., Inc.*, 1992 WL 12004198, at *5 (Bankr. S.D. Ga. Dec. 23, 1992); *see also In re Village Properties, Ltd.*, 723 F.2d 441, 444 (5th Cir. 1984). It “was intended to strike ‘an appropriate balance between the rights of secured creditors and the rehabilitative purposes of the Bankruptcy Code.’” *In re Tower Air, Inc.*, 268 B.R. 404, 408 (Bankr. E.D.N.Y. 2001) (quoting *United Va. Bank v. Slab Fork Coal Co.*, 784 F.2d 1188 (4th Cir. 1984)).

142. This is precisely the type of case the section 552(b) exception was designed to address. Unencumbered assets include foreign subsidiary equity, owned and leased real property, manufacturing facilities, various fixtures, foreign intellectual property, vehicles, joint venture interests, and commercial tort claims. These unencumbered assets will be used under the Insider DIP Facility to generate proceeds that enhance the value of the Sponsors’ and Favored Lenders’ collateral—at the direct expense of unsecured creditors.

143. The equities are compounded by the fact that the Sponsor and Favored Lenders are materially undersecured. Permitting the Sponsor and Favored Lenders to capture appreciation generated through unencumbered estate assets would be grossly inequitable, particularly where the Insider DIP Facility already transfers enormous value to the Sponsor and the Favored Lenders. Allowing the Sponsor and Favored Lenders to also capture appreciation from postpetition proceeds would compound this inequitable transfer.

144. Further, the determination of whether to apply the “equities of the case” exception must be made after the facts of the reorganization unfold—not foreclosed at the outset. *See In re Metaldyne Corp.*, 2009 Bankr. LEXIS 1533, at *19–20 (Bankr. S.D.N.Y. June 23, 2009) (declining to approve waiver of equities of the case exception and noting that “[i]f, in the event, the Committee or any other party [in] interest argues that the equities of the case exception should apply to curtail a particular lenders’ [sic] rights, the Court will consider it”); *see also In re Gardens Reg’l Hosp. & Med. Ctr., Inc.*, 2016 Bankr. LEXIS 4715, at *16–17 (Bankr. C.D. Cal. Jul. 28, 2016) (providing for waiver of exception by debtor while expressly preserving the right of any other party in interest to assert the exception). And under the current record, there is no evidence that the Special Committee meaningfully evaluated this waiver. *Supra* ¶¶ 44-45, 85. The DIP Term Sheet obligated the Debtors prepetition to pursue it, Dkt. No. 18, RSA, Ex. B, but “[b]efore the bankruptcy case is filed, the debtor does not have the capacity to waive the rights bestowed by the Bankruptcy Code upon a Chapter 11 debtor in possession,” and “a waiver by the debtor cannot bind third parties.” *Trans World Airlines*, 261 B.R. at 114 (citations and quotations omitted). The waiver is improper for the additional reason that no unsecured creditors’ committee has yet consented. *See Mortg. Lenders*, Hr’g Tr. at 21:7–13, No. 07-10146 (PJW) [Dkt. No. 346].

145. Lastly, the scope of the Favored Lenders' liens is currently the subject of the Adversary Proceeding. Waiving the section 552(b) equities exception now—before the collateral issues are resolved—would be premature and prejudicial to unsecured creditors. For all these reasons, the blanket waiver of the “equities of the case” exception under section 552(b) of the Bankruptcy Code should not be approved. The Court should deny the waiver or, at minimum, preserve the right of any party in interest, including any future creditors' committee, to invoke the equities exception as these cases develop.

146. Waiver of Marshaling Doctrine Should Not Be Permitted. The Debtors' estates should not waive any rights with respect to the marshaling doctrine. Marshaling is an equitable doctrine that “prevent[s] the arbitrary action of a senior lienor from destroying the rights of a junior lien or a creditor having less security.” *Meyer v. United States*, 375 U.S. 233, 237 (1963).

147. Here, there should be no waiver of marshaling rights under the Insider DIP Facility. Moreover, given the insider status and the improper control exercised by the Sponsor, including in its capacity as a DIP lender, and the equitable nature of the marshaling doctrine, Debtors should not be permitted to waive the estates' rights to invoke the marshaling doctrine at this stage, especially when it is unclear and disputed what unsecured creditors will recover.

148. Indemnification of Parties in their Capacity as Pre-petition Lenders is Improper. The indemnification provisions that extend protection to the DIP lenders in their capacity as prepetition lenders should not be approved. Where DIP lenders owe fiduciary duties—as the Sponsor and the Secured Ad Hoc Group lenders do here given their roles in controlling the direction of these chapter 11 cases and the Debtors' restructuring—the standard “gross negligence” carve-out from indemnification is insufficient. As the court in *In re Allegheny International, Inc.* recognized, “holding a fiduciary harmless for its own negligence is shockingly inconsistent with

the strict standard of conduct for fiduciaries.” 100 B.R. 244, 247 (Bankr. W.D. Pa. 1989). Here, the DIP lenders include CD&R—the Debtors’ controlling shareholder and an insider—participated in structuring the very transaction from which they now seek broad indemnification. *See supra* ¶¶ 12-15, 30-34. The Debtors’ advisors failed to perform any calculation valuing the potential claims and rights the Debtors planned to release and waive against the various indemnified parties, further underscoring the impropriety of granting such sweeping protections.

149. Moreover, courts retain authority under section 328(a) of the Bankruptcy Code to modify indemnification terms that prove “improvident.” *See Allegheny*, 100 B.R. at 247. The broad indemnification sought here—which extends to prepetition conduct—goes well beyond what is appropriate in a case where the DIP Lenders’ prepetition conduct is itself the subject of substantial controversy. The Cross-Holder Ad Hoc Group has filed the Adversary Proceeding challenging the validity and extent of the prepetition liens, and there remain serious questions regarding the DIP Lenders’ conduct in the marketing process and their role in the Debtors’ entry into the RSA. There has been no evidence or disclosure presented as to the quantum of the myriad fees that the Sponsor and Favored Lenders seek to have covered by the estate. Under these circumstances, providing blanket indemnification and reimbursement to parties whose prepetition conduct remains under scrutiny would be inequitable and should be denied.

RESERVATION OF RIGHTS

150. This Objection is submitted without prejudice to, and with a full reservation of, the Cross-Holder Ad Hoc Group’s rights to supplement and amend this Objection, including by filing declarations in support thereof, to introduce evidence adduced after the filing of this Objection, and to further object to the DIP Motion, including any amendment thereto, on any grounds that may be appropriate.

CONCLUSION

151. For all the foregoing reasons, the Cross-Holder Ad Hoc Group respectfully requests that the Court deny the DIP Motion for final approval of the Insider DIP Facility. In the alternative, should the Court be inclined to approve the Insider DIP Facility on a final basis, the Cross-Holder Ad Hoc Group respectfully requests that the Court (i) decline to approve the roll-up or, at minimum, condition the roll-up on a determination that the Sponsor and Favored Lenders are fully secured and provide that the roll-up be unwound if they are ultimately found to be undersecured; (ii) decline to approve the Backstop Premium; (iii) delink the Insider DIP Facility from the RSA; (iv) require revisions to any proposed Final DIP Order consistent with applicable law, the evidentiary record, and the objections set forth herein; and (v) grant such other and further relief to the Cross-Holder Ad Hoc Group as is just and proper.

Dated: March 10, 2026

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

MULTI-COLOR CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No.: 26-10910 (MBK)

Judge: Michael B. Kaplan

¹ The last four digits of Debtor Multi-Color Corporation's tax identification number are 5853. A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://veritaglobal.net/MCC>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 3284 Northside Parkway NW, Suite 400, Atlanta, Georgia 30327.

**DECLARATION OF BENJAMIN ROSENBLUM IN SUPPORT
OF THE CROSS-HOLDER AD HOC GROUP'S OBJECTION TO
FINAL APPROVAL OF THE DEBTORS' MOTION FOR ENTRY OF
FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN
POSTPETITION FINANCING, (B) USE CASH COLLATERAL, AND
(C) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS, (II) GRANTING ADEQUATE PROTECTION TO
CERTAIN PREPETITION SECURED PARTIES, (III) MODIFYING
THE AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF**

I, Benjamin Rosenblum, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm Jones Day, counsel to the Cross-Holder Ad Hoc Group in this proceeding. I am personally familiar with the pleadings and proceedings in this case and with the matters set forth below.

2. I submit this declaration in support of the *Cross-Holder Ad Hoc Group's Objection to Final Approval of the Debtors' Motion for Entry of Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (the "Objection").²

3. Attached hereto as **Exhibit 1** is a true and correct copy of a document produced by Clayton, Dubilier & Rice, LLC ("CD&R") in this case with Bates number CDR_0019689.

4. Attached hereto as **Exhibit 2** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0032368.

5. Attached hereto as **Exhibit 3** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0032401.

² Capitalized terms not otherwise defined herein shall have meanings ascribed to such terms in the Objection.

6. Attached hereto as **Exhibit 4** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0000004.

7. Attached hereto as **Exhibit 5** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0008176.

8. Attached hereto as **Exhibit 6** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0025923.

9. Attached hereto as **Exhibit 7** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0027218.

10. Attached hereto as **Exhibit 8** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0022637.

11. Attached hereto as **Exhibit 9** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0024404.

12. Attached hereto as **Exhibit 10** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_186863.

13. Attached hereto as **Exhibit 11** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_129511.

14. Attached hereto as **Exhibit 12** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_092781.

15. Attached hereto as **Exhibit 13** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_094173.

16. Attached hereto as **Exhibit 14** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_094194.

17. Attached hereto as **Exhibit 15** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_094223.

18. Attached hereto as **Exhibit 16** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_094132.

19. Attached hereto as **Exhibit 17** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_094326.

20. Attached hereto as **Exhibit 18** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_102611.

21. Attached hereto as **Exhibit 19** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_094157.

22. Attached hereto as **Exhibit 20** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_093002.

23. Attached hereto as **Exhibit 21** is a true and correct copy of the final transcript of the February 23, 2026 deposition of Garrett Gabel.

24. Attached hereto as **Exhibit 22** is a true and correct copy of the Expert Report of Brent Banks – DIP Report, dated February 2026.

25. Attached hereto as **Exhibit 23** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0013344.

26. Attached hereto as **Exhibit 24** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_070045.

27. Attached hereto as **Exhibit 25** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0018308.

28. Attached hereto as **Exhibit 26** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_184570.

29. Attached hereto as **Exhibit 27** is a true and correct copy of the final transcript of the July 12, 2016 hearing in *In re UCI Int'l*, Case No. 6-11354 (Bankr. D. Del. July 12, 2016).

30. Attached hereto as **Exhibit 28** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0034934.

31. Attached hereto as **Exhibit 29** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0034917.

32. Attached hereto as **Exhibit 30** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0034919.

33. Attached hereto as **Exhibit 31** is a true and correct copy of a document produced by CD&R in this case with Bates number CDR_0034912.

34. Attached hereto as **Exhibit 32** is a true and correct copy of the final transcript of the February 23, 2026 deposition of Eric Koza.

35. Attached hereto as **Exhibit 33** is a true and correct copy of a document produced by the Debtors in this case with Bates number MCC_180066.

36. Attached hereto as **Exhibit 34** is a true and correct copy of the final transcript of the January 30, 2026 hearing in these Chapter 11 Cases.

37. Attached hereto as **Exhibit 35** is a true and correct copy of the final transcript of the February 2, 2026 hearing in these Chapter 11 Cases.

I declare on this 10th day of March, 2026, under the penalties of perjury that the foregoing is true and correct, and I understand that this document may be filed in an action or proceeding in a court of law.

Executed in New York, New York, on March 10, 2026.

/s/ *Benjamin Rosenblum*
Benjamin Rosenblum

EXHIBIT 1

SUBJECT OF MOTION TO SEAL

EXHIBIT 2

SUBJECT OF MOTION TO SEAL

EXHIBIT 3

SUBJECT OF MOTION TO SEAL

EXHIBIT 4

SUBJECT OF MOTION TO SEAL

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EXHIBIT 26

SUBJECT OF MOTION TO SEAL

EXHIBIT 27

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
UCI INTERNATIONAL, LLC., et al, Case No. 16-11354 (MFW)
Courtroom No. 4
824 Market Street
Wilmington, Delaware 19801
Debtors. July 12, 2016
10:30 A.M.

TRANSCRIPT OF HEARING
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence 10:33 a.m.)

2 (Call to order of the Court

3 THE COURT: Please be seated.

4 MR. MORTON: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. MORTON: For the record, Edmon Morton from
7 Young Conaway Stargatt & Taylor on behalf of the Debtors.

8 Turning to the morning's agenda, Your Honor,
9 obviously number one has been continued pending the outcome
10 of the main event of this hearing, the DIP motion.

11 We understand that Your Honor was hard at work
12 this morning and managed to sign items two through 16.

13 THE COURT: I did.

14 MR. MORTON: As well as orders shortening the
15 hearing notice of the various sealed request that had been
16 made in connection with the pleadings that were filed in
17 preparation for today's hearing.

18 So, Your Honor, if I may just briefly moving
19 through the agenda as quickly as we can skip over items 17
20 for obvious reasons for a moment.

21 And turning to item 18, Your Honor, that was the -
22 - you know what is a relatively standard request to file
23 under seal and in redacted form the fee letter associated
24 with the DIP in this case.

25 THE COURT: It may be standard, but let me just

1 state up front with respect to all the motions to seal and
2 for purposes of having the hearing today, I'm not inclined to
3 seal anything. So the parties should make their arguments and
4 present their evidence in light of that.

5 MR. MORTON: Well, Your Honor, that's actually a
6 fine point for us to take into consideration. Certainly,
7 while we made certain redactions for the pleadings that went
8 to the Court, we have conferred and it is the expectation of
9 all the parties in the room that we're going to be able to
10 conduct today's hearing without sealing the Courtroom and
11 just ask, you know, more vague questions, as necessary, to
12 avoid the confidential or commercial information that's been
13 elicited.

14 But having said that and then turning back to the
15 formal request to file the redacted fee letter, one thing we
16 did want to point out is that the U.S. Trustee initially
17 objected, but then realized after we went back and forth that
18 there was, in fact, public disclosure of the DIP budget
19 itself discloses the aggregate amount of fees. It just
20 doesn't disclose the breakdown, and that was enough to
21 satisfy the U.S. Trustee that the aggregate cost of this
22 facility is being -- is actually being disclosed.

23 I would say Mr. Schepacarter wants to be heard on
24 that as well.

25 MR. SCHEPACARTER: As I sneak up on Mr. Morton

1 from behind. For the record, Richard Schepacarter for the
2 United States Trustee.

3 I just wanted to point out, Your Honor, that one
4 of the things that we try to do with respect to the fees --
5 sealing of fee letters and the like is to make sure that that
6 information is publicly available somehow. It was publicly
7 available in the DIP budget. We did ask questions about it
8 at the 341.

9 So the public interest portion of that information
10 being publicized and being available through creditors and
11 parties in interest has been satisfied, so that resolved out
12 objection.

13 Just on another point, Mr. Morton said something
14 about sealing the Courtroom. And I would just like to make a
15 standing objection that we will object to any sealing of any
16 Courtroom at any point at this proceeding.

17 THE COURT: Ever, I know.

18 (Laughter)

19 THE COURT: Well I think I'm inclined to assume
20 we're not going to seal anything today.

21 So I'm not inclined, again, to grant the motion to
22 seal the fee letter, even though the aggregate has been
23 disclosed. I understand in consideration of whether or not
24 this is the appropriate DIP to go with. There are
25 differences on the line items, as well as the total.

1 So I'm not inclined to grant that motion at this
2 time.

3 MR. MORTON: Well, Your Honor, if we could have
4 just one moment to confer with our lender counsel.

5 THE COURT: Okay.

6 MR. MORTON: Your Honor, I think where we think we
7 are is the following, so. What will be made clear to you
8 throughout the testimony on the DIP is that we've actually
9 negotiated further since the filing of the motion a reduced
10 fee arrangement, and that has actually resolved the
11 opposition to, you know specifically to the fees themselves.

12 So what we would propose to do, at this stage, is
13 simply -- we understand Your Honor's disinclination to grant
14 it, we'll pass the motion to the end of the hearing for now.
15 And if we're able to get through the rest of it without
16 you're getting into the line item, we can renew and consider
17 that request at that time after Your Honor has been able to
18 see it play out, if that's acceptable.

19 THE COURT: All right.

20 MR. MORTON: Your Honor -- and then, obviously, I
21 suspect what we'll need to do is handle the same -- handle
22 the other motions to seal in the same arrangement, you know
23 with the hope and expectation and the standing objection of
24 the U.S. Trustee, always in the back of our minds, that we're
25 not anticipating closing the Courtroom for any portion of the

1 testimony today or argument.

2 Your Honor, I think then that brings us to, if I
3 may I'll just give Your Honor a brief outline about how the
4 Debtors intend to proceed today. And I do think there's one
5 point that some of the DIP proponents may want to raise
6 procedurally before we get underway.

7 Certainly our -- we have filed both two
8 declarations for Mr. Whittman's testimony. He is our first
9 witness. We would put him on for a much more abbreviated
10 direct then would traditionally be the case because of the
11 fact that he has two declarations already in the record. And
12 then, obviously, open him up for cross.

13 We then have Mr. Keil from Moelis who will also be
14 tendered as a witness. His declaration will be tendered in
15 and he will have an extremely short direct before being
16 tendered for cross.

17 We then understand the Committee to have one
18 witness Mr. MacGreevey from Zolfo Cooper. And I believe the
19 current expectation is that he would simply be tendered for
20 cross with his declaration being submitted as his direct
21 testimony.

22 I mean I think from our perspective, we would
23 prefer to proceed in the manner that Your Honor typically
24 proceeds, which is to dispense with openings, get straight to
25 the evidence rather than, you know, duplicating argument and

1 effort.

2 THE COURT: That's fine.

3 MR. MORTON: But that's the procedural point --

4 THE COURT: So far, let's see if the Committee or
5 other objectors wishes to be heard.

6 MR. MORTON: That's the point that folks want to
7 be heard on.

8 MR. MARINUZZI: Good morning, Your Honor, Lorenzo
9 Marinuzzi, Morrison Foerster on behalf of the Official
10 Committee of Unsecured Creditors.

11 I think the objectors would like just a couple of
12 minutes to present an opening argument -- five minutes tops.

13 THE COURT: Well are you going to say anything
14 that's not in your papers?

15 MR. MARINUZZI: I think I want to consolidate the
16 papers and just give you some high level observations of what
17 you're going to hear today and what was in the papers.

18 THE COURT: I'd rather you do that at the end.

19 MR. MARINUZZI: Your Honor, whatever you'd like.

20 THE COURT: Thank you.

21 MR. MARINUZZI: Thank you.

22 THE COURT: Another objector.

23 MR. FELDMAN: Your Honor, for the record, Matthew
24 Feldman from Willkie Farr & Gallagher on behalf of the Ad Hoc
25 Committee of Noteholders representing about 90 percent of the

1 Noteholders, Your Honor.

2 I'm not going to repeat Mr. Marinuzzi's request
3 for an opening, but I am going to say something that's not in
4 our papers, which is we did not consent to whatever reduction
5 in fees we have not yet heard about. We are still objecting
6 to the fees, so that is an open issue and we'll deal with it
7 in cross and we'll deal with it in argument. Thank you.

8 THE COURT: All right. Thank you.

9 MR. FELDMAN: And I'm not sure who they settled
10 with.

11 MR. MARINUZZI: Your Honor, just so we're clear.
12 We've been negotiating with counsel for Rank and indirectly
13 counsel for Credit Suisse, so I'm trying to resolve a number
14 of the DIP issues that are in our papers including the fees.

15 I don't know where it stands precisely. We're
16 still opposed to the DIP. If we could take some issues off
17 the table for the Court, I think that would be beneficial to
18 all parties, but we're not there yet, as far as I know.

19 THE COURT: Thank you.

20 MR. FELDMAN: Your Honor, one additional
21 procedural point that I neglected to mention, which is that
22 the director, the independent director whose business
23 judgment or entire fairness is at issue today is not in the
24 Courtroom, is not available today. And I think from the
25 Noteholders' perspective since he's really the linchpin of

1 the Debtors' argument that this has been approved in an
2 independent way, I think there's some challenges with going
3 forward today.

4 I don't want to take the Debtors' case away from
5 themselves, but we will also be arguing, Your Honor, which is
6 not in our papers that the Court just simply cannot have
7 enough information today in order to make a determination as
8 to whether the exercise by their business judgment or entire
9 fairness was appropriate given the lack of live evidence
10 today.

11 THE COURT: All right. We'll I'll let you argue
12 that at the end.

13 MR. MORTON: Thank you, Your Honor, we have worked
14 out, at least with the Committee. We were presuming some
15 level of coordination and I think maybe there are certain
16 items they coordinated on and certain item they didn't. We
17 are planning to put in certain excerpts from the deposition,
18 as well as counter-designations that have been negotiated
19 with the Committee and with respect to Mr. Carr's testimony.

20 We also have with us the chief restructuring
21 officer who was advising the board and participated in the
22 board meetings at which the decision was considered, so.

23 THE COURT: All right.

24 MR. MORTON: Understood. And with that, Your
25 Honor, we will -- I'll cede the podium to Mr. Ducayet who

1 will present our first witness.

2 THE COURT: Thank you.

3 MR. DUCAYET: Good morning, Your Honor. For the
4 record Jim Ducayet on behalf of the Debtors.

5 Your Honor, at this time we'd like to call Mr.
6 Brian Whittman to the stand.

7 THE COURT: All right.

8 Please remain standing so you can be sworn by the
9 clerk.

10 BRIAN WHITTMAN, DEBTORS' WITNESS, SWORN

11 THE CLERK: Please state your full name and spell
12 your last name.

13 THE WITNESS: Brian Whittman; W-h-i-t-t-m-a-n.

14 MR. DUCAYET: May I proceed, Your Honor.

15 THE COURT: Yes.

16 DIRECT EXAMINATION

17 BY MR. DUCAYET:

18 Q Good morning, Mr. Whittman.

19 A Good morning.

20 Q Could you please state your current title?

21 A I am the chief restructuring officer of UCI, as well as
22 a managing director of Alvarez & Marsal.

23 MR. DUCAYET: And let's just deal with a couple of
24 housekeeping matters first, if I could, Your Honor. If I may
25 approach?

1 THE COURT: You may. Thank you.

2 BY MR. DUCAYET:

3 Q Mr. Whittman, may I ask you to take a look at the
4 documents -- I've handed you documents, right?

5 A Correct.

6 Q Let me ask you to take a look at the first document I
7 handed you, which is the declaration of Brian Whittman in
8 support of the Debtors' motion, do you see that?

9 A I do.

10 Q Is that a declaration that you prepared in connection
11 with the motion?

12 A I did.

13 Q Okay.

14 MR. DUCAYET: And, Your Honor, just for the record
15 that was attached as an exhibit to the original motion.

16 THE COURT: Well is that docket number 195?

17 MR. DUCAYET: Your Honor, I don't have the docket
18 number in front of me. I apologize. If it's helpful, Your
19 Honor, both of these --

20 THE COURT: I think the motion was 194, but
21 according to your agenda letter it says that Mr. Whittman's
22 declaration was docket number 195.

23 MR. DUCAYET: It was an exhibit to the motion, so
24 that may well be, Your Honor.

25 THE COURT: All right.

1 BY MR. DUCAYET:

2 Q And then, Mr. Whittman, if I could ask you to take a
3 look at the second document, which is a supplemental
4 declaration.

5 A Yes.

6 Q And is that a declaration that you prepared in
7 connection with the reply brief that was filed yesterday?

8 A I did.

9 Q And do each of these declarations reflect your truthful
10 testimony in this matter?

11 A They do.

12 MR. DUCAYET: Your Honor, at this point I just
13 move these two declarations into evidence and then proceed
14 with my direct.

15 THE COURT: All right. And I think the
16 supplemental is docket number 267 filed 7/11, is that
17 correct?

18 MR. DUCAYET: That's right, Your Honor.

19 THE COURT: All right. Just for the record.

20 Any objection to those being considered part of
21 the record?

22 MS. LIU: None from the Committee, Your Honor.

23 THE COURT: All right. Then they will be admitted
24 subject to cross.

25 (Brian Whittman's Declarations, admitted)

1 MR. DUCAYET: Thank you, Your Honor.

2 BY MR. DUCAYET:

3 Q Mr. Whittman, when did you start working with UCI?

4 A I was engaged by UCI at the end of February, February
5 25th, 2016.

6 Q And what have you done since that time?

7 A We initially worked to help the company prepare for a
8 potential bankruptcy filing timed with the expiration of the
9 grace period and the company senior notes in the middle of
10 March 2016.

11 When we were able to avoid that filing, we continued to
12 work with the company around developing a 13-week cash flow
13 forecast and longer range liquidity projection. We worked
14 with the company to develop a five-year business plan. And
15 ultimately prepared for the filing, which did occur on June
16 2nd.

17 Q And you indicated at the beginning that you have the
18 current title of chief restructuring officer?

19 A That is correct. I was appointed chief restructuring
20 officer effective with the petition date.

21 Q And to whom do you report?

22 A I report to Alan Carr, the independent director on the
23 board.

24 Q Do you report to anyone else at UCI?

25 A I do not.

1 Q As a result of the work that you described beginning
2 back in February have you become familiar with UCI's
3 business?

4 A I have.

5 Q Okay. Now, Mr. Whittman, you understand that when the
6 Debtors filed the petition back on June 2nd, they did so
7 without any post-petition financing in place, right?

8 A That's correct.

9 Q And were you involved in the decision to commence the
10 proceeding without post-petition financing?

11 A I was. We considered the fact that we had two
12 competing DIP proposals at the time, one from our Ad Hoc
13 Noteholders and one from Credit Suisse.

14 We had at the time about \$31 and a half million dollars
15 of cash on hand. And we were in the fortunate position of
16 having sufficient liquidity to avoid a day one fight between
17 two perspective lenders, as well as to allow us to continue
18 to negotiate for the best possible DIP facility.

19 And so we chose to move forward. I recommended to Alan
20 and Alan made the decision to move forward with the filing on
21 the cash collateral basis.

22 Q At the time you filed and made that decision, did you
23 have an expectation that at some point in the proceeding, you
24 would need post-petition financing?

25 A We did.

1 Q And as we are here today on July 12th, is it the
2 Debtors current belief that they require post-petition
3 financing?

4 A Yes, it is.

5 Q And what are the principle reasons why -- and I take it
6 you agree with that?

7 A I do. I do.

8 Q And what are the principle reasons, in your mind, for
9 why it is that the Debtors need post-petition financing at
10 this time?

11 A The first is the traditional reason for liquidity for
12 the business. Our current cash flow forecast shows that we
13 need, with the fee concessions granted over the weekend,
14 approximately \$8 million dollars of cash in the near term,
15 closer to ten, over the next nine months. That would be the
16 term of the facility.

17 Secondly, we have had, as we negotiated with our
18 vendors, to continue operating the business and to continue
19 an uninterrupted supply chain had a continuous reaction from
20 our vendor population around our lack of DIP financing. Our
21 explanation to them has been the same answer I gave to you
22 regarding our strategy at the filing that we were in the
23 fortunate position of having sufficient liquidity. We had
24 multiple DIP proposals and we intended to enter into a DIP
25 facility at some point.

1 Well that helped to calm the vendors as we talked to
2 them, but there was definitely a desire and a communication
3 on our part that ultimately we intended to put DIP financing
4 in place.

5 We also had similar conversations with our customers.
6 Our customers were very concerned about the stability of the
7 business. We supplied product that goes directly into key
8 production facilities for a number of OEM's, among others,
9 that if we were to stop supplying would have the impact of
10 shutting down some of their production facilities. And they
11 were very concerned about our liquidity, our ability to
12 continue to operate. And, again, without DIP financing was
13 very difficult to get them to a comfortable position.

14 Q Okay. So as I've understood your testimony, you've got
15 basically three reasons and three principle reasons:
16 liquidity requirements of the business, the issue with
17 respect to vendors and vendors' expectations, and the issue
18 of the customers that you just described.

19 A I would say with a fourth overriding factor of the risk
20 profile of this case given the amount of likely litigation,
21 given just a lot of uncertainty around different components
22 of the business, as well as different components of our
23 liquidity profile, particularly our factoring relationships
24 that also underlines my concern and need for a DIP facility.

25 Q Okay. Let me ask you about the first reason that you

1 identified, which was essentially the liquidity needs of the
2 business on a going forward basis.

3 Now in connection with the motion that's at issue here,
4 did you prepare a cash forecast?

5 A I did.

6 Q Okay. And I think you've already alluded to this, but
7 what is that cash forecast, the current forecast show with
8 respect to the needs and when those needs will arise?

9 A Shows that we need approximately \$8 million dollars of
10 cash in a 13-week period and approximately \$10 million
11 dollars of cash overall throughout the nine month projection.

12 Q Okay. And could you just briefly describe how you put
13 that cash forecast together?

14 A We together with the various business units of the
15 company went through a very traditional process of assembling
16 a 13-week cash flow forecast looking at accounts receivable,
17 accounts payable. As we got beyond the initial weeks looking
18 at the revenue forecast of the business, the expense forecast
19 of the business.

20 And then we made the typical adjustments that would for
21 a Chapter 11 situation: the contraction of trade terms type
22 of experience, expectations around critical vendor payments
23 and other first day relief, as well as professional fees in
24 the case.

25 Q And you mentioned in an earlier answer the issue of

1 factoring, recall that?

2 A Yes.

3 Q Can you just tell the Court a little bit about the
4 significance of factoring arrangements with respect to UCI's
5 business?

6 A The company has a number of large retail customers that
7 in order to get better terms on the receivables factor, we
8 factor the receivables. The factoring provides the customers
9 with an extended period of time to pay the receivable. And
10 our arrangement at the -- we're set up for the benefit of the
11 customers.

12 The factoring provides the company with approximately
13 \$17 million dollars of liquidity, such that if the factors
14 stopped factoring and acquiring these receivables we would
15 have a compression in our liquidity of approximately \$17
16 million dollars.

17 Q What did you assume -- back up for a second. You
18 prepared a cash forecast in connection with the initial first
19 day filings including the cash collateral motion, is that
20 right?

21 A That is correct.

22 Q And what assumptions were contained in that cash
23 forecast about factoring as of the date of the filing?

24 A We made the assumption in our original cash collateral
25 budget that all factoring would cease with the petition date.

1 And we made that assumption because we were unable to
2 communicate with the factors leading up to the bankruptcy
3 filing given that the factors are a relationship with the
4 customers and we did not want to alert our customers prior to
5 the petition date.

6 Q What's happened with respect to the factoring
7 arrangements since the filing?

8 A It's been a touch and go situation. We have had two
9 factors that have now terminated the factoring relationship.
10 This is out of a population of eight. We have had other
11 factors put us on hold; three factors that put us on hold.
12 One of which has now come off of hold, although it's filed
13 either an objection or reservation of rights related to this
14 current DIP motion that we're hearing today. So it has been
15 a somewhat unstable situation; although, pleasantly we are
16 better than a zero situation.

17 Q And have you -- you said that the initial cash forecast
18 assumes essentially that there would be no factoring
19 relationships going forward. Have you made adjustments to
20 that in the most current cash forecast?

21 A We have. The current cash flow forecast reflects that
22 a portion of the factoring would continue.

23 Q About what portion?

24 A Between a third and a half.

25 Q Do you have a view as to whether or not obtaining a DIP

1 facility will help you with respect to your relationships
2 with factors?

3 A It certainly will give us the comfort that if the
4 factors were to disappear that we will have the necessary
5 liquidity to operate the business. It may provide some
6 comfort to the factors. I'm not sure.

7 Q Turning back more broadly to the issue of liquidity
8 needs of the company. Do you understand that the Committee
9 has tendered a declaration from Mr. MacGreevey from Zolfo
10 Cooper on that topic?

11 A I do.

12 Q Have you had an occasion to read that declaration?

13 A I have.

14 Q Okay. And you know that Mr. MacGreevey was deposed
15 yesterday?

16 A I do.

17 Q Have you read his transcripts; the transcript of that
18 deposition?

19 A I have.

20 Q You understand that Mr. MacGreevey has expressed the
21 opinion that the company does not have an immediate need for
22 a DIP?

23 A I do.

24 Q Do you agree with that?

25 A I do not.

1 Q Why not?

2 A I think that, first of all, based on my on the ground
3 understanding and being very close to the numbers at the
4 company, we have a reasonable forecast, a reasonably
5 conservative forecast that shows a need for DIP financing,
6 shows a need for liquidity, both in the 13-week period and
7 over the longer term.

8 And we have been basing a number of risks also a number
9 of pressures over the last several weeks from vendors, from
10 customers, from the factors all of which have created a
11 situation that requires additional liquidity.

12 Q Mr. MacGreevey also expressed an opinion about a cash
13 cushion which you were assuming in your cash forecast, do you
14 recall that?

15 A I do.

16 Q Can you just describe for the Court briefly what it is
17 that you're talking about there?

18 A My understanding is that Mr. MacGreevey's position was
19 that six weeks into the case, we should be in a situation of
20 stability and not require a cash cushion in our forecast --

21 Q And do you agree with that --

22 A Which I completely disagree with. In my experience
23 bankruptcy is really never a stable situation. There are
24 always ongoing risks with customers and vendors. There's
25 always the possibility of a customer resourcing, a vendor

1 stopping to ship product to us. And, therefore, it is
2 appropriate to continue to have a reasonably conservative
3 cash flow forecast.

4 Q Okay. And let's then turn to the issue of vendors,
5 which you made reference to. Have vendors expressed concern
6 over the fact that the Debtors have not obtained post-
7 petition financing?

8 A They have.

9 Q About how many?

10 A We have been negotiating critical vendor agreements
11 with a number of vendors somewhere in the neighborhood of 30
12 vendors. I would say all of them have expressed some degree
13 of concern about our lack of DIP financing.

14 We also have a number of vendors that we have ongoing
15 discussions with where we have not entered into a critical
16 vendor agreement with and they have been very concerned;
17 again focused somewhat on this date. We told people that we
18 have a DIP financing hearing on July 12th and wanting to see
19 the outcome of that hearing before considering extending us
20 additional trade terms.

21 Q Has the absence of post-petition financing had an
22 impact on the trade terms?

23 A It has.

24 Q In what way?

25 A Our trade terms have contracted. A number of vendors

1 have either put us on COD or on very short terms where COD
2 often times is administratively difficult for both us and the
3 vendor. They've agreed to five or 10 day type terms.

4 Q And do you have a view of what the consequences would
5 be with respect to trade terms if the Debtors were not able
6 to obtain a DIP facility?

7 A I believe that we would have difficulty maintaining or
8 extending trade terms with parties other than those we've
9 already committed to the critical vendor agreement.

10 Q Let me ask you a few question about customers. Have
11 any customers expressed concerns to you about the fact that
12 the Debtors don't have post-petition financing?

13 A They have.

14 Q And what are the nature of those concerns?

15 A As you would expect, as I described earlier, a number
16 of our key customers our product is critical to their ongoing
17 production. And without our product, their production lines
18 would shut down. They have expressed concerns as to wanting
19 to know which of our vendors we haven't paid that supply raw
20 materials that then go in to their product. And how we're
21 going to make sure that there's no disruption to the supply
22 chain.

23 Q Do you have a view as to what the consequences would be
24 if the Debtors were not able to obtain a DIP facility?

25 A I think that it would create a difficult conversation

1 with our customers particularly in light of the narrative
2 that we have described to them thus far that while fortunate
3 in having sufficient liquidity on the petition date, we
4 intended to enter into a DIP financing facility.

5 I think it would, again, create increased concern. We
6 have some customers where we're dual sourced. They could be
7 moving to the other party. The customers where single
8 sourced where they would be moving to resource product.

9 Q Okay. So we've talked about liquidity. We've talked
10 about vendors. We've talked about customers. You had a
11 fourth sort of principle reason that you thought it was
12 appropriate to get a DIP facility in place and that was the
13 overall risk profile of the case.

14 A Correct.

15 Q Can you describe what you mean by that?

16 A This is -- first of all this is the company that has
17 gone through a lot of risk or a lot of turmoil over the last
18 six to nine months leading to the petition date. As I
19 discussed in my first day affidavit, we lost a number of
20 critical customers to the business late last year.

21 While I am reasonably confident sitting here today that
22 we're going to hold the customer base together, there are
23 clearly risks of losing customers and they can leave very
24 quickly.

25 In terms of the dynamics of the case, this is a case

1 that's clearly going to have a battle between a lot of
2 parties; a lot of people sitting in the Courtroom today. And
3 I think it's important that we have the liquidity cushion
4 necessary to weather any storm that comes.

5 Q Let me switch topics just a little bit. I want to go
6 back to the initial filing of the case at the beginning of
7 June.

8 As you testified earlier, Debtors went into the
9 proceeding without financing in place and on the basis of
10 cash collateral. Following the commencement of the case,
11 what happened with respect to the Debtors' efforts to obtain
12 a DIP facility?

13 A After the petition date and getting through the first
14 day hearing, we went back as we said and I said at the
15 petition date, we have proposals from both the Ad Hoc
16 Noteholders and Credit Suisse to provide a, in one case a
17 priming DIP facility, and the other case the rollup facility
18 that we're sitting here regarding today.

19 We went back to both parties shortly after the first
20 day hearing and asked them for certain concessions in order
21 to try to negotiate the best deal for the Debtors leveraging
22 each party against the other.

23 Q And let's talk a little bit about the proposals. Did
24 you make a proposal to the secured lenders?

25 A We did.

1 Q Can you describe that, please?

2 A The primary -- one of the primary concerns I had as of
3 the petition date was that we had received a series of
4 termination notices related to services that were
5 historically provided to us by various affiliates of Rank.
6 And so one of the items I thought was now available to
7 negotiate related to the CS DIP facility giving Rank's
8 position in that facility was those termination notices.

9 And we went out with a list of issues. I think there
10 were nine or 10 issues that we asked to be changed in the CS
11 proposal. The most important of which to me was a list of
12 those services, as well as some other issues related to
13 unwinding, the relationship between the two companies, and
14 where we wanted specific additional time or other concessions
15 in order to consider moving forward with the CS Rank
16 facility.

17 Q And did you having submitted that proposal, did you
18 then receive a response?

19 A We did.

20 Q And what was the response?

21 A The response was to deny -- unilaterally deny our
22 request related to the operational issues around the
23 transition. There was some movement around the other more
24 financial issues associated with the DIP facility, but no
25 movement on the operational issues.

1 Q So what did you decide to do then?

2 A After consulting with counsel, with Alan Carr, the
3 independent board member, we reached a decision, I think it
4 was about June 10th, that we would proceed with the priming
5 DIP facility.

6 Q And when you say the priming DIP facility, can you just
7 describe a little bit what you mean by that?

8 A Yes. The Ad Hoc Noteholders shortly before the
9 petition date provided us with a term sheet in which they
10 would lend a certain amount of money. It was ultimately was
11 negotiated to \$35 million dollars as a term loan. That would
12 be a priming facility that would sit on top of the
13 prepetition ABL.

14 Q And so you said around June 10th you turned to the
15 possibility of doing a priming DIP. What did you do in that
16 regard in terms of negotiating with the Committee?

17 A We provided a markup to the Noteholders of their term
18 sheet regarding a number of terms from interest rates to fees
19 to milestones to more technical terms.

20 Q And did you receive a response to that markup?

21 A We did. And they largely accepted our asks.

22 Q Did there come a point in time when you recommenced
23 negotiations with the secured lenders?

24 A They did. Shortly after the Court granted an order --
25 I believe it was on the 17th of June that extended the

1 interim cash collateral and where there was going to be a
2 hearing on the 21st. As part of that order, there was also a
3 requirement to file the DIP financing if we were to have it
4 heard today by I think it was June 14th, somewhere in that
5 neighborhood -- 24. Sorry, June 24th.

6 So at that point, we were getting -- moving forward
7 with the priming DIP. But there was a meeting between Mr.
8 Carr and Mr. Hart, the owner of Rank, as well as subsequently
9 a discussion with counsel. And coming out of that meeting
10 over the next couple of days, there was an overture from Rank
11 indicating that they would be willing to discuss the
12 operational issues.

13 Q And did you then directly get involved in negotiating
14 the terms of those operational issues?

15 A I did.

16 Q And who were you dealing with in that regard?

17 A The negotiation was largely through counsel. I
18 prepared an amended term sheet from what we had proposed a
19 few weeks earlier. We had passed that through counsel, which
20 went over to Rank's counsel. And the negotiation largely
21 proceeded through counsel back and forth.

22 Q Did you have a list as you were preparing this list
23 that you just identified, do you have a list of services or
24 assets that you viewed as particularly critical or sort of
25 non-negotiable?

1 A I did.

2 Q And can you just briefly describe what those are?

3 A Yes, really three key areas. The Debtors currently
4 utilize two warehouses that are Rank warehouse facilities,
5 actually warehouses of ATH, the Rank affiliates. And our
6 ability -- those were subject to a termination notice that
7 required us to move out by August 1st.

8 Our ability to accomplish that was going to be very
9 difficult and placed significant risk on our ability to
10 service our customers without interruption. So the
11 warehousing and extending that warehousing service was a
12 critical item for me.

13 We each shard IT infrastructure including key network
14 circuits, as well as having our key critical operating
15 software hosted in a data center owned by a Rank affiliate.
16 And, again, it was going to be very difficult for us to
17 vacate and transition those services in the required
18 timeline.

19 And, finally, we had our -- we did not have our own
20 laboratory. We had previously years ago, but our laboratory
21 had been merged into a FRAM facility, which is a Rank
22 affiliate, a number of years back and that --

23 Q Can I just stop you there, Mr. Whittman. Can you
24 describe for the Court what the significance is of a
25 laboratory?

1 A We are required by our customers to do significant
2 testing of our product throughout the year: quality testing,
3 testing related to warranty issues, testing for safety. And
4 in order to operate that testing regime without the lab
5 equipment, it would have cost us approximately \$3 million
6 dollars a year from an outsource service.

7 Q Okay. All right. So these are the three sort of bucket
8 of issues that were particularly important to you?

9 A Yes.

10 Q As the negotiations proceeded, did you get any
11 concessions from Rank with respect to those issues?

12 A We did. We received concessions ultimately on all
13 three of issues. Although in the interim phase, I believe it
14 was as late as -- well certainly Thursday night and then
15 continued on in to the Friday deadline of June 24th. Rank
16 was willing to concede on the first two issues to a timeline
17 that was agreeable to us. But they refused to negotiate
18 around the lab equipment.

19 And as a result, I think as late as mid-afternoon on
20 that Friday the 24th, we had moved back to the position of
21 filing the priming DIP.

22 Q And I think your testimony was earlier that June 24th
23 was actually the deadline to make that filing?

24 A That was, yes.

25 Q So how close did you come to filing a priming DIP

1 proposal?

2 A Within a handful of hours.

3 Q And that's because the lab testing equipment that you
4 described was of such significance to the business?

5 A It was. That's correct.

6 Q Okay. Let me ask a few questions about the ultimate
7 decision that you just described to go with the secured
8 lender DIP facility as opposed to the AD Hoc proposal.

9 Is it your opinion here today that the secured lender
10 DIP facility that is the subject to this motion is preferable
11 to the Ad Hoc proposal?

12 A Yes, it is.

13 Q Okay. And did you recommend to Mr. Carr that the
14 Debtors enter into the DIP facility?

15 A I did.

16 Q Now you understand had the ultimate authority to enter
17 into a financing arrangement on behalf of the Debtors, right?

18 A Correct.

19 Q What are the reasons you recommended to Mr. Carr that
20 he enter into the DIP facility?

21 A I recommended that we enter into the DIP facility
22 because after the negotiation we were getting key concessions
23 that we needed around the operational issues and the lab
24 equipment in order to significantly de-risk the transition
25 and the separation of services away from the Rank affiliates.

1 That was key in my mind to preserving the value of the
2 company.

3 We were also getting a facility that was economically
4 similar to the Ad Hoc Bondholder proposal. And it was a
5 facility that in my understanding did not in a significant
6 way impair the rights or prejudice sort of the long term
7 issues that needed to be addressed in the case.

8 Q Okay. Let me just ask you just a couple of questions
9 about the economics. You said the economics of the two
10 proposals were similar?

11 A Correct.

12 Q And what do you mean by that?

13 A Looking at the fees and the interest rates being
14 charged on the two facilities, the cost of the facilities
15 were similar with an advantage to the Noteholder facility,
16 but an advantage that was far outweighed by the costs that
17 would be incurred if we did not receive the lab equipment.

18 In fact, subsequent to filing the motion and over this
19 weekend as part of trying to negotiate some of the UCC's
20 concerns and objections, the fees on the CS facility were
21 further dropped by an additional approximately \$1.4 million
22 dollars, which it really makes the two facilities comparable
23 in terms of economics.

24 Q Okay. And you've already talked a little bit about the
25 services and the lab testing equipment. Let me just ask you

1 a couple of additional questions in that regard.

2 With respect to the warehousing situation that you
3 described, what relief did you obtain as a result of entering
4 into the DIP facility with respect to warehousing?

5 A Well its key for me on the warehousing, we had received
6 on June 1st a notice that purported to terminate the
7 warehousing services as of August 1st. And while I believe
8 that we would have a case, a legal argument, to try to negate
9 that notice, that notice was already causing us to move on
10 what I would view as a clash separation approach and moving
11 in a very fast and very risky pace.

12 Q Why would it be risky?

13 A This warehouse is used to service all of our retail
14 customers. They are already very concerned about our ability
15 to service their needs during the bankruptcy. And any
16 potential disruption of shipments of products or reduction in
17 fill rates resulting from a fast warehouse move that does not
18 go smoothly would risk those customer relationships.

19 Q And what's the relief that you obtained as a result of
20 the DIP facility?

21 A We eliminated that August 1st date and moved to an
22 October 1st date, which in my view was a manageable
23 transition period for the warehouse.

24 Q So that's just a couple of months, right?

25 A That is, but it's a couple of critical months in terms

1 of pacing the movement of the customers out of the warehouse.

2 Q Are you confident that you're going to be able to meet
3 the new deadline of October 1?

4 A I am.

5 Q How confident are you?

6 A Highly confident.

7 Q With respect to the IT services that you described,
8 what's the relief that you obtained as a result of entering
9 into the DIP facility?

10 A Similar relief. The IT services have largely been
11 subject of a termination notice that would have been
12 effective on September 3rd; although there was some assertion
13 that an unspecified portion of those services was also have
14 been terminated on August 1st. So again, we relieved
15 ourselves of the uncertainty around an August 1st deadline
16 and then moved the September 3rd deadline out to October 1st.

17 Q And, again, is that critical in your view?

18 A That was. There are certain IT services over which we
19 don't have direct control over the ability to transition
20 those services on a set timeline. We are reliant upon outside
21 service providers, particularly as it relates to key network
22 circuits. And the timeline that I was advised was reasonable
23 to achieve was going beyond the August 1st and, in fact,
24 going beyond the September 3rd date.

25 Q Okay. Let me ask you a question about the lab testing

1 equipment, which as I understand it was the final issue that
2 almost settled this deal, is that fair?

3 A It was.

4 Q And had you not been able to attain the lab testing
5 equipment in connection with this agreement, what would have
6 your -- what would your alternatives have been?

