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
	§	WEDNESDAY,
v	§	JUNE 26, 2024
	§	
SSD INVESTMENTS LTD., ET AL	§	1:45 P.M. TO 4:02 P.M.

TRIAL DAY 33

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

(RECORDED VIA COURTSPEAK; NO LOG NOTES PROVIDED)

(AUDIO ISSUES NOTED)

TRANSCRIPTION SERVICE BY:

JUDICIAL TRANSCRIBERS OF TEXAS, LLC
935 ELDRIDGE ROAD, #144
SUGAR LAND, TEXAS 77478
281-277-5325
www.judicialtranscribers.com

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

APPEARANCES:

SPECIAL COUNSEL FOR THE DEBTORS, WESCO AIRCRAFT HOLDINGS INC., ET AL.:	QUINN EMANUEL URQUHART & SULLIVAN, LLP Susheel Kirpalani, Esq. 51 Madison Avenue 22nd Floor New York, NY 10010 212-849-7000 MILBANK Andrew LeBlanc, Esq. 1850 K Street, NW Suite 1100 Washington, DC 20006 202-835-7500
FOR THE PLATINUM DEFENDANTS:	WILLIAMS & CONNOLLY, LLP Ellen Oberwetter, Esq. 680 Main Avenue SW Washington, DC 20024 202-434-5173
FOR THE 2024/2026 NOTEHOLDERS:	KOBRE & KIM Adam Lavine, Esq. Zachary Rosenbaum, Esq. 800 Third Avenue New York, NY 10022 212-380-2580
FOR PIMCO AND SILVER POINT NOTEHOLDERS:	HOLWELL SHUSTER & GOLDBERG, LLP Benjamin Heidlage, Esq. 425 Lexington Avenue New York, NY 10017 646-837-5151
FOR CARLYLE AND SPRING CREEK:	PAUL WEISS William Clareman, Esq. 1285 Avenue of the Americas New York, NY 10019-6064 212-373-3248

APPEARANCES (CONT'D):

FOR THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS:

MORRISON & FOERSTER
Lorenzo Marinuzzi, Esq.
250 West 55th Street
New York, NY 10019
212-468-8000

(Please also see Electronic Appearances.)

HOUSTON, TEXAS; WEDNESDAY, JUNE 26, 2024; 1:45 P.M.

THE COURT: Okay. Let's go back on the Record on Wesco.

(Pause in proceedings)

THE COURT: Those of you on the phone can go ahead and press five-star if you want the ability to speak. You don't need to, but you may.

This is Adversary Proceeding 23-3091. I want to advise the parties that, as forecast, you will have a couple of interruptions during the course of the afternoon; the first one will actually be shortly after 2:00 o'clock. Then there won't be another interruption until about 4:00 o'clock.

So I want to proceed either right now, and want to get in 10 or 15 minutes worth of work or come back at 2:15. I'm inclined to go ahead and get in the 10 or 15 minutes work of work.

MR. LAVINE: That's fine for us, Your Honor.

THE COURT: All right.

MR. LAVINE: Before we get started, can you grant access to 2024/2026 holders tech?

(Pause in proceedings)

THE COURT: All right. 2024/2026 has the control.

MR. LAVINE: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. LAVINE: Adam Lavine of Kobre & Kim on behalf of

the 2024/2026 holders.

THE COURT: So I did not --

MR. LAVINE: I --

THE COURT: I did not get the presentation.

MR. LAVINE: I'm sorry.

THE COURT: If you intended for me to get one, I didn't get one.

MR. LAVINE: May I approach?

THE COURT: Yes, sir. Thank you.

MR. LAVINE: Thank you, Your Honor.

So, as has been mentioned by others this week, from the parties' perspective, the purpose of this afternoon session is to discuss the threshold question of whether, if the Court makes a finding of liability; for example, breach of 2026 note indenture, may the Court impose equitable remedies to right the wrongs that occurred.

