

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:) **Case No. 25-80121-mvl-11**
) *(Jointly Administered)*
)
HIGHER GROUND EDUCATION,) Dallas, Texas
INC., et al.,) July 21, 2025
) 9:30 a.m. Docket
Debtors.)
) OMNIBUS HEARING BLOCK
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHELLE V. LARSON,
UNITED STATES BANKRUPTCY JUDGE.

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1 DALLAS, TEXAS - JULY 21, 2025 - 9:33 A.M.

2 THE COURT: Please, be seated. Good morning,
3 everyone. We are here on our 9:30 docket. We have one matter
4 on the docket this morning, and that is Case No. 25-80121. I
5 will take appearances for the record, and I'll begin with
6 those in the courtroom.

7 MS. O'NEIL: Good morning, Your Honor. Holly O'Neil,
8 Tim Mohan, Nora McGuffey, and Tom Scannell on behalf of the
9 Debtors.

10 Your Honor, we also have some folks on WebEx, if I may
11 introduce them as well.

12 THE COURT: Of course.

13 MS. O'NEIL: Our financial -- our two board members,
14 Jon McCarthy and Mark Kirshbaum. Mark -- or, Mr. Kirshbaum is
15 our independent director.

16 We also have representatives with SierraConstellation
17 Partners, which is our financial advisor, and that's Mr. Carl
18 Moore and Mr. Sean Corwen.

19 Thank you, Your Honor.

20 THE COURT: All right. Thank you very much.

21 Mr. Brookner?

22 MR. BROOKNER: Good morning, Your Honor. Jason
23 Brookner and Amber Carson from Gray Reed on behalf of the
24 Official Committee of Unsecured Creditors.

25 THE COURT: Good morning. Mr. Binford?

1 MR. BINFORD: Good morning, Your Honor. Jason
2 Binford with the law firm of Kane Russell Coleman & Logan on
3 behalf of the Junior DIP Lender, Guidepost Global Education,
4 Incorporated.

5 MS. KIPPES: Good morning, Your Honor. Meredyth
6 Kippes on behalf of the United States Trustee. I like your
7 pen.

8 THE COURT: Oh, thank you. I hear it makes me look
9 friendlier.

10 MS. KIPPES: I don't know that that's possible. I
11 mean that she's always friendly.

12 (Laughter.)

13 A VOICE: Good recovery.

14 MS. CHIARELLO: Good morning, Your Honor. Annmarie
15 Chiarello of Winstead P.C. I'm here today on behalf of a
16 landlord, 214 East Hallandale Beach, LLC.

17 THE COURT: Thank you very much.

18 MS. CHIARELLO: Thank you.

19 MR. HENDRICKS: Good morning, Your Honor. Chuck
20 Hendricks on behalf of Carl Barney. He's a litigant in
21 California. And also should have on WebEx, I can't tell, Rob
22 Goe, whom the Court has admitted *pro hac vice* as counsel for
23 Mr. Barney also.

24 THE COURT: Excellent.

25 MR. HENDRICKS: Thank you.

1 THE COURT: Thank you very much.

2 All right. Thank you all for making your appearances.

3 Also, I have an electronic roll. On WebEx, I have Mr.

4 Christopher Candon and Mr. James LaMontagne with Sheehan

5 Phinney Bass on behalf of EB5AN Investment Management, LLC.

6 With the Pachulski law firm, I have Mr. Jordan Kroop with

7 Guidepost Financial Partner, LLC.

8 I think one additional appearance. For the Debtors, I

9 have Ms. Quynh-Nhu Truong.

10 Let me see if I have anyone else. On behalf of 2HR

11 Learning, Inc. and YYYYY, LLC, I have, with the Cozen O'Connor

12 firm, Trevor Hoffman and Frederick Schmidt, Jr.

13 And then the last appearance I have, on behalf of Kimco

14 Realty Corp. and Twin Star Ventures, with Singer & Levick, I

15 have Ms. Michelle Shriro.

16 Is there anyone else on WebEx who would like to make an

17 appearance?

18 MR. TAYLOR: Good morning, Your Honor. Clay Taylor

19 on behalf of Rebecca and Ray Girn.

20 THE COURT: Good morning. Anyone else?

21 MR. MONSOUR: Good morning, Your Honor. Trey Monsour

22 from Fox Rothschild on behalf of WTI Funding X, Inc. I did

23 file an electronic appearance, but I guess I didn't make your

24 list.

25 THE COURT: Oh, it's okay. Maybe it was on a Page 2

1 that I'm missing, or maybe it came in a little bit after we
2 printed it. Thank you, Mr. Monsour.

3 MR. MONSOUR: Thank you.

4 THE COURT: Anyone else wish to make an appearance?
5 Give me one moment.

6 (Pause.)

7 THE COURT: All right. So, obviously, we're here on
8 an omnibus hearing docket for second days. I have, let's see,
9 I know I had the original agenda. I know there is an amended
10 agenda. I'm not sure if I have it, but I know I'll be able to
11 follow along.

12 I have been able to review each of the proposed forms of
13 order that were filed with everything that is going forward
14 today. I have those with me for any discussion. And
15 otherwise, I'm ready when you are, Ms. O'Neil.

16 MS. O'NEIL: Thank you, Your Honor. Holly O'Neil on
17 behalf of the Debtors.

18 Your Honor, as a housekeeping matter, we had filed some
19 updated exhibits late last night. And if it pleases the
20 Court, we have a couple of updated exhibit binders.

