IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

WESCO AIRCRAFT HOLDINGS, INC., ET AL	§	CASE NO. 23-03091-ADV
	§	HOUSTON, TEXAS
	§	TUESDAY,
v	§	JUNE 25, 2024
	§	
SSD INVESTMENTS LTD., ET AL	§	9:00 A.M. TO 7:31 P.M.

TRIAL DAY 32

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

(RECORDED VIA COURTSPEAK; NO LOG NOTES PROVIDED)

(AUDIO ISSUES NOTED)

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(Please also see Electronic Appearances.)

HOUSTON, TEXAS; TUESDAY, JUNE 25, 2024; 9:00 A.M.

THE COURT: Good morning. Please be seated.

Before we start, I want to correct and withdraw some statements that I made on the Record yesterday. I've grown to understand that I may have been mistaken about how the signature escrow worked at the closing.

Up until late in the day yesterday, I had understood that Milbank, for lack of a better description, was the master of the release of the signatures. I don't believe that that is necessarily correct. And based on further review of the closing call and of the various documents that were explored yesterday where it appears that fully-executed signature documents may have been widely disseminated but not released prior to the closing, that's at least a distinct possibility at this point in my mind.

The comments that I made about Milbank's release of the signatures may have been incorrect, sufficiently likely incorrect that I want to withdraw my comments about that.

It's certainly possible in the -- and I'll finish all this, and finish all the closing arguments, but I had made comments about this actively on the record yesterday -- that, if you will, this was a disseminated escrow where each party was responsible for releasing its own signatures to itself as various things occurred.

And because my comments had assumed a Milbank-controlled escrow or had understood there to be a Milbank-controlled escrow where they were master of the release, I am no longer confident in those comments that I made, and so, I'm withdrawing them. But I may come back to them. But for now, I'm withdrawing those comments.

So, Mr. Rosenbaum, good morning.

CLOSING ARGUMENT, CONTINUED

MR. ROSENBAUM: Good morning, Your Honor. And thank you for that clarification. I was thinking about this overnight, too. But I'll pick up where I left off, and then I will come back to the closing script and a closing shortly.

So where I left off last night was on Slide 98. And just for context, this was among the emails and testimony about the what we can call the panic, that PIMCO and Silver Point were panicked when they didn't think they would have 67.1 percent of the 2026 notes.

So the last in that string of emails was Mr. Prager imploring Wadell, one of the co-op partners, to rip back for them; get your bonds back so you can vote them because we need to get over the 67 percent.

And we can go to the next Slide, 99.

By the 16th of February, so less than a week later, I think the dust settled, and it became clear that our group, the Akin group, had a over one-third, and as it turned out, about 36 percent ultimately, maybe closer to 37.

And it was at this time that the company side -- and when I say company side, I mean the company and its board members -- first came to realize that the group that they had been negotiating with for some matter of months that premised its proposals on having two-thirds of both tranches didn't and wouldn't. And it was only after that --

-- and we can go to Slide 101 --

-- that for the first time on February 21 or thereabouts, that the PIMCO Silver Point advisors informed the company of this purported, underscore purported, alternative path where, hey, all along, we didn't need 67 percent; we could've just done it with a simple majority.

I don't think that was ever the case, but the first -- what's clear is the first that the company ever learned of it -- and Mr. O'Connell admitted to this in his capacity as 30(b)(6) -- was on February 21 or 22, which was very shortly and maybe immediately after Akin sent the letter with our group's holdings.

So why is that significant? If you put it into context, now the company was informing PIMCO and Silver Point that it had this liquidity problem was becoming -- going to become acute by March 11th, that it needed to close by March 11th.

So now we're in this completely different world where people are scrambling to do a purportedly different deal, one that we say breached and has the company under the gun because, you know, February's a short month. They have, you know, maybe two weeks, two weeks plus, to get a deal done.

And that scramble then is evidence, you know, through the negotiation of documents phase, and they enter into a, you know, what they call final agreed terms on February 25th. And it's not until March 24th that the board votes, and March 28th that they close because in the intervening days, they got a little bit more runway. But, you know, what's critical in this sequence --

-- and I'm going to turn to Slide 109 --

-- is when the -- is the board's perception of its options when it approved what we call the breaching deal. And Mr. Malik said it well on cross-examination, or maybe I said it well, and he agreed with me.

"Question: PIMCO/Silver Point group had the ability to prevent the company from getting financing in other ways? Yeah, they were definitely in a power position, yes. And the expectation of the board was that they would use that power? Yes."

So this was PIMCO and Silver Point's objective to get their deal done irrespective of whether it breached, and here we are arguing that breach. And why?

Let's turn to the next slide.

Now we didn't get --

-- this is 29. Just a second. Sorry. It's 29, so I'm going out of order.

We didn't get, and they chose not to produce it based on the Court's discovery ruling, the internal modeling and forecasts that were prepared by PIMCO and Silver Point. But we did get one, and I think it's quite revealing as to what was motivating PIMCO and Silver Point. Mr. Dostart's internal workup on the deal, and this is the deal as closed in his view prior to the closing would get a 64 percent IRR, which is, you know, a -- I'd suggest an outsized return. So --

THE COURT: What does that matter? I mean, their job in life as a hedge fund is to be greedy, right? I mean, that's not a negative connotation. That's what they do for a living. Why do I care that they were going to get an outsized return?

MR. ROSENBAUM: I don't think -- you don't care if they didn't induce a breach.

THE COURT: If they what?

MR. ROSENBAUM: If they did not induce a breach, I don't think you care. I think their --

THE COURT: But if they did induce a breach, and their return was only 12 percent, I would care just as much as if the return was 64 percent. I don't think that I should determine whether there was a breach based on whether they were getting nice returns. I just think those are unrelated --

MR. ROSENBAUM: Okay.

THE COURT: -- concepts. And unless you can persuade me to the contrary, I don't think there's any case law that says that the fact that somebody is trying to maximize their returns in a perfectly legal way should bias the Court into setting that aside.

And if it's a perfectly illegal way, the fact that their returns were fairly low should also not endorse the illegality. I just -- why do I care?

MR. ROSENBAUM: The only reason you care, Your Honor, and much of this was in response to the presentation yesterday, both of the company and PIMCO and Silver Point, as to their generous motives and desires, which -- and ultimately, their motives are returns. And their motive in doing what they did was to maximize the return, and that's the only point of this slide.

THE COURT: But I think that the legal perspective has to look at did they breach, and were they acting in the disinterest of the company. Maybe. But I don't think it shows they were acting in the disinterest of the company, other than saying we won't share, but they had every right to say we won't share. We just won't do a deal if it's just us.

So I'm not sure this points me anywhere, and I don't want the record confused that -- I've indicated a lot of hesitancy about the issuance of the new notes.

MR. ROSENBAUM: Um-hum.

THE COURT: I don't think any of that hesitancy should be influenced by whether PIMCO and Silver Point intend to make a lot of money. I hope they do intend to make a lot of money.

MR. ROSENBAUM: Fair enough, Your Honor. And so, I want to now turn back to -- and that was just me finishing where I left off at 7:00 p.m. yesterday. But I now think it's important to turn back to the "have the effect" and what that means, what that means both under the agreement, and what it means under these facts.

So let's start at Slide 23.

And I just want to point out two admissions or pieces of testimony from both sides of the transaction. And this was the understanding going into the transaction was, if you look at the company's side from the board, "Your understanding was that PIMCO Silver Point was not willing to provide new money on a peri-pursuit basis, correct? That was the board's understanding pre-deal."

The PIMCO Silver Point requirement was -- and this is their own 30(b)(6) admission -- "PIMCO and Silver Point also communicated to the company they would not do a per-pursuit transaction."

So if it was anything in between that purported to be a transaction, their own admission says they wouldn't do that without the rest. So that then I think guides us to come back to the closing script and to apply the words "have the effect."

And I listened carefully, Your Honor, yesterday, and I think that when the Court looks at what the intentions were, right, at one piece of the relevant evidence, what were their intentions, and then were their intentions borne out by the transaction.

And I think the intentions guide what they intended to do, and then you look at what they did do to see if that's what happened. And if one had the effect of the other, I think it violated the first leg of 9.02.

So we also, before I get to the closing deck, you know, talked about, and I think for the Court's analysis, using principles of causation.

And why don't we go to Slide 5?

Or at least a good guidepost. I mean, I think that there -- courts and the law has spent, you know, eons, centuries defining cause. And I think it breaks down into two. We talked about "but for" yesterday and the criminal context and your court of appeals. This isn't a tort context, but there's no reason it doesn't apply if people contractually choose to use it, proximate causation.

And proximate causation always requires first a "but-for" clause, but also, legal cause. And New York defines legal cause to be a substantial cause of the events which produced the injury that are a normal or foreseeable consequence of the situation created by the defendant. That's Court of Appeals' definition of legal cause.

And now if you look at the -- I'm going to continue to call it a closing script because I'm not sure it's an escrow, but I think it has meaning by its words, and we prepared some supplemental slides to help do that.

MR. STEIN: Your Honor, may I approach?

THE COURT: Yes, sir. Thank you. Thank you.

MR. ROSENBAUM: Your Honor, and we're using here the same demonstrative version of the closing script that I presented yesterday. So I think the way to look at the words on the page, and this was testified to be the script, the callout on the closing call, the preamble is extremely important, which is, "Clients," -- you have all counsel gathered -- "authorized the release of all their signature pages in the following order in accordance with the exchange agreement." Critical.

It continues. "This release" -- or I'm sorry -- "This authorization will be to release all signature pages in the following order without further action by any party." So once it starts, it has to stop.

And now looking down at numerate 1, the release of signatures for the third supplemental indenture had to have the effect of numerate 3, which was the release of all or substantially all liens because the mandate was in accordance with the exchange agreement, without further action, this all happens.

So again, whatever rubric of cause and effect, effect is the operative word in this indenture, this satisfies it -- and that's why I don't know that the Court has to resolve whether it's "but-for" or proximate -- have the effect on its own demonstrates, you know, on these facts that one had the effect of the other.

It's a similar analysis and one that probably can show better than I was explaining it yesterday. On Section 412 of the indenture, which is the protection on liens, and the prohibition on directly or indirectly creating, incurring, or allowing any lien of any kind other than a permitted lien.

Here, I think it's same preamble. This was all hardwired without further action, but now it's important, I think, to do that exercise, to just look at the end. And then decide whether the beginning directly or indirectly resulted in the end.

And the end is very clearly the creation of new liens that at the time of the beginning were not permitted liens. And it's not just the creation. Right. This document goes further and says create, incur, or allow, right. So I don't think there's any way to read this as not indirectly or directly allowing new liens that were unpermitted liens when the engine started.

And I think when you look at 2.01(e) with the proviso that the company's ability to issue -- company's ability to issue any additional secured notes is subject to its compliance with its covenant that it cannot and will not directly or indirectly create, incur, or allow any new liens other than the permitted liens.

I think the only way to read that is at the beginning of the exercise, certainly not any time after that. And I think that comports, Your Honor, with -- we can go back to --

THE COURT: So I want to go through sort of this alternative factual scenario that comes up late yesterday and that I think we all worried about overnight. If I look at the agenda of the call, subparagraph (i) and subparagraph 2(i) occur without any action by any party.

MR. ROSENBAUM: Um-hum.

THE COURT: Everybody has the signatures. They have occurred. And there's a confirmation under subparagraph 7 and 8 of Milbank's releasing them anyway. Not really necessary because it was self-effectuating and automatic.

Then when I go to 3(i), the exchange documents get released without anyone tendering a signature because the signatures are already there as soon as the wire is received. Because that's the consummation already done pursuant to 1 and 2.

And the way that I read this now in the context of what was proffered yesterday is that when PIMCO and Silver Point sends their wire, the exchange agreement came into life with no further action by any party. And so, it was the wire that makes the exchange agreement effective, which is why after this call, we then see an email from PIMCO and Silver Point's counsel saying the signatures are released because they sent the wire.

That triggered the release of the signature -- maybe when sent, maybe when received by someone. It doesn't really matter, but upon receipt of the signature, there was no risk of the exchange agreement because no one could withdraw from it.

It was automatically effective. This idea that somebody could've sent a letter of rescission goes away under those events, and the moment the wire is received, i.e., the moment that PIMCO and Silver Point take their first dollar of risk, the exchange agreement comes into life without any further action by any party.

And therefore, I think right now it was a very direct effect that the transmission of the wire created the exchange agreement into life; and therefore, it was a risk-free -- not risk-free in terms of the ultimate deal -- but there was no risk that the liens don't come into being because they came into being with the wire. It's stronger than what you're arguing --

MR. ROSENBAUM: Well, I prepared this last --

THE COURT: -- but I want --

MR. ROSENBAUM: -- night when I thought Your Honor was seeing it differently. That's -- the way Your Honor just described it was what I was trying to communicate yesterday. That's the way we've always seen it.

THE COURT: So I had not --

MR. ROSENBAUM: And it --

THE COURT: -- realized this until yesterday until I saw that all the signature pages and the timing on that. I'm not saying it wasn't in evidence. I don't feel even a little bit mislead at this point by anything. I feel like I -- that's why I started out with the correction.

I sort of approached this understanding it was a signature escrow. And in some sense, it was a signature escrow, but it was a disseminated escrow where each party upon these events had their documents. And I think PIMCO Silver Point had their exchange agreement not the nanosecond after the money got received, but the nanosecond that the money was received.

MR. ROSENBAUM: I --

THE COURT: So I don't think there was a moment of time when their money was out and the exchange agreement wasn't effective. I'm saying this now because I want to give other parties an opportunity to correct this misunderstanding. But that's at least the way that I think it occurred. And I understand you were trying to make this argument, and I was being stubborn about it because I didn't understand it. I think I now understand it better, but I'm still going to look at it more.

But if you're right about all that, then I think you're correct about the conclusion.

MR. ROSENBAUM: Thank you, Your Honor. And I think it was not when the wire was received; I think it was when the wire was released. In other words, once the --

THE COURT: Well --

MR. ROSENBAUM: -- and frankly, I --

THE COURT: -- how do I know that? Because it says in here, "As soon as such notes purchase has been consummated." So if a wire gets sent and never delivered, do you get your money back, right?

MR. ROSENBAUM: Correct.

THE COURT: So the moment that their money was at risk, i.e. received, exchange agreement came into being. I don't know that it matters terribly when they sent it versus when it was received because the money, the risk of the 250 million was matched at the precise time that the exchange agreement came into being. One triggered the other. It was a very direct effect.

MR. ROSENBAUM: That's been our -- and I agree, Your Honor. The distinction between sent and received doesn't matter. It's the money was at risk the moment -- at the latest, the moment it was received when it came into the company's account.

And at that moment, or before that moment, whichever metaphysical moment you want to think about, there was no legal risk that the exchange didn't happen. And that was hardwired, and I think that is what all those emails that we pointed to inform, right. Beyond -- that's what they were setting out to do, and that's what they did, and that's why we always read it that way.

So with that, without further ado, I want to, before I get to authentication which I know is a quite interesting topic, I want to respond at least briefly --

THE COURT: I think it's a very uninteresting topic frankly, and I don't see where there's any ground to be gained there.

MR. ROSENBAUM: Okay.

THE COURT: I'll just tell you that. I can't imagine that this is not repairable by the parties to a transaction, even if there was an authentication problem, which I'm not sure there was.

But if there was, I will assume for a moment that there was an authentication problem. They make the argument, and I see no response by you, but, of course, you hadn't seen their argument. I got it. But they make the argument which makes an awful lot of sense to me that the parties to the transaction could have always corrected that, and would have corrected it. So what's the big deal?

MR. ROSENBAUM: So here's why I think it's perhaps a bigger deal than Your Honor thinks, but I understand the way you're looking at it, which is --

THE COURT: So tell me whether they -- I mean, if they could fix it, they could fix it.

MR. ROSENBAUM: They couldn't fix it --

THE COURT: Why not?

MR. ROSENBAUM: -- because as soon as they did it, right, whatever they did, then they'd stepped out, right. They were no longer the controlling class of the bonds so --

THE COURT: Well, no, because if you're telling me it didn't occur because it wasn't authenticated, they can go back and retroactively authenticate it effective as of the original date, and everybody gets put back there. So, the worst -- if there weren't the class, because they weren't authenticated, then you're wrong.

MR. ROSENBAUM: Okay. Look --

THE COURT: But if they were the class because it was authenticated, then you're wrong. As long as it was repairable, I will tell you this is a very uninteresting question to me.

MR. ROSENBAUM: All right.

THE COURT: But if you want to argue against it, go ahead.

MR. ROSENBAUM: This is no offense to Mr. Stein, but he's prepared.

You want to talk about it?

He's prepared to talk about the uninteresting argument. Then I'll come back to an interesting.

Why don't you do it now? This is -- that was kidding.

MR. STEIN: Thank you, Your Honor. And I understand where Your Honor's coming from, this idea that if the contract could be ratified or reformed or if the issue could be waived, then this isn't an issue. And those are the three defenses they raise.

I think that the Court of Appeals cases on why this sort of occasion matters and why under Moss, this is an express agreement of the parties that need to be enforced according to its terms explains why this certain occasion is important.

But as to the question of ratification, reformation, and waiver, there's three different arguments here. So the first is that the parties could ratify the error by their subsequent conduct. This is a variation of the argument that they raised in their brief but didn't raise here of Section 9.04, which is to say because we did it, we did it, and it has effect.

They haven't raised that argument at -- in the closings, and I think that would render the promise of the amendment provision, the protection that we're entitled to. It would render that illusion.

And so, I don't think that 9.04 can get them out of this. And so, we turn to the ordinary principles of ratification. And the New York law on ratification says that ratification happens when a party with full knowledge of the facts undertakes actions to perform a contract that they otherwise would not have to perform under, a voidable contract.

But here, the testimony we have is that the parties were not -- did not do this with full knowledge of the facts with respect to the authentication. And that's the first issue that we see with respect to ratification.

The second, I want to talk about waiver, because waiver of noncompliance with a provision of the indenture must follow -- and this is under Section 9.02 -- the processes set forth in the indenture under 6.04 and 6.07 -- this is in the middle of the first paragraph of Section 9.02 -- which they did not do. And I think that's an important piece --

THE COURT: Can they do it right now?

MR. STEIN: I don't believe so because it's --

THE COURT: Why not?

MR. STEIN: -- a waiver of a noncompliance of a term of the contract. It's not a matter of -- if they were correcting the indenture to remove the requirement of a manual signature --

THE COURT: Let's say they redo the signatures right now, and we put somebody from --

MR. STEIN: Sure.

THE COURT: -- WSFS there on the stand, and I watch him sign the hand-delivered thing, hand-signed things, and he delivers them on over, is there a problem?

MR. STEIN: So there's two issues with that. First is that the original signatory is no longer the trustee for the -- that's the first issue.

The second is that these are contracts that have been cancelled and destroyed and that there's -- it's not possible. I think -- I'm trying to remember whether it's reformation or ratification this is most directly expressed in terms of. But once a contract is no longer in effect, that corrective action can no longer be taken.

This is the transaction they did. It's not the transaction that they wanted to do. And so, in that respect, if they didn't comply with the terms of the indenture as laid out, if they didn't comply with the technical requirements, then we have a breach.

And the last point that I would raise on this with respect to reformation because I understand Your Honor's focus on this, and I appreciate you hearing me out on it, but the principle of reformation applies in cases where there is clear evidence that meets a high bar for establishing mutual mistake.

And they have not come forward with evidence sufficient to meet that high bar. This is exactly the issue that Mr. Rosenbaum argued with you, I think, after Mr. Stephan's testimony, on the inferences that can be drawn from why these signature pages were used.

They're asking the Court to make an assumption of mutual mistake without the evidence in the case, for example, of Matter of Snyde that they cite where a husband and wife sign one another's wills. But you have testimony from everyone who was in the room at the time as to why -- how it was that that happened, and what their understanding was at the time.

We don't have that testimony from the people in the room that allows you to meet the high bar for reformation here, even assuming you could reform a cancelled contract.

THE COURT: I will tell you there's not a scintilla of doubt in my mind that they intended to sign them -- none. None has been introduced.

MR. STEIN: That Milbank -- that WSFS intended to sign?

THE COURT: Yeah.

MR. STEIN: Yeah.

THE COURT: They intended to sign them. The fact that they screwed up or may have screwed up because there's also an argument as to whether the facsimile of a manual signature, whether that is a facsimile signature or not in terms of the definitions -- assume they screwed up just for a minute.

They intended to do this. There's zero question they intended to do this, and I can just take from the record as a whole that was their intent. And I'm not going to toss a $250 million transaction based on that. If that's what the defense comes down to, you're going to lose.

MR. STEIN: I understand that, Your Honor. And to be clear, we don't think this case comes down to this at all.

THE COURT: I don't either.

MR. STEIN: We think this is --

THE COURT: I don't either.

MR. STEIN: Yeah.

THE COURT: So, you know, --

MR. STEIN: But --

THE COURT: -- I'm just telling you I'm not ruling on that -- in your favor on that basis so --

MR. STEIN: I understand, Your Honor.

THE COURT: But make your record, but it's -- there's no way.

MR. STEIN: And if Your Honor will just briefly indulge me --

THE COURT: No.

MR. STEIN: -- on making my record --

THE COURT: Make your full record.

MR. STEIN: -- before I pass this back to Mr. Rosenbaum. I just want to briefly address what happened with the WSFS signatures, not because of the issue of the facsimile issue but the issue of what they -- the actions they undertook.

Because I actually don't think there's too much of a disagreement between our view of what happened on the record and what the Debtors' slide deck put forward in Slide 126 of their presentation.

But under -- and if the 2024/2026 holders' tech could bring up Slide 9 for --

The requirements of authentication are set forth in the indenture under Section 2.01. And this says that the 2026 secured notes and the trustee's certificate of authentication will be substantially in the form of Exhibit A here today.

And on the right, you see what Exhibit A here -- with the signature space for the company in the top-right corner, and the signature space for the trustee on the bottom, to the left at the bottom.

And so, on Slide 10, what you'll see is the authentication form that's provided by the indenture and the one signed by WSFS on the left. And I raise this to illustrate the point that these are two different things.

And the reason why that matters is when the -- in the indenture, it says that the issuer will sign by manual or facsimile signature. It doesn't say that the trustee will sign. It says the trustee will authenticate.

And what it means to authenticate something is to attest to the genuineness of it. And that's why the signature block for the trustee appears on the same page as the page for the issuer. And we think that's significant because that goes to the protection that we are entitled to as a noteholder under Section 2.08 that only notes that are outstanding will be counted towards the consent requirements.

And so when the notes were signed, they didn't follow this form, and these weren't facsimiles of, let's say, you know, a document that has the substantive text of a particular note on it that said this is the signature page for D1; this is the signature page for D2.

These were signature pages that were undifferentiated. To the extent that we know that, they were for separate documents, for different documents, but they were all identical. In fact, 35 of them were photocopies. And we don't think that meets the standard for authentication under the plain meaning of the term.

And that meaning is important because the manual signature of a trustee is to the conclusive evidence that the note is valid and outstanding. And that's why there's a form that requires the signature of a trustee to be underneath the signature of the issuer, and why it has to be manual. But then I want to address just two other points.

THE COURT: Just is there any one that has ever invalidated a transaction when the parties to the transaction intended it for it to be signed, but there was a technical defect? No. It occurs when there's a fraud or a fraud allegation.

Here there's no question that all the parties intended for those notes to be signed. Can you give me an example of something where everyone intended it unambiguously through their lawyers, well represented, but then a Court comes back and says, oh, no, this didn't occur? Any case?

MR. STEIN: So in the indenture context in particular, almost all of the cases -- and I think the only one that is unclear is a case, Holland Trust v. Thomson Houston Electric Company of New York, which is at 170 N.Y. 68.

This is a case that was cited in the McQuellan (phonetic) Treatise that was cited in the Debtors' brief. That's how we just recently found this because these older cases are sometimes difficult to find because the Court of Appeals doesn't always -- those decisions aren't always referred back to in later cases.

But it stands for the proposition -- and this is consistent with the proposition in Moss -- is that you follow the terms of the indenture. And I say ambiguous because the facts of that case are fairly unclear. It's an old decision.

But there, there was -- there were coupons that were handed to a president of the company, and those were later sold to third parties. And the question there was whether those could be enforced, whether the security interest of those coupons would have been entitled -- could be enforced, even though they had not been certified.

And the Court of Appeals said maybe there's an unsecured obligation here, but they're not entitled to the rights under the secured document. It is not clear to me whether that was a case of fraud or not, but it is consistent with New York case law which says that when an agreement by its terms includes an express provision, that has to be enforced according to its terms.

And so, that goes back to the case -- they cited this case -- Electric to say that New York courts will excuse compliance with provisions that are immaterial. Now that case cites to a case, Oppenheimer, also from the Court of Appeals. That's at -- sorry -- 86 N.Y. 2d. 685.

And what Oppenheimer said is that when an agreement unambiguously establish -- sorry -- it said the letter agreement unambiguously established an express condition precedent rather than a promise as the parties employed the unmistakable language of condition if, unless, and until -- and then the Court said there is no doubt of the parties' intent and no occasion for interpreting the terms of the letter agreement other than as written.

THE COURT: I got that. But you're not alleging in any way that the parties to this transaction did not intend to do it. You're not alleging any fraud. All that you're alleging is maybe a very important technical issue, but a court of equity will find a way to correct the technicality if the parties' intent was unambiguous, and here it was.

MR. STEIN: And that is what cases outside of New York have done in the cases like -- I think Minnesota. Those aren't New York cases. I think that's notable. And if the Court reaches that conclusion in equity, I think we would disagree with it as a matter of New York law because the case like Oppenheimer, Daneco (phonetic) Electric came out differently, but there was a subsequent case, MLB Construction that cites it.

But what these cases stand for the proposition of is that New York courts will enforce conditions precedent. So even, for example, a notice provision where a contract requires written notice of something. And instead of sending the written notice, the party calls them up and says, hey, we've got the consent for the building on this; we're good to go; the Court finds the plaintiff is unable to bring the suit because they failed to comply with the written notice. And Oppenheimer deals with these situations --

THE COURT: Right. But that was the party that was intended to get the notice. Here, the parties that were intended to be -- to receive it all acknowledged that they got it.

MR. STEIN: That's correct. We're not disputing that they received that. We're disputing that it complied with the terms of the indenture.

THE COURT: I know, I know.

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

THE COURT: Thank you.

MR. ROSENBAUM: Thank you. Your Honor, --

-- we could turn, put this slide down --

-- I think one reason to think about this or one way to think about this is -- and Mr. Kirpalani spent a lot of time talking about the owner's manual yesterday, and the owner's manual is the owner's manual. For our purposes, our interests in this authentication, not as between PIMCO Silver Point and the company, is whether those -- I'm going to use an O.J. line -- if the notes could've vote, that's all she wrote. There -- and the only way --

THE COURT: O.J. said that? I don't remember that one.

MR. ROSENBAUM: That's a good one, right? If the notes -- I'll credit Mr. Lavine with it. If the notes couldn't vote, that's all she wrote. And the owner's manual that Mr. Kirpalani spent most of his presentation talking the Court through says that notes are not valid until authenticated with a manual signature of the trustee.

There was no manual signature. Manual means by hand. And I just want to bring this forward a little bit more. I think there was no authentication because you can't -- these were 38 separate instruments. And each one has to be authenticated.

Now maybe you could put somebody on the stand, and they could redo it now, but they can't go back and vote. And so the votes don't count, and that's our interest in this issue. And that's why I think it's important. We're not suggesting there might not --

THE COURT: I think the law would allow you to do it now and have it retroactively effective, meaning that their vote counted.

MR. ROSENBAUM: Okay.

THE COURT: I really think you should spend your time on something productive.

MR. ROSENBAUM: I will move past it, but I thought I'd at least get my -- the notes can't vote quip out. So the last topic and it's our -- the handful of supplemental slides that we handed up is the New York single integration transaction or single integrated transaction doctrine lapsing.

There's a lot of terms for it, but I'm going to focus predominantly here on New York case law with one exception, the Delaware case that was cited in New York. And I want to take this back when we look at this doctrine.

And the Court in the summary judgment decision cited the TriMark case for this proposition, as well as the Wedgeford Waterford or Waterford Wedgeford, the Crystal company case, which was fraudulent conveyance. And they stand for the same proposition.

One is in the context of fraudulent conveyance; the other is in context of contract. But as I read the Court's summary judgment decision -- and this was on Page 39 of 58 -- ultimately, the Court found -- and that's why we went to trial

-- is that most of these issues will be based on the parties' intentions. Right.

And I think it's then important to think of this doctrine in two different respects. Because it's one doctrine, but it's applied differently depending on who's applying it. So when, if you think of it in the context of a bilateral contract, if you and I have a contract and, in fact, we have a series of writings that may or may not form the whole contract, and we get into a dispute, then it's quite obviously an interpretive tool to look at one writing and the other to determine what you and I meant as between each other in that bilateral context. That -- it's often used for that, and some of the cases apply it for that.

It's equally often used, maybe less so, but it's used differently where there's a multilateral contract, and one part, here a third-party beneficiary, us, that was the situation in TriMark is collaterally affected by the transaction, and the proponents of the transaction are asking a Court to look at it a certain way.

And whichever way the Court looks at it impacts the rights of that nonparticipant or excluded. Those are our facts. And under those facts, I don't know that -- I think that the word collapsing has crept in through the lexicon. I think they all mean the same thing.

If you look at them together, then you look at them together and what their intentions were, and you can also look -- there is no, especially when you're talking about the multilateral context where it's someone outside the four corners of the actual transaction documents, you have to look to the actual intent.

You have to look to substance, not form. That's the essence of the document. Now it also comes up in fraudulent conveyance law and in tax law. And those are typically where this outsider to the actual transaction is asking it to be viewed as a single transaction.

But it comes up quite often in contracts. So that's just a primer because I think the JDG has spent a lot of time, I think, trying to confuse what this doctrine is or isn't. And I just think it is applied differently based on the facts and circumstances as to who's applying it or who's asking for its application.

So with that, TriMark is, I think, a very informative case because the first thing the Court did, and we talked about this a bit yesterday, is from the pure exit consent standpoint, pure exit consent, and we don't have an exit consent, said if you had your 51 percent when you consented to the transaction, that's all I need to look at.

But then -- that was for purposes of exit consent. But then when it was considering the, in that case, the sacred right and the adverse effect on the proponents of the single transaction doctrine, it did a different analysis. And it's the analysis that we're in, not this exit consent analysis.

So it started by reciting, you know, the black letter New York law: "Agreements executed at the same time by the same parties and for the same purpose are in the eyes of the law one instrument." I don't think there's any real daylight between that statement and what happened here.

It goes on. And it's talking about a Section 2. In that, it was a credit agreement, not an indenture. But Section 902, sorry, "No such agreement in that case agreement is an amendment for our purposes" -- and it's singular, by the way -- "shall without the written consent of each lender directly and adversely affected waive, amend, modify the waterfall," and in that context, which is our context, the Court -- and this was a motion to dismiss so it didn't have the benefit of this robust factual record that this Court does -- said -- and the case settled shortly after this -- "Section 902(b) reasonably can be read to implicate the liquidity transaction as a whole" -- as a whole -- "rather than only the portion of the alleged, quote/unquote, scheme that involved amending the credit agreement itself."

Those are our facts. And it continues. "Defendant's argument that the provisions can only be read as applying to the portion of the liquidity transaction on which they choose to focus is on a motion to dismiss."

I think that's what the defendants here are trying to do. I think this is what -- I think it was Justice Combs spoke again, and I think it's extremely consistent with how the courts have applied this doctrine for decades in New York, both in federal courts and state courts.

So next case to focus on is TVT Records v. Island Def Jam Music Group. I think by the caption, everyone can probably tell this is not an uptier. And it was Second Circuit 2005. Similar principle -- in fact, the same principle.

In that case, the Second Circuit, which again, short of the Court of Appeals is probably the most influential purveyor of New York law, at least, you know, in federal courts outside the district, and the Second Circuit said, "Under New York law, all writings which form part of a single transaction and are designed to effectuate the same purpose must be read together even though they were executed on different dates and were not all between the same parties."

Here obviously, we don't have anything executed on different dates. And the Court continued: "Whether the contracts were part of a single transaction intended to effectuate the same purpose" -- that's what happened here -- "we believe they were." So it asks the question and an answer, "We believe they were."

That's the same answer Your Honor should reach if the Court feels the need to apply the single transaction doctrine because it's alive and well and it governs, but I think the Court can look to the plain language and get to the same place.

THE COURT: Is there ever any daylight between those two? Would there be a situation where you have the language we have, the "with the effect of" language where that would not be sufficient because the single integrated transaction doctrine would pull in some documents that the "with the effect of" language would not?

MR. ROSENBAUM: I think that if we didn't have "the effect of," --

THE COURT: Yeah, but we do.

MR. ROSENBAUM: We do.

THE COURT: We do.

MR. ROSENBAUM: That's why -- no, I --

THE COURT: So what I'm trying to figure out is there ever a situation where with the language we have, you would look to the single integrated transaction question because it seems to me there's no daylight left.

MR. ROSENBAUM: I agree. I agree. I think in our contract, you don't need it, which is what we've been saying, but it's there. And the other side says it's not, it doesn't exist; it does exist.

So with that, I'll be really brief. If you look at the next page, and I won't get into the case discussion, other than there was a Delaware 1999 case called Noddings Group v. Casper Communications that really elucidate as a matter of New York law. It was applying New-York-law-governed contracts. The collapsing document. They called it collapsing. That's fine. It's one Delaware chancery judge from 25 years ago.

But in 2011, the first department, the Appellate Division first department on a similar fact pattern applied not so that it -- to collapse. And that was on a motion to dismiss. And it looked at it and said this was a single transaction; and therefore, there's no claim.

It went up to the Court of Appeals in 2012. The Court of Appeals had occasion to say this doesn't exist in our state. It's always, right, the Court of Appeals in 1942 said it existed. That's not what the Court of Appeals said. The Court of Appeals reversed because it said there were fact issues, similar to what this Court did on summary judgment.

It found that there were fact issues. It acknowledged the potential for a finding that a series of steps could be a single transaction, a single integrated transaction, but found that there were just fact issues that needed to be aired, and it didn't warrant dismissal at the motion stage.

So in the context of what the law is in New York, I don't think there's daylight between the contract, so I don't think the Court needs to reach this, but I think if the Court were to, it's very clear that this doctrine is alive and well in New York. And when an outside to the contract is affected by it as a third-party beneficiary, it can apply.

And I certainly think -- I'll just make one more point on this --

THE COURT: So --

MR. ROSENBAUM: -- this idea that you're not, that the Court is not supposed to look at anything but the four corners of the third amendment to see if it had the effect, I think, is completed belied by both the doctrine and the plain language.

THE COURT: So it would seem to me that under New York law -- and I've tried to focus throughout on New York law, not on Texas law -- that you could write a contract where you make it clear that you do not integrate steps. You don't collapse steps.

And that would be enforceable under New York law. And so, I think citing general principles of that one could have a single integrated transaction in theory and do a collapse, fine. I don't know that anybody --

MR. ROSENBAUM: Um-hum.

THE COURT: -- is going to disagree that that's at least theoretically possible. But it's all going to be factually dependent. And if the parties were to write something that made it unambiguous that you have the right to alter permitted liens even if there is a long-term result that would result in violations of other provisions of the agreement, you still have the right to do that, you could write that. And I think any Court should enforce it as the parties intended for the transaction to be.

And so here, where we have a transaction that talks about effect of, that should have a view to enforce the effect of. And unless there's a reason to think about single integrated transactions, we shouldn't go there. But the fact that I don't want to go there doesn't mean that you can't have situations with them, nor does it mean that you always do or always don't. It's very factually dependent. So --

MR. ROSENBAUM: I agree with that premise. This was more responsive. And we did -- I think we'd be remiss if we had briefed this and didn't cite --

THE COURT: I'm not --

MR. ROSENBAUM: -- the principle.

THE COURT: -- complaining about it; I'm just trying to tell everyone that I don't anticipate crossing the bridge as to when and when not the single integrated transaction doctrine applies because frankly, if you lose the "with the effect of" language because I'm supposed to look at each document separately, then I wouldn't then go back and say, no, I'm going to look at them all together because I was supposed to look at them all separately.

So far, I haven't seen that, but I just don't see this as having much influence on what I need to do.

MR. ROSENBAUM: I get that, Your Honor, but --

THE COURT: I appreciate it's an alternative theory.

MR. ROSENBAUM: -- I do think, just to that point, and then I will sit down, and I will thank the Court subject to perhaps minimal surrebuttal, is that it is a principle, and therefore, to Your Honor's point, if contracting parties explicitly say that it doesn't apply or use, you know, words that would make clear that it doesn't apply, then I think that would probably be enforceable in New York.

But otherwise, it is the law, and it does have an overlay over at least how the Court is supposed to interpret the single integrated documents that were used to affect the transaction.

And with that, I will thank the Court for its time and patience.

THE COURT: Yeah, what I want to be careful of though is I am not considering right now in a serious way trying to address whether step transactions should always be respected as separated events, should never be respected as separate events.

I think it's fact-intensive, and I should not, given the case I have, sitting down here in Houston declare New York law on a really important question that I don't need to answer.

MR. ROSENBAUM: Thank you, Your Honor.

THE COURT: Thank you.

Who else from the right side? Great.

Rebuttal on the left side?

REBUTTAL ARGUMENT

MR. KIRPALANI: Thank you, Your Honor. Susheel Kirpalani from Quinn, Emanuel, Urquhart & Sullivan, special counsel for the Debtors. We do have some -- a short presentation. We discussed yesterday evening how exhausted you must be from looking at slides, so we're going to keep them very brief, but I'm going to want to engage in a discussion with you, I think, more than yesterday where we had a lot of ground to cover.

Especially now, since we're all pretty clear on what the Court is most focused on, and I think that's a good thing for all of us because it's a complicated case, a lot of moving parts, and I think what we -- what I've witnessed -- I'm not going to cast aspersions -- it's hard for me sometimes to separate the arguments that are being made as to whether you need to collapse in order to get that point, or you don't need to collapse in order to get that point.

And I think Your Honor distilling it just now really helps us all, and I want to focus on the issue, which I think is "had the effect" in that clause.

THE COURT: All right.

MR. KIRPALANI: Okay. Can Your Honor give control to --

THE COURT: I've done that.

MR. KIRPALANI: -- Incora tech?

THE COURT: I've done that.

MR. KIRPALANI: Oh, great.

Put up the first cover slide, and don't go to the next slide just yet. I want to talk about something first. Okay.

So Mr. Heidlage is going to cover the issues after I finish about the closing and what happened on the closing call, and really whether or not documents were conditioned on the particular order or not conditioned. And he has a thorough presentation on that, and I don't want to duplicate anything.

What I want the Court to focus on, and I'm going to walk you through the language, is Your Honor's comments and hypothetical -- not hypothetical -- statement that what happened here is the wire was sent, and when the wire was sent, Your Honor felt the exchange agreement became effective perhaps.

THE COURT: I said I wasn't sure if it was when it was sent or when it was received, but I didn't think it would matter.

MR. KIRPALANI: Either thing, either thing. Okay. And I want us to take a breath and to think about that because we're going to look at Section 9.02 which everyone has agreed, including my friends across the aisle, is what governs the case.

And when we look at it, we're going to see not just "have the effect," that's been most of the discussion. But what noun goes with that action purpose? Is the noun transaction? Is the noun purchase? Is the noun a wire transfer? And we'll look at it, and I hope to be able to convince you that this is a much, much tougher case than perhaps you think at this moment.

Section 9.02 -- also, another thing to think about, another high-level 30,000-foot viewpoint. Section 902 in an indenture regulates conduct, right. Those are our laws or my instruction manual. It regulates the conduct of the issuer. What can the issuer do? What can the issuer amend the contract to do, to permit.

It doesn't regulate purchasers of bonds; it regulates what the company can do, what flexibility does the company have. Another thing to think about before we jump into it.

So now let's take a look at the first slide. This was Mr. Rosenbaum's slide from yesterday where he tried to import the definition of Black's Law Dictionary for "have the effect." Says, "No amendment, supplement, or waiver may have the effect," and then included in i.e., which just replaces the effect, the definition for effect, which is in the footnote faithfully there, "something produced by an agent or cause; a result, outcome, or consequence." You'll no doubt remember Mr. Rosenbaum's reference to Justice Scalia's lead-off batter hitting the ball and home run. That, of course, caused the win, and we're going to come back to that analogy as well.

So have the effect. I think this is focusing on only part of the question, and that's what we've all been missing. What else, what action is this dealing with? It is dealing with the amendment. Okay. I'm going to come back to that in a second.

Mr. Rosenbaum didn't show you --

Let's turn the slide --

-- the other definition in Black's Law Dictionary of what effect means. Definition two: the result that an instrument between parties will produce on their relative rights as discovered from the language used, the forms employed, or other materials for construing it.

Your Honor, I think this is a much more apt definition for our case than definition one, which is just kind of a generic way to refer to the word effect. It's the result that the instrument between parties will produce on their relative rights as discovered from the language used -- obviously, that means in the instrument -- the forms employed, or other materials for construing it.

There are circumstances. We could look to lots of facts. I'm not saying we don't look to facts. For example, a simple one where it talks about releasing substantially all of the assets. If we filed an amendment or we had an amendment that said all property in the State of Kansas is going to be released, of course, we need to look to what property in the State of Kansas did Incora have. Was it substantially all of the collateral or not?

No way can you just look to the four corners. But the key is it's within the language used and the forms employed and the materials used for construing that language that's in the amendment itself that will answer the question whether the amendment itself has the effect, or whether it's something that the amendment facilitated, and I think that's where we have a disconnect here.

Let's turn the slide.

So we believe that the key issue is whether the amendment is the thing that had the effect of releasing. And the examples we gave you yesterday were, well, you can amend by changing the beneficiaries of a lien. You can amend the definition of excluded collateral. Neither of those things actually releases the lien, but they in effect do.

Even though you didn't formally do it in the four corners, in effect within the four corners, you did because you have added things. For example, if you change the definition of excluded collateral to say everything in the State of Kansas, nothing in your amendment actually released, but we can look and see. First by excluding it, you've effectively released it. And second, it's -- we'll need to consider all of the assets of Incora to see whether that's substantially all or not.

Let's turn the slide.

Here's the big punchline that I want to make, Your Honor. What Mr. Rosenbaum is asking the Court to do --

-- let's go to the next one --

-- is basically insert some words that are not there. This doesn't say no transaction made possible by an amendment, supplement, or waiver. That's how we get to what happened as a result of the third amendment.

What happened is the company opened its basket. It unlocked a door. It unlocked a door. Somebody still needed to turn the knob and walk through it. That's not the conduct that's regulated by Section 9.02. The conduct that's regulated by Section 9.02 is can you or can you not unlock it. That's the company's power to amend.

And it's not that power of amending that affected the release. It was the -- somebody bought the bonds, somebody voted the bonds, and somebody agreed to exchange the bonds as part of a consent solicitation exit consent.

Those last three things I mentioned is what had the effect of releasing the liens through the fourth amendment. The third amendment simply gave the company the flexibility to do the next things that it needed to do, but we keep replacing the word amendment with transaction. And this is not governing transactions. This particular sentence is governing amendments.

Let's turn the page.