And we understand Your Honor has given considerable thought to what the specific contours of various equitable remedies might look like in that world. And the evidentiary inputs that would go into what might be the ultimate outcome for these cases.

But I don't believe the parties are prepared to discuss today the particular inputs. Rather, the agreement among the parties is that today would be limited to the simpler threshold question: Would equitable remedies be

available at all? And on that limited question, Your Honor, we don't think this is a close call.

If the Court were to find a breach of contract, we think there are multiple equitable remedies that would be available for this Court, sitting in equity, to right the wrongs attendant to the breach. And frankly, none of them are mutually exclusive.

The counterclaim defendants make a lot of arguments as to why our clients do not have equitable remedies. To use an analogy from Mr. Rosenbaum, they say that, even if they broke the rules of the game, they get to keep their hotels under it. But here, denying a remedy would be entirely inconsistent with one of the longest standing principles of this nation's jurisprudence: That equity will not suffer a wrong without a remedy.

THE COURT: So I think that I should clarify the premise under which I'm asking the question. The legal remedies that are available to the Court might actually treat your client better than the equitable remedies. And one of the reasons why I've been focused on whether I can do equitable remedies is to try and recognize what I believe the overwhelming evidence on the expected benefits -- they didn't materialize -- but the expected benefits of the two-hundred-million-dollar cash infusion. So I don't want to think of whether I can create an equitable remedy solely on whether I

can give you better relief, but on whether an equitable remedy is more fair for the overall solution.

I will identify at least two legal remedies that are potentials:

One is to give you all an allowed unsecured claim. You already have that.

MR. LAVINE: Correct.

THE COURT: I'll give you another one for the same amount.

Number two is to say that, as a matter of law, your lien remains in place for all the 2024 -- excuse me -- all the 2026 lienholders, and it primes the new money because it never got released in accordance with the law.

Those are both law remedies. One seems, from a fairness point of view, to go too far; and the other seems, from a fairness point of view, to not go far enough. I may be wrong on both counts --

MR. LAVINE: Well --

THE COURT: -- because I haven't run the numbers on those counts.

But the reason I'm interested in whether I can do equitable relief is not only to try and be sure that your clients' interests are vindicated, but I don't -- I would like to not give you a windfall, frankly, if you win. And I'm afraid that the two sides of legal relief, one of them could

create a windfall that I don't necessarily want to award.

So, as the parties are thinking about their arguments today, including you --

MR. LAVINE: Yes.

THE COURT: You know, you need to --

MR. LAVINE: No, the --

THE COURT: -- think about that because it's not automatic that, if I'm authorized to do equitable relief, that it helps you. It may hurt you. And I want to put it in that context, where no one is misled by why I'm thinking about it.

MR. LAVINE: I appreciate that, Your Honor, and I will try and focus my presentation to that effect.

Two points jump out at us pretty immediately:

First, we're not here seeking a windfall, that's the point.

Point two is --

THE COURT: Well, you may not be seeking it, but you might get one, if I'm limited to legal relief, right?

MR. LAVINE: Well, we have been -- I -- we have been thinking -- I -- it might be a question of nomenclature because there are certain remedies which we have been calling "state law equitable remedies," the kind of non-bankruptcy court, non-bankruptcy law remedies that could be attendant to a breach of contract; for example, specific performance. Another might having the transaction or portions of it be void

ab initio. And we had been thinking of those things and discussing them in the context of --

THE COURT: Well, but the most likely one to me is just to say that you didn't lose your lien.

MR. LAVINE: Correct. And --

THE COURT: And we have a B-F -- we don't have a BFP out here.

MR. LAVINE: Correct. And --

THE COURT: We have parties with notice. Maybe you just didn't lose your lien.

MR. LAVINE: And we agree --

THE COURT: That might give you --

MR. LAVINE: And we --

THE COURT: But that might give you a windfall because then you get benefits of that new $200 million and you didn't put any in. Maybe that's not your fault. But I am concerned about giving you a windfall.