21 THE COURT: Oh, okay. Thank you.

22 MS. O'NEIL: And I've got two copies, if I may
23 approach. Do you want one or two?

24 THE COURT: Thank you.

25 MS. O'NEIL: Your Honor, Mr. Mohan and Ms. McGuffey

1 are going to really be the stars of the show today, so I just
2 thought I would give the Court a bit of some background just
3 as to -- since we filed the case and what we -- where we are
4 today.

5 OPENING STATEMENT ON BEHALF OF THE DEBTORS

6 MS. O'NEIL: As Your Honor may be aware, the U.S.
7 Trustee formed the Creditors' Committee on Tuesday, July the
8 8th, and the Committee engaged Gray Reed shortly thereafter as
9 counsel. The Debtors have, and hopefully Mr. -- the Committee
10 counsel will back me up on this, we immediately engaged with
11 Mr. Brookner and his team to try to get them up to speed as
12 much as possible and as quickly as possible to prepare for
13 this hearing.

14 We've provided them a lot of information, and we'll
15 continue to provide them information related to not only the
16 matters set for today, but the plan, et cetera, that has been
17 filed.

18 The Committee did deliver a diligence request list on
19 Sunday, and the Debtors and their advisors have been working
20 to facilitate compliance with providing that information. I
21 think as of yesterday we had provided over 1,600 documents for
22 their review, which I'm certain they have not had a chance to
23 get through, but are in the process. And we will continue to
24 do so.

25 Your Honor, I understand that the Committee, in

1 furtherance of its investigation, has sent discovery requests
2 also to certain of the other nondebtor parties under the
3 Restructuring Support Agreement, the RSA. And this is all to
4 say that the Debtors and the RSA Parties understand that the
5 proposed speed of these cases and the need to provide the
6 Committee with reasonable time and information needed kind of
7 informs how we are proposing to proceed today.

8 With that, Your Honor, we have agreed to continue the
9 hearing on the Conditional Disclosure Statement and the
10 Omnibus Lease Assumption Motion to the next hearing date,
11 which is August the 8th, and limit the nature of today's
12 hearing on the RSA Motion, with the assumption of the -- the
13 full assumption of the RSA Motion being continued to August
14 8th. There are parts of it I think we're going to present
15 today.

16 The primary issue today, Your Honor, is on approval --
17 final approval of the DIP. I'd like to thank the DIP Lenders,
18 the Committee, the Office of the United States Trustee, all
19 for working with us to get as far as we could to a full
20 resolution. We do still have some open issues with the U.S.
21 Trustee's Office, which I'm sure Ms. Kippes will present to
22 the Court. So that's the primary issue for today, is on the
23 DIP.

24 So, with that, I will hand the lectern over to Mr. Mohan.

25 THE COURT: Thank you very much, Ms. O'Neil.

1 MS. O'NEIL: Thank you.

2 THE COURT: Would the Committee or anyone else like
3 to make any brief opening before we get to the motions
4 themselves with Mr. Mohan? Ms. Carson?

5 OPENING STATEMENT ON BEHALF OF THE CREDITORS' COMMITTEE

6 MS. CARSON: Good morning, Your Honor. Amber Carson
7 from Gray Reed on behalf of the Committee.

8 I can echo Ms. O'Neil's comments. We have been working
9 since we were retained about 11 days ago, on July 10th. And
10 just to clarify one piece of that information. We were
11 retained on July 10th, which was a Thursday. We sent our
12 diligence requests that following Sunday, so just a few days
13 later.

14 So we have been working to gather documents as quickly as
15 possible so that we can gather sufficient information that we
16 need to conduct a fulsome investigation into estate causes of
17 action, as well as the releases in the proposed plan.

18 I would also like to echo her thanks to the RSA Parties
19 and to the Debtors, everyone who has been working with us as
20 part of this process. The Committee does have a lot of work
21 to do in a very short period of time.

22 So far, everything has been going relatively smoothly, and
23 it's our hope that we can continue to work cooperatively and
24 amicably and productively with all of the parties, to achieve
25 a consensual and value-maximizing resolution to these Chapter

1 11 cases.

2 THE COURT: Thank you very much, Ms. Carson.

3 MS. CARSON: Thank you.

4 THE COURT: Appreciate that. See, you have a good
5 cop and a bad cop.

6 Ms. Kippes?

7 OPENING STATEMENT ON BEHALF OF THE UNITED STATES TRUSTEE

8 MS. KIPPES: Thank you, Your Honor. Meredyth Kippes
9 on behalf of the United States Trustee.

10 The Court has seen my objection to the DIP and the Court
11 is aware that there are just -- there are things that we
12 cannot agree on. And we'll get to those when we get to the
13 DIP.

14 THE COURT: Sure.

15 MS. KIPPES: I'll go ahead and tell the Court that,
16 although we can't agree to a last-look rollup, that is
17 certainly better -- or, not rollup, last-look liens on Chapter
18 5, --

19 THE COURT: Yes.

20 MS. KIPPES: That is certainly better.

21 THE COURT: I was following you.

22 MS. KIPPES: Thank you. Certainly better than a
23 first lien on Chapter 5s.

24 And likewise, I have taken a look at the declaration on
25 the rollup, and we had asked for them to put on evidence of

1 market. I don't anticipate needing to take any -- do any
2 cross on that.

3 THE COURT: Okay.

4 MS. KIPPES: I think it covers the -- covers the land
5 there.

6 With regard to the RSA, we had sent comments to the
7 Debtors with regard to assumption of the RSA. For the limited
8 purposes today, we're not really raising anything. But with
9 regard to the assumption of it that will be heard on the 8th,
10 the Court may see papers from us.