I know Your Honor knows this story, but just to be clear again, what does Section 902 regulate? It only regulates the green boxes. That's it. By its terms. I'm not asking you to read things that aren't there. By its terms, it regulates green box number one, the third supplemental indenture.

What did it do? It changed the definition of permitted lien. No wire was sent. It doesn't issue notes at all. New notes did not vote or were obligated to vote. The company wasn't obligated to do anything under third amendment. The note purchase is not governed by Section 902. That's where the wire was sent. That's where the new notes were issued.

The fourth amendment, the fourth supplemental indenture is governed by 902. That is Mr. Rosenbaum's star player. That's the guy that hits the home run. It's not the third amendment.

Let's turn the page.

I want to come back to the baseball analogy because I started thinking about this last night. Imagine this rule, Judge. A walk may not have the effect of ending a tie game. Okay. A walk cannot have the effect of ending a tie game. It's a tied game. It's bottom of the ninth. The lead-off batter is walked.

The next batter hits a triple, scoring the batter who walked. The 2024/2026 holders say the walk had the effect of ending a tied game; therefore, it's impermissible. The team didn't win. That's not true.

The walk created the opportunity for the win, but did not itself have the effect of ending the game. When the newspapers write about the win the next morning, it's crediting the batter who hit the triple. Because he hit the triple, they won. The end of the tie game.

Of course, your first -- you needed to have the person on base; you needed to have the walk to facilitate the win. But the question is what's being discussed in Section 902.

Next slide.

I also think --

THE COURT: Can we go back up --

MR. KIRPALANI: Yeah.

THE COURT: -- two slides?

MR. KIRPALANI: Two slides. Yeah.

THE COURT: And I understand that Mr. Heidlage is going to deal with this primarily.

MR. KIRPALANI: Yes.

THE COURT: And if you want him to answer this instead of you, that's fine. I just don't want to forget this slide.

MR. KIRPALANI: Okay.

THE COURT: At the closing, when the third supplemental indenture is executed, did the notes purchase agreement at that second become enforceable against the parties because it was already circulated with signatures?

MR. KIRPALANI: I mean, in terms of at that second, it's supposed to follow the authorization to issue the notes. But --

THE COURT: But did it --

MR. KIRPALANI: -- in terms of whether it was --

THE COURT: -- it occurred --

MR. KIRPALANI: -- enforceable --

THE COURT: -- as I understand, they have the signatures, and it occurs automatically with no action by any party.

MR. KIRPALANI: Okay.

THE COURT: So if that's correct, then at the nanosecond, not the next nanosecond, but at the same nanosecond that the third supplemental indenture is executed, that forces the note purchase agreement's execution because under the escrow, it was automatic without action by any party.

MR. KIRPALANI: Okay.

THE COURT: Do I misunderstand that? And again, if you want to --

MR. KIRPALANI: I'll let --

THE COURT: -- defer that to Mr. Heidlage, that's fine.

MR. KIRPALANI: -- Mr. Heidlage --

THE COURT: But I want to bring back up this exact table because it's important, I think.

MR. KIRPALANI: Yeah. I'll let Mr. Heidlage deal with the detail. But I will just say even if I accept what Your Honor is saying, I'll accept this as the proposition that the note purchase agreement happened at the same time or was destined to happen --

THE COURT: Not destined --

MR. KIRPALANI: -- with nobody --

THE COURT: No, there's a big difference between --

MR. KIRPALANI: Okay.

THE COURT: -- if I accept your argument in total, and I'm not sure that I do --

MR. KIRPALANI: Okay.

THE COURT: -- I have to live with these facts --

MR. KIRPALANI: Okay.

THE COURT: -- which are that as I understand the closing agreement, --

MR. KIRPALANI: Right.

THE COURT: -- everyone has all the pages. The signatures are out there. I don't have what I had assumed was someone that was going to distribute signatures.

MR. KIRPALANI: Okay.

THE COURT: So the notes purchase agreement parties have fully signed notes purchase agreements. Without any action by any party at the same time, that nanosecond that the third supplemental indenture signatures are released, the notes purchase signatures are also released --

MR. KIRPALANI: Okay.

THE COURT: -- not a moment later, but at the same moment.

MR. KIRPALANI: Okay. And I'm saying --

THE COURT: If that's right, then what happens here?

MR. KIRPALANI: Okay. What happens here is we look to what is 902 regulating. It's regulating the amendment. The amendment --

THE COURT: Um-hum.

MR. KIRPALANI: -- didn't cause the lien release.

THE COURT: Well, it caused the note purchase, right, under my hypothetical?

MR. KIRPALANI: It didn't cause the note purchase; they happened at the same time. Let's say they happened at the same time.

THE COURT: Well, no, the notes purchase agreement never occurs. It's a never-occur versus a must-occur. It's not that there's any intervening act that occurs. It is, in fact, a simultaneous --

MR. KIRPALANI: Simultaneous, okay. Say simultaneous.

THE COURT: -- meaning that the third supplemental indenture causes the note purchase agreement --

MR. KIRPALANI: That's the logical --

THE COURT: -- has the effect of it.

MR. KIRPALANI: -- leap I'm not getting to.

THE COURT: Okay. Why not?

MR. KIRPALANI: Because the third supplemental indenture is a condition precedent for issuing notes. What I thought Your Honor is saying is the agreement to consent to the third supplemental indenture and the agreement to buy the notes happened exactly at the same time. Right? That's what you're saying. They happened at the exact same time in the same utterance.

THE COURT: No, but they do happen at the same time, but you're missing -- it's not the same utterance. Because the utterance of third supplemental mandatorily triggers the note purchase agreement. It doesn't make it optional. It doesn't mean that it enables others; it forces others to do the note purchase --

MR. KIRPALANI: It doesn't force. There's nothing in the amendment that force --

THE COURT: It does. It does because the agreement was the minute that the SI is done, the notes purchase agreement is also done by force of the SI being done.

MR. KIRPALANI: But when looking and construing 902 and the amendment, we need to look to what does the amendment itself require. The amendment itself is what's being regulated.

THE COURT: So this goes back --

MR. KIRPALANI: Not what somebody does --

THE COURT: But this goes back --

MR. KIRPALANI: -- you know, with that authority in hand.

THE COURT: -- to the environmental question we were talking about before. You're telling me I can look at how many facilities there were in Kansas. It seems to me that I can also look at whether there was a mandatory sequence of events irrevocably triggered by the third SI that no one can stop.

And the note purchase agreement mandated the wire, and the wire mandated the exchange agreement with no further action by any party. So I'm not understanding how this sequence helps you.

MR. KIRPALANI: Because the -- what I'm trying to illustrate to you with the sequence is what work each document does. And 902 doesn't regulate purchases of bonds. 902 doesn't deal with that issue.

THE COURT: Yeah, but you're eliminating the environment. You're eliminating the environment. You've got to look at the -- I think you have to look at the environment you do it in. And if the environment that you sign the third SI is one that mandatorily and uninterruptedly results in a -- how did it not have the effect? You're telling me it gave an opportunity.

MR. KIRPALANI: That's correct.

THE COURT: No, it didn't just give an opportunity. The signing of it mandatorily triggered other events, and that's what I'm not accepting right now.

MR. KIRPALANI: Okay. I would say that it is absolutely consistent to say you can consider facts to determine whether all or substantially all collateral is being released because that's what the text tells you to do. It says I have to determine whether all or substantially all.

The text is not telling us to say when we look at the word amendment, we need to look at whether or not the transactions facilitated by the amendment are also going to happen or not.

THE COURT: You keep using facilitated, opportunity, and I'm trying to tell you I don't think that's what you-all did. I think what you did is the execution of the third supplemental indenture mandated because of the environment that it was executed in everything else to occur. Did it?

MR. KIRPALANI: No. I don't think it mandated anything.

THE COURT: Okay. Well, then that's --

MR. KIRPALANI: I think the --

THE COURT: -- the difference.

MR. KIRPALANI: -- third supplemental indenture --

THE COURT: But that may be the difference --

MR. KIRPALANI: -- authorized the company --

THE COURT: -- because if you look at the environment, I think it did. You're telling me the environment didn't. And I guess that's what we'll leave for Mr. Heidlage.

MR. KIRPALANI: Well, yes. Let's wait for Mr. --

THE COURT: I mean, you can go to it if you want to, but that's the current way I'm looking at this is that you look at this within the environment in which it was occurring.

MR. KIRPALANI: I'm not telling you to put blinders on. I'm not telling you to put blinders on. What I'm saying is the provision we're all wrestling with for two days has a specific reference. It's does the amendment do something. What Your Honor is saying is the closing call created an obligation. That's fine. Closing calls are not what's regulated in 902.

THE COURT: Right. But the closing call occurs before the third supplemental indenture is effective. It then becomes effective in the environment of the closing. And the environment of the closing was everything else was mandated.

MR. KIRPALANI: Yeah, but we're supposed to be interpreting the indenture as to what text is there. It's about whether the amendment has the effect. That's all we're supposed to be doing. It's not supposed to have been as much work, I think as my friends across the aisle think it's supposed to be doing. That's our position.

THE COURT: Thank you.

MR. KIRPALANI: Okay.

THE COURT: Okay.

MR. KIRPALANI: As a legal matter.

Let's turn the slide. Again.

So the interpretation of indentures requires certainty of application in all situations, different situations. This is the Fifth Circuit: "A large degree of uniformity in the language of debenture indentures is essential to the effective functioning of the financial markets."

It can't be the case that what "have the effect of" means with one-third amendment in one closing call in one deal means something totally different in another closing call in another deal. Our position is when I look at the instruction manual, I'm looking at what tools do I have to unlock doors, to make things available. That's what I'm being regulated. That's what I need to comply with.

And now how do I do it? I look to what 2.08 says. It talks about what notes count as outstanding. That's it. And that ends that inquiry.

And Your Honor, I would like to flip back to --

-- not the next slide --

-- is there a way -- well, Your Honor can just look at it, but in Kobre & Kim's most recent discussion of the case law on this, it was the Audax case, the TriMark case. It's Page 118.

THE COURT: I've got it in front of me right here.

MR. KIRPALANI: Okay. Perfect. Yeah. That's the slide. So you see the second bullet there? It says Section 9.02, no such agreement, and then he replaces the word agreement with amendment. And then I checked the transcript.

Mr. Rosenbaum literally stressed the fact that it's singular by the way. It's not singular. Again, just with ellipses or I don't know how, I don't know how, the language in TriMark is: "No such agreement or agreements plural" -- and that was the very additional text that Justice Cohen relied on when he denied our motion to dismiss.

He said I don't know what agreement or agreements means in this context. I maybe do need to look at the totality of the transaction. I don't know how a person can omit that language, and then stress in front of you that it's singular, by the way. It's not singular. I didn't want to lose that point.

We can shift gears. I want to briefly come back to the other issue that I think is sitting with the Court, which is did amending the definition of permitted liens deal with collateral; is that a provision that deals with collateral. Moving away from the "have the effect of" now.

Okay. Is it dealing with collateral? These are the three things that we're construing in 902, the two-thirds requirements. The first one is the "have the effect of." The second one is: Does the amendment make any change to application of proceeds? That's the waterfall. And the third one is: Does the amendment modify the security documents? We've covered that the security documents themselves were not modified, or the provisions of this indenture -- that's the definition of permitted liens -- is that a provision dealing with collateral?

And then there's other requirements which we're going to come to. If you look at number one and number two, the super majority consent provision expressly distinguishes between amendments that affect security interests or liens, and those that affect collateral.

The first super majority consent provision applies to amendments that have the effect of releasing or altering the priority of liens.

In contrast, the third super majority consent provision, the one we're dealing with, deals directly with the underlying collateral. Did you change the collateral, or are we leaving the collateral alone and just changing how many notes we can issue against that collateral? That's it.

And that's not what's being regulated in three. We didn't change any provision that deals with collateral. We changed the provision as to permitted liens, but that's not what number three talks about.

Number three talks about did we change any provision that deals with the collateral, the actual assets that are being pledged. If you have the -- I'm sorry.

THE COURT: First of all, I tried to explain yesterday why I think that the example of the unsecured indenture doesn't cover this, so I'm going to ignore that --

MR. KIRPALANI: Okay.

THE COURT: -- argument for a moment and focus on this one. We have permitted a total amount of debt that is secured by the collateral. As you increase the amount of the debt, everyone's interest in the collateral, assuming that it's a pro rata extension of the debt, diminishes.

MR. KIRPALANI: Cash comes in.

THE COURT: Well, their percentage interest in the collateral diminishes if there's more liens against the collateral, right?

MR. KIRPALANI: Yes, but cash comes in, which benefits that group, but okay.

THE COURT: Yeah, no.

MR. KIRPALANI: I understand --

THE COURT: I'm not saying --

MR. KIRPALANI: -- what you're saying. Yeah. Um-hum.

THE COURT: But all I'm saying is --

MR. KIRPALANI: It's dilution.

THE COURT: -- I think they're permitted -- dealing with collateral is a pretty broad phrase.

MR. KIRPALANI: Right.

THE COURT: So if you change the amount of liens, let's say no cash comes in just as an example, and you uptier things so that different parties can look to the collateral than could look at it before, that deals with the collateral.

If you increase the amount of liens against the same collateral, that deals with collateral. It may not change what the collateral is, but dealing with collateral seems very broad to me.

MR. KIRPALANI: You see, I think -- here's what I think. I think that this was my -- I don't know if this was the slide. But this is where we don't hide elephants in mouse holes comes to. This whole indenture as a whole deals with the ability to borrow money, the ability to issue more debt, the ability to sell assets, the ability -- all sorts of things -- to make amendments.

If there's going to be a two-thirds prohibition on issuing additional pari-passu debt, it would say that. It wouldn't be, oh, well, if you modify the definition of permitted liens, that would be considered a provision of the indenture dealing with collateral.

And the reason I want you to accept that, Your Honor, is because I have shown you the provisions of the indenture. It's not a nolle set interpretation. There's a rational, reasonable interpretation.

There are entire articles of this indenture that don't appear in the unsecured that deal with collateral. It's all about maintaining it, insuring it.

THE COURT: Right.

MR. KIRPALANI: A Debtor enjoying the right to use it as long as there's no breach. I can't change that, even though it doesn't affect the release. If it was as broad as my friends suggest it is, you don't need one or two. Everything deals with collateral. But we're talking about a specific thing. It's not a provision. No market participant, I don't believe, would read this and say, well, that's a provision; dealing with collateral means you can't amend debt baskets. That's just not --

THE COURT: Well, it doesn't say you can't deal with collateral. You can deal with collateral. It only says you can't deal with collateral in a manner adverse to the holders of the 2026 secured notes in any material respect except as otherwise provided in the indenture, right?

MR. KIRPALANI: That is --

THE COURT: You can --

MR. KIRPALANI: -- true.

THE COURT: -- you can deal with it.

MR. KIRPALANI: And I do want to talk about that.

THE COURT: Yeah.

MR. KIRPALANI: I do want to talk about that.

THE COURT: Okay.

MR. KIRPALANI: Because we believe that the evidence is completely lacking on the issue of --

Let's turn to Slide 12. That's not my Slide 12.

I'm sorry. The one that's the situation overview. It's forward three or four. There. Yeah. Thank you. All right.

We had a whole trial, four or five months long. I know it's stretched out. But the evidence is wholly lacking that -- we're talking about the third amendment, right? When Mr. Rosenbaum describes what happened, he always uses the phrase on top of. They amended the indenture to allow 250 million on top of. They're trying to paint a mental picture.

This isn't the priming. Nothing came in in the third amendment to make it on top of; it's on the side. Pari-passu, the first step, the third amendment. For this analysis, we're talking about whether amending a debt basket, not the prime. I will stipulate priming adversely affects.

Talking about just the sliding in of additional indebtedness. And it wasn't 250; it was 175 because they already had up to 75. So if we look at what the change did, we always had the ability to do 75. Now we did 250. So the actual effect of the dilution was another 175 -- 175 over about 900 million of outstanding 2026 notes. Okay. Those are the facts in the trial.

Mr. Cesarz, Perella Weinberg, a person who has every financial incentive to give you the best possible evidence that would help his clients, said a near-term filing would likely be value destructive. This is the only evidence about whether staving off bankruptcy from their side was a good or a bad thing. It's the only evidence.

They had so many witnesses. So many opportunities to come in. Experts they brought on the wrong issue, but they could've brought experts in to say the value of this company and the value of my collateral right before the financing was this; the value of my collateral right afterwards was that. Didn't happen. Your Honor has seen those things -- priming fights, DIP financing, diminution in value.

This is like mother's milk, Your Honor. It goes down very easily. It wasn't there in this trial. They have the burden of proving that the change that we made materially and adversely affected them. They can't just say because in 2019, Mr. Cook believed it was an important amendment to have -- important fact to know how much debt capacity the company had, that doesn't mean in 2022 that this amendment --

THE COURT: Can --

MR. KIRPALANI: -- materially and adversely affected them. It's --

THE COURT: -- I reword your argument a little bit to be sure I understand it? Because I think I do and I think it's something I need them to answer if they want to.

If we look at the subsequent exchange agreement, Paragraph 3 adds no more than Paragraph 1 because Paragraph 1 forecloses your defense. But if we don't look at the subsequent exchange agreement, we can't look at Paragraph 3 --

MR. KIRPALANI: Right.

THE COURT: -- to give them relief unless they have shown an adverse effect of the borrowings --

MR. KIRPALANI: That opening the debt basket was by itself was a material adverse effect.

THE COURT: Because it doesn't have -- they would need their collapsing agreement --

MR. KIRPALANI: Yes.

THE COURT: -- in order to make me look at that.

MR. KIRPALANI: Right. And I think that's why, you know, very artfully --

THE COURT: I do understand --

MR. KIRPALANI: -- the dancing between these arguments starts to --

THE COURT: I am understanding your argument well.

MR. KIRPALANI: Okay.

THE COURT: If that's correct --

MR. KIRPALANI: That's my argument.

THE COURT: -- I think that that makes sense, and I am actually not aware of evidence that shows that opening the debt basket alone, if it hadn't been followed on --

MR. KIRPALANI: By the priming, right.

THE COURT: -- by the priming which is governed by one, and if you argue it's not governed by one, then three is not governed by that either.

MR. KIRPALANI: It's governed by one.

THE COURT: Then I don't think they have made that proof to me yet. Maybe they can show they have, but I don't -- I tend to agree with your argument.

MR. KIRPALANI: If they have, then Your Honor's going to have to weigh the evidence that you heard.

THE COURT: Correct.

MR. KIRPALANI: So just one more slide on this. Here's --

Can you flip the slide?

Here's Mr. Clouse in April, right, writing within the firm, "This recent transaction does provide the company with significant, much-needed liquidity." It's their position in the capital structure that made them very sour for good, you know, I'm not saying that they don't have a reason to be sour.

But that's a quibble with the fourth amendment and the exchange of the uptiering. It's not a quibble with the fact that the company needed money. Everybody -- Your Honor sat here, and you heard it all for weeks. Nobody ever said it wasn't a good idea.

THE COURT: I will say that your argument is now telling me to look at environmental issues, right?

MR. KIRPALANI: No, it's not.

THE COURT: Yeah, it is. I've got to look to --

MR. KIRPALANI: Not on the third amendment.

THE COURT: I think your argument makes a lot of sense, but it makes a lot of sense because they desperately needed the money.

MR. KIRPALANI: Oh, oh, yes. Oh, no, I'm sorry. Yes. I misheard you.

THE COURT: So I get to look at whether they desperately needed the money to decide if there was an adverse effect, which means I leave the document and --

MR. KIRPALANI: You have to.

THE COURT: -- look at the environment.

MR. KIRPALANI: Oh, you have to. I never told you you had to put blinders on. I was trying to say the opposite.

THE COURT: Oh, not really.

MR. KIRPALANI: No, I'm -- I didn't say that you shouldn't look --

THE COURT: No, you never said --

MR. KIRPALANI: -- to what --

THE COURT: -- it, but you won't -- you think I shouldn't be looking at the part of the environment that is, in my view, the most important part.

MR. KIRPALANI: That's for a different purpose. Here the text says does it materially and adversely affect. You obviously need to understand the facts to know if something materially and adversely affects it. It's a quintessential factual question.

THE COURT: Well, not if I don't look at the environment. I could simply look and say, okay, all I'm going to look at is -- I'm going to exclude your 220 -- your 75 million argument for a moment --

MR. KIRPALANI: Okay.

THE COURT: -- just to give my example. Then I could just look and say, no, there was only 200 million that came in. It was 250 that goes out in terms of notes, which means that there was a ratable disadvantage on the terms of it. I don't think that's the right way to look at it.

I think the way you're describing is the right way to look at it because I should look at the total environment and the total transactions to see what occurred. And I do think they desperately needed the money. But I think --

MR. KIRPALANI: I don't think it's inconsistent because I think what I'm saying is when you're determining an amendment, the word amendment is what -- is the work that's being done. I understand what you're saying. I'm saying you can look at what else happens.

I'm just saying that this trial did occur, and Your Honor has their statements that --

THE COURT: Correct.

MR. KIRPALANI: -- opening the debt basket by -- I'm trying to say opening a debt basket by itself doesn't materially and adversely affect anyone. That's within the four corners.

But even if you considered what actually happened here, what they're really complaining about is the opportunity. They're not really complaining about --

THE COURT: Yeah.

MR. KIRPALANI: -- the opening of the debt basket.

THE COURT: I got it. I think I do understand your argument, and I think it has a lot of merit.

(Recess taken from 10:34 a.m. to 10:47 a.m.)

THE COURT: All right. Mr. Heidlage, let's move ahead. Thank you.

MR. HEIDLAGE: We have some additional slides, Your Honor. So, Your Honor, first want -- can I start.

THE COURT: Yeah.

MR. HEIDLAGE: Okay. Benjamin Heidlage for the PIMCO and Silver Point Noteholders.

I first want to note, you know, we agree with Mr. Kirpalani interpretation of the effect of provision, but I, sort of, I want to put that aside for a moment and sort of meet you where I think you are with your interpretation that says that if there's a, sort of a contractually committed chain of events that were from the third supplemental indenture, fourth supplemental indenture, then the issuance of the third supplemental would have the effect of the fourth supplemental. And what I want to walk through in the next 10 minutes or so is why that's not the case, and if these documents were, of course, carefully drafted as you know, but there are important formalities there that in fact do not create that chain of causation that I think that you have been focused on.

So, the first thing I want to sort of go back to, and this was something that Mr. Kirpalani said, which was that the thing that releases the liens is the fourth supplemental indenture. It's not the exchange. I think there's been some time he's talking about the exchange and/or the exchange agreement, but the document that releases the liens, and so therefore, under taking your analysis, the thing that would need to be caused by the third supplemental indenture is the fourth supplemental indenture.

THE COURT: Yeah. And so, I think in the closing document, these are all referred together as the exchange consent documents, and the term exchange consent documents includes the fourth supplemental indenture, I believe.

MR. HEIDLAGE: Well, so, yeah, let me go through them one by one because they actually are slightly different in different places and I want to make sure it's very clear.

THE COURT: Okay.

MR. HEIDLAGE: And hopefully, at the end, you know, I can convince you. So, the fourth supplemental indenture, there is no obligation by the issuer in any document to enter into the fourth supplemental indenture. It wasn't a commitment on the closing call. There was an agreement -- oh, I'm sorry -- excuse me, an authorization to release the signatures. There was no bar on a revocation of that authorization. And I understand you said there's this sort of the simultaneous point. I want to get to that in a moment. And there was no obligation in the fourth -- I'm sorry -- here was no obligation in the exchange agreement to enter into the fourth supplemental indenture. It was a one-way obligation, and I'm going to get to that in a moment, but I think that may affect how you're thinking of what the contractual obligations are here and I want to address that. So, what's important about that is there is no specific right of specific performance if the company failed to, and the Trustee, failed to execute and deliver the fourth supplemental indenture. It doesn't exist.

Okay. So, here was the closing call agenda. We've now seen this quite a bit. The parties agree that they would read this out and that the clients had authorized the release of the signature pages in the following order and without any action by any further party. That doesn't mean that there's no revocation. It means that they don't have to get on successive closing calls to say, "I release, I release, I release," if they -- that's all it says.

MR. ***1: I'm going to object to this because we asked for and we're denied in discovery. The internal communications of both Milbank and Counsel for PIMCO and Silver Point, we received this this closing script, probably midway through the trial, if not later than that, for counsel now, perhaps Counsel knowing but us and the Court not knowing how this came to be, because for Mr. Osornio was not even involved in the creation of this closing script, and then take it further and opine on what it means, I think is unfair based on the way this came about and what we didn't get as opposed to what we got.

THE COURT: I'm going to sustain this, but very narrowly. Some of what you have said exceeds the evidence that we have before us and I'm striking that part. So, as you make your argument, you are free to interpret, for example, the document that is shown up on the screen right now, which is the closing transcript guide, whatever we want to call it. And if what you're doing is merely an interpretation, that's fine. I think you're entitled to do that in closing argument. If, in fact, you are referring to other agreements between the parties that meant that the release of the signatures in this was voluntary by those parties, that is beyond the evidentiary record. You can tell me that in this agreement it is voluntary, if you want to interpret it that way, but I think you're leaving it a little bit. It's a pretty sustaining of it.

MR. HEIDLAGE: Yeah. And look, all I'm trying to do is read the words on the page, and what I will say is if -- and I unfortunately don't have the second page of this, but this --

THE COURT: I've got the whole thing up; do you want me to put the second page up?

MR. HEIDLAGE: If you look at the second page, the parties that are giving their authorization on the call re the non-company parties, Davis Polk, Paul, Weiss, Morgan Lewis, Cahill, Platinum, Wilmington, etc. And then, Milbank, at the end, confirms the release of the, confirms that the release certificate instructing the release. So, I'm not sure that actually that matters, but I wanted to highlight that because I do think it may be relevant in your analysis.

So, if we can put that down for a second.

THE COURT: Well, hold on.

MR. HEIDLAGE: Okay.

THE COURT: All right, go ahead.

You wanted me to put that down some, or you're going to do that? Okay, good.

MR. HEIDLAGE: Yeah. So, after last night, in your question about the release of signatures and the fact that there have been executed versions that were circulated, I understood that you may have had some concerns about that and

--

THE COURT: By the way, I very much appreciate your explanation, and what I looked at this, this was not it started as a concern that I might not have been told accurate information. It ended with my conclusion that I had not properly evaluated things. So, I have zero concern over what you did, and I very much appreciated the cogency of the explanation he gave on short notice. So, you can forget any concern that I might have over that being hidden from me. It was not hidden from me. I had just not gotten the focus right.

MR. HEIDLAGE: I appreciate that, Your Honor, and actually, when I said concern, what I really meant was sort of attention and focus, because I really want to make sure that it's clear that signatures that are held in escrow mean you can have executed versions go back and forth. And this is an example that we found last night from Dish Network, and if you look, the first one, "But those emails expressly stated that the signature pages are being sent in escrow pending our express authorization to release. Thus, the order in which those emails were sent did not impact what transaction closed first." We've got the cases if you want to leaf through. I will tell you I think that they are useful in seeing how these types of closings -- as somebody who's not a transactional lawyer, I found it very helpful to see how these are done. In

Dish Network, they had all these executed versions going across, and then they got on a closing call and they said, "We're first going to do this one, and then we're going to do that one."

THE COURT: Right.

MR. HEIDLAGE: And the Court said, "I understand that. That's the order in which they have them and respected that order. And you know, the other side said, "Well, they have it concurrently." Nope, you respect the way they're done on the closing call.

THE COURT: And I don't need to see that because I can accept that --

MR. HEIDLAGE: Okay.

THE COURT: -- at face value. I'm happy to see it, but that makes sense to me and I don't know that I need to see it.

MR. HEIDLAGE: We do have copies. We found a second case as well, because we were very attuned to making sure that there wasn't any suggestion that this was in an out of -- and I don't think you're the --

THE COURT: No. No, no, no. No, the --

MR. HEIDLAGE: I've heard you.

THE COURT: At first, I was worried about it, but once I read everything it came and it was almost like a --what should we call it? I realize that my belief that the internal

Milbank draft of how the closing was going to take place, that Milbank was the holder and releaser of the signatures. It didn't say that. I had sort of entered it believing that was what had occurred, but it didn't say that. And so, there was nothing inconsistent about having the signatures out there. It just changed my view of what I was reading. And his is mine, not, mine to own, not yours to own.

MR. HEIDLAGE: Understood, Your Honor, but I think one thing that is important to understand is that, or just -- and I think you're telling me that you get it -- is that even when these things are exchanged amongst the parties and there isn't a central escrow agent, they're not effective until the parties have then given their authorized release.

THE COURT: That may be the case in some situations. That is not the case here.

MR. HEIDLAGE: I think it is, and I'm going to try to get there.

THE COURT: The reason why I think it's not and I want you to persuade me that I'm wrong is that it does not require any confirmation of release by the party who signed. These things happen without any further action or confirmation. So, upon the occurrence of events, the signatures are released, not upon confirmation by Milbank. And that's the way I read this, and you're welcome to dissuade me of that, but that is a difference from what you're saying.

MR. HEIDLAGE: So, I think it's true that had nobody said anything or anything like that and there were no other events, that the parties would have proceeded that way, but I don't think it holds that if somebody had raised their hand or not done what they decide to do, that that would affect things. Again, I'm just reading what I understand. I'm not trying to, you know --

THE COURT: I'm saying I do not read it that way. So, you can show me where you can read it that way.

MR. HEIDLAGE: Okay.

THE COURT: I show delivered signatures, and you, the participant in the transaction, if you take your action, which then must be followed by the next action, that next action is automatic with no confirmation or action by any other person. So, I do read it differently than you are. You're welcome to take me through the language and show me where I misreading that.

MR. HEIDLAGE: Well, I think it matters, in particular, for the fourth supplemental indenture. So, and I would like to get there in a moment.

THE COURT: But the fourth supplemental indenture is one of the documents that was, in fact, with all signatures transmitted to be held in escrow, right?

MR. HEIDLAGE: That is my understanding, but --

THE COURT: Okay.

MR. HEIDLAGE: So, the first is that there's a third supplemental indenture, and I think we're on the same page. That itself does not obligate an execution of the fourth supplemental indenture. This is just the amendment of, the first amendment that allowed the issuance of the new notes. In and of itself-- and I understand that the closing call overlay, so to speak, you've got this, but in and of itself, it doesn't require the fourth supplemental Indenture. It doesn't reference it or even the exchange agreement for that matter. The note purchase agreement also does not obligate the execution of the fourth supplemental indenture. The consent documents that are referred to in the note purchase agreement are third supplemental indenture consent documents. They're not the fourth supplemental consent documents. So, when that becomes effective, there's still no obligation that the fourth supplemental indenture becomes effective. Now, just because the note purchase agreement becomes effective does not mean that the note purchase has been consummated because the money goes out. It needs to be received. There has to then be an issuance of the notes, and then the notes have to be delivered to the parties. That is a something that you heard took, not instantaneous. It took over the course of the day, and at any point in that, over that course, something could have happened. And we saw it happen in the cases that I showed you where, you know, people got cold feet, they backed out, whatever it may be. There was, you know, the company could have filed. The company could have done a number of things, and at that point in time, the note purchase agreement was in effect and all of those obligations were in effect. but in fact, the fourth supplemental indenture had not yet been delivered and the signatures had not yet been released.

And so, the next is the exchange agreement. Now again, I think we -- it was not executed until the release of the signature pages pursuant to the closing call, and we talked about that. But regardless, the exchange agreement --

THE COURT: Wait, wait, what do you mean? It was not executed? I thought it was --

MR. HEIDLAGE: Sorry, sorry. Well, I mean, it did not become -- well, executed with the release of the signatures in the order that were --

THE COURT: Well, but it matters. It was already executed.

MR. HEIDLAGE: There wasn't --

THE COURT: The execution wasn't effective until, under the closing call, the prior events occurred, and once they occurred, i.e. the consummation of the note purchase agreement, once that got consummated --

MR. HEIDLAGE: Consummation of the note purchase.

THE COURT: The confirmation of the note purchase pursuant to the note purchase agreement.

MR. HEIDLAGE: Correct, but they're two different things, but yes.

THE COURT: Well, they are two different things, but the confirmation of the note purchase pursuant to the note purchase agreement, once that's consummated, no one has to take any action to release those signature pages. They are automatically and irrevocably released, right?

MR. HEIDLAGE: I think, at that point in time, they would be released without any further action.

THE COURT: Okay.

MR. HEIDLAGE: Now, the exchange agreement, though, does not obligate the issuer to enter into the four supplemental indentures.

THE COURT: Okay.

THE COURT: Okay?

MR. HEIDLAGE: I thought the exchange agreement was -- okay, it doesn't -- I don't know that, but I will accept your word for it.

MR. HEIDLAGE: I will show you that that is true.

THE COURT: Okay, but the signature pages still got released, right?

MR. HEIDLAGE: To the exchange agreement? I just want to make sure we're --

THE COURT: No, to the exchange agreement and to the fourth supplemental indenture.

MR. HEIDLAGE: Well, the fourth supplemental indenture, let me get to in a moment, but to the exchange agreement, it does get released and --

THE COURT: This says everything that is an exchange consent document, which includes the fourth supplemental indenture, gets released upon consummation of the note purchase.

MR. HEIDLAGE: Upon consummation of the note purchase.

THE COURT: Uh-huh.

MR. HEIDLAGE: So, there's that period of time between the consummation of the sending of the money, for example, there's a period of time where there is a, that the notes are being assembled and issued and all of that, and during that time, things can happen and the company is then, has an opportunity to not enter into the fourth supplemental indenture.

THE COURT: I'm not sure I see that here, but okay. If it wasn't consummated, you're correct. It not the company has an opportunity. That stops it.

MR. HEIDLAGE: Well, but -- so, two things. One is that -- that's true, but the third supplemental indenture in that case is still effective.

THE COURT: Uh-huh.

MR. HEIDLAGE: Right? So, the notes don't get issued for whatever reason. There's no fourth supplemental indenture. The liens aren't released. The third supplemental indenture is, in fact, effective.

THE COURT: Well, the money gets sent back. You don't get to keep the money.

MR. HEIDLAGE: True, but the third supplemental indenture is so effective. The purchase may not be.

THE COURT: Right, okay. So, we have an indenture with no money.

MR. HEIDLAGE: We have an indenture that permits additional money to be issued --

THE COURT: Uh-huh.

MR. HEIDLAGE: -- but no money has, at that point, in fact, been issued.

THE COURT: But you also had an obligation to send the money, and you had an obligation to issue the notes, and you had an obligation to consummate. All that was mandated. People may have breached an agreement, but it was mandated, right? Upon --

MR. HEIDLAGE: The note purchase agreement --

THE COURT: -- the execution of -- no, at the moment that the closing call ended, the note purchase agreement became effective along with the third supplemental indenture and everything else had to was mandated to then fall in place. You're talking people could breached, different question.

MR. HEIDLAGE: Of the third supplemental -- I'm sorry -- of the note purchase? Correct, but --

THE COURT: The note purchase agreement comes into being without any action by any party upon the execution. upon the release, which occurred at the closing call of the third supplemental indenture. At that point, the effect is that a purchase agreement becomes effective --

MR. HEIDLAGE: Uh-huh.

THE COURT: -- and it mandates action by parties that they can't --

MR. HEIDLAGE: But --

THE COURT: They could potentially breach. For example, don't send the money, that would be a breach.

MR. HEIDLAGE: But just remember, until the no purchase is consummated --

THE COURT: Uh-huh.

MR. HEIDLAGE: -- the court supplemental indenture is not --

THE COURT: Uh-huh.

MR. HEIDLAGE: The sanctions aren't released, but --

THE COURT: But it's mandated to be consummated. I got it that it has to be consummated.

MR. HEIDLAGE: But --

THE COURT: I got it that somebody has to send the money, but upon the execution of the third supplemental, there is no option without creating a breach of a contractual commitment that was triggered by the third supplemental to send the money, to send the notes, to do everything that is required to consummate, right?

MR. HEIDLAGE: Well, I actually don't think that's true. So, one, my point is that, look, what we're talking about is what is the effect of the third supplemental indenture.

THE COURT: Uh-huh.

MR. HEIDLAGE: And my point is that, for whatever reason, that note consummation doesn't happen, the signatures to the fourth supplemental indenture are not even released. But I want to get to the --

THE COURT: But you're saying if for whatever reason, it doesn't happen, and I'm saying it was mandated to happen. You're just telling me somebody might breach, but the effect of the release of the signatures to the third supplemental is you mandated people to carry through consummation of the note purchase agreement, which then takes us to the issue that I think you want to address is whether once that got fully consummated, you're telling me maybe they didn't have to do the fourth supplemental indenture, but it was all mandated at that point, unless you want to tell me I'm misreading what occurred.

MR. HEIDLAGE: I think it's probably best if I --

I'm not sure I agree with you, but I also am not sure I'm going to convince you, and I'd rather focus your attention on --

THE COURT: Okay.

MR. HEIDLAGE: So, let's talk about the fourth, the exchange agreement because I do want to address this, and I'm going to come to the fourth supplemental indenture after this. So, the exchange agreement does not obligate the company to enter into the fourth supplemental indenture. The Trustee is not a party to the exchange agreement. The exchange agreement obligated holders to deliver consent letters, or else the issuer could cancel the exchange rate. So, for example, if Carlysle, PIMCO, Silver Point, for whatever reason, didn't deliver their consent letters, the issuer can cancel the exchange.

THE COURT: Yeah, but the consent letters in that example are part of the 2024 exchange consent documents, all of which are done simultaneously, right?

MR. HEIDLAGE: I'm just getting to what the legal obligations are. I agree with you that they were --

THE COURT: No, the signatures were already delivered. They just weren't released.

MR. HEIDLAGE: Right.

THE COURT: Okay. So, they're delivered, not released. That release becomes automatic, right?

MR. HEIDLAGE: So, I agree. I just would like to --

THE COURT: Okay.

MR. HEIDLAGE: With apologies.

And then only upon satisfaction of the conditions precedent in 402 and 403 of the exchange agreement does the issuer conduct the exchange. And the issuance of the fourth supplemental indenture is a condition precedent, not an obligation. And I think this goes to the specific performance point, right, which is they talked about specific performance. It's in the exchange agreement. The parties to the exchange agreement could not specifically require the issuer or the Trustee to specifically perform the execution and delivery of the fourth supplemental indenture.

THE COURT: But the signatures were there waiting for release.

MR. HEIDLAGE: They were waiting for release, but they had not been released.

THE COURT: Including the fourth supplemental indenture.

MR. HEIDLAGE: Including that, but they had not yet been released.

THE COURT: But there is no sequencing between the fourth supplemental indenture and the exchange agreement. They are released at the same nanosecond.

MR. HEIDLAGE: Well, one is right before the other, but --

THE COURT: No, they're not, not under the letter. They're all released simultaneously. I'm looking at Subparagraph 3, and they are released simultaneously. It's the exchange consent documents are what are released --

MR. HEIDLAGE: But --

THE COURT: -- what it does consist of is defined, but they are all -- they've all been signed. They've all been delivered have been released. That release is effective upon consummation.

MR. HEIDLAGE: I don't --

THE COURT: Read number three and tell me how I'm misreading it.

MR. HEIDLAGE: So, I do think it's -- I just want to go back to it. So, there's a release of signatures. That does not mean that the fourth supplemental indenture has been delivered and effectuated. And we saw in the emails --

THE COURT: The fourth supplemental indenture has been delivered though, right?

MR. HEIDLAGE: We see the email from W***, from Milbank to W***, when that four supplemental indenture is actually delivered.

THE COURT: No, I thought, and I may have this wrong, I thought the fourth supplemental indenture was one of the documents that was attached to the 7:00 a.m. email, was it not?

MR. HEIDLAGE: But for the fourth supplemental indenture, when it gets released, it then is delivered to the Trustee.

THE COURT: When does the signature page get delivered to everyone without releasing it? When does this, when does the signed executed fourth supplemental physical copy go out to parties?

MR. HEIDLAGE: In escrow? I just want to make --

THE COURT: In escrow is fine, in escrow is fine.

MR. HEIDLAGE: Yeah.

THE COURT: But when does it go to the parties? That's at like 7:00 a.m., right?

MR. HEIDLAGE: I believe it was before, but --

THE COURT: Okay. So, 7:00 a.m. everybody has it, and then there is a mandate that those signatures get released upon consummation that is automatic.

MR. HEIDLAGE: I don't think so, Your Honor, and if we can go to the Slide 110 of the Debtor's deck.

THE COURT: You got little three on there. Tell me how it's possible once the note purchase agreements been consummated, that PIMCP and Silver Point doesn't get --

MR. HEIDLAGE: Because --

THE COURT: -- a fully released four supplemental indenture.

MR. HEIDLAGE: Yeah, I mean, if you look at little five, right, it's the consent documents have been delivered.

THE COURT: I want to look at little three first.

MR. HEIDLAGE: I understand. The signatures are released, but they have to be delivered in particular for the fourth supplemental indenture, and Milbank does that, does that action.

THE COURT: Wait, where does it say that?

MR. HEIDLAGE: It's little five. As soon as the foregoing exchange consent documents have been delivered --

THE COURT: Which included the fourth supplemental indenture.

MR. HEIDLAGE: Yes, but they have to be delivered. And if you look, that's not delivered under its ECF 1150-16. That's when he gets executed and delivered to the Trustee.

THE COURT: Take me through the closing document.

MR. HEIDLAGE: Sorry, which closing document?

THE COURT: The one that we're looking at --

MR. HEIDLAGE: Okay.

THE COURT: -- that's up on your screen.

MR. HEIDLAGE: Yes.

THE COURT: So, PIMCO, Silver Point, after No, 3 has happened, have a fully released and executed fourth supplemental indenture, right?

MR. HEIDLAGE: I think the fourth supplemental indenture has to be delivered to the Trustee, as this is the fourth supplemental indenture.

THE COURT: Not my question.

MR. HEIDLAGE: They have in their possession --

THE COURT: A released and signed fourth supplemental indenture.

MR. HEIDLAGE: I think that may be technically right, but I think that it's not effective until it's delivered to the Trustee, which it is done at 1150-16.

THE COURT: Well, hold on. I'm going to let you get to your effectiveness agreement, but what we have is after No. 3 has occurred, Silver Point has a fully executed 2026 exchange agreement and a fully executed fourth supplemental indenture. Those are in their possession and enforceable by them. There may be defenses that you want to assert, but they have them fully.

MR. HEIDLAGE: I'm not sure they are, technically, I'm not sure that they are technically enforceable. And I also think that if the issuer had instructed the Trustee, for example, not to issue the fourth supplemental indenture, there's nothing that anybody could have done about it.

THE COURT: We'll see.

Okay. So, now, you're going to -- so, you're agreeing with me, though, that after No. 3, PIMCO, Silver Point hold fully released exchange agreements and fully released fourth supplemental indentures, right? That's what they've got. You want to argue the legal effect of that? That's a different question, but they have fully released and fully executed fourth supplemental indentures and exchange agreements, right, in their possession, not subject to anybody being able to call back the signatures? They've got them signed?

MR. HEIDLAGE: They have signed copies of those. I think for a fourth supplemental indenture, which requires delivery to the Trustee, it is not effective.

THE COURT: You're telling me it isn't effective. I'm telling you that it's not my question. I'm going to get you to explain to me why it's not effective at the moment.