MR. LAVINE: Well, I think, because these remedies are not necessarily mutually exclusive -- and I can give you one example where that might be the windfall. And we can -- and I can talk through on --

THE COURT: All of that's fine. I just -- your intro to the --

MR. LAVINE: Yeah.

THE COURT: -- equitable relief was talking about

giving you full and fair compensation. And I want you to be aware that that's not the way that my thoughts of equitable relief germinated; they germinated the other direction.

MR. LAVINE: What I think we can both agree on, or at least -- actually, I'm not going to (indiscernible) so I won't say we both agree. But certainly, what is not equitable under any circumstances, in our view, is that, if there is a breach to a fundamental contract right that converts security interests into, effectively, an unsecured claim, then that is not doing equity. And I can explain that in the presentation and I thank you for your opening remarks.

So, at least in our brief, we spend a significant amount of time on what I call the, you know, from the left side here, the "state law contract remedies." And so I would like to start there. And we have some slides on the applicable case law, but I'll summarize the argument first, which is simple:

If the 2024/2026 holders held a right to an equitable remedy attendant to a breach of contract under state law; for example, specific performance, and if -- or equitable lien, and if that state law right to an equitable remedy belonged to the holders as of the petition date, then that equitable remedy is enforceable in bankruptcy. And that's actually a point that's disputed at this moment.

And here, we do have a right to multiple equitable

remedies. Again, they're not necessarily mutually exclusive. And the Court, in equity, can fashion appropriate relief. But those remedies -- and has the discretion to do so. But those remedies include, as I said, specific performance and equitable lien because, today and before the petition date, there was no adequate remedy at law for this particular breach.

There is a long history in this country of courts holding that a secured creditor has no adequate remedy at law where its secured position is jeopardized by the breach, and the reason for this is obvious. If a lender purposefully negotiates for secured status with the bundle of rights attendant to that secured status, it cannot be the case that the payment of damages, in this case the provision of an unsecured claim, provides an adequate remedy at law. If that lender wanted an unsecured claim, it would have bargained for an unsecured instrument and it would have gotten a much higher interest rate, among other things. And so, based on that jurisprudence, this Court can instruct the Debtor and the trustee to specifically perform under the indenture.

THE COURT: What does "specifically perform" mean at this point?

MR. LAVINE: There is a provision in the indenture, for example, which is Section 12.01 -- and we can actually jump to the back of the presentation, which has Section 12.01

on it.

But in short, the provision of 12.01 provides that the issuer and the notes collateral agent shall enter into security documents and make all necessary UCC filings.

It is not too distinct, I would think, from orders approving DIP financing, which has kind of general provisions that say the parties are permitted to execute their security documents and then take all necessary steps to perfect those security interests without the Court actually, you know, ordering that anyone does any specific thing; rather, you're enforcing and approving an existing agreement.

THE COURT: But they did all that. They then took it away from you.

MR. LAVINE: Correct.

THE COURT: Right? So, now that they took it away from you, what would "specific performance" mean?

MR. LAVINE: There is specific -- well, I'll give you another example, and we do have a slide and some cases on this, related to the context of consummated transactions, so in other consummated --

THE COURT: And --

MR. LAVINE: -- transactions -- and the easiest to wrap your head around would be instances where a party has a right of first refusal for a piece of real property.

THE COURT: Uh-huh.

MR. LAVINE: And let me just turn to the slide, so we can -- the slide which says "Consummated Transaction Cases, Texas." I don't have page numbers, I realize, on my deck.

(Participants confer)

MR. LAVINE: But I think, Your Honor, to -- the most direct answer to your question is, what does "specific performance mean," it's, in this case, getting our liens back and we believe elevating us --

THE COURT: What if you never lost your lien?

MR. LAVINE: What if --

THE COURT: I don't think you lost your lien. They think you lost your lien, they tried to take your lien away.