11 Thank you.

12 THE COURT: Fair enough. Thank you very much, Ms.
13 Kippes.

14 Anyone else before I turn it back over to Mr. Mohan? Does
15 anyone else wish to be heard by way of opening?

16 All right. Anyone on WebEx?

17 Mr. Mohan?

18 MR. MOHAN: Thank you, Your Honor. Tim Mohan of
19 Foley & Lardner, again, on behalf of the Debtors.

20 I'm going to just repeat everybody here and say thank you
21 to all the parties again for being collaborative and working
22 towards today's, you know, majority-resolved matters here.

23 For today, Your Honor, as set forth in the agenda on
24 Docket No. 206, we're presenting four motions: the Wages
25 Motion and the Cash Management Motion. There are some

1 comments that my colleague, Ms. Nora McGuffey, will speak
2 about with regard to those. The DIP Motion, which has the
3 U.S. Trustee's outstanding objection. And the RSA Motion on a
4 limited interim basis.

5 As we've said, before we get into that part, I'd like to
6 go through the evidence and have certain items moved into
7 evidence, if possible. Some of this is duplicative of what we
8 filed in the first days with regard to certain declarations
9 and certain evidence there. But for today's hearing, Your
10 Honor, there's three declarations that we would like to move
11 into evidence. The first are -- the first two by Jonathan
12 McCarthy, our director and interim president and secretary.
13 The first one is the first day declaration he filed in support
14 of these cases at Docket No. 15. And then his declaration in
15 support of the DIP Motion at -- which was an exhibit to Docket
16 No. 14.

17 And the next declaration is a declaration by Carl Moore,
18 managing director of SierraConstellation Partners, our
19 financial advisor. He -- we filed his declaration at
20 Declaration No. -- or, at Docket No. 205. This declaration is
21 with respect to the U.S. Trustee's request for additional
22 evidence with respect to the reasonableness of the rollups.

23 THE COURT: Uh-huh.

24 MR. MOHAN: Both Mr. McCarthy and Mr. Moore are here
25 with us today virtually and are available for direct testimony

1 or cross-examination, if necessary.

2 With that, Your Honor, unless anybody has any questions,
3 I'd ask that we be able to move those declarations into
4 evidence for the record.

5 THE COURT: All right. Thank you very much, Mr.
6 Mohan.

7 Is there any objection to the admission of Debtors'
8 Exhibits -- it's going to be Docket 207, the Second Amended
9 Witness and Exhibit List. So that would be Exhibits 1, 12,
10 and 14, the three declarations. Any objections?

11 MS. CARSON: No objections from the Committee.

12 THE COURT: Thank you very much, Ms. Carson.

13 All right. Hearing no objections, each of the three
14 declarations are hereby admitted.

15 MR. MOHAN: Thank you, Your Honor.

16 (Debtors' Exhibits 1, 12, and 14 are admitted into
17 evidence.)

18 MR. MOHAN: And then with respect to the rest of the
19 documents included at the witness and exhibit list that we
20 filed at Docket No. 207, I'd like to ask that those be
21 admitted as well. Those reflect all other Exhibits 2 through
22 11, 13, and then 15 through 21.

23 I'm happy to walk through each of those items if Your
24 Honor would like to speak about each exhibit, or, you know, in
25 the interests of time and the fact that this is primarily

1 consensual, I request that the rest of the exhibits be
2 admitted into evidence at this time.

3 THE COURT: All right. Thank you, Mr. Mohan.

4 All right. Again, from Docket 207, any objection to
5 Exhibits 2 through 11, 13, and then 15 through 21?

6 MS. CARSON: No objection from the Committee.

7 THE COURT: Thank you very much.

8 All right. Hearing no objections, each of those are
9 admitted: 2 through 11, 13, and 15 through 21.

10 MR. MOHAN: Thank you, Your Honor.

11 (Debtors' Exhibits 2 through 11, 13, and 15 through 21 are
12 admitted into evidence.)

13 MR. MOHAN: With that done, I am going to pass the
14 mic to Ms. Nora McGuffey, who is going to walk through the
15 Wages and Cash Management Motions. Thank you.

16 THE COURT: Thank you very much.

17 MS. MCGUFFEY: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MS. MCGUFFEY: Nora McGuffey of Foley & Lardner on
20 behalf of the Debtors.

21 So, Item No. 1 is our Wages Motion, which Your Honor
22 entered an order at Docket No. 61 after the first day hearing.
23 If you'll recall, Your Honor, in that order we sought approval
24 and gained approval of the Wages Motion except for the Non-
25 Insider Incentive Program.

1 Since that hearing, the Debtors have reviewed the
2 incentive programs and engaged in discussions with the
3 Committee. And following that review and discussions, the
4 Debtors determined that we will not be seeking approval of
5 those incentive programs at this time.

6 We do reserve the right to seek relief in the future if
7 necessary and appropriate.

8 In our proposed final order filed at Docket 197, the
9 redline shows in Paragraph 2 this language, which I believe
10 from my understanding that the Committee counsel has agreed
11 to.

12 And then, additionally, Your Honor, I just wanted to
13 address one concern that the Court made at our first day
14 hearing about the independent contractors. We reviewed the
15 records of the Debtor, and we can determine -- and we
16 determined that all of the independent contractors we sought
17 to pay were individuals primarily with an education focus. So
18 they were such things as substitute teachers, and there were a
19 few enrichment teachers who provided services such as like
20 after-school activities or music programs. And all of those
21 individuals have 1099 agreements with the Debtors. And,
22 again, the prepetition amount that we sought to pay was only
23 \$11,000.