MR. HEIDLAGE: Yeah.

THE COURT: They have fully executed, signed, and released signatures on all of the documents, including signatures by the indenture Trustee are on those documents, right, as required?

MR. HEIDLAGE: I believe that's the case, but I do want to make -- give me one moment just to make sure that I'm not missing something.

THE COURT: Sure, take a look and see.

MR. HEIDLAGE: So, I think what you're saying is you just mean the signatures themselves have been released and I think if that's the case, I think I agree with that.

THE COURT: No, not the signature, the signatures on the documents. The documents are fully delivered with signatures by all parties.

MR. HEIDLAGE: Well, but see, that's where I push back on the fully delivered because they are delivered to W*** at 11:50.

THE COURT: No, hold on. I'm not worried about when they're delivered to W***.

MR. HEIDLAGE: Okay.

THE COURT: My question is Silver Point and PIMCO. After No. 3 occurs --

MR. HEIDLAGE: PIMCO and Silver Point have them, yes.

THE COURT: -- Silver Point and PIMCO have fully executed, fully released, fully signed full documents in their possession and they're free to do with it whatever they want, right? You're telling me there may be something they can't do with it, but they have them and no one can call back the signatures at that point, right? And that includes the Trustee's signature, right?

MR. HEIDLAGE: I think that's right, although I will note that Milbank has to still deliver its signature, right? This is what I got to at the beginning.

THE COURT: Yeah, I want you to quit going to the next step. At this step, that's what they've got, right?

MR. HEIDLAGE: Well, if you look at *** right, it says the clients authorized the release of all signature pages in the following order, right?

THE COURT: Without any further action --

MR. HEIDLAGE: Right.

THE COURT: -- by any party, meaning that without any further action by any party, as soon as the notes purchase agreement has been consummated, Silver Point and PIMCO are already holding copies of the fourth supplemental indenture that are fully signed. They're holding copies of the exchange agreement that are fully signed by all parties, including the Trustee, to the extent the Trustee's signature is required --

MR. HEIDLAGE: Can we go to --

THE COURT: -- and they --

MR. HEIDLAGE: Sorry, go ahead.

THE COURT: -- and they now have the right under this agreement to release those documents to their clients, and they did so.

MR. HEIDLAGE: Can we go to 1146-5 at 3? Can we just pull up that document? And I don't --

THE COURT: Not until you answer my question.

MR. HEIDLAGE: So, that's where I'd say I don't think that's technically correct, because I think Milbank needed to separately release its signature that wasn't in this agreement.

THE COURT: So, was this -- when you say release its signature, do you mean the Trustee's signature?

MR. HEIDLAGE: No, Milbank needed for his client to send it to W*** --

THE COURT: Right, whose signature?

MR. HEIDLAGE: The company's.

THE COURT: And so, but the document that got delivered and released had the company's signature on it, right?

MR. HEIDLAGE: To my clients you mean?

THE COURT: Yes.

MR. HEIDLAGE: Yes.

THE COURT: So, your client had a fully -- that's all I'm asking you to confirm to me and you keep saying, "Well, but it's not effective. It doesn't do this." All I want to know is --

MR. HEIDLAGE: Yes, yes. Yes, sorry.

THE COURT: -- at the point that the notes were, purchase agreement was consummated, Silver Point and PIMCO had fully executed by the issuer, by the Debtor, by the Trustee, and by anyone else that was required both the fourth supplemental indenture and the exchange agreement, and they were free to do with them whatever their rights were, having been in full possession of them, no one can call back the signature. You're telling me that that may not have been much and I'll get to what that may not have been much about, but at that point, the signatures were not called backable, right?

MR. HEIDLAGE: I think that is probably right.

THE COURT: Okay. So, now, let's go back if you'll turn back on the screen, or go to wherever you want to go.

MR. HEIDLAGE: Sorry. If we could go to 1146-5 at 3.

And so, my only point is that the parties that were agreeing to release the signatures, right, don't include, specifically include Milbank. They include Millbank for very specific things. And for the fourth supplemental indenture that had to be sent to W*** for delivery to be effective.

THE COURT: So, show me what you're talking about.

MR. HEIDLAGE: Can you scroll down on 2? Sorry, maybe it was 3. Yeah, sorry. Sorry, right here.

So, if you look, what Milbank is confirming the release of are the various opinion letters and the exchange of the certificate. The company's release and ascending of the indenture of the fourth supplemental indenture occurs at 1150-16 to W***. That's the delivery of the fourth supplemental indenture and that's what makes it effective.

THE COURT: So, I'm looking at 1150-16; where do you want me to look on that?

MR. HEIDLAGE: Sorry, did I miss -- I'm seeing a -- so --

THE COURT: It says, "As discussed in the closing call attached, please sign the execution versions."

MR. HEIDLAGE: Yes, and this is when it's delivered to the Trustee, and it's at 2:15 ET. So, if Milbank hadn't done that, that fourth supplemental indenture is not effective.

THE COURT: Where does anything say that?

MR. HEIDLAGE: There's been no release by the company of the signature page on this until this.

THE COURT: Where does anything say that?

MR. HEIDLAGE: Well, I just walked through on the closing call it doesn't say Milbank has been agreeing to release its --

THE COURT: Go back up --

MR. HEIDLAGE: Okay.

THE COURT: -- to Paragraph 3. Not on this one. Go back to the, yeah, go back to up to three. It's the release of all the signatures occurred. They were all signed. It doesn't say, "But Milbank's signature." It says the release of all signatures.

MR. HEIDLAGE: But the part -- well --

THE COURT: Milbank's the one proposing this. Other people agreed to it. Don't tell me that when it says that release of signatures that it didn't include Milbank's signature, which is the one proposing the deal. That doesn't make any sense.

MR. HEIDLAGE: Well, I think what it highlights is that --

THE COURT: Offer acceptance, right?

MR. HEIDLAGE: Right, but if you look at what makes the fourth supplemental indenture effective, it is the delivery to the Trustee. It's the delivery.

THE COURT: They had a fully executed copy where the Trustee had signed it released to them. Now, show me where delivery to the Trustee matters. If the Trustee had signed it. Isn't that when the Trustee signs it is when they get delivery? They had signed it just like everything else in advance expecting things to occur --

MR. HEIDLAGE: I think that it's when it's --

THE COURT: -- but they released their signature.

MR. HEIDLAGE: I think it's when it's delivered on the closing date, Your Honor.

THE COURT: Show me.

MR. HEIDLAGE: Okay, we can go to 604-41. Okay, go to the next page, go to the next page, next page. This is the -- next page.

And it has to be delivered, and it's delivered --

THE COURT: Wait, I'm looking at Paragraph 5 on what you're showing me.

MR. HEIDLAGE: Uh-huh.

THE COURT: "It shall become effective and binding immediately upon by the parties hereto," right?

MR. HEIDLAGE: Right, and Milbank is delivering it as effective at 6:13 CUT.

THE COURT: No, it got delivered to the parties under Paragraph 3. It was already signed and it was fully released. Why wasn't that delivery when it got fully released under Paragraph 3? Why did it require further delivery?

MR. HEIDLAGE: I think that it just -- if you -- it needs to be delivered to the Trustee.

One moment, I just want to make sure that --

THE COURT: The Trustee had signed it. Surely, the Trustee had it before they signed.

MR. HEIDLAGE: I mean, I think, to be blunt, Your Honor, I think we probably have a different interpretation of what the closing call is doing. I think it's releasing the signatures in a certain order. I do think that this requires a separate --

THE COURT: Including though the Trustee's signature, right?

MR. HEIDLAGE: I agree, I agree.

THE COURT: Including everybody's signature.

MR. HEIDLAGE: I agree.

THE COURT: So, I don't understand why we have a different view of it.

MR. HEIDLAGE: Well, I think that the fourth supplement, it's just, it's not obligated. If, for whatever reason, the issuer had decided not to go forward, it was entitled not to go forward.

THE COURT: Why? No, it wasn't because its signature was automatically released once the money was, once the note purchase was consummated.

MR. HEIDLAGE: But --

THE COURT: Signature was then delivered.

MR. HEIDLAGE: Well, unless it, for whatever reason, unless it revoked and then there was no contractual --

THE COURT: Where does it say that? Where does it give them the right to revoke? You're going to take somebody's 200, you're going to take your client's $250 million, and then you're going to tell me it's a revocable by someone else.

MR. HEIDLAGE: Well, just to be, well, wait, just to be clear, the $250 million, we absolutely would have, had been entitled to the notes the additional 2026 note.

THE COURT: No, under this closing agreement, you were entitled to get the fourth supplemental indenture in the exchange agreement. There's no other way to read this, and it occurred -- the minute you were entitled to the notes, you were entitled to that.

MR. HEIDLAGE: Only upon the issuance of the notes to our clients were those signatures released. If, for whatever reason, that had -- an authorization to release signatures is revocable at will in New York. There's no ability to -- I don't have to read it in. That's the background rule is that authorizations can be revoked and the contractual obligation at that time --

THE COURT: Not after their release.

MR. HEIDLAGE: Not after their release, but they could do it before. They could do it before. During that entire time when the notes are being issued, when the money is sitting in the wire transfer, they could have withdrawn their --

THE COURT: Well, this is a different argument than you were making before. So, I mean, I've got that argument but --

MR. HEIDLAGE: Okay. So --

THE COURT: -- but this has nothing to do with the execution of delivery. Step 3, executed and delivered the fourth supplemental indenture and the exchange agreement simultaneously with the consummation of the notes agreement, and the parties were mandated to do that by their agreement. You're telling me that somebody might have breached the mandate. That doesn't mean there wasn't an effect. It means that we would have been able to enforce it contractually.

MR. HEIDLAGE: So, there are -- I actually don't think that is a breach because again, the contracts that were in effect as of, with the note purchase agreement, does not mandate the fourth supplemental indenture. It doesn't.

THE COURT: I understand that.

MR. HEIDLAGE: Okay.

THE COURT: But as soon as it was consummated, i.e., that your client's money was at risk, that released the signatures with no action by any party. If your client wanted to back out of the, if someone wanted to back out of the deal, then your client's money is not at risk at that point. It's once your client's money is at risk, there was not a nanosecond where this didn't occur.

MR. HEIDLAGE: So, I disagree with that. That's a different -- I want to -- that's a different, slightly different point. So, I want to address just that.

THE COURT: Go ahead.

MR. HEIDLAGE: Our money starts to go over in the morning. At that point in time, I agree with you they have a contractual obligation to deliver to us additional 2026 notes. That I agree with you. And at some point in time, they will end up delivering us the additional 2026 notes or breach the note purchase agreement.

THE COURT: Uh-huh.

MR. HEIDLAGE: Okay. During that --

THE COURT: And if they breached the note purchase agreement, your client gets back its money, right?

MR. HEIDLAGE: Um, yeah, or either that, or we get the notes, but my only point is there's a period of time when the note purchase agreement is being consummated. It has not yet been consummated. It's in process. The money is going across. The notes are being delivered. During that period of time, if the issuer has said, "I am revoking my signatures to the fourth supplemental indenture," not the note purchase, not the notes, fourth supplemental venture, that's not a breach of anything. It's not in the note purchase agreement. We would still get our 250 notes. We wouldn't have the exchange.

THE COURT: And you'd have no right to sue.

MR. HEIDLAGE: Correct, we would have no right to sue.

THE COURT: And your clients walk away happy with the notes.

MR. HEIDLAGE: They do not walk away happy.

THE COURT: Well, why don't I just --

MR. HEIDLAGE: Just be with clear.

THE COURT: Why don't I just give them that as the equitable answer then?

MR. HEIDLAGE: They would not --

THE COURT: I'll give them the notes, third supplemental notes. That may be what I should do under 510 if you're telling me that was the outcome that was a reasonable one for your clients to have expected.

MR. HEIDLAGE: t wasn't reasonable for us to expect. We didn't want it to expect.

THE COURT: It doesn't matter. You contracted to have that expectation, and maybe we'll make that expectation come true.

MR. HEIDLAGE: The issue that I wanted to get at was the question as to whether or not the third supplemental indenture had the effect. And what my point is, is that there was a period of time when it would not have breached a contractual obligation to revoke the signatures to the fourth supplemental indenture. That's what I'm trying to get at.

THE COURT: And your clients then sued for fraud, right?

MR. HEIDLAGE: I don't know what my clients would do. They'd be unhappy. I don't think that they would necessarily have a contractual right to enforce it.

THE COURT: Maybe not, but they'd sue for fraud.

MR. HEIDLAGE: I would suspect they would --

THE COURT: The effect --

MR. HEIDLAGE: --take some action. I don't know.

THE COURT: The effect was there and clear. I just, I don't accept the argument. I got it.

MR. HEIDLAGE: Okay.

THE COURT: I understand the argument. Don't accept it.

All right, let's move to the next phase of this then.

MS. OBERWETTER: Your Honor --

THE COURT: I'm sorry.

MS. OBERWETTER: -- I did have a few

THE COURT: I apologize. I was not trying to cut you off.

Go ahead.

MS. OBERWETTER: Thank you, Your Honor.

MR. ***2: I do, too. I have one quick point.

THE COURT: All right.

MS. OBERWETTER: Could we change, Your Honor, to encourage?

THE COURT: Sure.

Can I get incoratech to turn on your camera just for a moment?

(No audible response.)

THE COURT: I think this is it, probably. Hold on. Yep, I found it. Never mind. Give me one second to just check something.

MS. OBERWETTER: Yes, Your Honor.

THE COURT: Sorry, I leave my emails closed when I'm on the bench. I need to check one email, which I'm having to turn it on, and then I'm going to turn it back off. I hate looking at emails while I'm out here, and I won't do that, but I have to check this for timing.

MS. OBERWETTER: That's fine, Your Honor.

THE COURT: Great, I'm with you 100%.

MS. OBERWETTER: Okay. Thank you, Your Honor.

Ellen Oberwetter from Williams & Connolly, on behalf of the Platinum defendants.

I'm going to try to move through these points on the same issue we've been talking about, "the effect of," "had the effect of" language we've been talking about relatively briefly. I don't want to recover ground that we've already been down.

And I'm trying to see if my clipper is operational here.

(Pause in the proceedings.)

MS. OBERWETTER: There are three points I want to touch on. The first, and I'll go through these in a little more detail, touching on some of the points Mr. Kirpalani made earlier this morning, our read of 9.02 is that it requires looking at amendments as sort of the triggering events in terms of where you're looking at voting thresholds.

I'm going to -- this is just an outline slide. So, I'm going to talk about that a little bit more, but from our standpoint, the third supplemental indenture can't possibly be read as doing anything that has the effect. If you're looking at that supplemental indenture, that can't be the thing that has the effect of releasing these, and I'll talk about why. And if you look at the face of it, it's not the thing that ever required a lien release to occur. The second point I'm going to talk about, and to the extent I think that this is affecting maybe some of the analysis here, although maybe not, and I'll take guidance from Your Honor, but "have the effect of," that language in 9.02 is not the same as having the purpose of and should not be read as encompassing a subjective intent of the parties rather than an objective outcome of a given amendment. And then the third point I'm going to talk about briefly is the same point that I was struggling, I think, to articulate yesterday, which is that a broad reading of "have the effect of" would contradict the language in that supermajority paragraph that you get to vote you're then outstanding notes wherever you got them, however you got them, whenever you got them. So, I'll just take these in order.

The first -- I'm not going to dwell on this language. We all have it probably close to memorize at this point after the last some hours of discussion. I do want to talk briefly about the steps of the transaction. I think, and I just heard, and I'm not going to depart at all from the recitation of events that Mr. Heidlage just provided you, to me, the relevant break point and what we should be talking about here is Step 1. That's the amendment. That's the third supplemental amendment, and that's sort of the governing act that I think 9.02 talks about. And then you have other things that follow that, but whether you view all those other things that follow that as one thing, one transaction, multiple steps, whatever it is, the thing that comes first and it has to be pegged in time is the third supplemental indenture.

I'm trying advance forward.

THE COURT: And I mean, this is the same question I asked to them, but you may have a different answer to it. Do I look at the environment in which it is executed, or do I ignore the environment in which it is executed? That is, if the execution of it automatically triggered these other events, do I consider those other events, or not?

MS. OBERWETTER: You do not, Your Honor, and, in fact, I think the contract mandates that you don't because it focuses us on the word, for example, amendment, or supplement, or things that are very concrete things that you can do to the original indenture. The 9.02 doesn't talk about the environment. 9.02 doesn't talk about what else is going on.

THE COURT: No, when it says, "have the effect of," do I determine effect by looking at the environment, or do I determine the effect in isolation?

MS. OBERWETTER: You determine the effect by looking at what the amendment does, because that's the word that 9.02 uses. 9.02 isn't talking about some broader set of transactions. It's not talking about a broader purpose. It's not talking about a broader agreement. The word 9.02 uses that's of any relevance for present purposes is the word amendment. And so --

THE COURT: Amendment having the effect of, but if the amendment has the effect of releasing liens because it mandates the -- I know that there's a disagreement about this, but if by following the chain of irrevocable events it mandates the release of liens, is that still not in effect?

MS. OBERWETTER: So, let me pick apart the premise of that just for a minute and explain where I have a different point of departure from that.

THE COURT: Great.

MS. OBERWETTER: So, I think that is conflating the concepts a little bit of things that happen in sequence versus things that may happen automatically. So, I think we all are familiar with basic physics principles. Things can happen automatically in a chain, but that doesn't necessarily mean -- the fact that one thing happens after another is a different concept than whether one causes the other. I think the causal thing that you are pointing to here -- and for present purposes, I'll just posit. Assume one big master plan steps in a sequence. Everything is going to happen one after another. Let's just assume that for a minute. That still can have embedded within it different steps that the parties intend to have occur in a given order, and that they implement a plan through given specific amendments and --

THE COURT: Mandatorily or with options to do each thing in the step?

MS. OBERWETTER: Either, Your Honor.

THE COURT: Let's talk mandatorily then.

MS. OBERWETTER: Either, Your Honor.

Let's say they agree that "We're going to do all of these things." Let's say they say that. You still have the language, the operative language of 902 that tells you where in your sequence you have authority to do various events, and that's the word amendment. And the reason, you know, you have to look at particular moments in time, even within a broader overall plan, is that it refers to the language then outstanding. That's the language in 902 that makes very clear at any given moment in time, whatever your ultimate objective is, whatever your plan is, whatever you're trying to accomplish, what's the thing you can do right now? And that's why I'm very focused on not the whole chronology of everything that happened on closing day, but what was the circumstance as of the moment of the third supplemental indenture and what is it that the third supplemental indenture actually did. Even if other things are going to follow from the third supplemental, follow in sequence after the third supplemental indenture, the third supplemental indenture is not the one that caused them to have happen, or that has the effect of making them happen. At that point, the thing that's making those other things happen is the big agreement that you're talking about. It's not the indenture, it's not the third supplemental indenture that's making those. It's the broader overall purpose or objective that I think you're positing, and we'll just posit for a minute, the parties otherwise have.

Let me pause there because I --

THE COURT: Yeah, but -- so, if you have something that says, "If you agree to the third supplemental indenture, then I must do X" --

MS. OBERWETTER: Sure.

THE COURT: -- "you then agree to the third supplemental indenture, making me do something." Did this third supplemental indenture have the effect of making me do that thing?

MS. OBERWETTER: No, Your Honor. No. Your Honor, the overall plan or objective that you're talking about is the thing that made you do the next thing. You have, you can have --

THE COURT: No. No, it's not the overall plan or objective. It's not something subjective. I'm saying there is a written, mandatory contractual obligation on my part to do B, but only if you do A. You do A, aren't I then, didn't that then have the effect of making me do B?

MS. OBERWETTER: So --

THE COURT: That's what I'm referring to as the environment?

MS. OBERWETTER: I don't think so, Your Honor. The thing that made you do B is not the language of A, it's the overarching agreement that you are talking about.

THE COURT: It is not the -- I agree, it is not the language of A. It is the fact of A makes me do B. And so, by signing it, you create that fact. And if I ignore the environment, I understand your argument.

MS. OBERWETTER: Yeah.

THE COURT: If I pay attention to the environment, I need to figure out whether "effect of" means the effect of the individual provisions or the effect of executing the amendment itself.

MS. OBERWETTER: I think the reason you're paying attention to the environment is because the amendment doesn't say it. And so, you're looking to the environment, but if we just look at the words of the amendment, which is what we say 902 tells you to do, you don't go beyond. You don't ever go beyond the language of the third supplemental indenture. You look at what you had the right to do in that indenture and you look at the language --

THE COURT: Let me give you an example then --

MS. OBERWETTER: Sure.

THE COURT: -- because we haven't explored this, but this sort of goes to the Kansas example, I think, that Mr. Kirpalani used.

So, if it says, if the third supplement indenture said, and it doesn't say, "We are going to release any outstanding liens, if any," --

MS. OBERWETTER: Okay.

THE COURT: -- you have to leave the indenture to see if there were any liens that are being released because there may not be any.

MS. OBERWETTER: Okay.

THE COURT: So, do you agree that I have to leave the indenture to look at the facts that sit there in the world, right? Were there any liens to release?

MS. OBERWETTER: Well, if there aren't any, there's no claim. So, I guess from the standpoint of the --

THE COURT: Forgetting whether there's a claim, can I look to see whether there are any, because if there are some, then you breached? If there aren't any, then you didn't breach. So, don't I have to look external to the agreements as it says you're going to release liens, if any, to see what the effect of that was. Did you actually release a lien?

MS. OBERWETTER: I think actually that that really is a damages question than does the act that's being directed --

THE COURT: No, because if -- let's assume for a minute --

MS. OBERWETTER: Yeah.

THE COURT: -- that there's $1 billion lien out there.

MS. OBERWETTER: Okay.

THE COURT: I need to figure out was that third supplemental effective or not? It's not effective if there was $1 billion lien out, but assume that the billion dollar lien had already been released prior to that, then there was no lien out there. At which point it's a totally effective third supplemental, Meaning you have to leave the I have to leave the words of the third supplemental to look at the facts on the ground present at the moment of its execution, to know whether it violated it or not, right?

MS. OBERWETTER: So, I guess I am going to, I'm still trying to think about what it is that differentiates that example, because I think there is that it is still going to the damages concept that I have in mind, but there's --

THE COURT: It goes to a breach concept. If there was no lien, then there was no breach.

MS. OBERWETTER: There's no question that to do the -- I don't think

THE COURT: Uh-huh.

MS. OBERWETTER: They would pass me a note. I don't think there's any question that to do the thing that you just described, which is release a lien, you need the two-thirds to do the release.

THE COURT: Yeah, but you don't know that unless you know if there is a lien.

MS. OBERWETTER: Well, I think to try to --

THE COURT: So, you have to look to see was there lien.

MS. OBERWETTER: Yeah, I mean, I think you would need two-thirds to do the act that would even have, that would have that outcome dependent on if there was a lien.

THE COURT: You would have to leave though the document to see if there was a lien because you know from reading the document if there was a lien.

MS. OBERWETTER: I guess I think you need to write that, to write that amendment, you need two-thirds because there might be a lien that you're releasing.

THE COURT: Because they're might be? Why would you need two-thirds if there was no lien? There was no lien, you could do it with 50%.

MS. OBERWETTER: I mean, we could -

THE COURT: You have to leave the document to determine whether you need 50% or two-thirds.

MS. OBERWETTER: I will try to think of a crisp answer to this hypo, but to me, it's not the same as when we know for sure that the external fact that you're going to is not the amendment itself to decide the chain of causality, and you're going instead to some broader external agreement.

THE COURT: Okay.

MS. OBERWETTER: Okay. So, the question is and should be what amendment, if any, had the effect of releasing the liens? It can't be that it was the third. It can't be that it was the third because the third doesn't say anything about doing that. All it does is increase the permitted lien basket size, and that is an act in and of itself. That's an act in and of itself that only requires a bare majority to execute, and that's the top language in 9.02.

Then I'm going to pass through some of this because you explored it with Mr. Heidlage, but then you've got an issuance of notes, and that can't be an amendment because it's not an amendment at all. That's not a thing that qualifies us, the thing that you can't do without two-thirds. And then you get to the ultimate fourth supplemental indenture, and that's the thing that releases the liens.

I'm not going to dwell on the case law, which Mr. Kirpalani has covered, other than to say that all of these cases are entirely supportive of the position that we are taking, which is when you've got sequenced steps, the timing of those should be respected, even if they are pre-planned. And so, that comes back to the point that I'm trying to make about the fact that things might happen automatically doesn't mean that they're not happening in some order, and that's an order that should be respected if that's an intent that the party had, to have those things happen in a given order.

Trying to advance the slide.

So, I want to focus again just on what I think the two kind of operative events are. Those are the amendments, because that's what 9.02 speaks to. So, the third supplemental indenture effectively does one thing. It increases the basket size by amending the definition of permitted liens. You then have the note purchase agreement and those events that happen subsequent to that. And maybe you think that's all planned, but those events happen subsequent to the third supplemental indenture and result in the issuance of additional notes. At which point, you're in a position to do the two-thirds lien release. What I see them doing and what I actually think the environment question goes to is a modification of the language, and Mr. Kirpalani had a similar example. I think they're basically getting at the same type of point, which is you're departing from the focus on amendment supplement or waiver if what you're doing is looking at actually the broader environment, or other agreements, or other events instead of what a particular amendment does in isolation.

I'm going to touch briefly on the fact that I think some of where we're going here is straying into conflating the concepts of "having the effect of" with "having the purpose of." It can't be that what you have to do when you're trying to figure out if a particular amendment is effective is ascertain the subjective intent of many parties to the amendment that you're working on. What 902 sets out is actually an objective test, "have the effect of." It is something that you can look at without resort to figuring out what was going through the minds of the various people who were parties to the transaction. And I actually think that's an important interpretive point in this case, because maybe you think here, "Well, I look at the purpose. I'm looking at the closing call agenda. I'm looking at all this, and I think I know what the subjective purpose is," but if the definition of "have the effect of" is infected with that, that's not a way that people should have to operate under indentures to figure out to any given amendment what were all the parties to that amendment actually trying to do?

THE COURT: I don't disagree with this part at all, other than it's possible that intent could be used to interpret what was going but if it wasn't going on, the intent to make it go on is irrelevant. And if it was going on, the lack of intent is irrelevant, but it might inform what was going on. But that's it. It's a pretty limited use in terms of intent.

MS. OBERWETTER: Yes, Your Honor.

And then the final point that I just want to circle back to is the point that I was attempting to make yesterday and I will try again. And it's really -- I'm having a little bit of a lag on the slide. It's really to come back to the language of the supermajority provision that you get to count the notes that were then outstanding, however you got them, and the point is you shouldn't interpret the phrase "have the effect of" in a broad way that could in any way undermine the first part of the supermajority paragraph. That paragraph says you count the notes as a snapshot in time then outstanding, and that's really the only thing that where you're focused on timing in this paragraph, at the time of any given amendment. And it effectively says you can do that no matter where you got your notes, no matter when you got your notes, you get to vote them. And I think we were more or less in agreement on that point when we were talking about this yesterday. If you read the phrase "have the effect of" broadly, then what you're really doing is saying that the first part of the paragraph doesn't mean what it says, because there's an exception that turns on how you actually got your notes, and if you got them in a certain way, there's something that was part of a series of a chain of events, or part of a broader transaction, then when it comes time to do the thing where you are having the effect of releasing all or substantially all the collateral, then it does all of a sudden matter where you've got your notes. So, I think you would be reading "have the effect of" broadly in a way that undermines the very express preliminary language of this paragraph, which is you get to count them however you got them. Those are what count.

THE COURT: When you say plaintiffs want to count fewer than the 2026 notes then outstanding --

MS. OBERWETTER: Yeah.

THE COURT: I've never understood them to say that and that's why I get confused about this.

MS. OBERWETTER: So, I think.

THE COURT: They're counting all of the outstanding notes and saying y'all owned 60% of them, or 59% of them.

MS. OBERWETTER: Yes, I think the point -- well, I think now we're just having a difference of timing in terms of when we do the counting, because I will agree that the argument that I'm making now presumes that, the argument that I'm making presumes that you look at an amendment here and you look at an amendment there. The point I'm making is you shouldn't have a reading of the phrase "have the effect of" that is so broad that it could undermine events that happened in the past that had the effect of giving you more notes. If you do that, you're really undermining --

THE COURT: Right, but that's not what's happening.

Is there anyone that says that's what should happen here?

MS. OBERWETTER: I think that's the consequence of what they're arguing here is that they have a broad reading of "have the effect of" which would mean, from a practical standpoint, I don't, the Plaintiffs want to count fewer than all the notes then outstanding. That's not probably the best, most articulate phrasing at this point. The point is this establishes a bright line rule that for any given amendment, you look at the notes that you have in your hand --

THE COURT: Uh-huh

MS. OBERWETTER: -- to figure out what it is you can count, and you shouldn't be able to take to "have the effect of" from a prior activity and say that means, "Well, you don't actually have" -- I think that's circular.

THE COURT: I may actually start to understand this now.

MS. OBERWETTER: Okay.

THE COURT: Let me reword it to you.

MS. OBERWETTER: Yes.

THE COURT: At the third amendment stage, your argument is irrelevant. At the fourth amendment stage, it has relevance because you're telling me if the third notes were properly issued, they should be able to vote for the fourth amendment.

Is that --

MS. OBERWETTER: Yeah.

THE COURT: So, is this going to the fourth amendment or the third amendment in terms of the argument you're making?

MS. OBERWETTER: It's telling you that if you are allowed, and I appreciate the comment that you just made, it's telling you that if you are allowed to vote to do little item one here --

MS. OBERWETTER: -- with 66 2/3% of the votes, then it can't be that a prior issuance of notes can be something that has the effect of releasing all or substantially all of the collateral.

THE COURT: But that goes in terms of substance only to the fourth amendment, not the third amendment, right?

MS. OBERWETTER: I think functionally it does, but I think it is still a reason that you shouldn't interpret "have the effect of" as broadly as you may be --

THE COURT: But if --

MS. OBERWETTER: Yeah. Go ahead, Your Honor.

THE COURT: I'm not sure that having the effect of affects this because if you respect that language -- and let's look at the fourth.

MS. OBERWETTER: Sure.

THE COURT: If the third notes were not properly issued, then you wouldn't count them. This doesn't say you count notes improperly issued, but if they were properly issued --

MS. OBERWETTER: Yes.

THE COURT: -- then you can do the fourth supplemental indenture no problem, and I don't have any disagreement about that because we're not going to look at that second vote to challenge it, nor do I think it's being challenged other than the additional notes were not properly issued. But I don't think this says you count improperly issued notes.

MS. OBERWETTER: So, and I agree with that, too. What I'm suggesting is that this implies in, to me, the strongest possible way that issuance of notes is not something that should ever be read as "having the effect of releasing all or substantially all of the collateral." So, to that extent, I am actually trying to reach back to the third supplemental to say, I don't think that is a type of act that should be considered having the effect of releasing, because then you run headlong into what is otherwise a bright line rule in the supermajority provision that says you count the notes, however you got them. So, I agree with you. I'm not suggesting that this says count notes improperly issued. It's a point as to why. It's another reason I think the third should be read as valid, so you don't run headlong into this policy problem. You would have to conflicting provisions. If you can count them however you got them, unless you issued them for the wrong purpose.

THE COURT: I think I understand the argument.

MS. OBERWETTER: Okay. Thank you, Your Honor, and I appreciate your hearing me further on this. And that's all I have.

THE COURT: No, thank you very much.

MS. OBERWETTER: Thank you.

THE COURT: Then, I think we had the Committee had something, right?

MR. ***2: No, actually, it was Citadel, Your Honor --

THE COURT: I'm sorry.

MR. ***2: -- but it's been covered. I'm good.

THE COURT: Okay, thank you.

MR. ***3: May I briefly respond, Your Honor?

THE COURT: Go ahead.

Do you need PowerPoint or no PowerPoint?

MR. ***3: Yeah, I probably do.

I just want to point a few things out --

THE COURT: Hold on. If you want the PowerPoint, I've got to find your --

MR. ***3: 2024/2026 ***

THE COURT: I know. Just if they'd all turn on their camera, that would be great.

Thank you.

All right.

MR. ***3: I'll try to be brief, but much of what I just heard, particularly on how the Court should view the environment, and I completely agree that you cannot look at the indenture without its environment, I mean, the third supplemental. And I think what's being proffered, and we talked about this towards the end of my presentation earlier this morning, whether there's daylight between "have the effect" and New York single integration doctrine. I don't think there is, but the JDG is promoting an interpretation that would go contrary to New York interpretive principles. And the Debtors -- this is an ECF199. This is their summary judgment pleading. And I quote, "To be clear, the Debtors are not suggesting that the agreement signed to implement the 2022 transaction should not be read and analyzed together." So, that is York law and the Court can't look --

THE COURT: Yeah, but they're saying something different there. In fairness, what they're saying is you read them together to figure out their meaning, but you don't look at secondary documents to turn out, to determine their effect. So, you can have a definition in one, you can have the same terms used, but they're not, I don't believe, in the summary judgment -- it's been a while since I've read their summary judgment -- saying, agreeing that you read them as an integrated transaction as opposed to getting meaning from one to the other.

MR. ***3: I think that's right, but I think what the cases show is those are essentially one and the same. But my only point is --

THE COURT: Well, I think some cases agree with you and some are limited to interpretive issues.

MR. ***3: Could be, but yeah, my broader point is that you have to look at the environment to determine what had the effect of releasing. And there's been discussion, and I'll just touch on it very briefly, but there's been discussion of the third amendment and what it actually says. And this is our Slide 56, and connection between the third amendment and the note purchase agreement. So, why don't we pull it up?

It's Slide 55, I'm sorry. One back.

The third amendment amends the indenture to include the purchase agreement. So, this idea that you get -- from even a textual standpoint, I completely disagree that you somehow are bound by the four corners of the third amendment to then decide environmentally what its effect was, but the third amendment itself amends the indenture to include the note purchase agreement.

THE COURT: There's something wrong here. This says

-- you're telling me this is from the third supplemental indenture, but the definition of note purchase agreement that you're showing me refers to a third supplemental indenture, not to this agreement.

Can I see the full document?

MR. ***3: Yeah, let's pull up the --

THE COURT: Something isn't making sense.

MR. ***3: Can we pull up 601-39?

So, if you look at the whereas clause, the third whereas clause, this is the third. So, just so we're all clear.

THE COURT: That defines what the note purchase agreement is.

MR. ***3: Yeah, and then if you go --

THE COURT: But where's that language you were just showing me?

MR. ***3: That's on the next page under amendments to the indenture.

THE COURT: Got it, okay. So, you're -- nevermind, I do understand now how that worked. Okay.

MR. ***3: So, again --

THE COURT: So, it's defined.

MR. ***3: Right.

THE COURT: And where is it then used?

MR. ***3: Well, it just, it includes it. Now, it's a defined term in the indenture by virtue of the third.

THE COURT: It's a defined term, but where does that defined term get used for anything substantive because defining something that's ever used is kind of a meaningless act.

MR. ***3: You know, that's a good question. I'm not sure, but the whoever undertook, and it certainly wasn't us, to prepare the third amendment included, felt it necessary. I genuinely don't know and I haven't searched the indenture --

THE COURT: Yeah, what's that ECF number?

MR. ***3: 601-39,

Your Honor, perhaps the explanation is in the warehouse, which says, "In connection," -- and maybe I skipped over this, but I think it's actually maybe the most important phrasing. "In connection with this supplemental indenture," the third, "the issuer will enter into that certain note purchase agreement to be dated on the date hereunder. So, the note purchase agreement is part and parcel of the third amendment. And as we've established --

THE COURT: So, as background, they're telling me -- it's not part and parcel of. As background, they're telling me what they're going to do.

MR. ***3: Okay.

THE COURT: But they don't have any operative language that mandates anyone to do anything, just states an intent to do X.

MR. ***3: No, I agree, but in terms of the environment that the Court is looking at and what became effective when, I'm trying to pull myself into the rubric that they're asking the Court --

THE COURT: Right.

MR. ***3: -- to operate in. I don't think it's the right rubric. So just take it for that, but -- and that's my only point in showing. You could put this down.

I want to turn to the adverse effect discussion of. So, moving on from "have the effect" for a moment, because Mr. Kirpalani argued that the proper way, I think, to look at what we call the adverse effects of three of Section 902 is not in the environment. I don't think it's possible to separate yourself from the environment within which it was entered, particularly because it says, "Modify the security documents or the provisions of this indenture dealing with collateral in any manner." So, in any manner adverse to the holder in any material respect. But if we're to suspend disbelief for the moment and pretend we didn't know that prior to entering into this transaction, Malik said he knew the transaction was going to harm our security interests. If the Court was to strip itself --

THE COURT: He knew the overall transaction would, but not that he knew the third supplemental --

MR. ***3: Yeah, we weren't talking about --

THE COURT: -- indenture taken in isolation would be.

MR. ***3: Right.

THE COURT: It's just Paragraph 1, the way that you're interpreting it and that I, at this stage, am agreeing with by saying you look in effect, you do look downstream to what occurred in the environment, but Paragraph 3 doesn't seem to incorporate that language. Now, if you collapse the transaction, that's a different story.

MR. ***3: Yeah, I agree and I think --

THE COURT: But if you don't and just use the language, then I don't, then my conclusion would be that there is no evidence of a material adverse effect solely from executing that third indenture if it were not carried into the fourth indenture and the exchange.

MR. ***3: Yeah, and I think this is where Trimark comes in. Because when the court was looking to the effect on the sacred rite provision -- and I looked back. Mr. Kirpalani pointed out -- my quote from it uses the singular amendment, but I'll acknowledge because I look back at the case, it says, "such amendment." So, to the point. Mr. Kirpalani meant, I don't know if it was referring to amendments prior to that, but I think it's immaterial because the Court there didn't ascribe any real import to the fact that it said one or the other, and here we have a general rule of construction. But the main point that I want to make for --

THE COURT: Why do I care about No. 3? What will it encompass at No. 1 does not encompass?

MR. ***3: Well, in our facts, or just as a protection?

THE COURT: In your fact. No, in your facts.

MR. ***3: Nothing. So, in our facts, other than I think -- I do think, and I just want to be clear on this, it did prevent, without our consent, even the permitted lien basket to expand and for the issuance of the notes, even if there were going to be priority to sue. And I just want to go to --

THE COURT: Well, it prevented further expansion, but it utilized some of that existing expansion.

MR. ***3: It didn't. On this, Mr. Kirpalani is dead wrong. The 75 million -- and we could pull up the permitted lien definition. If you look --

THE COURT: No, the practical effect is they take out the 75 million, but they do include this new 250 million a purchase.

MR. ***3: They popped it on top whether --

THE COURT: So, then that effect is 175.

MR. ***3: Yes, because they used 175.

THE COURT: Right

MR. ***3: So, even if we go with the net effect is 175, but they issued 250, right. they issued 250 million.

THE COURT: Right.

MR. ***3: And we heard testimony about the advantages of, right, not 250 coming in -- if you think about a world where 250 comes in parity and there's no exchange, which is not the world, not the environment anyone was living in, but if you think of that world, right, you don't get liquidity benefits of a pick. You have now cash pay bonds at 250 that dilute us down. And cash is a second lien, right? We don't have a first lien in cash. And we also know from Mr. Carney that 50 million of that cash was immediately going out to unsecureds, to vendors. We know that 70 million went out to buy new inventory, which we had a second lien, right? Not a first lien because it's current assets. We know that 26 million went to professional fees. And so, you're doing two things, right? You're elevating unsecureds above us by paying the cash out. And if you, again, suspend disbelief and you're in a world where the 250 comes in parry, its cash pay at 9%, and you don't get any of the exchange from the unsecured, so all the benefits that you've been hearing about by turning them into pick, nor do you get the holders of the 24s or the 26s who participated picking any of their notes, I think that would be -- I don't think we need an expert on this -- that would be terrible for the company and certainly for us as secured holders.

THE COURT: Under the evidentiary record that I have --

MR. ***3: Uh-huh.

THE COURT: I believe that I will find, if I'm required to go to No. 3 -- I'm not sure I am required to go to No. 3 --hat the raising of $250 million, even with all the expenses attributed to it, put all the creditor classes, including your creditor class in better shape than they would have been without the transaction had it stopped with just the issuance of an additional 250 million and not any uptiering. And I find that because the evidence is conclusive that the company, if it hadn't raised approximately this amount of money, would have immediately filed a bankruptcy case, and I don't have any evidence from you that you would have been better off in an immediate bankruptcy case than where you would have been if the 250 had been raised without the follow on. Now, with the follow on, it's a completely different story, but if you want me to look, as he is arguing and as I don't think you're contesting solely at this agreement --

MR. ***3: Uh-huh.

THE COURT: -- to authorize another 250, that's not adverse.

MR. ***3: Okay, I think --

THE COURT: It's not adverse under the evidentiary.

MR. ***3: I think in any manner --

THE COURT: It says, "in any manner adverse."

MR. ***3: No, no, I accept adverse --

THE COURT: Material adverse.

MR. ***3: And material.

THE COURT: Yeah.

MR. ***3: Yeah, right.

So, and I'll just, I'll finish the point because I hear what Your Honor is saying. It was adverse to our security interests in the cloud. And that is that that--

THE COURT: Well, look, not necessarily. If 250 million of new cash comes in with no fees --

MR. ***3: Well, no fees but --

THE COURT: Well, but we don't know how it's coming. It simply allows 250 to come in. If you want me to visit what the deal was, I think I should for No. 1, but if No. 3 is, if 3 is to have some meaning beyond 1, the only reason to look at 3 is you lose the one argument, correct? So, then I have to look at 3 to say, "Does just doing this without looking at any subsequent external effects" -- and I think you would have been better off.

MR. ***3: Okay. I have nothing further, Your Honor.

THE COURT: Thank you.

Anyone else?

(No audible response.)

THE COURT: All right, I'll see y'all at 1:44.

Thank you.

Yes sir?

I'm sorry, let's not break yet. Hold on.

Mr. Bennett, go ahead.

MR. BENNETT: I suspect some other people have the same question which is there are two issues left on the agenda.

THE COURT: Okay.

MR. BENNETT: One of which is the issue of equitable relief, what kind of relief is to follow from findings, and the other relates to defaults which are predominantly being *** issues. Based upon what's been happening today, it's inconceivable that both of them can get done today.

THE COURT: Okay.

MR. BENNETT: So, I guess, the question we all have is which one do you want to hear first?

Did I get that question right?

MR. ***4: You did, yes. We finally agree on something.

(Laughter.)

THE COURT: How much total time do we need to get through both?

MR. BENNETT: I will say that on my personal one, I have the shortest slide deck so far.

(Laughter.)

THE COURT: That is not much of a promise.

MALE SPEAKER: I, unfortunately, would predict that I would probably be an hour, possibly an hour and a half. I can try to shorten it. It may depend on where your client, or where Your Honor's focus is and questions you may have, and I would be around, I expect around an hour, but there's other people that are going to be speaking as well. (Indiscernible).

FEMALE SPEAKER: To some extent, although I believe Mr. Clairman will be handling most of it.

THE COURT: So, look, I think that tomorrow afternoon -- and people may not be able to stay tomorrow afternoon. I understand that, but if people can return tomorrow afternoon, with some interruptions, I can give you another four hours tomorrow afternoon and get through everything so we're finished.