MR. LAVINE: Right.

THE COURT: If you win this argument, then I don't think you lost your lien.

MR. LAVINE: We --

THE COURT: You may have lost your lien if they re-transferred it to a BFP. But it didn't go to a BFP.

MR. LAVINE: Well, that --

THE COURT: It went to a non-BFP; therefore, I don't think your lien ever went away. So why would I --

MR. LAVINE: That is --

THE COURT: -- order specific --

MR. LAVINE: That is certainly another way to look at this that we would accept. So, in other words --

THE COURT: I would think --

MR. LAVINE: And if I hear the Court --

THE COURT: I would think --

MR. LAVINE: If I hear --

THE COURT: But --

MR. LAVINE: -- the Court correctly --

THE COURT: But that seems un --

MR. LAVINE: -- it's that --

THE COURT: That gives you a windfall, right? Even this, gives you a windfall.

MR. LAVINE: Well, here's what I would suggest I that case. If you -- and I'll stick to specific performance, but I hear that Your Honor, I imagine, is referencing the case law, which says, effectively, that, if a trustee is acting outside of its authority or otherwise under its indenture, then, you know, transactions are void *ab initio*. It's not that -- as if they never occurred.

THE COURT: No.

MR. LAVINE: And we --

THE COURT: I don't -- I think the transaction occurred. I think that PIMCO and Silver Point thought they were getting the rights of a first lienholder. But they knew that they were taking the risk that they weren't because they were not BFPs. And all that I need to do is to say, as a matter of law, that they didn't get that superior to you.

But it's not just you, don't forget, it's all the 2026 noteholders, of which -- or interest holders, of which they're -- after you do all the adjustments, they're still more than 50 percent sort of under any measure.

MR. LAVINE: Yeah.

THE COURT: But why --

MR. LAVINE: So --

THE COURT: Why are we going to these fancy things when all that we have to do is say there wasn't a lien, a lien for -- you did not lose your lien.

MR. LAVINE: Your Honor, that --

THE COURT: Am I --

MR. LAVINE: That would --

THE COURT: Am I missing --

MR. LAVINE: -- be acceptable.

THE COURT: -- the law about that? Because --

MR. LAVINE: Well --

THE COURT: But I think that's a legal remedy --

MR. LAVINE: No, I --

THE COURT: -- not an equitable -- I don't think that's an equitable remedy; I think that's a law remedy.

MR. LAVINE: So we had at least been thinking of that, in terms of equitable remedy, specific performance; or, in the alternative, you know, avoiding -- voiding the transaction or declaring it void.

THE COURT: So -- but --

MR. LAVINE: I didn't --

THE COURT: But wouldn't it be more fair, instead of doing any of those things, all of which put you in a first lien position, to say let's try and put this transaction back the way it should have been? But 200 million did come in. We shouldn't subordinate that to the world.

MR. LAVINE: That --

THE COURT: And let's then figure out, in the capital structure, what is an appropriate capital structure that recognizes, on some basis, both your rights as a first lienholder and the benefits brought in by the new 200 million. That's global equitable relief. It's very hard to figure out the numbers, very, very hard to figure out the numbers.

MR. LAVINE: We --

THE COURT: But is that more fair and within my power?

MR. LAVINE: We believe it's within your power.

And one way that could be accomplished, I -- because I think there are many -- is, either declaring the transaction -- sorry. Start over. Specific --

THE COURT: Then see, if --

MR. LAVINE: Specific --

THE COURT: No, but the parties -- see, but if I declare it void, then the people that put in the 200 million

now get back an unsecured claim for their 200 million, which puts them --

MR. LAVINE: If --

THE COURT: -- behind or at least *pari passu* with people that didn't put in new money and that don't have a first lien. That didn't seem very fair or does not seem very fair to me either.

MR. LAVINE: What we think the Court can do -- and again, today's presentation, we were more here to talk about are these available at all, so that's --

THE COURT: Right.