24 With that being said, unless the Court or any other party
25 has any questions, we request that the order at Docket No. 197

1 be entered.

2 THE COURT: All right. Thank you very much, Ms.
3 McGuffey.

4 Is there anyone who wishes to be heard with respect to the
5 Final Wages Order?

6 All right. Hearing no responses, the Court did have an
7 opportunity prior to the hearing to review the redline that
8 was filed at Docket 197, and I don't have any further comments
9 than we did at the first day hearings. So the Court will
10 grant that on a final basis.

11 MS. MCGUFFEY: Thank you, Your Honor.

12 THE COURT: You're very welcome.

13 MS. MCGUFFEY: So, turning to Item No. 2, we have our
14 Cash Management Motion. We also sought interim relief with
15 respect to the Cash Management Motion at the first day
16 hearing, and that order is entered at Docket No. 62.

17 Following the first day hearing, the Debtor engaged with
18 conversations with Wells Fargo, our bank, and the Committee,
19 to address any of their concerns. Based on these discussions,
20 the Debtors filed a revised final proposed order at Docket
21 198, which reflects the agreed-upon language from Wells Fargo
22 and from the Committee.

23 However, Your Honor, I just want to note, there was an
24 inadvertent -- we left out one of the Committee's additional
25 changes. And I have a redline that reflects the incremental

1 change, if Your Honor would like a copy.

2 THE COURT: Oh, please. And this is incremental from
3 that which was filed?

4 MS. MCGUFFEY: Yes.

5 THE COURT: Okay. Thank you. It's a minefield over
6 there. Be careful. Thank you.

7 MS. MCGUFFEY: The incremental change is at Paragraph
8 18, which makes Paragraph 18 subject to Paragraph 11.

9 And with that, Your Honor, I believe we've addressed all
10 of the comments and concerns from other parties, so we would
11 respectfully request that that order that I just handed, which
12 we can file on the docket as well, be entered.

13 THE COURT: All right. Thank you very much, Ms.
14 McGuffey.

15 Is there anyone who wishes to be heard with respect to
16 Cash Management?

17 Ms. Kippes, I assume all of the United States Trustee's
18 concerns have been addressed, if any?

19 MS. KIPPES: Yes. They were addressed on the first
20 day.

21 THE COURT: Okay. Excellent. Thank you. And in
22 case the record didn't pick it up, Ms. Kippes said they were
23 addressed on the first day motions.

24 All right. I think -- I did have one question based upon
25 the redline that I reviewed prior to the hearing. In new

1 Paragraph 13, it references that existing deposit agreements
2 will govern postpetition cash management, including provisions
3 related to termination and fee. Is there any materiality to
4 the termination and fee provisions? Are these all commonplace
5 provisions?

6 MS. MCGUFFEY: That's my understanding. This
7 language was requested by Wells Fargo, which we added.

8 THE COURT: Certainly.

9 MS. MCGUFFEY: And I don't think there's any
10 materiality to --

11 THE COURT: Excellent. All right.

12 Other than that, the only thing that the Court has is,
13 also in that Paragraph 13, take a look at it before you upload
14 it. I think there's a rogue "that" --

15 MS. MCGUFFEY: Okay.

16 THE COURT: -- in that sentence right after "and."
17 So take a look at it. I could have read it quickly and it
18 could be fine, but just take a look.

19 MS. MCGUFFEY: Okay. We'll take a look and we will
20 file a revised form of order.

21 THE COURT: All right. Thank you, Ms. McGuffey.

22 Is there anyone else who wishes to be heard with respect
23 to cash management?

24 All right. Hearing no further responses, the Court will
25 grant the cash management order on a final basis.

1 MS. MCGUFFEY: Thank you, Your Honor. I'm going to
2 pass the mic back to Mr. Mohan, who will do the DIP and RSA
3 Motion.

4 THE COURT: All right. Thank you very much. Nice to
5 see you.

6 MS. MCGUFFEY: Thank you.

7 MR. MOHAN: Thank you, Your Honor. Again, Timothy
8 Mohan of Foley & Lardner on behalf of the Debtors.

9 As was previewed with the Court, the DIP Motion has been
10 -- we have resolutions with all parties besides the U.S.
11 Trustee. Those resolutions include comments received from the
12 Texas Taxing Authorities, which filed an objection at Docket
13 No. 171, and through new language at Paragraph 39 of the
14 Revised Proposed Final DIP Order, that objection was withdrawn
15 by the Texas Taxing Authorities at Docket No. 189.

16 The U.S. Trustee filed its objection at Docket No. 182.
17 The Debtors filed a response in support of the DIP Motion at
18 Docket No. 204.

19 Your Honor, the reason why we did not have an objection
20 by the Committee is because of the work done by the Committee,
21 by the DIP Lenders, by I'll credit the Debtors' team as well,
22 to work through their comments and their concerns proactively.
23 So that's why --

24 THE COURT: Always credit your own team. You'll have
25 an uprising back at home.

1 MR. MOHAN: Yeah. Well, we appreciate that. Thank
2 you.

3 So we have, as Ms. Kippes said, we have three issues here:
4 the rollup; there's a concern by the U.S. Trustee, the grant
5 of liens on Chapter 5 cause of action proceeds; and the waiver
6 of the surcharge under Section 506(c) and the Doctrine of
7 Marshaling by the Debtors under the DIP Order.

8 So, Your Honor, I'm happy to walk through this however you
9 would like. If, I mean, if we can just go straight to the
10 U.S. Trustee's concerns, or I can present, however you prefer
11 here, honestly.