Does that work, or people can't make it, you can't make it. I don't want to upset people's schedules.

MR. ***7: It's a little hard for me. So, if we did the Langur Maize default issues today, I wouldn't have to be here for equity *** tomorrow.

MR. ***8: If Your Honor's not sick of ***, I can be here tomorrow for the equitable *** and if we finish the Langur Maize today --

THE COURT: Great. Well, let's do that. That way we can finish tomorrow, I hope.

MR. ***9: I may I may need to participate tomorrow remotely. I need to figure out if I can change some things in my schedule.

THE COURT: Well, first of all, that's fine, but I don't want to deprive you of the chance to be here in person. If that means that tomorrow doesn't work, it doesn't work.

MR. ***9: If you'll -- during the lunch break, I can --

THE COURT: Y'all figure that out. I will give y'all as much of my time as you need tomorrow afternoon, but I'm not going to impair somebody's rights to be here. We've work too hard for everybody having the right to be here.

MR. ***A: Just so Your Honor is aware, I think what Mr. Clairman is saying is that either way, Langur Maize will be this afternoon.

THE COURT: That's fine. Langur Maize is this afternoon, and I'll figure out when we return, hopefully tomorrow, but if not, that's fine. I'm going to respect everyone's right to be here. It's fine with me if you're remote, by the way, and it usually -- I don't think it's been a disadvantage for people to appear remotely, but if you feel like it is, then you should be here. I know, for example, Mr. Bennett really wanted to be here in person, and we're doing that. So, if you feel that way, you feel that way.

Okay. Well, then we'll see you in an hour and a half, at 1:48.

Thank you.

(Recess taken from 12:18 p.m. to 1:51 p.m.)

THE COURT: Please be seated.

Mr. Clareman, go ahead.

MR. CLAREMAN: Good afternoon, Your Honor. William Clareman from Paul Weiss on behalf of Carlyle and Spring Creek.

Let me start actually with the scheduling matter discussed right before the break. I greatly appreciated Your Honor's comments about the ability to participate remotely.

Full disclosure I have to take my kids to summer camp first thing Thursday morning. I promised them I'd take them to dinner tomorrow night. So if I can do -- if I can both honor my commitment to the Court and them, I'll do that. And I'm happy to participate remotely at --

THE COURT: What time do you need to need to be with dinner with them tomorrow night? That's more important than being at dinner with me.

(Laughter)

MR. CLAREMAN: Well, it's scheduled for 6:00 p.m.

Eastern, but I can move the dinner reservation. So provided that we are at -- I don't want to impose for a moment on the Court's schedule. I can move that back. Everyone will be very grateful.

THE COURT: So 1:45 tomorrow then we'll restart, if that works for you. 1:45 Central.

MR. CLAREMAN: Absolutely. And I really appreciate it.

THE COURT: And I'm not getting in the way of your dinner. If that means people need to come back, you need to come back.

MR. CLAREMAN: I appreciate that and my family really appreciate this. Thank you.

THE COURT: Thank you.

MR. CLAREMAN: If I may, I have some presentations to hand out, if I may, and the presenter rights to be given to Max Siegel (phonetic).

THE COURT: Mr. Siegel, can I get you to go ahead and turn on your camera, please?

Oh, wait, I may have found him. There's an MS, Max Siegel, I found him. Okay.

MR. CLAREMAN: And may I approach?

THE COURT: Yes, sir.

Mr. Siegel is now the presenter.

MR. CLAREMAN: Thank you.

THE COURT: Thank you.

(Pause in the proceedings.)

THE COURT: What I'm going to do though in fairness to everyone, Mr. Clareman, I promise you I'll respect your requests. I'm going to put the you to make them if you need me to stop or start or whatever tomorrow. But I'll respect your family requests fully, but I'm not going to worry about them --

MR. CLAREMAN: Yes.

THE COURT: -- other than respect what you asked me to do.

MR. CLAREMAN: I appreciate that and I can assure you that I can move them to accommodate what's happening here.

THE COURT: All right.

MR. CLAREMAN: I just can't fly all the way back to New York (indiscernible).

Okay. So I want to start by just sort of setting the table with a little bit of background because a lot of the focus here has not been on the issues that are pertinent to the Langur Maize breach of contracts that are the same (indiscernible).

If we could go to the next slide.

Just to start by referencing some of the documents that are relevant and I will reference in the course of our discussion. This is intended to set forth the exact sequencing. I don't think that issue was raised by the Langur Maize claims.

But the first event that happened in the sequence that led to the unsecured exchange was the 3rd supplemental indenture that amended the unsecured indenture, it permitted the incurrence of the additional 2026 notes. It also deleted Section 4.09(h) of the indenture, which I will come back to, that is specifically regarding transactions with the sponsor of Platinum. So I'll come back to that.

The 4th supplemental indenture removed additional covenants from the 2027 indenture, including restrictions on the incurrence of debt and liens, which paved the way for the unsecured exchange in addition to the 1-1/4 lien notes. Obviously the 1-1/4 lien note indenture was entered into to govern the 1-1/4 lien PIK notes. And then the exchange agreement was the contract pursuant to which the participating unsecured holders delivered their unsecured notes in exchange for 1-1/4 lien notes.

Go to the next slide.

This just sets forth the economics of the transaction. What was exchanged included the participating holders, that's Platinum, that's the Wolverine entity, Senator, the Carlyle entities, those are the 3 that's CCOF, CSP and CCOF, those 3 entities are Carlyle entities, and the Spring Creek was also a holder of unsecured notes, and those notes were exchanged.

Also, all accrued interest was contributed in exchange for newly issued 1-1/4 lien notes. There was also a PIK amendment fee of 1-1/8 percent and therefore the total that was issued was 4 million -- 472 million and change in 1-1/4 lien notes. After this was done there was 104 unexchanged 2027 unsecured notes that remained.

We can go to the next slide.

The principal breaches that Langur Maize has alleged are a breach of Section 3.02 of the unsecured indenture and alleges that the unsecured exchange was a redemption for which participation should have been granted by the Trustee pro rata by law or by some other means. They also have I think alleged now a breach of Section 3.07(h) of the indenture. That wasn't the original (indiscernible) to the present now. That alleges that Platinum's participation in the unsecured exchange breached 3.07(h) because 3.07(h) permits transactions with "third parties" and the argument is Platinum was a third party.

They have lastly alleged -- well, it's not last but these are the principal claims, a breach of Section 902.10 which is the sacred rights provision in the unsecured indenture alleging that the unsecured exchange modified the weighting of the unsecured notes in respect of (indiscernible).

They also have two other claims which I'm not going to spend much time on today. I think they're sort of of lesser importance. I'll touch on them briefly, I'll elaborate on them in rebuttal if necessary. But they had originally pleaded in their complaint a breach of 605 of the indenture. That's the provision that allows note -- beneficial holders to instruct the Trustee. It didn't happen, it wasn't relevant to the transaction.

Also, it was not addressed in their post-trial brief. The post-trial brief also raised for the first time I think an alternative theory regarding Section 611 which involves how proceeds are to be distributed by the Trustee that are collected after an event of default. And I'll touch on those 2 briefly at the end, but they're not going to be central to the presentation I'm going to make.

Lastly, Langur Maize alleges a breach of Section 4 of the global note incorporates by reference the terms of the unsecured indenture. So it's not an independent source of breach claims, it's simply that the breaches alleged in the indenture also breach the global note.

The next slide.

And again, I'm going to talk at length about the principal breaches as set forth here with a summary of the primary responses. Section 3.02 does not apply because the unsecured exchange was not a redemption. It was a purchase pursuant to Section 3.0(h).

Section 3.0(h) was not breached because Section 3.0(h) does not bring in transactions with affiliates or transactions with the sponsor. Both of those are defined terms under the indenture. Transactions with Platinum are transactions with third parties. The provision does not say it prohibits transactions with third parties who are affiliates or third parties who are the sponsor.

Finally, Section 902.10 was --

THE COURT: I'm sorry, I thought -- just take --

MR. CLAREMAN: Yeah.

THE COURT: I guess we'll get there in a moment. It does preclude transactions other than with third parties. Right?

MR. CLAREMAN: Correct.

THE COURT: So if you're a third party, it did not preclude it. If you were not a third party, it did preclude it. Right?

MR. CLAREMAN: Correct.

THE COURT: Okay.

MR. CLAREMAN: And so the point that I'll -- I'll spend some time this when we get there, but the indenture is expressed in the provisions that limit or regulate transactions with the capital S, Sponsor, or transactions with the capital A, Affiliates. And this provision, 3.07(h) doesn't regulate transactions with the sponsor or transactions with affiliates because it doesn't use the express terminology, in the indenture, for doing these things.

And I'll show you that there are more provisions that did actually -- would have been relevant and frankly would have been superfluous provisions if Section 3.07(h) actually regulated transactions with affiliates or its sponsor.

And then lastly Section 902.10 didn't breach the unsecured indenture because it didn't -- there was nothing that amended the unsecured indenture that modified the ranking of the notes in respect to right of payment, a term that protects against payment subordination not insubordination. Again, I will spend time walking through each of these.

The unsecured indenture is not ambiguous. The Court need not look beyond the four corners of the agreement, but it was not breached. But I will say at the outset that should the Court conclude that any of the provisions are ambiguous, I don't believe Langur Maize has sustained its burden of proof. There'll be more on this as we go through, but it called no witnesses to substantiate its interpretations of the unsecured indenture.

And I do think the relevant evidence at trial between the plan language of the unsecured indenture, the documentary evidence and all witnesses who did testify on custom usage all support the conclusion that there was no breach.

We can go to the next slide. Go to our next one.

And with a little bit of apologies for some of the (indiscernible) here, I just want to be clear about what I am addressing today and what I'm not addressing today. I'm not going to stand here and talk to the Court, at least I don't intend to unless the Court wants to hear about it, about why Carlyle is on the side of angels in this transaction, no one was hurt, I know that you've heard me say all those things. But that's not where we focus in the presentation. Today I really wanted to focus on the contract claims which I understand is really the only thing that is at issue today.

There are of course other issues that we will have to argue on the Langur Maize day in the future, which include tortious interference, whether there was contractual assignment of tort claims against third parties and the economic interest defense. And so those issues are not before the Court today and I'm not going to address them, I don't intend to address those issues.

I am going to speak about the contract issues. The contract issues are a necessary condition for liability of course, and this has been a breach of contract, the tortious interference -- the tortious interference. So it's a necessary condition, but not sufficient.

I put up this slide only because there are in the case still claims that the beneficial holders of notes and the unsecured holders are (indiscernible), et cetera, a breach of the unsecured indenture. Beneficial holders do not have contractual obligations under the unsecured indenture or the global note. The Court recognized this in the summary judgment opinion as it relates to the secured indenture. The same principle applies to the unsecured indenture. I don't want to belabor the point but just to focus on what is really at issue today and the consequences of the breach issue.

We can jump to Slide 11.

So now I'm going to address Section 3.02 of the indenture. This is the provision that Langur Maize alleges is breached because the Trustee did not distribute -- select participation in the exchange pro rata (indiscernible).

What I've highlighted here, Your Honor, is really the key language in Section 3.02 of the indenture. It says, If less than all of the unsecured notes are to be redeemed pursuant to the provisions of Section 3.07 hereof. So that language in Section 3.02, as Your Honor held in the summary judgment opinion, makes it clear that this applies only to redemptions, it doesn't apply to purchases.

As I'm going go explain, it's really important to read the words Pursuant to the provisions of Section 3.07 hereof in order to understand the redemptions to which this provision applies. The language, plain language in Section 3.07, when we look at it, which we will, makes clear that only Sections 3.07(a) through (g) are redemptions. Transactions pursuant to 3.07(h) are not redemptions. Again, the plain language of those provisions will make that clear as I'll shortly explain.

We can go to the next slide.

The basis on which the Court concluded that Section 3.02 applied only to redemptions and not purchases was a rule of construction, which I will use the English language equivalent of just so I don't butcher the Latin, which is that the expression of one thing to the exclusion of the other thing, and that is true of the animated provision of Section 3.02.

It's also going to be really important as we look as Sections 3.07 and subdivisions because what we will see is that Sections 3.07(a) through (g) all use the word redemption to explain the types of transactions that are being described and authorized there, where Section 3.07(h) permits purchases, and there's a lot of flexibility in terms of how those purchases can be consummated, but it's the only provision that doesn't use the word redemption to describe the type of transactions that it authorizes.

THE COURT: But it's under a section that describes only redemptions. Right?

MR. CLAREMAN: It's in a section that describes redemptions, but it doesn't describe only redemptions because it also describes purchases.

THE COURT: You're saying the heading is -- the heading doesn't mention purchases, the heading only mentions redemptions.

MR. CLAREMAN: The heading mentions redemptions, but it -- when you actually look at the text of what's authorized, in order to reach the conclusion that 3.07(h) is transactions (indiscernible) are redemptions, one would need to insert the word Redemption to the text, which I have here.

THE COURT: Okay.

MR. CLAREMAN: We can go to the next slide.

THE COURT: Just when you get there isn't there a possibility that 3.07(h) is a redemption that is excluded from the pro rata selection provision, but it's still a redemption?

MR. CLAREMAN: I don't believe that's consistent with the text and terminology that's used in the indenture. I think if that were the conclusion, it would -- I don't -- if it's exempted from 3.02, then I don't think that -- the issue is whether it's subject to it or not, so it's --

THE COURT: Right. So but the core question that I don't know the answer to is I think an (h) transaction could only occur with a third party.

MR. CLAREMAN: Uh-huh.

THE COURT: So if you did an (h) transaction, but not with a third party, then the 3.02 provisions would seem to take over requiring a fair selection. But I think it would be -- I think you'd have to read the specific over the general if this was a transaction with a third party. And I know you're alleging that it is. So if it's a transaction with a third party, then I think the pro rata provision can't apply because of the whole nature of the transaction is not one that is subject to that, but it's authorized. So you do a purchase with a third party, it has to be excluded from the pro rations or else something else is just inconsistent.

But if you did one not with a third party, then I have a hard time thinking you could do one with an insider that is -- with someone that is defined as not a third party. I don't want to get into your argument that you're about to make one way or the other. If you did someone with a prohibited counterparty, then it would look like you would have to give others a fair and equal opportunity under 3.02. We wouldn't just remove that and say, Well, the transaction's okay because it was with a prohibited party therefore you don't have pro ration. Right?

MR. CLAREMAN: I believe my -- so my response to that is I think it's right except that I think the -- what would need to be pro rata in that world would be the transaction with the non-third party as opposed to the transactions with the parties that were indisputable third parties.

THE COURT: No, let's say that there's a transaction with a non-third party.

MR. CLAREMAN: Yes.

THE COURT: So a -- not a prohibited transaction but not a authorized transaction under 3.07(h) for --

MR. CLAREMAN: Right. Right.

THE COURT: If you did that, then 3.02 kicks in. Right?

MR. CLAREMAN: (Indiscernible) --

THE COURT: Or I'll ask you what happens if you were to do a private transaction with a prohibited party.

MR. CLAREMAN: Yeah. I, so I -- I'm not going to avoid Your Honor's question, I hadn't thought about this particular hypothetical before, and the only issue is that 3.02 is a selection mechanism that applies to 3.07(a) through (g) on the issue as an (indiscernible). And it operates in a very coherent manner because what happens in a option redemption when the issuer is just going to exercise its right, its unilateral right to do a redemption under 3.07(a) through (g) such as by saying the pre-pay (indiscernible).

THE COURT: Right.

MR. CLAREMAN: The issuer has to pay a lot of money and give it --

THE COURT: Right.

MR. CLAREMAN: -- to somebody, you've got to decide where it's going so there's a selection mechanism for that.

THE COURT: Right. And so there's a exclusion for the third party private transactions.

MR. CLAREMAN: Yes.

THE COURT: Got that. So that takes someone that -- it does take a private transaction but with -- not with a third party, how is it treated under 3.02 and 3.07?

MR. CLAREMAN: If a transaction -- so it would be a breach of the indenture if it's not with a third party and it doesn't meet any of the criteria of 207(a) through (g). So if it's --

THE COURT: Are you sure? Because where does it breach the indenture to do that? I don't think it breaches it, it just doesn't authorize it. I think that's why it may be a redemption that's governed by 3.02 which makes everything fit together, but it doesn't require pro rata if it's a transaction with a third party because of the nature of the transaction. That's -- I'm not sure this is going to matter but I have a feeling that most of today's fight it going to be whether you were a third party or not.

MR. CLAREMAN: I think that's right. And if I -- well, if -- with Your Honor's indulgence, can I come back --

THE COURT: Sure. Sure.

MR. CLAREMAN: -- and discuss this with you? I think -- I think the terms of the indenture will actually be cleared up before we get to that issue.

So I have up on this slide, this is making the point that I was just making which is that the indenture, and specifically the first part of 3.02, tells us where to look to know what is and is not a redemption. And so I have this (indiscernible) redemption sticker, but the purpose of that, as I'll show in the next slide, is that redemption is the word that is used in 3.07(a) through (g) to describe what those provisions are doing, and it is not used conspicuously in Section 3.07(h).

So we can just flip through the next slides, we can go to 15.

So here's 3.07(a), and I'll go back through these provisions, but I'm right now just making a point that the words used in this provision are -- include the word redemption. If we can go to the next slide, 3.07(b) again uses the word redemption. The next slide, 3.07(c) again uses the word redemption.

There is no 3.07(d), so we are at 3.07(e), this just says, Except pursuant to the preceding paragraphs, unsecured notes will not be redeemable at the issuer's option prior to November 15. Again, the word redemption is used. 3.07(f) next, the same thing, 3.07(g), the same thing. 3.07(h), and here, as I mentioned, is the only provision, the only subsection of 3.07 that does not use the word redeem or redemption anywhere in its text.

Because transactions that are done pursuant to this paragraph, and I understand Your Honor's questioning about the third party issue, but set that aside for the moment, what's happening here in the transactions that are authorized here are not redemptions, and to interpret this provision as being a redemption or involving a redemption would require the Court to insert a word into this provision that the parties did not use when they're transcribing transactions that it authorized.

It says the issuer or its affiliates may at any time from time-to-time protest unsecured notes. Any such purchases may be made through the open market or privately-negotiated transactions with third parties or pursuant to one or more tender or exchange offers or otherwise on such terms and at such prices as well as with such consideration as the issuer or any such affiliates may determine.

The -- and so I really that this answers the questions of whether 3.07(h) is a redemption because it doesn't call itself that. If I was to remove another name tag from this one, it would say, hello, my name is purchase because that's the word that was used in this provision.

I also want to note that further supporting -- and I don't think we need to go outside the four corners here to reach a conclusion that this is not a redemption transaction pursuant to this provision, but the global note has -- which is basically an aggregate, it has a series of paragraphs. One of the paragraphs says the provisions of the indenture are incorporated by reference. If there's any conflict between the indenture and the global note, the indenture governs.

But the global note sets forth in a list optional redemption and redemption for tax reasons. So that's in the global note, there's a list, a summary of these things. The summary in the global note includes all of the provisions of Section 3.07 other than 3.07(h) which is not there. It also includes a provision of 308(a) which is a tax redemption which is not relevant to the case.

But again, I think this further supports the conclusion that because transactions under 3.07(h) are not redemptions, they were regarded as redemptions and that's clear through the text and it's additional (indiscernible).

THE COURT: So can we go back up, because --

MR. CLAREMAN: Yes.

THE COURT: -- we talked about whether it was prohibited or not, and I said I don't think it is prohibited. I think it may be, I was wrong, so if you'll go back up to, first of all (h) only authorizes open market or privately-negotiated transactions with third parties, or tender or exchange offers.

MR. CLAREMAN: The --

THE COURT: Now a tender or exchange offer didn't occur.

MR. CLAREMAN: Right.

THE COURT: Right? An open market transaction didn't occur. What occurred was a privately negotiated transaction, and there's a dispute as to whether it was with a third party. So let's -- if you win that it -- you were a third party, it's kind of game, set, match, you win. If you lose that it was with a third party, does it matter whether this is a redemption or not because you would have then bought unauthorized notes. Right?

MR. CLAREMAN: I'm sorry, can you --

THE COURT: It then would have been an unauthorized transaction because it was before November of 2022 and therefore you had no authority to do it unless it was a -- unless you were a third party. Right?

MR. CLAREMAN: Correct.

THE COURT: So if you lose third party, the transaction was not authorized. If you win third party, it doesn't matter if it's a redemption or not. I'm trying to understand then is the only question that I worry about, if you're a third party, you win; you're not a third party, you lose.

MR. CLAREMAN: I believe that that's true, yes.

THE COURT: I'll see if Mr. Bennett agrees with that. He does not. Okay. Fair enough.

MR. CLAREMAN: Okay. The -- if we go to the next slide, and, Your Honor, at the summary judgment stage one of the comments that was made by the Court in the summary judgment opinion that it was unclear why this is not a transaction pursuant to Sections 3.07(a) through (g). I don't think there's any claim in the case that the transaction that occurred here was done pursuant to 3.07(a) through (g). I can explain to the Court what each of those subdivisions means if the Court is interested in hearing that, but it will take some time to do because it requires (indiscernible).

THE COURT: I don't think we need to, unless you want to.

MR. CLAREMAN: I am happy to discuss what that (indiscernible).

If we can then go to Slide -- let's go to Slide 32.

I'll go through these very quickly because I want to get to the point that I think is where we wanting to go that concerns Your Honor which is the third party issue. I just want to address an issue that you had raised. So this only is relevant if there is any identified ambiguity in the terms of the unsecured indenture of what constitutes a redemption.

I just want to point out that all of the testimony that was elicited at trial was that the unsecured exchange was not a redemption, because a redemption in the mind of the investment professional who testified is when the issuer exercises its options (indiscernible). And I don't think this is relevant --

MR. BENNETT: Excuse me.

MR. CLAREMAN: -- Your Honor --

MR. BENNETT: Excuse me. I want to just at least mark the objection, argue it now or later, but when the commercial understanding was admitted by Your Honor, it was admitted only for the purpose of dealing with good faith. And I have in my presentation the slides where I'll show you that colloquy, and that good faith is like the 4th layer of the intentional interference, it's a tortious interference issue.

Then you allowed some testimony in provisionally, but no one ever came back to argue as to why it goes to anything other than the issue of good faith of their understanding. It has nothing to do with interpretation, and for other reasons I'll get into all this is parol evidence, it isn't admissible anyway. But you didn't admit it for this purpose, and I think it shouldn't be offered to you for -- at final argument for this purpose either.

THE COURT: Mr. Clareman?

MR. CLAREMAN: So I will concede that I don't have the citations handy, but I do not recall there being any limitation of the sort that was just mentioned. For example

Patrick (indiscernible) testified on I believe at least redirect concerning his understanding of redemptions. I don't recall any objection at all when I asked Mr. Ho about this issue. So I don't actually know what he's referring to. I just -- I don't believe it's (indiscernible) --

THE COURT: I'm going to interrupt you for a minute --

MR. CLAREMAN: Sure.

THE COURT: -- because I want to hear his objection, and let me -- I'm sure he's got the references and we can all look at it, but he's made an objection so we'll go ahead and let him make it now so I can rule on this properly. I do recall a limitation, I don't remember whether it was done with which witness or all witnesses. But there's at least 1 instance that I can remember doing that.

So I can pull up the transcript of Mr. Ho's testimony if that would help the parties. You all tell me --

MR. BENNETT: I think the place where Your Honor actually considered Mr. Smith's testimony, which is the very first time it came up, and I think what happened then is they just followed your ruling.

THE COURT: So show me where it happens first.

MR. BENNETT: Give me a second, Judge.

THE COURT: Yep. Mr. Heidlage?

MR. HEIDLAGE: Yes, Your Honor, my understanding from others is that at least 1 or more of the microphones is not working, and I think it would be very difficult for the court reporter to hear. So just wanted to bring that to the Court's attention given the slight pause.

THE COURT: All right. Thank you. I think it's mainly people aren't talking into the microphones probably, but --

MR. HEIDLAGE: That may be.

THE COURT: -- we'll try and get that to happen.

MR. BENNETT: So, Your Honor, February 9, 2024 trial transcript, Page --

THE COURT: Hold on. I have to find that.

(Pause in the proceedings.)

THE COURT: February 9 trial transcript. What page?

MR. BENNETT: Page 95 --

THE COURT: Okay.

MR. BENNETT: -- starting at Line 22.

THE COURT: Hold on. What is a redemption to your understanding, this is to Mr. Smith. A redemption objection, his understanding is irrelevant.

(Pause in the proceedings.)

MR. BENNETT: Then there's another place --

THE COURT: Here, hold on, let me finish reading this.

MR. BENNETT: -- there's another place in the transaction as well.

(Pause in the proceedings.)

MR. BENNETT: Your Honor, may I --

THE COURT: I'm just still reading this. This is a long colloquy about this and I want to stick with ruling one way or the other.

(Pause in the proceedings.)

THE COURT: Okay. What was the next thing you want me to look at?

MR. BENNETT: Page, the same transcript, 104, Lines 2 to 12.

(Pause in the proceedings.)

THE COURT: Anything else anyone wants me to read about Mr. Ho's statement?

MR. BENNETT: Your Honor, I think that this was a relatively (indiscernible) with respect to it was relatively (indiscernible) in this trial and we took it Your Honor has established (indiscernible).

THE COURT: Well, but I want to see his testimony and see if it gets preserved in there. Where does his testimony come in?

MR. BENNETT: I have a transcript cite, ECF 832, 157, 24, so Page 157.

(Pause in the proceedings.)

THE COURT: Okay. I'm going to sustain the objection. The question was not asked but -- the question was not answered in the terms of what does it mean in the industry. It was how they used it in this deal and they never discussed it in this deal. So I think it's not very probative but it's certainly not probative as to what the agreement means. So I'll sustain the objection.

MR. CLAREMAN: Judge, may I respond to that briefly?

THE COURT: Go ahead.

MR. CLAREMAN: And so I think the objection as I read it relating to Mr. Smith was that the testimony was being elicited for the purpose of the intent of the drafter of the document, which is different than the issue that is -- arises with Mr. Ho. The questioning --

THE COURT: Let me go back there again.

MR. CLAREMAN: Yes.

THE COURT: You said it was 831? I was on that for a minute. Is it 831 again?

MR. CLAREMAN: I'm sorry, Mr. Smith's testimony?

THE COURT: Mr. Ho.

MR. CLAREMAN: Mr. Ho. So let's -- sorry, let's stick with Mr. Ho. Okay? Sorry sir.

THE COURT: I had it up on the screen and then I took it down so.

MR. CLAREMAN: So it's 832 is the ECF number.

THE COURT: Okay.

MR. CLAREMAN: And so the --

THE COURT: Hold on.

MR. CLAREMAN: -- it's Page 157, I'm sorry, Your Honor.

(Pause in the proceedings.)

THE COURT: So my computer just froze, hold on. I'm sorry, this will take a second.

(Pause in the proceedings.)

THE COURT: 832.

MR. CLAREMAN: It's Page 157.

THE COURT: Right. But he says in here --

MR. CLAREMAN: He did opine on one, that's right.

THE COURT: -- In the course of the negotiations you're a party to, this is the question that gets asked to him, Did anyone ever use the term redemption in connection with the comprehensive transaction you were negotiating. He says, No, not from my memory. I mean it wasn't really viewed as a redemption at all because we were negotiating the terms of it.

MR. CLAREMAN: Right. Can I just refer the Court to the part about --

THE COURT: Right.

MR. CLAREMAN: -- the earlier Q&A --

THE COURT: Right.

MR. CLAREMAN: -- starting at Line 1 was the question about whether in the course of his job --

THE COURT: Right.

MR. CLAREMAN: -- he heard the term redemption used.

THE COURT: Right.

MR. CLAREMAN: And the I asked for his understanding of what that term means in the context of debt investments and then he responds in terms or his general understanding of what that word means, not specifically in relation to this indenture --

THE COURT: Right.

MR. CLAREMAN: -- but generally as a term that he as a debt investor is familiar with and how it's used in the context of his job, which is to do distressed investments.

So the issue with Mr. Smith was specifically about an uncommunicated intent by the issuer in drafting the indenture. There was no objection that was made to this testimony. I don't think it's fair to assume that ground rules applicable to --

THE COURT: I'm not doing ground rules. I'm not sure what you're telling me this proves.

MR. CLAREMAN: My point, it's a limited point. Frankly I think, as I told you, I think this is all answered by the 4 corners of the document, so I don't think -- I don't want spend an undue amount of time on this issue. But redemption is a -- to the extent it is not defined, to the extent there is any ambiguity that the Court's finds in that term and how it is used and applied in this case, I think the custom and usage of that term is relevant, and there was testimony from people who invest in, you know, bonds all day long and they know what they means.

If you ask a person, any client on our side, Do you know what a redemption is, they're not going to say, No. They know what it is, they may not know what it is in the context of this specific indenture, and that is the language issue and the reason why I don't think we get to it. I think we do find ambiguity and the question is how should we resolve that ambiguity, and I think at that point custom and usage of the term does become relevant in the relevant community.

MR. BENNETT: But, Your Honor, to establish custom and usage you have to establish that it is uniform and widespread. And a handful of people rattling off about what their lawyers told them to tell the Court about what a redemption is is not such evidence.

As you know from our briefs, this is -- we're talking about redemption, small R, they're in financial dictionaries and <u>Black's Law Dictionary</u>, and of course sitting here all day yesterday when we were talking about what the word effect means, out came the dictionaries.

And that's exactly what we should be doing here if we want to find out what the word redemption means. But if it were custom and usage, you have to establish that it's uniform, widespread. There are cases that say that, they're in charts too, and that hasn't been established at all in this argument.

THE COURT: Okay. I will allow you to make the closing argument, I'm going to take the objection under advisement.

MR. CLAREMAN: Thank you, Your Honor.

Let me go to Slide 37. This is just to point out -- this is to respond to a point that was made in the post-trial brief by Langur Maize accusing the testimony such as Jesse Ho's testimony as be self-serving and irrelevant, and this is just point out that there were several witnesses that were called to testify by the folks on this side of the aisle, none of them supported from the standpoint of custom and usage the interpretation of redemption that's being adopted here.

That includes Brian Simala (phonetic), who was in absentia, he didn't appear live to testify. That's the only Langur Maize witness. And none of the witnesses that did apply -- appear live endorsed the reading of redemption or the fact that this was a redemption in their testimony. So there's an absence of evidence on the other side.

If I can go to the next slide, the only witness who actually came close to addressing the subject of whether or not this was a redemption was actually Greg Seketa from JPMorgan.

The Akin proposals, Your Honor will recall, and this wasn't the main focus of the Akin proposals at the trial, but all of the Akin proposals included an exchange of 2024 and 2026 notes that they owned for a new 2026 note that was going have a PIK interest rate at a high -- and pay a higher amount. So that was a par-for-par exchange into new notes with a higher interest rate.

And again, nobody called that an exchange, and he didn't recall that word being used in connection with the redemption -- or with the unsecured exchange I mean, he didn't recall the word redemption being used. It wasn't in his term sheets and it's not in any of the term sheets, in all the terms sheets that were exchanged, and there were a lot of them, a lot of them were the subject of a customary file, did not reflect the statement that any of the transactions that were happening, what were proposed by either side included a redemption piece that included an exchange of notes. And the same language, as we heard from Mr. Rosenbaum yesterday, on 3.02 and subsequent provisions they're also unsecured indentures.

We can go to Slide 39.

This is a compendium of some of Langur Maize's own statements about this issue in various pleadings in this case.

Langur Maize's position actually for most of this case was that the unsecured exchange was not a redemption, No 2027 notes were redeemed in the selective exchange. That's from their summary judgment motion.

Some of the 2027 notes were purchased in the selective exchanged, but none were redeemed. That's a reply as part of summary judgment. Langur Maize has never asserted that the selective exchange should be recharacterized as a redemption, opposition to motion for summary.

The reason -- so they -- this wasn't -- everyone knew this wasn't a redemption. The reason why we're hearing a different argument now is because in the summary judgment ruling the Court held that 3.02 doesn't apply to purchases and so they have to argue it's a redemption, but that was never the position, and there's good reason for that position.

We can go to the next slide.

So the principal argument, and Mr. Bennett previewed it just a moment ago is that the Court should not look at what the indenture says, but instead should adopt some preferred dictionary definition from Black's Law Dictionary or some other source. And the reason why that's not a complete answer and can't furnish a complete answer to what is or isn't a redemption under the indenture, is because when we read the words Pursuant to the provisions of 3.07 out of the indenture, that's where the indenture comes to know what is or is not a redemption, that's where you look to the language that's used in those various subsections and you see 3.07(h) is where there is no language describing it as a redemption.

We've also cited authority here which the -- the proposition of dictionary definitions may and can alter the intrinsic meaning of the words within an agreement. Custom and usage in context can be more relevant than literal definitions. I know he doesn't accept there's custom and usage evidence.

We can go to the next slide.

The other point I want to make about this, which goes to the dictionary definition point, is that we are not advocating an interpretation of redemption as that term is used in the first sentence of 3.02 and then the rest 3.07 in a way that does violence to the dictionary definition of that term.

The first definition of redemption in <u>Black's Law Dictionary</u> is the act or an instance of reclaiming or regaining possession by paying a specific price. And if we go back to the Sections 3.07(a) through (g), you see that there are specific prices, make whole premiums, drag rights if there's 90 percent acceptance of a tendered offer.

So the definition that we are proffering that is supplied by the words used in the indenture is consistent with <u>Black's Law Dictionary</u>. This isn't a case where the Court would need to attribute an unnatural meaning substantially different from the normal meaning of the word redemption in order to conclude that the unsecured exchange was not a redemption.

Go to the next slide.

So Langur Maize also pointed to this provision, which is 3.09 -- 4.09(h) of the indenture to argue that this provision somehow equates exchanges with redemptions. The terms of this provision, and I'm going to read it in full because I think it's part of the answer to this question about third parties.

This says, Notwithstanding the foregoing, in no event shall any unsecured notes held by the sponsor be exchanged, converted or otherwise redeemed, repaid or refinanced with indebtedness secured by any collateral or guaranteed by any entities not otherwise securing or guaranteeing the unsecured notes or with greater priority than any collateral securing the unsecured notes or guarantees guaranteeing those secured notes unless the same collateral or guarantee has been offered to all holders.

So this provision, which was deleted in the third supplemental indenture is relevant to understanding what third parties means as that term is used in Section 3.07(h), and I'll come back to that. But this provision also does not equate for purposes of 3.07(h) exchanges or refinancing or indebtedness -- or refinancing or repayment with redemptions.

That's not what the plain language of this provision says. It doesn't support the conclusion that, well, okay, if this list of words says that no (indiscernible) sponsor can be exchanged, converted or otherwise redeemed, repaid or refinanced, that somehow now under Section 3.07(h) the ability to repay, repurchase, refinance notes held by the sponsor is somehow altered by this provision.

Go to the next slide.

I want to touch on the cases that Langur Maize cites. I think the most important distinguishing factor between this case and the cases that they cite, which really don't support their interpretation of this indenture, is actually a point that Your Honor made yesterday in discussing the effect of other indentures on interpreting this indenture.

These provisions, as I've shown, are used in a specific way in this indenture, and that's really what matters. These cases are all dealing with issues in interpreting provisions, redemption provisions which do not match ours.

So for example in the *Chesapeake Energy* case there was a question that the indenture there permitted a redemption to happen within a 4-month period. The Court -- the issuer also needed to give notice within that same 4-month period, and they needed to do it 30-60 days before. So in that case the issuer gave notice 23 days before the end or the period in which it could do redemptions, so the actual redemption part happened after the applicable period set forth in that indenture.

So the Court looks to what does the word Redeem mean because does redeem mean the act of starting the redemption, or does it actually mean doing the redemption. Because if it means doing the redemption, then this transaction didn't comply because the redemption part happened later. So that's why the dictionary is consulted in *Chesapeake Energy*, just to reinforce a point that was frankly inherent from the plain language but it's not supported for reinterpreting the 2027 unsecured indenture.

And the other cases were similar, *Blue Ridge* really didn't not discuss any relevant issue, *EFH* dealt with a specific problem of a bankruptcy filing that accelerated the debt, the issuer then in bankruptcy tried to redeem the bonds, arguing that the acceleration meant sort of divested the indenture, its redemption provisions and the obviation to pay the make whole which was very insubstantial in that case. Most of these cases were about whether make whole has been paid.

So that was the issue there and the Court said, Well, let -- we'll just read these provisions in the indenture. The acceleration doesn't negate the obligation under Section 3.07 or the redemption provisions, and therefore you just apply how the indenture is written. So as I said, I think that general proposition and framework supports us.

Go to the next slide.

Connolly is similarly irrelevant to address a federal estate tax issue, and the fact that there was a -- the Supreme Court said in that context, to like help readers who are unfamiliar with these terms, that redemption was a type of purchase. I don't think that's relevant to this case.

I do want to address for a moment the *White Box* case. The *White Box* case, the Court correctly concluded in its summary judgment opinion, was not precedent here. But an additional distinguishing factor between our indenture and *White Box* is that *White Box* didn't have -- in that case there was no 3.07(h), so they didn't have that ability to do a transaction pursuant to 3.07(h), and so the Court was confronted with the question of how do I interpret the redemption provisions in the absence of an affirmative grant to do a transaction otherwise with a privately-negotiated exchange.

So if we can go to the next slide.

I'm going to dwell on this, if Your Honor has questions about the redemption issue, I'm now going to move on to the 3.07(h) issue. But this just summarizes the redemption provisions in the -- in Section 3.07 and which apply to the

2022 transaction and which do not. The only provision that applies is Section 3.07(h) which, as I mentioned, does not use the term redemption, it does not use the term.

So unless Your Honor has questions about this, I'm going to move on to the 3.07(h) third party issue.

THE COURT: (No audible response.)

MR. CLAREMAN: Okay. If we can jump to Slide 49?

So here's the 3.07 issue, and as Your Honor noted, the language that Langur Maize is now seizing on is that 3.07(h) authorizes transactions with "third parties". And the principle that I was offering before, which I'll walk you through in a little more detail now, is that the indenture uses specific terms to restrict or limit transactions with the sponsor or transactions with affiliates, and those words are not used in this provision of the indenture.

I've rewritten it, I like the way that -- and if it was Ms. Oberwetter or Mr. Kirpalani did this before when they were redlining the indenture, but these are the words in 3.07(h) that don't appear and that they are asking the Court to read into the indenture. They're asking to interpret third parties as third parties who are not the sponsor or affiliates of the issuer, which the indenture does not say.

The indenture does say that it -- that any such purchases may be made through open market or privately-negotiated transactions with third parties. It also has an open-ended Or otherwise at the end, but I don't think we need to rely on your otherwise because I think the plain language in the indenture doesn't do the work that they asking the Court to do.

If we can go to the next.

THE COURT: So where do I see a definition of third parties then?

MR. CLAREMAN: There is no definition of third party.

THE COURT: Couldn't find one either.

MR. CLAREMAN: There is none.

THE COURT: So the sponsor was a third party in your view?

MR. CLAREMAN: Uh-huh. It is an entity --

THE COURT: You have an undefined term. Right?

MR. CLAREMAN: Correct.

THE COURT: An uncapitalized term.

MR. CLAREMAN: Correct.

THE COURT: They're the owner.

MR. CLAREMAN: Uh-huh.

THE COURT: Hard to believe they're a third party.

MR. CLAREMAN: The --

THE COURT: Third party is broader than sponsor --

MR. CLAREMAN: Yeah.

THE COURT: -- and broader than affiliate, but that wouldn't mean it couldn't include them if it's not defined. Why am I deciding that they're a third party?

MR. CLAREMAN: They are a third party for purposes of 3.0(h) because --

THE COURT: Why?

MR. CLAREMAN: -- is broader -- the sponsor --

THE COURT: It's broader.

MR. CLAREMAN: -- is a subset of the third parties --

THE COURT: Why?

MR. CLAREMAN: -- if we --

THE COURT: Why are they a subset of third parties as opposed to subset of non-third parties?

MR. CLAREMAN: Because Platinum has an independent legal existence. The entities that owned the 2027 notes were not -- it wasn't Wesco, it wasn't Incora, it wasn't the issuer or it wasn't Incora. It was a different entity. That entity -- and there's no basis to ignore the separateness of the entities that acquired the notes.

THE COURT: I've never considered in use the term third parties that you would not -- that you would think that the owner of an entity was a third party to that entity. I agree they have separate legal significance in that entity, but under common usage they would seem to be something other than a third party.

MR. CLAREMAN: I think the potential ambiguity that may result, or that could have resulted does require the Court to read out of the indenture, or assume that the indenture doesn't have specific verbiage that it uses deliberately but is intending to do exactly the thing and restrict exactly the thing that they're advocating. That was --

THE COURT: No, there may be an ambiguity as to how broad third party is, but I doubt there's an ambiguity that the 100 percent owner of an entity isn't it's -- is a third party to the entity that it owns 100 percent of. They control the selection of the board, granted there was an independent board member appointed. But that tends to prove that they're not a third party, the fact that there was an independent board member appointed, not that they are a third party.

Is there any case law that says anywhere that the 100 percent owner of an entity is a third party to that entity?

MR. CLAREMAN: So the answer directly is I don't have a case that says that, but I -- what I'm being referred to is <u>Black's Law Dictionary</u>, which is of course (indiscernible) source which says that a person not connected -- the definition in <u>Black's Law Dictionary</u> is a person not connected to a contract but may be affected by its outcome. That's the <u>Black's Law Dictionary</u> definition.

But I do think, and if I can just go through the next series of slides, Your Honor --

THE COURT: Yeah.

MR. CLAREMAN: -- we have a term here Affiliate, which is a defined capital A term in the indenture. Affiliate and any specified person in the entity means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. That's affiliate.

There's also a separate definition of sponsor which I will turn to unless Your Honor would like to --

THE COURT: No, go back up a minute.

MR. CLAREMAN: All right. Go ahead.

THE COURT: Because I agree that 3.07(h) doesn't use the word affiliate, but you're telling me that we have an undefined term called third party and because the words Affiliate aren't used in 3.07(h), that affiliates are therefore third parties, meaning that wholly owned subsidiary would be a third party under that definition. Who would be a non-third party if the exclusion of the word Affiliate means that affiliates are third parties, who's a non-third party? Tell me one in this case, a non-third party.

MR. CLAREMAN: A non-third --

THE COURT: Identify any non-third party in the world. If you're right that we don't include affiliates.

MR. CLAREMAN: The guarantors are contractually obligated, so if I was going to apply the Black's Law Dictionary definition then it would apply to guarantors of the debt.

THE COURT: Who are the guarantors of the debt?

MR. CLAREMAN: They're -- they are the --

THE COURT: Are there any --

MR. CLAREMAN: -- subsidiaries of the issuer.

THE COURT: So they're affiliates.

MR. CLAREMAN: They are affiliates but I'm just --

THE COURT: Yeah, so I'm saying --

MR. CLAREMAN: -- the guarantors would be contractual in the case --

THE COURT: No, but if you're --

MR. CLAREMAN: -- yes.

THE COURT: -- telling me that the omission of the word affiliate means that an affiliate is therefore a third party, tell me anyone in the whole world that this regulates against. There's no one.

MR. CLAREMAN: I, well, I think the premise is that this regulating against as opposed to (indiscernible) making as much as --

THE COURT: Against who?