7 A Our alternative was to engage the services of outside
8 testing services that we had received quotes indicating that
9 this would be an incremental cost of \$3 million dollars a
10 year to the business. Clearly, that wouldn't have been a
11 permanent solution. We have actually would have acquired
12 equipment, but that would ultimately be a costly proposition.

13 So we were looking at an expensive option and also an
14 option that was placing the testing outside of our control,
15 which was going to create some logistical issues in terms of
16 how we operated the business.

17 Q Now the alternative DIP proposal from the Ad Hoc group
18 that would prime the liens of the existing secured lenders,
19 right?

20 A That is correct.

21 Q Was there any effort to try to negotiate the issue of
22 whether or not the Ad Hoc proposal would prime the liens?

23 A Yes. We reached out -- I reached out personally.
24 Other representatives, the Debtors reached out as well to
25 representatives of the Ad Hoc Noteholders asking them if they

1 would be willing to put forth their DIP on a junior basis as
2 opposed to a priming basis.

3 Q What did they say?

4 A No.

5 Q Did there come a point in time where you reached a
6 conclusion that there was no possibility that they would
7 agree to that?

8 A Yes.

9 Q And because of the priming of the liens, do you have an
10 understanding that had the Debtors gone with the Ad Hoc
11 proposal that there would have been a priming fight in this
12 Court?

13 A Yes.

14 Q Did that have any bearing on your ultimate
15 recommendation to Mr. Carr?

16 A It was certainly a secondary factor beyond the
17 operational issues in terms of my view that the current CS
18 Dip was more appealing than the priming DIP.

19 Q And maybe you can just elaborate on that. Why did you
20 believe that it was a factor supportive of the decision to
21 enter into the DIP facility?

22 A Really twofold. First of all, I thought that the
23 priming battle was potentially disruptive to the business.
24 In a priming fight, the parties would have been arguing about
25 the valuation of the business. It was also clear to me that

1 the parties would have been arguing about the fragility of
2 the business, the potential of the business would, you know
3 not just from a valuation standpoint, but would actually
4 implode at some point and, therefore, those arguments would
5 not be helpful as we were talking to vendors and customers.

6 And then, secondly, just the time involved in the
7 priming battle would likely be a little bit more extensive
8 and more of a drain on everyone's focus as opposed to being
9 focused on getting to a plan of reorganization.

10 Q Focusing on the litigation issue for a second. I think
11 you said in your earlier testimony that the Debtors disputed
12 their validity of the termination of the services that are
13 the subject now of the new agreement.

14 A Yeah, particularly the notice that was provided on June
15 1st related to the 8/1 date around warehousing and some other
16 services. That is correct.

17 Q And had the Debtors not entered into the DIP facility,
18 would it have been your expectation that there would be
19 litigation over the validity of that termination?

20 A Absolutely. We had been discussing in the week leading
21 up to the filing of this facility, the filing of some sort of
22 action, an adversary complaint or some sort of action to try
23 to stay that August 1st date.

24 Q So in a world in which rather than going with the DIP
25 facility we had instead gone with the Ad Hoc proposal, just

1 from a litigation standpoint, what would the next couple of
2 weeks look like?

3 A Really, there would have been at the completion of a
4 valuation of a liquidation analysis testimony and so forth
5 regarding those issues and trial regarding valuation, as well
6 as there would have been separate action around the notice
7 for the 8/1 termination.

8 MR. DUCAYET: We would have been seeing a lot of
9 you, Your Honor.

10 BY MR. DUCAYET:

11 Q So then finally you said that one of the factors that
12 went into your recommendation to Mr. Carr was that entering
13 into the DIP facility doesn't prejudice or predetermine the
14 ultimate outcome of the case. Can you explain what you mean
15 by that?

16 A Yes. The important factor to me was that as I
17 understood the language in the agreement before we moved
18 forward was that it preserved the challenge rights of the
19 Committee in terms of pursuing any actions against CS and
20 Rank related to the prepetition debt. And, therefore, by
21 moving forward with this facility, we were not prejudicing
22 those issues to be decided later in the case.

23 Q Now in entering into the DIP facility does that have
24 any impact with respect to the rights of unsecured creditors
25 in a subsequent plan of reorganization?

1 A Yes. There is a definition in the plan of a
2 requirement that we file an acceptable plan of
3 reorganization. This is an area of significant scrutiny for
4 me as I wanted to make sure that by entering to the facility
5 with CS, we weren't providing any handcuffs or any undue
6 control to them over the process of how I want to proceed
7 with getting to a plan of reorganization.

8 And as I understand that acceptable plan definition
9 other than requiring a release for the lenders in their
10 capacity as a DIP lender, it really did not go beyond that.
11 And, therefore, did not handcuff our ability to move forward
12 with the plan.

13 What it does, however, as I understand that it does
14 close on the option of cramming up the prepetition debt. And
15 --

16 Q Is that a matter of concern to you?

17 A While I understood that was something that at various
18 points the Noteholders had been interested in doing, in my
19 view having an unwilling post-petition, post-emergent lender
20 that was also a now a competitor of the company was not a
21 situation that was appropriate for UCI.

22 Q And if that were the way that this case were to play
23 out, is that something that you would have recommended that
24 the Debtors proceed with?

25 A I would not have.

1 Q Okay. So for all the reasons that you've just
2 testified, I take it that you had a discussion with Mr. Carr?

3 A I did.

4 Q And you recommended to Mr. Carr that the Debtors enter
5 into the DIP facility?

6 A I did.

7 Q And that remains your belief today that this is the
8 appropriate step for the Debtors to take at this point in
9 time?

10 A It is.

11 MR. DUCAYET: Your Honor, at this point I have
12 nothing further.

13 THE COURT: Thank you. Cross.

14 MR. MOSKOWITZ: Your Honor, just a quick
15 housekeeping matter while counsel is assembling.

16 THE COURT: Yes.

17 MR. MOSKOWITZ: Elliot Moskowitz of the law firm
18 of Davis Polk representing the Rank entities. We don't have
19 questions for this witness. We may have questions for other
20 witnesses over the course of the day. I think the same is
21 true for counsel for Credit Suisse as well.

22 THE COURT: All right.

23 MR. MOSKOWITZ: Thank you.

24 THE COURT: They would, obviously, go before any
25 objectors. Do you have any questions?

1 MR. NASAB: We do. Just a few.

2 THE COURT: All right.

3 MR. NASAB: It may make sense for us to ask those
4 now.

5 THE COURT: Okay.

6 MR. NASAB: Good morning, Your Honor, this is Omid
7 Nasab from Cravath Swaine & Moore on behalf of Credit Suisse.
8 May I proceed with the witness?

9 THE COURT: You may.

10 MR. NASAB: Thank you.

11 CROSS EXAMINATION

12 BY MR. NASAB:

13 Q Mr. Whittman, I just had a few questions for you.

14 A Okay.

15 Q The first was about the milestones that are part of the
16 DIP financing proposal that we're discussing today. Are you
17 familiar with the milestones?

18 A I am.

19 Q And is it correct that one of the milestones that the
20 Debtors will file an acceptable plan of reorganization within
21 60 days following closing?

22 A That is correct.

23 Q Okay. Based on your knowledge of this company as the
24 chief restructuring officer, is that a feasible milestone?

25 A Yes, it is.

1 Q Why do you say that?

2 A We have been discussing plan options for a considerable
3 period of time and I believe it is in the best interest of
4 the Debtor, from a business standpoint, to get a plan on file
5 as soon as possible. I think that we will be in a position,
6 given the definition of acceptable plan, to be able to file a
7 plan in August in advance of that deadline.

8 Q Another milestone is that within 180 days the
9 Bankruptcy Court shall enter an order confirming and
10 acceptable plan of reorganization, is that right?

11 A That is correct.

12 Q Again, based on your knowledge as CRO, is that a
13 feasible milestone?

14 A I believe so.

15 Q How does that milestone compare to the milestone set
16 out in the bondholders priming proposal?

17 A Those milestones are essentially the same.

18 Q I just want to switch gears. I just had a little bit of
19 follow-up on Mr. Ducayet's questions about the company's
20 liquidity needs. I believe you testified that the Debtors
21 current projections showed a need for at least 10 million of
22 additional liquidity, is that right?

23 A Correct.

24 Q My question for you is when would the Debtors start
25 needing to draw on that additional liquidity?

1 A Our forecast shows that we would need to start drawing
2 on the liquidity before the end of the month.

3 MR. NASAB: Okay. Thank you, Mr. Whittman. I
4 appreciate that.

5 THE WITNESS: You're welcome.

6 THE COURT: All right. Now the Committee.

7 MS. LIU: Good morning, Your Honor, my name is
8 Jessie Liu from the law firm of Morrison & Foerster on behalf
9 of the Committee.

10 CROSS EXAMINATION

11 BY MS. LIU:

12 Q Good morning.

13 A Good morning.

14 Q Let me start by asking you a few questions about your
15 conclusion that DIP financing is necessary in this matter.

16 A Okay.

17 Q In your original declaration you noted that there is no
18 guarantee that upon the expiration of the second interim cash
19 collateral order that Debtors will continue to be able to
20 utilize the cash collateral in order to maintain their
21 ordinary course business operations, isn't that correct?

22 A That is correct.

23 Q You don't have any specific reason as you sit here
24 today to believe that the Debtors would not be able to
25 continue to utilize cash collateral, do you?

1 A Only that it's my understanding that CS would
2 vigorously oppose such a use and we would be dependent on an
3 order of this Court to do so.

4 Q Okay. Turning then to your analysis of the cash-flows
5 of the Debtor, I believe that you have in front of you an
6 attachment to your supplemental declaration that you refer to
7 as the current forecast, is that correct?

8 A Correct.

9 Q And that's the last page of your supplemental
10 declaration, right?

11 A It's not included in the version that was handed to me.

12 THE COURT: Nor me.

13 MS. LIU: Your Honor, may I approach?

14 THE COURT: You may.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 BY MS. LIU:

18 Q Mr. Whittman, just so the record is clear I have now
19 handed you a copy of your supplemental declaration which is
20 document No. 267 on the docket. I am asking you to look at
21 page 13 of 13. Do you have that in front of you?

22 A I do.

23 Q And that is, in fact, a forecast that you prepared in
24 connection with your supplemental declaration which was filed
25 yesterday, correct?

1 A Correct.

2 Q And if you could just take a look at the current
3 forecast, isn't it the case that the current forecast
4 reflects actual cash-flows through the week ending June 24th?

5 A It reflects actual cash-flows through the week ending
6 June 17th; although, I believe that the cash-flows for the
7 week ending June 24th were estimated at the time this was
8 prepared. So they're pretty close to actual.

9 Q Okay.

10 MS. LIU: And then I'd like to show you another
11 document, if I may, Your Honor.

12 THE COURT: You may. Has this been filed on the
13 docket?

14 MS. LIU: This has not been filed on the docket.
15 It is --

16 THE COURT: All right. So we're going to have
17 mark it as an exhibit.

18 MS. LIU: Yes.

19 THE COURT: Shall I mark it as Committee 1?

20 MS. LIU: Yes, please.

21 THE COURT: Creditors Committee 1.

22 (Creditors Committee's Exhibit Number one, marked for
23 Identification)

24 MS. LIU: Correct.

25 THE COURT: All right. Go ahead.

1 BY MS. LIU:

2 Q Mr. Whittman, I've just handed you what's been marked
3 as Creditors Committee Exhibit 1. Could you take a look at
4 this document and see if you recognize it.

5 A I do. It is a weekly variance report that we're
6 required to provide to the lenders under the second interim
7 cash collateral order.

8 Q Did you prepare this report?

9 A I did.

10 Q And, in fact, on the first page of this report your
11 signature appears, correct?

12 A Correct.

13 MS. LIU: Your Honor, we would move this exhibit
14 into evidence.

15 THE COURT: Well, let's wait till the end of the
16 hearing on all exhibits.

17 BY MS. LIU:

18 Q Mr. Whittman, what I would like you to do now is to
19 take a look at the current forecast which is attached to your
20 supplemental declaration and look at the ending cash after
21 borrowing's figure.

22 A Okay.

23 Q For week two. Can you tell the Court what that figure
24 is?

25 A \$21.6 million dollars.

1 Q And that means that when you prepared the current
2 forecast you anticipated that in the week ending July 1st the
3 Debtors would have approximately \$21.6 million dollars on
4 hand, is that correct?

5 A Correct.

6 Q Now if I could ask you to take a look at page 2 of
7 Creditors Committee Exhibit 1 and focus on the line that says
8 ending cash after borrowings for the week ending July 1st,
9 2016.

10 A Yes.

11 Q What figure appears there?

12 A \$42.6 million dollars.

13 Q And that \$42.6 million dollars reflects what the
14 Debtors actually had on hand in terms of cash at the end of
15 the week, ending July 1st, correct?

16 A Correct.

17 Q So, although, your current forecast projected that the
18 Debtors would have only approximately \$21 million dollars on
19 hand as of July 1st, in fact they had on hand 42.6 million,
20 is that correct?

21 A Based on a number of timing issues that is correct.

22 Q And when you refer to a number of timing issues, can
23 you tell the Court what you mean by that?

24 A Sure. Specifically, the couple of key areas on the
25 disbursement side we have included, in the forecast, an

1 assumption related to the prepetition payments authorized by
2 the first day motions. The actual timing of entering into a
3 number of these critical lender agreements has either been
4 slower or we have been successful in while committing to
5 significant payments, having those payments timed out. So as
6 a result the forecast showed in week two \$6.7 million dollars
7 of prepetition bankruptcy related payments and that amount
8 was much smaller. I think it was under \$1 million dollars if
9 I recall within that week due to timing of when those
10 agreements were entered into and the ultimate scheduling in
11 terms of how those payments were agreed to be scheduled out.

12 Another example would be on the insurance/claims line
13 about three lines up from the third party disbursement sub-
14 total. In week two we had included approximately \$2.7
15 million dollars related to the renewal of our Worker's Comp,
16 general liability and auto insurance programs. Those
17 programs were, in fact, renewed on June 30th; however, our
18 broker extended us -- effectively, extended us credit and
19 didn't require us to actually wire the money until the
20 following week. So that was a timing issue. Those would be
21 two significant timing examples.

22 Q So just to be clear, you've identified two timing
23 examples, as you put it; one involving insurance and claims
24 in the amount of approximately \$2.7 million dollars, correct?

25 A Correct.

1 Q And the other one involving prepetition bankruptcy
2 related payments in the amount of approximately \$6.7 million
3 dollars, right?

4 A That's correct.

5 Q And if you add up those two figures they come to about
6 \$8.4 million dollars, isn't that right?

7 A That's correct.

8 Q But the DIP loans between the actual cash on hand and
9 the projected cash on hand is more than \$8.4 million dollars,
10 isn't it?

11 A That is correct. I can continue to go through more
12 examples if you would like.

13 Q Mr. Ducayet asked you a number of questions about
14 factoring, do you remember that?

15 A I do.

16 Q And I believe you testified that your forecast assumes
17 that approximately a third to a half of the Debtors'
18 prepetition factoring would cease, isn't that right?

19 A I believe what I said was that a third to half would
20 continue, but yes. Roughly half would continue and half
21 would cease.

22 Q In fact -- now, you also testified that there are
23 approximately eight factors, is that right?

24 A We had eight factoring banks as of the petition date
25 that is correct.

1 Q And one bank has terminated a factoring arrangement
2 since the petition was filed, isn't that right?

3 A Actually two banks have now terminated.

4 Q Let's start by talking about the bank that terminated a
5 factoring arrangement as of the date of your deposition. Do
6 you remember testifying that there had been a bank that had
7 terminated a factoring arrangement at your deposition?

8 A Yes.

9 Q And that bank, the bank that had terminated its
10 factoring arrangement as of your deposition date last
11 Thursday, was, in fact, a bank-up factoring arrangement,
12 isn't that right?

13 A That is correct.

14 Q And, in fact, that factoring arrangement had not been
15 used recently, isn't that right?

16 A Within the last couple of months; that is correct.

17 Q And is it your testimony today that in addition to the
18 bank that you testified had terminated a factoring
19 arrangement as of your deposition date there has since been
20 yet another bank that has terminated a factoring arrangement?

21 A That is correct. At my deposition I testified to the
22 fact that Wells Fargo/Wachovia had placed us on hold and we
23 were still investigating the reasons and what could be done
24 about that. In fact, they have terminated -- they had
25 already terminated. I just wasn't aware as of that date. I

1 knew they put us on hold. They had already terminated the
2 factoring arrangement.

3 Q Now are you counting Wells Fargo and Wachovia as two
4 separate factoring banks or just one?

5 A One. The agreement was with Wachovia, which is now
6 part of Wells Fargo.

7 Q So to be clear, in your deposition you testified that
8 Wells Fargo and Wachovia had placed factoring on hold?

9 A Correct.

10 Q In fact, although unbeknownst to you at the time, Wells
11 Fargo and Wachovia had terminated the factoring arrangement?

12 A Correct.

13 Q Approximately when was that factoring arrangement
14 terminated?

15 A It was terminated in late June; although, it took us
16 some time to, through attempts of back and forth phone calls,
17 to confirm that it was, in fact, terminated and why. The
18 termination was in the form of an email. There wasn't, what
19 you would expect with a loan agreement, a nice formal letter
20 of termination.

21 Q Have you don't any analysis of the impact of that
22 termination of the Wachovia/Wells Fargo factoring
23 arrangement?

24 A No specific analysis, but I would say that they were an
25 active factoring bank that was being used by one of our

1 largest retail customers.

2 Q But as you sit here today you can't tell us a dollar
3 number in terms of impact of that termination?

4 A Thus far others of the factoring banks have stepped up
5 regarding that customer. So it's unclear what the dollar
6 impact will be.

7 Q You mentioned in your deposition that in addition to
8 Wells Fargo and Wachovia there had been another bank that had
9 put factoring on hold, is that correct?

10 A That's correct.

11 Q And that bank actually restarted factoring, isn't that
12 right?

13 A Well, there were two separate banks that I testified to
14 that put us on hold. Citibank, which still has us on hold
15 with no clear path to coming off of hold, and Deutsche Bank
16 which had put us on hold for a number of weeks and it did,
17 after obtaining some concessions in the second interim cash
18 collateral order, take us off hold; although, has now raised
19 an objection to the DIP financing and how they're being
20 treated there. So it's unclear to me where Deutsche is going
21 to go from here.

22 Q In fact, as you sit here today, lower than fifty
23 percent of the Debtors' prepetition factoring remains in
24 place, right?

25 A If you count based on number of factors, I guess that

1 was two of eight terminated, and one that was on hold and one
2 that's shaky. I'm not sure of the relevance of doing it that
3 way, but yes. By counts that would be more than fifty
4 percent.

5 Q In terms of dollar value, the impact of any lost
6 factoring more than fifty percent of the prepetition
7 factoring remains in place, right?

8 A The concern that I have about the factoring is not so
9 much a linear factor bank to dollar relationship issue, but
10 the instability of the factoring banks and their ability to
11 terminate for no reason at any time. So really when we
12 discounted the cash-flow forecast a percentage of what
13 portion of the factors we expect to be there is really a risk
14 adjustment not a linear relationship between a certain number
15 of factors equaling a certain amount of dollars.

16 Q But, again, your forecast assumes that approximately a
17 third to a half of the Debtors' prepetition factoring would
18 continue post-petition, right?

19 A Correct.

20 Q In fact, more than a third to a half of Debtors'
21 prepetition factoring has continued post-petition to date,
22 isn't that right?

23 A Correct.

24 Q Mr. Ducayet had also asked you some questions about the
25 Debtors' vendors and their views on the need for DIP

1 financing, do you remember that?

2 A I do.

3 Q You testified that there are approximately 30 vendors
4 all of whom have expressed some degree of concern about the
5 lack of DIP financing, is that right?

6 A That is correct.

7 Q In fact, though no vendor has actually declined to sell
8 goods to the Debtors because of the lack of DIP financing,
9 right?

10 A Related to those critical vendors we have been able to
11 enter into critical vendor agreements despite not having DIP
12 financing; that is correct. We had other vendors which we
13 have not been able to successfully conclude negotiations and
14 which we remain on cash and delivery or other very short
15 terms for a variety of reasons. Liquidity concerns being one
16 that have been expressed.

17 Q With respect to those other vendors with whom you have
18 been negotiating terms and there are some terms, as you put
19 them, that are tight terms, the lack of DIP financing is not
20 the sole reason for those tight terms as you put it, is that
21 right?

22 A Clearly they are concerned about the overall situation
23 of the company being in bankruptcy, with DIP financing being
24 one of a number of concerns in that arena.

25 Q One vendor has actually declined to sell services to

1 Debtors because of the lack of DIP financing, right?

2 A No.

3 Q In fact, the Debtors have made efforts to discuss the
4 lack of DIP financing with their vendors and try to get those
5 vendors comfortable, isn't that right?

6 A That is correct; although, our narrative to the vendors
7 has been, again, around the fortunate position we were in as
8 of the petition date with liquidity on hand, the ability to
9 defer a fight and the intent to ultimately have DIP
10 financing.

11 Q But it is the case, isn't it, that the vendors -- at
12 least some of those vendors have been able to get comfortable
13 with the current state of affairs with respect to DIP
14 financing?

15 A Yes, absolutely.

16 Q Mr. Ducayet had also asked you a number of questions
17 about the Debtors' customers and their views on DIP
18 financing, do you remember that?

19 A I do.

20 Q And your testimony was that there was some anxiety on
21 the part of customers regarding the lack of DIP financing, is
22 that right?

23 A Correct.

24 Q In fact, no customer has actually resourced product
25 away from the Debtors because of the lack of DIP financing,

1 right?

2 A Correct.

3 Q And the Debtors have not agreed to any terms that are
4 contingent on getting DIP financing, right?

5 A Correct.

6 Q Let me change gears a little bit and ask you some
7 questions about the comparison between what I'll call the
8 Credit Suisse/Rank DIP facility and the Ad Hoc proposal.

9 A Okay.

10 Q Your testimony is that the primary reason, in your
11 view, for preferring the Credit Suisse/Rank DIP facility over
12 the Ad Hoc proposal are the concessions made with respect to
13 operational matters, is that right?

14 A That is correct.

15 Q And isn't it fair to say that the primary concession
16 that makes the Credit Suisse/Rank DIP facility attractive to
17 you is the warehousing issue that you testified about
18 earlier?

19 A I value the warehousing, the lab equipment and the IT
20 issues. They're all important to the business. I'm not sure
21 I would characterize the warehousing as the primary of the
22 three.

23 Q Well, wouldn't it be fair to say that the primary
24 reason that you would view the Credit Suisse/Rank DIP
25 facility as more attractive is actually the concessions made

1 on the lab facilities?

2 A I view them as a package. So I would agree that the
3 primary reason that makes the CS facility attractive to me is
4 the overall package of issues, operational issues in terms of
5 timeline, plus lab equipment that we were able to negotiate
6 around, which includes the warehousing, the IT issues and the
7 lab equipment. Any of the three created significant issues
8 for the company. So they were really all important to us
9 which is why I was unwilling to accept the CS facility
10 without getting all three of those things conceded to.

11 Q During the period of negotiation over the CS facility,
12 the CS and Rank lenders agree to concessions on the
13 warehousing and IT before they agreed to a concession on the
14 lab equipment, is that right?

15 A That is correct.

16 Q And, in fact, as of June 24th you were still going to
17 recommend going with the Ad Hoc proposal; in other words the
18 priming DIP because there had been no concession yet on the
19 lab equipment, isn't that right?

20 A Absolutely.

21 Q So as of June 24th you had reached a point where you
22 had all the concessions from Credit Suisse and Rank that you
23 have today except for the lab equipment, right?

24 A Not correct under the standpoint that subsequent to the
25 Committees' objection being filed, as is typical in these

1 cases, there had been additional concessions that had been
2 granted by CS attempting to resolve some of the Committees'
3 concerns, but it would be lab equipment and then those
4 subsequent post-filing considerations.

5 Q Well, the primary operational concessions that you
6 listed, the warehousing, the IT and the lab equipment, you
7 were prepared to recommend going with the priming proposal at
8 a time when you had the warehousing and the IT concession,
9 but not the lab equipment, right?

10 A That is correct.

11 Q The need for these operational concessions was
12 necessitated by a series of termination agreements that were
13 issued in May and June of 2016, right?

14 A Yes, I would agree with that.

15 Q And just to walk through them a bit, on May 6th, 2016
16 Autoparts Holdings Limited issued a termination notice of the
17 joint services agreement between Autoparts Holdings Limited
18 and UCI, right?

19 A Correct.

20 Q Autoparts Holdings Limited is an affiliate of Rank,
21 right?

22 A That is correct.

23 Q That termination notice was signed by Tom Degnan,
24 right?

25 A Correct.

1 Q Mr. Degnan is a close associate of Graeme Richard Hart,
2 right?

3 A I would characterize it that way, yes.

4 Q And Mr. Degnan is also the CEO of UCI?

5 A That is correct.

6 Q Now moving onto the IT services agreement, isn't it the
7 case that Reynolds Services, Inc., issued a termination
8 notice of the IT services agreement with UCI on May 6th, 2016
9 as well?

10 A That is correct.

11 Q Reynolds Services, Inc. is an affiliate of Rank,
12 correct?

13 A Correct.

14 Q The IT services agreement termination notice was signed
15 by an individual named Helen Golding, correct?

16 A Correct.

17 Q And Ms. Golding is an in-house legal counsel for Rank,
18 correct?

19 A That is correct.

20 Q Pactiv LLC issued a termination notice of the amended
21 and restated facility use agreement on May 6th, 2016 as well,
22 correct?

23 A Correct.

24 Q Pactiv LLC is an affiliate of Rank, correct?

25 A Yes.

1 Q And the Pactiv LLC termination notice was signed by Ms.
2 Golding as well, correct?

3 A That is correct.

4 Q Autoparts Holdings Limited issued a termination notice
5 on June 6th, 2016 that purportedly applied to certain other
6 services, right?

7 A I think you mean June 1st.

8 Q June 1st, I'm sorry.

9 A That is correct.

10 Q And this is the same Autoparts Holdings Limited that
11 issued the May 6th termination notice of the joint services
12 agreement, correct?

13 A Correct.

14 Q The person who signed the June 1st termination notice
15 was Greg Cole, right?

16 A That is correct.

17 Q Mr. Cole is a director of Autoparts Holdings Limited,
18 right?

19 A I know that he is a director of UCI, given that he
20 signed on behalf of Autoparts Holdings. I think he is a
21 director of Autoparts Holdings as well.

22 Q Mr. Cole is a director of UCI to, right?

23 A Yes.

24 Q Your view with respect to the June 1st, 2016
25 termination notice is that it was improper, right?

1 A That is correct. My belief was that all of the
2 services listed on the exhibit to that letter were covered by
3 the other services agreements that had been previously
4 terminated with an effective date of September 3rd.

5 Q You believe that the Debtors could challenge the June
6 1st termination notice, correct?

7 A I did.

8 Q Do you believe that the Debtors could challenge the
9 three May 6th termination notices, correct?

10 A It was less clear to me while there may have been some
11 technical issues related to those three notices, it was less
12 clear to me what the basis for those notices to be challenged
13 was.

14 Q Why did Rank's affiliates, the affiliates who issued
15 the termination notices on May 6th and June 1st, issue those
16 termination notices at the time that they did?

17 A My understanding at the time was that they issued them
18 because they were concerned that somehow if they did not
19 issue them prior to the petition date that those -- that they
20 could somehow be forced into a position to continue providing
21 those services after a change of control. Since that time,
22 in reading the deposition transcript of Mr. Hugley (sp), I
23 understand he expressed a slightly different reason;
24 although, I think actually still very much the same in terms
25 of wanting to move forward with the separation and not be

1 tied to anything post-bankruptcy.

2 Q Now the three operational considerations that you
3 identified as a significant factor in your recommendation to
4 Mr. Carr to accept the CS/Rank DIP facility were the
5 warehousing, the IT and the lab equipment, right?

6 A Correct. I mean there are a number of other smaller
7 items contained within the agreement, but those were the
8 three principal ones.

9 Q The need for concessions on warehousing, IT and lab
10 equipment was necessitated by termination notices that
11 affiliates of Rank issued, right?

12 A Yes.

13 Q And Rank is a lender with respect to the proposed DIP
14 facility, correct?

15 A Yes. Let me just correct my prior statement in one
16 regard. The lab equipment, having been owned by FRAM --
17 while the termination notice, I guess, affected our ability
18 to continue to use the equipment after a period of time the
19 ultimate ownership of the equipment was an issue that would
20 need to be resolved. It was not directly tied to the
21 termination notices.

22 Q Let's talk a little bit, if we can, about the lab
23 equipment. The concession that you referenced with respect
24 to the lab equipment is the transfer of that lab equipment
25 from FRAM to Champion Laboratories, is that correct?

1 A That is correct.

2 Q Okay. Some portion of the lab equipment that was to be
3 transferred under the concession was previously owned by
4 Champion Laboratories, right?

5 A That is correct, a number of years ago.

6 Q And what percentage of the lab equipment that was to be
7 transferred from FRAM to Champion Labs had previously been
8 owned by Champion Labs?

9 A I'm not sure of the percentage; although, I believe it
10 was greater than fifty percent.

11 Q At some point in the past this lab equipment that had
12 been owned by Champion Labs had been transferred to FRAM,
13 correct?

14 A That is correct. I believe the transfer occurred in
15 the 2012 timeframe.

16 Q How do you know that the transfer of that lab equipment
17 from Champion Labs to FRAM took place in the 2012 timeframe?

18 A Since you had asked me the question at my deposition
19 and I did not know the answer I was curious. I inquired with
20 several people at the company. We weren't able to narrow it
21 to the precise date, but based on people's history of the
22 company we were able to narrow it to having occurred prior to
23 2013 and given that Mr. Hart acquired UCI in 2011 we were
24 able to triangulate it down to 2012.

25 Q The lab equipment that was transferred from Champion

1 Labs to FRAM was transferred at book value, right?

2 A That's my understanding, correct.

3 Q In other words by creating an intercompany payable from
4 FRAM to Champion Labs?

5 A Correct.

6 Q The book value of the equipment was relatively low,
7 isn't that fair to say?

8 A The book value of the equipment today is approximately
9 \$150,000 dollars. I don't know what it would have been at
10 the time of the transfer. It would have been higher just
11 based on depreciation.

12 Q But the cost of replacing that lab equipment would be
13 relatively high, isn't that fair to say?

14 A Yes.

15 Q And now as part of the CS/Rank DIP facility the Debtors
16 would agree to have this equipment transferred bank to
17 Champion Labs, right?

18 A Well, I'm not quite sure I follow your question. APH,
19 the Rank affiliate, would agree to transfer that lab
20 equipment to us.

21 Q Okay. And that transfer would take place under a
22 letter agreement that is part of the CS/Rank DIP facility
23 agreement, right?

24 A Correct.

25 Q And under that letter agreement Champion Labs will be

1 responsible for the cost of transferring the equipment back
2 to itself, is that fair to say?

3 A That is correct; cost being the moving cost,
4 essentially, yes.

5 Q Correct. The letter agreement also provides for the
6 certain transfer of some assets from Champion Labs to FRAM,
7 right?

8 A Correct.

9 Q And the Debtors wouldn't receive any cash consideration
10 in exchange for assets that Champion Labs would transfer to
11 FRAM under the letter agreement, correct?

12 A Correct.

13 Q In other words, what's happening with respect to
14 equipment under the letter agreement is a reciprocal transfer
15 of equipment, right?

16 A It's certainly a reciprocal transfer of equipment;
17 although, in my view a transfer of equipment to the Debtors
18 that is significantly more valuable than the equipment going
19 in the other direction.

20 Q And that conclusion is based on your assessment of the
21 cost of having an outside party perform testing, is that
22 right?

23 A On the one hand yes and on the other hand the relative
24 benefit that we get from the equipment in the form of gross
25 margin dollars that we are giving up.

1 Q Did Rank ever consult with you regarding the dates on
2 which the termination notices would become effective?

3 A I'm not sure I understand your question. We put forth
4 a proposal in terms of the dates that we would like, as I
5 described when we were negotiating the DIP facility after the
6 termination notices had been received. I'm not sure that
7 answers your question.

8 Q Let me break it down a little bit. Before the petition
9 was filed --

10 A Okay.

11 Q -- did Rank consult with you about those termination
12 notices at all?

13 A No.

14 Q During the process of negotiating over the CS/Rank DIP
15 facility did Rank consult with you with respect to the
16 extension of the deadlines in the termination notices?

17 A They did not consult with me. I put forth a proposal
18 to which they declined to negotiate, then some time passed
19 and then they indicated that they would be willing to
20 negotiate something around an October 1st date, and that's
21 when the negotiations resumed in mid to late June.

22 Q What was the date in the proposal that you put forth?

23 A There were a variety of dates. We had -- as I stated,
24 while we talked a lot about the warehousing, and the IT and
25 the lab equipment the IT itself is actually comprised of a

1 number of separate components. Even the warehousing has some
2 separate components. Then there were a number of other
3 services as well. I don't recall sitting here the exact
4 dates, but I know there were dates that it ranged from
5 relatively near term, probably August/September timeframe all
6 the way for a few things out until Marcy of 2017. I don't
7 believe anything we asked for extended beyond that.

8 Q Okay. So in your proposal you had suggested at least
9 some dates for the effective date of the termination notices
10 that extended beyond October 1st, 2016, right?

11 A That is correct. In fact, even in the current
12 agreement I'm always focused on October 1st. One of the items
13 is licenses, Microsoft licenses that under the current
14 agreement go to the termination of those licenses which is
15 approximately March 2017. That was one of the items that
16 went beyond October in the original.

17 Q So with respect to warehousing can you recall what you
18 proposed as the effective termination date when you were
19 negotiating with CS and Rank?

20 A I don't recall the exact dates. I'm sure it was beyond
21 October 1st.

22 Q And you proposed that date because you believed that a
23 date beyond October 1st would be optimal in terms of your
24 arranging for other warehousing, correct?

25 A I proposed it for, really, three reasons. One, I was

1 hoping that we would actually engage in some negotiations and
2 I therefore wanted to give myself some leeway in those
3 negotiations. So I purposely included some cushion in the
4 dates that I proposed. Two, we were sitting at the time of
5 that proposal, I believe we put that out around June 7th or
6 8th, we had just, although we received that termination
7 notice on June 1st given everything that was going on,
8 effectively we had just received that notice and we were just
9 shifting gears into this really, as I described before, crash
10 separation exercise. So I didn't have as clear of a picture
11 as I would like around the timeline that it would take and,
12 therefore, wanted to be conservative there.

13 Then, finally, there were certain activities that in an
14 ideal state we might stagger just in terms of management
15 focus so that even if a certain activity such as the
16 warehouse move may only take us a certain number of months,
17 ideally we might not start that move for a period of time
18 just based on staggering certain activities to allow
19 management to focus on items one at a time.

20 Q With respect to IT what was the effective termination
21 date that you proposed in negotiating with CS and Rank?

22 A Again, I don't recall the date. In fact, I think there
23 were a number of dates given the fact that -- my recollection
24 is the schedule we provided had maybe a half a dozen
25 different lines related to IT. I think there may have been

1 different dates related to the different schedules. Again,
2 I'm sure that at least some, if not most of them extended
3 beyond October 1st.

4 Q With respect to the June 1st termination notice did you
5 propose another effective date for that termination notice as
6 part of your negotiations with CS and Rank?

7 A Our negotiations focused on the services that were
8 required. I didn't make a distinction in those services
9 whether they were covered by the June 1st notice versus one
10 of the May 6th notices. We just focused on the services
11 themselves, regardless of what notice they may have or not
12 have been covered by.

13 Q And just going back to the termination notice related
14 to the joint services agreement, this was the termination
15 notice that was signed by Tom Degnan, correct?

16 A Correct.

17 Q Okay. Did Mr. Degnan consult with you before he sent
18 that notice on behalf of Autoparts Holdings Limited?

19 A He did not.

20 Q Okay. The letter agreement that would accompany the
21 CS/Rank DIP facility if it were approved would give you an
22 additional 27 days with respect to the May 6th termination
23 notices, right?

24 A It would give us for those specific services, yes, it
25 would give us 27 additional days.

1 Q It would give you from September 3rd, 2016 to October
2 1st, 2016, right?

3 A That is correct.

4 Q And you haven't attempted to quantify the economic
5 benefit to the Debtors' estates of that additional 27 days,
6 have you?

7 A Most of the benefit, both for those 27 days as well as
8 the benefit around the warehousing, really is an issue of
9 risk and de-risking the separation process to reduce the
10 possibility of either something not being completed or
11 actually more alarmingly something going wrong along the way
12 because we're moving too fast. It's difficult to actually
13 quantify any of those into specific dollars. It's really
14 about risk, not about cost savings.

15 Q So, again, you have not attempted to try to put a
16 dollar amount on the value of those additional 27 days?

17 A I have not.

18 Q With respect to the services that were purportedly
19 terminated by the June 1st termination notice, the letter
20 agreement would give you an additional 60 or 61 days,
21 correct?

22 A Correct.

23 Q And you haven't attempted to put a dollar figure on the
24 economic benefit to the Debtors' estates of those additional
25 60 or 61 days, have you?

1 A I haven't focused on a specific dollar amount in the 60
2 days; although, I would say that two key factors in my mind.
3 One is that given the proximity of August 1st to today's
4 Court hearing and given the likelihood of the dispute around
5 the August 1st deadline extending beyond this hearing, we
6 would have, without the relief we currently have, been moving
7 down the crash process to separate to be done by August 1st
8 and spending money to litigate that, I guess, along the way.

9 Q DID UCI receive any notice of default from any of the
10 Rank entities who issued termination notices before getting
11 those termination notices?

12 A I'm not aware of any other notices.

13 Q And finally just to be perfectly clear, is it fair to
14 say that the Debtors felt the need to accept the CS/Rank DIP
15 and the associated concessions because of prepetition actions
16 that Rank or its affiliates decided to take? In other words
17 issuing the termination notices on May 1st -- May 6th and
18 June 1st?

19 A Being that in so much as one of my -- my primary
20 concern in negotiating the CS DIP was to address the
21 operational issues. Then, clearly there is a relationship
22 there. In terms of the other issues, in terms of the cost of
23 a priming fight, as well as the sort of underlying assumption
24 about preserving the rights to deal with plan issues down the
25 road, those would not have been effected.

1 Q And, again, the termination notices that were issued by
2 Rank's affiliates on May 6th and June 1st, at least one of
3 those were issued by an individual who was a UCI officer,
4 correct, Mr. Degnan?

5 A That is correct.

6 Q And at least one of those notices, in other words the
7 June 1st notice, was issued by Mr. Cole who is also a UCI
8 director, is that correct?

9 A That is correct.

10 Q In response to questions from Mr. Ducayet you testified
11 regarding the impact of potential priming litigation. Do you
12 remember that?

13 A I do.

14 Q Isn't it fair to say that the importance of any priming
15 litigation to your decision about whether to recommend the
16 CS/Rank facility was much less significant than the
17 concessions in the letter agreement?

18 A I would say -- I don't know that I would characterize
19 it as much less significant. It was certainly a factor. I
20 was very much focused in those final hours and days on the
21 issues around the operational issues; that was what was being
22 negotiated at that time. The issue around the concern about
23 the priming facility was an issue that we had been wrestling
24 with at some times. It wasn't as proximate in my mind at
25 that moment because I was focused on the one issue.

1 Q Well, could I ask you to take a look at paragraph 17 of
2 your supplemental declaration?

3 A Yes.

4 Q And I would like to direct your attention to the middle
5 of paragraph 17, which reads initially Rank was unwilling to
6 include concessions regarding the shared services
7 terminations in the DIP financing negotiations. As a result,
8 the Debtors turn their attention to the Ad Hoc Groups post-
9 petition financing proposal, do you see that?

10 A I do.

11 Q Okay. The Ad Hoc Groups post-petition financing
12 proposal would have involved priming, correct?

13 A Correct.

14 Q That's the same proposal that you testified earlier may
15 well have resulted in a priming dispute had it been accepted
16 by the Debtors?

17 A That is correct. It was important to me to use what
18 very little leverage I as the Debtor had in this case and
19 that was leverage that was provided by being willing to move
20 forward with the priming facility; to enforce CS and Rank to
21 move on issues that were important to me.

22 Q But notwithstanding the potential of a priming fight if
23 the Debtors accepted the Ad Hoc Groups proposal, you were
24 seriously considering that proposal when Rank would not
25 include concessions regarding the operational issues we were

1 discussing earlier, right?

2 A I was.

3 Q And going now to paragraph 18 of your supplemental
4 declaration, again looking at the middle of that paragraph
5 you say had the Debtors not obtained these three key
6 concessions the Debtors were prepared to move forward with
7 the post-petition financing proposal offered by the Ad Hoc
8 Group, do you see that?

9 A I do and I was.

10 Q The reference to three key concessions refers to
11 concessions related to the warehousing services, to IT
12 services and to lab equipment, right?

13 A That is correct, acknowledging that prior to that point
14 in the negotiation we had already had other movement from CS
15 on a number of other economic and structural points within
16 the agreement. So all we were focused on at that point was
17 those three issues.

18 Q Those three issues were very important issues to you,
19 though, right?

20 A Yes.

21 Q At the point in time described in paragraph 18 you were
22 prepared to recommend that the Debtors go with the Ad Hoc
23 Group proposal despite the potential for a priming fight,
24 correct?

25 A I was.

1 Q You've never prepared an analysis of the cost of
2 resolving and priming dispute in this matter, have you?

3 A I have not.

4 Q Okay. You've never seen an analysis, have you, of the
5 relative cost of a priming dispute versus a potential dispute
6 over the DIP motion?

7 A I have not.

8 Q You've never discussed the potential effects of a
9 priming dispute with vendors, have you?

10 A No, although I was preparing materials to educate
11 management and to have talking points around a priming
12 dispute as well as regarding this dispute, as we were in
13 those final hours and not sure which way we were going to go.

14 Q Okay. No one else associated with the Debtors has had
15 a discussion, as far as you know, of the potential effect of
16 a priming dispute with vendors, have they?

17 A No, although certainly our conversations with vendors
18 and customers throughout the case, I think, give us a good
19 sense of what their concerns would be and how they would
20 react.

21 Q You yourself have never discussed the potential effect
22 of a priming dispute with customers, have you?

23 A No, again I think I have a sense of how they would
24 react.

25 Q Anyone else at Debtors, to your knowledge, discuss the

1 potential effect of a priming dispute with customers?

2 A No.

3 Q Any litigation is potentially time consuming, right?

4 A Yes.

5 Q Any litigation is potentially expensive, right?

6 A I'm sure to widely varying degrees, but yes.

7 Q And as you noted yourself earlier in your testimony
8 there are a lot of lawyers in the Courtroom today, right?

9 A I thought I said that at my deposition, but I would
10 hold true today as well.

11 Q Turning just briefly you testified a little bit earlier
12 about the milestones that are set out in the CS/Rank DIP
13 facility, do you remember that?

14 A I do.

15 Q None of those milestones requires that the Court
16 confirm a plan of reorganization within 180 days, is that
17 correct?

18 A That's correct.

19 Q The Court's approval of a plan of reorganization is not
20 completely within the control of the Debtor, correct?

21 A As much as I would like it to be, I don't think so.

22 Q You also testified that the Ad Hoc Groups proposal
23 contains milestones as well, correct?

24 A That is correct.

25 Q And those milestones are substantially the same as

1 between the two new DIP proposals, right?

2 A The milestones are specifically related to the plan
3 process, that is correct.

4 Q But the CS/Rank DIP facility contains a requirement
5 that if a milestone is not met the Debtors have to pivot to a
6 sale process, correct?

7 A That is correct.

8 Q The Ad Hoc Groups proposal does not contain that
9 requirement to pivot to a sale process if the milestone is
10 not met, correct?

11 A That is correct.

12 MS. LIU: Your Honor, I have nothing further.

13 THE COURT: Thank you. This is a good time to
14 break, I think. All right. You're still under cross so you
15 should not discuss your testimony with counsel on the break.

16 THE WITNESS: Okay.

17 THE COURT: Let's come back at 1:30. Thank you.

18 (Recess taken at 12:24 p.m.)

19 AFTERNOON SESSION

20 (Proceedings resume at 1:34 p.m.)

21 (Call to order of the Court)

22 THE COURT OFFICER: You may be seated.

23 THE COURT: Good afternoon.

24 BRIAN WHITTMAN, WITNESS FOR THE DEBTORS, PREVIOUSLY SWORN,
25 RESUMES STAND.

1 MR. FREEMAN: Good afternoon, Your Honor. Matthew
2 Freeman from Willkie Farr, for the ad hoc group of
3 bondholders. I have a few questions for Mr. Whittman.

4 THE COURT: All right. You may proceed.

5 CROSS-EXAMINATION

6 BY MR. FREEMAN:

7 Q Good afternoon, Mr. Whittman.

8 A Good afternoon.

9 Q I want to focus first on the time line leading up to
10 the selection of the DIP that's the subject of today's
11 motion, okay?

12 A Okay.

13 Q Okay. Now, the hearing is scheduled to consider the
14 debtors' use of -- continued use of cash collateral was
15 originally scheduled for June 21, 2016. Does that sound
16 right?

17 A That's correct.

18 Q Okay. And ultimately that hearing was adjourned and
19 today's hearing was set, correct?

20 A That's correct.

21 Q It was the ABL lenders who conditioned their consent to
22 that adjournment on the debtors' agreement to file a DIP
23 motion by June 24th, correct?

24 A My understanding was that a motion had to be filed by
25 June 24th to be heard at this hearing; obviously, we could

1 have filed it at some other time to be heard at some other
2 date.

3 Q Did you have an understanding that the ABL lenders were
4 the ones requesting the June 24th date?

5 A It doesn't surprise me. I don't recall at the time.

6 Q Okay. Now, in the post-petition time period since
7 early June --

8 A Actually -- I'm sorry -- I did -- I thought it was the
9 committee, actually, who requested that.

10 Q Requested the June 24th date?

11 A In other words, that the technical rules would have
12 allowed us to file a DIP later, but I thought the committee
13 wanted to make sure they didn't have too short a period of
14 time, but I could be recalling incorrectly. It's a while
15 ago.

16 MR. FREEMAN: Your Honor, can I approach?

17 THE COURT: You may.

18 BY MR. FREEMAN:

19 Q I just handed you what's on the docket, Docket Number
20 194, which is the debtors' motion for a DIP order. And I
21 just want to turn your attention to Paragraph 33, and in
22 particular, about five lines up from the bottom -- six lines
23 up from the bottom, the sentence that reads:

24 "The prepetition ABL agent conditioned its
25 agreement to adjourn the June 21 hearing on

1 debtors' agreement to file a motion seeking
2 authority to enter a debtor-in-possession financing
3 facility no later than June 24, 2016, correct?

4 THE COURT: Which paragraph number are you on?

5 MR. FREEMAN: That's 33, Your Honor.

6 THE COURT: 33, okay. Thank you.

7 BY MR. FREEMAN:

8 Q Do you see that, Mr. Whittman?

9 A I do. I stand corrected.

10 Q Okay. So that refreshes your recollection that it was,
11 in fact, the lenders that assisted -- insisted on the June
12 24th deadline, correct?

13 A It appears that way, yes.

14 Q Thank you.

15 Now, in the post-petition period since early June, you
16 describe yourself as the lead negotiator, with respect to the
17 DIP financing arrangements, correct?