12 THE COURT: Well, I have had an opportunity to review
13 the redline that was filed -- well, I have I think two banners
14 on top of each other, so it's a little hard for me to --

15 MR. MOHAN: Yeah. Docket No. 203, Your Honor.

16 THE COURT: Yes. I did have an opportunity to review
17 that one last night. And so I think I am up to speed on where
18 the terms of the order were after negotiations with the DIP
19 and the Committee and probably numerous other parties. I
20 think that we can probably dive right into --

21 MR. MOHAN: Great.

22 THE COURT: -- the Trustee's objections. I have had
23 an opportunity to review Ms. Kippes' objection at Docket 182,
24 as well as the Debtors' reply. Don't make me cite that
25 docket. So I've had an opportunity to review both of those as

1 well.

2 MR. MOHAN: Great. Thank you, Your Honor.

3 So, Your Honor, one quick point, though, to discuss the
4 collaboration that we've had with the Committee, is one of the
5 Committee's major concerns was the amount of budget for the
6 Committee professionals --

7 THE COURT: Sure.

8 MR. MOHAN: -- in the DIP budget. Right? And so
9 through the revised budget that you see in the -- or, the
10 Proposed Final DIP Order, the Committee's budget has increased
11 to \$700,000.

12 THE COURT: Uh-huh.

13 MR. MOHAN: The Debtors and the DIP Lenders
14 understood -- understand that we are moving quickly here and
15 there's a finite amount of money here, but we also understand
16 the Committee's duties and need to perform an investigation on
17 that quickened timeline, too, which adds a little bit of we'll
18 call it *lagniappe* here to the budget. And so as result of
19 those negotiations, we have agreed to that increased \$700,000
20 Committee professional fee budget there.

21 THE COURT: All right.

22 MR. MOHAN: With respect to I'll start --

23 THE COURT: Shockingly, the first use of the word
24 *lagniappe* in my courtroom.

25 MR. MOHAN: Wow.

1 THE COURT: It's just sad for everyone else, is what
2 it is.

3 MR. MOHAN: Well, I went to Tulane, Your Honor, so I
4 have a little bit of that.

5 THE COURT: Oh, excellent, excellent.

6 MR. MOHAN: The first time I said it, I called it
7 lag-ni-appi, and so people laughed at me, so I had to figure
8 it out, right? Sorry. I digress, Your Honor.

9 So, with respect to the rollup, Your Honor, there's two
10 parts of the rollup, Your Honor. There's the Senior DIP,
11 which has a \$500,000 prepetition bridge rollup for \$5.5
12 million of new money, a ratio of 1:11. The Junior DIP rollup
13 is \$1.5 million of prepetition bridge loan-up, or rollup,
14 compared to \$1 million of new money. A 1.5:1 rollup ratio.

15 Without this bridge funding, there's no cases. It was
16 kind of considered one and the same amongst the Debtors and
17 the DIP Lenders here. And as stated in Mr. Moore's
18 declaration, this Court has approved rollups that varied
19 between a 1:7 and a 2.5:1 ratio here.

20 So, based on our analysis, based on Mr. Moore's experience
21 in this Court and with dealing with other DIPs, debtor-in-
22 possession financing arrangements, we believe that the rollup
23 is reasonable in scope and amount and should be approved by
24 the Court.

25 THE COURT: All right. Thank you very much. Do you

1 want to hit on the other portions?

2 MR. MOHAN: Sure. I can do that first. Yeah. Okay.

3 THE COURT: Yes. Why don't we hit them all, and then
4 I'll hear from --

5 MR. MOHAN: Okay.

6 THE COURT: -- anyone else who wants to be heard, and
7 then I'll go to Ms. Kippes.

8 MR. MOHAN: Great. Thank you, Your Honor.

9 Next is the U.S. Trustee's objection to the grant of liens
10 on avoidance action proceeds here.

11 THE COURT: Uh-huh.

12 MR. MOHAN: Your Honor, this was a major concern
13 amongst the Committee as well. And through conversations with
14 the Committee and the DIP Lenders and Ms. Carson's well-
15 proposed resolution to a last-look concept, that we agreed to
16 -- that the DIP Lenders and the Debtors thought was reasonable
17 and resolved that issue, we've agreed to include that last-
18 look concept in the DIP order, to whereby the DIP Lenders will
19 look to proceeds from avoidance actions as a last resort with
20 respect to recovery on their DIP collateral here.

21 And so with that, Your Honor, we believe that that
22 addresses any concerns from the U.S. Trustee. We also believe
23 that the grant of liens on avoidance action proceeds is
24 reasonable in its own right and has been approved by this
25 Court in precedent.

1 And so, regardless, though, to find an ultimate
2 resolution, the last-look concept proposed by the Committee,
3 we think that resolves any concerns there.

4 And then with respect to the last items, the waiver of
5 surcharge under 506(c) and the waiver of the Doctrine of
6 Marshaling, it was part of our collective negotiations with
7 the DIP Lenders. They provided funding based on a macro
8 proposal that included these waivers as part of their package.
9 Removing these waivers will have a material impact. The DIP
10 Lenders, even following conversations with them, they have not
11 agreed to the removal of these waivers. It is -- it's still a
12 material condition to their providing DIP financing under
13 these cases. And without that financing, obviously, these
14 cases are dead. And so there is no moving forward. Nobody
15 else has come forward with an alternative proposal for any
16 sort of lending capacity or any way to move forward with these
17 cases.