MR. CLAREMAN: -- possible.

THE COURT: Against who? Who does that mean? Who is included in the definition of a non-third party because you just included the whole world as a third party.

MR. CLAREMAN: And I think that is the actual definition of that per other entities, so any entity can contract with any other entity. The issue --

THE COURT: Yeah, tell me somebody in -- at the time that this was done any entity in the entire world that's a third party under the way you're defining third party, name an entity.

MR. CLAREMAN: An entity --

THE COURT: Take a minute.

MR. CLAREMAN: -- that is --

THE COURT: Talk with your partners over there. I don't think there is one.

MR. CLAREMAN: I think this is -- the words here -- if we go back to 3.07(h) (indiscernible).

THE COURT: Right.

MR. CLAREMAN: So any such purchasers may be made through an open market or privately-negotiated transactions with third parties, and there's a lot of ors, and --

THE COURT: But you're telling me under that definition that that means with anyone.

MR. CLAREMAN: That is how this reads, or otherwise. And (indiscernible) --

THE COURT: No, it means -- what this says is, Any such purchases that be made through open market or privately-negotiated transaction with anyone in the world. Right?

MR. CLAREMAN: Yes. Yes, I believe that is what this means.

THE COURT: So it has no -- the word third parties has no meaning.

MR. CLAREMAN: It’s not that it has -- it is the broadest possible meaning, it is not restrictive. So it is --

THE COURT: Why say it, why do you say it? Why wouldn’t you just say --

MR. CLAREMAN: Well, I think the Or otherwise is doing exactly the work that Your Honor is questioning with respect to third parties. I don’t think we need to limit this to third parties because it says Or otherwise, which is -- has expansive a formulation as (indiscernible).

THE COURT: I don't understand that.

MR. CLAREMAN: So any such purchases may be made through open market or privately-negotiated transactions with third parties --

THE COURT: Okay.

MR. CLAREMAN: -- or with --

THE COURT: A privately-negotiated transaction with your mother.

MR. CLAREMAN: Yes.

THE COURT: Right?

THE COURT: Okay.

MR. CLAREMAN: Except -- but if they're not an issuer. Now the rest of the sentence I think emphasizes in the use of the Or otherwise language the breadth of third parties as its used here does not actually impose limitation. This is a provision which imparts the maximum flexibility to do transactions.

THE COURT: No, no, no, that's missing the point. That sentence says if you go out and you buy them under the first part of (h), under the second part of (h) the issuer can cancel then if it wishes to. That's an unremarkable proposition. That doesn't have anything to do with what the acquisition of the notes says. The second sentence deals with what can you acquire. You can acquire under your interpretation anything through a privately-negotiated transaction with your own wholly owned subsidiary --

MR. CLAREMAN: --

THE COURT: -- paying an over-price -- with your parent paying an over-price and it's not subject to review, you can do it with anyone, meaning that it shouldn't say with third parties, it should say with anyone, including affiliates, which is your read of this. And that can't be what this is intended to do.

MR. CLAREMAN: Well, if I can refer Your Honor to -- if we can go to Section 4.09(h).

THE COURT: Okay.

MR. CLAREMAN: Which is on Slide 52.

(Pause in the proceedings.)

MR. CLAREMAN: This is -- this provision (indiscernible) third supplemental indenture. These are the provisions that is doing the work of limiting the ability to do transactions of the types that actually occurred in the secure exchange with Platinum. There was a prohibition, it was amended, no one's alleging that the amendment was breached or that the amendment was (indiscernible).

THE COURT: No, this deals with unsecured notes held by the sponsor --

MR. CLAREMAN: Right.

THE COURT: -- not unsecured notes acquired by the sponsor. 3.07(h) deals with unsecured notes acquired by the sponsor.

MR. CLAREMAN: This is -- this 4.09(h) is only -- it comes into effect if -- when the sponsor owns notes.

THE COURT: No. Oh, correct, when the sponsor owns notes --

MR. CLAREMAN: You can't --

THE COURT: -- they can do what they want with the notes. Right?

MR. CLAREMAN: No, the sponsor owns notes, you can't -- the issuer --

THE COURT: Okay.

MR. CLAREMAN: -- is not allowed to exchange those notes with the (indiscernible) --

THE COURT: Right. But that's not 3.07(h) does. 3.07 isn't notes owned by the sponsor, it's notes being acquired by the sponsor -- I'm sorry, notes being -- I apologize, never mind, I'm wrong about that.

MR. CLAREMAN: Okay.

THE COURT: So any open sponsor -- okay, I got your argument. Go ahead.

MR. CLAREMAN: So, look, what I --

THE COURT: I was reading it wrong.

MR. CLAREMAN: -- so the structure of this, and I think this is really important is that 3.07(h) is a grant or authority that is extraordinarily broad, that allows transactions with third parties.

And there are other provisions in the indenture like this one in 4.09(h) which are -- specifically limit -- imposing limits on the broad grant that the company otherwise has to do certain types of transactions with the issuer -- I mean, sorry, with the sponsor. And when Platinum owns notes, because Platinum is the sponsor, they are in that definition, Platinum owns notes.

This is the provision that is saying, Issuer, you can't exchange unsecured notes -- you can't exchange secured notes that are secured by collateral for unsecured notes that the issuer owns unless you're offering that to everybody. That's what 4.09(h) did. 4.09(h) was the lead in. Again, that -- there's no question in this case that the amendment that effectuated this was duly authorized.

So this is what I'm saying is that they are interpreting 3.07(h) in a way that would do the work that 4.09 implicitly -- that 3.07(h) implicitly is doing the work that 4.09(h) was explicitly doing. And that is --

THE COURT: No --

MR. CLAREMAN: -- an appropriate way to redemption.

THE COURT: -- 4.09 -- 4.09(h) says you may acquire notes held by the sponsor if the same collateral or guarantee has been offered to all holders.

MR. CLAREMAN: Correct.

THE COURT: You deleted that. So now the questions is, can you acquire things held by the sponsor without offering it to all holders, and the answer under 3.07(h) is, no, you can't.

MR. CLAREMAN: The answer under 3.07(h) is, yes, you can.

THE COURT: No, not if the word third parties has any meaning in 3.07(h).

MR. CLAREMAN: Not if the word third parties is imposing a restriction in 3.07(h), and I think --

THE COURT: What does it mean? Tell me an entity it covers.

MR. CLAREMAN: It is a word that is doing the same work as counterparties, it is any other entity in the world. That is --

THE COURT: Third party means anyone?

MR. CLAREMAN: In that provision, yes.

THE COURT: Why is it --

MR. CLAREMAN: And --

THE COURT: -- why is it there if it means anyone?

MR. CLAREMAN: It's there --

THE COURT: Can we go back up to it?

MR. CLAREMAN: -- it's there because there needed to be a word to describe a transaction that could be done.

THE COURT: Let's go back up to it, 3.07(h).

(Pause in the proceedings.)

THE COURT: What function does the second sentence have that the first sentence doesn't have?

MR. CLAREMAN: The second sentence meaning Upon such charges?

THE COURT: No, the Any such purchases. Why do we have the second sentence if the first sentence says you can do this.

MR. CLAREMAN: Because the second sentence is expressing the extensiveness that purchase -- that meaning that purchase has in the first sentence.

THE COURT: Right.

MR. CLAREMAN: So it's extent.

THE COURT: So if you take out the words With third parties, now what different meaning does it have? The words With third parties just became superfluous, because it could have said, Any such purchases may be made through open market or privately-negotiated transactions or pursuant to 1 or more tender exchange officers -- offers, et cetera, et cetera.

And the word third -- With third parties would be completely unnecessary unless it means something less than anyone in the whole world. It has to mean something less than anyone in the whole world, and I don't think you can give me an example of that.

MR. CLAREMAN: I will -- I will give it some thought, but my -- the interpretation that I'm advocating is that based on the structure of the indentures a hole in the defined terms and so on is that that term, what it is doing is it's expressing the expansiveness that I think you were --

THE COURT: Okay.

MR. CLAREMAN: -- that you were struggling with. And --

THE COURT: Okay.

MR. CLAREMAN: -- so if we go again to -- so I quoted the Court out -- I quoted the Court to Section 4.09(h).

THE COURT: So before we go any further, assume for a minute then that I don't accept your interpretation and that this transaction was not authorized by 3.07(h), what result?

MR. CLAREMAN: That would not -- it would result, as it relates to -- let me start with Carlyle and Spring Creek who did the transaction as well. It would be -- if the -- our negotiation, our transaction or our notes would not be affected by a finding that another signatory, not us, was not permitted to do the transaction.

THE COURT: Okay. Now let's assume that's right.

MR. CLAREMAN: Okay. So with respect to the third parties, if the conclusion is that Platinum was not permitted to do the transaction because Platinum was not a third party, the -- well, the conclusion would be that this provision was not (indiscernible).

And so if Your Honor's asking what further consequence there would be from that, a breach of the indenture --

THE COURT: So it could be damages, it could be that that exchange never occurred, we don't know what it is.

MR. CLAREMAN: Correct. It would be the typical (indiscernible) --

THE COURT: But your argument is, and I know this is separate from the tortious interference and the conspiracy and whatever other words are being used for what you did, that without the -- if you're wrong about what third parties means, that your actual transaction stands and that the problem is with somebody else's transaction.

MR. CLAREMAN: Correct.

THE COURT: It may affect your liability on the tort side, but it would not affect the capital structure for you all.

MR. CLAREMAN: That is -- that's my response -- reaction to Your Honor on the slide.

THE COURT: Okay. Thank you.

MR. CLAREMAN: I believe that that's correct.

THE COURT: So let's go ahead then.

MR. CLAREMAN: Okay. You'll know the provision that I would point to, not because it says anything specifically about 3.07(h), but it's Section 4.09 --

That would be the other Slide, 54. This is just for completeness.

Just, again, to make the point that the indenture is explicit in its regulation of transactions with affiliates just as we saw with respect to certain types of transactions with the sponsor in 4.09(h).

So again, this provision is not specifically germane to 3.07(h) other than to illustrate the manner in which transactions with affiliates are used using the express definitions that appear in the indenture.

THE COURT: All right.

MR. CLAREMAN: All right. So I'll move on to the 902.10 issue. Let's go to the next slide.

So to focus now on the allegation that there was a breach of the sacred rights provision. No holders -- no 2027 holders' sacred rights were breached by the unsecured exchange. Of course it's true that the unsecured holders, unlike the secured holders, I don't think this difference matters, but it is they're different in the following respect.

Of course the unsecured holders, they owned unsecured notes before, they owned unsecured notes after, they have the exact same payment terms, they had the exact same maturities, the principal that they owned was unchanged. The payments that were owed to them, even the source of those payments was not affected in their indenture by the transaction.

The specific sacred right that they're focused on in 902.10 which prohibits amendments that adversely affect holders in the ranking of their -- the ranking in respect to right of payment, that terminology is using the indenture to protect against payment subordination, not lien subordination. There are extensive provisions in the indenture that deal with lien restrictions, in regards to that restriction, that is not what is addressed in Section 902.10.

And so Your Honor consistent with the way I have described 3.02, 3.07(h), I know this provision, all of these theories I believe require Langur Maize to persuade the Court that there's a word or term, I know we had our disagreement about third party, but it would require the Court to read into the indenture in order to determine it does not appear there.

The indenture, as I said, consistently distinguishes lien priority and right of payment, and it has separate provisions for those things and use separate terminology for those things.

Why don't we skip to 58.

Okay. So here's Section 902.10, this is the provision that Langur Maize has raised. Without the consent of each holder affected, an amendment, supplement or waiver under this Section 902 may not, with respect to any secured notes held by a non-consenting holder, make any change to or modify the ranking of the unsecured notes in respect of right of payment that would adversely affect the holders of the unsecured notes.

I'm going to start by focusing on the right of payment point. But I want to just come back to an issue that has occupied a ton of time in the last couple of days in relation to this secured indenture. What needs to identified is an amendment, supplement or waiver that effectuates an adverse change to the right -- the ranking of the right of payment of -- in an adverse way of holders.

We don't have here the Have the effect of language so we don't need to have a discussion about the meaning of those words and how it applies to sacred rights. Here the sacred right is specifically regulating amendments, supplements or waivers.

THE COURT: Well, in fairness the reason why we didn't talk about that much on single transaction and collapsing is because all of that was encompassed in the Had the effect of language.

Having said that, I think I've said before that I agree that a mere change -- not a mere change -- a change of whether there is a lien is not a change in the ranking of the right of payment. It will affect whether you get paid, but it's not a change in the ranking of the right of payment in terms of the way this is worded. And so I don't know that we ever get anywhere else because of that, but I don't know that I'd preclude it if we need to.

Looking at the other issues in terms of single transaction and all that stuff, it was just unnecessary for the earlier transactions that we were talking about. And I'm not sure what their argument is. It's different that what I've read, but maybe I misunderstood. But I don't think that in respect of right of payment would -- the right of -- sorry, the ranking in respect of right of payment, not the right of payment, I don't think that anything that I am aware of changed the ranking in respect of right of payment.

MR. CLAREMAN: I agree with that with respect to the unsecured notes. The only -- if I can just highlight a couple of provisions because I think -- well, this was not briefed extensively in the post-trial briefing. There's an incorporation by reference in the summary judgment argument so it wasn't something that new arguments based on the trial record were marshaled in response to it.

But if we can just go to Slide 62, I just want to highlight a couple of provisions for Your Honor that I think that underscore the difference between right of payment and priority.

There's a defined term in the indenture subordinated indebtedness. That means with respect to the issuer any indebtedness of the issuer which is by its terms expressly subordinated right of payment of the unsecured notes, and then there's another (indiscernible) provision for the note guarantee.

So this is an example, another example outside of the sacred rights in which the indenture speaks explicitly to the meaning -- or it speaks to right of payment and doesn't address liens.

If we go to 412 which is on the next slide, this is the prohibition that was I believe deleted by the fourth supplemental indenture. But it says in Paragraph 412(a)(1), In the case of liens securing subordinated indebtedness, that is subordinated in right of payment, the unsecured notes are secured --

THE COURT: Where does it say -- I'm --

MR. CLAREMAN: I'm sorry.

THE COURT: -- I'm looking for the language, Subordinated in right of payment.

MR. CLAREMAN: Oh, I'm sorry. This is -- so I am --

(Pause in the proceedings.)

MR. CLAREMAN: Oh, yes. Okay. I'm sorry. So I apologize, Your Honor, so 412(a) states the issuer will not, will not permit any of its restricted subsidiaries or guarantors, if any, to directly or indirectly create, incur similarly suffer to exist any lien of any kind other than permitted liens, which is separately defined, securing indebtedness of the issuer or its restricted subsidiaries that are guarantors, if any, on any property or assets now owned or hereinafter acquired for any interest therein or any kind of a profit therefrom unless.

So to shorten this, this says the issuer will not award new liens and that include the other than permitted liens. That's what this -- that's what the preamble says. In 412(a)(1) this says, In the case of liens securing subordinated indebtedness, that is junior in right of payment debt, the unsecured notes are -- must have a lien that is senior in payment. So the only point being that this is the indenture using different verbiage to address ranking of liens versus ranking of right of payment.

Section 4.09(c) I'll just go through briefly. We can go to the next slide.

Again, uses the terms right of payment and lien priority separately. The indenture consistently attributes different meanings to those terms. I'm going to go -- I do just want to highlight one case.

Go to Slide 67.

Which is the (indiscernible) Silicon case, which does discuss at length the difference between lien priority and payment priority and how those operate in the context of indentures. I'm not going to belabor the point because I think based on Your Honor's comments that the distinction is understood.

I did want to come back though, if we can go to Slide 70, before I move on from Section 902.10. So I just want to reinforce the point that I started with, which is I do think -- so I don't think there's any issue with respect to the sacred right in the unsecured indenture. At least as I've gone through it.

But I also want to highlight that I don't think Langur Maize, which has the burden of proof on this issue, has shown any amendments, modification or waiver is the actual source of any change in ranking of right of payment, that they have the same burden that the secured indenture plaintiffs do on that issue in terms of identifying a document within the 4 corners that effectuates the things they're complaining about, nor have they shown adverse effect for any such amendment, modification or waiver.

We just -- I'll touch very briefly before I sit down on Sections 605 and 611. If we go to Page 73. Again, I'll just be brief here. I don't think the 605 breach claim has been preserved, I haven't put it up here, it wasn't in the post-trial brief. In any event, it does not concern the transaction because 605 was not used. That's a provision that allows the majority of the holders to instruct the Trustee to pursue remedies and do other things. It has no application to this case.

Langur Maize has argued in its post-trial briefing, and this was not in its complaint, that if the transaction doesn't comply with 3.07(h), it also doesn't comply with 611. Again, 611 is not a relative provision here, it's a provision that instructs how the Trustee is to distribute the proceeds it receives during the -- well, so it has an application, I don't think it's relevant, but I can address that in greater length if necessary on rebuttal.

Unless Your Honor has any further questions, I'll stop.

THE COURT: No, thank you, Mr. Clareman.

Anyone else from the left side of the room?

MS. OBERWETTER: Yes, Your Honor.

THE COURT: Ms. Oberwetter.

(Pause in the proceedings.)

THE COURT: Let's see, I need to find your tech.

MS. OBERWETTER: Again, is it possible to redisplay the slides? I want to go just to Slide 31.

THE COURT: Of whose slides?

MS. OBERWETTER: Mr. Clareman's slides.

THE COURT: Oh, great. That'll be easier.

Mr. Clareman, could you ask your person to show Slide 31 for us, please?

MR. CLAREMAN: Oh, yes.

THE COURT: Thank you.

(Pause in the proceedings.)

MS. OBERWETTER: If I may proceed, Your Honor. Ellen Oberwetter again from Williams & Connolly on behalf of the Platinum defendants. I want to talk about 3.07(h) which is where you've had an exchange with Mr. Clareman, and I just want to provide maybe a slightly different perspective on the right way to read the first 2 sentences of that provision.

The first sentence says that issuer or its affiliates may at any time, and from time-to-time purchase unsecured notes period. So I want to talk about after that sentence is written, which is a very broad sentence what the next sentence is about.

And I think with their reading of it -- I'll talk in a moment about the third party issue but -- the third party issue, but I actually think it's a lot easier question than that. The second sentence is a list of examples and the way you know that it's a list of examples and not exclusive things that you can do is that first clause ends with the words Or otherwise.

And so if you treat -- and it's no different than if you had started the sentence with the word Including. And so if you don't read Or otherwise as doing the same type of work that the word including would do at the beginning of the sentence, you're reading the Or otherwise out of the -- out of the provision entirely.

THE COURT: Wait a minute, the Or otherwise in the third sentence?

MS. OBERWETTER: In the second sentence, Your Honor. Any such purchases may be made through open market or privately-negotiated transactions with third parties, or pursuant to 1 or more tender or exchange offers, or otherwise, upon such terms and it set prices as well with such consideration, et cetera.

So that's an inclusiveness clause that tells you your not dealing with a series of exclusive concepts where you have to worry about what every last word of that prior clause means. We don't have to worry about whether this clause contains the word Sponsor or affiliate or why a third party isn't a defined term and what that means because it isn't.

There's a series of different things you can do following on the first sentence that says, You may at any time from time-from-time purchase unsecured notes period and it lists a series of concepts that embody that followed by an Or otherwise. So I don't think there's any way to give meaning to those last 2 words, or otherwise.

(Electronic interruption.)

MS. OBERWETTER: It feels earlier than usual, I don't know.

THE COURT: It doesn't seem like it's been an hour. Sorry, this is -- I don't have my court deputy here and I forgot to reconnect over lunch, so it's going to do that every hour unless I disconnect everybody from the phone that redials.

MS. OBERWETTER: That explains it.

So anyway, I think as a matter of basic paragraph structure where you've got an expansive first sentence, and then a second sentence that has language of inclusiveness. That second sentence is also doing other work too, which is telling you that these can be individually negotiated types of purchases that you are doing, that it says, Upon such terms and such prices, and then it goes on.

All of that tells you that this is an expansive concept. This paragraph in our -- to our understanding means you can do the purchase from whomever, whenever so long as you go and negotiate it on individualized basis.

THE COURT: So I do understand that argument I think completely. Maybe I'm wrong. But it specifically authorizes privately-negotiated transactions with third parties. Right? Meaning it takes out of it the requirement to do things in the manner required by Section 3.02. Right? But if you did something that was not taken out of the requirements of 3.02 by its explicitness, then why wouldn't 3.02 apply, because 3.02 refers to all of 3.07, not just a part of it.

MS. OBERWETTER: Well, I think 3.02 talks about redemptions and then we're back to the question of whether 3.07(h) is talking about redemptions at all, or whether it is merely placed in this section for convenience which is what our --

THE COURT: Let's take a look at 3.02.

MS. OBERWETTER: Yes, Your Honor.

THE COURT: Do you want me to pull it up somewhere? I'm happy to or --

MS. OBERWETTER: That would be great, Your Honor.

THE COURT: Do you have an ECF number? I think it -- I think it is 601-7.

UNIDENTIFIED SPEAKER: Is it up -- so, yeah, it's up on the screen. Right? Okay.

THE COURT: Okay.

MS. OBERWETTER: Yes.

(Pause in the proceedings.)

MS. OBERWETTER: So now I fully anticipate the point that I think you're making, but the point is that the first sentence refers to 3.7. I don't think that tells you every subpart of 3.07 is a redemption paragraph. It tells you if you are doing a redemption pursuant to 3.07, then you need to look to 3.02.

THE COURT: Right. But the Or otherwise could be a redemption. Right?

MS. OBERWETTER: But the Or otherwise --

THE COURT: Could be a redemption.

MS. OBERWETTER: No, I don't agree with that, Your Honor.

THE COURT: Okay.

MS. OBERWETTER: I think the Or -- I think the entirety of 3.07(h), if that's what you're now referring back to, is talking about something that is fundamentally different than a redemption. It's talking about privately-negotiated transactions of one form or another because --

THE COURT: No, I don't think so. Let me pull this all up. I think it refers to more than a privately-negotiated transaction in that laundry list, but I'm going to pull it up and just set --

MS. OBERWETTER: Yes, Your Honor.

THE COURT: -- the whole thing here.

MS. OBERWETTER: Well, we can be bided by the language of the -- maybe not -- privately-negotiated is not the right word, but you've got the purchase language that's at the start of it. And then you've got the exemplary types of transactions.

THE COURT: So here's the document.

(Pause in the proceedings.)

MR. CLAREMAN: This is on Page 57, this is the unsecured indenture.

THE COURT: Thank you.

(Pause in the proceedings.)

THE COURT: 3.07, Page --

MR. CLAREMAN: Yes, Your Honor, yes -- the number on the page on the bottom is 57. So this is 60, so you have to scroll up.

THE COURT: It's not 3.07(h)?

MR. CLAREMAN: Oh, I'm sorry, you're looking for 3.07(h) or 3.02?

THE COURT: I'm looking at 601-7.

MR. CLAREMAN: Okay. This is 3.07(h).

THE COURT: That is that?

MR. CLAREMAN: This is 3.07(h) on the screen right now, yes.

THE COURT: Is that what we want is 3.07(h)?

MR. CLAREMAN: If that's what Your Honor was looking for then, yes.

(Laughter.)

THE COURT: But this is --

MR. CLAREMAN: Okay. Sorry, it's 3.02 or 3.07(h), I wasn't sure --

THE COURT: Oh, right, right.

MR. CLAREMAN: -- I wasn't sure what you wanted to do with it.

THE COURT: Right. So 3.07(h) if we treat the second sentence as a laundry list --

MS. OBERWETTER: Yes.

THE COURT: -- then part of the laundry list allows a privately-negotiated transaction with third parties. Right? Part of it allows purchasing the unsecured notes otherwise. Which could be a redemption, maybe it would be, maybe it wouldn't be.

MS. OBERWETTER: I would give that some thought, but let me say this, the laundry list also allows privately-negotiated -- because it's a laundry list it includes Or otherwise which is about as expansive of a phrase as you could have, such as including without limitation. You can have a private -- you could have a privately-negotiated transaction with not a third party.

THE COURT: Well, then why would you say privately-negotiating with third parties, why wouldn't you just say a privately-negotiated transaction?

MS. OBERWETTER: Because the meaning --

THE COURT: The with third parties has to have a meaning.

MS. OBERWETTER: Oh, it doesn't have to have a meaning if these are not -- it doesn't have to have a meaning except providing examples is what this is intended to be is providing examples. It could have said privately-negotiated transactions not with third parties. It's listing -- it's providing you with a list of things that my typically happen, but it's not exclusive.

THE COURT: Right.

MS. OBERWETTER: Any permutation of --

THE COURT: Which could include a --

MS. OBERWETTER: -- purchases --

THE COURT: -- so it could include a redemption.

MS. OBERWETTER: I'm puzzling over that, because I think there are other provisions here that are talking about redemptions that aren't this one.

THE COURT: Well, I understand that, but we certainly are talking about privately-negotiated transactions with third parties, and if that's part of the laundry list, it doesn't matter that we're talking about other things, it was just a laundry list and it says, as you said, in the broadest possible terms it could include a redemption.

MS. OBERWETTER: So the next clause then says, Upon such terms and as such prices as well as with such consideration as the issuer or any such affiliate may determine.

THE COURT: Uh-huh.

MS. OBERWETTER: Meaning this is a set -- this is a type of action that you're taking within each where you get to decide how you do it. And so I don't think that that requires then going to 3.02 because this is -- you have your own agency under 3.07(h), that you do transactions and to make these purchases the way you want them, voluntary transactions with third parties, or other parties, and that's different than what 3.02 is contemplating.

THE COURT: Okay. I'm going to hear the argument.

MS. OBERWETTER: And I think anything else you do here reads Or otherwise out of this.

THE COURT: Yeah, I do understand your argument. I don't understand why Or otherwise would not include redemptions. But I don't know that it matters a lot, but I think it -- I think it means that there are portions of 3. -- if your argument is correct --

MS. OBERWETTER: Yes.

THE COURT: -- there are portions of Section 3.07(h) that by their very nature are excluded from the 3.02 ratability provisions. But there are portions of it that would be governed by the 3.02 ratability provisions because they would not run contrary to them I think is the force of your argument. Maybe I'm missing it.

MS. OBERWETTER: I'm going to get across whether there is a broader force of the argument because I think -- I think this is fundamentally a different category, this is totally different animal and that's why it doesn't use the word redemption at all, unlike everything else that's listed in 3.07.

And that it is here to any or all things that are negotiated and not done with all the bells and whistles that the earlier provisions in 3.07 say you have to do alongside redemption so, of which there -- of which there is quite a few, where you have certain constraints that are associated with having to do a redemption in terms of pricing, in terms of I give notice to people, all of those other things that 3.07 doesn't tell you you have to do at all.

THE COURT: Okay.

MS. OBERWETTER: I have a couple of other -- just a couple of other points briefly, and I will join in some of the comments that Mr. Clareman made up front about how we're not living today as overall Langur Maize Day, and we're trying to stick to the --

THE COURT: Right. Yeah, right, right.

MS. OBERWETTER: -- contract argument. It could have some consequence from (indiscernible), so we'll reserve our comments on that.

I did want to touch on the section from Langur Maize's brief that has a number of definitions related to the term redemption. And I just want to say, I don't actually think they're not -- I don't think they're very helpful or useful for the following reason, and I think the reason I'm about to give applies to all or almost all of them.

The most that they show is that a redemption in some circumstances can be a kind of purchase, but they don't tell you that every purchase is a redemption. And so it's just a basic flaw in the logic of the definitions I think, and they don't really answer the question of what 3.07(h) does.

So that's all I really had to add, Your Honor, to the -- to Mr. Clareman's presentation, unless you have other questions at this time.

THE COURT: So I'm going to go back and just 3.02 before you leave.

(Pause in the proceedings.)

THE COURT: It -- one of the questions I wanted to ask, and I should have asked Mr. Clareman, but I'm going to ask you, does the last sentence apply if the unsecured notes are represented by global notes, do we have a global note here?

MS. OBERWETTER: There is a global -- there is a global note, yes, Your Honor.

THE COURT: And so it's the interests that would be selected for redemption or purchase, not the notes themselves. Right? Under 3.02 --

MS. OBERWETTER: I believe that's -- yes, I believe that's correct, Your Honor.

THE COURT: Okay. And in the second sentence it refers to the particular unsecured notes to be redeemed or purchased. What does it mean by or purchased?

MS. OBERWETTER: The particular -- I think that, again, applies to the redemption provisions.

THE COURT: Why did it say Or purchased?

MS. OBERWETTER: I would need to look back at 3.07 and study the earlier parts of 3.07 I think the answer to that question.

THE COURT: Okay. The Trustee will notify the issuer selected for redemption or purchase. Right? If they're to be redeemed or purchased. It continues to use there term in there second and third paragraphs redeemed or purchases. And in the first paragraph it says, Will select unsecured notes for redemption or purchase pro rata.

And your argument that these aren't subject, that

3.07(h) is excluded from redemption is because it's a purchase. So what's the function of the word Or purchased throughout 3.02 if you're telling me that 3.02 excludes purchases?

MS. OBERWETTER: I would like to get back to that question with reference to the rest of 3.07.

THE COURT: Okay.

MS. OBERWETTER: So --

THE COURT: But it -- I am -- I do -- I do understand the force of your argument, but it requires me to say that 3.07(h) is excluded, and the only reason I've heard to excluder 3.0(h) is because it's a purchase not a redemption, but 3.02 is labeled redeemed or purchased and it uses Or purchases throughout.

So I don't know why I exclude 3.07(h) if it's a purchase rather than a redemption, other than sort of there are instances where there are specifics that would take it out, you know, a privately-negotiated transaction to sell a particular lot. By its nature it wouldn't work but beyond that, if you're going to do a private transaction with an affiliate, it could work for example.

So anyway I need -- I would appreciate it if you'd give some thought to that.

MS. OBERWETTER: Yes, Your Honor, I'll do that.

THE COURT: Thank you.

MS. OBERWETTER: Thank you.

THE COURT: Anyone else on the left side of the room?

(No audible response.)

THE COURT: All right. Mr. Bennett?

MR. BENNETT: Can I get a short comfort break?

THE COURT: I just didn’t hear you.

MR. BENNETT: Can I get a short comfort break?

THE COURT: Sure.

MR. BENNETT: Thank you, Your Honor.

THE COURT: Why don’t we come back at 3:45? Will that work for everybody?

(No audible response.)

THE COURT: See you all then.

(Recess taken from 3:33 p.m. to 3:43 p.m.)

THE COURT: Have a seat.

For those of you on the phone, and to avoid further interruptions in the court, I'm going to disconnect the phone line. You can immediately reconnect after I disconnect.

Thank you.

(Electronic announcement.)

THE COURT: So now your rebuttals won't be interrupted.

MR. BENNETT: Your Honor, Shane Buck will be the person --

THE COURT: Thank you.

MR. BENNETT: -- (indiscernible) slides. And she probably can't hear us at this (indiscernible).

(Pause)

THE COURT: Ms. Buck, it -- probably going to be helpful if you'll turn on your camera for a moment. There we go. Thank you.

All right, Ms. Buck, you're the presenter.

MR. BENNETT: Chane, we're going to start on Slide 4.

(Mr. Bennett/Mr. Speaker confer.)

MR. BENNETT: May I approach, Your Honor?

THE COURT: Yes, sir, thank you.

MR. BENNETT: Are we ready to go, Your Honor, has everybody dialed in again?

THE COURT: Yeah. We already have 42 people who have dialed back in so we can go ahead.

MR. BENNETT: All right. So for the record, the book is the shortest book by a decent margin.

THE COURT: I will officially declare it is the shortest book.

(Laughter)

MR. BENNETT: Starting on Page 4. Excuse me, having a little (indiscernible).

So I want to start with a couple of general thoughts because I think they're relevant -- I think they're kind of consistent with what's been said before.

It is often said that bondholders have to protect themselves with contract terms, and it's because they have very little else. They have some limited protection by applicable laws but not very much.

But I think there's an important corollary to this, and that is when bondholders do protect themselves, the protection should not be ignored, minimized, or narrowed.

Issuers like the issuer here argue that the terms of indentures have their ordinary meanings and offer no protection beyond their actual words.

And they talked about the owner's manual and they talked about using Black's Law Dictionary and other dictionaries to interpret what they say.

But the corollary is the actual words of the indentures do provide protection in accordance with their ordinary meaning, too. And these provisions have to be given full force and effect.

Here, the bondholders have the benefit of a provision that directly addresses non-pro rata treatment of holders. What could possibly be wrong with that?

And of course if Your Honor may remember that before the pandemic was the first non-pro rata attempts. They didn't get as much publicity as some of the ones afterwards, but people knew what was coming.

A couple of other corollaries that are relevant to us. An indenture can, when it's giving rights to an issuer or when it's giving protections to holders, it can have multiple different ways of getting at the same thing. And the indenture has to comply with all of them in both respects. And there also can be multiple applicable restrictions, and all of them have to be complied with.

We were also told, by the way, the indentures are written and to be enforced as written, there are no value judgments. And I agree with that. We ought to be looking at the words and what the words are saying.

So with that I want to actually start, and always planned to start, more or less where we left off, which is on Page 7 of my charts. And it is to speak about Section 3.02.

And this is 3.02. And the couple of brackets there are mine. And they're there because there are really four parts to Section 3.02.

And the first one is the phrase that I think frankly has been given too much trouble, and it is if less than all of the unsecured notes are to be redeemed pursuant to the provisions of Section 3.07 hereof, that's the first condition.

Now, I note, and you just did and -- before the break, that 3.02 talks about selection of notes to be redeemed or purchased in the title, and the "or purchased" formulation is 14 times in the words that follow; not a few places, 14 times.

So Your Honor decided to put a gloss in the summary judgment papers on this first phrase. And I don't understand why. And I've -- I understand that these words are a little unusual, but they're not imprecise.

They're very precise. And I'm going to propose a synonym that will remove the distractions.

If you take out the words "if less than" and say instead "unless," and now read the sentence: unless all of the unsecured notes are to be redeemed pursuant to the provisions of Section 3.07 hereof, and then on you go.

THE COURT: I think that changes the meaning.

MR. BENNETT: Okay.

THE COURT: It doesn't change it a lot. But here's where my confusion comes in, which I will push on you because I didn't push this one on them. I'll accept your brackets for a minute.

Under your number one bracket, this only controls unsecured notes that are to be redeemed. But then in paragraph -- your bracket two, it says redeemed or purchased.

And so the interpretive difficulty is that the "if" clause or, in your case, the "unless clause," only deals with redeemed, unless redeemed could then say, but if you're going to purchase all this and this. So the "unless" changes the meaning from "if."

MR. BENNETT: Well, only --

THE COURT: This is --

MR. BENNETT: I mean, this is -- there was a lot of briefing on this. It started out -- and I don't know if you remember, it's been a long time. It started out with us saying very clearly that less than all includes none.

And initially our opponents, I think it was a brief written by Quinn Emanuel, said, no, less than all doesn't mean none.

But by the end of the briefing, everyone had agreed that less than all includes the word "none." And, again, all bondholders have are the terms of their contract.

Someone, okay, wrote this provision. If less than all aren't redeemed in this particular way, the following applies.

And then, in the very next phrase which I was going to get to because it's number two, it talks about redemption or purchase.

So it's clearly recognizing by number two, okay, by my number two bracket that number one can be a purchase not involving any redemption at all. Otherwise, the second purchase word has no meaning.

Let's talk just a little bit about policy, okay, and why this is the kind of thing that was important to noteholders, should be important to noteholders, and should be important to this Court.

One, what is this -- what work is this provision trying to do? It's trying to prevent non-pro rata treatment.

Number two, what's wrong with that? I mean, that is one of the fundamental principles that used to be uniformly adhered to with respect to debt instruments, and people were concerned that it wasn't anymore.

And it used to be and may still be, but it's been weakened around the edges, a primary principle around here. Three, what's the problem with enforcing it? All it would say is that if you're a purchaser and you make a deal with the issuer, it's only the issuer -- there was some argument that this is -- could apply to any purchase. Well, we just heard that the indentures is -- only binds the issuer.

If an issuer wants to go out and buy things, they have to make offers; can be prorated, it can be done by lot. You don't have to offer all. But they have to deal so equally.

And by the way, it wasn't even -- this particular issuer wasn't worried about that because of course their initial proposal to the unsecured notes was to offer the exchange to everyone.

So giving it this -- the meaning it's intended wasn't going to disrupt anything.

Is this an abusive result for the Debtor or an abusive result for holders? Of course it isn't.

And is this really an inappropriate provision as written in the environment in which it was written?

THE COURT: So if I accept your interpretation for a moment of 3.02, how would that apply and be implemented with respect to a privately negotiated transaction with a third party?

MR. BENNETT: It's the issuer in a third party, so the issuer, when they go negotiate with the third party, has to say to them open -- either, open paren. one, I'll do the same thing for everybody else who wants it or, open paren. two, I've got to offer it to everybody and it will be prorated as to you or distributed by lot as to you.

It is just a rule that the issuer would have to follow. And, again, what in God's name is wrong with that?

THE COURT: Well, I mean, first of all, I think the parties could agree to that if that's what they agreed to, and there would --

MR. BENNETT: Okay.

THE COURT: -- be nothing wrong with it. But I'm not sure that that's an item without a cost to it. But we ought to be sure that's what it says.

If you try and negotiate a private transaction with a third party, if it's truly a third party then we're not really worried about the pro rata issue because everybody gets the pro rata benefit of an arm's length transaction.

And you probably get a higher price if you don't have to offer it to everybody because you can negotiate a better deal.

MR. BENNETT: Your Honor

THE COURT: It may be that that's not what the parties agreed to. And I agree with you that if they agreed not to do that, that's fine. But it's not costless either.

MR. BENNETT: I'm not sure that's even right, okay. But let's assume that it is. If less than all includes none, and given the use of purchase in the immediate following line, I think this draftsperson was on the ball.

It is not ambiguous. It just isn't if less than all is none, or if you agree with me that the equivalent of -- if less than is unless. And I think they're exactly the same. And, again, Your Honor started I think reading this provision, and you saw purchase popping up all over the place. And it does 14 times.

And no one's ever given an explanation as to how to make all 14 of them work if you restrict the entire operation of 3.02 to redemptions.

This does not say if there is a redemption but not all are to be redeemed pursuant to 3.07. It doesn't say that. It's really applying to everything.

It's a reasonable term. It's a reasonable term in the time. There is no reason to call it ambiguous and to add a gloss that is simply not there. So I start there.

Now, does it even matter?

I'm going to skip Page 8 for a second. We may come back to it. Let's go to Page 10.

They didn't use these words. But what Mr. Clareman told you is that small "r" redemption note at the top of this page, it's -- we're looking for the meaning of small "r" redemption.

What he said to you -- although it took him paragraph after paragraph after paragraph and page after page after page -- is that redemption small "r" is defined only as transactions included in 3.07(a) through (g). That's what he said.

He said -- but that's not there. I mean, you could have defined Redemption that way with a capital "R."

Again, we're looking at -- we're going to protect bondholders, we're going to give them the rights so they protect it for themselves.

One thing they did not do is narrow the word "redemption" to the transactions included in 3.07(a) through (g).

Your Honor also correctly identified that they said 3.07, all of it, including 3.07(h). So --

THE COURT: Does this matter under -- I'm now understanding your argument. If I didn't understand it before, I didn't understand it before. I understand your argument as to how to read 3.02.

If I read 3.02 the way that you're telling me to read 3.02, which I'm not saying I'll do, but I fully understand the argument, why do I care --

MR. BENNETT: You --

THE COURT: -- what 3.07(h) is?

MR. BENNETT: You do not.

THE COURT: So you don't care whether 3.07(h) is a redemption or not a redemption. It can be a purchase, it can be a redemption, it still has to be in effect pro rata.

MR. BENNETT: Correct.

THE COURT: Pro rata offered if not --

MR. BENNETT: Well, --

THE COURT: -- pro rata made.

MR. BENNETT: -- and let's -- so let's be technical just to be complete.

In the first part where it says the trustee has to select, it talks about proration by lot or another fair method.

Then it keeps going about the DTC's involvement correctly. And, frankly, we can get -- work through the DTC materials.

But DTC, they're kind of purists. Their rule is pro rata or lot. They don't have -- they don't permit another method. They've got two boxes you can check, and they're -- and so it's consistent. But the extra choice isn't available.

Okay. So --

THE COURT: But just -- but -- sorry, I thought you were going somewhere else.

MR. BENNETT: Okay.

THE COURT: You don't care -- if your definition --

MR. BENNETT: If --

THE COURT: Sorry. If your interpretation of the first paragraph of 3.02 is accepted by the Court, then it is irrelevant to your argument whether 3.07(h) is a redemption or not.

MR. BENNETT: Correct.

THE COURT: Okay.

MR. BENNETT: Applies either way.

THE COURT: Okay.

MR. BENNETT: But I will also say, Your Honor, that 3.07(h) is also a redemption provision because, again, it -- we're talking about what small "R" means, redemption. And --

THE COURT: But why are you telling me this if it doesn't matter?

MR. BENNETT: Because I -- you said you weren't going to tell me whether you accepted my interpretation or not. If you tell me you're going to accept my interpretation, we'll make this really short.

THE COURT: Got it. Okay. That's a fair answer.

MR. BENNETT: Okay. So under New York law -- and I know that there was an effort to distinguish these cases, but they are not distinguishable for the proposition for which they are cited, which is you go to the dictionary when you have a small "R" word.

And these are accurately -- the cases are accurately cited, and you can look at them and decide whether we've deceived anybody in any way. I don't think we did.

Black's Law Dictionary -- and by the way, if you need to have a theme, which you don't because frankly all of them work for us, I don't care which one. Okay.

But the theme is, is it's an acquisition by the issuer. That's a redemption. That's what the courts say. That's what the definitions say.

Sometimes there's an extra bell or whistle, like before maturity. You know, in all of the extra bells and whistles, they're also satisfied here by the transaction that was evidenced by the exchange agreement.

THE COURT: I think the one -- I don't agree with that totally but the one exception may be pretty narrow, which is there are some of the cases that do say required rather than negotiated. In other words, a purchase where the purchaser can require the seller to sell.

MR. BENNETT: Okay.

THE COURT: So I think there is -- are some like that. But beyond that I think you're right.

MR. BENNETT: Well, let's go -- even deal with that. Why don't we -- and we'll come back because I don't want to, you know, go over all the other things that are also important. But I want to get right to your issue.

The exchange agreement, Your Honor, is the agreement that created the indenture. Excuse me, created the redemption.

The exchange agreement in -- when it was agreed to by the parties created a mandatory purchase by the Debtors of the 2027 notes that were subject to the exchange agreement at a specified price before its maturity. It's all in the exchange agreement.

So if you take a look at Slide 20, here we've laid it out. And this is consistent with Your Honor's determination about order of operations that occurred this morning.

Number one, the parties signed the exchange agreement. No notes have been exchanged, okay? But the agreement states the issuer and the existing 2027 noteholders desire to exchange principal amounts of the existing 2027 notes.

Then the parties become bound by the exchange agreement. And we have the relevant quote there. And then, third, in what -- the agreement they became bound to, they agreed that the issuer could buy. And it -- there's actually specific performance in the exchange agreement that the issuer can compel. Both sides can compel performance of the obligations under the exchange agreement.