18 A Correct.

19 Q Okay. And you were the lead negotiator reporting to
20 Mr. Carr, right?

21 A Correct.

22 Q And you decided after the first day hearing that the
23 best course of action would be to go back and engage both,
24 CS/Rank on the one hand, and the ad hoc noteholders on the
25 other, in an effort to negotiate DIP financing, correct?

1 A Correct.

2 Q Okay. Now, the ad hoc group provided the debtor with a
3 draft termsheet, correct?

4 A They had provided us the termsheet shortly before the
5 petition date.

6 Q Okay. And they also provided a draft credit agreement.
7 Do you recall that?

8 A They did. I -- I don't recall the exact timing of the
9 credit agreement.

10 Q Okay. And as far as you know, with respect to the
11 negotiations with the ad hoc group, the debtor provided a
12 single set of comments on a proposed termsheet, right?

13 A We did.

14 Q Okay. And the debtor never provided any comments on
15 the credit agreement, as far as you know, correct?

16 A I -- I think that's correct.

17 Q Okay. And you, as the lead negotiator, never met with
18 any representatives of the ad hoc group to discuss the
19 termsheet or the credit agreement, correct?

20 A That's not correct. I had conversations with Mr. Han.

21 Q Okay. Do you recall how many conversations you had
22 with Mr. Han?

23 A I had at least one that we could end it with the June
24 24th; likely, there was one or two others, but I recall at
25 least one.

1 Q Apart from the one conversation, though, do you recall
2 any others specifically?

3 A I spoke to Mr. Han in advance of the -- I spoke to Mr.
4 Han in advance of the termsheet being delivered. I spoke to
5 Mr. Han after the termsheet was delivered and talked to him
6 about whether they would consider a junior DIP, as opposed to
7 a priming DIP.

8 And then after the -- then we delivered our comments
9 back. And then after the comments were delivered back, I
10 spoke to him to go through some questions I had on those
11 comments -- or those changes, I should say -- and I think
12 there was, then, a separate conversation a couple days after
13 that right before we arrived at the 24th and the ultimate --
14 first, the delay, and then the filing of the current
15 facility.

16 Q So let's just be precise. Am I correct that some of
17 those conversations that you're recalling happened
18 prepetition?

19 A Certainly, the conversation before they delivered the
20 termsheet was prepetition.

21 Q Okay. So in this post-petition frame when you are the
22 lead negotiator for the DIP financing, how many conversations
23 do you recall with Mr. Han, between June 2nd and June 24th?

24 A On this subject I would say there were three. We had
25 other conversations on other subjects.

1 Q Okay. Are you aware of any meetings or discussions
2 between debtors' counsel and counsel for the ad hoc group
3 related to the termsheet?

4 A Again, you know, counsel, that was how the comments on
5 the termsheet were communicated, were through counsel. I'm
6 not aware of any specific face-to-face meetings about the
7 termsheet, no.

8 Q Okay. And are you aware of any discussions between Mr.
9 Carr and representatives from the ad hoc group related to the
10 ad hoc group's DIP proposal?

11 A I know that Mr. Carr spoke with a representative of
12 BlackRock regarding where we stood in our discussions in
13 terms of DIP financing. Whether it was specifically going
14 through the termsheet, I don't know.

15 Q Okay. And do you have any recollection of when that
16 conversation occurred?

17 A No. It would have been sometime in mid-June.

18 Q Now, with respect to the Rank/CS agreement, you
19 prepared a schedule outlining your position, with respect to
20 the shared- services agreement, correct?

21 A Yes.

22 Q And the lab equipment issues and the other transition
23 issues?

24 A Yes.

25 Q Okay. You provided them a list of key issues, related

1 to the financial terms of the credit agreement itself,
2 correct?

3 A Correct. I would say that was similar to how we marked
4 up the noteholders' proposal --

5 Q Okay.

6 A -- with a similar type of response.

7 Q Okay. You engaged in direct discussions with Credit
8 Suisse related to the DIP proposal that's subject of the
9 motion today, correct?

10 A I did, yes.

11 Q Okay. And you engaged in discussions where you
12 prioritized the list of issues, with respect to the shared-
13 services arrangement, correct?

14 A I -- I -- I did engage in conversations where I
15 indicated to CS that the shared-services issues were a
16 priority for us; that is correct.

17 Q In the week leading up to the June 24 deadline, did
18 you, yourself, participate in any direct discussions with the
19 ad hoc group or its advisors?

20 A I -- as I said a minute ago, I certainly spoke to Mr.
21 Han from GLC, the ad hocs' investment bank, on a couple of
22 occasions that week. In terms of the -- the ad hoc group,
23 more broadly, I'm just trying to recall a time line. I don't
24 -- I don't believe there were any other discussions with the
25 ad hoc group, more broadly that week; I think they had

1 occurred earlier in June.

2 Q Okay. Are you aware of any discussions between your
3 counsel and counsel for the ad hoc group, related to the
4 termsheet or credit agreement in the first few days of that
5 week, let's say prior to June 23rd?

6 A I'm just trying to recall exactly when the noteholders
7 delivered the response to our comment. I'm -- I'm -- I'm not
8 specifically aware of any.

9 Q Okay. And are you aware that debtors' counsel didn't
10 inform counsel for the ad hoc group until eleven o'clock
11 before the June 24th deadline, that the debtor was intending
12 to proceed with the priming DIP the next day?

13 A I'm aware that there was conversation at that time, but
14 I -- that would surprise me that that was -- I wouldn't agree
15 to your characterization.

16 Q Does that timing sound inconsistent with your
17 recollection?

18 A I'm aware that there was a communication to the
19 noteholders' counsel at that time, that negotiations, which
20 had been started, with CS had broken down and we were
21 intending to go with the priming DIP.

22 Q And you're aware that that communication happened very
23 late in the day on the 23rd, correct?

24 A I think that that's when negotiations broke down, so
25 that does not surprise me.

1 Q Okay. Now, at this point in time, the reason that the
2 debtor decided to proceed with the ad hoc group was because
3 Rank was continuing to refuse to make concessions related to
4 certain operational issues that were critical to the company,
5 correct?

6 A Then, yes, and that is -- that's the same reason that
7 we decided to proceed with the ad hoc group on the 10th of
8 June.

9 Q And those were concessions that the company needed
10 because of the termination notices that had been issued by
11 Rank affiliates in late May, correct?

12 A Correct.

13 Q Okay. And to be clear, at this time, on June 23rd, you
14 still had questions in your mind about whether or not those
15 termination notices were even valid, correct?

16 A My concern about the validity of the termination
17 notices, as I mentioned earlier, was more focused around the
18 June 1st termination notice, as opposed to the series of
19 termination notices that occurred on May 6th.

20 Q So -- but your concerns, with respect to the validity
21 of the June 1st termination notice still existed on June
22 23rd, correct?

23 A Yeah, absolutely.

24 Q Okay. And may still exist today, right?

25 A They do.

1 Q And so the next day is Friday, June 24th, and the
2 company is working to get a motion put together for the
3 priming DIP, correct?

4 A Correct.

5 Q Okay. And very late in that day, there's a development
6 of sorts, correct?

7 A That's correct.

8 Q Because low and behold, late in that day, Rank -- you
9 learned that Rank is willing to make some concessions on the
10 operational issues, resulting from the termination notices,
11 correct?

12 A They had already made concessions on the operational
13 issues, related to the timing, so, at least, in terms of the
14 three buckets we talked about, they had already made the
15 concessions around the warehousing and the -- the IT; that
16 had happened earlier in the week. And then negotiations had
17 broken down Thursday night around the lab equipment, and,
18 yes, then it was late on Friday that they indicated they were
19 willing to negotiate around the lab equipment and proposed
20 extending the deadline to file, to be heard at this hearing,
21 from the 12th until I believe it was the following Tuesday --
22 the 12th, I'm sorry -- it's the 12th.

23 Q So, to be clear --

24 A From the 24th until the following Tuesday.

25 Q Okay. But to be clear, it was late in the day on that

1 Friday, where you first learned Rank is willing to make the
2 concessions, with respect to the lab equipment, the final
3 sticking point?

4 A That's correct.

5 Q And it was Rank who made a suggestion at that time to
6 extend the June 24 deadline that it had originally
7 established, correct?

8 A I don't know whether that was CS or -- or Rank, but,
9 yes, the DIP-lending parties suggested that extension.

10 Q Okay. And this development, with respect to the
11 laboratory equipment, happened as a result of the discussions
12 that were going on between Mike King and Greg Noethlich,
13 correct?

14 A No.

15 Q What was the genesis for the development of the --
16 Rank's decision to move on the laboratory equipment?

17 A My understanding is it was the fact that we didn't
18 blink.

19 Q Okay. Mr. King and Mr. Noethlich were engaged in
20 discussions over that 23rd and 24th time period, related to
21 issues concerning the termination of the shared-services
22 agreement, correct?

23 A Earlier in the week, there was an indication, as we
24 opened these negotiations and came to an agreement on the
25 warehousing and on the IT, that Mr. Hart was willing to reach

1 agreement on the lab equipment if Mr. King and Mr. Noethlich
2 agree to that amongst themselves; Mr. King being the
3 president of APH, Mr. Noethlich being the president of
4 Champion Laboratories, our filtration -- our debtor
5 filtration operation.

6 So they had -- Mr. Noethlich had reached out to Mr.
7 King in the Wednesday/Thursday time frame -- maybe it was as
8 early as Tuesday -- some -- somewhere there in the middle of
9 the week; however, then negotiations broke down. There was
10 an indication -- Mr. King had indicated that he could not
11 negotiate the lab equipment. It also came back through
12 counsel that Rank was unwilling to negotiate around the lab
13 equipment. That was where we got to Thursday night, with the
14 negotiations having broken down.

15 And then the communication back at some point during
16 the day on Friday, that they, in fact, would be willing to
17 negotiate the lab equipment and -- and proposing this
18 extension to Tuesday, that came through counsel.

19 Q Okay. So Mr. Noethlich was, at one point in time, an
20 employee of RAM affiliate, FRAM, also, correct?

21 A That is correct.

22 Q Okay. And from a technical standpoint -- let me
23 withdraw that.

24 When was he employed also as president of FRAM?

25 A Mr. Noethlich was president of both FRAM and Champ for

1 the last couple of years -- I don't recall when his
2 employment started -- but for a couple-of-year period leading
3 up to March of 2016. At that time, while he was president of
4 both FRAM and Champ, from a technical employment standpoint,
5 his W-2, his paycheck came from FRAM. His costs were
6 allocated between the two businesses.

7 In the middle of March of this year, his employment was
8 transferred from FRAM to Champ and shortly thereafter, he
9 ceased having any oversight or any responsibilities related
10 to FRAM.

11 Q Understood. Okay.

12 It was clear to you in the course of the discussions
13 going on between Mr. King and Mr. Noethlich that Mr. King was
14 taking direction from Graeme Hart, correct?

15 A Yes.

16 Q Okay. And ultimately, you testified at your deposition
17 that you have no idea what prompted Rank to change its mind
18 on these operational issues at the last minute, correct?

19 A I -- I don't recall exactly what I said, but that
20 sounds about right, other than -- other than what I said a
21 minute ago, they -- they blinked. I don't know what caused
22 them to do so.

23 Q Now, with respect to this development late on the
24 Friday regarding the resolution of the laboratory equipment
25 issue, am I correct that the letter agreement, which dealt

1 with the negotiations regarding the letter agreement that
2 dealt with the termination of the shared services, was
3 finalized the very next morning, right?

4 A The -- so the very next morning, Mr. Noethlich and Mr.
5 King engaged in discussions around the equipment. I had
6 almost hourly conversations with Mr. Noethlich going back and
7 forth, supervising his activities. I'm not sure to what
8 extent Mr. King had conversations with Mr. Hart or others
9 within the Rank organization, but, yes, I think it was -- I
10 don't know if it was by noon or certainly at some point in
11 the afternoon, it appeared that we had, at least a deal in
12 principle, around the lab equipment.

13 I don't think that that was negotiated -- fully
14 documented, I should say -- and in this case, nothing matters
15 until it's fully documented -- until it was either Monday or
16 Tuesday.

17 Q But you had a deal in principle, by mid-day Saturday,
18 right?

19 A Yes.

20 Q Okay. And it was at that time that you made the
21 recommendation to Mr. Carr that the company proceed with the
22 CS/Rank DIP, correct?

23 A Correct.

24 Q Okay. Now, there were no further negotiations with the
25 ad hoc group after that time, correct?

1 A That is correct.

2 Q Okay. Now, just a couple follow-up questions.

3 The company has no additional liquidity need today, correct?

4 A We don't -- we don't have a funding need today; that is
5 correct.

6 Q Okay. And in fact, you project that that need is going
7 to occur a few weeks out, right?

8 A It's towards the end of this month.

9 Q Okay. Do you agree that the general unsecured
10 creditors, largely, the noteholders, are likely to own this
11 company at the conclusion of the case?

12 A I do.

13 Q Okay. You're not a director, are you, Mr. Whittman?

14 A No.

15 Q And you have not been empowered by the Board to make
16 decisions related to the restructuring, have you?

17 A I think in my capacity as chief restructuring officer,
18 I have been empowered to make a wide range of decisions
19 relating to the restructuring process at -- clearly, again,
20 at the direction of Alan Carr, in consultation with him on
21 those matters that require board-level attention.

22 Q Okay. But it's your testimony from earlier that you
23 report and make recommendations to Mr. Carr, correct?

24 A Correct.

25 Q Okay.

1 MR. FREEMAN: I don't have anything further, Your
2 Honor.

3 THE COURT: Thank you.

4 Any other party-in-interest?

5 (No verbal response)

6 THE COURT: All right. Any redirect by the
7 debtor?

8 MR. NASAB: Your Honor, I do think there are a
9 couple of questions.

10 REDIRECT EXAMINATION

11 BY MR. NASAB:

12 Q Mr. Whittman, I only have a few more questions for you.

13 A Okay.

14 Q You were asked during your cross-examination about
15 milestones. Do you recall that, generally?

16 A Yes, I do.

17 Q Okay. And counsel elicited that under the CS DIP, that
18 if a milestone was missed, the debtor would then switch to a
19 sales process. Do you recall that?

20 A I do.

21 Q And counsel also elicited that under the bondholders'
22 proposal, there was no sale toggle. Do you recall that?

23 A Correct.

24 Q Okay. My question for you is: What happens under the
25 bondholders' proposed priming proposal if the debtors miss

1 one of the milestones in that proposal?

2 A I believe it's in the event of default.

3 Q Okay. And that event of default would permit the
4 bondholders to then begin exercising remedies against the
5 debtors' assets, correct?

6 A That's my understanding.

7 Q Thank you, Mr. Whittman.

8 MR. MOSKOWITZ: Good afternoon, again, Your Honor.
9 For the record, Elliot Moskowitz, from the law firm of Davis
10 Polk, representing the Rank entities, and I just have a few
11 brief questions for Mr. Whittman.

12 And I appreciate your patience, Mr. Whittman.

13 THE WITNESS: No problem.

14 RECROSS-EXAMINATION

15 BY MR. MOSKOWITZ:

16 Q Mr. Whittman, do you recall being asked a series of
17 questions over the course of the day about operational
18 concessions that Rank agreed to make, with respect to the DIP
19 financing?

20 A I do.

21 Q And do you recall that Ms. Liu asked you whether the
22 need for those operational concessions was driven by the
23 termination notices that were issued in May or June. Do you
24 recall being asked those questions by Ms. Liu?

25 A I do.

1 Q Okay. Do you know whether at the time those
2 termination notices were issued in May and June, there was
3 already an effort underway, prior to that, to separate the
4 Autoparts and UCI businesses?

5 A There was.

6 Q What can you tell us about that?

7 A Starting -- well, first, as a minor -- a minor --
8 first, in the middle of March, there was the transfer of Mr.
9 Noethlich from being duly responsible for APH and Champ, to
10 being solely responsible for Champ. And then more
11 substantively, at the end of April, we enacted a separation
12 of the people at the company, so prior to that point, or at
13 least several years previously, the -- at a corporate level,
14 where virtually all of the corporate employees that provided
15 corporate-type services -- accounting, IT, et cetera -- were
16 all employees of UCI and they provided those corporate
17 services both, to UCI and to APH.

18 And then in the filtration business, there were
19 employees of FRAM that provided services to Champ and there
20 were employees of Champ that provided services to FRAM; it
21 was a bit commingled.

22 And on April 30th, we effectuated a separation of
23 people, whereby the people were all moved to the entity we
24 felt was appropriate and if, from that point, there was some
25 sort of secondary or resulting separation activities that

1 occurred, in terms of any common vendor relationships or
2 customer relationships, reassigning those to a dedicated
3 Champ employee.

4 Q And everything you just described took place in the
5 period prior to the termination notices being issued,
6 correct?

7 A Correct.

8 Q A few more questions about the termination notices
9 themselves. I think you -- do you recall being asked a
10 series of questions about your views as to the validity of
11 the termination notices?

12 A I do.

13 Q Just so we're clear, if there were no deal between Rank
14 and the debtors, with respect to the operational issues,
15 would there have been a litigation over whether the
16 termination notices were valid?

17 A There would have been.

18 Q And do you know how long that litigation would take to
19 resolve?

20 A I don't; although, my concern was that it would take
21 longer than the amount of time I had.

22 Q Fair enough.

23 And of course, sitting here today, can you tell me with
24 certainty how that litigation would have turned out?

25 A I cannot.

1 Q Do you recall being asked a series of questions about
2 the impact of a priming fight on UCI's business?

3 A Yes.

4 Q And in response to one of those questions that Ms. Liu
5 asked, you said:

6 "I have a sense of how customers would react to a
7 priming fight."

8 Do you recall saying that?

9 A I do.

10 Q And then she didn't elicit further testimony from you
11 on that, so I will. What sense do you have of how customers
12 would react to a priming fight?

13 A We -- we tried to communicate a message to customers
14 from the start of the case that this was a case that was
15 about an equity exchange, that it was a case about changing
16 the ownership of the company, and that outside of a handful
17 of issues that were difficult and forced us to be in
18 bankruptcy to resolve them, as opposed to resolving them out
19 of court, that we were proceeding down a path towards a
20 reorganization that would get this company out of bankruptcy
21 quickly, that we have the liquidity to do that, that we had
22 the luxury of the first day, \$30 million of cash, and the
23 luxury of two DIP proposals in an expectation that we would
24 enter into a DIP at the appropriate time.

25 And that was our message to customers. I think that

1 customers were still nervous. We had had customers that
2 said, well, we're going to hold off on giving you business
3 until we see progress, a DIP, a plan of reorganization on
4 file, we want to see where this company is going. And given
5 those types of comments, given the tenor of those
6 conversations, a pitched battle would -- where -- where the
7 value of the company was being called into question would
8 certainly cause concern among the customers.

9 Q And just a final few questions, Mr. Whittman. Is it
10 fair to say that because you're sitting here, that the DIP
11 was negotiated at arm's length by Mr. Carr --

12 A Absolutely.

13 Q -- and the debtors' professionals?

14 A Absolutely.

15 Q And do you believe that the DIP is in the best interest
16 of the estates?

17 A It is. It's the best DIP we were able to negotiate --
18 not perfect -- but the best we were able to negotiate.

19 Q Do you recall being asked a series of questions by, I
20 think, both counsel, about the fact that the termination
21 notices were signed by an affiliate of UCI and that one of
22 the DIP lenders is also an affiliate of UCI. Do you recall
23 being asked about that?

24 A I do.

25 Q Does that fact change your view as to what you just

1 testified about, that the DIP was negotiated at arm's length
2 by the debtors' professionals and is in the best interest of
3 the estate? Does that change your view?

4 A It does not.

5 Q Why not?

6 A The -- from the time, particularly the time of the
7 filing for bankruptcy on June 2nd, shortly at which Mr. Carr
8 was granted authority, unilateral authority by the Board, to,
9 on his own, effectuate the bankruptcy, make decisions related
10 to the restructuring, including DIP financing, there was no
11 involvement of Rank or any parties associated with Rank in
12 the decision-making process, the negotiation process, et
13 cetera, other than from the other side, from which we were
14 negotiating on the side of the lender.

15 Q Mr. Whittman, thank you for your patience.

16 MR. MOSKOWITZ: Nothing further, Your Honor.

17 THE WITNESS: Thank you.

18 THE COURT: Okay. The debtor?

19 MR. DUCAYET: Your Honor, just a couple of
20 questions. For the record, Jim Ducayet, from the -- on
21 behalf of the debtors.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. DUCAYET:

24 Q Mr. Whittman, you were asked some questions about Ms.
25 Liu about the current cash forecast, correct?

1 A Correct.

2 Q And she showed you, and marked as an exhibit, the
3 variance report. Do you recall that?

4 A Yes.

5 Q Would it be fair to say, based on that variance report,
6 that the debtors have outperformed their cash forecast?

7 A It would.

8 Q Does the fact that the debtors have outperformed the
9 cash forecast to date, change your view that the debtors need
10 liquidity?

11 A It does not.

12 Q Why not?

13 A We have -- first of all, going back to the concerns
14 that I raised before in terms of customers and vendors,
15 there's no change in -- in that front.

16 In terms of the risks that concern me about this
17 business and about this case and the need for liquidity to
18 mitigate those risks, none of that has changed by our
19 performance to date.

20 In terms of the liquidity, I would view the vast
21 majority of this as -- as timing. Between the original cash
22 collateral budget and the budget that's been attached to the
23 DIP, there have been some outperformance that is permanent
24 and as a result, we now show a need.

25 The original budget ended, I think, at about August

1 19th and showed a need through that time of \$13 million. We
2 now show a need of about \$8 million. So it's -- you know,
3 there has been some positive performance and we've reflected
4 that in our forecast and we've reflected that in our
5 thinking.

6 But, I believe that the majority of what we've seen has
7 been timing, particularly around how we have been able to
8 negotiate critical vendor agreements and the like.

9 MR. DUCAYET: Okay. I have nothing further.
10 Thank you.

11 THE COURT: Any cross?

12 MS. LIU: Thank you, Your Honor. And for the
13 record, Jessie Liu from Morrison & Foerster, on behalf of the
14 official committee of unsecured creditors.

15 RECROSS-EXAMINATION

16 BY MS. LIU:

17 Q Mr. Whittman, I have just a few more questions for you.

18 A Sure.

19 Q Thank you very much for your patience.

20 You were asked a little bit earlier about the
21 milestones and the ad hoc group's DIP proposal. Do you
22 recall that?

23 A It's a positive topic.

24 (Laughter)

25 Q And you said that the failure on the part of the

1 debtors to meet those milestones would constitute an event of
2 default, correct?

3 A Correct.

4 Q And that event of default would allow the DIP lenders
5 to exercise remedies against the debtors, correct?

6 A That's my understanding.

7 Q In your experience, when there is DIP -- an event of
8 default, how often do DIP lenders exercise remedies against
9 the debtors' assets?

10 A That's hard for me to -- to quantify. I think it's
11 very case-specific in terms of if the DIP lender sees
12 progress and thinks the case is heading in a way that is
13 beneficial, then they tend not to exercise remedies and
14 you're able to negotiate some sort of amendment or
15 forbearance.

16 And if they don't believe that the case is headed in a
17 positive direction, it goes the other way.

18 Q It's fair to say, though, that even though the DIP
19 lenders would have the right to exercise remedies in the
20 event of default, there's no guarantee that they would, in
21 fact, do so, right?

22 A That's correct.

23 Q You were also asked a series of questions about a
24 separation between UCI and Autoparts Holdings Limited that
25 was underway before the petition was filed. Do you recall

1 that?

2 A I do.

3 Q Okay. Even though there was a separation underway
4 before the petition, and, in fact, before the termination
5 notices, there was no deadline of September 3rd for the
6 termination of the joint services agreement, the IT
7 agreement, and the amended and restated facility-use
8 agreement until the May 6th termination notices were issued.
9 Is that correct?

10 A That is -- that is correct.

11 Q Okay. And even though there was a separation effort
12 underway prepetition, there was no deadline of August 1st for
13 the termination of the services described in the June 1
14 notice before that notice was actually issued on June 1st,
15 correct?

16 A Correct.

17 Q I'd like to turn now, very briefly, to the discussion
18 you were having with counsel about the effects of a priming
19 fight. Even if there were a priming fight underway, you
20 would still do your best to keep the vendors supplying UCI,
21 correct?

22 A Of course.

23 Q And even if there were a priming fight underway, you
24 would still to your best to keep customers buying from UCI,
25 correct?

1 A Of course.

2 MS. LIU: Nothing further.

3 Thank you very much.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you.

6 MR. FELDMAN: Good afternoon, Your Honor. For the
7 record, Matthew Feldman from Willkie Farr & Gallagher, on
8 behalf of the noteholders.

9 RECROSS-EXAMINATION

10 BY MR. FELDMAN:

11 Q Mr. Whittman, I hope I only have one or two questions.

12 To go back to the questions you've been asked about the
13 separation that commenced prepetition, was that separation
14 authorized by Alan Carr, as independent director, do you
15 recall?

16 A The separation that occurred in April, yes, that was.

17 Q In March -- the March separation that you referred to?

18 A The transfer of Mr. Noethlich, Mr. Carr was not aware
19 of the transfer of Mr. Noethlich.

20 Q So if he wasn't aware, then he didn't authorize it.
21 Would that be correct?

22 A That is correct.

23 Q In fact, that was a unilateral action taken by Rank or
24 an affiliate of Rank?

25 A Yeah. I -- I guess it was a unilateral action taken by

1 the CEO of UCI without -- I'm not aware of any Board
2 discussion or resolution on that transfer.

3 Q Do you believe that transfer would have taken place
4 without the support and knowledge of Rank?

5 A No.

6 MR. FELDMAN: No further questions.

7 THE COURT: Anybody else?

8 (No verbal response)

9 THE COURT: Thank you, you may step down.

10 THE WITNESS: Thank you.

11 (Witness excused)

12 MR. KUSTER: Your Honor, John Kuster from Sidley,
13 on behalf of the debtors. Our next witness would be Adam
14 Keil.

15 THE COURT: Please remain standing so you can be
16 sworn by the clerk.

17 THE CLERK: Raise your right hand.

18 ADAM KEIL, WITNESS FOR THE DEBTORS, SWORN/AFFIRMED.

19 THE CLERK: Please state your name and spell your
20 last name for the record.

21 THE WITNESS: Adam Keil, K-e-i-l.

22 MR. KUSTER: Your Honor, may I proceed?

23 THE COURT: You may.

24 DIRECT EXAMINATION

25 BY MR. KUSTER:

1 Q Mr. Keil, where are you employed?

2 A Moelis & Company.

3 Q What's your position there?

4 A I'm the managing director in the restructuring and
5 capitalization group.

6 Q Could you describe, briefly, your professional
7 experience as an investment banker.

8 A Sure. I graduated from the Wharton School at the
9 University of Pennsylvania in 2000. I joined the
10 restructuring group at Jefferies when I graduated; I was
11 there for about eight years. After my time at Jefferies, I
12 left and joined Moelis and have been there since.

13 Q What is Moelis' relationship with the debtor?

14 A We're the debtors' investment banker.

15 Q Did you submit a declaration in connection with this
16 DIP motion --

17 A I did.

18 Q -- on behalf of the debtors?

19 A Yes.

20 MR. KUSTER: Your Honor, may I approach?

21 THE COURT: You may. Thank you.

22 Can we agree this is at Docket Number 196?

23 MR. KUSTER: I believe that's correct, Your Honor.

24 BY MR. KUSTER:

25 Q Mr. Keil, do you recognize the document that I just put

1 in front of you?

2 A Yes.

3 Q What is it?

4 A It's the declaration that I filed in support of the
5 motion.

6 Q Did you prepare this declaration?

7 A Yes.

8 Q Is it a true and accurate reflection of the facts and
9 conclusions you've put forward in this motion -- in the
10 declaration?

11 A Yes.

12 MR. KUSTER: We'd move for the admission of this
13 declaration into evidence, Your Honor.

14 THE COURT: Well, subject to cross.

15 MR. KUSTER: Yes.

16 (Keil Declaration received in evidence)

17 BY MR. KUSTER:

18 Q When did Moelis start working on this engagement?

19 A In mid-December, 2015.

20 Q And what was your mandate when you were retained?

21 A I mean it was a pretty broad restructuring mandate. It
22 was clear at the time that the company was overlevered [sic],
23 had too much debt in its capital structure, so we were
24 retained to assist the company in addressing its leverage.

25 Q Did there come a time when you began assisting the

1 debtor in soliciting interest from the market, with respect
2 to providing DIP financing to the debtors?

3 A Yes.

4 Q And can you briefly describe the steps you undertook in
5 that regard.

6 A Sure. So, we started that process before Alvarez &
7 Marsal was retained. We were initially working with the
8 company to, basically, pressure-test or sensitize their cash
9 flow forecast and to factor in the potential effects of a
10 bankruptcy. In the middle of that process, Alvarez & Marsal
11 was retained, so they took over that process upon their
12 retention. But that, then, resulted in an analysis around
13 the need for DIP financing; a DIP-sizing analysis, I would
14 call it.

15 We then prepared marketing materials and a summary of
16 those forecasts that we used to market the DIP facility. We
17 reached out to ten external institutions. We also had
18 discussions with the ad hoc group of noteholders and the
19 existing ABL lenders to solicit interest in the DIP facility.

20 Subsequent to that, we actually received an inbound
21 call, so it was a total of 11 external parties that we spoke
22 to.

23 Q Excluding for the moment, the secured lenders and the
24 bondholder group, did any of the third-party lenders have any
25 indications of interest?

1 A Yeah, I think seven of the eleven signed NDAs; of those
2 seven, we received two proposals.

3 Q Did any third-party lender express any interest in a
4 non-consensual priming DIP loan?

5 A No, and we asked.

6 Q How about with respect to taking a junior position?

7 A Same answer. We asked them all and none of them were
8 interested in providing a junior DIP.

9 Q What did you do next, with respect to the third-party
10 lender expressions of interest, the two you did receive?

11 A Initially, we had phone calls with those lenders to
12 make sure we fully understood their proposal, asked
13 questions, tried to probe where there might be areas of
14 flexibility, for example, things of that nature. We, then,
15 summarized it and presented it -- presented both of them to
16 the Board. We also provided the Board with the termsheets
17 themselves.

18 Q Now, do you recall any discussions with the debtor,
19 whether they should pursue the third-party lending
20 opportunities?

21 A Well, one of the two proposals, I would describe more
22 as an interest in a marketing facility, than a proposal
23 itself, so that one was relatively easy to dismiss; there
24 were a lot of issues with it.

25 The second one was fairly detailed and I would say it

1 was more interesting and more actionable, from our
2 perspective, and so we had a discussion with the Board about
3 the merits of basically investing into a due diligence
4 process to allow that lender to firm up and ultimately commit
5 to a facility. Based on where we were on the calendar and
6 where we were in the process, the Board decided not to pay a
7 diligence deposit to that lender, but we did discuss it with
8 the Board.

9 Q After the filing of the petition, did debtors make any
10 attempts to contact other potential DIP lenders, obviously,
11 other than the bondholders and the secured lenders to see if
12 they had any interest at that time?

13 A Yes.

14 Q All right. And what did you know -- what efforts were
15 made in that regard?

16 A This was actually just after we filed the DIP motion.
17 We reached back out to the 11 parties we had spoken to
18 historically. The reason we did it after the DIP motion was
19 filed was so that we could share with them, the terms of the
20 proposed DIP and ask them if they were interested in, you
21 know, reconsidering their interest in providing competing DIP
22 financing for the company and none of the 11 were interested
23 in providing DIP financing at this time.

24 Q Now, you understand that the debtors had decided to
25 accept the DIP financing offered by the secured lenders here,

1 correct?

2 A Yes.

3 Q Have you done any analysis of the key economic terms of
4 the proposed DIP facility from the secured lenders?

5 A Yes.

6 Q What is that analysis?

7 A Well, we looked at, you know, the economic terms of the
8 financing itself, so I would say things like the size of the
9 facility, the amount of liquidity provided, the fees
10 associated with it, the projected interest associated with
11 the borrowings under those facilities and compare it, those
12 two facilities against each other and also against the
13 preliminary indication that we had received from the third
14 party that we were just discussing.

15 So I would say, notably, both of them are more cost-
16 effective than the third-party financing would have been had
17 we pursued it and ultimately it was consummated. In both
18 cases, you know, it's our assessment that it provides the
19 company with adequate liquidity to get through this
20 bankruptcy case.

21 When we initially did the analysis, the ad hoc group's
22 proposal would have been less expensive than the secured
23 lenders' proposal, principally on account of a significant
24 difference in up-front fees. As Mr. Whittman testified
25 earlier today, the secured lenders have agreed to reduce

1 their fee by about \$1.4 million, so there's some apples and
2 oranges. But on balance, you know, our analysis is that the
3 economic terms of the two proposals are relatively
4 equivalent.

5 MR. KUSTER: Thank you. Nothing further.

6 THE COURT: Do either Credit Suisse or Rank wish
7 to ask any questions of this witness?

8 UNIDENTIFIED: No, Your Honor.

9 MR. MCGUIRE: Nothing on direct, Your Honor.

10 THE COURT: Thank you. You may proceed.

11 MS. LIU: Your Honor, Jessie Liu from Morrison &
12 Foerster, on behalf of the official committee of unsecured
13 creditors. I have nothing on cross.

14 THE COURT: Okay. Does the ad hoc committee?

15 (No verbal response)

16 THE COURT: No?

17 (No verbal response)

18 THE COURT: You may step down.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 THE COURT: Are the debtors through its case?

22 MR. DUCAYET: Your Honor, Jim Ducayet, on behalf
23 of the debtors.

24 We are through the presentation of witnesses, Your
25 Honor. We do intend to tender some designations from the

1 deposition of Mr. Alan Carr, the company's independent
2 director. If I could hand this up to Your Honor at this
3 point?

4 THE COURT: You may.

5 MR. DUCAYET: May I approach, Your Honor?

6 THE COURT: You may.

7 Any objection to that?

8 MS. LIU: No objection, Your Honor.

9 THE COURT: All right. It's admitted.

10 (Carr Deposition Designations received in evidence)

11 MR. MOSKOWITZ: Your Honor, Elliot Moskowitz, on
12 behalf of Rank.

13 We have some designations for the Court as well of
14 Mr. Hugli and Mr. Stern and Mr. Carr.

15 May I hand those up, Your Honor?

16 THE COURT: You may.

17 Well, give me a copy. Thank you.

18 All right. Any objection to those designations?

19 MS. LIU: No objection, Your Honor. Thank you.

20 THE COURT: All right. They're admitted, as well.

21 *(Hugli Deposition Designations received in evidence)

22 *(Stern Deposition Designations received in evidence)

23 *(Carr Deposition Designations received in evidence)

24 MR. DUCAYET: Your Honor, there are also a set of
25 exhibits that we'd like to have entered. We can handle that

1 however Your Honor prefers at this point. The parties have
2 prepared a list of exhibits. We can move those in, *in toto*.
3 If you want us to go through exhibit by exhibit, whatever
4 Your Honor's preference is.

5 THE COURT: How big are they?

6 MR. DUCAYET: Excuse me?

7 THE COURT: How big are they?

8 MR. DUCAYET: There are two binders, Your Honor.

9 THE COURT: I assume you want a decision by me?

10 (Laughter)

11 MR. DUCAYET: We do, Your Honor.

12 Your Honor, this is, largely, if I can, material
13 that is contained in the motion papers, copies of the
14 proposed DIP facility credit agreements, some other materials
15 relating to the termination notices that were received, a
16 copy of the letter agreements and the like. So, as I said,
17 Your Honor, we're happy to proceed however you would like.

18 THE COURT: Any objection to these exhibits?
19 You've agreed to them, the committee?

20 MS. LIU: Your Honor, we've agreed to them and we
21 don't have an objection to them coming in.

22 THE COURT: All right. Well, you better hand them
23 up. I don't know if I'll get a chance to look at them, but
24 ...

25 (Debtors' Exhibits received in evidence)

1 MR. DUCAYET: Your Honor, thank you for your
2 patience. We have nothing further.

3 THE COURT: All right. The debtor rests.

4 Then, does the committee wish to -- I'm sorry --
5 Rank has additional?

6 MR. NASAB: Omid Nasab, for Credit Suisse.

7 THE COURT: I'm sorry.

8 MR. NASAB: We also had some designations from the
9 deposition of Mr. Stern, who is a Credit Suisse
10 representative. Those are all in the form of counter-
11 designations, because the objectors initially designated his
12 transcript and we made counter-designations. So those will
13 come in, you know, I think with the objector's.

14 THE COURT: They're included in theirs?

15 MR. NASAB: I believe they will be, yes.

16 THE COURT: Are they included in Rank's, that I
17 got?

18 MR. NASAB: Yes, they would be included in with
19 the objectors'.

20 THE COURT: All right.

21 MR. NASAB: Thank you.

22 MR. GEOGHAN: Your Honor, Dan Geoghan from Cole
23 Schotz, for the committee. We have no objection to the
24 counter-designations.

25 THE COURT: Okay. All right. Does the committee

1 wish to -- I assume the debtor and those supporting the
2 motion are done?

3 MR. DUCAYET: Your Honor, I think there's just one
4 more point that someone from our side is going to address. I
5 apologize, Your Honor.

6 You know, Your Honor, we're not going to keep you
7 waiting. Why don't we -- we'll proceed.

8 THE COURT: Okay. The committee may proceed,
9 then.

10 MS. LIU: Your Honor, the committee has one
11 witness, David MacGreevey. We would propose to offer his
12 declaration, which was filed on July 8th, as, I believe
13 docket entry Number 256 as direct testimony, together with
14 the four exhibits that are attached to that declaration.

15 If he were called to testify live today, he would
16 testify to what is in his declaration and we would, of
17 course, make him available for cross-examination.

18 THE COURT: Any objection to that?

19 MR. DUCAYET: No, Your Honor.

20 THE COURT: All right. The declaration and
21 exhibits are admitted then.

22 (MacGreevey Declaration and Exhibits received in
23 evidence)

24 THE COURT: He should -- I assume there's cross?

25 MR. DUCAYET: Just a little bit, Your Honor.

1 THE COURT: He should take the stand then.

2 MS. LIU: Thank you, Your Honor.

3 THE COURT: You know the drill. Remain standing
4 so you can be sworn by the clerk.

5 THE CLERK: Raise your right hand.

6 DAVID MACGREEVEY, WITNESS FOR THE COMMITTEE, SWORN/AFFIRMED.

7 THE CLERK: Please state your full name and spell
8 your last name.

9 THE WITNESS: It's David MacGreevey, M-a-c-G-r-e-
10 e-v-e-y.

11 THE CLERK: Thank you.

12 CROSS-EXAMINATION

13 BY MR. DUCAYET:

14 Q Good afternoon, Mr. MacGreevey.

15 A Hello.

16 Q I just have a few questions for you this afternoon.

17 Mr. MacGreevey, you are currently a managing director
18 of Zolfo Cooper. Is that right?

19 A That's correct.

20 Q And you are a restructuring advisor. Is that fair to
21 say?

22 A That's correct.

23 Q How long have you been at Zolfo Cooper?

24 A I rejoined Zolfo Cooper about five years ago.

25 Q And since you've rejoined Zolfo Cooper, you have not

1 represented any debtors in any matters. Is that right?

2 A I have not.

3 Q Okay. Have you ever served as a chief restructuring
4 officer?

5 A I have not.

6 Q So you've never had to, as a chief restructuring
7 officer, prepare a cash forecast, right?

8 A Not in the capacity of a chief restructuring officer.

9 Q And you've never had to, in the capacity as a chief
10 restructuring officer, negotiate with vendors, have you?

11 A Correct.

12 Q And you've never had to, as a chief restructuring
13 officer, reassure vendors about the consequences of a
14 bankruptcy filing, have you?

15 A Correct.

16 Q And you've never had to, as a chief restructuring
17 officer, had to negotiate factoring arrangements, have you?

18 A Correct.

19 Q You ever never had to, as a chief restructuring
20 officer, reassure vendors as to whether or not a debtor had
21 adequate liquidity. Is that right?

22 A Not in the capacity of a chief restructuring officer,
23 no.

24 Q Okay. And you've never had to, as a chief
25 restructuring officer, negotiate trade terms with customers

1 following bankruptcy --

2 THE COURT: Since he was never CRO, he's never
3 done any of these things as a CRO.

4 (Laughter)

5 MR. DUCAYET: Yes.

6 THE COURT: I don't think we need to go through
7 the litany of all of what he could have done if he were a
8 CRO.

9 MR. DUCAYET: Very well, Your Honor.

10 BY MR. DUCAYET:

11 Q Now, Mr. MacGreevey, you've expressed an opinion that
12 the budget that was prepared in connection with the DIP
13 motion today is overly conservative, right?

14 A Correct.

15 Q And one of the claims that you've made is that the
16 factoring assumptions that are contained in the DIP budget
17 are too conservative. Is that right?

18 A That's right.

19 Q Okay. Now, you don't claim to be an expert on
20 factoring arrangements, right?

21 A I don't.

22 Q You've been sitting in the court today, right?

23 A I have.

24 Q And you heard the testimony of Mr. Whittman?

25 A Yes.

1 Q And did you hear Mr. Whittman testify about the
2 assumptions relating to factoring that he's included in the
3 current DIP budget?

4 A Yes.

5 Q And did you hear him testify that those assumptions are
6 based upon risk assessment that he and his team have
7 undertaken?

8 A Yes.

9 Q Now, you believe, if I'm understanding it correctly,
10 that factoring should be assuming to be at approximately 100
11 percent of prepetition levels on a going-forward basis. Is
12 that right?

13 A Yeah. Our assumption is that the factoring projections
14 today should be consistent with the reality that the company
15 is facing today. I think the company has projected that they
16 have about 40 percent of their factoring capacity.

17 In reality, during our conversations with the company
18 and its professionals, in our observation of the actual cash
19 receipts of the company, it's fairly clear that they have
20 access to all, if not nearly all, of their factoring capacity
21 today, 100 percent.

22 Q And thinking about it in terms of the risk adjustment
23 that Mr. Whittman described, you're essentially saying you
24 don't think there's any risk on a going-forward basis that
25 those factoring arrangements are going to terminate?

1 A I think there's a lot lower risk today than there would
2 have been maybe when you put those projections together at
3 the beginning of the case or even two or three weeks ago.
4 And as the case goes on, as the company continues to perform
5 well, considering the company has built 43 million in cash, I
6 think, a lot of those uncertainties are less than they were
7 earlier.

8 Q But you're assumption is there's essentially no
9 uncertainty going forward, right?

10 A We're assuming that they have access to their factoring
11 arrangements.

12 Q Okay. And you've not spoken to any of the factors,
13 right?

14 A No.

15 Q Mr. Whittman and his team have spoken to the factors?

16 A I assume he has spoken to most or not all of them. I -
17 - I don't know. He didn't testify to that, I don't believe.

18 Q You were sitting here when you heard Mr. Whittman
19 testify about the most recent developments relating to the
20 factors?

21 A Yes.

22 Q Okay. And so is it fair to say that even today, there
23 are factors who are terminating their arrangements with the
24 company, right?

25 A I think he testified that two of the eight factors have

1 terminated their agreements.

2 Q Okay. One of the other elements of the DIP budget that
3 you've critiqued is the existence of a five-million-dollar
4 cash cushion. Is that right?

5 A Correct. Specifically, as it relates to the cash
6 receipts line item. There are other cushions in the budget,
7 but that's the one that we addressed.

8 Q Right. The specific five-million-dollar cash receipts?

9 A Correct.

10 Q Okay. And it's your opinion that on a going-forward
11 basis there shouldn't be any cash cushion. Is that fair?

12 A Our opinion is that the cash cushion that the company
13 implemented in its budgeting was in the first five weeks of
14 the case, was a hard cut of a million dollars a week. The
15 first five weeks of the case are over and that's proved to be
16 unnecessary cushion.

17 Q Okay. And again, you heard Mr. Whittman's testimony
18 this morning about the reasons why he believes there should
19 be a cash cushion in the budget going forward?

20 A I sat through all of Mr. Whittman's testimony.

21 Q Okay. And would you at least agree with me that the
22 issue of whether or not there should be a cash cushion and
23 the amount is a matter of judgment?

24 A Sure.

25 Q And you understand that Mr. Whittman has made such a

1 judgment, right?

2 A I do.

3 Q Okay. And Mr. Whittman is the one on the ground
4 dealing with customers and vendors. Wouldn't you agree?

5 A I would.

6 Q Now, the declaration that you've submitted includes a
7 recalculation of the budget that was submitted in connection
8 with the DIP facility. Is that right?

9 A Not entirely right. It includes a recalculation of the
10 budget that was provided to us through July 1st or on July
11 1st.

12 Q Okay. But you've essentially adjusted the budget to
13 reflect some of the items you were just talking about, right?

14 A Correct.

15 Q Now, one of the assumptions in your revised budget is
16 that you've assumed that the debtors will continue to be able
17 to use cash collateral, right?

18 A Yes.

19 Q Okay. And you understand that such a use of cash
20 collateral would be over the objection of the secured
21 lenders?

22 A I've been informed of that by the debtors.

23 Q In fact, I told you that yesterday at your deposition,
24 right?

25 A Correct.

1 Q Okay. Before that, you hadn't been aware of that?

2 A It's not -- it was not represented to me before
3 yesterday.

4 Q Okay. Now, the budget, the adjusted budget that you
5 prepared doesn't include an estimate of the costs of an
6 adequate protection dispute, should the debtors proceed to
7 attempt to use cash collateral on a non-consensual basis,
8 does it?

9 A It includes professional fees, as projected by the
10 debtors.

11 Q Okay. But nothing specific to deal with an adequate
12 protection fight?

13 A We didn't adjust the professional fees for anything.

14 Q Now, you've expressed an opinion in your declaration
15 that as between the secured lender DIP facility and the ad
16 hoc facility that the ad hoc is better, right?

17 A Correct.

18 Q And you understand that the DIP facility, the secured
19 lender facility includes the letter agreements, right, as it
20 relates to the services and the assets?

21 A I do.

22 Q And you haven't quantified the economic benefit of the
23 letter agreement in connection with your assessment of the
24 two different DIPs, have you?

25 A We have not.

1 Q Okay. And specifically, one of the terms of the letter
2 agreement relates to the warehousing services, which you
3 heard Mr. Whittman testify about, right?

4 A I did.

5 Q And once again, you haven't quantified the economic
6 benefit to that?

7 A No.

8 Q Or you haven't made any assessment of the more
9 intangible risks that would be faced by the company, were it
10 not to have gotten the relief that it did in the letter
11 agreement, right?

12 A I'd say we've assessed the risks of the company in
13 general of not being able to meet any deadline around the
14 transition of the separation of the two companies, Autoparts
15 Holdings and UCI.

16 Q Have you done any specific analysis, though, of the
17 risks that the company would face, if it were forced to move
18 out of its warehousing facilities by August 1st?

19 A No.

20 Q Now, you understand that one of the provisions of the
21 letter agreement relates to lab testing equipment?

22 A Correct.

23 Q And you heard Mr. Whittman testify this morning about
24 the costs that would be avoided by virtue of the fact that
25 they're getting this lab equipment, right?