18 And so we don't think those waivers, though, are also
19 extraordinary in this Court. They're routinely granted. They
20 are well within the Debtors' business judgment to waive those
21 -- to provide those waivers as part of DIP financing. And for
22 that, Your Honor, we would request that the Court approve the
23 DIP motion and overrule the U.S. Trustee's objections with
24 respect to those matters --

25 THE COURT: All right.

1 MR. MOHAN: -- set forth herein.

2 THE COURT: Thank you very much, Mr. Mohan.

3 What I'll do is I'll hear from anyone, let's just say,
4 same side as the Debtor that's supporting the DIP, and then
5 I'll turn it over to Ms. Kippes. Anyone else wish to be
6 heard?

7 All right. Ms. Kippes?

8 MS. KIPPES: (chuckles)

9 THE COURT: Maybe.

10 MS. KIPPES: Yeah. I'll try not to choke myself with
11 my lanyard, Your Honor. Meredyth Kippes on behalf of the
12 United States Trustee.

13 Your Honor, I previewed my arguments, so I'll be very
14 brief. We appreciate the Debtors submitting that declaration
15 regarding market. It's always important to the United States
16 Trustee that these rollups be supported by evidence. And as I
17 said earlier, we did not feel the need to cross Mr. Moore on
18 his declaration.

19 So I do not have authority to agree to this, but the Court
20 shall rule how she shall rule.

21 And likewise on the liens on Chapter 5s. Definitely
22 better to have a last look than a first lien. And, again, the
23 Court will rule on that.

24 And I know the Court -- the facts are important to the
25 Court on these types of cases. So even though I know

1 sometimes people cite to you other cases that you've ruled A
2 or B, I know the Court considers these on a case-by-case
3 basis.

4 With regard to the waivers, Your Honor, I've looked
5 through the new proposed form of order, and there are a lot
6 more changes to the order requested by the Committee that
7 haven't been discussed here today. But in light of all of the
8 changes that the Committee has negotiated with regard to the
9 order, we will stand down on the waivers.

10 THE COURT: All right. Thank you very much, Ms.
11 Kippes.

12 MS. KIPPES: Thank you.

13 THE COURT: All right. Anything further, Mr. Mohan?

14 MR. MOHAN: Thank you, Your Honor. No, nothing
15 further with respect to the DIP Motion.

16 THE COURT: All right. I have had an opportunity, as
17 I mentioned, to review in earnest the redline that was filed
18 by the Debtors. I certainly appreciate that. That was very
19 helpful in preparing for today.

20 And Ms. Kippes is right. There are a number of changes in
21 here relative to investigation, relative to let's just say
22 easing the potential default of a variance and things of that
23 nature that are obviously probably the Committee's handiwork,
24 and I certainly appreciate the softening of the DIP in that
25 way.

1 The one thing that I did have a question on, Mr. Mohan,
2 and this is, as I've said before and I'm sure I'll say again
3 about a dozen times before I leave the bench, milestones are
4 not my favorite because --

5 MR. MOHAN: Understood.

6 THE COURT: -- I don't like the potential for
7 default. I can only assume that whatever you're asking me to
8 approve today, there are no milestones that have already --

9 MR. MOHAN: Correct.

10 THE COURT: -- that are already problematic or
11 anything like that, that these have been tweaked such that we
12 have a clean slate of milestone calendars.

13 MR. MOHAN: Yes, Your Honor. That is correct.

14 THE COURT: Okay. Excellent.

15 And I saw the investigation period kind of went out a
16 little bit, and I know that we've already moved a few motions
17 that would require some easing of the milestones.

18 MR. MOHAN: Yes.

19 THE COURT: So, okay. That is all good.

20 With respect to the record, the Court does, like the UST,
21 appreciate the additional evidence with respect to rollups.
22 Every DIP is different. Every case is different. I have, in
23 various cases, approved rollups, approved avoidance actions on
24 liens, and waivers of the various marshaling and surcharge
25 provisions. But I haven't always. So I appreciate that you've

1 put on the evidence.

2 I do believe, in this particular case, that the rollup is
3 -- I'm not going to say not material in the whole scheme of
4 things, but it's probably smaller than others that I have
5 approved over time. I think that the ratios are pretty fair,
6 given where we are in this case and the participants that are
7 essentially the supporters of the plan.

8 So I will approve the rollup. And, again, but I am
9 appreciative of the declaration and the evidence in that way.

10 Chapter 5 causes of action and liens thereon, not my
11 favorite, of course. I also recognize where this case is,
12 what the existing Lenders are foregoing in this process, and I
13 appreciate them working collaboratively with the Committee,
14 and having the Committee on board gives the Court the added
15 comfort that there is someone watching the shop, so to speak.
16 And, again, those being on a last-look basis is a lot more
17 favorable than that which was originally proposed.

18 And so the Court will, based upon the facts of this case,
19 and based upon the lack of objection, primarily by the
20 Committee, approve the lien on Chapter 5s on a last-look
21 basis.

22 Lastly, with respect to the equitable doctrine of
23 marshaling and the waiver of the 506(c) surcharge, the Court
24 certainly takes to heart the United States Trustee's reasoning
25 for these, and there are cases in which this comes back to

1 bite debtors. I haven't seen it. I'm happy to say that. But
2 I do view a DIP facility and a DIP agreement as a whole
3 package. And I recognize that there's lots of things that
4 kind of go into a DIP, and I've said that from time to time,
5 that it's all part of one package. But based upon the lack of
6 objection by the Committee today, which will represent the
7 stakeholders in this case, the Court will approve those
8 waivers as well.

9 And so, with that, and based upon the Debtors confirming
10 to the Court that there are no current defaults with respect
11 to milestones and the like, the Court will approve the form of
12 order that was filed on the docket at -- remind me again.