So it actually -- I was interested that when Mr. Kirpalani was speaking on behalf of the Defendants in our case at opening argument, he said the additional definition term is, well, you have to have a price specified in advance.

And we found no dictionary definition had that whatsoever. But that did cause me to think did that actually happen. And, yes, it did. It happened in the exchange agreement.

And so now let's look at the chronology, okay. That's on Page 21. And what this demonstrates only is that there were several hours that passed between the time when the exchange agreement became effective -- and I don't know what precise minute you decide that it happened, whether it was when the wires came in or at some -- at a later point in time. But the wires came in long before 3.08. About the last thing that happened was that the parties actually conducted the exchange.

So if there is a requirement anywhere in the definitions -- and there isn't.

And if Your Honor wants to put a gloss on it and say that there has to be some form of ability by the -- in order for there to be a redemption, it has to be both in advance and has to be contractually -- a contractual obligation of the seller to sell the notes to the issuer at par, all those things happened here in the exchange agreement itself.

So there you have it. It was a redemption.

Now, again, because Your Honor hasn't told me you've agreed with anything yet, let's go through a little bit of the work on how the definitions work and what the cases say. So, first of all, Page 11. Slide 11, please. I talked about -- we're there.

I talked about Black's Law Dictionary as defining a redemption as the reacquisition of a security by the issuer. Redemption usually refers to the purchase of a bond before maturity. Check, check, check, that's us.

Barron's Dictionary of Finance and Investment Terms which, by the way, if there's anything that's closer to custom and practice, I don't think this qualifies.

But if it was -- if you were looking for something that's kind of closer than one person's opinion, this might be it.

Repayment of a debt security or preferred stock issue at or before maturity at par or at a premium price. It was par and a premium because they got the redemption.

So what do courts do? Well, the courts in New York, which are the courts that matter -- and, again, I don't know how and why that my opponent says that these cases don't say this because they're accurately quoted.

What Chesapeake Energy did is basically used the very same definitions I just listed for you, uses the same resources.

And then couldn't believe the timing. Slide 13. United States Supreme Court did something that I tried to do with a witness, and I had a stubborn witness and he wouldn't agree that a redemption is a kind of a purchase, which it is.

It is one category of a purchase. It's not the only category of purchase but it is one category of a purchase.

And the Supreme Court, by the way, says, both that that's true and, number two, that the purchase by the issuer, not with anything else, constitutes the redemption as far as the Supreme Court is concerned.

And, yes, it was not a bankruptcy case. But that I don't think reduces the force of the definition given to us by the United States Supreme Court.

Whitebox. I don't think we need Whitebox. But I do think Your Honor should reread it. You're right. Your opinion was right that it does not involve two redemptions. But it involved one transaction that they did not characterize as a redemption that the Court said it was a redemption. That's why we cited it. That's why it's important.

Now we turn to the parol evidence issue. As I said before, I don't think we're dealing with an ambiguous term. And I think purchases are included.

I think someone did a -- maybe they did too good a job, but they did a good job doing something that was absolutely sensible from the perspective of a holder, it doesn't hurt anybody else materially, and is unbelievably fair.

But the issue has come up as to whether or not if we have to deal with the issue of whether or not there is a redemption, we are told, well, there was a whole bunch of opinions that came -- were offered to Your Honor in court.

And, frankly, they should not in any way influence you. For one reason, I mean, and I was not here of course but I was watching on video when Mr. Healy admitted that he spent 12 hours with all of our adversaries in this case drilling him on his testimony to make sure he got it right.

And he -- and when Mr. Jones asked him, he spent 12 hours being told exactly -- and I'm paraphrasing -- exactly what you should say and how to say it, and he said, yes. So that's what you got, Your Honor.

But beside that, besides the unbelievable credibility problems with everyone mentioning an after-the-fact definition, parol evidence is not admissible to interpret an indenture.

And what is admissible are the dictionary definitions plain meanings of words. If someone wants to say that the plain meaning of words is different because of a trade usage, here's what they have to show.

Third bullet. Evidence of custom and usage must be so well-settled, so uniformly acted upon, and so long continued as to raise a fair presumption that it was known to both contracting parties and that they contracted in reference thereto.

It does not mean proof of the parties' subjective intent, much less their undisclosed subjective intent. The next paragraph's the same effect.

I don't think it could be -- it's also remarkable that this custom and trade usage escaped the Supreme Court entirely.

Your Honor, there was no effort whatsoever for the Defendants to meet their burden to establish a custom and usage definition of redemption. They didn't even really offer one.

What they offered was what a couple of people were told to say in direct testimony in this court. It was self-serving subjective opinions, just like in Mitsubishi Corp. versus Interstate Chem Corp.

Here's the reference to the exact quote of the question and answer with respect to Mr. Healy and his deposition preparation.

The last bullet's really important. And it goes to all of this so-called commercial understanding evidence. Your Honor probably hasn't looked at the privilege logs, and I don't blame you. It's not any fun.

But the privilege logs show hundreds of communications that are privileged only if they involve requests for or receipts of legal advice concerning this transaction. Hundreds. And all over a period of just several months.

Whenever anyone testified to the commercial understandings, no one said, and, oh, by the way, I completely disregarded everything lawyers told me and I only relied on my commercial understanding, and I didn't pay any attention to what the lawyers said. And that didn't come from anyone.

And of course what they really relied upon with $26 million in transaction fees and hundreds of supposedly privileged communications that are about giving and receiving legal advice, they relied on the legal advice; not on any commercial understandings. That's what really happened in this case.

So Your Honor should be disregarding them absolutely entirely.

Slide 17 is just a reproduction of the Kevin Smith testimony that you've already seen. It just -- your reluctance to accept that testimony for any purpose, you know, for any purpose other than supposed good faith and, frankly, for the reasons I just indicated and hundreds of privilege communications, I don't think it should be accepted for any purpose.

It doesn't have any role in interpreting what the word small "r" redemption means.

Okay. On Pages 19 through 21, we've covered this. This is if you are searching for a predefined price, if you think a predefined price in an obligation is an element of redemption, contrary to all of the dictionary definitions, you had it. It was in the exchange agreement.

And if they think having the -- a loan outstanding for two hours is perfectly substantive, having an agreement outstanding for three hours is -- during which the redemption was agreed to and when it was actually performed is equally substantive.

The conclusion is on Page 22. Between the time that the exchange agreement became effective and the time that the 2027 notes were delivered, the select sellers were obligated to tender their notes for consideration set forth in the exchange agreement when the pertinent conditions were met. So even if -- let's go back to 3.02; 3.02 is on Page 7, or

Slide 7.

If the way we have to read my one bracket, my effort to identify the, you know, first clause, if we have to read this to say if there has been a redemption and less than all of the unsecured notes are to be redeemed pursuant to provisions of Section 3.07 -- well, none of them were redeemed pursuant to the requirements of, you know, 3.07 -- then the trustee will select.

But, again, that's not required. That's not what the draftsperson intended. That's not what the draftsperson wrote. But if it is how it has to be interpreted, it has been satisfied.

Now we have to turn to 3.07(h). And, Your Honor, because I want to spend a minute on the first otherwise, the one at the end of the second sentence. And, frankly, if you want to read this sentence accurately or otherwise modify its tender or exchange offers, it doesn't modify anything else.

And I think on Slide 49 of our -- of my opponent, Mr. Clareman, where he practices with his ellipses -- I don't know if you have it in front of you, Your Honor, but I don't have the ability to project it.

But if you go take a look at Slide 49 of my opponent's slide, he didn't give you a fair chance. I'm looking at the second bullet on the right -- lower righthand corner.

THE COURT: Okay.

MR. BENNETT: Obviously there were words between that were omitted, and I call your attention to them now. Okay. So does 3.0(h) include redemptions? The answer is absolutely they do under the common dictionary definition. And this can't be surprising. Why? Because Section 3.07 is part of a section of the indenture entitled optional redemption.

And Your Honor correctly pointed out that 3.02 refers to unsecured notes redeemed pursuant to the provisions of 3.07, not 3.07(a) through (g).

I'm sorry, Slide 25.

But there was actually some witness testimony about this. When Mr. Smith was talking about his work and the development of his commercial understanding, he said, I reviewed this redemption section, including what's in 3.07(h). He included 3.07(h) as part of the redemption section.

THE COURT: I don't think there's a dispute that it's part of the redemption section. But it's also a part of the purchase price section.

MR. BENNETT: Well, --

THE COURT: The section is labeled --

MR. BENNETT: I get that. Well, wait, that one isn't.

THE COURT: I'm sorry. That section is labeled optional redemption.

MR. BENNETT: Redemption, right. The purchase is 3.02.

THE COURT: You're right, you're correct.

MR. BENNETT: So it's redemption or purchase, okay, and --

THE COURT: But there's no question it is part of the optional redemption section. Does this agreement have a provision that says ignore the headings?

MR. BENNETT: It does.

THE COURT: So why do I care that --

MR. BENNETT: But --

THE COURT: I know I brought it up but then --

MR. BENNETT: But to the extent that -- but, by the way, to the extent that you find an ambiguity, I think they're parol evidence. And they can come in for that purpose.

So they're not part of the indenture but they're signals for interpretation purposes. And there are actually cases that say that. And they're in one of our briefs but I don't remember. I'm never going to get the right --

THE COURT: Right.

MR. BENNETT: -- authorities right now.

In any event, let's talk about 4.09 because I think that 4.09(h) -- now, remember, this is a little bit odd because 4.09(h) is no longer part of the indenture. It was taken away.

But it was part of the indenture at the time the indenture was signed, so it's a good signal for what was intended in the rest of the document.

Notice that 4.09 is regulating exchanges converted or otherwise redeemed. Transactions that involve exchanged, converted, or otherwise redeemed.

Now, if you look through the entire indenture -- and this was in our brief, so our opponents knew that this was our point -- 3.07(h) is the only provision of the indenture that would include the transaction regulated by 4.09(h).

None of the others do. They all have different specified, very tightly specified circumstances. It is only 3.07(h) that could possibly provide a platform for the transactions that are regulated by 4.09(h), the only one.

So if you didn't think that 3.07(h) included redemptions, you would be wrong because 4.09 is only talking about 3.07(h), and it says 3.07(h) is a redemption provision. That is the right way we believe to put 4.09 together, a deleted provision but one that was there at the inception, to help inform what 3.07 actually -- what work it actually does. Okay. On Page 28 we talk about the fact that it makes sense for 3.07(h) to use the term "purchase" because it's trying to regulate lots of different things.

It does, by the way, give some rights because it doesn't let affiliates sell but it lets affiliates purchase. And so purchase as a use of -- remember, purchase includes redemptions. Not just me, Supreme Court and the dictionary definitions, okay.

And so what they're doing in 3.07(h) is regulate both. And they do so by just using the word "purchase." And of course there's nothing in 3.07(h) that says the transactions permitted by 3.07(h) are not also regulated by the redemption provisions and elsewhere in the document. That's nowhere.

Okay. Now, whether -- Wolverine Top Co is a third party. Your Honor may say this is not going to matter either. I hope you do. But I will tell you that this is the easiest part of the case.

So where do we start? We start with Malek's (phonetic) testimony. And Mr. Malek, because he was being a little bit of a difficult witness, forced me to ask him to define third party. This is at Lines 22 and 23.

And his answer is, and a lender that is neither affiliated with Incora or Platinum Equity. And I say, okay, I'll accept that definition.

And then I'm talking about at this point a document that we're going to see in a second, which is the $25 million note. That's what this is. But it's the 25 million note negotiated at arm's length with a third party.

He says, no, because the funds and the injunction -- and injection, sorry, came from Platinum Advice Funds. Okay. Hold that. I think that's an admission gets us all the way home. But it doesn't have to.

Jamie O'Connell (phonetic), this is -- he's just talking about affiliates, but it's talking about people's understanding. We'll get to what they really knew in a minute.

Okay. This is a question. That's because Platinum and Wolverine Top Co are both affiliates of the issuer, correct? And he says, yes, that's correct. Okay. So let's now move on to some facts.

Your Honor, when it first came up during the trial, the Debtors elicited testimony from Mr. O'Connell concerning his engagement agreement with the companies.
And we learned then that Wolverine Top Holding Corporation, which I've been calling Wolverine Top Co, was a PJT client during this entire period of time.

And the Debtors elicited testimony from Mr. O'Connell concerning his understanding of why Top Co was a PJT client.

And the parties, though, agreed -- and I am part of that agreement -- that this issue would not be an issue for the trial but would have to be sorted out later in the main case. And I'm not presenting this slide to revisit any of this.

There are two sides to this engagement agreement. Today I want to talk about what the signers on behalf of the companies knew and the significance of the fact that the companies engaged a common advisor for Wolverine Top Co, a holder, and Wesco, the issuer.

So I guess it's conceivable that both PJT and Milbank did not fully understand Top Co's importance to the Wesco structure.

But today we should consider the other side of the engagement agreements, all of the entities that signed this engagement agreement on behalf of the Wolver/Wesco signed. And by the way, the person who actually signed them was a lawyer. All of them knew that Wesco/Top Co's ownership of the 2027 notes issued by Wesco and guaranteed my Intermediate Two were there.

They knew that Wolverine/Top Co's ownership of the $25 million note and Wolverine's role as the sole obligor under the CASA were issues in the case. It surely did.

And, in fact, there's reference to testimony if you want them or if anyone questions that. I'm not going to burden the record, but if you want them, I'll give them to you. I've got a long list.

Even Mr. Bartels knew all of this with the possible exception of the actual parties to the CASA.

Platinum and all of the entities on the chart that we're going to come to, which is on Page 34, and we can flip to that now, decided that it was appropriate to share professionals even though all of -- one of the parties was an obligor, another one was a guarantor, and another party was the owner of the debts.

This is not something third parties do. Third parties do not share professionals when the third parties are on opposite side of a contemplated restructuring; not ever.

Bartels testified that he assumed that Milbank and PJT represented all four of these entities, discussed it at the time with Milbank and PJT, and did not raise any objection or obtain independent advice.

Even Bartels, therefore, did not regard Wolverine/Top Co as a third party.

So going back, Slide 32 is the signatures of -- is the Don Holland's signature on behalf of all of the Wolverine slash --

THE COURT: Yeah, I'm going to --

MR. BENNETT: -- Wesco.

THE COURT: I think we're wasting a little bit of time here because that misses the arguments. I -- we have two arguments made here.

Ms. Oberwetter says this isn't a list, who cares what it says. I think she has some merit, and there's a long list. So if it's just exemplar, we don't care.

And then Mr. Clareman says the reason -- he doesn't deny that they are parent/child entities or subsidiary entities.

He says because of the structure of the deal that the use of the term -- I'm sorry, the structure of the document, that the use of the third parties must by its nature exclude subsidiaries and affiliates.

Now, you heard my skepticism about that.

MR. BENNETT: Well, --

THE COURT: But it isn't the factual -- you're getting to the fact of whether they are subsidiaries or not. And that's just not disputed. So I'd rather not spend time on whether they are -- what their relationship was. Their relationship was parent subsidiary.

MR. BENNETT: I'm glad --

THE COURT: This is a definitional issue.

MR. BENNETT: I'm glad Your Honor reminded me because their idea that third parties are just the people that are subject to the indenture, then why is it that Wesco can be a buyer?

THE COURT: Why is it that what?

MR. BENNETT: Wesco can be a buyer. Look at the term. It says any such purchases may be made through open market or privately negotiation with third parties with --

THE COURT: No, --

MR. BENNETT: -- both sides.

THE COURT: No. Here's the -- I think you're not hearing their argument. Here's the language. She's saying that this sentence that begins with the word "any" and ends with the word "determine" is a laundry list.

So they can do a privately negotiated transaction with a third party, but because of the language of this, these are simply examples. They could also do a privately negotiated transaction with an affiliate.

I'm just telling you nobody is denying it's an affiliate at all. They're simply saying definitionally I'm reading this wrong.

Mr. Clareman is saying because we use subsidiaries and affiliates elsewhere and the document used the term third parties here, third parties by necessity has to exclude those, which I find -- I didn't buy, to be blunt.

And then but Ms. Oberwetter's argument, that it's simply a laundry list so who cares what it says, she doesn't deny that they are affiliates. And she doesn't deny the parent/child relationship.

She says it's irrelevant because it's a laundry list and this is one of the many permissive things they can do. It doesn't exclude things not on the list.

MR. BENNETT: Your Honor, it's --

THE COURT: That's their argument.

MR. BENNETT: -- only an unlimited laundry list if you say that otherwise modifies anything other than tender or exchange offers.

It's -- and by the way, the fact that interpreting otherwise to modify anything before those words makes those prior words irrelevant and lets them do no work --

THE COURT: Well, no, I said that to her. I said it -- why do we even care about it. And she said, it's just a laundry list, doesn't mean anything.

MR. BENNETT: It's not. It is an explanation of the prior sentence. It says these are the purchases you can make.

THE COURT: Her point is -- and she didn't --

MR. BENNETT: Once again --

THE COURT: -- use this argument, but she could have. It says any such purchases may be made.

MR. BENNETT: Yes. And there's --

THE COURT: And it's maybe made --

MR. BENNETT: -- a lot of authority that says --

THE COURT: -- in these -- I know. May has multiple meanings in the world.

MR. BENNETT: Correct.

THE COURT: But her -- but it may be made through any of these things or it may be made otherwise.

It may very well just be a laundry list. I don't think it does any force to your argument one way or the other, frankly, to make this argument.

But it certainly does no force to just argue that they are a parent/child relationship because everybody admits that. So I don't want to spend time on that fact.

MR. BENNETT: Okay. But there was more than a parent/child relationship, as I just indicated. They shared professionals, had --

THE COURT: Controlled every -- no one disputes any of that.

MR. BENNETT: Okay, fine.

THE COURT: That --

MR. BENNETT: Well, --

THE COURT: -- is not their argument.

MR. BENNETT: I know that. But I wanted to make sure I covered what I have to cover.

THE COURT: Well, --

MR. BENNETT: But Your Honor otherwise has said before, again, we're in the -- we're talking about an indenture that protects holders.

THE COURT: Right.

MR. BENNETT: Okay. We're talking about giving effect because it's all they've got. All they've got are the words of the indenture. And so to the extent that we're being told to ignore words, --

THE COURT: But I'm --

MR. BENNETT: -- any words, --

THE COURT: But I'm telling you you're not engaging their argument.

MR. BENNETT: I am engaging their argument.

THE COURT: I don't think you are.

MR. BENNETT: To interpret otherwise to apply to everything that precedes it makes the third parties' language irrelevant. It makes it completely irrelevant.

THE COURT: And her answer to that is, that's fine to make it irrelevant because it's a laundry list, and laundry lists don't matter, if that's all it is, is a laundry list.

MR. BENNETT: Well, but even --

THE COURT: What is your answer to that argument?

MR. BENNETT: The words don't matter are not allowed.

THE COURT: Well, if you have an --

MR. BENNETT: No, they're not.

THE COURT: -- exemplar list, it says these things are permitted but so may other things be. It's not --

MR. BENNETT: Then --

THE COURT: -- it doesn't exclude unlisted things. That is her argument. You can confront that argument.

MR. BENNETT: I'm confronting that argument by saying accepting that arguments means that the -- I think the second sentence modifies the first sentence.

THE COURT: Okay.

MR. BENNETT: That's its purpose.

You're saying the second is just flippant extra words because if you -- if it wasn't there, there would be no dispute that you could purchase --

THE COURT: And I said that to her.

MR. BENNETT: -- unsecured notes from anyone.

THE COURT: And she said back to me, yeah, but it's just a clarifying laundry list, we can do these things but we can do more. Just what's your response to that?

MR. BENNETT: My response is that we don't go to indentures and say, oh, this sentence doesn't matter, it's just an example because creditors decided to put it there. There was a reason for it.

Any explanation that says there's no reason for the sentence is not an adequate reason.

THE COURT: Okay. I think that engages her argument. I'm just telling you going into the other issues doesn't.

MR. BENNETT: Okay.

THE COURT: There's no dispute on the other issues.

MR. BENNETT: All right. Well, okay, then I'll skip through.

There are other examples that suggest a lack of a relationship, a third party relationship. They're in the papers. Okay.

I hope I don't have to spend any time about the assertion that we waived the 3.07(h) claim. They said we didn't plead it.

First of all, you plead facts underlying your claims for relief, not theories. But just in case that there's anything to that at all, let's take a look at Slide 40.

And this is kind of the history of 3.07(h). On August 23rd, 2023, which by my count is five months before the trial, five days less than five months before the trial began, the counterclaim defendants themselves -- that's the Debtor -- they sought a declaratory judgment against Langur Maize that the selective exchange was properly executed under 3.07(h) of the indenture, and it was therefore not a redemption subject to 3.02. They put it in issue all by themselves.

On August 23rd, 2023 Langur Maize argued on summary judgment that the facts support the grant of summary judgment because the exchange was not -- because the exchange -- excuse me.

We were entitled to summary judgment because they claimed that it -- against the declaration of the exchange was properly executed under 3.07.

And during opening argument, counsel for Langur Maize, that would be me, argued that the selective exchange breached 3.07(h). And it wasn't just on the transcript.

The next page, Slide 41, is a slide that was in the opening argument. It'll be in with a copy of the slides that Your Honor has as well.

And in your opinion Your Honor also referenced that 3.07(h) claim. And that's on Slide 42. So nothing was waived.

I'm going to skip over the next slide. It's not controversial.

We all know this and it's in the record that WSFS did not comply, it did not select notes for redemption pro rata, by lot, or by such method as it shall deem fair and appropriate.

The testimony by Mr. Healy also revealed that they had ample opportunities to do so, that the transaction was not going to close unless they cooperated with it.

And at any point in time they could have said, gee, we have an obligation to look at this, and this ought to be pro rata and it's not, or ought to be by lot and it's not. So the conclusion with respect to that part is there was in fact an indenture breach. You can get there three ways.

One, to interpret 3.07 the way I interpret 3.07, which is a clear effort by a draftsperson to enforce pro rata rules.

Or, secondly, you can look at all -- whether or not this was a -- this -- whether whoever participated was a redemption or not based upon either the dictionary definitions themselves, and even the definitions they procured in opening argument saying you needed an advance agreement because the advance agreement was found in the exchange agreement itself.

Or, third, you have to -- you would find that the -- that a third party was on the wrong side.

And, frankly, as we'll get into, and it's not for today, when we talk about tortious interference, if that's where we are, if that last prong is where we really are, then it's the fact that the exchange agreement was signed by a whole bunch of people who were intimately involved in excluding people who were entitled to be excluded.

But that's for another day, and I agree that's for another day.

Next section. And I'll be brief. And this is about Section 9.02.

Your Honor said something really interesting yesterday, and it peaked up my ears and I wanted to engage you in a debate with it, but it wasn't my time to talk.

And you said correctly that the time of payment in Bankruptcy Court doesn't matter, that a note that matures in two years and a note that matures in ten years both are deemed accelerated in a fair, original principal amount, and they share equally so long as there's no collateral or no subordination involved.

Indentures, though, are kind of irrelevant after a bankruptcy case is filed. In fact, unless there's a subordination provision that adversely affects the indenture or this collateral, I probably keep the indentures but I never look at them again because once you're in bankruptcy, none of that stuff matters.

But timing of payment and when -- whether you're an early maturing or a later maturing obligation outside of a bankruptcy case when an indenture does its work, yeah, that matters, and it matters a lot.

And the prices are always -- not for triple "A" credit, but for most credits the prices are very substantially different if it's a two-year versus a ten-year or 20-year piece of paper.

THE COURT: The interest rate -- but the interest rates are different, too.

MR. BENNETT: Pardon?

THE COURT: Interest rates presumably --

MR. BENNETT: I agree --

THE COURT: -- are different and --

MR. BENNETT: -- you have to correct for everything. But one of -- but there's also differences in maturity based on people's --

THE COURT: Yeah.

MR. BENNETT: -- estimation of how much risk there is in the future. Okay.

And so that's one concept that I want to keep over here, okay, up in the air is that when we talk about what an indenture is protecting, we're not just talking about bankruptcy results.

We're talking about stuff that goes on in the more relevant period before bankruptcy from an indenture perspective.

Now, we're having a definition problem again, okay. This indenture uses the word -- and many others do, too, by the way -- uses the word "ranking," small "R." It uses the word "ranking" in the same document that talks about subordination and talks about liens.

Ranking can't be the same as subordination. They are different words. They have -- they can have a different meaning.

And if a draftsman of an indenture working on behalf of creditors says, okay, I want to have three provisions, I want to have a provision that deals with subordination, I want to have a provision that deals with release of liens, which by the way we don't have.

They justified when responding to the 9.02 argument made by the '24, '26 noteholders, one of the responses was, well, we have release of lien provisions in this indenture so that's what's really at stake, and this would really be a duplicate -- ranking provision would be a duplicate to a release of liens provision.

That argument, whether or not it works for the 24s or the 26s, it doesn't work for the unsecured indenture because the unsecured indenture doesn't have any provisions dealing with releases of liens.

So you've got someone representing the interest of unsecured creditors. They got a provision that says ranking. They got a provision that says subordination. Are we allowed to say they're the same? My answer to you is, no, we are not.

If someone decided -- remember, they're writing a document in this case that's got to last seven years; in other cases that's got to last 20 years. And someone's thinking, how can I be heard?

So if they write with different provisions using different words, okay, we've got to figure out why they did it. Or we have to supply some meaning for the alternative way of addressing maybe a similar situation. But it's not being addressed in the same way.

So to try to make this clearer, we have a little chart which also deals with the issue of proving that there was a change in ranking.

We say that ranking, okay, which we have some, you know, words here that talks about like what we think it means.

But the basic idea is it takes into account everything.

And the point was made, okay, which provisions, which amendment do you think affected your ranking? Well, the third and the fourth amendments both affected our ranking.

But if you have to -- you know, the fourth amendment, which provides for the creation of additional secured debt, okay, is -- at an earlier maturity, that definitely affects ranking.

And so the chart on Page 51 is where I want to go right now, okay, shows what happened to the poor unsecured noteholders who are excluded from everything.

And it deals with their priority with respect to liens and their priority with respect to time. And before bankruptcy, priority with respect to time matters a great deal.

So the only way to say, and the only way they have said, that 9.02 wasn't breached is because they say ranking is the same as subordination. But I say that is the one argument that they cannot make.

Again, unsecured credit -- excuse me. Bondholders have only one way to protect themselves. It is in their document.

When they decide to address the similar or related situations with different words, it is our responsibility to give effect to both approaches, do our best never to say, oh, that's just the same because that is not an appropriate rule of construction in this environment.

THE COURT: So show me where the duplication is because, I mean, strikes me that you're saying that ranking includes the term maturity, which it could have said, so it doesn't. Why would I add maturity in? Your argument is because subordination is other places.

So I'm looking at the definition of subordinated indebtedness. That doesn't provide this protection, right?

Where are you saying you get the protection --

MR. BENNETT: Oh, --

THE COURT: -- in ranking of payment?

MR. BENNETT: -- the provision is -- I'm sorry. Let's go to Page 47. The provision, I'm sorry, is on Page 46.

It's a sacred right.

THE COURT: Right. Any change to the ranking of the unsecured notes and respective right of payment, right?

MR. BENNETT: Right.

THE COURT: So if that means maturity, it could have just said the maturity, and we wouldn't be having this issue. The word maturity is used in the document. That's not used here.

So if you're right, then there ought to be some provision that would prohibit subordination of the 2027 indenture to others secured -- I'm sorry, to other unsecured payments. Where is that?

MR. BENNETT: I'm -- I'll catch it on the next round. I'll go look for the indenture. It's there. The word "subordination" is used somewhere and I will find it.

THE COURT: I know it's used somewhere. But I --

MR. BENNETT: Yeah.

THE COURT: But does it -- is it used as something that would preclude subordinating the 2027 indentures to other unsecured debts?

MR. BENNETT: Your Honor, I respectfully think it's the wrong question. I think that we -- that's backwards. I mean, it's -- I guess it's a way of approaching it. But the direct way to approach it is to say, okay, I've got a word, "ranking."

And if you take a look at the bottom of Page 47, there are -- turn out to be dictionary definitions of the word "ranking." And they're very broad.

Ranking is a term that is broader than the technical term "subordination," is broader than term "lien subordination." And it's broader than the term, you know, "release of liens."

And so Merrian-Webster, position, order, or standing without a group.

Oxford English Dictionary, probably a little better for me, to give a certain position in a sequence, series, or hierarchy.

Ranking is very broad. And if the Debtor didn't want to be tested on ranking as well as subordination as well as collateral releases, they should have said, I don't like that word, or I want a different word. But they didn't. They said small "r" ranking is perfectly okay with them.

THE COURT: It's ranking with respect to right of payment, which --

MR. BENNETT: Okay.

THE COURT: -- is not just a ranking. I can't think of anything that's a ranking that needs to be a ranking with respect to the right of payment. So --

MR. BENNETT: Your Honor, a sequence, time matters to -- particularly in an environment outside of bankruptcy, the ability to -- the ability of someone to collect in six months or a year is a difference in rank.

(Pause)

THE COURT: I hear what you're telling me. I don't know what to do with that.

MR. BENNETT: It wasn't argued so maybe I don't need to talk about it today. But in the briefs there was a discussion about Platinum being exculpated by Section 13.05 of the indenture, which the important words are "as such."

THE COURT: Right.

MR. BENNETT: And no one's saying that the reason why Platinum is liable is because of their capacity as an equity holder. It's because of what they did. And there are cases that we've cited.

So my conclusion with respect to this. Your Honor, we actually made an error on the top of Page 61 which I want to correct.

If Your Honor makes determinations as a result of this hearing, they have to be in the form of recommended findings and recommended conclusions and recommended judgment because our case is a related matter where --

THE COURT: But your case what?

MR. BENNETT: Our case is not core and --

THE COURT: Well, part of it may be core and part of it may not be core.

MR. BENNETT: Well, remember we're not the ones seeking a change in the capital structure. This is just a damage claim by us against non-Debtors. So, frankly, I think it's completely noncore.

And you may have -- I don't know if you ruled specifically on that point but you certainly said it's -- they're not claims of the estate and we don't own them.

THE COURT: I agree your claims against -- are you saying that there are zero remedies that you're seeking against the Debtor, zero?

MR. BENNETT: That's correct. We already have a we already filed a proof of claim for the full amount of our debt. We don't have anything else against the Debtor.

THE COURT: Okay. Then I agree it does need to be that.

MR. BENNETT: Yeah.

And I think with that, if Your Honor has any questions, --

THE COURT: All right. Thank you.

Anyone else from the right side of the room?

MR. ROSENBAUM: Good afternoon, Your Honor.

Mr. Bennett, might I use your slide?

MR. BENNETT: Yes.

(Mr. Rosenbaum/Mr. Bennett confer.)

MR. ROSENBAUM: I'll be brief because we join in the arguments of Langur Maize with respect to Section 3.02, Your Honor. And with the exception of 3.07(h), which --

THE COURT: Why does your client care?

MR. ROSENBAUM: Well, the 2024 holders care. So that is the predominant part of my argument, Your Honor.

THE COURT: Okay. Go ahead.

MR. ROSENBAUM: And so starting from that premise I just want to at least for the record be clear on this. We the 2024 and 2026 holders joined in Langur Maize argument as to Section 3.02, particularly the term redemption and purchase.

We believe that the proper application of this venture reflects the exchange being a redemption with respect to the 2024 and 2026 notes.

The same provision that's cited in the exchange agreement with respect to the 2027 notes -- and it's Section 2.02 under the heading exchange closing -- and, for the record, I'm looking at document number 6.04-19, Section 202(a).

Mr. Bennett's presentation cited numerette three, and numerettes (a)(1) and (a)(2) refer to the 2024 and 2026 notes.

So all of those arguments apply equally because the language in 3.02 is the same in the unsecured as in the secured bonds.

I do acknowledge that the 3.07(h) argument, if I can get to it, is slightly different because -- but it's interesting phrasing.

And this is 6.01-8, and I'm looking at the 2026 indenture. But it could apply equally to the 2024 --

THE COURT: Hold on. I thought you told me to go to 6.04-19, right?

MR. ROSENBAUM: I'm looking -- oh, I'm sorry, I moved past 6.04-19. Maybe I'm moving too --

THE COURT: But 6.04-19, I'm not -- where in 6.04-19?

MR. ROSENBAUM: I was looking at 6.01-8 but maybe --

THE COURT: Okay. Well I misheard you then. Let me go to 6.01-8.

MR. ROSENBAUM: And I don't -- maybe I can give credentials to this.

THE COURT: Yeah. I'm in 6.01-8 now.

MR. ROSENBAUM: That's fine. It's just if everyone has it, it's the -- in this case it's the 2026 indenture. And I thought it'd be easier just to look at this indenture than as opposed to the unsecured. But the language is the same.

THE COURT: This -- is this going to be the 2024 indenture?

MR. ROSENBAUM: This -- I have the 2026, I apologize. I just -- this is the copy I have. But it's the same --

THE COURT: Okay.

MR. ROSENBAUM: -- language for the 2024s.

THE COURT: I'm opening it.

MR. ROSENBAUM: So, again, as Mr. Bennett explained, if we're right on this having been a redemption, you know, the 3.07(h) argument doesn't really matter. But I'll at least --

THE COURT: Let me just --

MR. ROSENBAUM: -- kind of walk through the language --

THE COURT: Let me get there. Hold on.

MR. ROSENBAUM: -- because I do acknowledge it applies differently but it --

THE COURT: So what section do I want to go to? I'm now in 6.01-8.

MR. ROSENBAUM: So I am on Page 69 of 283, and it's under subheading "H."

THE COURT: Okay. Hold up, 69, "H." Let me go back up.

MR. ROSENBAUM: You were there. I think you were there.

THE COURT: So I thought you said I was -- I'm confused and I just want to --

MR. ROSENBAUM: Okay.

THE COURT: -- back up a minute. I thought you told me that his Section 3 became your Section 2. No?

MR. ROSENBAUM: No. I didn't say that. But maybe I'm going too quickly. So --

THE COURT: Okay.

MR. ROSENBAUM: Okay. Sorry. Let me go more slowly and explain myself better.

THE COURT: Okay. So it's the same Section 3.02 and the same Section 3.07.

MR. ROSENBAUM: Correct. And what I was --

THE COURT: And you're associating with his arguments, okay.

MR. ROSENBAUM: Yeah. What I was speaking of early, just at least so the record's clear on this, the argument made by Langur Maize that we join in is among the reasons that this transaction was a redemption is by virtue of the terms of the exchange agreement that we I think established this morning was effective no later than the close of that call at 8:15 a.m.

And the provisions that apply to the unsecureds apply to the 2024/2026. So that's what I was speaking of, but I went too quickly through it.

THE COURT: Okay.

MR. ROSENBAUM: And we're now back at a different provision, one that we -- that would apply differently because the non-third party, the sponsor, did not own 2026 or 2024 notes. But I think the language might at least nonetheless apply.

So the first sentence says, and now the issuer or its affiliates may at any time and from time to time purchase, in this case, 2026 notes.

So here we're talking about the issuer or its affiliates purchasing 2026 notes. No affiliates owned 2026 notes.

The next sentence doesn't use the term affiliates, we've all established that. It says any such purchases may be made through open market or privately negotiated transactions with third parties.

So third parties is, as we've been talking about, different than affiliates. Or it's different word at least.

Any such purchases may be made through privately negotiated transactions with third parties. I think that is broader than just a purchase of the particular note or class of note.

I think that's speaking to the transaction in this case if it includes third parties, this transaction, as we know, included the sponsor, which is not a third party.

So I think that it's a bit more nuanced. But I think if you look at the way this --

THE COURT: You're saying the 2024 transaction.

MR. ROSENBAUM: Well, this was one --

THE COURT: -- included Platinum.

MR. ROSENBAUM: If you look at this -- yeah.

THE COURT: And what did Platinum own in the 2024 transaction?

MR. ROSENBAUM: Nothing.

THE COURT: Thought you said it did include them?

MR. ROSENBAUM: It -- what I'm saying -- and, again, it's nuanced. The purchase by the company -- there was a purchase by the company of 2024 notes.

THE COURT: The issuer.

MR. ROSENBAUM: Yeah, issuer.

THE COURT: Yeah, correct.

MR. ROSENBAUM: There was a purchase by the company.

THE COURT: Correct.

MR. ROSENBAUM: Okay. And then it refers to a privately negotiated transaction with third parties. I think there is at least a reading that disassociates the purchase from the company with the overall transaction. That's what I'm suggesting.

THE COURT: This isn't a purchase from the company. It's a purchase by the company.

MR. ROSENBAUM: By the company.

THE COURT: I'm not making any sense out of what you're telling me.

MR. ROSENBAUM: Well, this -- I might move on from this, Your Honor. But what I am suggesting is that it -- the company -- and this -- the transaction we're speaking of, --

THE COURT: Right.

MR. ROSENBAUM: -- the company --

THE COURT: The 2024 transaction.

MR. ROSENBAUM: Well, the 2022 transaction which was --

THE COURT: The 2022 transaction involving the 2024 notes.

MR. ROSENBAUM: Right.

THE COURT: Okay.

MR. ROSENBAUM: Yes. The company purchased or redeemed 2024 notes.

THE COURT: Correct.

MR. ROSENBAUM: And that was part of a -- right, a broader transaction.

THE COURT: Okay.

MR. ROSENBAUM: Okay. So if you look at any purchases made through privately negotiated transactions with third parties, there's -- this suggests that the transactions is broader than just the purchase of the 2024 notes. It's the overall transaction.

And this overall transaction was with the sponsor, who's not a third party. That's --

THE COURT: What was with the sponsor? That's what I -- I thought you just told me there was no transaction with the sponsor.

MR. ROSENBAUM: There was. It was just the sponsor was participating in the exchange, right, the -- it was getting -- I mean, if you think about what happened, it was getting the collateral that was removed from the 2024 holders through one and a quarter "L" notes.

So I think if you look at transactions broader than just -- there's two different words here. I know this is complicated. And -- yeah, Platinum is a party to the exchange document, right. Platinum is the sponsor.

The result of the exchange documents was that

Platinum --

THE COURT: Of the -- which exchange documents?

MR. ROSENBAUM: The one that we just looked at, the --

THE COURT: We're not looking at any exchange document.

MR. ROSENBAUM: Huh?

THE COURT: Sorry. This isn't the exchange document. We're looking at the 2026 indenture.

MR. ROSENBAUM: The -- I know. I -- it's complicated but I at least want to see if Your Honor understands it; whether or not you agree with me, we can take it from there.

THE COURT: Yeah, so far I'm not understanding what we're talking --

(Laughter)

THE COURT: -- I don't even know what we're talking about.

MR. ROSENBAUM: And I'll try to get it out.

THE COURT: Okay.

MR. ROSENBAUM: Because we have two things at play here, right? We have a 2022 transaction, which is the whole transaction. And Platinum is a participant in the whole transaction.

THE COURT: Correct.

MR. ROSENBAUM: And we start there. As a -- and it didn't turn in any 2024 bonds because it didn't own 2024 bonds.

THE COURT: Nor did it acquire any 2024 bonds.

MR. ROSENBAUM: Correct.

THE COURT: Okay.

MR. ROSENBAUM: But it acquired bonds that were secured by the collateral immediately before the transaction of the 2024 bond.

So the -- so if the transaction, right, I think there is at least a reading that the transaction as a whole needs to entirely be with third parties.

And here, you have a non-third party who is in the transaction, is a party to the exchange agreement, and as a consequence of the transaction is getting the liens or rights to the collateral from the 2024 holder.

So that's all I want to communicate.

I think there is a reading of this because it doesn't -- it uses the word "transactions." It doesn't go say purchase.

THE COURT: Okay. But as I understand it, though, you are endorsing the entire argument of the 2027 noteholders that the reading of 302 would encompass everything within 307, including 307(h) in terms of ratability of the offer.

MR. ROSENBAUM: That's the principal argument that we're making.

THE COURT: Okay.

MR. ROSENBAUM: And this is a ancillary argument.

THE COURT: All right.

MR. ROSENBAUM: I just wanted to explain it because I think -- especially because I think Your Honor brought it up with me yesterday, and I wasn't really prepared to talk about it. But I think this is what your was talking about with respect to the 2024s and third parties.

THE COURT: Well, I was asking what the 2024s thought they were entitled to if we have a problem with the 2026 exchange agreement or the 2026 additional note issues.

So if the 2026 additional notes were not issued, what kind of remedy would the 2024s be entitled to?

And I think what you're telling me is they would be entitled to an equable and ratable exchange, along with the other parties to the 2024 agreement.

MR. ROSENBAUM: I am -- that is exactly what I'm saying.

THE COURT: Okay. I understand that then.

MR. ROSENBAUM: And I was trying maybe in-artfully to explain how to look at it separately, right? Because I think that if this was a redemption, this issue is no longer relevant.

But if it's -- but I was trying to explain a way to look at 3.07(h) in the context of this transaction as a whole and the sponsors' participation and it -- in the fact that 2024 bonds were part of it. That's all.

THE COURT: Thank you.

MR. ROSENBAUM: So I also want to touch on 9.02. We -- it's another topic that among many that we talked about. I -- we talked a little bit about the sacred rights, sub ten.

And I just want to expound on that a bit more since it's more topical today than it was yesterday and earlier this morning.

I think the first item to take note of is -- and it happens to be just below sub ten of the sacred rights.

The two-thirds super majority portion that we have talked a lot about starts with in addition. So these rights are cumulative. And that doesn't mean you should read them in conflict with each other. I don't think you can.

Now you have to go down, Chris. You were at the right place before. We're on Page 131.

THE COURT: Yeah, and I just wanted to read the intro --

MR. ROSENBAUM: Oh, I'm sorry.

THE COURT: -- that it's a full sacred rights. Okay.

MR. ROSENBAUM: Oh, it's not -- so the super majority rights are in addition to the sacred rights so they're cumulative.

And I heard Your Honor's comment about maturities. And there is a provision in the sacred rights that deals with a change of the stated majority.

And we didn't assert that because we expected the response would be that --

MR. KIRPALANI: Don't mean to interrupt you, Mr. Rosenbaum, but I thought we concluded the contract arguments on right of payment with respect to the 2024/2026 holders. If we're going to restart them, I'm going to restart, too. I don't know what we're doing.

MR. ROSENBAUM: Your Honor, I thought today -- this argument was for the sacred right and not -- and that was --

THE COURT: I'm going to hold that for a minute. I don't know where we're going yet on this.

MR. ROSENBAUM: I'm not going into the super majority --

MR. KIRPALANI: Okay. I just heard you say that.

MR. ROSENBAUM: I'm not. I'm just --

THE COURT: Where is the provision in the sacred rights that prohibits a change in the collateral?

MR. ROSENBAUM: There isn't one.

THE COURT: Okay. So what is your argument now? Tell me again --

MR. ROSENBAUM: Okay.

THE COURT: -- your argument. And then I want to hear Mr. Kirpalani's objection.

MR. ROSENBAUM: Okay. I'm only establishing that the rights are cumulative. This is -- and I'm limited -- I'm not talking about super majority.

The subsection ten reads, make any change to or modify the ranking of the 2026 secured notes in respect of a right of payment.

I join in Langur Maize's arguments, Your Honor, as to why sequence and timing is baked in in a non-bankruptcy context to the term "ranking."