1 A I did.

2 Q And he put about a three-million-dollar impact on
3 there?

4 A Yeah, I believe that was the cost that he estimated to
5 outsource the function.

6 Q Okay. And I take it you haven't done any assessment of
7 whether or not that's a valid assessment -- a valid estimate
8 of the costs involved?

9 A Not independent of the debtors' stipulation.

10 Q Now, again, focusing on the differences between the two
11 DIP proposals, you understand that the ad hoc DIP proposal is
12 a priming DIP, right?

13 A I do.

14 Q And you further understand that were the debtors to
15 proceed with the ad hoc proposal, there would be a priming
16 fight, right?

17 A I do.

18 Q And you didn't make any effort to calculate the costs
19 of a priming fight, did you?

20 A Are you talking about the professional fees associated
21 specifically with that hearing?

22 Q Yeah, let's start with that.

23 A No.

24 Q Okay. Did you make any broader assessment of the
25 collateral sequences of a priming fight; for example, on the

1 company's customers or its vendors?

2 A Not without with respect -- no different analysis as to
3 this hearing or an adequate protection hearing or a priming
4 hearing, no.

5 Q Now, you've never been involved in a successful priming
6 fight. Is that right?

7 A No.

8 Q Okay. You heard Mr. Whittman testify that he has
9 concerns about the impact of a priming fight on the company's
10 customers and debtors -- excuse me -- strike that.

11 You understand that Mr. Whittman has concerns about the
12 impact of a priming fight on the debtors' customers and
13 vendors, right?

14 A I did hear his testimony, yeah.

15 Q Okay. And you've not spoken to any customers or
16 vendors, have you?

17 A No.

18 Q You have no basis, as you sit here today, that Mr.
19 Whittman's concerns in that regard are not valid, do you?

20 A I don't. I think, with respect to his deposition
21 testimony, he expressed several other issues where he had
22 concerns around his vendors and his customers not related to
23 the priming DIP financing. That was just one issue he was
24 concerned about as chief restructuring officer.

25

1 Q Okay. But, again, as you sit here, you don't have any
2 basis to question the validity or the legitimacy of his
3 concern in that regard?

4 A Look, I would say, based on our experience in
5 bankruptcies and automotive bankruptcies, his customers are
6 fairly sophisticated. Many of his vendors are fairly
7 sophisticated.

8 Rolling out the right communication plan, explaining to
9 them what the company is attempting to do, in terms of
10 getting the best DIP financing available, explain to them the
11 company has adequate cash cushion for the near future, maybe
12 for the pendency of the whole case, I think could be
13 effective.

14 And Mr. Whittman has concerns and he's testified to
15 those and that's his personal opinion.

16 Q Okay.

17 MR. DUCAYET: Your Honor, I have nothing further.

18 THE COURT: Thank you.

19 Does CS or Rank wish to cross-examine?

20 MR. NASAB: No, Your Honor.

21 MR. MOSKOWITZ: Very briefly, Your Honor.

22 For the record, Elliot Moskowitz of Davis Polk,
23 representing the Rank entities.

24 CROSS-EXAMINATION

25 BY MR. MOSKOWITZ:

1 Q Mr. MacGreevey, good to see you again.

2 A Good afternoon.

3 Q Mr. MacGreevey, you state in your declaration that the
4 debtors have no immediate need for DIP financing, correct?

5 A Correct.

6 Q Sitting here today, you cannot guarantee that this
7 debtor will not need DIP financing at some point in the
8 bankruptcy cases, correct? You can't guarantee that.

9 A I make my representations based on our analysis.
10 That's our best estimate as to the future performs of the
11 company. I don't think any of us can sit here and guarantee
12 what's going to happen during the bankruptcy.

13 Q So you can't guarantee the --

14 A Correct. Correct.

15 Q Thank you.

16 If UCI eventually did need DIP financing over the
17 course of the bankruptcy case, you can't say today whether it
18 would be easier or harder for UCI to obtain that DIP
19 financing at a later point in time, correct?

20 A It would depend on market conditions at the time and
21 the performance of the company at that time, so you'd be
22 correct.

23 Q And if the company -- if market conditions were the
24 same as they are now, but the company had deteriorated during
25 that time, so that it needed DIP financing, would you agree

1 with me that the terms of a DIP at that point in time would
2 likely be worse than the terms that are being offered today
3 in the DIP financing order?

4 A So, it depends, right. I mean, if you're talking about
5 economic terms, right, just simply the interest rate or fees,
6 they may be different based on the deteriorating credit
7 quality of the company at that point in time. It depends on
8 the value you place -- or deterioration of value you place on
9 whatever other restrictions are in the currently proposed
10 DIP.

11 Whether you think you don't want to have this sale
12 toggle or you don't like the transition services agreement or
13 you don't like the releases that are a feature in the DIP,
14 all of those have some kind of tangible or intangible cost.
15 So if you're talking about a third-party DIP, you know,
16 several months from now, sure, it may be more expensive
17 economically, but may be the parties would prefer it because
18 it didn't contain those features I just described. It just
19 depends on your view.

20 Q Okay. So it might be more expensive economically,
21 correct?

22 A Economically, sure.

23 Q Okay.

24 MR. MOSKOWITZ: Nothing further.

25 THE COURT: All right. Does the committee wish to

1 redirect?

2 REDIRECT EXAMINATION

3 BY MS. LIU:

4 Q Good afternoon, Mr. MacGreevey.

5 A Good afternoon.

6 Q On cross, Mr. Ducayet had asked you some questions
7 about whether or not you've ever been a chief restructuring
8 officer. Do you remember that?

9 A I do.

10 Q And it's the case that you have not been a chief
11 restructuring officer before, right?

12 A That's correct.

13 Q Do you have any restructuring experience, other than
14 being a chief restructuring officer?

15 A I do.

16 Q Could you please tell the Court about that experience.

17 A Sure. For the past 16 years, I've focused on advising
18 companies, creditors, lenders through restructurings. I
19 currently serve as the head of creditor services at Zolfo
20 Cooper, which means I focus almost exclusively on
21 representing creditor committees like this one.

22 Q Mr. Moskowitz just asked you a few questions about
23 whether you could guarantee that the debtors will not need
24 DIP financing in the future. Do you remember that?

25 A I do.

1 Q Okay. What is your best estimate, as you sit here
2 today, as to whether or not the debtors will need DIP
3 financing in the future?

4 A So, based on our review of the actual performance of
5 the company to date, based on our review of the likely
6 projected performance of the company through the pendency of
7 bankruptcy, we don't feel there's a need or a requirement for
8 the DIP financing.

9 Q You were also asked some questions on cross about the
10 debtors' assumptions regarding factoring. Do you remember
11 that?

12 A I do.

13 Q And in your view, to what degree are the debtors'
14 assumptions regarding factoring consistent with reality, to
15 date?

16 A Well, it appears that the debtors are assuming they
17 have 40 percent of their factoring arrangements or factoring
18 capacity, I should say, available to them; however, the
19 actual performance of the company to date would suggest they
20 have 100 percent, if not close to 100 percent of their
21 factoring capacity available to them today.

22 Q And going forward, to what extent would there be a
23 reason to take a more conservative view of what factoring
24 would continue than what has been proven by reality, to date?

25 A Our view is that, you know, the most uncertain time in

1 a bankruptcy is at the beginning of the case, before you're
2 able to roll out a communication plan to your constituents,
3 before you're able to prove to your constituents that -- or
4 how you're going to perform.

5 At this point, ostensibly, the company has had a chance
6 to communicate with all of its major constituents and can
7 demonstrate solid, if not very good performance in the first
8 five or six weeks of the case, so we believe that threat you
9 just described is much less, if not, substantially unfounded
10 at this point.

11 Q You were also asked some questions about your
12 assumption that access to cash collateral would continue. Do
13 you remember that?

14 A I do.

15 Q Okay. Other than a potential objection of the secured
16 creditors to the continued use of cash collateral, do you
17 have any reason to believe that the debtors' access to cash
18 collateral would cease?

19 A No.

20 Q You were also asked some questions about your
21 conclusion that the ad hoc proposal was to, for lack of a
22 better word, than the CS/Rank DIP facility. Do you remember
23 that?

24 A I do.

25 Q Why do you say that the ad hoc proposal is better, even

1 given the letter agreement, about which Mr. Ducayet asked
2 you?

3 A Well, to the extent that the parties determine that
4 they do need a DIP financing, the ad hoc proposal provides a
5 greater amount of liquidity. It provides certainty around
6 that liquidity, because it's provided as a term loan, which
7 means you can fund that closing on day one. The milestones
8 are more flexible, in that they do not contain a pivot
9 feature to the sale process. And it doesn't provide or
10 guarantee releases -- require -- I should say require
11 releases to the lenders, the prepetition lenders in the plan
12 of reorganization, all of which adds value to their proposal.

13 Q And finally, you were asked some questions about a
14 potential priming fight, had the debtors determined to accept
15 the ad hoc group's proposal. Do you remember that?

16 A I do.

17 Q Are you aware of a stipulation that the debtors entered
18 into with the committee, regarding the value of the
19 collateral securing their loan?

20 A My understanding is that the debtors have stipulated
21 that the value of the collateral, even on a liquidation
22 basis, is in excess of the prepetition secured debt, as well
23 as the proposed ad hoc group term loan.

24 Q In your experience, assuming the correctness of that
25 stipulation, what effect, if any, would there be on the

1 outcome of a priming dispute?

2 A It's ultimately up to the judge, but you would think,
3 from a financial perspective, you'd be able to demonstrate
4 that both, the prepetition lenders and the DIP lenders, would
5 be covered by the value of the collateral.

6 MS. LIU: All right. Nothing further.

7 Thank you very much.

8 THE WITNESS: Thanks.

9 THE COURT: Does the ad hoc committee wish to ask
10 any questions?

11 (No verbal response)

12 THE COURT: No?

13 (No verbal response)

14 THE COURT: All right. Any cross?

15 MR. MOSKOWITZ: Ten seconds, Your Honor.

16 THE COURT: All right.

17 RECROSS-EXAMINATION

18 BY MR. MOSKOWITZ:

19 Q Good afternoon, Elliot Moskowitz for the Rank entities.
20 Mr. MacGreevey, you were just asked a moment ago about
21 a stipulation as between the debtors and the committee. Do
22 you recall being asked about that?

23 A I do.

24 Q Okay. Did you prepare that stipulation?

25 A I did not.

1 Q Do you know whether that stipulation is binding on Rank
2 or any of the -- or CS, which would be parties to the priming
3 fight that we're talking about?

4 A I do not.

5 Q And in fact -- so, if I told you that it would not be
6 binding on those parties, you wouldn't have any reason to
7 disagree with me, correct?

8 A Not sitting here I wouldn't, no.

9 Q Thank you.

10 MR. MOSKOWITZ: Nothing further.

11 MR. DUCAYET: Nothing further, Your Honor.

12 THE COURT: Okay. Thank you. You may step down.

13 THE WITNESS: Thanks.

14 (Witness excused)

15 MS. LIU: Your Honor, the committee has a few
16 housekeeping matters, if you would indulge us.

17 We do, like the other parties, have deposition
18 designations that we would like to pass up and we have
19 exhibits, as well.

20 THE COURT: All right. You may do so.

21 Thank you. You can leave them there.

22 (Committee's Deposition Designations received in
23 evidence)

24 MS. LIU: Your Honor, I also just realized we did
25 not pass up a copy of Mr. MacGreevey's declaration and the

1 attachments, so we'll bring that up now.

2 THE COURT: Okay.

3 MS. LIU: Finally, Your Honor, one last
4 housekeeping matter. When I was conducting cross-examination
5 of Mr. Whittman, I showed him a document that was marked as
6 Exhibit 1; it was a variance report about which he testified
7 and that, I believe, is actually listed in our exhibit list
8 as Number 14, and we would, again, move that it be admitted
9 into the record.

10 THE COURT: Any objection to any of the exhibits?

11 MR. DUCAYET: No objection, Your Honor.

12 THE COURT: All right. They're admitted.

13 (Committee Exhibit 1 received in evidence)

14 MS. LIU: Thank you, Your Honor.

15 The committee has nothing further.

16 MS. BOELTER: Good afternoon, Your Honor, Jessica
17 Boelter, Sidley Austin, for the debtors.

18 Your Honor, I think we're at the point in the
19 proceedings where I would propose that we go to closing
20 arguments, unless Your Honor would like to take a brief
21 break.

22 THE COURT: I would like to take a break.

23 (Laughter)

24 MS. BOELTER: Okay. Very good, Your Honor.

25 THE COURT: All right. I'll be back in ten

1 minutes.

2 MS. BOELTER: Sounds good. Thank you, Your Honor.

3 (Recess taken at 2:51 p.m.)

4 (Proceedings resume at 3:09 p.m.)

5 (Call to order of the Court)

6 THE COURT OFFICER: You may be seated.

7 THE COURT: Now you may proceed.

8 MS. BOELTER: Thank you, Your Honor. Once again,
9 for the record, Jessica Boelter, Sidley Austin, on behalf of
10 the debtors.

11 Your Honor, before I proceed with my closing
12 remarks, I just want to give you some sense of where we're at
13 with the parties so you understand the scope of what I'm
14 going to be covering.

15 THE COURT: Okay.

16 MS. BOELTER: It's my understanding that some of
17 the hallway activity that we referenced earlier in the
18 proceeding has resulted in an agreement between the committee
19 and the lenders, with respect to the -- and, therefore, the
20 debtors, as well -- with respect to a number of the items
21 that were raised in the committee objection.

22 The three items remaining in the committee
23 objection are the roll-up, the milestones, and the extent of
24 the letter agreement; in other words, the date that the
25 letter agreement terminates. October 1 is what's on the

1 table right now. Those three items have not yet been agreed
2 to, and I think you'll be hearing parties remark on those
3 items throughout their closing.

4 With that, Your Honor, I'm going to turn to the
5 debtors' closing remarks. You know, we stood here six weeks
6 ago and I said to Your Honor, the debtors are here between a
7 rock and a hard place and while that has candidly extracted
8 some pain, at the end of the day, it was not a bad thing. We
9 had two lenders, two groups of lenders that were very anxious
10 to provide the debtors with a debtor-in-possession financing
11 facility.

12 But as I said to you at that time, the debtors had
13 a serious dilemma; they had two facilities before them,
14 neither of which were acceptable. But we told Your Honor
15 then that we intended to take the time afforded to us by the
16 luxury of liquidity to negotiate the best deal possible for
17 these estates and that's exactly what we did.

18 As the testimony showed today, the debtors
19 believed in good faith that we need DIP financing. We need
20 that liquidity for these estates. And we negotiated with
21 both sides, both CS and Rank and the ad hoc committee of
22 bondholders to get the absolute best possible deal that we
23 could.

24 Now, we understand that the ad hoc committee is
25 not happy that we selected the CS/Rank DIP; they wanted us to

1 select their priming DIP. And as the testimony came out on
2 cross today, we almost did. We were literally within hours
3 of filing that motion.

4 But we didn't, because as that testimony also
5 showed, the debtors were continuing their arm's length
6 negotiations up until the very point of filing on that
7 Friday, the 24th. The presence of the priming DIP facility
8 that was offered by the ad hoc committee was actually crucial
9 to us getting the business concessions that Mr. Whittman
10 testified about today and that I will talk about a little bit
11 later in the presentation. That's the ad hoc committee.

12 On the committee side, the actual official
13 committee, they're not happy with us right now, as you heard.
14 They would prefer that the debtors survive on cash
15 collateral, because as unsecured creditors, they don't want
16 another dime of secured debt sitting on top of them. And
17 while we understand that view, it just simply is not
18 consistent with the debtors' view as to its liquidity needs
19 during the course of this case.

20 So in the end, Your Honor, from the debtors'
21 perspective, the decision before you is relatively
22 straightforward and it comes down to two issues. First,
23 whether the debtors independently selected the existing
24 senior lender DIP and, second, whether the DIP that we
25 independently selected is one that the Court can and should

1 approve. And the debtors believe that the answer to both of
2 those questions is a resounding yes.

3 Let's start with the independence. At the outset,
4 Your Honor, I want to note that I don't think any party has
5 actually called into question the independence of Mr. Carr or
6 Mr. Whittman. It is absolutely clear that Mr. Carr,
7 independent director, has no connection to Rank, Graeme Hart,
8 or Credit Suisse. He was granted the independent authority,
9 pursuant a resolution that was approved on or about June 1st
10 to approve financing.

11 And by the way, Your Honor, that resolution that I
12 just referenced -- I know you were handed a number of
13 exhibits and exhibit binders -- is in the proponent's exhibit
14 binder, and I think it's Exhibit 7. He was granted
15 independent authority to approve a financing and that's what
16 he did. Mr. Hart's position, as controlling shareholder of
17 the debtors or Rank's position as being owned by Mr. Hart,
18 had no absolutely no bearing on Mr. Carr's determination; it
19 truly was an independent decision.

20 And the same is true for Mr. Whittman. Whittman
21 has no connection to Rank, no connection to Mr. Hart, and no
22 connection to Credit Suisse. As Mr. Whittman testified
23 today, and according to the resolution that put him in place
24 as CRO, and even pursuant to the A&M engagement letter, Mr.
25 Whittman answers to Mr. Carr. He does not answer to any

1 other director, officer, or employee of the debtors', and nor
2 does he answer to Mr. Hart, nor does he answer to anyone
3 affiliated with Rank. He answers to Mr. Carr.

4 And again, Your Honor, just because I'm
5 sympathetic to the extensive exhibit binders you received,
6 the two -- the resolution appointing Mr. Whittman is present
7 on Exhibit 9 and the A&M engagement letter that clearly
8 indicates that Mr. Whittman responds directly to Mr. Carr is
9 on Exhibit 37. So, Your Honor, with respect to the
10 independence point, candidly, the debtors believe that ends
11 this inquiry.

12 That being said, the objecting parties, rather
13 than suggesting that Mr. Carr and Mr. Whittman are not
14 independent, which they can't do, as I've just established,
15 the objecting parties, instead, are seeking to demonstrate
16 that somehow Mr. Hart or Rank had development in the debtors'
17 decision-making process, with respect to this DIP, and that,
18 therefore, the process was flawed. That's simply wrong.

19 You probably saw in the pleadings, Your Honor, a
20 lot of the history pertaining to the relationship between Mr.
21 Hart and Rank on the one hand and UCI on the other. And you
22 also heard -- well, there was an attempt to elicit testimony
23 today and you'll see it in the deposition transcripts, as
24 well as in the pleadings, that there were suggestions that CS
25 should or should not have done certain things prior to the

1 petition date.

2 Again, from the debtors' perspective, Your Honor,
3 this history is just irrelevant to the decision-making
4 process pertaining to the DIP. The evidence has demonstrated
5 that the DIP was negotiated by Mr. Whittman and Mr. Carr
6 associated -- assisted by independent counsel; indeed, even
7 today on cross-examination, when counsel for the ad hoc
8 committee was attempting to elicit testimony from Mr.
9 Whittman concerning the sort of last-minute change in our
10 mind to go with the CS/Rank facility versus the priming DIP
11 facility, it was crystal clear in Mr. Whittman's testimony
12 that we were literally engaged in arm's length negotiations
13 up until the moment that we were going to file the priming
14 DIP facility and through the very next weekend. I think for
15 those of us that were involved can say, this was borderline
16 hand-to-hand combat. It was an arm's length negotiated DIP
17 and the evidence is clear on that point.

18 In the end, Mr. Whittman, for the reasons that I'm
19 going to discuss and the reasons that he testified about
20 today, recommended that Mr. Carr select the existing senior
21 lender DIP over the priming DIP, and based upon that
22 recommendation, that's exactly what Carr did. Again, just so
23 we're clear, when Mr. Carr made that determination, Mr. Hart
24 and Rank, and parties associated with Rank, had no role in
25 the selection of this DIP on behalf of UCI, nor did they

1 negotiate this DIP on behalf of UCI.

2 Now, Your Honor, there was some discussion in the
3 pleadings about the appropriate standard that this Court
4 should apply when deciding whether to approve the DIP. There
5 is no question in the debtors' mind that this Court is going
6 to have to determine and will determine that the DIP that we
7 selected is fair, it's adequate, and it's appropriate. We
8 believe that, consistent with other bankruptcy courts, a
9 business judgment standard should apply because a
10 determination was made exclusively by an independent
11 director, exclusively negotiated by Mr. Whittman. Both
12 parties were represented by independent counsel. But at the
13 end of the day, Your Honor, even if you determine that the
14 entire fairness doctrine applies, we believe that we
15 absolutely meet that standard.

16 So let's turn to why the Court can and should
17 approve this DIP facility. From the debtors' perspective,
18 it's quite simple: One, the debtors needed a DIP facility;
19 two, we were able to extract significant concessions for this
20 DIP facility, as it pertains to the shared services, as well
21 as the equipment, the laboratory equipment that you heard
22 about that; and, finally, the debtors were able to avoid a
23 priming fight and the significant business disruption and
24 damage that would result.

25 Let's start with the first: The debtors needed a

1 DIP facility. Immigration advisement testified extensively
2 on this today. Now, we understand that from the committee's
3 perspective, they believe that the outperformance of our
4 original projections in this case suggest that for some
5 reason, we just don't need the DIP. As Mr. Whittman
6 testified today, that performance, in very large measure, was
7 candidly due to timing issues. The debtors didn't need the
8 entirety of their critical vendor basket during the interim
9 period of these cases.

10 Mr. Whittman and his team, which, by the way, as
11 the evidence showed today, were on the ground negotiating
12 with the critical vendors. In contrast to Mr. MacGreevey,
13 Mr. Whittman was on the ground negotiating with its vendors
14 and he had success in deferring payments in those critical
15 vendor negotiations.

16 We also assumed, as we had to in the initial
17 stages of the case, that the factoring arrangements would not
18 continue, and that's because, as Mr. Whittman said today,
19 those factoring arrangements are essentially dictated by our
20 customers and we simply weren't going to have those
21 conversations prior to filing for Chapter 11. So, again, we
22 had to make that assumption in our initial liquidity
23 forecast.

24 But simply because the debtors outperformed their
25 own projections does not mean that this company does not need

1 a DIP facility. As Whittman testified, there are two bases,
2 really, for meeting this DIP facility. One is to address the
3 customer and vendor reaction to the Chapter 11 findings. As
4 Whittman testified, a number of vendors; in fact, I think he
5 said more than 30 vendors, expressed serious concern with the
6 lack of post-petition financing when the debtors filed the
7 cases.

8 Mr. Whittman and his team was able to quiet those
9 concerns because they essentially assured the vendors that
10 not only did we have sufficient liquidity, that we would be
11 filing a motion seeking approval of debtor-in-possession
12 financing, which is exactly what we did. That's how we were
13 able to quiet those concerns.

14 Similarly, Mr. Whittman testified today that
15 customers had expressed concern about the lack of post-
16 petition financing and they're principally concerned with
17 supply chain interruption. If the debtors don't have
18 sufficient liquidity to pay their vendors and vendors stop
19 supplying goods to the debtors, the debtors are unable to
20 produce goods for their customers.

21 As Mr. Whittman testified today -- and, by the
22 way, this testimony has been uncontroverted -- that the way
23 they were able to quiet customer concerns was by assuring
24 their customers, again, that not only did we have sufficient
25 liquidity, but that we would be filing a motion seeking

1 approval of debtor-in-possession financing. And that, once
2 again, Your Honor, is exactly what we did.

3 With respect to the company's liquidity position,
4 Whittman testified today that we need, baseline, at least \$10
5 million during the forecast period. But he also testified
6 today that due to a couple of factors, that number may be
7 conservative. For example, the factoring relationships have
8 been volatile since we have commenced the Chapter 11 case.
9 We know that one factor, if not two, have terminated the
10 relationship. We've got one on hold. We've even had a
11 factor file a reservation of rights to the DIP motion.

12 And as Mr. Whittman testified, there can be no
13 assurance that these factoring relationships will continue
14 into the future. We do not have an order from this Court
15 mandating that the factors continue to purchase our
16 receivables. That's just not the case. And they could go
17 away, at any moment, which is exactly what Mr. Whittman
18 testified we saw, with respect to one of the factors last
19 week. So, again, the factoring relationships, while I
20 understand Mr. MacGreevey's view is that we've had good
21 success and that they will continue in the future; we have no
22 assurance of that.

23 Mr. Whittman also testified that because of the
24 risk profile of this company, he believes that we need the
25 DIP facility to actually support and backstop this debtor

1 during the Chapter 11 cases.

2 First of all, I think, as Mr. Whittman said, look
3 around this room, Your Honor; there are a lot of
4 professionals in here. It is undoubtedly the case that the
5 budget underestimates professional fees -- I'm sorry, Brian,
6 but I think it does -- and that, just given where I see these
7 cases, at least for the near term, will likely continue.

8 Second, and, again, as he said, and I'll quote Mr.
9 Whittman on this. He said, in his experience, Chapter 11s or
10 bankruptcy filings are "not stable situations." So going
11 forward after today without a DIP facility in his view is
12 simply not advisable. And I think none of the restructuring
13 professionals in this courtroom can argue with that
14 proposition.

15 Finally, Your Honor, I think the committee has
16 assumed that the debtors will have unfettered access to cash
17 collateral if the Court does not approve the DIP motion. You
18 saw a preview of this at our first day hearing. You saw a
19 preview of this, prior to the second telephonic hearing we
20 were going to have on the second interim cash collateral
21 order.

22 Credit Suisse has made it extremely clear to the
23 debtors that they would object to the debtors' ability to use
24 cash collateral going forward -- my guess is without some
25 pretty significant controls on that and controls that the

1 committee wouldn't like; my guess is, further, that we would
2 be litigating that usage. So, again, I don't think it's a
3 safe assumption, in any way, that the company will continue
4 to be able to use its cash collateral after today.

5 That brings me to the next business reason that
6 the debtors candidly selected the DIP proposal with Credit
7 Suisse and Rank. You heard a lot today about the shared-
8 services agreement and the laboratory equipment. To be
9 clear, because of termination notices that the debtors
10 received pre- bankruptcy, we have two upcoming terminations.
11 The first occurs on August 1st, which that's in relation to
12 the warehousing that Mr. Whittman referenced in his
13 testimony, and that's a mere three weeks away, and the second
14 occurs on September 3rd, and that's with respect to the joint
15 services agreement.

16 And again, Your Honor, just to pause for a
17 housekeeping matter, because you received the big binders,
18 the termination -- the June 1 termination letter that
19 pertains to the August 1st terminations is proponent's
20 Exhibit 13. The JSA termination letter is Exhibit 10, and
21 the IT services termination, which is also effective on that
22 September 3rd date, is Exhibit 11.

23 The letter agreement that was attached to the DIP
24 motion extends these terminations to October 1st and ensures
25 that the debtors maintain ownership of the laboratory

1 equipment that Mr. Whittman testified to as being so
2 critically important and, candidly, so expensive to replace
3 if we lost that. This letter agreement, as Mr. Whittman
4 said, is, in fact, the most critical reason that the debtors
5 choice this particular facility.

6 I think you heard about, ad nauseam perhaps, why
7 the debtors thought it was so important, so I'm not going to
8 belabor Mr. Whittman's testimony. But what I will say is the
9 following, Your Honor, and this was a critical part of the
10 debtors' analysis in choosing this DIP. To understand the
11 importance of this aspect of the DIP, I would ask Your Honor
12 to put yourself in a hypothetical world where we're not -- we
13 did not select the CS/Rank DIP; where, instead, we selected
14 the priming DIP.

15 First, Your Honor, as light -- parties would like
16 to make light of what a priming DIP fight -- or the objectors
17 would like to -- would look like. I can assure you, Your
18 Honor, if we were here on July 12th on a priming DIP, I would
19 not be making my closing argument right now; in fact, my
20 guess is, I would be making my closing argument right around
21 3:30 on Friday afternoon after Your Honor heard an entire
22 week of valuation testimony.

23 Second, there's been an assumption that in the
24 world where the debtors did not receive the benefit of the
25 letter agreement and the existing senior lender DIP, that we

1 would somehow be able to transition our warehousing services
2 and other services that are purportedly terminated as of
3 August 1st and that we would somehow be able to meet the
4 September 3rd deadline in the other termination letter.

5 To be clear, Your Honor, in the absence of the
6 letter agreement, the debtors fully intended to commence an
7 adversary proceeding, challenging the effectiveness of those
8 terminations and also seeking injunctive relief, with respect
9 to those terminations. That's relief that I'm sure Mr.
10 Graulich will tell you, APH would have vigorously contested.
11 In other words, Your Honor, had we gone down the priming DIP
12 route, we would be in front of you this week, to the extent
13 your schedule would have permitted, with valuation fights and
14 we would have been before you repeatedly during the month of
15 July, trying to seek injunctive relief with respect to the
16 terminations, which the debtors dispute.

17 Entry into the letter agreement saves this Court
18 and the debtors the time and the uncertainty that would be
19 attendant to that litigation. And as Mr. Whittman testified,
20 from a business perspective -- and, by the way, let's just go
21 back into that hypothetical world for a moment with Mr.
22 Whittman. If we were in priming DIP world, Mr. Whittman
23 right now would be, one, defending the business plans that
24 back-stopped the valuation analysis in the priming DIP world,
25 because we know that Credit Suisse and Rank would have,

1 again, vigorously contested our attempt to prime them.

2 He would also be trying to stabilize the business
3 and maintain the customer and vendor relationships,
4 notwithstanding the public battle that would have ensued over
5 the company's business plan and the valuation.

6 And then, finally, he would have had to extend
7 significant resources to transferring the warehousing to name
8 one; the IT services -- because, by the way, the company's IT
9 platform is currently on the platform of a non-debtor
10 affiliate which was subject to that termination notice, so,
11 for example, emails would have ended at the company in the
12 next few months; he would have been expending significant
13 resources trying to transition those businesses to their own
14 stand-alone platforms by either August 1st or September 3rd,
15 whichever is the applicable date with respect to those
16 services, because he would have had no assurance that the
17 debtors would have been successful in their litigation of the
18 efficacy of those termination notices. Again, Your Honor, in
19 my hypothetical world where we didn't choose this DIP, we
20 would have been embroiled in litigation.

21 Finally, Your Honor, as you heard from Mr.
22 Whittman, one of the large reasons that we selected this DIP
23 facility is exactly what I just talked about; it avoided the
24 priming fight. A public fight over the debtors' business
25 plans, which would have been fully visible to the watchful

1 eyes of our customers and vendors, absolutely would have been
2 damaging to this business. We just couldn't afford to do
3 that.

4 So, Your Honor, I guess that brings me to the
5 following: There's one term that I have not used yet and
6 that's the term "roll-up." It's sort of the elephant that I
7 think is sitting in the corner of the courtroom right now,
8 and I'd like to give you the debtors' perspective on the
9 roll-up, and Mr. Whittman testified to this earlier today.

10 In the debtors' view, the roll-up is absolutely
11 subject to the committee's challenge rights. In fact, if
12 there are any holes, with respect to that subject to, we
13 invite them to tell us, because we will clarify it; in fact,
14 they may have found one ambiguity in the definition of
15 acceptable plan of reorganization. And part of the
16 agreements that were reached, that I referenced at the outset
17 of my remarks, actually closed that loophole.

18 So, from the debtors' perspective, there was no
19 harm to the committee and, in fact, to the extent that the
20 committee files an adversary proceeding and is successful,
21 with respect to that adversary proceeding, as it pertains to
22 the prepetition loans, there will be no roll-up at all.
23 That's how broad the carveout is for the committee's
24 challenge rights.

25 Second -- and this is where I think the roll-up

1 comes into play from the objectors' perspective -- as Your
2 Honor knows, the roll-up of prepetition debt essentially
3 means that that debt has to be paid out in cash at emergence.
4 The ability of the company to cram up that debt with a new
5 debt instrument has essentially been foreclosed.

6 From the debtors' perspective, this was a non-
7 issue and Mr. Whittman testified to this. The reason that it
8 was not a fact during our analysis is because, candidly, the
9 debtors have no intention of cramming up this plan on the
10 senior secured lenders and, in fact, fully intend to
11 refinance, in full, the DIP, and would have refinanced, in
12 full, the ABL, at emergence.

13 And the reason for that is simple. As Mr.
14 Whittman testified today, Rank owns APH, and by the time that
15 these cases are over, APH and UCI will be fully separated
16 from each other and APH will be a competitor of this debtor.
17 As a result, in the debtors' view, it is wholly inappropriate
18 for Rank, or any entity affiliated with Rank, to be in the
19 debtors' post-emergence capital structure. So by foreclosing
20 the ability to cram them up, we think it is foreclosing
21 nothing, because we never would have done that to begin with,
22 because it just simply was inappropriate.

23 Your Honor, the milestones, which I think you'll
24 probably hear about from other parties, Mr. Whittman
25 testified that they are achievable. I understand that's

1 still an open point, but the debtors' view is we're going to
2 get a plan on file as soon as we possibly can and are going
3 to drive ourselves to confirmation.

4 So with that, in conclusions, I would say the
5 evidence has been clear. The DIP was vigorously negotiated
6 at arm's length. It was independently selected by Mr. Carr,
7 based upon the independent recommendation of Mr. Whittman.
8 Mr. Whittman made that recommendation, based on very strong
9 business reasons. The debtors believe it's the best
10 alternative for them for financing, which they need, and it's
11 fair and it's necessary to these estates.

12 Your Honor, I'm happy to answer any questions that
13 you may have at this point or I can hand the podium over to
14 another party.

15 THE COURT: Let me hear from those supporting the
16 CS/Rank DIP first.

17 MS. BOELTER: Thank you, Your Honor.

18 MR. ZUMBRO: Good afternoon, Your Honor. Paul
19 Zumbro from Cravath, Swain & Moore, on behalf of Credit
20 Suisse as prepetition agent, and as agent and proposed lender
21 under the proposed DIP facility.

22 As Mr. Boelter described, I believe there's only
23 three issues that remain objections of the official
24 creditors' committee in the case to the DIP that's being
25 proposed today, which is the roll-up, the milestones, and the

1 letter agreement regarding services. I'll cover the first of
2 those two points, and I'll allow Mr. Graulich to cover the
3 third point on behalf of the Rank entities.

4 As it pertains to the roll-up, Your Honor, the
5 debtors need the money. The lenders were unwilling to
6 provide the new money without the protections of the roll-up.
7 The roll-up will not harm the objectors. The ABL lenders are
8 fully secured. The roll-up alters when the ABL lenders will
9 be repaid, not if.

10 We believe that roll-ups are routinely approved in
11 this jurisdiction, particularly where, like here, they
12 involve a revolving credit line that can be paid down by
13 collections of accounts receivable and re-borrowed. The
14 debtors' motion, in Paragraphs 61 to 67, contain an abundance
15 of case law support --

16 THE COURT: Are they --

17 MR. ZUMBRO: -- for the roll-up.

18 THE COURT: Are they written opinions or just
19 orders?

20 MR. ZUMBRO: I think they're mostly orders.

21 THE COURT: Which I don't consider because I don't
22 know if anybody objected to them, or on what bases, so ...

23 MR. ZUMBRO: Fair enough. Nevertheless --

24 THE COURT: And certainly these -- this case is a
25 little different from other cases.

1 MR. ZUMBRO: Recognizing that every case is
2 different, Your Honor, we respectfully urge the Court to
3 consider this roll-up, in this circumstance, is appropriate.

4 Mr. Whittman, the debtors' CRO, testified today,
5 and Ms. Boelter just referred to that, and we agree that the
6 roll-up is fully subject to the creditors' committee's
7 challenge rights.

8 Furthermore, Mr. Whittman testified that the --
9 foreclosing the option to cram up the ABL lenders in this
10 case, going back to what the Court just referred to, we need
11 to think about the particularities of this case, which is
12 that the debtors don't wish to emerge with an affiliated
13 entity, a lender controlled by an affiliated entity, in the
14 case of Rank, being in their exit financing. So I would urge
15 the Court to consider that in this particular circumstance.

16 So the roll-up is an important protection from us.
17 And I think it's fair to say, as Ms. Boelter described it,
18 and Mr. Whittman testified, it's sleeves off the vest, from
19 the debtors' perspective, during this particular
20 circumstance. In light of that, I would respectfully urge
21 the Court not to let the roll-up feature stand in the way of
22 the Court's approving the DIP financing chosen by the debtors
23 here, to the extent the Court is otherwise inclined to do so.

24 Turning to the milestones, Your Honor. The
25 milestones provide six months to get to the confirmation of a

1 plan. Mr. Whittman and the company's, the debtors' CF --
2 CRO, testified today that he believes it's feasible to
3 achieve that milestone. The objectors, in fact, don't
4 complain that much about the milestones because they can't.
5 Our milestones are the same as the ones that they proposed.
6 Mr. Whittman also testified to that today.

7 So the objectors complain about the sale toggle.
8 We believe, Your Honor, that that's a red herring. Mr.
9 Whittman testified today that missing a milestone in the ad
10 hoc proposal gives rise to an event of default, which would
11 give the noteholders the right to exercise remedies. Our
12 facility does not go straight to default, but rather, it
13 toggles to a three-month sale process. It's not a forced,
14 quick sale case that's before the Court today. Our
15 milestones require a sale only if the debtor cannot get to
16 plan confirmation in a reasonable time frame. And if the
17 debtors can't get there in six months, we think the three-
18 month-plus process that is contemplated is sufficient time to
19 allow for an orderly sales process.

20 Your Honor, I -- given the sort of serious and
21 unsubstantiated allegations lodged at Credit Suisse in some
22 of the objectors' papers, I feel the need to pause for a
23 moment. We believe that those allegations are completely
24 irrelevant to the issue before the Court; namely, whether the
25 debtors exercised their business judgment in choosing to

1 enter into the DIP financing proposed by Credit Suisse and
2 Rank.

3 Nevertheless, given the seriousness of the
4 allegations, CS felt compelled to correct the record in our
5 reply, which the Court can find at Docket Number 260, and set
6 forth in detail about why each of CS's challenged actions
7 were completely appropriate and consistent with its rights as
8 an ABL secured lender. I will not rehash those arguments
9 here, unless Your Honor has any questions. But I do reserve
10 our right to reply to any arguments that are raised by the
11 objectors in their closing statements on those topics.

12 In conclusion, Your Honor, we believe this is
13 about the business judgment rule, as Ms. Boelter correctly
14 described to the Court. When we were here the first day, we
15 were not happy with the decision that the debtors had made to
16 start the case with cash collateral use and no DIP; we
17 thought that was the wrong decision. Today, the objectors
18 are unhappy that the debtors have chosen our DIP over the
19 objectors' proposed priming DIP. But the legal standard
20 before the Court is the same. In matters of DIP financing,
21 it is the debtors' business judgment that controls.

22 THE COURT: Even when the DIP is, in part, to an
23 insider?

24 MR. ZUMBRO: It's in -- it's to an insider in its
25 capacity as a lender, completely separate and apart from the

1 approval process that went through an independent director
2 and --

3 THE COURT: No, you're --

4 MR. ZUMBRO: -- a wholly --

5 THE COURT: -- asserting that --

6 MR. ZUMBRO: -- independent CRO.

7 THE COURT: -- you followed the correct procedure,
8 not that it's simply business judgment.

9 MR. ZUMBRO: Correct. I think, though --

10 THE COURT: Otherwise, you wouldn't need an
11 independent director.

12 MR. ZUMBRO: Your Honor, I would submit that there
13 was both a fair process here and a fair result.

14 The insider issue is a bit of a red herring, in
15 our view. Rank came into the ABL facility under entirely
16 appropriate circumstances. It did -- I don't mean to take up
17 Mr. Graulich's argument, which I'm sure he'll make. But
18 there was nothing inappropriate about Rank coming into the
19 ABL facility prepetition. There was no grand plan behind CS
20 assigning a portion of the ABL to Rank.

21 THE COURT: Right. Well, that all goes to whether
22 its fair.

23 MR. ZUMBRO: It's fair. And I don't see how the
24 substance is changed from the perspective of an unsecured
25 creditors, whether legitimate debt, which is subject to

1 challenge by the creditors' committee, can be respected and
2 rolled up and treated as such, on a post-petition basis.

3 In other words, we think the process was fair, and
4 we don't think the creditors' committee, given the fact that
5 they have full and unfettered rights --

6 THE COURT: All right. Well, you're arguing --

7 MR. ZUMBRO: -- to challenge.

8 THE COURT: -- that it's entirely fair.

9 MR. ZUMBRO: Correct.

10 THE COURT: But I really don't think you can say
11 the business judgment rule applies.

12 MR. ZUMBRO: I'll accept the Court's
13 characterization of that, in either case. We think, from
14 CS's perspective, the business judgment rule is a right when
15 you look at it. I take your point that maybe Mr. Graulich
16 might have to go into entire fairness territory. But in
17 either event, we think it's entirely fair, the result, when
18 you actually look through the substance, and you get beyond
19 the histrionics and the sort of name-calling here, as to what
20 actually happened and what the result is on -- or the effect
21 is on unsecured creditors. We think it is entirely fair.

22 THE COURT: Okay.

23 MR. ZUMBRO: And for that reason, Your Honor, we
24 respectfully urge the Court to -- I was going to say "defer
25 to the better business judgment." But I guess I'll modify

1 that to say both defer to the debtors' business judgment, and
2 recognize the entire fairness of what's being presented to
3 you, and approve the DIP facility and overrule all remaining
4 objections.

5 THE COURT: Thank you.

6 MR. ZUMBRO: Thank you, Your Honor.

7 MR. GRAULICH: For the record, good afternoon,
8 Your Honor. Timothy Graulich of Davis Polk on behalf of the
9 Rank entities.

10 Let me actually start -- this is why it's good to
11 bring a pen with you because -- let me start, if I may, to
12 actually answer the question that you had asked Mr. Zumbro.

13 THE COURT: Uh-huh.

14 MR. GRAULICH: As far as we know from looking at
15 the research, there is a single case in which the debtors --
16 in which the entire fairness doctrine was applied to a DIP,
17 and that was in the Dodgers bankruptcy case. And in that
18 case, the owner, Mr. McCourt -- there were no -- there was no
19 independent director, there was no independent CRO, there was
20 no separate counsel, there was no separate financial advisor
21 -- Mr. McCourt made the decision of what DIP to -- that the
22 debtor would put forth to the Court. It just so happened
23 that Mr. McCourt -- I want to say it was something like five
24 and a half million dollars. If he brought any other DIP
25 forward to the Court, he would lose five and a half million

1 dollars.

2 And so, in dicta, by the way, because, actually,
3 the holding of the decision, I believe, is that the Court was
4 not comfortable that the debtor could satisfy Section 364
5 because there was an unsecured credit facility that was being
6 proposed by Major League Baseball. So the Court did make a
7 detour and speak about entire fairness, but it was clearly in
8 the -- well, first of all, it was dicta. But secondly, it
9 was in the context of the fact that there was no
10 independence.

11 THE COURT: Is there any case that you can cite me
12 that says that you don't apply the entire fairness rule to
13 DIPs proposed, or that you only apply the business judgment
14 rule to DIPs --

15 MR. GRAULICH: We --

16 THE COURT: -- proposed by insiders?

17 MR. GRAULICH: We have cited in our brief cases in
18 which insider DIPs have been approved under the business
19 judgment test.

20 THE COURT: But was that issue contested in those
21 cases? Because I didn't see a discussion of that.

22 MR. GRAULICH: Okay. Well, in any event, Your
23 Honor, I think that we're all very -- actually, I think the
24 tests sort of collapse upon themselves because of the ample
25 and undisputed facts that were presented here because, unless

1 the entire fairness test would require the debtor, after
2 going through a completely independent process, to pick a DIP
3 that they think is the least good of two alternatives, then I
4 don't know that it makes a difference what standard is
5 tested.

6 THE COURT: Okay.

7 MR. GRAULICH: So let me also talk about -- and
8 there's, essentially, two things that I wanted to address
9 Your Honor about this afternoon, and one clarification of an
10 otherwise -- and I'm not an easy grader -- a great
11 presentation by the debtors. I wasn't, actually, going to
12 say anything, but I think that it would be appropriate for me
13 to just address two issues; one has to do with the roll-up.
14 You know, why did the -- why do the creditors here need a
15 roll-up? CS has spoken about CS's views, but let me just,
16 you know, express Rank's views because that does seem to be
17 some of the cause for concern.

18 And I would just note, at the outset, that, you
19 know, conventionally, you'd be concerned about an insider
20 maybe being -- you know, going into the capital structure,
21 somehow trying to take control over the process. Here, we're
22 trying to do the opposite, and there's no mystery about what
23 we're trying to do: We're trying to hit the exit, and for
24 reasons that I'll describe in a second. So, instead of
25 trying to further ingratiate and imbed ourselves into the

1 company, we're actually, as part of the separation process,
2 trying to separate altogether.

3 THE COURT: And you're doing that by becoming a
4 DIP lender?

5 MR. GRAULICH: At the end of the case -- at the
6 end of the case, this is assuring that we are going to be
7 paid off in full and exit the scene.

8 As Your Honor would recall, when we first
9 discussed this on the first day, you know, how did Rank
10 become involved in this case to start out with, involved with
11 the ABL to start out with. In the last quarter of -- and
12 this is all undisputed in the record. In the last quarter of
13 2015, CS was in the process of syndicating the ABL. This was
14 a CS ABL in the first instance, could have been sold off to
15 anybody.

16 A significant contract with a significant customer
17 was terminated. Rank was concerned about -- and not for its
18 own purpose, by the way, for the protection of and the
19 stability of the company, even though, either at that point
20 or soon thereafter, it would become clear that there was
21 going to be a change of control here. This wasn't, you know,
22 Rank trying to preserve its equity value. Rank has never
23 been, in any of the negotiations here, trying to preserve its
24 equity value. So it became a lender. It bought, from CS,
25 not from the company, it bought, at par, 65 percent of the

1 commitments under the ABL.

2 What did it get for its trouble? Three months
3 later, there was a draw request, under circumstances under
4 which I think it's at least debatable as to whether or not
5 the company was entitled to draw. We funded; our co-lender
6 did not fund. And that's not by way of casting aspersions;
7 that's by just suggesting that it's not a hypothetical, that
8 there -- a reasonable mind could differ as to whether or not
9 the draw was appropriate. It was pretty obvious from the way
10 it played out that there was a question as to whether or not
11 the draw was appropriate.

12 And again, the coming into the ABL and the draw
13 were both -- and honoring the draw, were both to support the
14 company. We are here today as part of a DIP loan --

15 THE COURT: Well, what about the termination
16 notices; was that to support the company, also?

17 MR. GRAULICH: No. Actually, that is not -- that
18 is -- let me talk about the notices for a second. There are
19 -- I think there are -- let's see. I think there are sort of
20 five uncontested facts about those -- about those notices.

21 The first was that the notices were actually sent,
22 and I don't think anybody disputes that. They were sent and
23 received, and they say what they say.

24 The second fact that's undisputed is that there
25 was a separation plan between UCI and APH that has been going

1 on for months.

2 Thirdly undisputed is that Allen Hugli testified,
3 as part of his deposition -- and this is on -- starts on Page
4 135 of his deposition, and it's part of the designations --
5 that Rank sent these notices in furtherance of that
6 separation plan. In other words -- and in fact, I don't
7 think that anybody seriously disputes the fact that the
8 companies need to separate. There is a dispute about whether
9 or not Rank -- or whether or not the notices provided for too
10 short of a period to separate. But I don't think -- there's
11 no dispute about the fact that the companies needed to
12 separate. And in fact, as Allen Hugli testified, the
13 purposes of these notices was to make sure that the
14 separation plan -- that separation continued to proceed, and
15 not get bogged down by the fact that the company may file for
16 Chapter 11.