MR. LAVINE: Yeah, that's being challenged, but -- okay. I will engage with the Court directly on this question.

All right. So, if you were to grant us our liens, which we had been thinking as equitable relief, you could elevate the -- for example, the 2026 holders to the same position as the existing 1L holders and then, through something like a specific performance equitable remedy -- and then I understand Your Honor's concern with the new money -- and say okay, but with respect to the new money piece, it's in that circumstance and with respect to only those claims or that portion of the 1L notes, which the Court, in its discretion may use equitable subordination to make the appropriate adjustments that would do equity in this case. We do --

THE COURT: So for --

MR. LAVINE: -- think that's --

THE COURT: -- what it's worth --

MR. LAVINE: -- available.

THE COURT: -- that's not precisely what's in my mind.

MR. LAVINE: Okay.

THE COURT: But tell me what -- that's what I need. If I have the authority to do that, I have the authority to do what's in my mind.

MR. LAVINE: Uh-huh.

THE COURT: So tell me why I would have the authority to -- when there is an available legal remedy; i.e., the one I've said, they just -- you keep your lien, do I have the right to take away from your clients their available legal remedy and say I think that goes too far, given these circumstance; and, therefore, I can use equitable relief. Does the law allow me to take away those legal rights from you all and equitably give you less?

MR. LAVINE: So we had -- we have been thinking of the legal remedy as payment of cash or an unsecured claim. So I think the terminology here is a bit confusing.

THE COURT: Yeah.

MR. LAVINE: But what I would --

THE COURT: Well, look, I'm going to -- I need to

call my 2:00 o'clock.

MR. LAVINE: Yeah, okay.

THE COURT: But it is my -- and maybe I'm just wrong about the classification, so sorry if I am. But I thought a declaration of rights that says you still have a first lien would be a legal remedy and not an equitable remedy.

MR. LAVINE: No, we -- the --

THE COURT: If that's an equitable remedy, then fair enough.

MR. LAVINE: So we can -- when we come back from the break --

THE COURT: Okay.

MR. LAVINE: -- if you want to take one, and we'll answer that directly.

THE COURT: So here is the question: If I determine that you have the right, maybe, to just keep your first lien, do I also have the right to say that goes too far, I'm not going to give the plaintiffs a windfall, and so I'm going to modify it down with an equitable adjustment recognizing the new money? And as to whether that is one form of equitable relief that you maybe entitled to, as opposed to legal relief, I guess I never looked up the definition. So my question is: Can I take away the bigger relief and give you smaller relief if I think that's the right thing to do?

And we'll come back in a few minutes.

MR. LAVINE: Thank you.

THE COURT: Thank you.

(Recess taken from 2:08 p.m. to 2:28 p.m.)

THE COURT: All right. Let's go back on the Record in Wesco.

(Pause in proceedings)

THE COURT: So we have an hour and a half without interruptions.

Go ahead, please, Mr. Lavine.

MR. LAVINE: Thank you, Your Honor. For the Record, Adam Lavine of Kobre & Kim for the 2024/2026 holders.

So, Your Honor, my background, like yours -- and more than background -- but is in bankruptcy law and courts of equity. So I'm actually -- to answer your questions, I'm going to turn the podium over to Mr. Rosenbaum, who deals more in state court litigation and has more familiarity with the legal remedy aspect of your question.

THE COURT: Thank you.

MR. ROSENBAUM: Good afternoon, Your Honor. Zachary Rosenbaum.

(Participants confer)

MR. ROSENBAUM: So, granted, if we're kind of in a world where we filed legal claims on breach of contract, seeking legal remedies, and there are equitable remedies that are also available.

And just taking a step back, I think declaratory relief is legal. So the declaration that we're seeking is a legal remedy. I don't --

THE COURT: So if --

MR. ROSENBAUM: It's a tech --

THE COURT: So, if I declare your first lien remains in effect, that's a law remedy, right?