And I acknowledge Your Honor's observation that it doesn't say maturity. But if you look up at sub two, right, because the maturity wasn't changed in this. Sub two is the provision that -- and, again, I'm not -- I'm talking only about sacred rights.

Sub two is a provision that says it's a sacred right that you cannot change the maturity of these 2024 or 2026 notes. We acknowledge that didn't happen.

But then if you think about it, ranking has to mean something different than the maturity of those notes.

And what happened here, if you go back down to ten, is that by virtue of the 2022 transaction the 1.2 or I think it was 1.3 billion of bonds got the right to jump ahead of both the 2024s and 2026.

So our maturities didn't change but our ranking changed. And I -- and so I do think --

THE COURT: Well, your ranking only changed if ranking includes maturity. Your ranking didn't change if ranking doesn't include maturity, right?

MR. ROSENBAUM: No. I -- because --

THE COURT: How does your ranking change if --

MR. ROSENBAUM: -- our maturity didn't change. Someone else's maturity changed.

THE COURT: Well, somebody else's maturity changed. So only if ranking includes maturity did your position change. If ranking doesn't include maturity then your position didn't change.

MR. ROSENBAUM: Well, so I agree with that with a small "m."

THE COURT: Okay.

MR. ROSENBAUM: But I don't agree with it with a big "M" because I think our maturity didn't change but someone else's jumped -- with a small "M" jumped ahead of us. Not a big "M," a small "m." And that changed our ranking.

THE COURT: Only if the word ranking includes maturity.

MR. ROSENBAUM: No, I get it but --

THE COURT: If the word "ranking" includes right of payment and not maturity, then your ranking did not change, right?

MR. ROSENBAUM: I do agree with that.

THE COURT: Okay.

MR. ROSENBAUM: But the only thing I want to make clear on that is when we say maturity, what we're talking about because --

THE COURT: The timing of the maturity.

MR. ROSENBAUM: The timing of someone else's maturity, not ours.

THE COURT: The timing of someone else's maturity, if that changes your ranking, then there's a problem.

If the word "ranking" does not include relative maturities of notes --

MR. ROSENBAUM: I agree --

THE COURT: -- but rather relative right to payment that excludes maturity, then you don't have a complaint.

MR. ROSENBAUM: I agree with that.

THE COURT: Okay.

MR. ROSENBAUM: And that's --

THE COURT: But just depends on what the word "ranking" --

MR. ROSENBAUM: -- what -- that's why I was trying to distinguish between maturity with a small "m" and maturity as -- stated maturity, which is a defined term in this document, because our stated maturity didn't change. But we submit our ranking did.

THE COURT: Got it.

MR. ROSENBAUM: I have nothing further on this, Your Honor.

THE COURT: Thank you.

Anyone else from the right side of the room?

(No audible response.)

THE COURT: Okay. We're going to hear a rebuttal at 5:30, if there's any rebuttal.

We'll take a break until then. I'll call my 5:00 o'clock hearings. We should be -- I think we'll be done by about 5:30. I don't know if we'll keep you waiting long, if at all. And then we'll stay until you're done with your rebuttals.

Thank you.

(Recess taken from 5:11 p.m. to 5:30 p.m.)

THE COURT: All right. I know we did a little bit of housekeeping there to figure out what tech we wanted up, but we're now going to go back on the Record in Wesco.

Go ahead.

MR. KIRPALANI: Thank you, Your Honor. For the Record, Susheel Kirpalani, Quinn Emanuel, on behalf of the Debtors.

I'm going to be speaking not directly to the Langur Maize issues but it's really the arguments that were made about Section 302, because they do impact the Debtors because as we heard, the 2024/2026 holders are piggybacking, if you will, on the non-pro rata redemption alleged violation done because allegedly my client did file its action 302 when it did the exchange.

Just to a housekeeping point, the 2024/2026 holders actually did not include any breach of Section 307(h), in their briefing. And on Page 33, of the post-trial brief, they expressly incorporated Langur Maize's brief but only with respect to alleged violations of 302, and the sacred right 902-10.

So we think that they can't be asserting 3.07(h) violation. We think as a matter of fact, they can't be asserting even an alleged 3.07(h) violation on the theory that Your Honor was speaking with prior counsel about which is the third parties because there's no doubt that Silver Point and PIMCO were third parties and negotiated the exchange with the 2024, and 2026 holders, and sat through all the trial, talking about all of that.

And so clearly 3.07(h), you know, I think it applies also to the unsecured exchange but Mr. Clareman and Ms. Oberwetter expressly addressed that. I think for our purposes, I just wanted to make clear that I don't think the 2024/2026 holders reserve any arguments on 307(h), and even if they did, it doesn't apply to the secured exchange in any event because Silver Point and PIMCO clearly are third parties. So even the argument that may have gotten some traction a little while ago --

THE COURT: Yeah, I thought that -- you know, and it's been a long day, I may have this wrong. That Mr. Rosenbaum said that y'all were seeking a declaration that 307(h) was done correctly, and that they had sought a cross declaration on that.

MR. KIRPALANI: Yeah, that was -- actually Mr. Bennett who said it.

THE COURT: Sorry.

MR. KIRPALANI: He said that we put it into issue is fine. We put it into issue with respect to the unsecureds, that the unsecured notes --

THE COURT: Yeah, but you're saying it's not been at issue in the 2024's?

MR. KIRPALANI: I don't believe so. If I'm mistaken, someone will correct me. I'm mistaken?

MALE SPEAKER: It's counsel for us.

MR. KIRPALANI: Same issue? Okay. So it's the same issue. We'll address it then. Then I am addressing it so --

THE COURT: Okay.

MR. KIRPALANI: If it's something we said we would do, then obviously we should do it. 3.07(h) we do believe reserves the issuer's right expressly to enter into privately negotiated transactions with third parties.

And for purposes of the 2024/2026 noteholders' arguments, I don't think they can argue that because Platinum was a signatory to the exchange agreement, it makes the entirety of all exchanges done, all purchases done or exchanges done with 2024/2026 holders no longer in agreement with a third party.

We just think that's a factual mess, that I think Mr. Rosenbaum was trying to do at the end there by saying nuanced. I think it's not nuanced, but I don't believe it's more pejorative than that because I don't think that that argument holds any water.

The exchanges that were done on the secured indentures were with third parties, but this argument, if that's what it is, would not even apply to them. So I wanted to raise that.

THE COURT: So Mr. Matthews raises really more of an interpretation of 3.02, even with --

MR. KIRPALANI: Because that's what I wanted to spend more time on.

THE COURT: -- the interpretation of 3.07.

MR. KIRPALANI: Yes. So this point is actually pretty easy, and I actually did argue this at summary judgment. I hadn't looked at it much lately but when I heard some of the arguments this morning, I couldn't resist --

THE COURT: I'm sorry. I said Mr. Matthews. Mr. Bennett raised --

MR. KIRPALANI: Mr. Bennett. I couldn't resist --

THE COURT: Sorry.

MR. KIRPALANI: -- the implicit invitation to get back up and redo this. Mr. Bennett said that we conceded that less than all means none. If I conceded that, I meant as a dictionary, yeah, less than all includes none.

Two examples I gave to Judge Jones back at summary judgment were it's not the way human beings communicate. And when we read things, we're supposed to figure out what are they communicating.

No one would say I invited less than all of my friends when I got married to communicate that I eloped. That's how it works. And when I say I invited less than all, it means I invited some but not all, some.

And if there was no redemptions, then this entire provision, 302, doesn't apply. And so then their next argument is we think there was no redemptions. But it is a redemption, and because the rest of the phrase, rest of the passage uses the word or purchase, so therefore it's going to be, you know, everything can happen.

Rather than stress emphasis on or purchase and what that might mean, let's look at the substance of what this whole provision is saying because there's no answer to that.

It says -- I'm looking at Page 7.

So if you look at this chart. I was looking at Mr. Bennett's deck. But let's look at Page 7, 302. It says if less than all of the unsecured notes are to be redeemed which to us means a partial redemption.

That's why we used this language. Pursuant to the provisions of Section 307 hereof, now we agree with the other counsel on our side that those are 307, A through G, and not H, and I don't just rely on the plain meaning of the word redemption, or even the term of art as we see it, the word redemption.

We look to the rest of the provision. What is supposed to happen, and the what is supposed to happen can't happen if it's 307(h) because it says the trustee will select the notes for redemption or purchase pro rata, okay.

And that's what has to happen next. On the method that the trustee, a bank agent, deems fair and appropriate, okay. Well, let's look at this case. I'm not going to give you more hypotheticals.

Let's look at this case. Mr. Bennett's clients' upstream, the one that used to own the 2027 notes, we have no way of knowing if they would have wanted to take their 13 and an eighth cash coupon and accept that bargain.

I'll take a four percent cash coupon instead, and I'll get some lien. We have no way of knowing that. Some people might have bought bonds at 30 cents, or 40 cents, and said no.

I think if the company survives for a year, I'll get all my prepayment back, my purchase price back because of this great interest rate. We just have no way of knowing that. What this is saying, the way that they're reading it, is that the trustee, WSFS, is going to now obligate everybody to accept those terms. So you asked Mr. Bennett, well, how would it work, and what he said is --

THE COURT: But no, it says or by such method as it shall deem fair and appropriate.

MR. KIRPALANI: Okay.

THE COURT: And the suggestion that Mr. Bennett made was make the offer to everyone and select it among those that want to participate. That was his answer to that --

MR. KIRPALANI: Sure.

THE COURT: -- that question.

MR. KIRPALANI: But all of that mechanics, they don't exist anywhere here. This is all just filler --

THE COURT: Well, it says or by such method as it shall deem fair and appropriate.

MR. KIRPALANI: So if the indenture trustee is supposed -- it doesn't say -- that's referring to mathematically fair and appropriate. Pro rata, by law, or by such method as it shall deem fair and appropriate.

It doesn't even begin to start a conversation about making offers that could be rejected. This deals with unilateral conduct by the issuer. If the issuer is making unilateral conduct that it's permitted to do pursuant to provisions of 307, let's make sure it gets done in a ratable way so everyone suffers the same, either suffers or benefits.

Could be either. But that's the bargain that's being struck here. We don't see any language here to inform us that there's going to be some sort of a -- and I think Mr. Bennett came up with two scenarios.

The issuer's got to sit down, after privately negotiating under 307(h), the issuer's got to tell that counter party, okay, look, we've negotiated this deal but I actually can't go through with it.

What I've got to do in order to comply with 302 is I've got to make the same deal with everyone of my bond holders, and give them that opportunity. That's not clear. The only thing that they can rely on is it says the trustee is going to come up with terms that it deems fair and appropriate, and there's absolutely no way to guide the trustee into how to do that.

The idea, creative idea that, oh, well, we can just make it a voluntary offer is not found anywhere in the text. It's just a made up idea. And the better read of this provision, certainly again go back to my instruction manual analogy, or metaphor, somebody pulling off a shelf, my client, saying okay, if I'm going to make a partial redemption, I've got to comply with 307 to make sure everybody either gets the same benefit or suffers the same fate.

THE COURT: Couple things. I thought that 409 did in fact gives make the offer to everybody else provisions in it, and I understand that's gone. But you're telling me, we can't do that, it's just not mechanically doable. But take 409, give those procedures if you're doing a transaction?

MR. KIRPALANI: They do give those procedures. Those words don't exist in this passage, that's what I'm saying. I'm saying reading that whole mechanic into -- to mean the same thing as by such method as it, as the trustee means they're inappropriate.

You know, it breaks language. That's not what that phrase means. That language that you're referring to, Your Honor, under the old 409(h), there's a good example of what it could look like if that's what's being intended.

THE COURT: So his interpretation gives meaning to the use of the word redemption only in the first clause, and every use of the words redemption or purchase in all other clauses.

How do you give meaning to the use of only the word redemption in the first clause, but the use of the word redemption or purchase in all other clauses?

MR. KIRPALANI: I can't give you a good answer for purchase, Your Honor. Maybe some of my colleagues can. I can't give you a good answer as to why it doesn't say the trustee will select unsecured notes for redemption, and then for purchase.

I can tell you that as a matter of grammatical construction and reading the language, that lead in clause, it has to kick in before you look at the rest. You don't read past the comma if everything before the comma hasn't been applied yet.

And if less than all of the unsecured notes are to be redeemed pursuant to the provisions of Section 307 hereof is where we stop before we continue. And I don't think there's any ambiguity in what that means. When you go and look at Section 307 --

THE COURT: Well, there is if you uses dictionary definition -- I don't know, sir, I think it did. But if it uses dictionary definition of redeem, and you apply it to 307(h), and you say therefore what's in 307(h) is a redemption. We now do have that level of consistency, right?

MR. KIRPALANI: Yeah, that is true. But then when you get to the number three in the deck that I'm looking at, Page 7, but if we get to --

THE COURT: By law, or by such method?

MR. KIRPALANI: Yeah, pro rata, by law or by such method as it shall deem fair and appropriate, subject to applicable DTC procedures with respect to the global notes. Including the applicable procedures, that entire phrase talks about performing a pretty mechanical mathematical calculation.

There's nothing in that language to connote the process that you mentioned in 409(h), language that talks about what you have to do to go out and make offers to all parties. There's nothing in there whatsoever.

We just don't think it's a fair reading. We think the only reading would be that the trustee will select for redemption. It doesn't say it will select the notes to make an offer for redemption.

It says they will select the unsecured notes for redemption or purchase, pro rata. It doesn't say it will select the unsecured notes to make the offer, a similar offer for redemption, purchase pro rata.

And if you read it the way we're reading it, Your Honor, it can never be the case because it would violate sacred rights to change somebody's interest rates against their will. You can't do that. That's a sacred right. How could the trustee select somebody for redemption. You have to read --

THE COURT: But his --

MR. KIRPALANI: A lot of work in the subtext.

THE COURT: -- interpretation, and I got the lot of work issue. And I'm interested in his answer to that. But that would not violate a sacred right if he used a lot of work that he says is implied by this, I-E, any deal that you do that's privately negotiated has to be subject in effect to a roffer.

It wouldn't be quite a roffer because it would be a pro rated roffer. That you would have to offer it to everybody as part of the deal that you negotiated.

MR. KIRPALANI: I would agree.

THE COURT: That wouldn't violate a sacred right.

MR. KIRPALANI: That wouldn't violate a sacred right to -- to make everyone a roffer, I don't see the R and the O, the F or the R here, but I agree with you, that would not violate --

THE COURT: It wouldn't be a sacred rights violation. It would have the problem you've identified of it would no longer be a mechanical operation.

MR. KIRPALANI: That is true. And I don't think it's something that trustees would do, but okay, I accept that that would not violate a sacred right. There's another point that I just want to make then I'm going to sit down.

With respect to the 2024, and the 2026 indentures, Your Honor may remember from yesterday because there's so much company, you may remember I was stressing something about how compliance with any provision could be waived by the majority unless it's a sacred right, or it requires the two-thirds.

If Your Honor would recall, we could pull up the indenture, it might be easier, ECF 603. Actually, I don't have the indenture.

THE COURT: I can find it.

MALE SPEAKER: The indenture is 601-8.

MR. KIRPALANI: Oh, 601-8, thank you. No, the -- secured indenture. Oh, does it matter?

MALE SPEAKER: No, 601-7 is unsecured.

MR. KIRPALANI: Oh, you're looking at the unsecured indenture, Your Honor. Can we look at the secured indenture?

THE COURT: Sure. What do you want to look at?

MR. KIRPALANI: It's 601-8.

THE COURT: 601-8?

MR. KIRPALANI: Yes. It's a completely separate response, having nothing to do with --

THE COURT: I understand it is. What page do I want to look at?

MR. KIRPALANI: It's going to be Section 902, so page number. It's going -- subject to compliance (indiscernible). The secured, 601-8. Yeah, around Page 130, plus the table of contents --

THE COURT: Right.

MR. KIRPALANI: Section 902, oh, well, wait.

MALE SPEAKER: You're looking for 902 of the --

MR. KIRPALANI: Yeah.

MALE SPEAKER: -- secured? All right. At the bottom, Page 122, is where it starts, the numbered page.

MR. KIRPALANI: The bottom of Page 122, on the bottom of the page.

MALE SPEAKER: Looks like ECF 129 --

THE COURT: It's a different page but this is 902.

MR. KIRPALANI: Well, that's not -- okay, let's use this. I don't know. So Your Honor may remember, right here in the last paragraph on Page 130, it says -- this is right before the sacred rights behind.

The second to last sentence, it starts on the right side. Scroll up that last paragraph. See on the right side, there's the word subject. Subject to Section 604, and 607 hereof, we went through this with you yesterday.

604, and 607 have nothing to do with this case. The holders of a majority in aggregate principal amount of the 2026 secured notes, it's the same thing as the 2024's, may waive compliance in a particular instance by the issuers with any provision of this indenture.

Okay. That's what that says. And that was the general rule we discussed, that the general rule is majority owners for the assents unless it violates a sacred right, or it requires a two-thirds consent.

Your Honor, remember like that was the general framework. Okay. So let's look at, if you can, ECF 603-10. It's a short --

THE COURT: What page?

MR. KIRPALANI: Yeah, it's going to be on the second page.

THE COURT: Okay.

MR. KIRPALANI: It's very short, only two pages. Okay. This, Your Honor, is the consent letter that was delivered by the requisite majorities for the fourth supplemental indenture.

This second page, right here where it starts, each beneficial owner -- this is basically the Silver Point and PIMCO side -- hereby consents pursuant to Section 902 of the indenture of the amendments and the issuance of the issuer's new 10.5 percent senior secured first lien PIK notes due 2026, including the incurrence of the obligations and liens in respect thereof, in accordance with the exchange agreement.

Our position as well is we don't think that the non-pro rata provisions apply to what happened here. If they did, if Your Honor says well, I think they did apply, this constitutes a consent and waiver.

They satisfied the majority threshold needed for all consents and waivers of compliance with any provision in the indenture other than sacred rights and two-thirds. And this Section, 3.02, is not a sacred right and it's not a two-thirds, and nobody's ever suggested that.

THE COURT: Thank you, Mr. Kirpalani.

MALE SPEAKER: May we give presenter rights again --

THE COURT: Sure.

MALE SPEAKER: I'd like to try and have (indiscernible). The Court may be struggling with --

THE COURT: I'm struggling with so many issues, no way that you can do all that.

MALE SPEAKER: This I think should be --

THE COURT: Hold on just a minute, I'm having -- I've got to remake your person the presenter so who is that?

MALE SPEAKER: It's Max Siegel.

THE COURT: Okay. Mr. Siegel is now the presenter.

MALE SPEAKER: All right. So I'd like to start by pulling up if we can Slide 11, which has the text of 302. So this is the starting point that I was arguing in my initial remarks to determine what it is that (indiscernible).

The (indiscernible) opinion had correctly, I believe, that the animated language is less than all of the unsecured notes are to be redeemed pursuant to the provisions of Section 307 hereof.

It means that this applies to redemptions, and not purchases under 307(h). The question that's been raised is well, the word purchase up here is subsequent to that. It's not one of the things that springs, you know, to the light.

But it is used in the paragraph. But I think there is one redemption provision where the two concepts are related, or come together. And that is in 307(c).

THE COURT: Okay.

MALE SPEAKER: So if we can turn to Slide 17. What 307(c) does is it gives the issuer the right to unilaterally impose a tender offer on non-consenting bond holders if 90 percent or more of the holders agree to accept the terms of the tender offer.

So this says, at any time in connection with any offer to purchase the unsecured notes, and then there's the improving phrase, if holders of at least 90 percent in aggregate principal amount of the unsecured notes outstanding tender such unsecured notes in such offer, the issuer or such other person upon notice, given not more than 60 days following such purchase, pursuant to such offer, may redeem all of the remaining unsecured notes at a price in cash equal to the price offered to each holder in such prior offer.

And then there's other -- but this is, like the other redemption provisions in A through G, one of the instances in which the issuer is allowed to, at its option, redeem the less than all the notes --

THE COURT: But the use of the word purchase in C is an offer to purchase by someone else. So EXSCO (phonetic) offers to purchase the unsecured notes, right, because -- and at that point, 90 percent of the aggregate principal amount agree to the transaction.

It then says the company may redeem. It doesn't say the company may redeem or purchase. It only says the company may redeem. So where --

MALE SPEAKER: Correct.

THE COURT: -- is the purchase in 307(c) that is referenced in 302 coming into play?

MALE SPEAKER: It's the first part of 307(c) says at any time in connection with an offer to purchase so there is an offer to purchase that's accepted --

THE COURT: An offer to purchase --

MALE SPEAKER: -- in the tender offer.

THE COURT: -- by some third -- by somebody?

MALE SPEAKER: Well, by holders of unsecured notes.

THE COURT: By holders of unsecured notes?

MALE SPEAKER: Yes. And 90 --

THE COURT: Wait. The holders of unsecured notes offer to purchase other people's unsecured notes?

MALE SPEAKER: No, this is in connection with an offer by issuer or such other person, for example, the change in the transaction. If there is --

THE COURT: So who has made the -- in connection with any offer to purchase?

MALE SPEAKER: Yes.

THE COURT: Who has made that offer to purchase in your example?

MALE SPEAKER: Well, it says either the issuer or such other person. So the offer to purchase can come either from the issuer or some other person. It didn't actually --

THE COURT: No, that says the issuer, upon notice given not more than 60 days following such purchase, but who is making the purchase? At any time in connection with any offer to purchase the unsecured notes, so that's not -- apparently not a redemption or else, purchase and redemption may have the same meaning. Who is making the offer to purchase? Is that being made hypothetically by the issuer itself?

MALE SPEAKER: This offer to purchase is being made either by the issuer itself, or by some other person in the change of control --

THE COURT: So the offer, or offers to purchase all of the unsecured notes?

MALE SPEAKER: Correct. And 90 percent accept.

THE COURT: Okay. And why isn't that --

MALE SPEAKER: Then there's a redemption (indiscernible).

THE COURT: -- a redemption?

MALE SPEAKER: That's the tender offer and acceptance of the purchase price, so the 90 percent accept the tender offer. That's not the redemption. The redemption part is that the issuer at its option can now drag every non-accepting holder, if you get over the 90 percent threshold, and require them to redeem their notes --

THE COURT: Through a redemption?

MALE SPEAKER: -- at the purchase price.

THE COURT: Right. But up in 302, it says with respect to the dragged 10 percent, redeem or purchase. Why is that or purchase used there because you're telling me the original offer to purchase isn't the subject of 302, at all?

MALE SPEAKER: Correct.

THE COURT: That's the original purchase offer, so why does it say with respect to the other 10 percent, redeem or purchase?

MALE SPEAKER: Because the right that's being exercised with respect to the other 10 percent, who's the less than all. That's just the other 10 percent is the redemption right which is the unilateral right to purchase the bond on the same terms as everybody else.

THE COURT: Right. But now take me up to 302, and show me that language because I don't think that uses the word purchase --

MALE SPEAKER: And so --

THE COURT: -- to mean the original offer. The term purchase in 302 is used for the forced offer, right?

MALE SPEAKER: Correct.

THE COURT: So let's look at 302 again.

MALE SPEAKER: That's correct. In 302, in animating the phrase that gives light to the --

THE COURT: I want to wait till we can all read it so --

MALE SPEAKER: Oh, I'm sorry. It's --

THE COURT: There it is, okay. So there's 302. So less than all the unsecured notes are to be redeemed, that's -- you're describing to me where less than all the unsecured notes are to be purchased down under C.

MALE SPEAKER: I'm saying the redemption is the 10 percent that didn't accept the purchase price.

THE COURT: Okay. Let's assume that for a minute. So redeemed under C, for 10 percent, but that of course was 100 percent of the remainder so there is no --

MALE SPEAKER: Correct.

THE COURT: -- pro rata selection, right?

MALE SPEAKER: Well, that's correct. There's only -- that's correct.

THE COURT: So this is all of the unsecured notes?

MALE SPEAKER: Well, only 10 percent are redeemed but so it's less than all are being redeemed --

THE COURT: Okay. So 10 percent are redeemed. The trustee will select that 10 percent for redemption or purchase pro rata. How does the word or purchase come into play with respect to that 10 percent because when we look at C, it doesn't talk about purchasing the 10 percent? It talks about redeeming the 10 percent? So how does the word purchase come into play with the 10 percent?

MALE SPEAKER: So the word purchase comes into play -- well, one other clarification. We're actually in the last sentence here. If the unsecured notes --

THE COURT: Correct.

MALE SPEAKER: -- are represented by global notes, such interest will be selected for redemption or purchase by the UTC in accordance with --

THE COURT: Right. So why does the term -- where does the term or purchase ever apply to the 10 percent in your example?

MALE SPEAKER: It is -- it's a redemption but it is on the same terms as the purchase --

THE COURT: But it says redemption or purchase, not on the same terms as the purchase. It says for redemption or purchase. So there has to be a capability to be a purchase that is being picked.

That doesn't look to me like that 307(c) talks about purchases of the 10 percent. It talks only about redemptions of the 10 percent. So how do we -- how are the words or purchase ever applied under your interpretation?

MALE SPEAKER: I don't think that they are other than in this scenario, in the tender offer scenario --

THE COURT: Okay.

MALE SPEAKER: -- where the purchase is done on the exact same terms in the same way as the redemption. If you look in -- the redemption is adding is that you're dragging people who didn't consent to it.

THE COURT: I know that, but this can't have to deal with the purchase of the 90 percent that have agreed, right? This is dealing with the 10 percent --

MALE SPEAKER: Correct.

THE COURT: -- that didn't agree, and theirs are not being purchased. So the trustee is going to select unsecured notes for redemption or purchase. What unsecured notes will the trustee select for purchase?

MALE SPEAKER: All of those that did not participate in the tender offer.

THE COURT: But no, they're not purchasing, they're redeeming that. May be redemption and purchase are the same --

MALE SPEAKER: Yes.

THE COURT: -- thing.

MALE SPEAKER: I'm not saying they are.

THE COURT: But y'all have told me that they're different things.

MALE SPEAKER: Yeah, they're not the same thing.

THE COURT: Yeah. So how does this ever get animated?

MALE SPEAKER: Yeah. Well, I was positing that one way it gets animated is because there's one provision in which you have a tender offer, and then a connected redemption right. And so it's only in that scenario where you could --

THE COURT: But there would be no purchase of the 10 percent in your example?

MALE SPEAKER: Yes. It's a redemption set by the terms of --

THE COURT: So that doesn't tell me how the word purchase is used.

MALE SPEAKER: Okay.

THE COURT: I need to understand -- I've got -- y'all have raised really good, I think, issues about Mr. Bennett's theory not having mechanical capabilities. I bet he has something he wants to deal with on that. I'm going to give him that chance.

But y'all aren't so far explaining how your interpretation ever deals with the use of purchase up in Section 3.02, throughout 3.02. I have no inkling of how your interpretation ever utilizes that term.

It must have some meaning. It's used a lot. His animates the meaning, but I agree with Mr. Kirpalani, at least at this stage, that it doesn't give a mechanic.

MALE SPEAKER: Well, let me offer one other possibility.

THE COURT: Okay.

MALE SPEAKER: In the circumstance in which a redemption occurs -- sorry, let me hold off on that. I want to point the Court to one other --

THE COURT: Yeah.

MALE SPEAKER: -- provision. This is in -- it's in Section 3.01 --

THE COURT: Okay.

MALE SPEAKER: -- which is the manner in which redemptions are set into motion. That says if the issuer elects to redeem unsecured notes pursuant to the provisions of Section 307, or 308 hereof, (indiscernible) trustee or members of various notes.

So that provision is what, you know, makes clear that the issuer has the election to simply execute the transactions that are redemptions under Section 307(a) through 307(g). So that -- it's the same use of the term redemption, about redemption or purchase. Similarly the first sentence of 302 which points to --

THE COURT: The first phrase?

MALE SPEAKER: The first phrase, correct.

THE COURT: Right. Yeah, I agree. That only refers to redeemed which Mr. Bennett's awkward but technically correct less than all could mean zero, that -- his use of that animates the word purchase.

And so far, Mr. Kirpalani has passed, and you're giving me a non-answer on how purchase is animated in 302 which may leave me with just a difficult choice if I got that. But I'm not understanding how the word purchase is interpreted by your side?

MALE SPEAKER: And I apologize, I'm not answering Your Honor's question directly.

THE COURT: No, you're trying to. I don't think you're evading me at all. I just don't think you've got an answer.

MALE SPEAKER: I don't have a right answer.

THE COURT: Right.

MALE SPEAKER: I would like to raise the possibility with my side if we could.

THE COURT: Sure. Take a second.

MALE SPEAKER: Well, if you just want to identify that the argument that less than all means none, the argument more is addressed in the summary judgment and I think correctly. So I just wanted to provide Your Honor that that issue had been ruled on. I think it was made many months ago, and I'm just reading from the summary judgment.

Langur Maize also asserts that Section 302 applies to non-redemption transactions such as exchanges or purchases because the phrase less than all means none. Langur Maize asserts that even if the joint venture transactions are a redemption, that Section 302 still applies because none of the notes were redeemed. This logic would strain the language of the tranche. And so I just wanted to remind the Court --

THE COURT: I know that, but that's an interlocutory order and I've got to figure out the right answer now. I was only going to do it on the summary judgment but if I was wrong, I was wrong.

I am not at all convinced that I was wrong yet. Yeah, to the interpretation that either side is giving me that's terribly satisfactory, and that means I just have -- what I have to do is there to be a document that is written that has -- that forces the Court to make a choice between two difficult interpretations, and that may be just where I am.

But of course if the waiver link which I'm going to ask the right side of the room to respond to applies and this doesn't matter. But we still don't think it matters.

MALE SPEAKER: Your Honor, may I just have one moment?

THE COURT: Sure.

MALE SPEAKER: Okay. Sorry. One other provision that I just want to highlight for Your Honor, which again I think also uses the terminology of purchase and redemption that I -- so it's not been totally (indiscernible) with that issue, but it is another mechanical issue relating to how --

THE COURT: Okay.

MALE SPEAKER: -- a redemption could be implemented under the indenture. It's Section 305. I don't actually have -- I can give you the ECF number and we can pull it up.

THE COURT: Sure.

MALE SPEAKER: And we could look at it. This is ECF 601-7.

THE COURT: Again my favorite provision today. So seven -- do you have a page number on it?

MALE SPEAKER: It's page -- it's ECF 64.

THE COURT: Thank you.

MALE SPEAKER: And this is part of the requirement that is the way that an issuer actually implements the redemption. So I just want to call your attention to it (indiscernible), so you know.

THE COURT: Do I have the applicable DTC procedures in the record?

MALE SPEAKER: Yeah, you do.

MALE SPEAKER: Amin (phonetic) told me, yes, you do.

THE COURT: I'm going to want to go through those before we leave tonight --

MALE SPEAKER: Okay.

THE COURT: -- if they're in the record. Either side, I want to know how this -- because if it's a global notes, it is -- it has to be at least allowed by the applicable DTC procedures, I think. So let's see, I'm there with 305.

MALE SPEAKER: Section 305, so this says prior to 11:00 a.m., Eastern time, on the redemption or purchase made, the issuer will deposit with the trustee or with any issuer, money sufficient to pay the redemption at purchase price of, and accrued interest on all unsecured notes to be redeemed or purchased on that date.

The trustee or the pay agent will promptly return to the issuer any money deposited with the trustee or paying agent by the issuer in excess of the amounts necessary to pay the redemption or purchase price of and accrued interest if any on all unsecured notes to be redeemed.

So the only point I want to make about this is that this redemption mechanic doesn't make sense in the context of an exchange under 307(a) which is not a redemption. It does make sense in the context of every other redemption if that term is used in 307(a) through (g), which are unilateral options to buy back notes that the issuer has and can execute and implement.

And you can only pay from those in cash. So I just wanted to highlight this additional mechanic under the indenture which is coherent only in the context of what we're calling redemptions, not in the context of exchanges.

THE COURT: Thank you. I'm sorry. Go ahead.

MALE SPEAKER: I just want to touch briefly on the cases just because there was discussion of cases. I may not be (indiscernible). But there was a suggestion that somehow the Supreme Court has addressed the question of what a redemption is. It has not.

I think the case is really an opposite. It says -- and I'm reading from it. The dispute in this case is narrow. All agree that when calculating the federal estate tax, the value of a decedent's share of a closely held corporation must reflect corporation's fair market value, and all of the life insurance proceeds payable to the corporation are an asset that increases the corporation's fair market value.

The only question is whether Crown's (phonetic) contractual obligation (indiscernible) purchase shares at fair market value, but as that contractual term is used in contract at issue in that case, offsets the value of life insurance proceeds committed to funding the redemption.

It really doesn't address any issue (indiscernible) here. I won't go through the other cases, but really the principle animates my objection to the use of cases is that they are construing provisions that are not ours.

And so they're really not -- they don't have any relevance here. I just want to briefly return in a way that may be unsatisfactory to Your Honor but I want to just say that I do agree with Ms. Oberwetter's interpretation of 307(h), and what that provision means.

THE COURT: Just sort of laundry list argument that you --

MALE SPEAKER: No, laundry list. I'm sorry. I did not do a (indiscernible) -- she did in terms of expressing what I meant to express was that this is a really broad power to do these sorts of transactions, and I'm not limiting it to the other provisions that are limiting. And I think Your Honor should ask as part of the argument.

But I did want to just offer two other points. One is on the redemption issue. One is that the term third party does have meaning in the context of contracts. Parties are the significant person in the contracts.

Third parties are the parties that are not significant as to the contracts. They're a party beneficiary for example. So I just wanted to offer that possible interpretation to who would be excluded by the third party. It's the parties to the contract being --

THE COURT: I'm not aware of any case that says that third parties is limited to signatories to a contract. I mean this kind of a phrase when I've seen it used, and whenever I've seen it used, would encompass the parent of the signer of the deal.

It's hard to imagine that we didn't do that here. But if you've got case law that tells me that the term third parties means somebody that is not a signatory as opposed to someone that isn't married to the signatory, I will be surprised. But I've been surprised by a lot in the case.

MALE SPEAKER: That's fine. The narrow point I'm making is it's third party beneficiary law, that the third party beneficiary -- the premise of third party beneficiary law is that there are benefits that extend to people who are not actually parties to the contract.

THE COURT: No, this is not third party beneficiary law. This is doing a deal with a certain party is what is referenced. And I can't imagine Platinum is a third party to this deal when it controlled the board and owned all the shares.

MALE SPEAKER: Okay.

THE COURT: I mean it just -- it's not a third party. I don't know that matters. I don't think it does matter if this is merely a laundry list.

MALE SPEAKER: Yes. And --

THE COURT: But --

MALE SPEAKER: I understand. And I just --

THE COURT: Okay.

MALE SPEAKER: -- that one other point. And the last thing I'll say, just because Your Honor did ask the question about, you know, what does it mean if there is -- you know, if one party to the exchange agreement was ineligible under the 307(h).

THE COURT: Right.

MALE SPEAKER: And I just wanted to identify that there is, in the exchange agreement, a severability clause. This is -- we don't need to pull it up. I'll just cite for the record.

It's at ECF 276-2, which is the standard severability clause which says that in the event any one or more provisions contained in this agreement shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or (indiscernible). So the standard --

THE COURT: Makes sense.

MALE SPEAKER: -- provision (indiscernible).

Unless Your Honor has any further questions for me --

THE COURT: No, thank you.

MS. OBERWETTER: Good afternoon again, Your Honor.

THE COURT: No, good evening, Ms. Oberwetter.

MS. OBERWETTER: I guess we're at evening. Again, for the record, Ellen Oberwetter, on behalf of the Platinum defendants. I'm going to take a few points in turn, and try not to repeat too much ground that's already been covered.

I will say when I was listening to Mr. Bennett's presentation, I was waiting to see what he would say about the contradictory things that they have said before. And there really wasn't much answer to that.

I'm not going to repeat the slide that Mr. Clareman had in his opening, but I do think it would be a little odd to find a breach in a manner that turned on allowing them to directly contradict the statement they've taken previously about what is or is not a redemption.

And I understand his argument was a little bit different now when we're talking about purchases. But I did want to make that point. I'll talk briefly about the structure of Section 3, because I think that could be a little useful in thinking through some of the issues.

So 3.07, A through G, and again we're in that unsecured indenture, all of these provisions, and the way that all of these provisions are written, before you get to H, they're all about making somebody giving their notes.

That is sort of structurally how they reside and what all of them seem to be directed to in one form or another. These are talking about where the issuer has the control to trigger the event on the front end.

And I think that distinguishes them all from H, where you are talking about -- it is clear, at least in part, something that it is a one off, or a negotiated type of transaction or something, rather than something that is foisted upon them.

And I do want to talk -- and I will note actually, in one of the Langur Maize briefs that Mr. Clareman cited -- recited in his earlier presentation, in the footnote, they also differentiated between A through G, and H.

So it's not like we're perceiving something that they haven't also perceived earlier in the case in terms of the difference in kind between these sets of provisions. And I think that was footnote 26 from their reply brief at ECF 328.

So let me go back. I just talked about the structure of 3.07. Let's go back to sort of the beginning of the provision which is the Section 3.01. And again, when you're looking at 3.01, notice to the trustee, you were talking about an election that the issuer is making with respect to a particular kind of transaction.

So that's something that is initiated by the issuer. And then when you get down to 3.02, which follows directly on 3.01, you're still talking about what is fundamentally this sort of all or nothing is that the issuer initiated type of purchase or type of redemption that is being foisted upon other people.

And that's what the if means when you're in 3.02, and other people have tread that ground already so I don't want to repeat it.

THE COURT: And I've not thought about this so I'm going to ask you --

MS. OBERWETTER: Yes.

THE COURT: -- a question, just because I want to be sure I understand it. 301 talks about a redemption either under 307, or 308. 302 only talks about a redemption under 307, and not under 308. Does that inform anything? And I've not -- I don't even know what 308 says.

MS. OBERWETTER: I will say, standing here right now, it doesn't inform me, Your Honor. That doesn't mean that it couldn't have some bearing on something but --

THE COURT: Let me see what 308 deals with. Redemption for taxation reasons. Okay.

MS. OBERWETTER: Yes. So when you're at 302, and you're talking about a redemption following on sort of this elective type of procedure that the issuer can make, I want to talk about a couple of provisions.

And I'm just going to echo briefly what everyone else has said, which is in the very first sentence of this provision which is if less than all of the unsecured notes are to be redeemed.

And from our standpoint, like what everyone else is on this side of the room's standpoint, that means to get into

3.02, you have to be talking about a redemption. I will talk a little bit in a couple of minutes about your question about the next line, redemption or purchase, and why it says those two things.

I don't think I'm going to have a perfectly satisfactory answer for you, although I'm going to come to that. But what I can tell you is there's a way to read 3.02 sensibly in terms of the events that flow from it, and 3.07(h) sensibly in terms of the result that flow for it.

They don't get you into an incredibly weird situations if you're trying to import things that happened under 3.07(h) into 3.02. And so let me talk about that for a minute.

3.02 can't be about these one-off voluntary negotiated purchases that are the subject of 3.07(h). We have incredibly strange things that start happening. First of all, you can buy someone's note at well below par and then perhaps hoist that upon everyone else by having your trustee do either a pro rata or a buy lot methodology of doing a repurchase at a particular price that you had negotiated as a one-off.

THE COURT: Hold on.

Mr. Bennett needs a break. Why don't we just take a break? Let's come back at 6:30.

MR. BENNETT: Thank you.

(Recess taken from 6:21 p.m. to 6:28 p.m.)

THE COURT: Sorry, Ms. Oberwetter. I'll try not to interrupt you again.

MS. OBERWETTER: That's okay.

THE COURT: It wasn't a phone call this time.

Go ahead. Thank you.

MS. OBERWETTER: All right. If we're back on, I'll pick up where I was, which was talking about why 3.07(h) just doesn't make logical sense when paired with 3.02.

So the first example was what if there's a below par privately negotiated purchase of some sort, and then how do you translate that into a -- what would be a mandatory redemption of some unspecified number of other unsecured noteholders. It is only paying them a very low amount. That's one example.

Another example is what would happen if under 3.07(h), you bought unsecured notes from two different unsecured noteholders on the same day at two different prices. So at that point, what terms possibly would get put into some sort of redemption notice as the correct or operating price, if they're going to go out and mandatorily redeem other people.

I'll give you another example, and this one is completely baffling, but let's say you go negotiate a private purchase of some sort with someone under 3.07(h). Let's say you spend weeks and weeks doing that, and it's got all sorts of terms associated with it. But then under 3.02, the Trustee apparently gets to select by a lot who gets the benefit of the deal that we just negotiated with some third party. That's right on the date, the 3.02, that the Trustee can apparently elect between a pro rata purchase or by lot or by some other method that she'll deem fair and appropriate.

So the notion that it could apply to a privately negotiated transaction, the terms of 3.02 or the other, what Mr. Heidlage said. These are administrative-type caps that the Trustee's specifically doing. They shouldn't involve a whole lot of discretion of that sort, and they would be applying a private transaction to making choices about that that can't possibly be mapped onto one another.

So I suggest that the purpose and function of 3.07(h) is necessarily completely different than what you find in (a) through (g) of that section, which are the only things that are redemptions because, of course, 307(h) doesn't even use the word "redemption." The other provisions do, and those are the things that 3.02 is attempting to talk about.

So to go to your question, so what does it mean in 3.02 when it says "if less than all of the unsecured notes are to be redeemed", and then in the next sentence it also says "for redemption or purchase."

I don't have a perfect answer to that for you, but I can put to you, for example, 3.07(g), which is not one that we've really talked about so far. And I don't want to overstate 3.07(g), but 3.07(g) gives the issuer the right to have somebody else do a redemption and be the one to handle that. And so maybe that's the type of thing that could be considered a purchase if it's done by somebody else as opposed to the issuer itself.

I'm not saying that (g) answers that question on its face. It doesn't equate those concepts. But what I am suggesting is that there are other ways, including potentially the ones mentioned by Mr. Clareman where in (a) through (g) you could have other things that somebody might consider a purchase that 3.02 is simply trying to account for.

So I don't have a better example than the one he provided, and (g), but these are examples of things where you could give some meaning to that word in 3.02.

THE COURT: So --

MS. OBERWETTER: Yes.

THE COURT: Sorry. Under 3.07 -- excuse me, 3.02, it's by lot or by such method as shall deem -- as it shall deem fair and appropriate, subject to applicable DTC procedures with respect to the global notes, which is what we have, including the applicable procedures.

Did those procedures in any way allow the Trustee to do the kind of thing referenced by Mr. Bennett of saying, "Well, let's do a right of first refusal to everyone or an equal offer to everyone"? Are they permissive, are they allowed, or are they prohibited under the applicable procedures?

MS. OBERWETTER: So I have not looked at those procedures with that question in mind, and so if I've got a colleague who may end up being more indoctrinated to see if anybody else has had to address that question --

THE COURT: Well, I'm going to ask Mr. Bennett to address it and I'm going to give you all a chance to respond --

MS. OBERWETTER: Okay.

THE COURT: -- to whatever he says. I don't know what he's going to say, but a lot of this may be informed by that because, if the Trustee -- I haven't read the -- if the Trustee is prohibited from doing exactly what Mr. Bennett says, "Here's the solution to the problem," then I don't think it's a solution to the problem that makes the document internally consistent.