17 So it was to achieve a goal that had been in
18 discussion for some period of time before that. And you
19 know, frankly, while there is some -- there was some
20 testimony today about the company having concerns about the
21 termination notices, it wasn't about the fact that the
22 companies needed to terminate; it's more about the time line.

23 And frankly, even on the face, the -- you know,
24 the termination notice that caused the most grief, according
25 to Mr. Whittman, was the one dated June 1st. And frankly, it

1 says on its face about the fact that this was done to, quote:
2 "-- not create undue pressure on UCI to stand alone
3 immediately. And because of that, the discontinued
4 state may be extended from month to month
5 thereafter by mutual agreement of the parties."

6 And so -- and in fact, that is, in fact what
7 happened here.

8 It's also undisputed that the reason -- well, I'll
9 just give the articulated reason, from my position, as to why
10 the notices were sent. But it's also crystal-clear from the
11 testimony that they clearly were not sent in furtherance of
12 any type of scheme to get leverage with respect to the DIP
13 financing that's before Your Honor.

14 I think the record is crystal-clear that Rank
15 believed that negotiations about financing should be separate
16 from negotiations regarding operational separation. That was
17 the position that had been repeatedly taken. It wasn't until
18 the company basically, as you heard Mr. Whittman testified,
19 threatened to prime the lenders that Rank and its affiliates
20 were able to come around with combining two issues that,
21 frankly, they thought were unrelated to each other. It was a
22 concession by Rank. This is, you know, as Mr. Whittman
23 testified, quote, "we blinked." And that's how these issues
24 came to be combined. It's not because there was some type
25 of, you know, conspiracy to send these notices, to try and

1 get a leg up on this motion.

2 And so, you know, everybody's rights are reserved.
3 If people want to, you know, make some point about these
4 termination notices, that's not necessary to be resolved
5 today, in the context of this motion. I think the only
6 question is: Did it affect, in any way, the debtors' -- the
7 sort of cleanness of the process here? And as Mr. Whittman
8 testified, it was at the company's insistence that these
9 issues got joined.

10 And the next thing that actually is undisputed,
11 based upon the operational issues -- and this is the one
12 place where I would take a small, but important, exception to
13 the way the company presented this issue as part of the
14 closing -- is the word "maintain" was used, "maintain
15 ownership" of this lab equipment. There is no maintaining of
16 ownership. The lab equipment is -- but for this letter
17 agreement, is owned by a Rank affiliate, a non-debtor.

18 The debtors also insisted that that equipment be
19 part of a -- sort of an asset swap that was -- that they made
20 as a condition for this DIP financing. That lab equipment
21 has nothing whatsoever to do with the notices. In other
22 words, with or without the notices, the non-debtor Rank
23 companies would continue to own that lab equipment.

24 And so one of the three critical items that Mr.
25 Whittman was sort of -- and the last item that they -- he

1 sort of held out on, in order to get to a deal, actually has
2 nothing to do whatsoever with the termination notices. He
3 managed to negotiate, for the benefit of this estate, a
4 transfer of assets; it was an asset swap. He testified --
5 and there's no contrary evidence -- that the debtors believe
6 they got the better end of that deal. And frankly, in Mr.
7 Whittman's declaration, it indicates, in order to -- in order
8 to replace that equipment, they would need to spend
9 approximately \$3 million per year. So it was a significant
10 benefit that had absolutely nothing to do with the
11 termination notices.

12 So, in sum, these termination notices, Judge, I
13 don't think compel the outcome of the motion here at all.
14 They -- you know, the -- Rank believed they were proper, not
15 surprisingly. The debtors have a different view. There
16 would have been a litigation, if we weren't able to work
17 something out.

18 And you know, essentially, similar to a 9019, we
19 don't necessarily -- we definitely don't need to get to,
20 today, who's right and who's wrong with respect to anybody's
21 legal points. Suffice it to say that there was a dispute
22 that would have -- a dispute that would have resulted in
23 additional litigation that the company wanted to avoid.

24 Just handed up -- if -- frankly, Your Honor, and
25 these are actually in our pleadings. But like, for example,

1 you asked at the beginning whether or not they were decisions
2 with respect to the application of the -- whether or not you
3 could apply the business judgment to a board of directors
4 decision, even though it's dealing with a parent. And I'm
5 reminded that, in Paragraph 22, we cite to a Delaware case
6 that talks about the presence of parent/subsidiary dealings
7 alone will, quote," not invoke the intrinsic fairness
8 standard." Granted, that is not in the context of a DIP
9 motion, though.

10 So, just flipping then back, for a moment, to the
11 roll-up, we're not here, asking for a medal because we're so
12 great that we tried to stabilize the business in December, at
13 the very same time that Moelis is being retained,
14 demonstrating how distressed the company is. We're not
15 asking for a medal, either, that we put in 14 and a half
16 million of new dollars in March, under circumstances where it
17 wasn't clear that we were contractually required to do so.
18 But we also don't believe that we should be treated any
19 differently because we had taken those, or treated any worse
20 because of that.

21 The -- if we were any other lender, I don't think
22 there would be any question about whether or not a roll-up
23 here of an over-secured ABL -- and frankly, Your Honor, there
24 is a stipulation that the witness discussed. Frankly, it
25 doesn't bind Rank or CS, and it doesn't even bind the other

1 parties for anything other than this hearing. But there is a
2 stipulation between the creditors' committee and the debtors
3 with respect to the fact that, as of right now, the ABL is
4 over-secured.

5 THE COURT: So are you agreeing that you're over-
6 secured or not?

7 MR. GRAULICH: Oh, as of right now, we're -- we
8 are over-secured. If we were under-secured, we would not be
9 seeking a roll-up, Judge.

10 We believe -- our concern about priming, just to
11 sort of put it out there, is that, if the type of potential
12 customer dislocation that Mr. Whitman testified about were to
13 happen, at some point in the future, we may go from being
14 secured to under-secured.

15 But right now, we are -- we have no doubt that we
16 are -- that we are over-secured for -- we believe that we
17 would get paid in full, one way or the other, subject to, of
18 course, the committee's challenge period, and that's fully
19 reserved.

20 This is not -- they're -- we're not trying to, you
21 know, limit anybody's rights here about challenging anything
22 or any behavior that somebody wants to look into. All we're
23 trying to do is to make sure that, at the end of this case,
24 when there's likely to be a change of control, Rank has
25 consistently supported this business in the sense of the --

1 you, buying into the -- buying into the ABL, and then
2 advancing money under the ABL, in recognition of the fact
3 that it is the equity owner, and it's no longer associated in
4 this company, it's no longer interested in being a lender on
5 a go-forward basis. And that's why it wants the roll-up.

6 It doesn't want to be a lender to a competitor,
7 that's not its business. It's not a commercial lender. It
8 didn't get into this situation for the purposes of anything
9 other than trying to keep the business together, in an effort
10 to try and facilitate a reorganization. Once that has
11 occurred, once the separation has occurred, we think it's
12 fair, we think it's a reasonable ask, to be assured now that
13 we'll be paid off.

14 And frankly, it's great, what -- you know, it's
15 great that I just said what Rank believes. And obviously,
16 the creditors, the unsecured creditors, probably believe the
17 opposite. But frankly, it's not terribly relevant what
18 either one of us believe. The question is, is what the
19 debtors' judgment here is.

20 And as we've heard, the debtors' judgment is that
21 it is inappropriate -- in fact, I think that was the words
22 that Mr. Whittman used -- it would be inappropriate, at the
23 exit, to have a competitor in the capital structure. And in
24 fact, if this was some type of a cram-up under 1129(b), we
25 would not only be in the capital structure, we would be the

1 largest and most senior creditor in the capital structure.

2 I don't -- it's sort of inconceivable that the
3 debtors are going to be able to successfully go get exit
4 financing to do anything other than take out the existing
5 ABL. And I don't think it's a surprise, as Mr. Keil
6 testified, that the only DIP proposals that came in were, in
7 fact, ones that would refinance out the existing ABL.

8 I think that's why you, frankly, much more than in
9 a term loan, see an ABL roll-up, because the company has made
10 a judgment that has -- that, based upon the revolving nature
11 of the facility, based upon the fact that it's secured by
12 substantially all of the assets, that it -- you either need
13 the consent, or you need to get rid of it, in order to offer
14 those -- that collateral to a new lender.

15 So, at the end of the day, we think that the roll-
16 up is totally appropriate. We're asking for it, not for some
17 nefarious reason; it's pretty straightforward and it's out on
18 the table. We've been in this ABL for all of six months. We
19 went in, not for -- to speculate in the debt. We bought in
20 at par; we'd like to exit at par. We are not in the business
21 of making loans.

22 And we believe that the DIP is appropriate,
23 frankly, under whatever standard the Court applies, but
24 particularly given the very, very clear and strong
25 independence here that is, frankly, uncontested. We think

1 that the DIP motion should be approved.

2 THE COURT: Thank you.

3 MR. GRAULICH: Thank you.

4 MR. MARINUZZI: Good afternoon, Your Honor.

5 Your Honor, the committee -- you've read our
6 papers, obviously, you've seen our arguments. We're opposed
7 to the debtors' entry into this financing facility for a
8 number of reasons that are set forth in the papers. I just
9 wanted to highlight some of the big-picture issues, and talk
10 about some of the matters that were raised during the back-
11 and-forth with Your Honor.

12 Now, if the Court approves the DIP, it will roll
13 up approximately \$70 million of prepetition debt into post-
14 petition debt. The effect of that is obvious, and I think
15 it's intended for that effect, and that's to remove
16 optionality from the debtors' estates when it comes to plan
17 negotiation. To the extent the Court eliminates the ability
18 to negotiate around that point, and the ability to have a
19 cram-up, we've handed all of the leverage over to Rank and to
20 Credit Suisse.

21 Our papers present our view on Rank's behavior,
22 long before this case filed. And the committee is going to
23 investigate Rank's conduct, the things it did and didn't do,
24 as well as the conduct of Credit Suisse, in due time. But I
25 don't think you need to go back through history to see that

1 there are some issues here, as it relates to this DIP
2 financing proposal.

3 Now this isn't like many cases, where creditors'
4 committees stand up, and they ask Your Honor for help because
5 there are egregious positions in a DIP, and it's Your Honor's
6 role to basically push back on the lenders because the
7 debtors have no leverage. We have an alternative here; we
8 have a competing DIP proposal, one that is longer in duration
9 and, in our view, economically cheaper.

10 Now the debtors have given us, essentially, two
11 reasons why they have chosen the Rank/CS DIP over the ad hoc
12 DIP, and those two reasons are the business concerns and
13 wanting to avoid a priming fight and all of the noise that
14 goes along with that. I don't think either one of those
15 reasons, or both of them combined, is justification for this
16 DIP.

17 Now the business concerns. We listened to Mr.
18 Whittman testify, and Your Honor has seen the notices. And
19 I've known Mr. Whittman for a long time, and I find him to be
20 a credible witness. But his testimony was incredible, not in
21 the sense that I don't believe him. I couldn't believe what
22 I was hearing.

23 We have notices from May and June, just before the
24 bankruptcy filing, terminating prepetition agreements, signed
25 by the CEO of the debtor. How does that work? In what world

1 is that okay? Is this the Wild West? What corporate form is
2 that?

3 And no consultation. You heard Mr. Whittman, he
4 was not consulted. The CEO of the debtor, the company where
5 we have a CRO, who reports to an independent director, he had
6 no idea the notices were coming. Nobody said, how much time
7 do you need for this separation. We're supposed to thank
8 Rank for pushing the process along? So we've got this, now,
9 emergency, this business situation.

10 Now let's -- we went into hypothetical world
11 during the debtors' closing. Let's be hypothetical. Let's
12 assume the CEO of UCI took all of the UCI cash and swept it
13 over to one of the Rank entities, and just -- let's just, he
14 had the authority to do it, and he did it. And so they go
15 into bankruptcy; they don't have any cash. Rank says, well,
16 let's do a DIP for you, since you have no cash. They're
17 going to sit there and they're going to say, well, Your
18 Honor, we didn't want to fight, they took the cash, we're out
19 of luck, and so we chose this DIP, and you should thank them,
20 and you should approve this. At what point is too much too
21 much? These are sister companies, with overlapping officers,
22 overlapping directors. I mean, it's tough love, corporate
23 style.

24 Now we also think that the terminations were --
25 forget corporate; they're just wrong. They terminated with

1 three notices. We have a notice that says it's terminated on
2 the date, which the agreement itself says doesn't work. You
3 can't terminate the lease before 2019; that's the earliest
4 effective date of termination. They've chosen their own
5 date.

6 They didn't send a notice of default under the IT
7 services agreement; Mr. Whittman testified, no default notice
8 was sent, which was a precondition to terminating that
9 agreement. I don't know who had corporate authorization to
10 terminate the agreement that was signed by the CEO. There
11 was no consultation.

12 Rather than challenge this, just as I hope the
13 debtors would, if they took a million dollars of their money,
14 or all of their cash, and funnelled it off to a Rank entity -
15 - it's a lot easier not to fight over it, and to just take
16 this DIP with the roll-up. I don't think that's a basis for
17 a roll-up, I don't think that's a basis for this DIP.

18 Now we heard a lot about good faith, arm's length.
19 I lost track of how many times I heard that in the questions
20 and answers with Mr. Whittman. You can't put a bag over
21 someone's head and tell them to negotiate. It isn't simply
22 that they fought. I'm sure they fought. But you can't
23 ignore the stage that was set for the discussions. They put
24 them in a box. And they did the best they could. But you
25 can't fight if you don't have the ability to punch back.

1 They had all of the leverage. And they're trying to complete
2 that leverage play by getting a roll-up of this DIP and
3 eliminating plan options.

4 Now the priming fight. We heard Rank believes
5 they're over-secured. The debtors believe there's enough
6 value to support payment in full of the prepetition debt,
7 plus the incurred thirty-plus million dollars of liquidity
8 that would have been offered in the competing DIP.

9 There could be a priming fight, if the debtors
10 chose to have one. They've chosen, for expediency and
11 efficiency, with a DIP provided by a sister company that has
12 terminated services that the company needs, to go forward
13 with this and avoid a fight.

14 Your Honor, Mr. Whittman testified, there's going
15 to be lots of battles in this case. There are going to be
16 lots of battles. And if the Court gives Rank and Credit
17 Suisse all of the leverage when it comes to plan negotiations
18 because of this roll-up, guess what? There's going to be a
19 lot more fighting because the only way we're going to be able
20 to get anything is through litigation.

21 Now vendors. The priming fight is going to send
22 noise to vendors. Mr. Whittman is going to do a great job,
23 as I know he's capable of doing, no matter what fight is
24 happening; whether it's plan; whether it's because we have a
25 twenty-one-day contested confirmation hearing and we miss the

1 deadline, and the message has to go out to the vendors, don't
2 worry about it, we've negotiated a forbearance agreement. He
3 will do what he is paid to do, and do well, and that's make
4 sure the vendors continue to do business with this company
5 and suppliers continue to share. So I think, from the
6 creditors' perspective, it's really a justification not to
7 have a priming fight.

8 I want to skip through things, Your Honor.

9 Now we heard that there is a fail-safe in the
10 challenge rights that the committee has. That doesn't work.
11 It doesn't work, and here's why it doesn't work, Your Honor:

12 The entity that is providing the financing is Rank
13 Group Financing Holdings, Limited. The entities that sent
14 the notices that we believe engaged in misconduct are
15 different entities. The challenge period and the budget that
16 we agreed to for the challenge isn't a wholesale
17 investigation of all of the Rank entities and the things that
18 they did; it's whether this particular entity properly
19 perfected, et cetera, Credit Suisse properly perfected, et
20 cetera.

21 So, unless they're going to tell us that, somehow,
22 when we get to confirmation or we get to a challenge, that
23 the committee is going to be able to impute to the entity
24 that provided the financing and is getting the benefit of the
25 roll-up all of the conduct of the officers and directors of

1 all of the other closely held Rank entities, it doesn't
2 provide any protection whatsoever. And I can guarantee you,
3 they're not going to make that acknowledgement.

4 Now what standard applies? I think Your Honor has
5 it right, this can't be business judgment. This is entire
6 fairness, it's a higher standard. I was committee counsel in
7 the Dodgers case. I was also committee counsel in the
8 Innkeepers case in New York. Your Honor, there's a reason
9 why there's heightened scrutiny, and we've heard the reasons
10 through Mr. Whittman's testimony, about the relationship and
11 those things that Rank did.

12 Your Honor hit the nail on the head. Were they
13 trying to help the company? They certainly weren't helping
14 the company by terminating those services and putting the
15 company in the position it's in.

16 In a cram-up, the company's position seems to be
17 that we don't -- we want to give up on a cram-up today, as a
18 strategy, even for negotiation around what a plan could look
19 like, knowing they have the option, for a company that Mr.
20 Whittman acknowledged is going to be owned by the creditors.
21 It's our constituency, Mr. Feldman's constituency that are
22 going to own this company when it comes out of bankruptcy.

23 If we choose to have, among our secured creditors,
24 an entity that's a competitor, that's a choice for the
25 creditors to make, not to have the debtors give it up today,

1 on the basis that, to them, right now, it's meaningless.
2 I'll tell you what, to us, it has a lot of meaning, and it's
3 very important.

4 Now at what point does the Court say, this has
5 crossed the line? They've asked for a roll-up, they've asked
6 for these milestones, they've asked for things, they've asked
7 for a lot of things. And to their credit, we negotiated
8 around what I'll call the "smaller stuff," like the budget
9 and the challenge period. But there's still this big issue
10 of how this Court maintains leverage where it needs to be.

11 THE COURT: Well, what about the lien on avoidance
12 actions?

13 MR. MARINUZZI: Your Honor, we've agreed to
14 modifications on the liens on avoidance actions, so it's
15 basically a marshalling, where the -- certain avoidance
16 actions are available to the lenders as a last resort, to the
17 extent that there's not enough value to pay them off in full.
18 We're satisfied with that. It's not ideal, but we're trying
19 to limit the issues. And frankly, the roll-up, to us, is
20 going to have much more of an effect on how this case plays
21 out than a lien on avoidance actions.

22 So, Your Honor, at what point is all of the things
23 we heard Rank did -- and they're not disputing they did it;
24 they just -- you know, look, we wanted to separate, and we
25 thought that this was the right way to do it, and maybe we

1 should have talked to the CRO about how much time they needed
2 to do this, but we've agreed to fix it, and we're fixing it
3 through this deal that gets us a roll-up and puts us in a
4 much better position. This -- if this is okay, if they're
5 permitted to get a roll-up under these facts and
6 circumstances, with this conduct, I don't know a case where
7 it wouldn't be permitted.

8 I mean, I'm reminded of, years ago, when they
9 first talked about instituting drug-testing in Major League
10 Baseball, since we talked about Dodgers, and it reminded me
11 of those days. And a commentator said -- this was years ago,
12 when Sammy Sosa was hitting four home runs a night -- said,
13 drug-testing, just test Sammy Sosa, if he passes, there's no
14 need to test anybody else because they've all figured out how
15 to get around it.

16 Your Honor, if this is the right case for a roll-
17 up and giving the lenders the protections that they're asking
18 for, based on the debtors being put in a box by their own
19 conduct, then it's appropriate everywhere.

20 And so, Your Honor, we would urge the Court, with
21 an alternative that's available, that's better, that has a
22 longer term, better economically, in a case where they don't
23 need money today -- that testimony wasn't about them never
24 needing a DIP. Your Honor, at some point, who knows? Three
25 months, two months, they might need a DIP.

1 The point is, if Your Honor denies this motion
2 today, they're going to be able to make their payroll, so
3 there's no proverbial gun to the Court's head, like we see in
4 many DIP cases, where, if you don't sign the order today,
5 they're going to have to shut off the lights, and they're out
6 of business. that's not this case.

7 And so, Your Honor, we urge Your Honor to stand
8 firm, draw a line, and say, this conduct is not the conduct
9 that this Court is going to sanction for a roll-up DIP like
10 this one. Thank you.

11 MR. FELDMAN: Your Honor, again, for the record,
12 Matthew Feldman, Willkie, Farr & Gallagher, on behalf of the
13 ad hoc committee.

14 Your Honor, a lot has been said. It's been a long
15 day. I'm actually not going to repeat a whole lot of things
16 that have already been put into the record and argued. I
17 think it's been done well enough, and I think the Court
18 understands the issues. I really only want to make three
19 points.

20 Ms. Boelter got it exactly wrong when she said
21 that the ad hoc committee wanted to be the lenders, the DIP
22 lenders, to this company. In fact, the ad hoc lenders have
23 no interest in being the DIP lenders. We're happy for Rank
24 and CS to be the lenders. We just don't like the loan.

25 And there's really only one provision in the loan

1 that is completely offensive, and it is the roll-up. I'm not
2 going to reargue the roll-up. They've said they're over-
3 secured. I'm not sure why we couldn't have had a cramming
4 fight -- I'm sorry -- a priming fight, given that.

5 But I think, Your Honor, what the debtors got in
6 exchange for this roll-up, which was business concessions
7 that were a self-created crisis, self-created by Rank, three
8 business points and basically \$20 million of liquidity, 8
9 million of which the company says it needs, is simply not
10 enough to roll up \$70 million of debt.

11 Whether the company needs 1129(b) rights or
12 doesn't need 1129(b) rights at the end of the case is
13 something that ought to be decided at the end of the case.
14 And with all due respect to Ms. Boelter, again, she doesn't
15 necessarily get to decide for my constituency and for Mr.
16 Marinuzzi's constituency. And frankly, her view about who
17 can be in the ABL on a go-forward basis is irrelevant. Mr.
18 Whittman won't be there, Ms. Boelter won't be there. So the
19 fact that they don't like it today really is of no mind to
20 the Court.

21 The only other point I really wanted to make, Your
22 Honor -- well, I want to make two other points. One is, you
23 know, there's language in the DIP, which is sort of typical
24 for a DIP lender, that the DIP loan -- I'm sorry -- that the
25 plan needs to be acceptable to the DIP lender. That's a very

1 uncomfortable language in this particular case.

2 I'm not suggesting that the Court can't approve
3 the DIP with that language, but it would be helpful to
4 understand, with more particularity and clarity, what that
5 means because, if it means more than you have to pay a DIP
6 loan in cash, then we're going to have a very hard time
7 getting an acceptable plan.

8 And all of the litigation that Ms. Boelter is
9 worried about, Mr. Whittman was worried about, all of the --
10 I don't know, the hypothetical world that they've spun for
11 Your Honor, we're going to have to spin it again because, if
12 the DIP lenders are looking more than for payout in cash of
13 the DIP loan, whether that's the full rolled-up loan because
14 the Court approves it or the much smaller loan, which is what
15 we would urge the Court to approve, we're going to spend a
16 lot of time before Your Honor debating what's a reasonable --
17 I'm sorry, what's an acceptable plan.

18 The final point I wanted to make -- and nobody has
19 made it, Your Honor; it's in the papers, but I want to
20 highlight it -- is that, while I don't question Mr. Carr's
21 independence or Mr. Whittman's independence, what I do
22 question is whether or not the board has actually authorized
23 Mr. Carr to make the decision about the financing.

24 If you go back and look at the June 1st board
25 resolutions, which were attached as an exhibit to our

1 objection -- it's Docket Number 247, it's been submitted
2 multiple times, in multiple ways, I know Ms. Boelter referred
3 to it in her presentation -- you need to read the language
4 because this is a New Zealand based company with New Zealand
5 board resolutions. And there is a provision that says, sure,
6 Mr. Carr can act on behalf of the restructuring, unless this
7 is something, under New Zealand law, that requires the full
8 board.

9 We've asked the company, in writing, not less than
10 four times, what that means. We still await our answer. So,
11 from our perspective, we have no idea whether Mr. Carr had
12 the individual authority, or whether the board did.

13 I think this really only goes to entire fairness
14 versus business judgment. The reality is, sure, the board
15 did not stand up and say to Mr. Carr, don't pick the Rank/CS
16 DIP. But I think it's an open question if the -- I'm sorry -
17 - if the priming DIP could have ever really been filed,
18 without the entire board weighing in on that. And the board
19 remains five Rank-related directors and Mr. Carr; it's a six-
20 person board. So I think the Court needs to be cognizant of
21 that, as well, in looking at what standard ought to apply in
22 its consideration today.

23 With that, Your Honor, I want to thank you for
24 your time, and I have nothing further.

25 THE COURT: Thank you.

1 Response?

2 MS. BOELTER: Thank you, Your Honor. Jessica
3 Boelter, Sidley Austin, on behalf of the debtors.

4 Before I respond to the points that were raised by
5 Mr. Marinuzzi and Mr. Feldman, I just want to correct the
6 record on one point, and that is I agree with Mr. Graulich
7 that, if I did state that we were maintaining the ownership
8 of the laboratory equipment during my opening remarks, that
9 was a misstatement. Truly, that is a transfer of that
10 laboratory equipment back to the debtors.

11 Your Honor, then turning to some of the remarks
12 that were made by, again, Mr. Marinuzzi and Mr. Feldman,
13 first, just focusing on the applicable standard, if entire
14 fairness is the standard before the Court -- and I take your
15 point, Your Honor, that you have very real doubts about
16 whether business judgment applies -- the debtors have
17 demonstrated that this DIP facility was, in fact, negotiated
18 and approved by a completely independent director and a
19 completely independent CRO, advised by completely independent
20 professionals.

21 Under the entire fairness case law, which we cited
22 in our reply brief, this essentially shifts the burden to the
23 objecting parties to demonstrate that the deal before the
24 Court is, in fact, unfair.

25 And the seminal case on that topic, Your Honor,

1 which, again, was cited in our brief, is Kahn v. Lynch
2 Communications, Inc., 638 A.2d 1110 (Del. 1994). And in that
3 case, the Delaware Supreme Court clearly holds that an
4 approval of the transaction by an independent committee of
5 directors or an informed majority of minority shareholders
6 shifts the burden of proof on the issue of fairness from the
7 controlling or dominating shareholder to the challenging
8 shareholder plaintiff. That is the proper standard for the
9 entire fairness doctrine, and that is what is before your
10 Court right now, Your Honor, if you disagree with the
11 business judgment standard.

12 With that in mind, Your Honor, the inequitable
13 conduct, or the alleged inequitable conduct that Mr.
14 Marinuzzi pointed out in his remarks is simply in the past.
15 When the debtors filed these petitions -- and again, those
16 petitions were authorized by Mr. Carr -- we had to deal with
17 the business reality that we were in. And that business
18 reality that Mr. Whittman testified to was that we were
19 facing impending terminations of very critical services to
20 these debtors, and so we dealt with them. We dealt with them
21 by negotiating the best possible DIP facility that we could,
22 and that is the one before the Court.

23 Now Mr. Marinuzzi, I think, in his cash
24 hypothetical, suggests, I think, to Your Honor, that it would
25 be simply as easy as litigating an improper movement of cash,

1 and pushing a button to wire that cash back. That is not the
2 circumstance that we find ourselves in. It is much more
3 difficult for these debtors to not only fight the termination
4 letters, but actually, in the event we potentially lose that
5 fight, transition the warehousing and distribution services
6 that we heard about and the IT services, as well as the host
7 of other services that you'll see when you look at either the
8 joint services agreement or those termination notices. It's
9 just not that easy.

10 With respect to the parties' respective leverage
11 positions and the assertion that the roll-up somehow alters
12 that leverage, again, from the debtors' perspective, we
13 believe the leverage is in the committee's challenge rights,
14 in the litigation, not in putting a competitor in a post-
15 emergence capital structure. And because that we believe, as
16 the debtors, that that leverage lies in that litigation, as I
17 stated before, and as Mr. Whittman testified to, we did
18 everything humanly possible to make sure that the committee's
19 challenge rights are preserved.

20 Now Mr. Marinuzzi calls into question the fact
21 that certain of the entities, for example, that sent the
22 termination notices are different entities than the Rank
23 entity that is actually the lending party with respect to the
24 ABL. He's absolutely right. And there is nothing in the DIP
25 order or the DIP credit agreement that prevents Mr.

1 Marinuzzi's committee from seeking standing to pursue other
2 causes of action against other Rank entities -- Rank-
3 affiliated entities, I should say, or other Rank-affiliated
4 directors and officers.

5 The stipulations in the DIP order, as Your Honor
6 would expect, the release in the DIP order, as Your Honor
7 would expect, and the roll-up that's in the DIP order is 100
8 percent subject to the committee challenge rights, and there
9 is nothing -- no other claims against Reynolds, APH, a Rank
10 director or officer that should otherwise be affected by
11 those documents.

12 THE COURT: So the release is not of Rank
13 affiliates --

14 MS. BOELTER: It's --

15 THE COURT: -- Rank Finance affiliates?

16 MS. BOELTER: It's actually solely in relation to
17 the prepetition ABL facility. So, for example, it would be a
18 release of Rank directors and officers, but solely as it
19 pertains to their involvement in their capacities as such
20 with the prepetition ABL. The debtors are not releasing Rank
21 or any other party with respect to the termination notices.

22 And that release, again, Your Honor, is completely
23 subject to the committee's challenge rights. In fact, if you
24 look at the DIP order, the introductory clause to the
25 stipulations, which is where the releases are also contained,

1 says, "Subject to Paragraph 19 of this order." Paragraph 19
2 of this order is that committee challenge right. And again,
3 Your Honor, if we inadvertently released claims that are not
4 subject to that challenge right, the debtors would absolutely
5 support making that correction.

6 Finally, Your Honor, just to respond to a point
7 that Mr. Feldman made, he calls into question the language of
8 the resolution appointing Mr. Carr, and suggests that,
9 because there is an exception in that resolution for
10 applicable law, it's really not clear what that resolution
11 grants to Mr. Carr.

12 That's a matter that the parties can continue to
13 debate. We, on the debtors' side, think it's pretty clear,
14 and we think that you'll find it clear when you read the
15 resolution. But with respect to the DIP before this Court,
16 there is absolutely no evidence before Your Honor to suggest
17 that any party other than Mr. Carr approved this DIP
18 facility.

19 So, in essence, Your Honor, it doesn't matter what
20 that resolution said. We think it grants him appropriate
21 authority, and the grant of authority to make financing
22 decisions is crystal-clear. But as an evidentiary matter,
23 there is no evidence that anyone other than Carr made the
24 decision, that any Rank director or officer had any role in
25 that decision-making on behalf of UCI.

1 With that, Your Honor, again, the debtors
2 respectfully request that you grant the DIP motion, and if
3 you have any questions, Your Honor, I'm happy to respond to
4 them.

5 THE COURT: No, thank you.

6 MS. BOELTER: Thank you.

7 MR. MARINUZZI: Your Honor, can I just --

8 THE COURT: Briefly.

9 MR. MARINUZZI: One response, I'm sorry.

10 THE COURT: Okay.

11 MR. MARINUZZI: So the problem I have, I
12 appreciate it, and I think the debtors are well-intentioned,
13 trying to provide some level of protection to go after any of
14 the Rank group entities, which, all, by the way, roll up into
15 Graeme Hart.

16 The issue is: The debtors aren't going to concede
17 standing today. I'm sure Rank is not going to concede
18 standing today. So we're going to have a God-knows-how-long
19 trial about the claims to get standing, to bring them, with a
20 plan deadline of 120 days for confirmation in the plan. We'd
21 ask to have a litigation trust, it would not be an acceptable
22 plan to the Rank lender. And so where are we? So,
23 effectively, Your Honor, we're just kicking the can down the
24 road for a problem that we can solve today. Thank you.

25 MR. GRAULICH: Good afternoon, Your Honor.

1 Timothy Graulich, Davis Polk, on behalf of the Rank entities.

2 Just to start where committee counsel left off,
3 and I know that Mr. Feldman mentioned it, as well, if there
4 is an issue with respect to the way an acceptable "plan of
5 reorganization" is defined, we're happy to sit down. We've -
6 - through the course of the day, we've worked out many of the
7 language issues with respect to the committee, and I'm sure -
8 - I'm confident we could do this, as well.

9 There's no "gotcha" that the acceptable plan of
10 reorganization is going to be anything other than what one
11 would accept -- expect, associated with this, which is that
12 the DIP is being repaid, right? So, if there's an issue with
13 respect to language, I mean, we -- I'm confident we can work
14 that out.

15 With respect to the -- and the only other thing I
16 want to say is the observation about all the things that Rank
17 has done, of which I'm not quite sure what that is, it's --
18 there's -- I suspect that all those things are a reference to
19 the termination notices -- then, you know, the floodgates are
20 going to open, and there's going to be, you know, roll-up
21 DIPs everywhere, right? And I would submit that, actually,
22 this case not only doesn't turn on the termination notices,
23 it has very little to do with the termination notices.

24 The important facts about this case, with respect
25 to the roll-up, is:

1 One, no one is claiming that we're not fully
2 secured; therefore, we're going to get paid in full, one way
3 or the other.

4 Two, subject to the challenge, which is going to
5 be fully preserved -- so, if there's some bad act that
6 somebody did, that prevents them from getting paid in full,
7 that's going to be fully preserved for future litigation.

8 And then, thirdly, the question is, okay, well,
9 we're limiting the debtors' optionality. Well, we've heard
10 clearly -- and this is the debtor-in-possession; it's not the
11 creditor-in-possession. The debtor has indicated its
12 judgment that this was an easy trade, a trade that they would
13 do, you know, every day of the week. They're trading away
14 operational certainty, including getting necessary assets
15 that had nothing whatsoever to do with the termination
16 notices, in exchange for giving up 1129(b) rights that they
17 have no intention of using. That's a trade that, you know,
18 if I was on the other side of it, I may not like it, either.

19 The debtors made a lot of judgments. We didn't
20 agree with their judgment about going with cash collateral in
21 the beginning of the case. But at the end of the day, at
22 some point, the debtors' judgment needs to be deferred to,
23 and this is, I think, one of them.

24 The fact of the matter is, is that they're -- it -
25 - I think -- let me just end with this, is that it's -- I

1 take it that the creditors and various unsecured creditors
2 want to continue to -- you know, everybody has used the
3 colorful metaphor: Putting somebody in the box, putting a
4 gun to someone's head -- wants to continue to put a gun to
5 Rank's head about, hey, maybe it's going to turn out that
6 that money that you just put into the company is going to get
7 paid back in a piece of paper, over a long period of time,
8 that you're not going to like, and therefore, we can hold
9 that over your head for -- it -- you know, leverage is what
10 leverage is.

11 But the answer is, is that, when we exercise the
12 leverage, it's not bad; when the creditors exercise leverage,
13 it's not bad. But neither one of our leverage positions
14 ought to dictate the outcome of today. The question is, is
15 the debtors' judgment.

16 And the debtor has testified to the fact -- and it
17 hasn't been controverted -- that the right that they're
18 giving up, associated with the roll-up -- and Mr. Feldman
19 just said the roll-up is the issue here, and we agree that
20 that seems to be what people are most concerned about. It is
21 a concession that the debtors seemingly were very comfortable
22 making.

23 Obviously, it benefits our client, but it could
24 easily have -- you know, I mean, and that's not what's
25 dispositive here, not that it benefits my client; it is that

1 it reflects the debtors' judgment. Thank you.

2 THE COURT: Thank you.

3 All right. Let's take a ten-minute break, and
4 I'll come back and give you my ruling.

5 (Recess taken at 4:35 p.m.)

6 (Proceedings resume at 4:53 p.m.)

7 (Call to order of the Court)

8 THE COURT OFFICER: You may be seated.

9 THE COURT: All right. Let me issue my ruling.

10 I think I must start with what the appropriate
11 standard is, and I think it's the entire fairness standard,
12 not the debtors' business judgment, for a number of reasons,
13 not simply the fact that one of the lenders in the DIP is an
14 insider, but give the history of transactions that have
15 occurred in this case, not simply in the bankruptcy case, but
16 pre-bankruptcy.

17 And I think it's important that I consider all of
18 the history because I agree with the committee's argument, to
19 use my own words: You can't screw up the debtor completely,
20 and then appoint an independent director and make everything
21 all right, by letting the independent director have free
22 reign in doing what it can to clean up the mess.

23 And I think, in this case, I cannot conclude that
24 the DIP is entirely fair. Yes, after the bankruptcy, the
25 process was fair, and I accept that Mr. Carr and Mr. Whittman

1 were both independent, and both made their decisions
2 independent of any untoward influence by Rank, or anybody
3 associated with Rank.

4 But again, I can't start from June 2nd. I have to
5 consider where the debtor was on June 2nd, as a result of
6 what occurred pre-bankruptcy. And specifically, the
7 termination of the various agreements -- or attempted
8 termination of the very shared services agreement and the
9 warehouse lease. And there are some arguments that the
10 debtor has, arguments to assert that those notices were
11 defective, et cetera.

12 But I think, even in the absence of that, the fact
13 that those terminations were sent were clearly not in the
14 best interests of the debtor, even if they had been fully
15 effective, and there was no way to undo them. I think,
16 having sent those notices makes this entire process unfair,
17 and I just can't get beyond that.

18 This is not the case where I think I can approve a
19 roll-up of an insider debt, and that's where -- that's really
20 where I am. I might have been forced to approve that, if
21 there weren't other options. There are other options here:
22 Use of cash collateral, another DIP proposal, revisions to
23 this DIP.

24 The debtor is not in a position where it needs a
25 DIP today. The debtor has successfully operated for the last

1 five weeks, has exceeded its projections, not simply because
2 of timing of receipts and payments. The debtor has made
3 agreements with vendors, has been able to retain, in large
4 part, its factory. I think that the debtor has the time to
5 continue to work on what is an acceptable alternative to this
6 DIP, or to revise this DIP, so it would otherwise be
7 acceptable to the parties. And I urge the parties to
8 continue to talk about that.

9 There is nothing wrong with the milestones.
10 There's nothing wrong, in principle, with the roll-up. There
11 is nothing wrong with solving the debtors' operational
12 problems. It's just that, in the context of this case, I
13 can't say that the result has been achieved through a fair
14 process.

15 So I'm going to suggest that we continue this
16 hearing to an acceptable date, rather than enter an order.
17 And I'll hear from the parties what they think that
18 acceptable date could be.

19 MS. BOELTER: Your Honor, for the record, this is
20 Jessica Boelter, Sidley Austin, for the debtors.

21 The current interim cash collateral order has a
22 sunset date of July 15th, and then it officially terminates
23 five days thereafter, so July 20th. What I guess I would
24 propose, Your Honor, that we take a few days to caucus with
25 the parties-in-interest; I think everyone needs to speak with

1 their clients, and come back before you, telephonic or
2 otherwise, maybe in a couple of days, you know, Thursday or
3 Friday of this week.

4 THE COURT: All right. Oh, it's Friday. I do
5 have -- I'm here all week, and I'm here next week.

6 MS. BOELTER: Okay.

7 THE COURT: But I do have a long-planned vacation
8 starting July 22nd, so ...

9 MS. BOELTER: So maybe we should get in on
10 Thursday, rather than Friday, of this week.

11 THE COURT: That would be fine.

12 MS. BOELTER: Okay.

13 THE COURT: I'm available -- Thursday, I have no
14 hearings; Friday, I do have hearings in the morning. But I
15 will make myself available.

16 MS. BOELTER: Why don't we propose a -- maybe a
17 telephonic hearing during the morning, Thursday morning?

18 THE COURT: The 14th?

19 MS. BOELTER: Yes.

20 THE COURT: Okay. 10:30 work for the parties?

21 MR. MARINUZZI: That's fine, Your Honor. Thank
22 you.

23 THE COURT: Okay. I'll set -- I'll continue this
24 for a telephonic status update on Thursday at 10:30 then.

25 MS. BOELTER: Thank you, Your Honor.

1 THE COURT: Does anybody else -- Mr. Morton.

2 MR. MORTON: And Your Honor, just to note, we'll
3 just simply file a notice on the docket to that effect, just
4 one page of it, that indicates it's been continued as to the
5 DIP.

6 THE COURT: That's fine.

7 MR. MORTON: All right. We'll stand adjourned
8 then.

9 COUNSEL: Thank you, Your Honor. Thank you, Your
10 Honor.

11 (Proceedings adjourned to 7/14/16 at 10:30 a.m.)

12 (Concluded at 5 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the
electronic sound recording of the proceedings in the above-
entitled matter.

/s/Mary Zajackowski July 12, 2016
Mary Zajackowski, CET**D-531

/s/ William J. Garling July 12, 2016
William J. Garling

/s/ Coleen Rand July 12, 2016
Coleen Rand
Certified Court Transcriptionist
For Reliable

EXHIBIT 28

SUBJECT OF MOTION TO SEAL

EXHIBIT 29

SUBJECT OF MOTION TO SEAL

EXHIBIT 30

SUBJECT OF MOTION TO SEAL

EXHIBIT 31

SUBJECT OF MOTION TO SEAL

EXHIBIT 32

SUBJECT OF MOTION TO SEAL

EXHIBIT 33

SUBJECT OF MOTION TO SEAL

EXHIBIT 34

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

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

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1 (Proceedings commenced at 1:05 p.m.)

2 THE COURT: Okay. Good morning, oh good morning.

3 Good afternoon everyone. I wish it were morning. This is

4 Judge Kaplan and we'll be hearing the Multi-Color

5 Corporation, et al., matters. This isn't an entirely remote

6 hearing. I'll let parties adjust their screens as the Court

7 does itself.

8 I see a lot of familiar faces. Unfortunately, even

9 faces from yesterday. It's been a hectic week.

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

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

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

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

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

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

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

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

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

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

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

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

7 THE COURT: Let me just address that.

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

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

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

18 THE COURT: All right.

19 MR. SERAJEDDINI: Good afternoon, Your Honor.

20 THE COURT: Good afternoon.

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

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

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

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

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

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

18 MR. SERAJEDDINI: Great. Thanks, Your Honor.

19 So, Your Honor, Multi-Color is the global leader and
20 world's largest prime label provider. The company employs over
21 12,500 individuals with over 90 facilities in 25 countries and
22 generated approximately 3.1 billion of revenue. Your Honor,
23 this is a very large company.

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

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

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

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

19 Now, Multi-Color is the product of a company that
20 started in 1916. Over the years, it's grown and evolved
21 through numerous acquisitions as well as organic growth. Most
22 recently, that includes the labels division of Constantia in
23 2017, which kind of gave us a much larger European footprint,
24 as well as WS Packaging to further boost and bolster our label
25 offerings domestically.

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

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

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

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

1 structure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 The RSA also includes additional DIP financing of
11 roughly 657 million. That breaks out into a few different
12 categories. There's 250 million of new money DIP loans.
13 There's a one-to-one roll-up here in terms of \$250 million of
14 secured claims that are going to be repaid with DIP claims.
15 There's \$7.5 million backstop premium and then there's roughly
16 150 in incremental new money loans that don't have economics
17 and are really, for the purpose of implementation, at the back
18 end of the case.

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

1 hugely important and valuable for our business.

2 Your Honor, as I mentioned, the restructuring support
3 agreement and the plan that it embodied was the best option
4 that was available to the company. It has the aforementioned
5 reduction in debt in the business. It provides for almost 900
6 million of new money capital, will provide us with over 550
7 million of liquidity at closing, cash savings of approximately
8 350 million in debt service obligations, and a seven-year
9 maturity runway, which in my experience is relatively
10 unprecedented in large Chapter 11 cases in terms of the
11 maturity of the new debt.

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

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

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

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

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

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

1 THE COURT: I have just some clarification questions.

2 MR. SERAJEDDINI: Sure.

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

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

9 THE COURT: Okay.

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

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

15 THE COURT: Okay. Good. That helps.

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

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

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

4 All right. Let's go to the agenda.

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

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

9 The first would be the joining --

10 MR. BENNETT: Your Honor?

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

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

14 Do you still need the PowerPoint up?

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

16 THE COURT: All right.

17 There.

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

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

24 MR. BENNETT: Yes, Your Honor.

25 THE COURT: There's some feedback.

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

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

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

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

9 Please turn the rest of them off.

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

11 Okay. Your Honor, can you hear me?

12 THE COURT: I can. Thank you.

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

14 THE COURT: Yes. Yes, I can.

15 I guess the question is if you can hear me.

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

17 THE COURT: Okay.

18 MR. BENNETT: Thank you, Your Honor.

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

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

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

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

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

6 THE COURT: There we go, okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Thank you.

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

17 Mr. Cohen.

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

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

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

1 argument today.

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

4 Welcome, Mr. Schrock. Good to see you.

5 MR. COOPER: Thanks very much, Your Honor.

6 THE COURT: And anything else at this point?

7 MR. SCHROCK: Nothing further from me, Your Honor.

8 We just wanted to introduce ourselves from Latham & Watkins.

9 I've also got my colleagues with me, just very briefly.

10 Candace Arthur, Ryan Dahl will be with me here today also

11 handling argument. And we are very pleased to be before you.

12 We're looking forward to moving these cases forward. We are

13 one of the plan sponsors, and as Mr. Serajeddini mentioned, the
14 largest creditor of these estates.

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

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

17 Counsel from Kramer, I believe.

18 MS. SADIGHI: Good afternoon, Your Honor. Sheila

19 Sadighi with my colleague, Frank Catalina, of Rolnick Kramer

20 Sadighi.

21 THE COURT: Rolnick Kramer, yes.

22 MS. SADIGHI: We are here with our co-counsel, Mark

23 Stancil, and (audio skip) of Willkie Farr & Gallagher on behalf

24 of the Excluded First Lien Lenders. That is the other group

25 that has put in an objection, Your Honor, that's filed at

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

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

7 We appreciate, Your Honor, hearing them today.

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

11 Welcome, Mr. DiPompeo.

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

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

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

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

25 All right. Mr. Serajeddini.

1 MR. SERAJEDDINI: Yes.

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

4 MR. SERAJEDDINI: Thank you, Your Honor.

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

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

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

22 THE COURT: All right. Thank you, Counsel.

23 Mr. Bennett?

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

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

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

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

13 THE COURT: All right. Thank you.

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

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

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

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

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

18 You still have, Mr. Bennett, your hand?

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

1 here.

2 THE COURT: Objections noted.

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

5 MR. SERAJEDDINI: Thank you.

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

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

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

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

18 THE COURT: All right.

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

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

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

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

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

11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Sponder.

13 Mr. Serajeddini.

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

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

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

3 THE COURT: Thank you.

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

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

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

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

24 Thank you, Your Honor.

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

1 haven't we? Much easier. All right.

2 MR. SERAJEDDINI: All right.

3 THE COURT: Thank you.

4 MR. SERAJEDDINI: Thank you, Your Honor.

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

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

15 THE COURT: All right.

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

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

24 MR. SERAJEDDINI: Understood.

25 THE COURT: Thank you.

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

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

6 THE COURT: All right. Thank you.

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

13 THE COURT: All right.

14 Any objections?

15 (No audible response)

16 THE COURT: Motion granted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 come back and address the objections.

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

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

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

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

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

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

17 THE COURT: Yes, I can.

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

23 THE COURT: Great. Thank you.

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

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

1 Honor.

2 THE COURT: Great. Thank you.

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

12 THE COURT: That's acceptable. Thank you.

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

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

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

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

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

25 THE COURT: All right.

1 Let's start with each of them.

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

6 (No audible response)

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

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

11 MR. MCGUSHIN: Thank you, Your Honor.

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

14 THE COURT: All right.

15 Mr. Koza.

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

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

22 MR. MCGUSHIN: Yes.

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

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

25 MR. KOZA: It says "Debtor Witness."

Koza - Direct/McGushin

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

3 MR. KOZA: How are you?

4 THE COURT: Fine. Thank you.

5 Let me have you raise your right hand.

6 ERIC KOZA, DEBTORS' WITNESS, SWORN

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

8 THE WITNESS: There is not.

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

11 THE WITNESS: No, just my declaration.

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

14 MR. MCGUSHIN: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. MCGUSHIN:

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

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

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

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

Koza - Direct/McGushin

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1 A Since July of last year.