13 MR. MOHAN: Let me find that, Your Honor.

14 MS. CARSON: 203. 203.

15 MR. MOHAN: 203, Your Honor.

16 THE COURT: Thank you very much.

17 MR. MOHAN: Thank you, Ms. Carson.

18 THE COURT: At 203. And I'll approve that DIP on a
19 final basis. All right.

20 MR. MOHAN: Thank you, Your Honor. So, last up is
21 the RSA Assumption Motion and the interim relief we're seeking
22 today.

23 Your Honor, at Docket No. 199, we filed a proposed order
24 granting in part the motion to assume the Restructuring
25 Support Agreement. And the relief here has been limited to

1 where we're not assuming -- seeking assumption of the full RSA
2 here. It's the -- we're only seeking, first, the approval of
3 expense reimbursement and breakup fee for 2HR Learning, the
4 Plan Sponsor. There's clarifying language in the order with
5 respect to alternative transactions and the Committee's
6 ability to pursue or investigate such transactions. And then
7 we continued the hearing on this motion to the August 8th
8 hearing, with an objection deadline of August 4th.

9 Your Honor, there were no objections, formal or informal,
10 to the proposed order that we filed at Docket No. 199. And,
11 again, that's worth repeating, again, the collaborative nature
12 of what we've done so far in this last month here.

13 And as you saw, Your Honor, the Committee, when we were
14 moving forward with this potentially for the hearing for
15 today, the Committee filed 30(b)(6) deposition notices.
16 Following conversations on a late Monday night with the
17 parties, we were able to find a resolution with this proposed
18 order that we filed, and those depositions were withdrawn.
19 I'm not saying that there might not be further issues here,
20 obviously, Your Honor, but where we are right now, we were
21 able to come to a short-term resolution for the -- and defer
22 the rest.

23 With respect to the breakup fee, Your Honor, and expense
24 reimbursements, expense reimbursement is \$150,000. The
25 breakup fee is three percent of the consideration provided by

1 2HR Learning under the plan.

2 There's a bit of a defined term blowup here that we'll
3 clean up in the plan, but the consideration is the \$5.5
4 million provided by the Senior DIP. Or is \$5.5 million less
5 the Senior DIP claim amount. So the -- whatever savings there
6 are there, which, according to the budget, we are expecting
7 savings, that is going to be the plan consideration that's
8 going to be provided by 2HR Learning there. And so it's a
9 three percent breakup fee of that.

10 Your Honor, the Plan Sponsor protections here were a
11 requirement of the Plan Sponsor. While negotiating the RSA,
12 there were several rounds of negotiations, first with the
13 Debtors, saying -- striking those provisions completely. The
14 Plan Sponsor said no. Then we went back with --

15 THE COURT: Did he come back higher?

16 MR. MOHAN: We -- yeah. We said, okay, we'll go
17 higher. Let's triple it.

18 But we came back lower, and then the -- they said no
19 again. But then we came to a number that we are presenting to
20 the Court.

21 So, while the Plan Sponsor was willing to negotiate the
22 amount of these protections, they were not willing to
23 negotiate the complete removal of the protections here.

24 And then, second, Your Honor, the Plan Sponsor is willing
25 to -- is -- move forward with the majority of the RSA

1 Assumption Motion. They did not want to move forward "naked"
2 here. And that's quotes, right, obviously, you know, without
3 the protections here. They've spent a good amount of money
4 and time working with the Debtors to put together a plan, put
5 together the RSA, provide the framework for what we think is a
6 value-maximizing reorganization here, subject to what may
7 change going forward with negotiations with the Committee.
8 But the amount of time and effort that they put in here
9 supports the provisions of these bid protections -- or not bid
10 protections -- Plan Sponsor protections for the Plan Sponsor.

11 And, third, any of those costs related to the protections
12 will be paid by an alternative Plan Sponsor. It's not by the
13 estate. It's only if someone new comes in.

14 As of now, nobody has come forward with the Debtors. But
15 that doesn't mean that there is also a limitation on the
16 Debtors' ability to do that under the -- to seek alternative
17 transactions under the RSA, which is also why the Committee,
18 the Plan Sponsor, and the Debtors negotiated language in the
19 RSA, the Interim Order here today, that discusses the
20 Committee's ability to move forward with pursuing,
21 investigating, and potentially presenting alternative
22 transactions to the Debtors, as they may be able to review
23 subject to their fiduciary out under the RSA.

24 The idea here is the Committee has an incentive as well to
25 maximize value. If someone were to go -- were to present an

1 alternative transaction to the Debtors, we can pass it along
2 to the Committee for their analysis. The Committee can run
3 their own process as well, subject to that.

4 And so, with that said, and -- sorry. So, with that said,
5 Your Honor, I believe that the protections provided in the
6 interim order and the ability for the revised alternative
7 transaction language that allows the Committee to perform an
8 independent analysis is reasonable, within the Debtors'
9 business judgment to move forward here today, and we request
10 that the Court approve the Interim RSA Order as filed in front
11 of Your Honor.

12 THE COURT: All right. Thank you very much, Mr.
13 Mohan.

14 Is there anyone else who wishes to be heard with respect
15 to the Interim RSA? Mr. Hendricks?

16 MR. HENDRICKS: Thank you, Your Honor. Again, on
17 behalf of Carl Barney.

18 I'm not sure what the three percent applies to. Could you
19 maybe make that a little clearer?

20 MR. MOHAN: Yes, Your Honor. So, I apologize if I
21 wasn't particularly clear. So, there's \$5.5 million plan
22 consideration being provided by 5 Hour.