MR. ROSENBAUM: That is a law remedy.

THE COURT: Okay.

MR. ROSENBAUM: And I think, though, whether we're in -- there's a saying, the law abhors a windfall, not just equity abhors a windfall.

So I think, if we're in a world where we were fashioning a damage -- there is a breach and we are fashioning the damages remedy, the Court or the jury, in instructions to the jury, would do things that would prevent a windfall, but restore us to the position that we would have been in had there not been a breach.

And let me give an example, an easy example that I think is an easy concession for us. If -- in that counterfactual or, as Professor Morrison would say, that hypothetical world or that but for world, you know, the two fifty couldn't come in with liens because they were unauthorized; and, therefore (indiscernible).

THE COURT: No, they could get liens. They couldn't

get liens senior to your liens.

MR. ROSENBAUM: Couldn't get liens senior or we would see even *pari*, but maybe --

THE COURT: Right.

MR. ROSENBAUM: But --

THE COURT: They couldn't get liens senior or *pari* to your liens.

MR. ROSENBAUM: Right. So --

THE COURT: Your liens would remain first in that world.

MR. ROSENBAUM: So they --

THE COURT: But not just your liens, "your" not being you as a plaintiff, but all 2026 holders.

MR. ROSENBAUM: I believe that. And the easy party is with 2026 because our group makes up, if not all, I think more than 90 percent *2:32:01 of the 2026. That was excluded. You mean --

THE COURT: Right. No, but --

MR. ROSENBAUM: Oh, you mean them. Yeah.

THE COURT: If -- yeah. No, look, if the lien didn't go away, their lien didn't go away either.

MR. ROSENBAUM: Oh, I --

THE COURT: And so they would keep 55, 60 percent, whatever it is after we -- you know, you do some various adjustments in there. Why don't we call it 59 percent and

assume the adjustments work out event? They would then own a 59 percent interest in the first lien in their capacity as 2026 holders and you would own -- you and your other similarly situated holders would own a 41 percent interest in that first lien?

MR. ROSENBAUM: I would -- I think that's the but for world. Yeah.

THE COURT: Right.

MR. ROSENBAUM: And then you have this two fifty, right? That in that but for world, it was -- it came to the company, no one disputes that, but it wasn't able, per the indenture, to get liens; and, therefore, it would be --

THE COURT: It could get liens. It couldn't get a lien that was --

MR. ROSENBAUM: It couldn't get --

THE COURT: -- equal to your lien.

MR. ROSENBAUM: Yeah. So "*pari* liens," we'll call it --

THE COURT: Right.

MR. ROSENBAUM: -- with us. But it came in and it was used. And so the Court -- again, whether we're talking about this in law or equity, and we're being restored to the place we would have been had there not have been a breach.

For example, we got coupon payments, right?

THE COURT: Right.

MR. ROSENBAUM: After that. The Court can, I think, logically believe that we wouldn't have gotten them had the two fifty --

THE COURT: That's correct.

MR. ROSENBAUM: -- not come in.

THE COURT: That is part of my formula, yes.

MR. ROSENBAUM: Yeah. So we -- right? If you're thinking columns or, you know, debits, credits --

THE COURT: Uh-huh.

MR. ROSENBAUM: -- whatever -- you know, there's no question you're better at spreadsheets than me, but I can think in debits and creditors. I think, if we're fashioning a remedy, whether in law or in equity, it would be --

THE COURT: But the big -- here's the big problem, is the two fifty came in -- or the two hundred came in, and that's one of the big adjustments that you make is how much came in, I think. Two hundred million or more comes in and it -- I can't just reverse the transaction, right? Because -- just like I can't pay you your claim because there isn't money to do that with, I can't pay them back their $200 million because there isn't money to do that with. So does equity allow me to take your legal remedy, which may entitle to you to money before their two hundred, and say no, I'm not going to let the two hundred stay in there for your benefit and not charge you something for that?