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

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

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

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

21 A We wouldn't make it next week.

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

Koza - Direct/McGushin

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1 A Yes, generally, I am.

2 Q And at a high level, how do the fees and costs available
3 or proposed under that alternative DIP compare to the fees and
4 costs under the DIP the debtors are here seeking approval of?

5 A The high level terms, interest rate, and other fees OID,
6 are lower in the Jones Day, you know, DIP, vis-à-vis the DIP
7 that we have now. However, important to note is, there is no
8 clarity on path to exit with respect to that DIP. And as a
9 result, you know, it could be significantly more expensive
10 given the timing associated with a lack of a path and exit with
11 respect to a Chapter 11.

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

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

16 MR. BENNETT: Mr. Bennett, Your Honor.

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

18 Q Just to put a number on things, Mr. Koza, if we assume
19 approximately a four-month case about how much would the
20 debtors save in fees and interest under the alternative DIP as
21 compared to the DIP in front of the Court today?

22 A I think it's somewhere around ten to 10-15 million
23 dollars. But I think really important to note is our
24 expectation is every month that these cases just simply we're
25 probably going to be burning between 15 and 20 million dollars

Koza - Direct/McGushin

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

3 Q And what is your --

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

6 THE COURT: Overruled. Thank you.

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

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

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

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

25 A Yeah. The business plan was developed with the

Koza - Direct/McGushin

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

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

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

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

Koza - Cross/Bennett

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1 Q Thank you.

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

4 THE COURT: All right, thank you.

5 Mr. Bennett?

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

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

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

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

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

16 CROSS-EXAMINATION

17 BY MR. BENNETT:

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

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

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

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

3 A I did.

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

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

9 Q So, you --

10 A That was the work I did.

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

13 A Sure.

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

16 A I did not.

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

20 A I did not.

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

24 A Can you repeat the question? Sorry.

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

Koza - Cross/Bennett

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

3 A Yes.

4 Q How is the DIP loan to be repaid?

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

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

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

13 A Sure.

14 Q -- together. Okay.

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

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

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

25 A No, it does not.

Koza - Cross/Bennett

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

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

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

6 A Correct. That's what I see here.

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

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

12 Q Let me repeat it one more time.

13 A Sure.

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

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

22 MR. BENNETT: I have no further questions.

23 THE COURT: Thank you, Mr. Bennett.

24 Any redirect?

25 MR. MCGUSHIN: Briefly, Your Honor.

Koza - Redirect/McGushin

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1 REDIRECT EXAMINATION

2 BY MR. MCGUSHIN:

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

6 A Yes.

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

8 A Of the roll-up or -- yeah.

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

10 A Yes. Sorry. Go ahead.

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

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

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

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

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

22 MR. KOZA: Thank you.

23 (Witness Excused)

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

1 THE COURT: Yes, I can. Good afternoon.

2 MR. GREENBLATT: Thank you, Your Honor.

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

6 THE COURT: All right. Thank you.

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

9 MR. BANKS: Good afternoon.

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

11 MR. BANKS: Good, thank you.

12 THE COURT: All right.

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

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

17 MR. BANKS: I do.

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

20 THE WITNESS: No, there's not.

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

23 THE WITNESS: Just my declaration.

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

Banks - Direct/Greenblatt

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1 Mr. Greenblatt, you may examine.

2 MR. GREENBLATT: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. GREENBLATT:

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

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

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

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

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

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

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

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

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

Banks - Direct/Greenblatt

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

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

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

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

13 A Yes.

14 Q And who were those two constituencies?

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

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

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

Banks - Direct/Greenblatt

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1 A Really commenced in October --

2 UNIDENTIFIED SPEAKER: (Indiscernible).

3 THE COURT: Why don't we just take a second.

4 Continue, please.

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

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

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

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

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

25 A That is correct.

Banks - Direct/Greenblatt

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

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

13 You know, contrast that with the, you know, Cross-Holder
14 Group proposal that, while, again, being very close to being
15 actionable, provided, you know, less de-levering, approximately
16 450 million, runway through the end of 2028 and not necessarily
17 a comprehensive solution.

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

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

Banks - Direct/Greenblatt

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

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

4 A There is.

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

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

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

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

19 A I do.

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

22 A We did.

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

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

Banks - Direct/Greenblatt

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1 years of similar size.

2 Q And again, what was your conclusion from these
3 comparisons?

4 A That the terms of the DIP facility were within the market.

5 Q Okay. Did you and Evercore ultimately recommend to the
6 debtors that they pursue the DIP contained in the RSA?

7 A We did.

8 Q And what were your reasons for recommending this?

9 A We believe that this, you know, provides the best path, a
10 swift path for the company to emerge from this bankruptcy
11 proceeding. So, therefore, you know, the DIP, the RSA,
12 provided great certainty for the company in an uncertain period
13 for itself.

14 Q And why do you believe this DIP provides a clear exit
15 path?

16 A Because it's supported by the Secure Creditors -- well,
17 over 72 percent of the Secure Creditors.

18 Q And now, briefly, on the Cross-Holder DIP proposal, have
19 you reviewed the terms of the Cross-Holder proposal from
20 Sunday, January 25th?

21 A I have.

22 Q In a vacuum, how do these terms compare to the terms in
23 the secured lenders DIP that you just described?

24 A In a vacuum, you know, there's a larger amount, 350 to
25 500. The interest rate is lower, and the fees are lower.

Banks - Direct/Greenblatt

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

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

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

10 A We did.

11 Q And what did you do with it?

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

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

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

23 A We did.

24 Q Can you describe that marketing process briefly?

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

Banks - Direct/Greenblatt

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

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

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

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

19 A We did not.

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

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

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

4 A I do.

5 MR. GREENBLATT: No more questions. Thank you.

6 THE COURT: Thank you, Mr. Banks.

7 Let's hear from Mr. Bennett.

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

10 CROSS-EXAMINATION

11 BY MR. BENNETT:

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

14 A I do.

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

17 A I'm here.

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

21 A I do.

22 Q Okay. Is that correct?

23 A I believe it is.

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

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1 was provided to the parties, did you not?

2 A I did.

3 Q And some of that extensive due diligence information was
4 provided to the Cross-Holder Group?

5 A It was.

6 Q All right. And you understand that when I use the word
7 crossover work, you're referring to -- I'm referring to the
8 Canyon and others in that group, correct?

9 A I understand. Correct.

10 Q Okay. All right. And so, all the due diligence
11 information that you gave to people, was it reliable?

12

13 A To the best of my understanding, yes.

14 Q Look, did you find any inaccuracies in any of the due
15 diligence material you reviewed?

16 A Sitting here today, to my recollection, not that I can
17 think of.

18 Q Okay. And the trial balance for all of the entities at
19 multiple dates, that was one of the important due diligence
20 disclosures, wasn't it, Sir?

21 A I believe a trial balance was disclosed, yes. So, to say
22 it was provided in diligence, I think that's fair.

23 Q Okay. And were there any inaccuracies in that document at
24 all, to the best of your knowledge?

25 A I have not reviewed that specific document in detail, so

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1 hard for me to say.

2 Q Did any person on your staff transmit to you any
3 indication that anything in the trial balance documents were
4 inaccurate in any way?

5 A I don't know.

6 Q Well, so I'm going to ask the question again.

7 A Yeah.

8 Q Can you remember any occasion where any person on your
9 team, any of the people at Evercore, communicated to you that
10 anything in the trial balance reports was inaccurate in any
11 way?

12 A I do not recall receiving that information or that
13 notification.

14 Q So, when you collected information from the company, did
15 you ask for the company to make sure that the information that
16 you gave you was accurate and complete in all respects?

17 A I mean, I would describe it, we worked closely with the
18 Alix team and with the company to provide diligence information
19 that we believe to be accurate.

20 Q Okay. So did anyone at the company at any time
21 communicate to you that there were any inaccuracies in any of
22 the trial balance reports?

23 A I do not recall ever being told there was inaccuracies.

24 Q And same question with respect to Alix, Sir?

25 A I do not recall.

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

4 A Sure.

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

7 A That's correct, yes.

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

10 A Sure. That's correct.

11 Q And you've been analyzing and understanding spreadsheets?

12 A Sure. Yeah, correct.

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

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

19 Q Okay. Are you comfortable reviewing credit documentation?

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

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

24 A In some capacity, yes.

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

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1 people, correct?

2 A Correct.

3 Q And you signed your declaration, correct?

4 A I did.

5 Q Okay. Did you write it?

6 A I worked with the assistance of counsel to prepare it.

7 Q Did you prepare the initial draft?

8 A I did not.

9 Q Okay. Did you make any changes to the draft that was
10 given to you?

11 A Yes.

12 Q What changes did you make?

13 A I do not recall sitting here today, but a variety of
14 changes, you know, related to the process, et cetera.

15 Q Changes related to the process; do you remember any
16 changes related to the process that you made?

17 A Well, just to provide more detail on what we've done,
18 provide more detail on my professional experience, provide more
19 detail as to how, you know, the last 12 months unfolded.

20 Q Okay. Are you aware that a disclosure statement was sent
21 to creditors of Multi-Color on Tuesday, January 28, 2026?

22 A I am aware, yes.

23 Q And did you review the disclosure statement before it was
24 transmitted to creditors?

25 A I did, yes.

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

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

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

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

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

12 A That's correct.

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

15 A That is correct.

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

18 A Yes, last Friday, yup.

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

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

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

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

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1 Q Okay. Do you recall when the first time you saw a paper
2 showing any terms for a DIP loan for Multi-Color?

3 A Well, we began discussing the DIP at some point early in
4 January.

5 Q All right.

6 A Yeah, go ahead.

7 Q Did the company or a creditor representative prepare the
8 first term sheet you saw relating to a DIP loan for Multi-
9 Color?

10 A You know, it was left unaddressed for some period of time.
11 I believe the first proposal was made by the Secured Group of
12 creditors in our back and forth.

13 Q And when did that proposal arrive on your doorstep?

14 A I don't recall. Sometime in January.

15 Q Was it before January 23rd?

16 A It was.

17 Q Was it a week before January 23rd?

18 A I don't recall exactly when the DIP terms were negotiated
19 and when we first saw a DIP proposal as part of the broader
20 transaction term sheet.

21 Q Okay. Isn't it true that the Cross-Holder Ad Hoc Group
22 sent Evercore a note asking to be included in a debtor's DIP
23 marketing process?

24 A That is correct.

25 Q Do you know when the Cross-Holder Ad Hoc Group indicated

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

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

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

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

13 A That's correct.

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

18 A That is correct.

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

21 A That should be the case, yes.

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

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

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

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

5 A Can I just see the response?

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

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

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

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

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

17 A That's correct.

18 Q You were in charge, correct?

19 A That's correct.

20 Q Okay. Do you know how Evercore responded?

21 A I don't recall.

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

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

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

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

6 A Correct.

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

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

13 A I do.

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

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

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

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

23 Q Okay.

24 MR. BENNETT: We can take that down now.

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

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1 hadn't started yet, it's not accurate, correct?

2 A Can you pull up the email again, please?

3 Q Sure.

4 A I interpreted this to say, in connection with our DIP
5 marketing process, we intend to solicit all participants, which
6 included your group. We had not done so yet, but at this time,
7 we had conversations with third parties at a high level, and on
8 Saturday afternoon, you know, we had distributed DIP materials
9 to third parties.

10 Q So, why were the words, any DIP marketing process, as
11 opposed to the DIP marketing process, or the ongoing DIP
12 marketing process? What was intended there?

13 A Tough for me to speak to the intent. I don't recall
14 exactly.

15 Q But this document doesn't say, we started a DIP marketing
16 process yesterday, does it?

17 A No.

18 Q It doesn't say, we started a DIP marketing process
19 yesterday and would be thrilled if you could join it, does it?

20 A It does not, no.

21 Q It suggests that something might happen in the future,
22 doesn't it?

23 A It does.

24 Q But it was already going on beginning the day before,
25 correct?

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1 A Correct. We're having discussions.

2 Q Okay.

3 MR. BENNETT: Could you take that down, please?

4 Q Do you know when the debtors advised, or the debtors or
5 Evercore, or through Evercore, advised the Ad Hoc Group that a
6 marketing process had started?

7 A We did not speak with Guggenheim, the advisors to the
8 Cross-Holder Group, until Sunday with respect to the DIP
9 marketing process.

10 Q And what do you remember about that message?

11 A We were not yet signed up to the RSA. You know, from our
12 perspective, we wanted to be sure that the company had a
13 solution to the liquidity need at the end of the month, and
14 therefore, we continued with our competitive process, but felt
15 like we needed to share with the Guggenheim team what the DIP
16 marketing materials were.

17 Q Okay. Why don't we put up Hayes Declaration Exhibit 3,
18 please? Is this the transmission of DIP materials to
19 Guggenheim by your office?

20 A It is.

21 Q And you received this email, correct?

22 A I did.

23 Q Okay. And this is sent on Sunday, January 25th at 1:59
24 p.m. Eastern Time, correct?

25 A I can't tell. That number looks blotched out, but I'll

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

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

5 A Okay.

6 Q 48 hours after Guggenheim first asked, correct?

7 A That's correct.

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

10 A That's correct.

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

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

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

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

22 Q Did anything else important happen on Sunday, January
23 25th, in this case?

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

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1 Q It did enter into the RSA?

2 A Yeah, correct.

3 Q Didn't the RSA require the debtors to accept the DIP
4 proposal that was made by CDR and the other senior lenders?

5 A The DIP proposal was an integral part of the RSA.

6 Q Let me ask the question again. Did the RSA that was
7 signed on January 25, 2026, on the very same day you started a
8 DIP process with the Cross-Holder Group, include a provision
9 requiring that the debtors adopt the DIP proposal from CDR and
10 the DIP lenders?

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

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

18 THE COURT: Overruled, to that extent.

19 A Yeah, the RSA was entered into on Sunday. It was an
20 integral part. I suppose entering into the DIP connection with
21 the RSA, you know, would not surprise me.

22 Q Okay. Well, why don't we take a look, just as you aren't
23 surprised in the future?

24 A Okay.

25 Q We're going to look at page 19 of the RSA, which appeared

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

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

8 A Okay, I'm done.

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

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

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

19 A That's correct.

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

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

24 Q More than 95?

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

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1 this purpose, yeah.

2 Q Okay. Did you tell anyone that you'd already accepted a
3 DIP proposal when you signed the RSA?

4 MR. BENNETT: You can take that away.

5 A What we communicated to third parties was that we were
6 close to signing an RSA. We had not done it yet. I don't
7 recall going back to, as an example, the third-party lenders
8 and telling them that the RSA was signed.

9 Q What did you tell them?

10 A The third-party investors?

11 Q Yeah.

12 A That, you know, obviously we've been speaking with these
13 folks for the last several months, that we were soliciting a
14 DIP facility. We requested, you know, their willingness to
15 fund on a priming basis, on a junior basis, as well as junior
16 to the, you know, non-U.S. ABL collateral and, you know,
17 certain unencumbered properties, and that, you know, we were
18 close to an RSA, but not finalized. So, it was that speech.

19 Q It wasn't exactly accurate, was it?

20 A Well, we didn't communicate this until -- this was
21 communicated Friday, it was communicated Saturday, et cetera.
22 And then, we waited to see what, you know, kind of responses we
23 got, and we chased throughout the day, Sunday and Monday.

24 Q Okay. And what did you tell the Cross-Holder Group?

25 A I believe we told them we were interested in, you know, a

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1 similar proposal that we told the other third-party lenders.

2 Q Do you recall how the Cross-Holder Group responded to the
3 invitation to participate that they received on that Sunday?

4 A I believe in eight hours, the same day, the Cross-Holder
5 Group provided the company with a junior DIP against that, you
6 know, same ABL collateral that we were just discussing a moment
7 ago.

8 Q A junior DIP, correct?

9 A Correct.

10 Q Okay, no priming, correct?

11 A I believe that's correct. I mean, they were taking
12 currently unencumbered collateral, but yeah, generally
13 speaking, it was a junior DIP on the U.S. and non-U.S.
14 guarantor entities.

15 Q Did the Cross-Holder Ad Hoc Group provide all of the
16 information that the debtors in Evercore requested in its
17 request for a proposal?

18 A With respect to the RFP we put out there, I believe that
19 to be the case. They provided the key economic terms, et
20 cetera, information about the financial covenant, et cetera.
21 So, yes.

22 Q And were you given a copy of the response?

23 A Yes, I believe I received the response directly.

24 Q Okay. Why don't we put up Hayes Exhibit 4, please, and go
25 to the first page. And same offer; if you want to go down

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

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

6 A I'm finished.

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

11 A No, not on Sunday.

12 Q Not on Sunday. Why not?

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

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

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

23 Q And were you involved in making that request?

24 A I was.

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

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1 we're already committed, but we're still curious?

2 A I do not recall saying that, no.

3 Q Okay. Why don't we take a look at what you did say?

4 A Okay.

5 Q Hayes Exhibit 7, please. This time you sent it?

6 A Correct.

7 Q Monday at 11:10 p.m.?

8 A 11:10 p.m.

9 Q All right.

10 A Looks right to me. Yeah.

11 Q Yup, pretty late in the day.

12 A Yeah.

13 Q Another whole day gone. Okay. You'd signed the RSA
14 sometime the day before. Okay. "Thanks, Brendan. As
15 discussed in our call earlier today, we're evaluating your
16 client's DIP proposal. However, as you're aware, the quantum
17 of the proposed filing is uncertain in light of the range
18 included in your proposal." The proposal range was what?

19 A I believe it was 350 to 500 of new money.

20 Q Yeah. And how much new money is committed under the DIP
21 that you're sponsoring?

22 A The Secured Group and the plan sponsor, you know, are
23 providing 250 million of new capital.

24 Q Okay. And that was acceptable to you?

25 A Correct.

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

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

6 Q That comes later.

7 A Okay.

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

10 A It is not.

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

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

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

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

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1 Q Okay. But you don't say here, we've already signed an
2 RSA?

3 A I do not. No.

4 Q But you're still pestering them for more information,
5 correct?

6 A Yes, we were pestering them.

7 Q You're trying to suggest that your process is still
8 ongoing, aren't you?

9 A I didn't -- I don't think we're trying to suggest
10 anything. I think we were genuinely interested in what their
11 proposal was and wanted to educate the Special Committee on
12 what this plan sponsor proposal was.

13 Q But you were already committed?

14 A We had signed the RSA on Sunday, correct.

15 Q Why don't we just take a look at Exhibit 8 very quickly
16 for completeness. Is this the response you received to your
17 inquiry?

18 A It is. Sorry, I'm just reading it.

19 Q That's okay.

20 A Right.

21 Q And that was pretty prompt, right? You sent your response
22 at 11-something p.m. the prior night, and Brendan Hayes gets
23 back to you at 9:13 the next morning, right?

24 A It was the next morning, sure. So prompt, that works.

25 Q Okay. Now, the disclosure statement mentions many

1 pre-petition events, doesn't it?

2 A It does.

3 Q And -- but the disclosure statement, well, let me ask you
4 this way. Does the disclosure statement mention that the
5 Cross-Holder Ad Hoc Group offered an alternative DIP loan?

6 A I don't recall. My declaration does. I don't recall if
7 the disclosure statement includes that.

8 Q Okay. Now, we're going to shift gears a little bit. Do
9 you know that the debtor's plan that was sent to all creditors
10 on Tuesday, January 27th, provides, has provisions concerning
11 how the DIP loan will be paid under the plan?

12 A That sounds right to me.

13 Q How is it paid under the plan?

14 A The \$257-million portion of the DIP will be, you know,
15 repaid in cash. The DIP roll-up, the \$250 million DIP roll-up
16 will be converted into take-back debt on the company
17 post-emergence.

18 Q Okay. And you understand that the roll-up portion is not
19 a new money loan to the debtors, correct?

20 A Correct.

21 Q Okay. So, now we're going to confine ourselves to the new
22 money loan part of the DIP and the fees connected with it. The
23 debtor's proposal, which has other elements, is basically that
24 it will borrow cash that the debtor needs for its operations
25 during the Chapter 11 case, and it will pay back those loans

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1 with interest and fees in cash when the case ends, correct?

2 A That is correct.

3 Q Okay. Do you agree that it makes absolutely no difference
4 to the debtors as a financial matter who loans the cash and who
5 the debtors pay back?

6 A Well, I think it matters only insofar as the key advantage
7 of the DIP that we had from the Secured Group was the clear
8 path to emergence, and therefore, you know, what we believe is
9 the best path for the company to emerge from bankruptcy in a
10 short period.

11 Q Okay. I heard your testimony about clear path to
12 emergence. I'm asking an additional question.

13 A Sure.

14 Q As a pure economic matter concerning the DIP, do you agree
15 that it makes absolutely no difference to the debtors as a
16 financial matter who loans the cash and who the debtors pay
17 back when we're dealing with a loan that requires an advance of
18 cash and requires the repayment of cash?

19 A Looking in isolation at only who provides the loan, I
20 don't think it matters now.

21 Q Do you have any basis to doubt the creditworthiness or
22 ability to perform of any member of the Cross-Holder Ad Hoc
23 Group that have delivered commitments to make a financing to
24 the debtors?

25 A I have no reason to doubt their ability to fund.

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1 Q Has Evercore provided that advice to the company?

2 A We had a discussion with the Special Committee where we
3 talked about the benefits of the secured proposal versus, you
4 know, the Cross-Holder Group proposal, and I don't think at any
5 point did anyone doubt the ability of your client's ability to
6 fund here.

7 Q Okay, now I want to turn to the disclosure statement a
8 little bit to cover some structure points.

9 A Okay.

10 Q We're going to start on Page 31. And so I understand that
11 there's an ABL and we're not talking about that. I understand
12 that there's a cash flow loan and that it's similar to the
13 secured notes, but I don't want to bother talking about that
14 separately if I don't have to. If you want me to, I will.

15 And then there's what the Debtor calls secured notes and
16 unsecured notes in Paragraph 3 and 4 here. Are you familiar
17 with these paragraphs?

18 A Generally speaking, yes.

19 Q Okay. And do you know if they contain any inaccuracies as
20 far as you're concerned?

21 A Would you mind if I read them quickly?

22 Q No, I don't. And frankly, I only am interested in the
23 sentences and secured notes that start kind of near the bottom,
24 "The secured notes are guaranteed" and everything that follows
25 it. And with respect to the unsecured notes, I'm only

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

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

5 Q Yes.

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

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

9 A Yeah.

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

14 A Okay.

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

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

23 Q Not at all.

24 (Pause)

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

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

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

5 A Yeah, understood.

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

7 A Yeah, me too.

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

11 A I do.

12 Q Do you think that's true?

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

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

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

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

21 A I don't know the answer to that.

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

25 A The calculations performed by Evercore were done in

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

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

8 A Uh-huh.

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

13 A Uh-huh.

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

17 A I believe that to be the case, yes.

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

21 A I did not, no.

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

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

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1 statement.

2 Q Okay. What did Alix tell you about this issue, if you can
3 remember?

4 A So my recollection was that the security in the company,
5 you know, the guarantors, the U.S. guarantors, included things
6 like intercompany receivables as an example as part of the
7 intangibles and, therefore, was picked up in collateral for
8 purposes of this calculation. And intercompany notes.

9 Q Did you read any collateral descriptions in any loan
10 documents?

11 A I did not, no.

12 Q Do you know whether or not it's true that only two-thirds
13 of the shares of the foreign subsidiaries are pledged to secure
14 the secured debt?

15 A I have a general understanding that, yes, that to be the
16 case.

17 Q Okay. Is it true that the Debtors own real property?

18 A It is true, yes.

19 Q Isn't it true that none of the Debtors' own real property
20 is pledged to secure the secured debt?

21 A That is my understanding, yes.

22 Q Okay. Do the Debtors lease real property in the United
23 States?

24 A I believe they do, yes.

25 Q And they have something like 35 separate facilities,

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1 correct?

2 A I'll take your word on it. That sounds directionally
3 correct. I don't know, to be honest with you.

4 Q Is it more than 20?

5 A I believe that's the case, yes.

6 Q Okay. And so all of the Debtors' U.S. facilities sit on
7 owned or leased real property, correct?

8 A Would you mind repeating the question? I'm sorry.

9 Q Is it the case that all of the Debtors' U.S. facilities
10 sit on owned or leased real property?

11 A I believe that is the case, yes.

12 Q Do you know if any Debtor has executed any leasehold
13 mortgages for any U.S. property?

14 A I do not know.

15 Q Did anyone ever show you a leasehold mortgage applying to
16 any of the Debtors' U.S. properties?

17 A I do not recall that ever being shown to me.

18 Q Did anyone ever refer to any leasehold mortgage being
19 executed with respect to any of the U.S. properties?

20 A I don't recall.

21 Q Do you know what a fixture is?

22 A An improvement to a building and the like.

23 Q It's something attached to the building.

24 A Yeah.

25 Q Of all the machinery used by the Debtors in their

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

3 A I do not.

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

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

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

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

15 Q What did they tell you, sir?

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

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

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1 Debtors' machinery is equipment, did you?

2 A I don't recall discussing that, no.

3 Q And you know that there are several financings of
4 leasehold improvements and, I guess for lack of a better word,
5 machinery that's also on the Debtors' balance sheet, correct?

6 A I don't know that to be true, but I'll take your word for
7 it. There's been a lot of leasing activity over the past 12
8 months.

9 Q I don't want to take your word for everything, and I need
10 to build a record. So why don't we go back --

11 A Sure.

12 Q -- to the disclosure statement.

13 A Okay.

14 Q And I think I want to go pretty close to where we were
15 before.

16 A Okay.

17 Q Why don't we take a look at Page 33 of the disclosure
18 statement, the very next page. Finance leases and other funded
19 debt. Respecting the Court's interest in trying to expedite
20 things --

21 A Yeah.

22 Q -- I want to note that it's equipment leases -- if you can
23 stay with me.

24 MR. BENNETT: And, Your Honor, if you want me to slow
25 down, please tell me.

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1 THE COURT: No, I'm with you.

2 BY MR. BENNETT:

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

6 A I see it, yep. Makes sense.

7 Q Hear this before?

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

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

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

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

18 A Yes. Finance leases on the buildings, yes.

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

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

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

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1 A Not specifically, no.

2 Q Okay. And you note that this too is a sale and master
3 lease agreement, correct?

4 A Correct.

5 Q Any part of this a senior notes collateral package?

6 A I don't know for certain, but I would be surprised if it
7 was.

8 Q Okay. Last paragraph, second master lease agreement,
9 three lines from the bottom -- actually, I'm sorry, at the very
10 bottom, 72 million. Did you ever hear of this one?

11 A Not specifically, but same answer.

12 Q And the secured notes don't have a lien on this property,
13 do they?

14 A I don't know for certain, but I'd be surprised if they had
15 a lien on this.

16 Q Okay. Are you aware that the loan -- or strike that.

17 Did anyone make you aware that the loan documents for the
18 secured debt also exclude other property that would otherwise
19 be covered by a broader grant of collateral?

20 A My understanding is real property in the U.S. may be
21 excluded. That's the one thing that comes to mind.

22 Q Are there other exclusions?

23 A I'm sorry, in the collateral package of the secured notes
24 is the question?

25 Q Yes.

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

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

7 A Not that I can think of at the moment.

8 Q Okay.

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

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

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

18 THE WITNESS: Understood.

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

21 THE WITNESS: I'll sit here quietly.

22 THE COURT: All right.

23 MR. BENNETT: Thank you, Your Honor.

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

25 THE WITNESS: Thank you.

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

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

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

7 THE COURT: You're welcome.

8 BY MR. BENNETT:

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

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

16 Q Did you prepare the recovery estimates?

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

19 Q Okay. Did you review the final results?

20 A I did.

21 Q Did you sign off on the final results?

22 A I believe I did, yes.

23 Q And you stand by your company's work?

24 A I do.

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

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1 we can go look at the document if we need to for --

2 A Okay.

3 Q -- any particular one. But again, I'm trying to abide by
4 the Judge's wishes that we wrap up.

5 A Okay.

6 Q But, unfortunately, I've got a lot to do. You're aware
7 that the disclosure statement and plan sizes the secured claim
8 of the secured debt at roughly 1.952 billion. Is that true?

9 A I believe that's true.

10 Q And again --

11 A That sounds right to me.

12 Q -- if you have any doubt, we can look at the document.

13 A Okay.

14 Q Okay. Was that amount calculated assuming that the
15 secured debt was collateralized by substantially all of the
16 assets of the Debtors?

17 A No.

18 Q Okay. What was the assumption made in -- what were the
19 assumptions made -- well, let me start from the beginning.

20 A Sure.

21 Q How did you calculate the number?

22 A We started with the midpoint of the Evercore valuation
23 range, 3.15 billion. We reduced, you know, the amount by the
24 company's drawn ABL, by the DIP facility and the roll-up, as
25 well as the capital leases, I believe.

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1 Q Okay. So when you determined the 3.15 billion number,
2 that was a total business value, wasn't it?

3 A The 3.15 was the midpoint of the valuation range.

4 Q For the -- was --

5 A For the enterprise value of the company.

6 Q For the enterprise value of the company?

7 A Yes.

8 Q Doesn't that necessarily conclude all of its productive
9 assets?

10 A It does.

11 Q And doesn't that include its necessary cash balances in
12 order to operate its business?

13 A It does.

14 Q It includes everything it needs to run its business,
15 whether it's collateral or not, correct?

16 A That is correct.

17 Q Okay. So if it turns out that the secured debt is not
18 secured by substantially all of the assets of the Debtors, this
19 number is not correct?

20 A I don't think that's necessarily the case.

21 Q Is it -- well, is it necessarily still correct?

22 A In the arrival of that claim, you know, the methodology
23 that we used was to reduce value from the DIP as an example,
24 which you know includes unencumbered collateral.

25 Q Okay. But it was the -- I was talking about the 3.15

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1 billion --

2 A That's true.

3 Q -- the first number.

4 A Okay.

5 Q And you testified that the first number includes every
6 single business asset of the company and the cash needed to run
7 the business. Is that correct?

8 A Yeah. It's the enterprise value of the business.

9 Correct.

10 Q Is there anything else I'm missing? Is that everything
11 that's in enterprise value?

12 A That should be it.

13 Q Okay. So you didn't exclude any property, any
14 unencumbered property from that calculation whatsoever?

15 A Look, working with the other advisors, we did not exclude
16 any other property. No. We started with the enterprise value
17 of the company.

18 Q Okay. And you started with something about other
19 advisors? What is it about other advisors that I need to know?

20 A We worked with the Kirkland team and the Alix team to put
21 this analysis together.

22 Q And they agreed with your methodology? Or did you not
23 tell them about your methodology?

24 A No. We discussed the methodology.

25 Q Okay. Okay. So next, you had to calculate -- well, you

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1 didn't directly calculate, but it was the result of your
2 calculations. And, again, we will look, if you want to look,
3 that the unsecured deficiency claim of the secured creditors is
4 \$1.992 billion. Correct or incorrect?

5 A That sounds correct to me.

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

9 A I don't think that's correct.

10 Q Okay.

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

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

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

23 Q Exactly.

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

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1 confirm that at the moment.

2 Q Okay. Do we have those for -- well, we'll get to them.

3 You know something, we'll have a chart with it later.

4 A Okay.

5 Q But you agree that that's in the right ballpark, correct?

6 A That should be in the right ballpark.

7 Q Okay. And the DIP proposal includes a one-to-one roll-up

8 of 250 million of prepetition debt held by secured creditors.

9 Is that correct?

10 A That's correct.

11 Q Okay. And the debt being rolled up is a portion of the

12 secured debt that includes both the secured and the unsecured

13 portion, correct?

14 A The debt being rolled up both in the methodology that we
15 used in purposes of preparing this disclosure statement to
16 reduce the value of the company and also reduce the claim. So
17 for purposes of calculating that Class 4 claim, it comes off
18 the top and the bottom, if that makes sense.

19 Q Okay. So let me just make sure I understand that with
20 some numbers.

21 A Yeah.

22 Q Okay. If the disclosure statement estimated a recovery of
23 41 percent, which was the lower end of the range, for any
24 roll-up, and the roll-up would be paid in full, meaning 100
25 percent --

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1 A Yeah.

2 Q -- would you agree with me that the difference is 59
3 percent of the claim?

4 A Yeah, assuming that math is right, I agree.

5 Q Okay. And at the higher end of the range, if we're
6 starting with a recovery of 50 percent before the roll-up, and
7 the roll-up will then be paid in full in cash, as we learned,
8 will you agree with me that the difference is 50 percent of the
9 claim?

10 A Yeah, assuming that number is correct again, yes, I agree.

11 Q Okay. So I wish I could give you a calculator, but you're
12 probably pretty good with numbers. The low end of your range
13 for secured creditors involves a 59 percent uplift on the claim
14 as a result of the roll-up. That's \$147.5 million, isn't it?

15 A Say that one more time, please.

16 Q If we start out with an estimated recovery on secured
17 claims, both the secured and unsecured portion, of 41 percent,
18 roll it up so that it's going to get paid 100 cents. The
19 uplift is 59 percent, and 59 percent of 250 is 147.5.

20 A That sounds correct, yes.

21 Q Okay.

22 A Assuming that 41 percent number is correct.

23 Q Right. And that comes, and your math showed, 100 percent
24 out of the height of unsecured creditors.

25 A Again, I don't know that that's coming out of the

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

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

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

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

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

17 Q And that includes CDR.

18 A That does include the plan sponsor.

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

23 A Correct.

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

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1 A It does not, no.

2 Q Did you calculate it before you prepared your declaration?

3 A You know, we considered the cost of the roll-up generally,
4 that there would be a cash cost to the company and that we
5 would be rolling up claims of impaired secured creditors, yeah.

6 Q That wasn't my question. In colloquial terms, did you run
7 the numbers?

8 A We did run the numbers on the recovery of the secured
9 creditors in a somewhat different way because we gave them
10 credit for the roll-up, you know, but we did, you know, yes,
11 consider that.

12 Q When we get the board package before the final hearing, is
13 it going to include a calculation of the value of the roll-up?

14 A It will not, no.

15 Q And it won't calculate the value of the roll-up that
16 benefits CDR, does it?

17 A It will not, no.

18 Q Don't you think the board should know those kinds of
19 numbers?

20 A Look, I think from the company perspective, it was an
21 attractive DIP facility and, again, provided a path to
22 emergence. And the DIP is a feature that we see relatively
23 frequently in this market. The DIP roll-up, excuse me, I said
24 just the DIP.

25 Q And can you name a single one of the cases that you

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

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

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

9 A That specific number, no.

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

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

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

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

22 Q But this increase in recovery to the secured creditors of
23 147 million -- excuse me, this uplift for the roll-up creditors
24 of \$147.5 is material to them, isn't it?

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

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

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

5 A Yeah.

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

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

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

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

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

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

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

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

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1 A I don't know specifically sitting here today.

2 Q But here there is?

3 A I suppose that depends on what the unencumbered collateral
4 is and what is left.

5 Q There is some damage to unsecured creditors. You just
6 don't know how much.

7 A The DIP being provided by the secured lenders or by your
8 group both encumber currently unencumbered collateral. So I
9 don't know the calculation would be different across either.

10 Q Oh, really? I'm going to give you one chance to
11 reconsider that answer.

12 A Okay.

13 Q Is there a roll-up in the proposal by the unsecured
14 creditors?

15 A There is not, no.

16 Q The numbers that we just calculated are 40 percent small
17 if we're just focusing on the effect of the interim roll-up,
18 correct?

19 A That should be correct, yes.

20 Q So the interim roll-up is still more than \$100 million
21 under the low case, correct?

22 A Again, depending on what the unencumbered collateral is.

23 Q We're talking about \$100 million today, aren't we? I'm
24 talking about to the roll-up benefit today, January 30th.

25 A Yeah, I think it depends on what the unencumbered

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1 collateral is.

2 Q I didn't ask that part. I asked is there a benefit to the
3 roll-up creditors of more than \$100 million on your low case
4 for value today?

5 A Again, it depends on what is unencumbered and what is
6 benefitting the roll-up.

7 Q Okay. Is the roll-up getting an uplift of more than \$100
8 million if the interim order is entered today?

9 A It depends on what the unencumbered collateral is and what
10 the uplift is accordingly.

11 Q I'm just looking at the roll-up piece. You calculated the
12 recovery based upon substantially all assets at 41 to 50. The
13 difference was 147.5 for the full 250. All I'm asking is, is
14 what's 60 percent of that?

15 A Yeah.

16 Q You're good enough to do that.

17 A Yeah, but again, I think if you're saying we're taking
18 away from the unsecured, the theoretical uplift could --
19 amongst secured creditors, yes. Amongst secured creditors, one
20 could look at the 30 percent and say that's the uplift.

21 Q So it's almost \$100 million on your low case.

22 A Well, again, from a secured lender perspective, 70 percent
23 is shared, obviously. There would be uplift for the 30 percent
24 that is not shared.

25 Q Okay, but if you look at all of them together -- I'm sorry

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

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

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

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

16 A Okay.

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

19 A Okay.

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

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

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

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

3 MR. GREENBLATT: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. BENNETT:

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

7 A Okay.

8 Q That's only, only \$125 million uplift for the entire 250.

9 If only 150 is approved today, how much of the 125 is going to
10 hit the roll-up creditors, whether they're the 30 or the 70?

11 It's 60 percent of 125, isn't it?

12 A I believe that to be the case.

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

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

17 A The uplift calculations, no.

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

21 A No.

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

24 A Honestly, like, we're just doing this live, so no. We're
25 --

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

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

7 Q And you never had a conversation on the other side, the
8 \$125 million, to the effect of you guys are getting at least
9 \$125 million of uplift with respect to the rolled-up portion,
10 whether it's the 30 percent or the 70 percent, and that's a lot
11 you ought to take less. No conversation like that?

12 A No.

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

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

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

20 A Okay.

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

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1 (Pause)

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

3 Q Do you see any mistakes?

4 A No.

5 Q Okay.

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

8 Q Right. I understood that.

9 A Yeah, okay.

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

12 A Sure.

13 Q And 50.2, but --

14 A Yeah.

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

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

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

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

23 Q All right. We'll move on.

24 A Okay.

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

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

3 A Does the DIP term sheet in the RSA?

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

6 A Okay.

7 Q You're right.

8 A I don't know.

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

12 A No.

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

15 A I did.

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

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

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

25 THE COURT: Repeat the question.

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1 BY MR. BENNETT:

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

6 THE COURT: You can go ahead and answer.

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

11 BY MR. BENNETT:

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

16 A I do not know.

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

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

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

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

3 MR. BENNETT: Pass the witness, Your Honor.

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

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

8 THE COURT: All right.

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

11 REDIRECT EXAMINATION

12 BY MR. GREENBLATT:

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

16 A I do.

17 Q Okay.

18 MR. BENNETT: Objection. Leading.

19 THE COURT: Overruled.

20 BY MR. GREENBLATT:

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

23 MR. BENNETT: Objection. Asked and answered.

24 THE COURT: Overruled.

25 THE WITNESS: We did value the whole company.

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1 BY MR. GREENBLATT:

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

4 A We did.

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

7 A They did.

8 Q And did they allocate the recoveries?

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

10 THE COURT: Overruled.

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

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

18 THE COURT: Mr. Bennett?

19 MR. BENNETT: No -- no more questions.

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

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 (Witness excused)

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

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

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

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

10

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

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

19 THE COURT: Absolutely.

20 MR. BENNETT: Okay.

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

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

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

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

6 MR. GOLDFINE: Great. Thank you.

7 THE COURT: You're welcome.

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

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

11

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

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

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

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

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

1 I'd prefer to hear an oral argument first.

2 MR. BENNETT: Okay.

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

4 MR. SERAJEDDINI: Good afternoon again, Your Honor.

5 THE COURT: Good afternoon again.

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

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

12

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

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

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

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

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

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

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

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

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

1 notion of what that path might be.

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

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

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

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

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

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

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

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

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

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

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

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

1 the RSA proposes.

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

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

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

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

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

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

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

15 And to the extent Mr. Bennett is trying to, once
16 again, preserve some kind of re-characterization argument under
17 506, he's free to assert at confirmation that any of those
18 adequate protection payments should reduce the amount of the
19 secured claims on account of the fact that they're
20 undersecured. He's free to do that.

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

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

3 THE COURT: Thank you, Counsel.

4 We'll start with Mr. Bennett.

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

8 THE COURT: There you are.

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

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

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

1 the mouth of counsel in argument.

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

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

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

1 important features of this Chapter 11 case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And then we saw that they've separately financed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 then started talking about.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 And you see underneath that, we talked about the fact
8 that it gets improved by somewhere between 50, which is the
9 49.8, and 59 percent, which my defective rounding on, you know,
10 58.3. And then in the lower right hand corner, that's the
11 percent uplift. And then we calculated on the right hand side,
12 highlighted in yellow -- well, it's on mine it's highlighted
13 yellow, it's in a red box on yours, Your Honor, is the 146 and
14 125 numbers.

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

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

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

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

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

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

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

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

1 second.

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

6 So, I'm going to review the evidence. On January
7 23rd, 2026, the first time the Cross-Over Group understood the
8 debtors were evaluating filing for Chapter 11. Guggenheim
9 contacted Evercore to express the Cross-Holder Group's interest
10 in providing a DIP facility and requested the materials.

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

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

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

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

3 And this, this e-mail, Mr. Banks tried to
4 reinterpret. Steve, In connection with any DIP marketing
5 process. What do you mean any DIP marketing process? On the
6 24th, there was a DIP marketing process. Any DIP marketing
7 process suggests there wasn't one yet. The company intends to
8 solicit DIP proposals from all key stakeholders.

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

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

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

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

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

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

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

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

25 We have proved that their disclosure statement

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

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

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

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

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

9 39 is -- I think I've covered already. So, I'm
10 almost done. There's a lot more wrong with this case, Your
11 Honor. There's certain things that are distributed to classes
12 under the plan. But, frankly, there are more categories of
13 value, rights, and property that are being distributed to other
14 people outside of the class system. And it has the effect of
15 creating distinctive treatment to people in the same class.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 THE COURT: It's still Friday?

9 MR. STANCIL: -- two main --

10 THE COURT: Go ahead.

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

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

1 about here.

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

11 Moreover, if there's any reference, I'm going to try
12 to make their argument for them, and maybe they're thinking
13 when they said exchange, that this has something to do with
14 11.6(g) of the credit agreement. That applies only to open
15 market or other private negotiated purchases. This is not a
16 purchase. This is definitely not an open market. The simple
17 fact is it's a pay down of debt and they have to do it pro
18 rata.

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

1 arguments.

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

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

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

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

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

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

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

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

18 So, what are we really talking about as the cash
19 backstop here? If every single non-RSA first lien lender says,
20 I want the cash, not the term loan, they'd have to backstop
21 \$350 million of cash. Okay? And for that, they're going to
22 pay themselves \$125 million of new term loan. That is
23 outrageous.

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

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

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

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

10 THE COURT: All right.

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

12 THE COURT: Yes.

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

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

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

19 THE COURT: Good evening.

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

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

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

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

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

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

23 THE COURT: Right.

24 MR. FLECK: I'd encourage him to be. But, that's his
25 call. So --

1 MR. MOSS: Yeah. I'll have a few things to add, Your
2 Honor and Evan, when we get there.

3 THE COURT: All right. Well, let me get to that side
4 of the table in a couple of moments.

5 Mr. Walsh, too, what side are you coming down on.

6 MR. WALSH: We're co-counsel with the Secured Ad Hoc
7 Group, Your Honor. So, I just wanted to introduce Mr. Fleck
8 and his colleagues from the Milbank firm.

9 You know, and based upon Your Honor's comments at the
10 outset of the case welcoming all the attorneys to New Jersey,
11 when it's his turn to speak, I will just let Mr. Fleck handle
12 it. Thank you, Your Honor.

13 THE COURT: All right. Thank you. Well then, it
14 looks like we're ready for the flip side. So, let me go back
15 where I started. Mr. Dahl?

16 MR. DAHL: Thank you, Your Honor. And for the
17 record, Ryan Preston Dahl of Latham & Watkins on behalf of the
18 CD&R entities. And also with me is Mr. Schrock. There are a
19 number of things to respond to directed towards my clients.
20 I'm certainly not going to restate all the points raised by Mr.
21 Serajeddini.

22 I want to say at the outset, there is probably no
23 bigger fan of Bruce Bennett in this courtroom than myself.
24 He's a tremendous lawyer. He's a tremendous advocate for his
25 client. And he is a tremendous story teller, as any good

1 advocate should be.

2 But, there are certain instances where the stories we
3 would like to tell are not consistent with the facts. And
4 they're certainly entertaining, but they are not the facts.
5 And I think in many substantive respects, that is the case
6 here.

7 Because stepping back, the question for the Court is
8 fundamentally, whether the debtors have exercised their
9 business judgment in pursuing the DIP that is presented for
10 approval, as opposed to the alternative that Mr. Bennett is
11 advocating for.

12 And here, I'm going to pick up Mr. Bennett's
13 endorsement of LA Dodgers, where, and I quote, "Debtors
14 correctly posit that courts will almost always defer to the
15 business judgment of a debtor in the selection of a lender,"
16 end quote. And I'll come back to Mr. Bennett's point about why
17 apparently the business judgment rule shouldn't apply here.

18 But, to that point, what we've heard a lot about are
19 frankly in the light most favorable to the competing proposal.
20 Big relative differences between the two proposals. Whether
21 one proposal is a hundred basis points better than that
22 proposal. Whether the debtors are within their rights to pick
23 a proposal that provides a path to an exit than another
24 proposal.

25 These are quintessential business judgments. And I

1 don't think there was any dispute there. But, what I think we
2 do take issue with first is this notion that unencumbered
3 property is somehow protected or unavailable to secure post-
4 petition financing or adequate protection. And it's almost
5 taken for granted that unencumbered assets are unavailable.
6 And that frankly turns the Bankruptcy Code on its head, Your
7 Honor.

8 364(c)(2) is -- I know the Court knows, in fact,
9 requires that, that unencumbered assets be used precisely for
10 this purpose. And that's exactly what's happening here. I
11 know Mr. Bennett made a great deal about a OPI. An OPI is an
12 example of a DIP, and a DIP process should be followed.

13 In fact, that's exactly what occurred. An OPI.
14 Including with the interim order, as my colleague, Mr. Schrock,
15 who leads that case, can advise.

16 Speaking of OPI, I know Mr. Bennett has also made a
17 great deal about how a DIP can be denied and the parties can
18 simply go in the hallway and settle it. And therefore there's
19 no risk to be taken associated with that. And again, I would
20 note, the choice to avoid that risk is again a fundamental
21 business choice that the bankruptcy court affords to the
22 debtor.