23 THE COURT: Right.

24 MR. MOHAN: Or by, not 5 Hour, 2HR Learning. Of that
25 \$5.5 million, the consideration is decreased by the amount of

1 the DIP provided. The DIP is provided by YYYYY, which is
2 2HR's designee. So if there's any -- so the idea under the
3 budget, original budget had about \$1.5 million of
4 consideration that was being provided there. There still is
5 consideration provided now of around \$370,000 under the
6 proposed final budget there. Subject to savings, potentially,
7 if, you know, and subject to also decreasing in amount of that
8 consideration based on usage during the case, cash outflows.
9 But that's the consideration that's being provided. So it's
10 that \$5.5 million less the amount of the Senior DIP that's
11 being provided, is the outflow.

12 And Your Honor, the amount of the plan consideration is
13 not a subject for today, Your Honor. It's purely the amount
14 of the breakup fee which would be subject to it.

15 THE COURT: Okay. Thank you, Mr. Mohan.

16 Mr. Hendricks?

17 MR. HENDRICKS: I still -- I know there's a lot of
18 language and I'm new to the case. Could you give just a range
19 of what 3.5 -- three percent might --

20 MR. MOHAN: Sure.

21 MR. HENDRICKS: -- might apply to?

22 MR. MOHAN: Sure. So, Your Honor, again, Timothy
23 Mohan of Foley & Lardner.

24 If we were to do -- so, okay, the total amount we have --

25 THE COURT: It's Section 10, if that's helpful, Mr.

1 Hendricks.

2 MR. MOHAN: Right. So three percent of -- we say
3 three percent of \$1.5 million there. I believe that's around
4 \$90,000 if that's the full amount. That's based on their
5 original DIP budget.

6 Today, with it being the smaller amount of -- remaining in
7 the consideration, it would be three percent of that \$270,000,
8 which would be -- I used to be an accountant, Your Honor. I'm
9 not anymore. So I don't have my calculator.

10 THE COURT: I used to play one on TV.

11 MR. MOHAN: Yeah. Exactly. So, but even less than
12 that dollar amount. So it's, as of today, would be
13 approximately -- the total would be the \$150,000 plus less
14 than \$90,000. So, collectively, --

15 THE COURT: By \$45,000?

16 MR. MOHAN: -- when I put it together originally, it
17 was \$240,000, was the potential for total Plan Sponsor
18 protections. It will be less now because the amount of the
19 consideration is less.

20 THE COURT: All right. Thank you.

21 MR. HENDRICKS: Okay.

22 THE COURT: All right. Thank you, Mr. Hendricks.

23 All right. Anyone else wish to be heard with respect to
24 the -- I guess it's an interim order on the RSA.

25 All right. Hearing no takers.

1 All right. The Court has had an opportunity to review
2 Docket 199 as well as the RSA Motion and the agreement as
3 well. And obviously, those attachments to the agreement,
4 which are certainly voluminous, are all part and parcel of
5 other filings before the Court, whether that be Plan,
6 Disclosure Statement, DIP, et cetera. So I've had an occasion
7 to review those, each on their own.

8 I do believe that it's a good exercise in conservatism to
9 essentially find that which you can agree on for purposes of
10 today and then push the greater part of the RSA as the
11 Committee has a bigger opportunity to kind of get up to speed.
12 So, pushing the more fulsome approval of the RSA to August 8th
13 is probably a good idea on the whole.

14 With that said, I certainly understand why the Plan
15 Sponsors would want some versions of protection based upon,
16 number one, what they've given on the DIP and the process that
17 they agreed to.

18 So, with respect to the expense reimbursement and the
19 breakup fee, obviously, a \$150,000 expense reimbursement is
20 very modest and the Court has no issue with that. And three
21 percent in terms of a break fee is well within the percentages
22 this Court has approved in the past.

23 Likewise, notwithstanding that there was a fiduciary out
24 in Section 10 of the RSA, the Court is heartened by the
25 additional language that the Committee was able to garner in

1 the agreement, allowing the Committee to bring any alternative
2 transaction. Obviously, all to the better and value-
3 maximizing for creditors to the extent that an alternative
4 transaction is out there.

5 Notwithstanding that, the Court also recognizes there's
6 obviously a lot that went into the prepetition activities to
7 getting here.

8 So, with that, the Court will approve the order that was
9 filed, I think, at Docket 199.

10 MR. MOHAN: Yes, Your Honor.

11 THE COURT: Again, I know I called it an interim
12 order. I think that we probably are granting the relief that
13 we've talked about today with respect to the expense
14 reimbursement and the breakup fee, but that we're putting a
15 pin in the greater part of the RSA assumption and approval for
16 the August 8th hearing. And obviously, as Ms. Kippes said,
17 we'll hear from the United States Trustee at that time, most
18 likely, as well.

19 So, with that, the Court will grant the order that is
20 filed at 199.

21 All right. Anything else, Mr. Mohan?

22 MR. MOHAN: I have nothing else, Your Honor. I'm not
23 sure if anybody else in the courtroom or on WebEx has anything
24 to share. I don't know.

25 THE COURT: Okay. Well, I'll turn to the folks on

1 WebEx and then I'll give the final word to anyone in the
2 courtroom.

3 Anyone on WebEx wish to be heard today?

4 All right. Hearing no takers, anyone else?

5 All right. With that, the Court will stand in recess
6 until -- drum roll -- 1:30. You guys have a good one.

7 THE CLERK: All rise.

8 (Proceedings concluded at 10:23 a.m.)

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CERTIFICATE

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I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

23

/s/ Kathy Rehling

07/24/2025

24

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Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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