MR. ROSENBAUM: What I don't --

THE COURT: Can I make some adjustments --

MR. ROSENBAUM: Yeah.

THE COURT: -- because of the --

MR. ROSENBAUM: Look, so what I don't think -- just to like table-set, to table-set, I don't think there is any world that we can live in, whether it's legal or equity, where the two fifty is senior to us or the old '26s. So everyone -- the original -- call them "the original '26s," they're *pari* with each other.

THE COURT: Uh-huh.

MR. ROSENBAUM: And the two fifty, I think, starts the subordinate, but then two -- or the two hundred (indiscernible) and then, to account for -- to protect against the windfall, there are credits, potentially -- and I'm -- I started with the easy one because I think it gets harder after the easy one --

THE COURT: It does.

MR. ROSENBAUM: -- we get money out of it.

THE COURT: I just -- you know, in the spreadsheets that I've done, for example, I, if you will, charge your side of the ledger with the pro rata cost of having to put in your share of the two hundred, not where you have to put it in, in cash, but it adjusts the equities to say no, look, if this had been done on a pro rata basis, they wouldn't have really

written that big of a check, they would have written a smaller check, and you would have written a pro rata check. So I think --

MR. ROSENBAUM: That's interesting.

THE COURT: I will tell you that my equitable model is a complicated one that will take a long time to decide if it's right and a lot of evidence to figure what to go into that. And I'm not saying that the adjustments that I'm talking about are the right ones, I'm not looking for you to argue they're right or wrong.

The -- and I agree with you, the issue is -- or maybe this is -- was what Mr. Lavine said -- can I do it at all. But I'm not thinking of doing it simply.

MR. ROSENBAUM: I think you can do. I mean, I was here when we --

THE COURT: I want to know if --

MR. ROSENBAUM: -- when we --

THE COURT: -- I have the --

MR. ROSENBAUM: -- had the --

THE COURT: -- authority --

MR. ROSENBAUM: -- 510(c) --

THE COURT: -- to try and --

MR. ROSENBAUM: -- argument

THE COURT: -- create fairness.

MR. ROSENBAUM: I do think the Court can use a

scalpel. I think, ultimately, you know, it has to replicate the position we would have been in, had there not been a breach. And I think that is --

THE COURT: But this doesn't quite do -- I will tell you I can't quite do that because I then have to say -- if we're going to do this and we're going to make it fair --

MR. ROSENBAUM: Uh-huh.

THE COURT: -- I would have to say look, if Silver Point and PIMCO had agreed this could be pro rata, it would have been pro rata and you all would have put in your share of the money, right? And so, if I'm going to then elevate them to your level, I need to give them back the share of money they put in that rightfully you would have put in, in that --

MR. ROSENBAUM: Uh-huh.

THE COURT: -- hypothetical scenario.

But that's why this isn't a legal remedy. This is sort of the 510 granddaddy --

MR. ROSENBAUM: Yeah.

THE COURT: Pepper v. Litton of saying do your best to do justice. But justice isn't one-sided here because they put in a huge amount of money --

MR. ROSENBAUM: Uh-huh.

THE COURT: -- desperately needed by the Debtor and it was the only alternative.

MR. ROSENBAUM: So --

THE COURT: And that's part of the conclusion that I've come to, that nobody gets punished here, in the sense of me being -- creating an equitable relief that tips the scale to one side or the other. I shouldn't be doing that.

MR. ROSENBAUM: Well --

THE COURT: But if I'm going to do equitable relief, I should do it heads-up to say what's fair.

MR. ROSENBAUM: Okay. So, staying with that, you know, rubric or -- the -- a couple of things, right? And I think Your Honor is thinking of these things, as well. Had the world that Your Honor is thinking about occurred, right? That it was pro rata and our client group, which did ask to participate --

THE COURT: Right.