23 But, even in OPI, that did not happen in the context
24 of an emergency hearing at the first day of a Chapter 11 case.
25 Again, as Mr. Schrock could advise, that happened at a final

1 hearing where the cases had had the opportunity to stabilize,
2 to get on their own two feet, to allow the process negotiation
3 that Mr. Serajeddini identified at the outset of this hearing
4 to occur. But, the context that Mr. Bennett I think is
5 somewhat glibly referring to, that this can all just get sorted
6 out, simply isn't the facts that ground at OPI.

7 And this then, I think gets to the point that Mr.
8 Bennett raised about entire fairness. Because I think
9 fundamentally, the objections to the DIP, at least that I have
10 heard, really boil down to this notion that entire fairness
11 should be applied, and not the business judgment rule.
12 Because, again, the Bankruptcy Code requires unencumbered
13 assets to be used, as are being proposed to be used here.

14 So, the question then is, does this objection just
15 fall apart if we are not in a world where entire fairness
16 applies? And it does. Because, again, then we are talking
17 about, important to us, but fundamentally relative distinctions
18 between financing proposals. The discretion to choose which
19 one to the debtor.

20 So then the question is, did entire fairness make any
21 sense here? And here, Mr. Bennett says LA Dodgers, LA Dodgers,
22 LA Dodgers. And, again, accepting as true that LA Dodgers
23 should apply, I think it's very important to remember the
24 actual facts of that case. Because there is no evidence that
25 Mr. Bennett identified suggesting that the debtors' board

1 process was conflicted.

2 My clients, CD&R, have been out of the boardroom for
3 an extended period of time. The un rebutted testimony in the
4 first day declaration, I'd refer to you Paragraph 62, is the
5 debtors had fully delegated decision making authority to their
6 independent special committee. And the process or on the
7 selection of a DIP, and who the DIP provider would be, and the
8 terms of that DIP, (indiscernible) the special committee.

9 And CD&R was not involved in that process. We
10 haven't been involved in that process. Yes, we are a DIP
11 provider. But, we didn't control the DIP. And I think that's
12 a fairly fundamental point given that the entirety of Mr.
13 Bennett's argument around entire fairness comes down to this
14 notion that this is LA Dodgers.

15 But, when you look at the facts of that case, and
16 what the Court actually said in that case, is important.
17 Because in LA Dodgers, there was no delegation of authority.
18 As I'm sure Mr. Bennett would recall, the decision making
19 process when LA Dodgers filed for bankruptcy was controlled by
20 its controlling shareholder. A gentleman by the name of Mr.
21 Frank McCourt.

22 Mr. McCourt didn't delegate authority. Mr. McCourt
23 controlled the DIP process. And here, Mr. McCourt not only
24 controlled the DIP process as a controlling shareholder, the
25 evidence showed that he had a personal liability due if he

1 didn't select the DIP that was presented to the Court, but
2 ultimately denied under an entire fairness standard.

3 And here, I quote, "The evidence shows that a debtor
4 as controlled by Mr. Court (sic) did not seek court approval
5 for the Highbridge loan, Mr. Court would personally owe \$5.25
6 million to Highbridge. Such personal potential liability
7 clearly compromised debtor's, Mr. McCourt's, independent
8 judgment. Therefore, debtor's decision is not entitled to
9 review using the business judgment standard." Period. And
10 that's at 313 of that case, Your Honor.

11 Clearly, we're in a very different world from LA
12 Dodgers. Again, the unrebutted testimony is that this decision
13 making process was handled by an independent special committee
14 delegated with authority for a considerable period of time. My
15 client had nothing to do with that process. We're not in the
16 boardroom in that process. We are not Frank McCourt.

17 So, accepting as true then Mr. Bennett's proposition
18 that LA Dodgers controls, we are back as we should be where I
19 started, which is that courts must always defer to the business
20 judgment of the debtor in the selection of the lender.

21 We do think we have the best proposal, Judge. I want
22 to be clear about that. We do think it was the best proposal
23 for the estate. But, fundamentally, that's the debtors'
24 choice. They made it through an independent arms-length
25 process.

1 And we've heard a lot of rhetoric from Mr. Bennett
2 about how apparently everybody in this process is a bad person
3 or dishonest or misleading the Court. Or I think the phrase
4 Mr. Bennett used is, I'm not going to say the word dishonest,
5 but I am going to say misleading.

6 But, I think it's certainly fair to say that the
7 characterization that we heard earlier of LA Dodgers is
8 fundamentally misleading about the process, the fundamental
9 point, the decision before the Court.

10 Judge, I'm happy to answer any other questions that
11 the Court may have. But, otherwise, I would cede the virtual
12 podium.

13 THE COURT: Thank you for your input. Mr. Moss?

14 MR. MOSS: Good afternoon, Your Honor. Great to be
15 before you again.

16 THE COURT: Thank you.

17 MR. MOSS: Joel Moss representing Barclays Bank PLC,
18 as Administrative and Collateral Agent under the ABL Credit
19 Agreement, as well as the Cash Flow Credit Agreement.

20 Let me start with the easy part first. There were
21 extensive hard fought negotiations with the debtors on an
22 adequate protection package for the ABL secured lenders.
23 Most important to us (indiscernible) have to be expended first,
24 and basically we get a 7.5 percent cushion in terms of a top
25 up, basically if excess availability falls below that level,

1 the Debtors have to top that up.

2 And amounts included in -- for purposes of
3 determining the borrow base for that purpose include DIP cash
4 which is subject to our lien, as well as various termination
5 events and whatnot, as well as the payment of default interest.
6 These were essential core items for our lenders and fortunately
7 I can say that the ABL lenders and the agent support what was a
8 very hard-fought negotiated adequate protection package on the
9 ABL credit agreement.

10 I also want to make very clear as far as the ABL, I
11 heard Mr. Serajeddini's presentation at the beginning, my
12 understanding is the ABL lenders are being asked to potential
13 provide a new facility, the current facility is terminated.
14 But if they don't provide it, they're going to be paid in full
15 in cash.

16 There is no requirement that the ABL lenders roll
17 into a new facility, though the hope is there can be a
18 negotiation around that as a part of the path to exit. But
19 that's obviously up to every lender and there's no requirement
20 of it. This is not a cram up case, this is not a reinstatement
21 case with respect to the ABL.

22 I'll pause there, but I just wanted to make those
23 points on the ABL side which I think is the easiest part of
24 this.

25 THE COURT: All right.

1 MR. MOSS: On the cash flow side Mr. Serajeddini said
2 that Barclays is the only party that can "consent" to a DIP.
3 Barclays very much supports the Debtors' reorganization efforts
4 and obviously understands and supports the idea that the
5 Debtors need a path out for -- of bankruptcy. Barclays,
6 however, is in -- in the capacity as agent had no role in
7 negotiating this DIP facility.

8 We are effectively taking direction from the term
9 loan lenders who represent the required lenders. Barclays is
10 not consenting to the DIP of its own agency, it had no role in
11 that process. So I just want to make that very clear.

12 The other point that I want to make very clear that
13 Mr. Stancil seems to misapprehend, is the intercreditor
14 agreement with respect to a DIP. The intercreditor agreement,
15 and I -- you know, we can talk about the rollup in a second,
16 there intercreditor agreement sets forth the various
17 requirements under which each secured party basically is
18 required to consent to a DIP and can't object. It does not say
19 that if you do not meet those requirements, Your Honor cannot
20 approve the DIP.

21 I leave it to Your Honor as to whether to approve the
22 DIP, but I want to make that very important distinction because
23 the intercreditor is not a check on can you approve the DIP or
24 not. We have been directed to consent to the DIP, we leave it
25 to Your Honor's good auspices to determine whether the Debtors'

1 exercised their business judgment with respect to the DIP and
2 whether it otherwise complies with the requirements of the
3 intercreditor agreement, though we would take the position that
4 the intercreditor agreement itself isn't a block, it's just a
5 block on who can object and when.

6 I would also take the (skip in audio) and Barclays in
7 its (skip in audio) lender along with all of the other
8 revolving lenders and all of the other non-ad hoc group lenders
9 to the extent that Mr. Stancil on behalf of Canyon and his
10 clients get better treatment with respect to the rollup and get
11 to participate without the hold back and get to participate on
12 better terms, I would want and expect the revolving lenders,
13 who have very discreet and specific pro rata protections for
14 their own benefit in the credit agreement, as well as other
15 lenders to be able to get to participate on the same terms.

16 In other words, Canyon can't waive the treatment on a
17 pro rata basis, cut a sweetheart deal for itself and then
18 expect us and other lenders not to get the same treatment, that
19 would not be fair.

20 So those are the points that I had. I'm open to any
21 questions, but, Your Honor, I kept it brief and I know it's
22 getting late, so thank you.

23 THE COURT: All right. Thank you, counsel.

24 I see no, luckily no more raised hands. So --

25 MR. FLECK: Your Honor -- Your Honor, if I may, I

1 apologize, I had been called on earlier so my hand came down.
2 Evan Fleck of Milbank.

3 THE COURT: Oh, I'm sorry, Mr. Fleck.

4 MR. FLECK: Is that okay?

5 THE COURT: Yeah, that's fine.

6 MR. FLECK: Thank you, Your Honor. I appreciate the
7 time.

8 As I said, for the record Evan Fleck on behalf of the
9 secured ad hoc group. It won't surprise Your Honor to hear
10 that I would -- if I were going to go into the full argument, I
11 would echo a lot of the comments that Mr. Serajeddini, as well
12 as Mr. Dahl made. I won't -- I won't go over that territory
13 again.

14 I do think though a few minutes hopefully will be
15 helpful to the Court. Now we as practitioners are oftentimes
16 reminded by judges that it's really difficult in your position
17 to understand what's really happening behind the scenes. And
18 so I think maybe a bit a perspective from our group will be
19 useful to the Court. I hope it will be.

20 This case is marked -- and I'll say what's not
21 extraordinary about it, a lot of it is not -- what was
22 extraordinary is the extent of the negotiations that took place
23 with the parties, that includes Mr. Bennett's client, including
24 Mr. Stancil's new client, but I guess it's the same client or
25 some of the same clients, that went on for months in extreme

1 detail, in person, over Zoom, one-off calls.

2 This process, which by the way it has to be -- as we
3 all know, in order to have an effective pre-pack negotiations
4 need to take place over the course of time. And --

5 THE COURT: Hold on one second.

6 Mr. Bennett?

7 MR. BENNETT: This is testimony. If he wants to make
8 legal argument, he should make legal argument. He's testifying.
9 I object.

10 THE COURT: All right. Overruled. Well, let me have
11 the argument at this point. Thank you.

12 MR. FLECK: Thank you, Your Honor.

13 Over the course of weeks and months those
14 negotiations took place. Everybody who argued today was given
15 the right to participate and actively participated. These were
16 hard-fought negotiations. Nobody could seriously contend that
17 it was anything other than that. Everyone had an opportunity
18 to put their best foot forward, and that's what -- that's what
19 bankruptcy, at least in the context of a pre-pack should seek
20 to promote.

21 Everybody negotiated, there was no thumb on the
22 scale, finger on the scale or otherwise. The Debtor did their
23 job, much to our frustration. Mr. Bennett was frustrated, we
24 were frustrated as well. And I've never seen a process
25 before -- he's been doing this longer than me, but I've been

1 doing it a while as well at this point, I've never seen a
2 process marked by so much investment of time and energy by
3 sophisticated investors who came before the Debtor and did
4 their very best to effectively sponsor the deal that they were
5 advocating for.

6 Their deal was an out-of-court transaction. To the
7 extent that they were successful, maybe there would be
8 litigation in a different court. They weren't. Our
9 transaction with the Debtor was the one that prevailed. It
10 went right down to the wire. Unfortunately we are now at the
11 end of that process, the company is in extremis from a cash
12 flow perspective, and we have come forward to provide a
13 solution.

14 Mr. Dahl is 100 percent correct, as Your Honor knows.
15 There is one motion before this Court that provides a solution
16 to the company's liquidity needs. That is the motion that
17 should get an up or down decision from the Court, and it is
18 supported by the Debtors' reasonable business judgment.

19 There is no credible suggestion, certainly no
20 evidence to suggest that anything other than that took place.
21 There was a responsible and adult process that took place by
22 the Debtors through a special committee. Nobody has even tried
23 to suggest the special committee didn't do its job. It was
24 well-advised by professional advisors, and by individuals who
25 have done this before with great success. The process is

1 clean, Your Honor, and the result of that process is a DIP
2 financing that our clients are leading.

3 So I want to talk about -- you know, there's a lot of
4 hyperbole, a lot of big language that Mr. Bennett used. But
5 again, those are not the facts. This is not a remarkable case
6 for the terms that are coming before Your Honor. And that was
7 intentional on our part because we were competing, we wanted to
8 win the transaction.

9 So there was a natural discipline that was imposed on
10 us. We couldn't seek terms that were aggressive. This is a
11 down the fairway DIP financing, it's nothing aggressive, I
12 think everybody who does this knows, and Your Honor hopefully
13 recognizes as well. And it was -- and it was stated on the
14 record.

15 We did push at times for other terms and it was very
16 clear to us that we had to discipline ourselves, and the
17 Debtors did it to us as well. So, yes, there was discussion of
18 a rollup that was -- that was greater than 1-to-1. And we
19 ended at a place, again, that is very much customary. Even the
20 US Trustee argues that that -- that a 1-to-1 rollup is not
21 unusual at all.

22 So what are the things that the objectors are taking
23 issue with with respect to the DIP? The first, at least -- and
24 there's lots of arguments they made but I'm obviously going to
25 distill it to those that I think need to be responded to

1 independently -- the first is that it's an insider DIP. It's
2 not, Your Honor. Let's just -- let's just actually cut through
3 the -- what is being used for advocacy and what are the facts.

4 CD&R is participating in our DIP. Their role in the
5 DIP is less than 15 percent. Okay. That wasn't said before
6 obviously by Mr. Bennett because it doesn't help his argument.
7 Less than 15 percent of the dollars being put forward in the
8 DIP are being provided by the existing sponsor. The rest of
9 the money, more than 85 percent, and it was led by our group,
10 independent financial institutions who are entitled a debtor's
11 reasonable business judgment, and that's what it's supported
12 by. So I think that first argument is debunked.

13 Secondly, they argue that, well, we didn't -- we're
14 not -- we didn't put enough money forward. They're offering
15 more money to the Debtor. I know Mr. Bennett repeatedly said
16 it's fully committed, good to go, they're ready to sign, they
17 even talked to our fronting bank. But the reality is, the only
18 reason why their DIP needed more money was because it was
19 funding a path to nowhere. It's funding a case that has no
20 exit.

21 And I guess Mr. Bennett finds that to be an
22 unconvincing argument, but judges repeatedly find as an
23 attribute to a DIP financing when it comes along with a
24 confirmable plan. And that's what we delivered along with our
25 DIP, our DIP financing. That's not something that should be

1 counted against us. It actually is a sign of a responsible
2 debtor that understood that taking on the burden of a
3 significant DIP financing has to come along with a path of how
4 to get out of the Chapter 11 case, or at least it should.

5 So, no, we didn't need to provide more money to the
6 Debtor in order to loan them more money to be a more attractive
7 option. The fact that they may actually have been willing to
8 do that, we don't know, there's really no commitment on their
9 part. But the fact they may have been willing to do that is of
10 no moment. The Debtor didn't need more money. If they needed
11 more money, they would have come to us, we would have provided
12 it.

13 And the last, Your Honor, much ink has been spilled
14 over the question of a rollup. I'll just endorse the comments
15 from counsel to the agent, Mr. Moss, this rollup is permitted
16 by the documents. We know that -- we know that the objectors
17 would prefer not to be in this court and they found a case that
18 they think help -- is helpful in Delaware, that happens to not
19 be where we are.

20 But in any event, we believe that the intercreditor
21 agreement is clear the rollup is not a payment. We think it's
22 permitted and it is, as I said earlier, a customary form of
23 consideration as part of a DIP financing which we think is
24 supported by the market. Importantly, Your Honor, on the
25 concept -- on the topic of the DIP, it is being syndicated, the

1 DIP is being syndicated and the rollup is available to all 1st
2 lien lenders who want to participate.

3 So, you know, Mr. Stancil's here on behalf of, you
4 know, the other half of Canyon, or maybe some of the same
5 Canyon parties, they're welcome to participate, they're
6 encouraged to participate, they will get the same benefit of
7 any other non-steerco (phonetic) member of the 1st lien group
8 and get the rollup.

9 And so why is there a difference? You know, I was
10 deliberate in saying non-steerco member because there is a
11 steering committee of lenders and initial RSA parties who have
12 been working tirelessly, literally tirelessly through the
13 holidays over months to try to construct a viable transaction.
14 And as we all know, there is compensation generally provided to
15 those parties. So, yes, there's a difference with respect to
16 the treatment that is received on account of the backstop, but
17 again, the DIP is being broadly syndicated to all 1st lien
18 lenders and everybody does get the right to participate in the
19 rollup.

20 So, Your Honor, obviously our group supports the DIP,
21 we believe it was the product of a fair process, one that
22 actually, you know, produced -- you know, a lot of people say
23 when both parties are unhappy, that's a sign of a good process.
24 We're not happy either, Your Honor. There was a suggestion
25 that the we -- there's some windfall effect here or that the

1 recoveries are so generous to our group. There's significant
2 impairment all around here.

3 So we're satisfied with the process that produced a
4 responsible DIP financing for a company that clearly needs
5 financing, and a path to an exit. We want to see this company
6 be successful. It clearly needs the financing, that's
7 uncontroverted by the evidence. And therefore, Your Honor, we
8 respectfully request that the Court approve the Debtors'
9 motion. I'm happy to take any questions with respect to any
10 aspect of our presentation, or the DIP itself.

11 THE COURT: No, thank you, Mr. Fleck.

12 All right. I see --

13 MR. MOSS: Your Honor --

14 THE COURT: -- I'm going to go back to Mr. Moss and
15 then Mr. Bennett for very brief comments.

16 MR. MOSS: Yes, Your Honor. Hi, it's Joel Moss
17 again. I just wanted to correct something that Mr. Fleck said.
18 Barclays and myself didn't say that the rollup was permitted.
19 We were just outlining how the intercreditor agreement and the
20 credit agreement work. I'm not taking a position as to whether
21 the rollup is or isn't permitted.

22 I will certainly acknowledge that a rollup is a very
23 commonplace feature in many DIPs these days, and this was
24 something that obviously the ad hoc group bargained for and we
25 weren't in the room for it, but it's a 1-for-1 rollup. But not

1 taking a position on that point. And obviously to the extent
2 that Mr. Stancil's clients get any economics, we want them for
3 the benefit of our revolving lenders as well.

4 THE COURT: Disclaimer noted.

5 All right. Mr. Bennett?

6 MR. BENNETT: Your Honor, I will be very brief,
7 because I think in our slides we've covered, you know, kind of
8 all the territory, and I do hope and I do expect you're going
9 to focus on the evidence. But there's one part of the evidence
10 that didn't make it into my slides because I was actually
11 surprised, and that's the evidence that the special committee
12 actually isn't entitled to the business judgment rule because
13 it didn't inform itself about the rollup, about the waivers,
14 about the releases.

15 That was undisputed testimony from a person who was
16 in the room. There was no rebuttal, there was no recross.
17 That's the facts of this case. The requirements of the
18 business judgment rule were never met. So even if, and I'm --
19 look, I think that, what, a 97 percent or 90 -- I don't know,
20 more than 95 percent controlling shareholder who can replace
21 all the directors. Even though they hand it to people who are
22 supposedly independent, but not in a case where there are at
23 stake based upon the outcome of the case.

24 That's enough to put you into the total fairness
25 realm. But you also don't get to assert the business judgment

1 rule when you don't inform yourself about what's going on. And
2 the undisputed testimony was they had no idea, no one told them
3 that they were talking about a rollup that was going to cost
4 the company more than, depending upon the valuation assumption,
5 146 million or \$125 million, whatever it was costing.

6 And by the way, no -- in addition to not telling the
7 board, none of the declarations, the application for the -- for
8 approval of the loan, none of those papers say a word about the
9 cost of the rollup. I don't -- that would be enough. It has
10 to be denied. Thank you, Your Honor.

11 THE COURT: All right. Thank you.

12 Thank you all, counsel. Tremendous arguments, and I
13 respect the professionalism you've shown the Court and each
14 other.

15 Mr. -- I'm sorry I keep butchering it --
16 Serajeddini -- it's just so late -- give me a sense of what the
17 Debtor was looking for as far as second day. In other words, I
18 understand there's 2 fundings, 150 and 100. I want to get a
19 sense of what's needed to get to the second day, to get to the
20 final, I want to get --

21 MR. SERAJEDDINI: Yes, Your --

22 THE COURT: -- it done in the time frame. And I'm
23 going to --

24 MR. SERAJEDDINI: Yes, understood, Your Honor.

25 THE COURT: -- and I'm going to be very clear, I

1 want to approve only what's necessary to get there. I think
2 that's our task as judges. I also want to be clear in that I
3 haven't heard that an order has to be entered today. We have
4 other matters to -- that we have to complete and address, the
5 scheduling for the disclosure statement and the combined
6 hearing, et cetera.

7 In fairness to the Court and in fairness to the
8 parties, all the parties, I want the opportunity to digest and
9 consider everything you all have thrown at me in the last 5
10 hours. And I would look to have a continued hearing on Monday
11 at 11:30. That gives me a weekend to digest.

12 I haven't heard, and I'm going to look to you to tell
13 me, that that doesn't jeopardize or prejudice continued
14 operations, you know, what we usually hear, you know, a payroll
15 has to be made. It's already 5:45 on a Friday evening, so I'm
16 hard-pressed to understand that the Court can't be given the
17 latitude of being able to digest this, and look into all this
18 over the weekend.

19 I'm going to ask you all, either now or at some point
20 before we pick up again, to advise the Court what's truly
21 necessary to get to a final hearing should I approve the DIP
22 and the scheduling. My thinking is to have -- I understand
23 there's a March 17 hearing date for a combined hearing, I'm
24 looking to have a second day hearing, I think it would make
25 sense. It also serves as an opportunity to visit -- to revisit

1 where we are all at around March 9. That's roughly 4 to 5
2 weeks. Does that make sense?

3 So what is -- what I'm going to tell all the parties
4 now is that I'm going to continue on the DIP. I'll give a
5 ruling on Monday at 11:30. What I'm going to suggest to all
6 counsel is you all work as hard as I will this weekend, and
7 your clients respectfully, and continue discussions on seeing
8 if there's a pathway where there can be more of a global
9 resolution.

10 They say that -- you know, we hear the phrase used
11 disparagingly that law firms have playbooks. Well, Courts have
12 playbooks too. Mine has always been to try to get the parties
13 to reach a resolution through mediation. I used it somewhat
14 recently in *USS*, United Service Port-a-Potty case where retired
15 Judge Drain helped reach the parties into -- on an emergent
16 basis reach an accord.

17 So on Monday I'd like to hear if the parties think
18 that that would be a viable pathway. If you can't do it on
19 your own, to seek some outside assistance in trying to get to
20 what everybody needs are. It doesn't mean you're going to.
21 And as I said, I'm prepared to rule on Monday, unless you all
22 say, Hold up. We'll finish up today with what we need to do,
23 but I'm going to look to you to give me a time frame.

24 MR. SERAJEDDINI: Yeah, so, Your Honor, the challenge
25 with respect to the DIP funding, you're absolutely correct that

1 we cannot fund and close today. We're after -- we're after
2 business hours as you know.

3 In order to be able to fund and close on Monday, and
4 we absolutely have payments and I could, with a recess, get
5 Your Honor even more specificity on this, in order to get
6 payments out, critical payments out on Monday, my understanding
7 is we need the fronting agent to be aware today that the loan
8 has been approved so that they can get to work and hit the
9 ground running first thing Monday morning, and 11:30 Monday
10 would be too late in order for them to be able to do that.

11 So that's kind of my current understanding based on
12 what I know. But we can also confer if it would be helpful on
13 this issue to give you a little bit more specificity.

14 MR. BENNETT: Your Honor, the papers said the Debtors
15 have \$67 million worth of cash in the bank and --

16 MR. SERAJEDDINI: Excuse me, Mr. Bennett --

17 THE COURT: What --

18 MR. SERAJEDDINI: -- you've made a bunch of absurd
19 comments today and we've let it go. Can you please stop
20 interjecting --

21 THE COURT: Let's have colloquy, only direct -- let's
22 have discussions directed to the Court. I appreciate it. I'm
23 going to take a few minutes right now. We're closed on oral
24 argument as of now on the DIP. We'll pick up with everything
25 else. It's -- and I need to give staff a break -- it's 5:45,

1 I'm going to come back at 6:00 o'clock.

2 My goal here is to be done for today by 7:00, giving
3 you a sense -- let you have a -- get a sense of what you can do
4 as far as Monday, and let's be realistic about it. So I'll
5 leave it at that. All right, folks, see you at 6:00.

6 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 UNIDENTIFIED ATTORNEY: Thank you, Judge.

9 (Recess at 5:47 p.m./Reconvened at 6:04 p.m.)

10 THE COURT: Okay. Folks, we're back. Let me turn back to
11 counsel. Mr. Serajeddini, what --

12 MR. SERAJEDDINI: Yes, Your Honor. Go ahead.

13 THE COURT: What do you have for me?

14 MR. SERAJEDDINI: So here's what I've been able to
15 learn in 15 minutes, Your Honor. So we have roughly 90 million
16 in payments going out in the first part of next week. Among
17 other things there's about \$1 million for Australia, New
18 Zealand and Mexico payroll that's payable on Monday, or getting
19 funded on Monday, and as well as rent for a variety of
20 locations that are due on the 1st of the month.

21 And then in addition to that a lot of our vendor
22 relationships are spot relationships and there's 30 million in
23 spot vendor risk that we're hearing from procurement. If we
24 don't have the hearing until 11:30 Monday, because of the steps
25 required to close the risk is significant that we will not be

1 able to close the DIP on Monday, and that will push us into
2 Tuesday, and as I said, that would delay payroll and some of
3 these other payments.

4 And so -- and it's -- we'll adjust -- obviously the
5 DIP order doesn't cover just the DIP financing, it also covers
6 cash collateral use, and those would be the 2 sources -- well,
7 in the first instance, as Mr. Moss laid out, the DIP funds must
8 be used as part of our arrangement, but it would prohibit the
9 use of either.

10 THE COURT: So is there a way of approving limited
11 use of cash or a limited portion of the DIP to get us to 11:30?

12 MR. SERAJEDDINI: To get us to 11:30 Monday?

13 THE COURT: Yes.

14 MR. SERAJEDDINI: Yeah --

15 THE COURT: All right.

16 MR. SERAJEDDINI: -- I see no issue with that, Your
17 Honor, if we had the authority --

18 THE COURT: So what kind of numbers are we -- we
19 needing?

20 MR. SERAJEDDINI: I don't have an exact number for
21 you. As I said, it's 90 million in the first part of the week.
22 I can get an exact number for you in terms of what we could
23 close Monday to get it out.

24 THE COURT: I'm prepared to give you some more time.
25 As I said, I don't -- I'm not in a position to render a ruling

1 on the entire request.

2 MR. SERAJEDDINI: Understood.

3 THE COURT: I think it's inconceivable that this
4 Court is going to leave the Debtor adrift and not be in a
5 position to honor its obligations. That doesn't help anybody.
6 But I want to approve just what's necessary. Is it worth it if
7 I give you some more time to come up with a number that's
8 approved?

9 MR. SERAJEDDINI: I actually just got a text with a
10 number, Your Honor, so --

11 THE COURT: Oh.

12 MR. SERAJEDDINI: -- 35 million for Monday.

13 THE COURT: All right. Mr. Bennett, would you write
14 a check?

15 MR. BENNETT: On our DIP absolutely, Your Honor. And
16 by the way, their declaration, and I don't appreciate Mr.
17 Serajeddini's prior comments, I know he's a little upset, but I
18 -- their declaration says they have \$67 million in the bank
19 today. So they've got to cover -- they can cover the 35.

20 THE COURT: All right.

21 MR. BENNETT: It's their declaration. I'm not making
22 up the number. It's in the first day declaration.

23 THE COURT: Thank you, Mr. Bennett, and obviously I
24 was speaking tongue-in-cheek to a degree.

25 MR. BENNETT: But we're ready, and we would do it

1 with no roll up.

2 THE COURT: Well, I understand. That's not what I'm
3 asking though. I appreciate -- I'm prepared to approve on an
4 interim basis until Monday, and I'll give you some slack if
5 you're -- you're telling me it's 35 million, we'll go to 45
6 million to approve cash and to approve a pro rata portion of
7 the DIP under the current motion to get us to 11:30 on Monday.

8 MR. BENNETT: No roll up, Your Honor?

9 THE COURT: I would say a pro rata portion of it. So
10 it's getting -- it's smaller and smaller, but, yes, to the
11 extent there's a roll up, I'll approve it on 45 million until
12 we get to --

13 MR. BENNETT: We've had no opportunity to see their
14 -- their order was filed today.

15 THE COURT: Well, that's what the weekend will be
16 for.

17 MR. BENNETT: We're not ready for the order at all.

18 THE COURT: I'm not entering an order today. I'm
19 entering a bench order that -- if I can give comfort to those
20 who need it, that I'll authorize use of cash and DIP finance up
21 to \$45 million. I'll prepare to enter an order if you all can
22 agree to language on the weekend, and I'll have it entered on
23 -- before 11:30 to approve it.

24 Mr. Stancil?

25 MR. STANCIL: Yes, Your Honor. Yeah, I mean my

1 carve-out request stands. If there's any roll up, that would
2 be baked in there, and if I heard the argument correctly, they
3 don't think there's anything to worry about. If what I am
4 saying is not permitted under the debt documents, if I'm wrong,
5 carving it out doesn't do any harm to them. So I would like --
6 if there is any roll up that incrementally, even on this
7 interim basis, we would like a carve-out for a cause of action
8 to pursue our pre-petition agreement rights.

9 THE COURT: All right. I'm going to deny that
10 request for now. I'll consider the carve-out on the bigger
11 picture, so to speak, when we get to that point.

12 So, let me hear from debtors' counsel. What do you
13 need from the Court, and what do you need for the rest of this
14 evening?

15 MR. SERAJEDDINI: Yeah, Your Honor, I think from
16 there what we'd propose is let us go back with Your Honor's
17 limited ruling and just figure out because, again, this is --
18 there's massive complexity of even closing this DIP with
19 respect to fronting and the third party -- and the various
20 parties that we need to fund.

21 So let us -- if we could just pause and then return
22 on the DIP with any updates in terms of any implementation
23 issues based on what Your Honor has said. We would very much
24 appreciate the accommodation vis-a-vis Monday, and we'll work
25 on that in the interim.

1 In the meantime, I'll turn the podium over to Ms.
2 Bentley to continue as I -- while I go work on that to continue
3 to take us through the key first day relief that we need here
4 and vendors and other parties have been clamoring for.

5 MR. MOSS: Your Honor, Joel Moss again. Obviously we
6 support the limited use of cash subject to our cash collateral
7 protections that we fully negotiated. We're not going to
8 approve or consent to a blank check use of cash, we just can't.

9 THE COURT: All right. You're not opposed to the use
10 of cash.

11 MR. MOSS: On the terms we've negotiated, including
12 our very carefully negotiated adequate protection, which I
13 don't think anybody is really taking issue with.

14 THE COURT: All right. I think that's workable under
15 what I'm proposing, which is just --

16 MR. MOSS: Yeah.

17 THE COURT: -- a percentage of the overall request
18 and --

19 MR. MOSS: Sure.

20 THE COURT: -- a percentage of the overall rights
21 under that.

22 MR. MOSS: Sure. It's just whatever order is entered
23 would need to incorporate our protections.

24 THE COURT: That's fine.

25 MR. MOSS: Thank you, Your Honor.

1 THE COURT: All right. Then let's proceed. So,
2 parties -- Becca, we could -- they could the same link for --

3 COURT CLERK: Yeah, absolutely.

4 THE COURT: We'll have the same link available.
5 We'll schedule this at 11 -- the continuation of the DIP motion
6 and anything else that we have -- we don't complete today we
7 will address at 11:30 on Monday, 11:30 a.m., use the same link.
8 Now, I have no issue with -- let's move forward and see what we
9 can knock off.

10 MR. SERAJEDDINI: Your Honor, is 11:30 all remote or
11 is 11:30 in your courtroom?

12 THE COURT: Oh no, all remote. I wouldn't do that to
13 anybody. It's worked out so well so far.

14 Debtors' counsel? Ms. Bentley?

15 MS. BENTLEY: Good evening, Your Honor. Can you hear
16 me?

17 THE COURT: I can. Good evening. And --

18 MS. BENTLEY: Rachael --

19 THE COURT: I'm sorry. Go ahead.

20 MS. BENTLEY: Oh no. Rachael Bentley of Kirkland &
21 Ellis, proposed counsel for the debtors.

22 THE COURT: All right. Ms. Bentley, with respect to
23 what I would assume to be mostly unobjectionable first day
24 matters, I'm going to ask your indulgence and just let's just
25 go over them on a very short shrift basis, knowing that the

1 U.S. Trustee has essentially signed off on language on I think
2 all of it.

3 Obviously, I'll hear from any party that does want to
4 be heard on any specific motion, but I don't need the what I
5 would ordinarily hear on a first day matter when we having been
6 here seven hours already the expanded version of each motion.

7 MS. BENTLEY: Of course, Your Honor.

8 THE COURT: Thank you.

9 MS. BENTLEY: I'll get right to it. So, I'm now at
10 Docket Number 15, which is Agenda Item 13. This is the all
11 trade motion. In the interim period the debtors are seeking to
12 receive 140 million of availability with respect to vendors,
13 503(b)(9) and lien claimants. We bucketed those in the motion,
14 and I think there is sufficient and adequate evidence to
15 support payment of these in the first day declaration of
16 Garrett Gabel.

17 Your Honor, just quickly, the biggest thing here is
18 this really is critical. We've got 9,000 vendors, 5800 of
19 which are foreign vendors. We did file an auto stay motion,
20 but of course we need to make sure that we continue to receive
21 (indiscernible) goods and services from these vendors.

22 Last think I'll note just to be brief, but we have a
23 lot of sole source suppliers. Our materials and services are
24 subject to strict scrutiny with our customers and to how these
25 products must be made. The loss of any of these suppliers

1 would be critical and have a devastating impact on the
2 business.

3 THE COURT: All --

4 MS. BENTLEY: Your Honor, I'll pause to see if you
5 have any questions, but it's pretty clear in the motion.

6 THE COURT: I have no questions. Are there any
7 objections?

8 (No audible response)

9 THE COURT: Then we'll mark this granted, order to be
10 submitted.

11 MS. BENTLEY: Thank you, Your Honor. Your Honor, in
12 the interest of time, I'm going to turn the podium over to Ms.
13 Surinak to flip through the other motions with respect to the
14 relief that we're seeking here, and I will come back to do DS
15 scheduling at the end.

16 THE COURT: That's fine. Thank you.

17 MS. SURINAK: Good evening, Your Honor.

18 THE COURT: Good evening.

19 MS. SURINAK: For the record, Ashley Surinak of
20 Kirkland & Ellis, proposed counsel for the debtors. To Ms.
21 Bentley's point, I'll do rapid fire first days for Your Honor.

22 THE COURT: Thank you.

23 MS. SURINAK: The first is the cash management
24 motion. That's Docket Number 13, Agenda Item Number 11. The
25 debtors' cash management system is pretty expensive, but

1 customary for an international business. We're seeking to
2 continue to utilize corporate credit cards, use our bank
3 accounts and, you know, continue to engage in our intercompany
4 transactions. The order filed with the motion at Docket Number
5 13 is the current order, and unless any questions, we'd request
6 entry of that order.

7 THE COURT: All right. Mr. Sponder, if you're still
8 with us, I'm still working under the assumption if I don't hear
9 from you, the UST has worked out its language.

10 MR. SPONDER: Jeff Sponder from the Office of the
11 United States Trustee. I'm still here, Your Honor, and what I
12 said in the beginning of the hearing still applies. All of our
13 revisions have been incorporated in these orders. Thank you,
14 Your Honor.

15 THE COURT: Great. Thank you. All right. Motion is
16 granted, mark OTBS, order to be submitted.

17 MS. SURINAK: Thanks so much, Your Honor. Next is
18 the wages motion. This is Docket Number 12, Agenda Item Number
19 10. As the motion states, the debtors seek authority to
20 continue their compensation and benefits programs.

21 It's worth reiterating, just taking a pause, that the
22 9500 employees that the debtors have are one of the most
23 important resources. It's 54 or -- excuse me, yeah, 54.4
24 million due as of the petition date, 41.7 which is due during
25 the interim period, which we did size for about 30 days. So

1 just wanted to put the numbers out there.

2 No outstanding comments on the order that we're
3 aware. So we would request that the Court enter the order
4 filed at Docket Number 12.

5 THE COURT: All right. No objections. Motion is
6 granted, order to be submitted.

7 MS. SURINAK: Thank you, Your Honor. Next is the
8 debtors' automatic stay motion. That's Docket Number 11,
9 Agenda Item 9. As Ms. Bentley noted, the debtors does have an
10 extensive foreign vendor base. We're seeking merely entry of
11 an order to reinforce the automatic stay. We would request
12 that the Court enter the order filed at Docket Number 11.

13 THE COURT: All right. Again, I see no objection. I
14 always enjoy entering worldwide -- orders that have worldwide
15 impact. Granted, OTBS.

16 MS. SURINAK: Thank you so much, Your Honor. Next is
17 the debtors' taxes motion. This is Docket Number 5, Agenda
18 Item Number 3. \$30.1 million of taxes due and outstanding as
19 of the petition date. These are ongoing obligations entitled
20 to full payment. Unless Your Honor has any questions, we would
21 ask that you enter the order filed with the motion at Docket
22 Number 5.

23 THE COURT: Our government needs these funds. Motion
24 granted.

25 MS. SURINAK: Thank you so much, Your Honor. Next is

1 the debtors' NOL motion. This is Docket Number 14, Agenda Item
2 Number 12. This merely seeks to establish procedures with
3 regard to equity holders that debtor Labels Buyer, LLC. Unless
4 any questions, Your Honor, we request that you enter the order
5 filed at Docket Number 14 with the motion.

6 THE COURT: And this was what number on the agenda?

7 MS. SURINAK: This was Agenda Item Number 12.

8 THE COURT: Twelve. All right. I see no objections.
9 Motion granted.

10 MS. SURINAK: Thank you, Your Honor. Next is the
11 insurance motion. This is at Docket Number 6, Agenda Item
12 Number 4. The debtors pay \$11.5 million in annual premiums,
13 obviously not all due and outstanding at this time, seeking to
14 continue our insurance program in the ordinary course. We
15 would request that Your Honor enter the order filed with the
16 motion at Docket Number 6.

17 THE COURT: Motion granted. Thank you.

18 MS. SURINAK: Thank you. Next is the debtors'
19 customer programs motion. This is Docket Number 8, Agenda Item
20 Number 6. There is \$9.5 million outstanding tied to discount
21 programs that the debtors employ in the ordinary course of
22 business. We would request that Your Honor enter the order
23 filed at Docket Number 8 with the motion.

24 THE COURT: Again, no objections. Motion granted.
25 Thank you.

1 MS. SURINAK: Thank you, Your Honor. Next is the
2 utilities motion. This is Docket Number 7, Agenda Item Number
3 5. By this motion seek to continue paying utility providers.
4 We put or will put \$1.2 million within the adequate assurance
5 account within 20 calendar day of entry of the order. Unless
6 Your Honor has any questions, we would request that you enter
7 the order filed at Docket Number 7.

8 THE COURT: All right. Now, with this, and I don't
9 know if we missed it on others, this is an interim order. Do
10 we have a date for a final hearing which we're going to need to
11 include in these orders?

12 MS. SURINAK: We had proposed February 27th, Your
13 Honor, which is approximately 30 days after the petition date,
14 which is -- it also lines up to our DIP budget and DIP sizing.
15 It's a Friday.

16 THE COURT: Bear with me. Yes, I am out of the state
17 on the 27th. I do not return -- I fly back to -- the first day
18 I'm back is March 3rd.

19 MS. SURINAK: Okay. I think that should be fine,
20 Your Honor.

21 THE COURT: Mr. Sponder?

22 MR. SPONDER: Thank you, Your Honor. Jeff Sponder
23 from the Office of the United States Trustee. I just want to
24 clarify one comment that was just made. I believe that it's 20
25 days from the petition date, not 20 days from the date of entry

1 of the order. I think that was a change that we requested
2 that's included in the utilities motion, pursuant to 366.
3 Thank you.

4 MS. SURINAK: I might have misspoke. I agree that
5 what the order says is what we're prepared to do. I think the
6 funds might already be in the account quite honestly.

7 MR. SPONDER: That's fine. Thank you, Your Honor.
8 Again, Jeff Sponder from the Office of the United States
9 Trustee.

10 So that Your Honor is aware, a committee solicitation
11 just went out because I know we're talking about a second day
12 hearing, and questionnaires, if anyone is interested, are due
13 back in our office on February 6th. So if we were to go out to
14 March 3rd, there's certainly more than enough time to get a
15 committee selected if that's the way -- if there's interest.
16 Thank you, Your Honor.

17 THE COURT: All right. Thank you. Yes, just looking
18 at my calendar, I think that's the workable date March 3rd. So
19 we'll use that as a second day hearing date. We'll put it on
20 for 10 a.m.

21 MS. SURINAK: That works, Your Honor.

22 Two more matters, the debtors' creditor matrix
23 motion. This is Docket Number 10, Agenda Item number 8. By
24 this motion we seek to file the consolidated top 30 list,
25 redact certain personally identifiable information, natural

1 persons and customers and serve the -- or creditor matrix,
2 which is 125,000 parties over e-mail. Unless Your Honor has
3 any questions, we request that you enter the order filed with
4 the motion at Docket Number 10.

5 THE COURT: All right. I have no questions. Motion
6 granted, OTBS. Thank you.

7 MS. SURINAK: Thank you, Your Honor. Last for me
8 before I cede the podium back to my partner Ms. Bentley is the
9 claims and noticing agent application at Docket Number 9,
10 Agenda Item Number 7. Attached to that application as Exhibit
11 B is the declaration of Evan Gershbein, executive vice
12 president at Verita in support of that application. Mr.
13 Gershbein is present today on the Zoom, and we'd like to admit
14 that declaration into evidence for purposes of this
15 application.

16 THE COURT: All right. Declaration is admitted
17 absent any objection, which I see none. No objections to the
18 retention. Welcome aboard claims agent. Motion grant.
19 Application granted.

20 MS. SURINAK: Great. Thank you so much. My goal was
21 seven minutes, and I think we beat that, so thank you, Your
22 Honor. I'll cede the podium back to Ms. Bentley.

23 THE COURT: If all the others were as efficient as
24 you. Thank you.

25 MS. BENTLEY: Your Honor, Rachael Bentley of Kirkland

1 & Ellis --

2 THE COURT: Yes.

3 MS. BENTLEY: -- back at the podium. The last item
4 on the agenda, Your Honor, is the DS scheduling motion. That
5 is at Docket Number 16, Agenda Number 14.

6 MR. BENNETT: Your Honor, this one we do object to,
7 and, frankly, I don't think there's any urgency for it, and
8 perhaps this could be better taken up on Monday.

9 THE COURT: Let me hear your objection.

10 MR. BENNETT: Well, first of all, we think they
11 should be preparing schedules of statement of affairs. One of
12 the principal issues that will come up in this case is exactly
13 what is secure -- what is collateral and what is not
14 collateral, and a decent place to start would be honestly
15 prepared schedules that describe that.

16 THE COURT: I'm just at a loss because what we're
17 discussing is the scheduling of the disclosure statement,
18 correct?

19 MR. BENNETT: But they've asked for it to be -- they
20 basically want to be relieved from --

21 THE COURT: Right.

22 MR. BENNETT: -- an (indiscernible).

23 THE COURT: Oh, I see. Yes, relieved of the 341 and
24 the --

25 MR. BENNETT: Yes, Your Honor.

1 THE COURT: -- and the other obligations.

2 MR. BENNETT: Yes, Your Honor.

3 THE COURT: Although I'd doubt what would -- any
4 resolution of lien disputes is going to rest on the debtors'
5 schedules.

6 MR. BENNETT: It's not going to rest on it, but it's
7 a starting place. Experts are going to need the information to
8 figure out what's there, and so I think they're essential.

9 I would also point out that we don't think you should
10 be conditionally approving the disclosure statement. You heard
11 today testimony that it's grossly -- excuse me -- inaccurate,
12 and it is inaccurate.

13 And so I do think that this requires a little bit
14 more careful attention when we're all more wide awake, and I
15 don't think there's any particular urgency to do it tonight.

16 THE COURT: All right. Fair enough. Does counsel
17 wish to respond?

18 MS. BENTLEY: Thank you, Your Honor. Grossly
19 inaccurate. We will meet our burden to support the plan at
20 confirmation, but I do just want to clarify the standard for
21 approval with respect to the disclosure statement, particularly
22 on a conditional basis, has to do with whether or not the plan
23 is patently unconfirmable.

24 1129 issues are confirmation issues. 1129 also picks
25 up 1122 and 23, which is the points that Mr. Bennett is making.

1 There is precedent to suggest that confirmation-related
2 arguments alone should not dictate whether or not a disclosure
3 statement is approved. We still bear the burden to demonstrate
4 confirmation of the plan at the confirmation hearing.

5 We've started solicitation pre-petition. We should
6 be permitted to continue on that path. This is a DS scheduling
7 motion. I have a timeline I can show you. There is nothing
8 that came up in today's hearing that should suggest that we
9 need to slow down this process.

10 MR. BENNETT: Your Honor, I will prepare briefing
11 over the weekend that -- and if we can get a transcript, figure
12 out how to do it, we'll go through the testimony, and I -- and
13 we want to be heard on a reasonable time on the adequacy of the
14 disclosure statement. I'm not talking about confirmation
15 issues. I'm talking about disclosure statement adequacy
16 issues. There is no basis for conditional approval, especially
17 after the record developed today, none.

18 THE COURT: All right.

19 MS. BENTLEY: May I respond, Your Honor?

20 THE COURT: Yes, you may.

21 MS. BENTLEY: With respect to adequacy of the
22 disclosure statement, I can reference, I'm not going to because
23 I think you're well aware, Your Honor, 1125 is met. The
24 inaccuracies that Mr. Bennett is speaking about do not dictate
25 whether or not we have satisfied our burden with respect to

1 delivering an adequate disclosure statement. Every factor the
2 courts often consider are contained in our disclosure
3 statement.

4 THE COURT: All right. Mr. -- well, I see another
5 hand. Mr. Dahl?

6 MR. DAHL: Yeah, Your Honor, I just had a question
7 for Mr. Bennett. If he was proposing he needed additional time
8 for briefing, I assume he also meant that he would include
9 proposed language to resolve his concerns about the adequacy of
10 disclosure, but before I make that assumption I think that
11 would be helpful.

12 MR. BENNETT: If we have the information to offer, we
13 absolutely will, and if we don't, we'll ask the questions and
14 someone else will have the answer or not.

15 MR. DAHL: So that's a no though in terms of the
16 briefing that you (indiscernible).

17 MR. BENNETT: No, a combination of the two, Mr. Dahl.
18 In some instances we'll be able to do it, in some instance we
19 may not, and we'll explain each one.