MS. OBERWETTER: Okay.

THE COURT: But if it is permitted and not mandated, then his suggestion may make a lot of sense and I would -- that's why I'm interested in this, is it could actually inform the range of motion of the Trustee if, in fact, the Trustee is limited to mathematical selections, lots, things of that nature. Then the examples that you're giving create the issues that you're suggesting. But if it's done on -- you, too, have an opportunity to do this if you wanted, then I don't know that the problems that you're describing exist. That's why I just want to be informed about that, because it seems to be important to this discussion we're having.

MS. OBERWETTER: Yes, Your Honor. What I will say is, regardless of what the DTC procedures say -- and I don't know what they say, if anything, that deals with this precise question -- the Indentures language here appears to be ignorant of what the DTC procedures say, if that makes sense, because they contemplate that there could be a choice by the Trustee that it states pro rata or by lot or by such method, which regardless of what the DTC procedures actually say, suggest that the parties never would have intended a provision like this to apply to 3.07(h) where you're having individualized negotiation.

THE COURT: And I got that, but that may just -- that may put this into one of the many choices that I have to make about what to do. But if the DTC procedures -- and I'm really thinking of this more in a way that sides with the left side of the room. If the DTC procedures prohibit the Trustee from making -- would you two like to participate in this kind of a statement? It makes that interpretation much less interesting to me. So I'm more interested in that.

MS. OBERWETTER: Okay. Thank you, Your Honor. I'm sure we will see what's in the documents.

THE COURT: Okay.

MS. OBERWETTER: I did want to address briefly, so going back to the language of 3.07(h), just to touch again on the "or otherwise" language. I think I briefly mentioned this previously, but it's not really different than saying the word "including." It's just at the end of the sentence instead of the beginning of the sentence. And I know Mr. Bennett made a point that, you know, we wouldn't have our say in things if that phrase that doesn't have meaning, but the Indenture says -- uses word like "including" in at least a dozen different places, where it lists out things, which doesn't mean they're exclusive, which is the only point -- the only point that I'm making.

THE COURT: Right.

MS. OBERWETTER: I did also go to the dictionary to see what "otherwise" means, while we were on our break, and it just means "in a different way or manner," and you can look at any dictionary and I think it's going to be close to the same, and that's a very broad phrase and enabling case.

I'll talk briefly about that third party point, although I don't think that -- the way I understand this provision, I don't actually think it's that important of a question. But because the sentence doesn't define the term, I would think that we would have heard a definition from the

Plaintiffs if that had it, although there's been an attempt to cite testimony from people who were talking about things other than the Indenture. So I did want to make that point.

And 3.07(h) very conspicuously does not do the thing that some other provisions in the Indenture do, which is, for example, preclude transactions with the sponsor or affiliate, or anyone for that matter. It doesn't do those things, and that phrase doesn't tell you to do that.

THE COURT: So maybe it does. I'm not sure, because the word -- if you look at the laundry list, the first issue in the laundry list is an open market purchase. Open market purchases have the benefit of being tested in the open market. They're not insider deals.

The next is a privately negotiated transaction with third parties. If it's a true third party, it has the benefit of being an arm's-length transaction pursuant to one or more tender or exchange offers. Those, again, are made to everyone, and it becomes market-tested. Maybe "otherwise" means another way that creates a market test, as opposed to saying "otherwise" can include an insider transaction not subject to market tests. That may be a fair reading of "otherwise". What do you think?

MS. OBERWETTER: I think it can't be in light of the definition of the word "otherwise". There's no other information to impose --

THE COURT: Well, but no. "Otherwise" said another way of accomplishing the same thing. If what you're trying to accomplish here is market prices, then an insider transaction would not accomplish market prices. I thought that was -- what was your definition again? I thought it said "accomplish the same thing through a different means".

MS. OBERWETTER: No. It says something different in a different manner. It does -- so I don't -- this doesn't outline any purpose at all. It doesn't outline any purpose. We would be -- we would be making up the purpose.

THE COURT: Well, read me the dictionary definition again.

MS. OBERWETTER: Words to the effect that then depend on which definition you use. "In a different way or manner".

THE COURT: To do this. If I say to accomplish this.

MS. OBERWETTER: To purchase.

THE COURT: Well, all of the examples are purchases that are market tested. And so I don't know how you would then say that this laundry list of market-tested things has then this vague phrase that says -- or non-market tests. I mean, it -- that doesn't strike me as what "otherwise" means. "Otherwise" has to have more words to it than what you just said.

MS. OBERWETTER: The first sentence says, "The issuer or its affiliate may at any time and from time to time purchase unsecured notes", period.

THE COURT: Right.

MS. OBERWETTER: And so the "or otherwise" can't possibly -- that's what you can do. There are a series of examples of types of purchases and then it says "or otherwise". And I think the real purpose in that is again in the phrasing of the first sentence of this paragraph. There's no basis for that. There's no language in here that supports including purpose concerning on any aspect of the right to purchase. Full stop, it's a plain, unadorned first sentence, followed by examples.

THE COURT: I do understand your argument, yeah.

MS. OBERWETTER: I am not going to touch on the specific points that Mr. Bennett made about the pieces of evidence and talking about third parties, other than to say obviously from Platinum's perspective, we have things to say about it's all in the transaction, the corporate formality, the difference between Platinum and the board and all of that, which I'm not going to include today, but for when we have argument either next week in court --

THE COURT: Right.

MS. OBERWETTER: -- depending on how ever right it is. And then the last -- in the same respect, I just wanted to say that Mr. Bennett touched briefly on Section 1305 of the contract, which is totally separate from any of the rest of what we've been talking about. And, again, I don't think that has any bearing on what we're thinking of as day one and preliminary contract issues for resolving it with the Debtor, et cetera, so I've just risen beyond that. I don't think it's necessary to talk about them today. And with that, I will conclude, Your Honor.

THE COURT: Thank you. Mr. Heidlage wants you to say one more thing.

MR. HEIDLAGE: Well, he's not in this case.

UNIDENTIFIED SPEAKER: Well, I mean the claims have been -- no claims were asserted against you in this case.

MR. HEIDLAGE: Not by you. He's adopted the same arguments.

THE COURT: Mr. Heidlage, what do you have to say?

MR. HEIDLAGE: Sorry. So the only thing I just wanted to note was I think there was some reference to the DTC procedures. I'm not sure that's in the record, and so I have some concern about trying to bring things into the record that we haven't had a full opportunity to investigate. I mean, this is an example. I've looked online, there are DTC procedures about redemptions, putting in call lotteries, things like that, and it's just quite complicated. I haven't seen anything that relates to sort-of putting out a general offer and selecting, you know --

THE COURT: So I had asked the question --

MR. HEIDLAGE: I just want to be very careful because I do think --

THE COURT: No, I had asked the question: Do we have those here before us? And I guess I meant in admissible form.

MR. HEIDLAGE: All right, okay.

THE COURT: But if we have -- if we don't have them here in admissible form, then I actually don't want to hear the argument. But I am going to order that the parties agree and submit them to me in admissible form so that I can read them.

MR. HEIDLAGE: And I just wanted to make sure that -- I was concerned that they were not in the record, as far as I could tell.

THE COURT: I think someone said they are in the record, and I may have misunderstood that.

MR. CLAREMAN: That was me. I was actually relying on Mr. Bennett, but I subsequently, after I sat down, learned that that is --

THE COURT: Let's see if they're in the record. If they're not in the record, I'm going to require that parties supplement the record. I've got to interpret this provision and the parties can easily submit what those DTC procedures are. So, Mr. Bennett, whatever you want to talk about, but the two things -- I'm sorry.

MR. STEIN: Yes, just very briefly, Your Honor. Matthew Stein, Kasowitz, Benson, Torres, on behalf of Senator. Just so the record's clear, we join in the arguments on the left side of the room. Clearly, Senator is a third party, was a third party. It's not an affiliate of the issuer or the sponsor.

As you know, the parties will have more to say when we get to the actual tort claims asserted against Senator and the other voters when we get to that part of the funding.

THE COURT: Thank you, sir.

MR. STEIN: Thank you, Your Honor.

THE COURT: I do want to hear about the waiver issue for sure. I want to hear about the DTC issue, and then whatever else you want to talk to me about. And it may be we can't cover the DTC issue if we don't have those in the record at this point.

MR. BENNETT: Just on the waiver issue, it's about the 24 and 26's that isn't a comparable privilege in the --

THE COURT: Sorry?

MR. BENNETT: The waiver issue is about the 24 and 26, and is not a comparable waiver issue. It's just a provision of all things not -- all things that were not changed and remain in full force and effect. It's the way of the only amendment that relates to the 2027.

THE COURT: Okay.

MR. BENNETT: So the provision itself is the 24 and 26's.

THE COURT: All right.

MR. BENNETT: It only references the timelines and --

THE COURT: That's fine. That's a good answer, but --

MR. BENNETT: Okay, I'll take that. With respect to the DTC, there are additional sets of procedures. People are talking about it. We did file a, quote, applicable procedures, as there were different procedures for everything on these timelines. And so, you're right, we'll probably have to get together and maybe in a perfect world, in addition to giving you all these different sets of procedures that relate to different times and transactions, maybe we'll even have an agreed-upon first draft.

THE COURT: Okay. I'm going to require that the parties submit the full DTC procedures that they allege apply, with highlighting and call-outs of the particular paragraphs that would govern this event. Because, for example, and as I said to her and I just want to say it to you, if DTC procedures -- and I've never read them, but if they would say a Trustee may never do X and you're suggesting that would be the way this has to happen, then you're going to have to come up with a different suggestion because I think it would be restricted by DTC.

MR. BENNETT: Your Honor, this isn't -- I am confident that you're going to find that it's inherently isolated because -- I want to say three weeks ago, a company that is nowhere near bankruptcy --

THE COURT: I need you to get closer to a mike. I'm just having trouble hearing you.

MR. BENNETT: Three weeks ago, Your Honor, a company that's nowhere near a Bankruptcy Court -- it's Warner Brothers discovery -- issued a tenure order for about twelve different parts of their debt, each one limited to a certain amount that people could tender. So every single one had a proration being attached to it, and it rolled over from one to the other. I can't imagine anything more complicated. It was all bonds that was under the DTC.

So I think this is entire -- that this is a very minor distraction that's going to be very easily dealt with.

THE COURT: Great, thank you.

MR. BENNETT: Now, I want to say one other thing. This unbelievable evidence that this is workable, they proposed it. "They" meaning the Debtors. Remember, at the very beginning, the initial proposal was that they were going to go out to all of the holders of the 2027 notes and, yes, "Do you want to exchange"?

They wanted it. This is not for this. This is for the tortious interference, but you remember. Every single witness that was asked about the desirability of expanding the offer said, "We want to send it to everybody if we can. They will only stop us, but" --

THE COURT: Yeah, but Section 3.02 says that the Trustee has to determine how that solicitation gets made, right?

MR. BENNETT: Actually, Your Honor, it doesn't say that. It says, "If you want to take an offer to everyone, the Trustee doesn't have to do anything. If you want to make an offer that's to everyone and over-subscription is a problem, then the Trustee has to get involved and say who gets it."

THE COURT: Correct.

MR. BENNETT: So the initial offer has nothing to do with the DTC for this.

THE COURT: Well, no, they could have done something completely different, but that has nothing to do with whether what they did was valid. So what they did was a less than all, right?

MR. BENNETT: Correct.

THE COURT: But it was a less than all thing that might not be a redemption, is their argument. But it was a less than all, whatever it was. You think it's a redemption;

they think it's not a redemption. So if it's a less than all, we then have to say, did they do a less than all in compliance with Section 3 of the Indenture? And the mechanics of that are that the Trustee has to then get involved.

MR. BENNETT: And I think the inquiry's entirely reasonable, but I'm confident that it's not going to be an issue but let's get the materials before you in a way that works for you.

THE COURT: Okay, thank you.

MR. BENNETT: Okay. Let's start with Mr. Kirpalani's initial point. And I don't know whether it's easier for you
-- is it easier for you to print out Bankruptcy Code provisions or shall I just have --

THE COURT: Bankruptcy Code provisions.

MR. BENNETT: Bankruptcy Code provisions. Actually Bankruptcy Code provisions. You can pull up and show everybody. If you can't, I can have Shenay, who's prepared to do this.

THE COURT: Oh, I was just going to read them. If somebody showed up in my court without a Bankruptcy Code, shame on them. Let's just go ahead.

MR. BENNETT: Let's maybe -- if you can give Shenay --

THE COURT: Sure.

MR. BENNETT: -- control, just for a second.

THE COURT: All right, Shenay has the lectern.

MR. BENNETT: Shenay, could you please start with Bankruptcy Code Section 548(a)(1)(B)(ii), I guess.

(Code Section displayed.)

THE COURT: I've got it in front of me. Why don't we just move ahead. (A)(1)(B)(ii).

MR. BENNETT: Well, I don't even have it in front of me, but --

THE COURT: Okay, she's got it.

MR. BENNETT: But the point is, is that this says received less than a reasonably equivalent value. And I suppose that the argument Mr. Kirpalani was saying is this is awkward and that if you received zero it's perfectly okay.

So here, less than a reasonably equivalent value clearly includes zero.

And why don't we take a look at 1129(a)(7)(A)(ii).

(Section being displayed.)

MR. BENNETT: On the second line, I think, so if you -- you used the word awkward or technically accurate. And we have a Bankruptcy Code that says exactly the same thing in at least two places. And so I don't think that the reciprocation was (indiscernible).

I don't think I really need to say much about 307(c) except it has -- again, it has a purpose all over it. And what it's implying it doesn't even have a selection component because it's trying to pick up all the ones at the end. So, and this leads to the 3.02 point, which is 3.02 doesn't say, go to the DTC and then follow all of these other procedures and other provisions that relate to redemptions. It doesn't say that. It says just one thing that is applied to, in our view, purchases and redemptions. Or, really, any transaction that involves the issue of purchasing debt in a way that is not all or pro rata. And if the "not all" would you go to the pro rata for the lot or other reasonable method.

That's all it says. It doesn't say, "Try to fit yourself into all these other provisions that conceivably don't apply." It says one thing. And, by the way, it says the thing that is probably most important to a holder, which is don't cheat me.

There was another point made about the hypothetical, that we were told that it breaks down so it goes up and down.

THE COURT: It breaks down if somebody agrees to -- if you make -- if you receive an offer from someone and the Debtor makes this great deal to buy something at ten cents that's worth fifty cents.

MR. BENNETT: Right.

THE COURT: That you could then force people to sell at ten cents.

MR. BENNETT: You can't do that. There's no provision -- only at nine -- the only, of course -- the only -- I'm not saying it's additional for redemption purposes. I've got additional redemption purposes. If someone makes a discounted offer to you to buy it, you can buy it from that person, but you -- but no one else is going to sell these. You can make the -- you know, you can offer to buy it to other people but you can't force people to sell it to you.

THE COURT: Well, 3.02 says that the Trustee will select unsecured notes for redemption by lot.

MR. BENNETT: But they noted --

THE COURT: So if they do that, then you --

MR. BENNETT: But in that hypothetical, there's no redemption rights. And all I'm saying is that it's basically about giving people an equal opportunity to participate. So if someone makes a lowball offer and the company says they want to accept it, and by the way, anyone else who wants to come do that, too, they'd say that but no one's going to respond, and no one can be compelled to respond. Again, it doesn't say you get an additional redemption right. What it does is allocate people who respond to a redemption right where there was a cap. That's what -- or responds to the offer when there was a cap. And then the same --

THE COURT: I don't -- I don't think that language is here. I understand what you're telling me, that that may be the practical effect of it, but I don't think the language restricts the Trustee from not forcing it pro rata.

MR. BENNETT: It just says that if there -- if the amount that's ultimately to be redeemed or purchased. That's what this part means.

THE COURT: Yeah. If less than all are to be redeemed or purchased.

MR. BENNETT: Right.

THE COURT: So let's say a million dollars is going to be redeemed or purchased.

MR. BENNETT: Right.

THE COURT: Then it says the Trustee will select unsecured notes for redemption. It doesn't say select from people that tender at that price. It just says we'll select unsecured notes for redemption.

MR. BENNETT: But they're only going to select the people who you can force to redeem. I don't -- I don't see this as a "and you can force people to take the deal." This is only for dealing -- this provision goes to --

THE COURT: If the Trustee can select notes for redemption, why can't you force people to take it? I understand you're saying that would really be uncomittable.

MR. BENNETT: Because the original proposal was -- in your hypothetical, the original proposal wasn't a redemption; it was a purchase.

THE COURT: Correct.

MR. BENNETT: Okay. So all I'm saying --

THE COURT: It's a purchase.

MR. BENNETT: It's a purchase. So if --

THE COURT: So the Trustee will select unsecured notes for purchase --

MR. BENNETT: If others want to do it.

THE COURT: -- by lot.

MR. BENNETT: But if others don't want to do it, there's nobody to select. If others don't -- if others do want to do it, then there's some point to select.

THE COURT: I don't think it says that. It may mean that, but I don't think it says that.

MR. BENNETT: Well, I certainly don't think it says that it creates a super redemption right. That gives it a right to compel the people to do things that they can't be compelled to do on their own. It doesn't say that either.

THE COURT: Okay. Go ahead.

MR. BENNETT: The other point that was made is that what if they do two deals in one day, one low and one high? That's a problem. It's entirely sensible that holders would want a provision that basically says, "Don't treat us that way," that the issuer, what it's going to make the bundles, make it for one -- make it one for all, all for one at the same price.

And so it's not offensive to me that it would make it difficult for a company to do two different deals with two different sets of holders at the same moment in time and during the same day or something like that.

THE COURT: I know. I mean, look in her hypothetical or his hypothetical, it could be two holders that contacted the company. The first one says, "I'll sell you my notes at thirty cents." The next one says, "I'll sell you my notes at forty cents." You're not going to tell the thirty guy, "Well, no, I'll pay you forty." You're going to accept them both, right?

MR. BENNETT: And right.

THE COURT: And then they're going to both be then subject to some sort of a market test.

MR. BENNETT: I guess that's right. And you probably should have to say to other people, "We're in the market at thirty," or "we're in the market at forty." And now if it's below market, it's not going to be an issue for anyone.

THE COURT: Well, I think you could -- I think you could say, "We have an offer to buy" -- if we can go through the complex procedures, you can say, "We have an offer to buy ten million dollars worth at thirty, and forty million dollars worth at forty."

MR. BENNETT: Right.

THE COURT: "And we'll take subscriptions for either or both if you wish to subscribe to them." That's your logical way of doing it, and I think that makes a great deal of sense if that's permitted, and if selecting by lot is prohibited. But I don't know -- I need to see the mechanics of how it's going to work, and this is light on mechanics.

MR. BENNETT: Okay. Again, that's perfectly reasonable and I would request it.

THE COURT: What do you think the word "otherwise" means?

MR. BENNETT: In that context? As I said before, I think it only modifies the last two things. I need to get my book. Hold on one second.

Okay. Yeah, my view is that the word "otherwise" modifies tender or exchange offers.

THE COURT: Meaning in what way? What does it include?

MR. BENNETT: I don't know. There are other names. Tender offers, well I guess that's tenders. Offers to purchase, public offers to purchase as we sometimes see them titled "offer to purchase."

THE COURT: Those are tenders or offers but, hey, I don't know what "otherwise" means here, but I think it may mean more than you're saying and less than what she is saying, that if we eliminate 3.02 just for a minute, that 3.07(h), the logical meaning to me of "otherwise" would mean other things that are similar to those in this list, not anything in the whole world.

MR. BENNETT: But I'm not offended by that, but things in that list could still be redemptions.

THE COURT: I'm sorry, but what?

MR. BENNETT: Things in that list could still be redemptions.

THE COURT: They could be redemptions, and maybe aren't redemptions but it's irrelevant under what we have as to applying them, correct?

MR. BENNETT: Right.

THE COURT: Okay. What else have you got?

MR. BENNETT: That's all I have.

THE COURT: Anybody else have anything you want to talk about tonight?

(No audible response.)

THE COURT: I'm sorry, before you go, let me ask the left side of the room, do you agree with Mr. Bennett that the waiver argument does not apply to the 2027 notes? Or do you believe the waiver argument does apply to the 2027 notes?

MR. BENNETT: Your Honor, I apologize. I think the -- so I would like to be able to respond to that, and I'm actually not completely ready to respond to it right now. What I can say is the specific language that is in the consent letter in the 2024 and 2026 notes is not in the consent letter for the 2027 notes, so there's a difference in the language. I have not been able, in the times that we have here, to identify any other --

THE COURT: Is there a 2027 --

MR. BENNETT: There was a --

THE COURT: -- document in the record that would create a waiver that you know of? And you can submit it later, but it needs to already be in the record, obviously.

MR. BENNETT: But if it's there, it's in the record. I just haven't been able to unscramble the record. Because what is in the record is what followed after. All consent letters to the third and fourth Supplemental Indentures, those are in the record, as are the third and fourth Supplemental Indentures.

THE COURT: So how do we close this loop?

MR. BENNETT: I'd just amend the order to review that, so all of the consent letters and the amendments to confirm that there is in fact no waiver of the sort that is in the '24 and '26 consent letters.

MR. KIRPALANI: Your Honor, I feel compelled to say it wasn't pleaded anywhere, their complaint of us.

THE COURT: I'll deal with whether it was pled after I see if it was tried. And so --

MR. KIRPALANI: I'm not going to have to supplement the record, but I would either identify it in the record for you or it doesn't exist.

THE COURT: That's the deal, so by end of the day tomorrow will you supplement the record with whatever that is?

MR. KIRPALANI: Thank you.

THE COURT: All right. Mr. Rosenbaum, how do you respond to the --

MR. ROSENBAUM: So I -- yeah, I think I was the one who has to respond to the waiver argument. As I heard it, Mr. Kirpalani's suggesting that the majority -- agreement of the majority waived any rights that others would have, including my clients, as to participation through 3.02.

I don't -- I looked at the consent letter and I could look at a Fourth Supplemental Indenture, and neither of them do that, so --

THE COURT: Neither of them do what?

MR. ROSENBAUM: Waive anything. So they don't waive -- in other words --

THE COURT: What was the ECF number of the consent letter again? Can I get it?

MR. ROSENBAUM: It's 603-10. All they do is consent to something, and then I'll get to the Fourth Supplemental Indenture, which I think is even clearer.

And it's Page 2 of 217, so I think it's this paragraph that we're looking at, that I've --

THE COURT: Beneficial owner in the sentence to the amendments. The issuance of the new Senior Secured first lien treatments of the incurrence of the obligations in the liens. And they make a request of delivery. How is that not a waiver?

MR. ROSENBAUM: I don't see the word "waiver" in that. I only see --

THE COURT: I don't see the word "waiver" in there either. Why is it a waiver when you tell someone to do something and they do it?

MR. ROSENBAUM: Well, because -- and so that says what it says, but I think if you read it in the context of the Fourth Supplemental Indenture, which is 604-41.

THE COURT: Hold on just a minute.

MR. ROSENBAUM: And I'm sorry, that the document you have up, it says sub-lein as specified in the Fourth Supplemental. So we can go back now. I'm sorry, I should have -- so in that language they were just reading, just above that, it says solely, in numerette 2, amendments -- I'm sorry, numerette 1 -- become operative solely as specified in the Fourth Supplemental Indenture.

THE COURT: And the Fourth Supplemental Agreement is where?

MR. ROSENBAUM: It is 604-41.

THE COURT: What page?

MR. ROSENBAUM: It is Page 7 of 112, under the heading Ratification of Indenture; Fourth Supplemental Indenture. And it says: Except as expressly amended hereby, the Indenture is, in all respects, ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. 302 was not touched by the Fourth Supplemental Indenture. So I don't think there was a waiver of anything with respect to 302.

THE COURT: So what they requested and directed the Trustee to notice collateral agent to execute whatever the Supplemental Indenture was. Isn't that the document that you're concerned about?

MR. ROSENBAUM: This one, the Fourth Supplemental Indenture.

THE COURT: Right.

MR. ROSENBAUM: And solely as specified in the Fourth Supplemental Indenture, and if the -- if there was any intent to waive, it would have been so specified. And when you go to the actual Fourth Supplemental Indenture, it actually limits itself only to what's in the Fourth Supplemental Indenture and expressly preserves in full force and effect everything else that's in the Indenture, which includes 302.

THE COURT: I mean, I understand that, but you waive it for the purpose of this transaction and then 302 applies to further transactions. If you can't instruct them to do this transaction and say, "and now I'm going to sue you for doing the transaction I instructed you to do," that is an absolute waiver, I think. Unless I'm missing your point.

MR. ROSENBAUM: No, I don't think you're missing my point. I think -- and this is -- maybe this argument was made in that, but this -- the first time I'm responding to it is right now, and even thinking about it.

But I know the law on waiver, and waivers are supposed to be expressed and clear. And I didn't -- there's nothing that says waiver in any of these documents.

THE COURT: Well, waiver's a knowing and intentional relinquishment of a right, I think is the technical definition under the law.

MR. ROSENBAUM: I think that's right, and no one --

THE COURT: And when you instruct someone to do something and they do it, it's a pretty knowing and intentional act. I don't get it.

Okay, what else have you got?

MR. ROSENBAUM: That was it.

THE COURT: Okay. I'm going to sustain the waiver argument against you, just so that we're not worried about that in anything further that might occur. And I'll give you 'til tomorrow at 5:00 to file any document, or a statement that there are no documents.

MR. ROSENBAUM: Well, Your Honor, I think if I may just enhance the fiber of this. So the majority of the holders can waive any -- can waive any past defaults that we just discussed. The language of the consents filed by the 2021 and 7 holders to the Indentures -- the Supplemental Indentures varied a little bit from the language here, but it's clear, I think, in the record, and it's in the record that the majority of the unsecured 2027 notes consented to the transaction and waived defaults.

I would just note there is no express waiver, but it is not -- this is under Section 902 of the Indenture. It is not necessary -- I'm reading from the Indenture. It is not necessary for the consent of the holders under Section 902. This is from the 2026 Indenture.

UNIDENTIFIED COUNSEL: It's from '26, but I think it's exempt somewhere else.

MR. ROSENBAUM: It's the same. To approve the particular form of any proposed amendments, supplement or waiver, but is sufficient if such consent approves the -- since there are -- so, Your Honor, if I may provide a statement by 5:00 p.m. tomorrow, just pointing to the evidence in the record.

THE COURT: You can file what you need, so long as it's limited to what's in the record, and you can respond to it.

MR. ROSENBAUM: Thank you, Your Honor.

THE COURT: And when you file it, show me where it's been pled too, but just do it all at once.

MR. ROSENBAUM: Okay.

THE COURT: If it hasn't been pled, we might as well cross that bridge, too, because we'll have to deal with all of this.

MR. ROSENBAUM: Thank you, Your Honor.

THE COURT: Thank you.

MR. ROSENBAUM: Your Honor, I'm not asking you to second guess your ruling now, but having only had a few minutes to respond to it, if we -- if there's further argument on it, and I'm not saying there will be, but I would like the night to figure it out because this came up for the first time this afternoon, at least.

THE COURT: Actually it didn't come up for the first time this afternoon. It came up yesterday. But that's fine, you've got 'til 5:00 o'clock tomorrow to file a response, and you all can file a response.

I'm actually trying to save you money on something that I think is a pretty obvious ruling, so I don't want you to just --

MR. ROSENBAUM: No, I -- and that's fine, Your Honor.

THE COURT: When I ask for briefing, it's usually because I think I don't know what to do, and here I think I know what to do, so --

MR. ROSENBAUM: I'm not suggesting that. And if it came up yesterday, then I misspoke.

THE COURT: Okay. On this phase, are the closing arguments now closed, other than with respect to the supplements to be filed by tomorrow at 5:00?

MR. ROSENBAUM: And the DTC will have to be tomorrow at 5:00. we'll have to work out filing --

THE COURT: Okay. I don't think -- will we have the DTC by tomorrow at 5:00?

MR. ROSENBAUM: No. I'm saying I don't think we will.

THE COURT: Right.

MR. ROSENBAUM: So we'll have to work that between ourselves.

THE COURT: I agree with that, the DTC. Those may or may not prove relevant. I don't want to delay, so let's go ahead and get them done.

Here's what my intention is, and I want to hear if anyone thinks that this is unhelpful. Anything that I do will be interloctory. It's going to be dependent on the further remedies and arguments.

I am inclined to come back as soon as I can and announce the principal decisions that I'm going to be making, so that we can move ahead with confirmation and not delay it.

The remedies hearing will also need to occur. If I try and write down something this complicated before we ever get to remedies and before we ever get to confirmation, you are going to have a really extended delay to get it all written down.

So then once we're done with the remedies hearing, after I make an oral announcement that leads us to the remedies hearing, I would then issue a final written opinion that would include both, if you will, liabilities and remedies in it, and that would be the decision that would then be a final decision.

I will not tell people that you can't file motions for an interlocutory appeal of the oral order, although I would not think that would be helpful because I don't think a District Court will take it, but try -- I'm not trying to eliminate that by doing this. That's not my goal. My goal is to not delay while I take six weeks or so to write a written opinion about this.

If you all think that injures your clients, I'd like to hear that argument now. Otherwise, I'm going to pretty quickly come back and announce the outcome of the decision with some basic reasons within the more extensive reasons to be made later, and to be made in writing, all incorporated into one final judgment/report and recommendation. Probably do a memorandum opinion with one judgment and one report and recommendation coming out of the same logic in the memorandum opinion, but not to delay at all.

If you really think you want a written opinion now on the interlocutory portion of this, I want to hear those arguments. I'm not sure that I'll respect them, but I want to hear them. I'm trying to do this to benefit the parties. I know people have really wanted to get on with life.

Mr. Heidlage?

MR. HEIDLAGE: I guess what I would request is the opportunity to think about it overnight, since we're going to be here tomorrow at 1:45, as I understand it.

THE COURT: Yes, okay. That's fine.

MR. HEIDLAGE: Because I think --

THE COURT: No, that's fine.

MR. HEIDLAGE: Yeah, but I just want to -- I do want to make something -- I want to make sure I'm understanding what -- what your process is. So I think we've had what I'll call the contract liability discussions over the past few days. My understanding is that tomorrow we're going to talk about what I'll call sort of the availability of certain types of remedies, and then I do think -- and I'm just going to preview this. To the extent that there's a decision that is against my client just on the liability phase, and there's some type of rev -- certain types of revenues, I do think there will need to be, you know, some submissions, including evidentiary examination of what those remedies may be.

THE COURT: I think that at least for certain remedies, there absolutely will have to be that. For other remedies, not so clear, to me.

MR. HEIDLAGE: And I would just like the opportunity at some point -- and maybe it's tomorrow before we, you know, wrap up, to sort-of walk through what I think -- if you were to go down certain remedies, what we think would need to be addressed.

And I know you may do the same thing. I just want to make sure that we had that opportunity and --

THE COURT: Yeah, no, no. Absolutely. Absolutely. So I'll draw three sort-of pillars out there. Pillar 1 is I find no liability; we're not going to have remedies here. And Pillar 1A is I find liability on some issues and not on other issues. Then we're only going to have a remedies hearing on the ones where I find liability.

Pillar 2 is I find that the correct remedy is simply to void certain things. The easiest example is one that we talked about yesterday, that I would simply leave the 2026 lien in place. Now, that would benefit a lot of different groups. It would benefit the 2026 holders, it would benefit Pimco and SilverPoint because they would still, under that theory, own a whole bunch of the '26 issuance, right? And so I wouldn't allocate anything. I would just say that's it.

The third major pillar -- and now there's a whole bunch of room between No. 2 and No. 3, where probably that's more where we get to. The third major pillar is an equitable rearrangement of the capital structure.

I have already written out an Excel spreadsheet of all the inputs that I would need for that, and all of those inputs would have to come from an evidentiary record. Most of those aren't going to be contested, if that's what it is, you know.

How much were the bonds on a certain date? How much was paid out for indemnification? How much were the attorneys' fees? So most of those things will be stipulated to because the parties have -- I know, don't want to fight over stuff that's going to be an obvious answer.

So parties may disagree, for example. We'll take the easy one, how the indemnification issue should be handled. But the theory of how it ought to be handled will come out in the remedies decision that I get made before we then have the revenues hearing.

So, just to make something up. Let's assume that I say that there will be a reimbursement of any indemnification that's received, but only to the extent of 40 percent of it, you know. So people may argue against all of that, but it's not going to be hard to come up with how much indemnification's been paid. That will be known.

MR. HEIDLAGE: So I guess what I would just caution you on -- and I want to make sure we have an opportunity to talk about it. Frankly, I'm not sure that I was being prepared to talk about all the little -- the various knobs, so to speak, that you may be thinking about, tomorrow. I didn't understand that to be what you were asking for.

But for -- just for example, right? Just to take the indemnification point. Much of the indemnification has been indemnified for various causes --

THE COURT: Correct.

MR. HEIDLAGE: -- right? Has been paid pursuant to the, and was consideration under the DIP order.

THE COURT: Correct.

MR. HEIDLAGE: And so that is different in common than other types of, for example, indemnification they had incurred in bankruptcy. And I do think that there's some types of submissions that will need to be discussed or, for example, attorneys' fees. What would be the attorneys' fees in a but-for world or, for example, where their transaction was undertaken? That, I think, would be relevant.

We would at least contest it if stated as relevant, and we would want the opportunity to put in that type of the argumentation.

THE COURT: All right.

MR. HEIDLAGE: And I want to say two things. One is, I don't think that happens -- that can happen tomorrow. I didn't understand you to be asking for us to go through all of that tomorrow. I understood tomorrow to be sort-of, for example, you know, whether or not equitable subordination was available as a remedy and/or whether or not, you know, an equitable lien was there.

Well, I think that's -- frankly, I think that's what my colleagues -- so I just want to make sure, because, you know, you said, for example, in your remedies ruling you're going to have -- I heard -- let's say we can get there, and I realize you said that we may not get there. But that you might sort-of talk about how the certain health factors may be treated.

And I just would want to make sure that we have an opportunity, that's not sort-of on the fly tomorrow, to talk through what we believe would need to be taken into account.

THE COURT: Yeah. It isn't going to be tomorrow. How's that?

MR. HEIDLAGE: Okay. Oh, I see, but I do --

THE COURT: I do hope to do it soon.

MR. HEIDLAGE: No, no, I was going to say, I understand that there is a strong -- there's a strong interest among all parties, including my clients, to be clear, to do this as efficiently and as expeditiously as we can.

THE COURT: And are you willing -- well, not "willing," because this is ultimately going to be my decision. I'm not asking for your consent to it. Do you think it's a good idea that I render that decision orally rather than in writing, in the interest of time?

MR. HEIDLAGE: And this is what I'd like to think about --

THE COURT: Right.

MR. HEIDLAGE: -- because I just -- I don't -- I'm hearing about this for the first time and I don't want to be --

THE COURT: That's fine. No, that's fine. I'm bring it up and I would like feedback on it. I would like a lot. Anyone that has a view as to whether oral is better than written, or written is better than oral, just -- you'll need to trust me that there's a huge time delay between oral and written, and I think that that works to everyone's disadvantage.

MR. HEIDLAGE: I understand completely where you're coming from, but frankly that requires at least, for me at least, an art of conversation with my clients. I'm going to try to do that as soon as I can.

THE COURT: Sure. Thank you. Anybody else have any additional comment on that?

(No audible response.)

THE COURT: All right. I'll see you all tomorrow at

1:45. We're in recess for tonight. Oh, wait, wait, I'm sorry. I'm sorry. Hold on. Mr. Melko, go ahead.

MR. MELKO: Yes, Your Honor. John Melko on behalf of the 2024 and 2026 holders. Can you hear me okay?

THE COURT: I can. Thank you.

MR. MELKO: Thanks. We had to rearrange my office after the storm damage. The question, Your Honor has already found -- and we've been at this for over a year now, so it's at times hard to remember what was decided when, but certain aspects of this case are non-core.

And you had mentioned, you know, people actually thinking you've got interlocutory appeals and what have you. Just as a procedural matter, I was curious if the Court had thought about a report and recommendation, or how that would work in this context.

THE COURT: So I would announce the liability issue on the record in a way that does not totally elucidate a hundred percent of the reasons, have a subsequent hearing on the remedies, which would be evidentiary. I would then issue a single memorandum opinion with the anticipation that that would be accompanied by two things. One would be a judgment, the other would be a report and recommendation to the United States District Court, and that the date for the report and recommendation's triggering of objections and responses under the rules, and the date for the appeal of the final judgment would be on entry of those two documents. That up until then, everything would be interlocutory and would not constitute yet a report and recommendation.

But that would allow people to plan for confirmation, knowing what's going to happen.

MR. MELKO: And that was really the concern, Judge. It's how do people move forward with confirmation? I mean, you said -- one of the things you mentioned was this would help parties to get to confirmation. I don't think anybody in the courtroom or listening in wants to move forward with confirmation unless we know that the facts we're predicating our positions on are going to be the facts as they existed during the present.

THE COURT: Well, you're going to know what my decision is and what my recommendation is, but I have every anticipation that that will sit somewhere for a couple of years before you get a final non-appealable decision.

MR. MELKO: Oh, sure.

THE COURT: And I am not holding up confirmation. And, you know, I take counsel to the Debtors -- I mean, you know, Milbank comes on yesterday and makes a very clear statement -- and Mr. LeBlanc is listening right now -- that they intend to move ahead with confirmation at the earliest possible time. And I assume that they will move ahead with confirmation that is consistent with the judgment. They don't really care who owns their capital. They have views of who ought to own the capital, which I have very much appreciated.

But once I make a decision, I would expect to see a Plan that's consistent with the decision. That may not be what Mr. LeBlanc has in mind. I'm certainly not going to tell them what the contents of their Plan need to be, but that was sort-of the spirit that I took, that I'm going to enable his line, his statement to be in. But that would allow them to move ahead with confirmation. People could make their objections to confirmation. But the appeal's going to take a long time, and I'm not holding up confirmation while my decision gets appealed.

MR. MELKO: Oh, I wasn't going to take -- I wasn't suggesting that, Your Honor. I don't think anyone's contemplated that view. I mean, the issue really is, until there is an order that would not be stayed or on which the Plan could go forward and we'd have treatments. But that's -- you know, this was just off the cuff. I was not --

THE COURT: Yeah. Even if the order is stayed, I'm not holding up confirmation. Staying the order doesn't hold up confirmation. It means I've got decisions to make at confirmation and it -- I mean, I guess that there could be an order that stays it and I mean I'll respect whatever order the District Judge of the Fifth Circuit enters. Don't get me wrong. But I doubt they're going to say I can't then make an estimation for purposes of confirmation, or make confirmation decisions based on the logic in the Memorandum Opinion.

If I order some reordering of the capital account, they may say that that final reordering, you know, is subject to a stay of some sort, but --

MR. MELKO: Well --

THE COURT: You've seen me get --

MR. MELKO: Well, Your Honor --

THE COURT: You've seen me get reversed before, Mr. Melko. You probably got me reversed before. I respect the reversals, so people don't need to worry about that. But in the meantime, we're living with what I say.

MR. MELKO: Well, I'm not worried at this point about a reversal. I'm just trying to think ahead in terms of how people -- how really everybody could conduct themselves with regard to a Plan process in the face of certain (indiscernible).

THE COURT: Right. Well, let me -- Mr. LeBlanc, I'm going to --

MR. LEBLANC: Your Honor?

THE COURT: I'm going to put you on a bit of a spot, but I've enabled your line and I don't want to be in any way dictating what your Plan looks like, but I was trying to read what you were saying yesterday, and I'll let you make your own statement without my filtering of it, because you can file any

Plan that you think is appropriate, of course.

MR. LEBLANC: Well, and Your Honor, I think what you said was completely accurate. This is Andrew LeBlanc on behalf of (indiscernible) Bank on behalf of the company.

Your Honor, we intend -- it's important to the company to move as expeditiously as possible to confirm a Plan.

How quickly we can do that obviously is going to depend on what the decision says and what the outcome is for the capital structure, but we do intend to move as quickly as we can. We don't intend to wait a couple of years to have appeals run. Hopefully, once people have direction from the Court, we can -- we can even try to get people in a room and see if we can resolve things. We do intend to move as quickly as possible to get to confirmation, once there's a decision.

We'll talk to Mr. Kirpalani overnight and be prepared to have him respond to Your Honor's question with respect to whether we're comfortable with an oral decision. I don't want to give a view on that as we sit here now. I want to talk to our client about it. But we do -- whenever there is a decision, we're going to move as expeditiously as possible. How quickly that is will depend on what that decision is.

THE COURT: That's fine. And just so that you know, a provision in a Plan that says if the decision in an adversary proceeding, you know, 20 -- whatever this number is, 23-3091, I think -- reverses or modifies the decision in any way, that the capital accounts will be adjusted by the Bankruptcy Court as directed or mandated by any appeal that changes the results. Fine with me.

I'm telling you I'm -- this thing is so complicated and such a difficult decision, I will very, very, very happily follow any report and decision that thinks I got it wrong. So you'll get no fight from me on that. Nobody will. I don't think you ever have, even ones that where I think the Fifth Circuit completely blew it and I still follow it.

So here, it's going to be really hard for them to blow it because it's too difficult, and they may just make the calls differently than I do.

Mr. Clareman?

MR. CLAREMAN: Yes, Your Honor. I just wanted to mention, just from the standpoint of housekeeping and order of operations. I have nothing to say about the plan that the Court entered and wants to pursue with respect to the path or structure, and I understand that those exigencies will take precedence over other matters.

Even if the Court were to conclude ultimately, for example, that there was upper reach with the track or provisions that Langur Maize is alleging, they're seeking damages, and that -- unless the Court were to find that the potential holders actually were contractually obligated parties under the Indenture, we then have the other issues before we get to liability, which is why we didn't talk about Langur Maize today.

THE COURT: Correct.

MR. CLAREMAN: So I just don't want that to get lost in the --

THE COURT: No, I know what you're talking about Langur Maize stay. I don't think that the Langur Maize stay will affect the capital structure, and so I'm hoping I can issue, for the Langur Maize stay, the oral announcement. But I really do want to get feedback on that.

I'm not trying to put people in a position where they can't represent their clients well, and this is a huge amount of money. Somebody's going to win, somebody's going to lose on each of the issues. And if people believe that -- I mean, whichever way I go, it's going to be interlocutory.

So if people think that the oral ruling interlocutory disadvantages their client versus a written ruling interlocutory, I need to hear that so I can balance things out a little bit. I'm hoping everybody agrees that speed is more important, but you may not. You may not, and I need to hear why not, so that's why I want to hear it tomorrow, or as soon as I can.

Okay, we're going to start working on this. Thank you. We'll see you all tomorrow.

(Proceedings adjourned at 7:31 p.m.)

* * * * *

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

/S./ MARY D. HENRY

CERTIFIED BY THE AMERICAN ASSOCIATION OF

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JUDICIAL TRANSCRIBERS OF TEXAS, LLC

JTT TRANSCRIPT #68801

DATE FILED: JUNE 30, 2024

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS

In Re: Wesco Aircraft Holdings, Inc. and Official Committee Of Unsecured Creditors
Debtor

Case No.: 23−90611
Chapter: 11

Wesco Aircraft Holdings, Inc.,
Plaintiff(s),
vs.
SSD Investments Ltd.,
Defendant(s).

Adversary No.: 23−03091

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