20 MR. DAHL: Thank you for the clarification.

21 THE COURT: All right. Counsel may not agree with
22 the Court, often that's the case these days. I've never been
23 and I've said this before sanguine about the relevance of a
24 disclosure statement. I've always -- and I'll repeat it, I
25 always believe creditors want to know how much they're going to

1 get paid, when they're going to get paid and how they're going
2 to get paid, and usually in the 400 pages of disclosure
3 statements that gets lost.

4 There's ample information already contained in this
5 disclosure statement. What I would be approving is on a
6 conditional basis the adequacy of the disclosure statement.

7 It's the plan proponents who run the risk that at the
8 confirmation hearing I find that the disclosure statement was
9 inadequate, in which case I do send all the parties back, if
10 the plan proponents are comfortable with that risk. At this
11 point I think those that are on this call probably have the
12 information or access to the information that they're going to
13 need. They're not going to be relying on the disclosure
14 statement. I tend to believe that that's the case more often
15 than not.

16 So I'm prepared to approve the disclosure statement.
17 That doesn't mean if you can agree on some additional language
18 before it gets -- well, I'm not even sure that that would be
19 even relevant at this point. I'm going to agree to grant the
20 motion on the timeline that's been requested. We're far from
21 that point. There's ample opportunities to raise the
22 appropriate objections at confirmation, and the Court has that
23 opportunity to revisit the content of the disclosure statement,
24 again, at the potential prejudice to the plan proponents when
25 we get there.

1 Mr. Rosenblum?

2 MR. ROSENBLUM: Good evening, Your Honor. Benjamin
3 Rosenblum from Jones Day. I just wanted to call out in our
4 filing we had a handful of other issues with this motion beyond
5 disclosure. As the Court referenced, the waiver of the
6 schedules, statements, we have requested some information
7 rights that the statutory committee would get or the U.S.
8 Trustee would get, and we had a question. We just don't
9 understand frankly how the tabulation works.

10 So part of our request -- we can work with the
11 debtors over the weekend, but part of our request is driven on
12 not only by straight disclosure issues, but sort of discrete
13 issues in terms of the waivers and just mechanically how the
14 debtor is proposing the tabulation to work.

15 THE COURT: Counsel?

16 MS. BENTLEY: Your Honor, I just will say I'm sure
17 where you were going, the entrance of the DS scheduling motion
18 does not prohibit us to be requested to provide documents to
19 Mr. Rosenblum. I feel like we are sufficiently prepared to go
20 forward. We agree with you, we are in a position to take on
21 the burden to demonstrate at confirmation. We are not
22 prohibiting them from submitting further information requests.

23 And with respect to the waivers, they are
24 conditional. We have timelines by which we need to obtain
25 confirmation of the plan. To the extent we do not, the

1 reporting obligations come back.

2 THE COURT: Has the U.S. Trustee's Office agreed with
3 the timeline?

4 MS. BENTLEY: We -- I'm sorry. I'm sorry, Mr.
5 Sponder.

6 MR. SPONDER: Thank you, Your Honor. Jeff Sponder
7 from the Office of the United States Trustee. Your Honor, the
8 timeline is a lot better than it was and what we just did in
9 United Site Services.

10 THE COURT: That's what I thought.

11 MR. SPONDER: And we did discuss the waiver, and I
12 know Your Honor approved it just recently in the United Site
13 Services case. We just did get some more clarifying language
14 that it's actually has to be -- the plan has to be confirmed
15 and go effective within a certain amount of time, I think it's
16 75 days from the petition date, or then schedules have to be
17 filed and the 341 to be set. So we -- a little bit different
18 than United Site Services, but we -- based on that, we are in
19 agreement with the timeline, Your Honor. Thank you.

20 THE COURT: All right. I thought the timeline was a
21 little bit broadened. All right. Thank you, counsel. I am
22 granting the motion. We'll mark it order to be submitted.
23 Thank you. In that regard, I'm overruling the objections.

24 MS. BENTLEY: Thank you, Your Honor. We very much
25 appreciate the time. I know it's been a very long evening for

1 everyone, but thank you.

2 THE COURT: You're welcome.

3 MS. BENTLEY: Greatly appreciated.

4 MR. SERAJEDDINI: And, Your Honor, if I may briefly
5 on the DIP.

6 THE COURT: Yes.

7 MR. SERAJEDDINI: So, Your Honor, what our plan is is
8 because we're dealing with real major financial institutions
9 they do need an order in order to fund. And so what we would
10 propose is taking our interim order, adjusting the amount based
11 on Your Honor's ruling on the record today and submitting it to
12 chambers, subject to any other comments we get from creditors
13 say, you know, in the next 24 hours, and we're happy to
14 circulate it, but -- and by that I mean the parties that are
15 actually executing the transaction vis-a-vis the DIP and submit
16 it to chambers. If it can be entered over the weekend so that
17 it's entered by the time we get to open up business overseas is
18 key.

19 THE COURT: So you're saying that it has to be
20 entered before Monday morning.

21 MR. SERAJEDDINI: Correct.

22 THE COURT: Let me look over at staff.

23 COURT CLERK: I mean (indiscernible) tell them how do
24 it, but we can find someone to enter (indiscernible).

25 THE COURT: All right. We'll find somebody who can

1 enter it on Sunday.

2 COURT CLERK: And we might not be getting paid
3 (indiscernible).

4 MR. SERAJEDDINI: Okay. We very much appreciate
5 that.

6 THE COURT: As they've just noted, even though they
7 may not be getting paid, but we'll have them do that. What I'm
8 going to ask though is that you circulate it to the objectors
9 and to those who raise concerns, and let's get the cleanest,
10 simplest order that's necessary to keep this going forward.

11 MR. SERAJEDDINI: Understood, Your Honor. We will do
12 so.

13 THE COURT: Mr. Moss?

14 MR. MOSS: Your Honor, we have no objection to that
15 as long as it has all of our protections in it for use of cash
16 collateral. I mean and honestly we support simplicity, but
17 these orders tend to be longer for the sake of being specific,
18 et cetera and spelling out the --

19 THE COURT: It's understood. I'm just --

20 MR. MOSS: -- priorities and what not.

21 THE COURT: It's not the --

22 MR. MOSS: I think Mr. Serajeddini's --

23 THE COURT: It's not the simplicity --

24 MR. MOSS: Go ahead.

25 THE COURT: -- I'm concerned about. It's the lack of

1 controversial provisions that --

2 MR. MOSS: Yeah, the --

3 THE COURT: Let's just us to the 11:30 hearing and do
4 what's necessary to fund what's needed.

5 MR. MOSS: Sure. Well, as long as our protections
6 are in there we're good.

7 THE COURT: Good.

8 MR. MOSS: So we'll figure them out.

9 THE COURT: Thank you, Mr. Moss.

10 So, Becca, where should they e-mail this to make --

11 COURT CLERK: Directly to me.

12 THE COURT: All right. I'm going to ask counsel when
13 the order is ready to e-mail it directly to my career law clerk
14 Becca Earl who's going over and above, as she usually does.
15 Ms. Yudkin has her contact information. She can share it, and
16 we'll make sure that we ruin their weekends. All right.

17 MR. SERAJEDDINI: We apologize, Your Honor, on behalf
18 of all the parties and very, very much appreciate the
19 accommodation.

20 THE COURT: Absolutely. All right. Anything else I
21 need or you wish to address? Also, on Monday let's also circle
22 back to the venue issue and see what's required as far as
23 discovery or further hearings. All right.

24 MR. SERAJEDDINI: Understood. Thank you, Your Honor.

25 THE COURT: All right.

1 COURT CLERK: Wait.

2 THE COURT: Wait.

3 COURT CLERK: Are there any orders that must be
4 entered tonight?

5 THE COURT: The question has been asked are there any
6 orders that must be entered tonight?

7 MR. SERAJEDDINI: I presume, Your Honor, the
8 alternative would be to have them entered over the course of
9 the next couple of days as with the DIP.

10 COURT CLERK: But like joint administration we can do
11 that Monday morning.

12 THE COURT: Well, that's what -- most of those I
13 would think could be done on Monday morning, joint
14 administration. In other words, get to us for Sunday entry
15 those orders that really can't wait until Monday morning.

16 MR. SERAJEDDINI: Understood.

17 THE COURT: All right.

18 MR. SERAJEDDINI: Will do so, Your Honor.

19 THE COURT: All right, folks.

20 MR. SERAJEDDINI: Okay. Thank you.

21 THE COURT: Keep on talking, please. Please feel
22 free to reach out for the Court if I can assist in any way.
23 Otherwise, I look forward to seeing you all again at 11:30 on
24 Monday.

25 MR. SERAJEDDINI: Thank you very much.

1 UNIDENTIFIED ATTORNEY: Thank you, Judge.

2 THE COURT: We are adjourned. Thank you.

3 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

4 UNIDENTIFIED ATTORNEY: Have a good night.

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

We, KAREN WATSON, TRACY VERGOLLO, DIPTI PATEL, KIM WEBER, TERRI STARKEY and COLETTE MEHESKI, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Karen Watson

KAREN WATSON

/s/ Tracy Vergollo

TRACY VERGOLLO

/s/ Dipti Patel

DIPTI PATEL

/s/ Kim Weber

KIM WEBER

/s/ Terri Starkey

TERRI STARKEY

/s/ Colette Meheski

COLETTE MEHESKI

J&J COURT TRANSCRIBERS, INC. DATE: February 1, 2026

EXHIBIT 35

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE: . Case No. 26-10910-MBK
. (Joint Administration Requested)
. .
MULTI-COLOR CORPORATION, .
ET AL. . 402 East State Street
. Trenton, NJ 08608
Debtors. .
. February 2, 2026
. 11:33 a.m.

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

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- - - - -

1 (Proceedings commenced at 11:33 a.m.)

2 THE COURT: Good morning, everyone.

3 This is Judge Kaplan. And we'll be continuing the
4 first-day hearings started last Friday on the Multi-Color Corp.
5 matters. We are, again, remote, and so I'll let everybody just
6 adjust their screens.

7 We had closed the record with respect to the DIP
8 finance and cash collateral motion on Friday and we addressed
9 the other first-day matters. My intent this morning was to
10 read through a ruling that I had cobbled together over the
11 weekend. But I did want to give counsel the opportunity to
12 report back to the Court or bring up issues before I would do
13 so.

14 So, again, please use the raise-hand function if you
15 wish to be heard. And I'll emphasize, I'm not expecting
16 continued argument, although that's always an understatement in
17 any hearing.

18 So let me turn to Mr. Serajeddini, and I practiced
19 your name all weekend, so I really hope I got it right.

20 Well, I'm going to wait. We're having an audio
21 issue. So let me just check on us.

22 All right. Mr. Serajeddini.

23 MR. SERAJEDDINI: Thank you, Your Honor.

24 THE COURT: Now it works.

25 MR. SERAJEDDINI: Can you hear me okay? Great.

1 THE COURT: I can. Thank you.

2 MR. SERAJEDDINI: Okay. Great.

3 So good morning, Your Honor. For the record, Steven
4 Serajeddini of Kirkland & Ellis on behalf of the debtors.

5 I want to start, again, by thanking Your Honor and
6 chambers for your time and attention going late into Friday
7 evening, over the weekend, and once again today. It's a
8 massive imposition, but we really do appreciate it.

9 We noted, as Your Honor mentioned, the various first-
10 day orders that were entered this morning. That's incredibly
11 helpful to the business and will ease our transition into
12 Chapter 11.

13 Otherwise, I want to give the Court a brief update.

14 (Audio interference)

15 THE CLERK: I don't know why it's doing this.

16 THE COURT: I'm going to ask you to pause again. I'm
17 sorry, we're having problems.

18 We'll give it another shot. Go ahead.

19 MR. SERAJEDDINI: Okay. Can you hear me okay?

20 THE COURT: Yeah.

21 MR. SERAJEDDINI: Okay. Great.

22 So taking guidance from the Court at Friday's
23 hearing, we worked diligently with the parties over the weekend
24 around an agreed proposed form of order around the \$45 million
25 of financing that the Court approved on Friday. Despite the

1 party's efforts, we were unable to reach an agreement on a
2 proposed form of order, Your Honor.

3 The DIP lenders and cash collateral banks require
4 certain findings and rulings and the objecting parties objected
5 to the inclusion of those rulings and ultimately the parties
6 weren't able to agree. At the same time, though, fearing that
7 this may happen, we worked very much closely with our fronting
8 bank over the course of the weekend as well and believe we have
9 a path, assuming the Court is inclined to grant the DIP order,
10 that we can close on a very expeditious timeline today and
11 potentially not have any delays vis-a-vis funding that needs to
12 go out, specifically focused on the payroll overseas and making
13 sure that that goes out on time. So we'll be ready to go,
14 provided Your Honor rules today.

15 We also took Your Honor's guidance to heart with
16 respect to the extent of the interim relief we needed and
17 trying to limit it to what was absolutely necessary in the
18 first instance. We looked at the budget, went through all of
19 the specific payments that the AlixPartners and management did
20 on a line-item basis and we're prepared, in light of the fact
21 that the Court is willing to see us again for a final hearing
22 on March 3rd. And we're prepared to reduce the interim funding
23 request for the purposes of today's hearing from 150 to 125.
24 So that would be the modification.

25 We're also willing, and I want to reiterate it

1 because I said it in my opening remarks and I didn't want it to
2 get lost in the adversary process. I'll put it that way, Your
3 Honor. But we will continue to work diligently with the
4 objecting parties here between now and any future hearings to
5 try to determine whether there's a consensual path here. That
6 remains our goal.

7 Your Honor suggested the option for mediation on
8 Friday, and we've deliberated with our clients and we would
9 welcome mediation in these cases, provided it's on the timeline
10 laid out that the Court approved on Friday. And we're prepared
11 to start as soon as possible. And a lot of the back and forth
12 you heard, including vis-a-vis unencumbered assets, I think the
13 parties would benefit from basically showing each other all
14 their information and trying to find common ground on what's
15 the facts of the case as much as possible.

16 And then from there, trying to negotiate an agreed
17 outcome in terms of what's appropriate and what can be
18 accommodated by the various parties to reach a fully consensual
19 plan. So that's our goal. And we're prepared to do that as
20 soon as we break from today's hearing.

21 But for the purpose of today's hearing, Your Honor,
22 we once again reiterate the request that the DIP order be
23 entered in its revised form at Docket Number 65, which was
24 filed prior to Friday's hearing, with the modification that the
25 interim funding amount in that order be modified from 150 to

1 125 and any other conforming changes that are necessary to
2 comport with any ruling Your Honor gives today. That would be
3 our request.

4 And then from there, and I do want to caveat that we
5 may need a second interim hearing to the extent our
6 projections, because we've cut close to the bone here in terms
7 of the interim funding amount. If for some reason we do need
8 further funding, we reserve the right to come back with the
9 Court and chambers and see if we can find a day for a second
10 interim, potentially before. I understand Your Honor is
11 unavailable the originally requested day, but potentially
12 before that, what was imagined there. But that's something
13 we're happy obviously to take up at the end of today's hearing
14 to the extent it makes sense.

15 So with that, Your Honor, unless you have any
16 questions for me, as I said, we once again reiterate our
17 request that the order be entered as modified.

18 THE COURT: All right. Thank you.

19 Mr. Bennett, good morning.

20 MR. BENNETT: Good morning, Your Honor. Can you hear
21 me?

22 THE COURT: Yes, I can.

23 MR. BENNETT: Okay. Thank you, Your Honor. So first
24 of all, Bruce Bennett of Jones Day on behalf of the Cross-Over
25 Ad Hoc Group.

1 Your Honor, I'm also not going to re-argue the
2 arguments of last week. We stand by all of them. But I do
3 feel compelled to again state that we do not consent to any
4 proceedings going forward today in light of the fact that we
5 are in an improper venue and we object to the continuation of
6 the proceeding and to the entry of any orders, including an
7 order on DIP financing, not only for the reasons that we
8 articulated in the hearing, but also because there's no venue
9 supporting that order.

10 And, Your Honor, I just want to kind of focus on how
11 serious this is. But never mind. That would be argument. I
12 don't want to do it.

13 Thank you, Your Honor.

14 THE COURT: Understood. And I understand the
15 position. Thank you, Mr. Bennett.

16 Mr. Fleck, good morning.

17 MR. FLECK: Good morning, Your Honor. Evan Fleck of
18 Milbank on behalf of the Secured Ad Hoc Group.

19 Your Honor, just for good order, I don't think the
20 pro hac vice motions or orders have been entered yet, but may I
21 be heard?

22 THE COURT: Yeah, absolutely.

23 MR. FLECK: Thank you, Your Honor. Appreciate the
24 opportunity to speak at this point.

25 We heard what Mr. Serajeddini reported to the Court

1 with respect to the debtors' efforts over the course of the
2 weekend with respect to the quantum of the funding. Our group
3 stands ready to fund the full committed amount that we've
4 agreed to as part of the RSA and related transactions at this
5 point. We remain of the view from our vantage point that the
6 \$150 million funding at the interim stage now is what the
7 company needs.

8 Obviously, we listened attentively to the colloquy on
9 Friday about, both from Your Honor, that we should try to make
10 sure that there's no excess, try to keep the dollar amount to
11 just what is needed. And I think, from our client's
12 perspective, we just want to make sure this company is
13 appropriately funded for this period of time. And, obviously,
14 it's an international business. It has a lot of stakeholders.
15 The \$150 million sizing was done with care by AlixPartners and
16 others, and from our perspective, that we had gotten
17 comfortable with that amount. So that's the amount we support.

18 Secondarily, Your Honor, along with considering the
19 amount the company needs, that amount was part of a
20 comprehensive negotiation as between our group and the other
21 funding party, which is CD&R. To the extent that the amount
22 that the company is seeking or the amount that the Court is
23 prepared to approve as part of the interim funding is reduced,
24 it's our group's position that all of the terms with respect to
25 the financing, that's what we're prepared to support. And in

1 that regard, specifically, Your Honor, there was an allocation
2 with respect to the funding, and I referred to this last week,
3 that in response to the suggestion that this is a sponsor DIP,
4 but I push back on that because I don't think that's accurate.

5 Approximately 85 percent or more of the funding under
6 the DIP is coming from our client and not from the sponsor.
7 But to be clear, Your Honor, to the extent that the amount of
8 the funding is going to be reduced to any extent, 150 to 125 or
9 any other number, we would like to have the original economic
10 transaction that we signed up for remain intact. And what that
11 means is that, for us, we are still prepared to fund our share
12 of that, which would be approximately \$128 million on the same
13 terms that were contemplated in the original motion.

14 So that's our position. To the extent that Your
15 Honor would approve an amount that's less than 150, I would
16 suggest that it be subject to discussions among the funding
17 parties as to allocation with respect to this draw.

18 THE COURT: All right. Thank you, Mr. Fleck.

19 Mr. Moss, I see your hand.

20 MR. MOSS: (No audible response)

21 THE COURT: Oh, you need to put on your mic.

22 MR. MOSS: Good morning, Your Honor. Joel Moss from
23 Cahill Gordon & Reindel.

24 Solely speaking as to the amount of funding, we
25 obviously are supportive of the larger funding coming in as

1 that will minimize the debtors' use of cash collateral and
2 minimize any potential diminution claim of the estates. So
3 agree with Mr. Fleck on that and support solely that aspect.
4 Couldn't agree more with him on that one.

5 THE COURT: All right. Thank you.

6 Mr. Dahl, good morning.

7 MR. DAHL: Good morning, Your Honor. For the record,
8 Ryan Preston Dahl on behalf Latham & Watkins for the CD&R
9 entities.

10 I would also reiterate the support for the larger DIP
11 funding. At the end of the day, it is my clients' and
12 Mr. Fleck's clients' and Mr. Moss's clients' collateral that is
13 at risk here. And for an international business to try to
14 "just get by" on cash is never a good idea. And I don't mean
15 to say that to undermine the thoroughness or the integrity of
16 the analysis that the company's advisors have taken.

17 But not unlike water with a house on fire, you never
18 want just enough for that. But I would also note that if
19 Mr. Fleck's implication is his clients no longer stand by the
20 commitments and the undertakings that they've made through the
21 RSA, I'm sure that's not what Mr. Fleck meant to say.
22 Hopefully, we never have to address that. But I would note
23 that the incremental ratable allocation that we're talking
24 about amongst the lenders is in the grand scheme of things,
25 with a minor point, but not something that we need to get into

1 today. But we appreciate Your Honor's time, but we, again,
2 advocate for the full amount of the DIP balance, given the
3 criticality of the funding of this business.

4 THE COURT: All right. Thank you.

5 Good morning, Mr. Stancil.

6 MR. STANCIL: Good morning, Your Honor. Mark Stancil
7 for the Excluded First Lien Lenders.

8 Just to briefly reiterate, so I'm not leaving
9 something unreiterated that we're all reiterating this morning,
10 the pro rata objection stands. That is our central problem.
11 We don't see a basis for, if they think they need the roll-up,
12 we don't see a basis for excluding our right to challenge that
13 after the fact. And I've heard basically nothing on that.

14 And we do reiterate and join Mr. Bennett's venue
15 objection, and in particular, the overlap between those are, I
16 think, is substantial. We pointed, Your Honor, to a decision
17 from the Bankruptcy Court in Delaware that is directly contrary
18 to their position here. And they said, well, this isn't
19 Delaware.

20 Venue matters, Your Honor. But we'll stand on our
21 objections.

22 Thank you.

23 THE COURT: All right. Thank you.

24 Mr. Moss, would you like to reiterate something now?

25 MR. MOSS: (No audible response)

1 THE COURT: Mr. Bennett, how about you?

2 Do you want to reiterate something?

3 MR. BENNETT: (No audible response)

4 THE COURT: Can you all not hear us?

5 THE CLERK: Okay. Mic here has been stuck for a
6 while. I would put us on mute real quick.

7 (Court muted 11:48 a.m. to 11:52 a.m.)

8 THE COURT: Try this.

9 Works?

10 MR. SERAJEDDINI: Yes.

11 THE COURT: Sorry folks. Technology at its finest.

12 I think I left off, we heard from Mr. Stancil. We
13 heard from Mr. Fleck. I see Mr. Bennett wishes to probably
14 reiterate something now that everybody's reiterating.

15 I'll give you a chance, Mr. Bennett. Good morning,
16 again.

17 MR. BENNETT: Good morning, again, Your Honor.

18 I'm not going to reiterate. I want to point out that
19 something very remarkable is happening here.

20 Lenders that claim this is really risky and that
21 there are (audio interference) --

22 THE COURT: Oh --

23 THE CLERK: (Indiscernible)

24 THE COURT: Do the test again.

25 I'm here. Not to worry.

1 MR. BENNETT: I am supporting the debtors and noting
2 that we are at an interim hearing. At an interim hearing, the
3 maximum amount that can be approved is what the debtors need.
4 And the idea that just because the secured creditors want to
5 put more money in and get a bigger roll-up and have agreements
6 among themselves that need to be adjusted, that's quite
7 irrelevant.

8 The maximum the Court can authorize is the debtors'
9 need.

10 THE COURT: Thank you, Mr. Bennett.

11 I assume you all can still hear me.

12 Anyone else wish to address this topic?

13 (No audible response)

14 THE COURT: Otherwise, what I'm going to do, I
15 somewhat passively on Friday sat through about six hours of
16 testimony and argument. And I'm going to ask for your
17 indulgence this morning. It won't nearly be as long. But I'd
18 like to read through a ruling. I don't think it's impacted
19 necessarily by what's been put on the record this morning.

20 Grab a cup of coffee, get comfortable, and we'll
21 address other matters subsequent to my reading the ruling. I'm
22 anticipating about 20 minutes or so.

23 Thank you.

24 Among the remaining matters before the Court is the
25 debtors' motion for approval of the debtor-in-possession

1 financing, authority to use cash collateral and related relief
2 in connection with the restructuring support agreement, as well
3 as the objections raised by certain excluded secured lenders,
4 the Cross-Holder Ad Hoc Group, and a limited objection by the
5 office of the U.S. Trustee.

6 Today is a continued hearing from the initial hearing
7 held last Friday, the 30th, in which the Court authorized a
8 limited emergent DIP funding and use of cash collateral in the
9 amount of up to \$45 million. The Court has jurisdiction over
10 this matter pursuant to 28 U.S.C. Sections 157 and 1334. And
11 while venue has been challenged by certain parties for purposes
12 of this motion, based on the record to date, the Court finds
13 venue as proper in this district, subject to a reservation of
14 rights to further challenge venue.

15 The matter constitutes a Court proceeding under
16 28 U.S.C. Section 157(b). The Court enters this ruling for the
17 purposes of affording the debtors interim relief, subject to a
18 final ruling at a final hearing scheduled as of now for
19 March 3, 2026. The Court has considered the full record of
20 these Chapter 11 cases, including the declaration of Garrett
21 Gabel, the declaration and related testimony of Eric Koza, the
22 declaration and related testimony of Brent Banks, all exhibits
23 annexed to the declarations, as well as the exhibits offered by
24 the Cross-Holder Group annexed to the declarations of Brendan
25 Hayes and Benjamin Rosenblum, along with argument of counsel

1 and the applicable law.

2 In addition to the evidentiary record, the Court has
3 considered the arguments and information presented at the
4 first-day hearing, and since we're having technical issues, I'm
5 going to ask those, when you can stop hearing me for some
6 reason, start waving and let us know, so I save my breath.

7 The Court has considered the arguments and
8 information presented at the first-day hearing through the
9 debtors' first day presentation and the presentation submitted
10 by the Cross-Holder Ad Hoc Group. These presentations
11 reinforced and clarified the record with respect to the
12 debtors' capital structure, liquidity constraints, and the
13 competing narratives regarding the proposed DIP financing.

14 The debtors' presentation emphasized the scale and
15 complexity of the debtors' global operations, the deterioration
16 in operating performance following the COVID-era surge, and the
17 resulting liquidity crisis that precipitated the Chapter 11
18 filings. The Court finds that the evidence regarding the
19 debtors' workforce, global footprint, customer relationships,
20 and capital structure support the conclusion that uninterrupted
21 access to liquidity is essential to preserve going concern
22 value and avoid immediate disruption.

23 By contrast, the Cross-Holder Ad Hoc Group's
24 presentation focused primarily on the asserted existence of
25 unencumbered assets, the alleged impropriety of the roll-up

1 feature, the availability of non-priming alternative DIP
2 financing, and venue and process-related objections. The Court
3 has carefully considered these arguments, but finds, as will be
4 discussed, that they do not outweigh the demonstrated
5 necessity, feasibility, and overall benefits of the RSA-backed
6 DIP facility.

7 The Court issues the following findings of fact and
8 conclusions of law pursuant to Bankruptcy Rule 7052 and 9014.

9 Generally, based on the evidence presented, I find
10 that the debtors exercised sound business judgment in entering
11 into a restructuring support agreement and the related DIP
12 financing. The RSA is supported by a substantial majority of
13 the debtors' first lien secured lenders and by the equity
14 sponsor. It provides immediate and necessary liquidity,
15 materially de-leverages the debtors' balance sheet, and is
16 paired with a viable prepackaged Chapter 11 with defined
17 milestones.

18 The record demonstrates that this transaction
19 preserves the debtors as a going concern and maximizes value
20 for the estates. Specifically, the Court finds and determines
21 that the debtors came into this Chapter 11 with approximately
22 \$4.8 billion in secured funded debt and \$1.15 billion in
23 unsecured funded debt. Both the unsecured debt and the secured
24 debt are supported by guarantees from the same entities.

25 Evercore, debtors' proposed financial advisor

1 estimates that the total enterprise value of the reorganized
2 debtors are between 2.9 billion and 3.4 billion on emergence,
3 assuming an effective date of May 31. Assuming debt of 2.6
4 billion on emergence, Evercore estimates the reorganized
5 debtors' equity value lies somewhere between 300 million and
6 \$800 million.

7 The proposed RSA transaction is supported by holders
8 of approximately 72.3 percent of the debtors' first lien
9 secured debt and by the debtors' equity sponsor, CD&R,
10 reflecting broad consensus in favor of restructuring. The
11 debtors seek approval of up to \$657.5 million senior secured
12 DIP financing facility from first lien lenders, which includes
13 \$250 million of immediate new money separated into two fundings
14 of 150 million and 100 million. Today, that's been reduced
15 initially to \$125 million as opposed to the 150 million.

16 A \$250 million roll-up of pre-petition first lien
17 debt on a one-to-one basis, a \$7.5 million DIP backstop
18 premium, and up to \$150 million in additional new money loans.
19 The new money DIP loans would be paid in full on emergence with
20 the roll-up DIP loans exchanged for new debt. The DIP loans
21 would be backstopped by a plan sponsor and certain members of
22 the Secured Ad Hoc Group, and 30 percent of the DIP commitments
23 would be allocated to the DIP backstop parties on a pro rata
24 basis. All first lien lenders can participate in the debt
25 facility and are entitled to fund 70 percent of the DIP

1 commitments.

2 To secure the DIP financing, the debtors propose to
3 grant a priming first priority lien on all first lien
4 collateral and unencumbered assets, a junior lien on all ABL
5 collateral and any assets subject to permitted prior liens, and
6 subject to the entry of a final order, a lien on all avoidance
7 and recovery action proceeds.

8 The Court finds, consistent with the unrebutted
9 testimony, that this financing is necessary to fund ongoing
10 operations, preserve relationships with customers and vendors,
11 and administer these Chapter 11 cases. Without the liquidity
12 infusion provided by the DIP facility, there will be
13 insufficient cash on hand to continue operating and risk
14 material attrition and business disruption.

15 The DIP and RSA are coupled with a fully negotiated
16 prepackaged Chapter 11 plan and defined case milestones which
17 the debtors contend will result in an approximate \$3.9 billion
18 reduction on the debtors' net funded debt, reduce annual cash
19 debt service by \$350 million, preserve the debtors ability to
20 operate as a going concern, ensures continuing relationships
21 with trade creditors and customers, and as argued by the
22 debtors, reflect a strong signal to the marketplace regarding
23 the debtors liquidity and operational stability.

24 Additionally, the RSA-backed restructuring provides
25 the reorganized debtors with more than \$550 million of exit

1 liquidity and a maturity runway of approximately seven years.
2 The Court credits the testimony and declaration of Eric Koza of
3 AlixPartners regarding the debtors' liquidity needs, cash flow
4 forecasting, and the necessity of immediate access to the DIP
5 facility and cash collateral.

6 Mr. Koza credibly establishes that substantially all
7 available cash constitutes cash collateral, that absent the DIP
8 facility, liquidity would be exhausted within the first week of
9 these cases, and that failure to approve the financing would
10 result in immediate and irreparable harm to operations, vendor
11 relations, and going concern value.

12 The Court also credits the testimony and declaration
13 of Brett Banks of Evercore regarding the debtors' financing
14 process and market process. Mr. Banks established that the
15 debtors and their advisors conducted an extensive, arms-length
16 and good-faith marketing and financing process involving
17 existing lenders, the Cross-Holder Ad Hoc Group, and multiple
18 third parties.

19 The Court further finds that the marketing and
20 negotiation process, when viewed in its totality and under the
21 exigent circumstances facing the debtors, was reasonable and
22 that the process yielded no viable alternative financing
23 proposal, which provided comparable overall deleveraging and a
24 credible path to emergence. With regard to the concerns and
25 objections raised by the Cross-Holder Group, that its competing

1 finance proposal was given little or no consideration given
2 that the debtors had executed already the RSA at the time it
3 was engaging with the Cross-Holder advisors, Guggenheim, these
4 concerns ignore the fact that no RSA or DIP proposal is
5 operable without bankruptcy Court approval, and up until such
6 time such approval is given, the debtors, together with its
7 advisor Evercore, has a continuing fiduciary obligation to
8 solicit and explore all other financing alternatives.

9 Indeed, as counsel for the Cross-Holder Group
10 recognized during argument, this Court has significant
11 discretion in approving such financing. The Court further
12 rules that the debtors have satisfied their burden under
13 Section 364 of the Bankruptcy Code to demonstrate that the
14 debtors-in-possession financing contemplated by the RSA is
15 necessary to preserve the value of the estates and to avoid
16 immediate and irreparable harm.

17 The terms of the DIP financing were negotiated in
18 good faith and at arm's length, fall within the sound exercise
19 of the debtors' business judgment through the vetting and
20 review of the competing finance proposals by professional
21 advisors as well as the disinterested board members and a
22 special committee. In this regard, objectors challenge the
23 exercise of such business judgment by the Special Committee and
24 the disinterested directors contending that the application of
25 the business judgment standard should be displaced by the

1 Delaware corporate governance standard of entire fairness given
2 the alleged conflicted position of those charged with making
3 the ultimate decisions and the lack of information and
4 consideration with respect to the potential recoveries for
5 certain lenders arising from the roll-up.

6 Firstly, apart from the argument and conjecture,
7 there is nothing in the record to evidence any conflicted
8 positions or actions on the part of the disinterested directors
9 or Special Committee. Furthermore, while the testimony
10 confirms that Mr. Banks did not review with the Special
11 Committee and disinterested directors the specific range of
12 potential dollar recoveries due to the roll-up, there is
13 nothing in the record that suggests that the board was unaware
14 that a roll-up of \$250 million was part of the finance package.

15 Indeed, quite the opposite and certainly nothing in
16 the record to evidence that additional information regarding
17 the specific dollar breakdown for individual secured creditors
18 would have deterred the Special Committee in assessing the
19 proposal in its totality, as the Court previously described,
20 from making its overall recommendation. To suggest otherwise,
21 again, would be mere speculation.

22 The record further establishes that the RSA-backed
23 transaction represents a strong overall financing and
24 restructuring alternative available to the debtors, approval of
25 which falls well within the reasonable exercise of the debtors'

1 business judgment and satisfies the Third Circuit standards
2 applicable to the approval of DIP financing. The Court further
3 finds that the debtors properly exercised their business
4 judgment in rejecting the alternative proposal advanced by the
5 Cross-Holder Ad Hoc Group as the alternatives did not meet all
6 of the collective stakeholders' significant restructuring aims.

7 With respect to the Cross-Holder's competing
8 proposal, debtors' CRO Mr. Gabel, in his first-day declaration,
9 acknowledges that a proposal submitted in late January of 2026
10 would have reduced debt by approximately \$450 million and given
11 the debtors a two-year liquidity and maturity runway. The
12 debtors also rejected a proposal from the Cross-Holder Group
13 for a 350 million to \$500 million new money DIP facility
14 secured by a junior lien on ABL collateral and by a first lien
15 on the debtors unencumbered property.

16 Notwithstanding that this proposal offered a
17 non-priming facility with less fee exposure in the short term
18 and no roll-up component on a larger size junior DIP. The
19 record establishes that it lacked broad secured lender support,
20 was not coupled with a feasible exit proposal, and risked delay
21 for these proceedings while leaving the debtors with no
22 guaranteed pathway to address the now greater leveraged debt.

23 While it is true that Section 364 does not require a
24 debtor to condition entry into a DIP facility on such
25 facility's connection to a proposed plan of reorganization,

1 that section poses no bar to a debtor incorporating the benefit
2 of a guaranteed exit facility into its calculus in assessing
3 the financing proposals.

4 In reaching this ruling, the Court has carefully
5 considered the objections filed by the Cross-Holder Ad Hoc
6 Group and the Excluded First Lien Lenders. Each objection was
7 reviewed in detail against the evidentiary record, the
8 declarations submitted, the arguments of counsel, and the
9 applicable provisions of the Code.

10 The Cross-Holder Ad Hoc Group primarily challenges
11 the DIP facility and the restructuring support agreement on a
12 statutory, structural, and fairness grounds. Among other
13 things, the Cross-Holder Ad Hoc Group contends that the DIP
14 facility fails to satisfy Section 364 of the Bankruptcy Code
15 because a non-priming alternative is available, that the
16 involvement of the equity sponsor requires application of an
17 entire fairness standard, that the roll-up of the prepetition
18 debt improperly reallocates value from unsecured creditors,
19 that certain fees and backstop premiums are unjustified, and
20 that the financing constitutes an impermissible sub rosa plan.

21 The Court rejects these arguments. With respect to
22 the requirements of Section 364(d)(1), the Court respectfully
23 disagrees with counsel's construction on its implementation. A
24 constrained reading of this section, along with Section 364(c),
25 which would require a debtor actually to forego financing based

1 on a consensually subordinated or primed lien on existing
2 encumbered assets in favor of a financing secured by
3 unencumbered assets available to other stakeholders, is to this
4 Court value destructive and would produce policy adverse
5 results.

6 This Court reads the mandates of Section 364(d)(1) as
7 designed and intended to protect the interest of existing
8 unwilling lien holders and can certainly be subject to their
9 waiver and consent. Here, the exhaustion of Section 364(c)
10 opportunities is of less import given that the policy concern
11 of protecting unwilling secured creditors is absent.

12 Continuing, based on the record, the Court finds that
13 the debtors conducted a good faith and reasonable financing
14 process under exigent circumstances and that there is no basis
15 in the Code or the evidence presented which requires the
16 application of the entire fairness standard or any other higher
17 level of scrutiny apart from the debtors' proper exercise of
18 business judgment.

19 The alternative proposal advanced by the Cross-Holder
20 Ad Hoc Group, while considered, did not provide comparable
21 certainty of execution, did not carry sufficient lender
22 support, and was not, as I said, coupled with a viable
23 executable Chapter 11 plan. The Court further finds that the
24 DIP facility does not impermissibly dictate plan terms but
25 instead provides a necessary framework to stabilize the

1 debtors' operations and preserve enterprise value during these
2 cases.

3 The milestones and covenants are customary and
4 reasonable in light of the debtors' liquidity constraints and
5 the restructuring posture. Moreover, while disputes regarding
6 the precise scope and extent of the prepetition liens may
7 exist, those issues are not required to be conclusively
8 resolved at the interim DIP stage. Likewise, many of the
9 challenges raised reflect confirmation issues which can and
10 will be addressed at confirmation and all parties' rights are
11 expressly reserved in that regard.

12 With respect to the roll-up and associated fees, the
13 Court finds that these provisions were integral components of
14 the overall financing package and were negotiated in good
15 faith. The record supports the conclusion that a roll-up,
16 based on a one-to-one ratio which is well within market, was
17 necessary to secure critical lender participation and to avoid
18 a liquidity crisis that would have jeopardized the debtors'
19 operations. The Court is cognizant of the math and that a
20 roll-up may produce a significant pro rata uplift for certain
21 lenders, dependent upon collateral valuation.

22 However, this recovery cannot be viewed in a vacuum
23 and the debtors properly exercises its business judgment when
24 analyzing the cost and benefits of the roll-up in totality with
25 the benefits of the entire DIP and guaranteed exit financing.

1 Notwithstanding, the Court does have some concerns
2 given that based on the information set forth in the disclosure
3 statement and discussed on Friday in testimony, which
4 information reflects that total first lien claims face a
5 recovery in the range of approximately 42 to 50 percent,
6 dependent on collateral valuation, and that the extent and
7 value of the collateral securing these claims remain
8 unresolved.

9 I believe it was the Third Circuit in Tribune which
10 reaffirmed that bankruptcy law is a rough justice that requires
11 balancing the interests of the parties in a case. While in
12 balancing the debtors' business judgment in favor of financing
13 package offering the noted long-term benefits against the added
14 recoveries for certain lenders produced by the \$250 million
15 roll-up in a possibly under-secured environment, the Court is
16 unwilling to approve the roll-up in its entirety. Rather, the
17 Court authorizes today a roll-up total of \$125 million, which
18 includes the advances already authorized.

19 In addition, the Court will defer approval of
20 one-half of the 3 percent backstop fee pending the appointment
21 of a committee, if a committee is such appointed, and further
22 argument by interested parties at the final hearing on
23 March 3rd. The Excluded First Lien Lenders object primarily on
24 contractual grounds, arguing that the roll-up and DIP
25 participation structure violate the pro rata sharing provisions

1 of the pre-petition intercreditor and credit agreements and
2 improperly lock in disparate plan recoveries.

3 The Court acknowledges these concerns but finds they
4 do not warrant denial of the DIP facility. The Court's
5 approval of the DIP financing does not constitute a final
6 adjudication of any contractual disputes among lenders, nor
7 does it foreclose the ability of parties to raise appropriate
8 arguments in a proper forum to the extent those issues remain
9 justiciable.

10 Any further interim or final order entered in this
11 matter will expressly reserve the respective rights of the
12 excluded and other lenders to pursue available contract rights
13 and remedies. For purposes of interim and final approval of
14 the DIP facility, however, the Court finds that the financing
15 satisfies the requirements of Section 364 and reflects a sound
16 exercise of the debtors' business judgment.

17 To the extent any of the objections contend that the
18 DIP financing or RSA improperly dictate plan terms, forecloses
19 creditor participation, or constitutes an impermissible sub
20 rosa plan, I reject those arguments. The financing provides
21 the necessary framework to stabilize operation and preserve
22 value and does not improperly lock in plan outcomes.

23 Accordingly, having weighed all the objections and
24 arguments, the Court concludes that the DIP facility and
25 related relief are appropriate, necessary, and in the best

1 interest of the debtors' estates. The debtors' motion for
2 approval of the DIP financing, the authority to use cash
3 collateral and related relief is granted as modified by the
4 Court. The debtors are authorized to proceed in accordance
5 with the terms of the Restructuring Support Agreement and the
6 DIP financing documents. Counsel may submit an order
7 consistent with this bench ruling.

8 All right. Well, that was a mouthful, so let me
9 clarify.

10 It was the Court's intent to approve what was
11 requested by the debtors today on an interim basis, the use of
12 \$125 million, leaving for a further and final, either another
13 interim hearing, or a final hearing approval of the balance of
14 the negotiated financing proposal. The Court is approving at
15 this juncture only a roll-up of \$125 million. And the Court
16 will authorize payment of the backstop premium of one-half of
17 the 3 percent against one-half of the 7.5 million, subject to
18 further allowance at the final hearing.

19 Is there anything I can address among the parties?
20 And I'm fearful of asking this --

21 MR. SERAJEDDINI: Not from us, Your Honor, we
22 appreciate it.

23 THE COURT: -- with respect to the DIP ruling?
24 Mr. Bennett.

25 MR. BENNETT: Your Honor, thank you for your ruling.

1 We will be filing a notice of appeal immediately
2 after the order is docketed. In that connection, would the
3 Court be willing to certify that your order may be directly
4 appealed to the Third Circuit pursuant to 28 U.S.C.
5 Section 158(d) and Bankruptcy Code Section 8006?

6 THE COURT: Not without hearing further argument on
7 that issue, on the appropriateness of direct appeal. I would
8 listen to parties argue about the appropriateness of a direct
9 appeal.

10 I do want to discuss where we go from here.

11 We have venue issues to discuss. Bear with me one
12 second.

13 Actually, if we may take -- just bear with us. Let
14 me take a five-minute break. I'll come back in five minutes.

15 (Recess at 12:18 p.m./Reconvened at 12:25 p.m.)

16 THE COURT: All right. I am back. We are back.
17 Certain faces are back.

18 Thank you. I'll just give you an opportunity.

19 All right. So apart from issues relative to final
20 hearing, there are issues that have been raised with respect to
21 venue. And while we have a final hearing scheduled for
22 March 3rd, I think it's important that we resolve the venue
23 issue in advance of that.

24 I'm not cognizant of what you all need as far as
25 discovery, if you need discovery. I know parties should be

1 able to brief it in more depth and we would address the issues
2 in more depth.

3 So, I am scheduling a hearing on the venue motion for
4 February 25th. It's Wednesday. I can do this at 11:30. I'm
5 trying to accommodate some people maybe on the West Coast and
6 not make it so early. We would do it at 11:30.

7 I'm not sure what testimony or witnesses would be,
8 but I think you all need to look into it more. So what I would
9 ask is any submissions, in other words, I would ask for the
10 debtors to file a written response to the motion by Thursday
11 the 19th and a reply could be filed by close of business on
12 Monday the 23rd. And, of course, interested parties would all
13 make submissions as appropriate, as well, in that time frame.

14 I would hope you all will meet and confer and discuss
15 what your discovery or needs. The Court is available on an
16 informal basis to have a call if there are issues.

17 In that same vein, I had mentioned this at the Friday
18 hearing. I often have found, and you all have far more
19 experience, success in certain situations with mediation. I
20 think mediation is beneficial, but I think it's beneficial in
21 this case early before dollars are spent on adversary
22 proceedings, on litigation, and I'm going to direct the parties
23 to go into mediation. It could last a half a day or a day, but
24 to get you all down there and talking about your respective
25 concerns and issues.

1 So in that regard, I'm going to ask that, and when I
2 look at the mediation parties, in my mind, and I'll hear from
3 anybody who wants to touch on this, it involves obviously the
4 debtors, the sponsor, the Secured Ad Hoc Group, the Excluded
5 Lenders, and the Cross-Holder Group. Now, I don't know if ABL
6 or agents have to be involved, but those would be the mediation
7 parties subject to agreement by the parties or a mediator.

8 I'm going to ask by close of business on Wednesday,
9 this Wednesday, which is the 4th -- well, I'm going to ask that
10 the parties meet and confer about if you can agree on a
11 mediator that you would want the Court to reach out for. You
12 can't always get an agreement on a mediator, I recognize that.
13 So I would ask that by the close of business on Wednesday, and
14 at this point, I would ask basically it's the Cross-Holder and
15 Excluded Lenders versus the proponents of the financing, to
16 each give three names to the Court, to email it to the Court
17 directly, and the Court would choose from those names.

18 I'm hoping you can reach an accord on an individual.
19 I always make the plea don't further burden a sitting judge,
20 but that's always a possibility although it's always hard to
21 get scheduled. Timing is important. And I think before we get
22 too far down the road, we need to know if there's a chance at a
23 consensus. If there isn't, there isn't. And we'll move
24 forward with everybody's respective rights to make whatever
25 arguments are appropriate. But I think it's better to address

1 this at the outset.

2 So is there anyone who wishes to raise any concerns
3 or issues or anything else for today?

4 Mr. Serajeddini.

5 MR. SERAJEDDINI: Nothing further from us, Your
6 Honor. We appreciate the Court's respective rulings and no
7 issues from the debtors' perspective.

8 We will urgently submit to Your Honor the proposed
9 DIP order consistent with Your Honor's findings and the
10 modifications made today. And our number one focus for today
11 will be to ensure that the funding occurs and then from there,
12 Your Honor, we will, as I said, turn our attention to these
13 variety of matters that Your Honor has raised and that are
14 going to be our concern going forward, which is to do what we
15 can to build consensus in these cases.

16 THE COURT: With respect to the language of the
17 order, if there are concerns by the objecting parties as to the
18 language, I assume they have what you're proposing. You've had
19 it back and forth over the weekend. Please get those concerns
20 down to my chambers as quickly as possible so I have time to
21 address this this afternoon.

22 MR. SERAJEDDINI: Will do so, Your Honor.

23 THE COURT: All right.

24 MR. BENNETT: (Indiscernible), something, Your Honor.

25 THE COURT: All right. Thank you.

1 Thank you, counsel. Thank you, again, for your
2 patience, and stay well. Take care.

3 MR. BENNETT: Thank you, Judge.

4 MR. SERAJEDDINI: Thank you, Your Honor.

5 (Proceedings concluded at 12:32 p.m.)

6 * * * * *

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

I, Karen K. Watson, court-approved transcriber,
hereby 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 my ability.

/s/ Karen Watson
KAREN WATSON, AAERT CET-1039

DATE: February 3, 2026

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