MR. ROSENBAUM: -- was trying to --

THE COURT: Your client said --

MR. ROSENBAUM: -- participate --

THE COURT: -- they would go in pro rata --

MR. ROSENBAUM: Right.

THE COURT: -- and they were turned down.

MR. ROSENBAUM: Then there would have been no litigation at all --

THE COURT: Right.

MR. ROSENBAUM: -- because everyone would have been in harmony and would have agreed; and, therefore, the company

would not have spent however many tens of millions of dollars --

THE COURT: Do you really think I've done a model without worrying about that question?

MR. ROSENBAUM: Yeah, I -- and I think there's --

THE COURT: I promise that's in the model because I have to worry about what do I do about all the legal fees.

MR. ROSENBAUM: And there's an extraordinarily expensive indemnity that --

THE COURT: I have to worry about the indemnity, I have to worry --

MR. ROSENBAUM: And --

THE COURT: -- about that.

MR. ROSENBAUM: And our legal fees.

THE COURT: I have to worry about the fact that you have legal fees. I have to worry about the fact that we have a DIP that has various provisions that have to be balanced. There's a lot to worry about that people can argue as to what equity looks like. The fundamental question is, and I think what I'm hearing is that, if you're client is entitle to equitable -- to legal relief, that your client believes that I have the authority, whether I should use it or not, to override your legal relief and provide equitable relief instead. And if that's --

MR. ROSENBAUM: I don't --

THE COURT: -- your clients' --

MR. ROSENBAUM: I don't think I --

THE COURT: -- position, then good.

MR. ROSENBAUM: I don't think I can -- at least on today's record, I don't think I can go that far without further conferring with my clients. But what I can say is this: I do think --

THE COURT: That's only because I've surprised and said this may work against you. Mr. Lavine started off and said --

MR. ROSENBAUM: No, I --

THE COURT: -- I could do it, right?

MR. ROSENBAUM: I think we came in -- and in the interest in hearing what Mr. Kirpalani says because I think we were maybe preparing in the inverse, but --

THE COURT: Right. I'm just saying I -- the quest -- that's why the question is: Do I, under the law, have the authority, more under Pepper v. Litton than anything else -- which --

MR. ROSENBAUM: Uh-huh.

THE COURT: -- you may not be a bankruptcy lawyer, but you probably know Pepper v. Litton --

MR. ROSENBAUM: Yeah, I do.

THE COURT: -- to have the right to come in and do fairness that takes away some legal relief that you're

entitled to because, if you're telling me I can take away some of their legal relief to do fairness to you, I should be able to -- by that same token, be able to take away some of your legal relief to do fairness to them. And my question is do I have the authority to do that, not what it ought to look like.

MR. ROSENBAUM: Yeah. And I --

THE COURT: And what I'm telling you is I am not putting a thumb on the scale as to what factors should go in to balance that because some of them are just -- I will tell you, some are extraordinarily difficult, right? Because --

MR. ROSENBAUM: I agree, and that's why I -- I think we all agree and -- but we enjoyed the last few days. I think this is a whole other, you know, intellectual exercise that we need to wrap our minds around.

But I -- again, I think, because I've come out of it, you know, by training, as someone who's seeking legal remedies more often than I'm seeking equitable remedies, at the end of the day, if I was in this case and there was a pot of money that, you know, I won the liability claim and I was trying to fashion --

THE COURT: There's a pot of --

MR. ROSENBAUM: -- a damages award --

THE COURT: No. There is a pot of value --

MR. ROSENBAUM: Uh-huh.

THE COURT: -- that is significant, right? The

company. So there is a pot of value.

MR. ROSENBAUM: Right. And I would -- like we all do, I would probably come up with a damages claim as principled, but as high as possible. And there would be an argument on the other side that that's probably more because the objective of the damages remedy --

THE COURT: Yeah, but you don't want a damages claim.

MR. ROSENBAUM: Well, no, I don't want a damages remedy, but I'm -- what I'm --

THE COURT: I'll give you as big of a damages claim as you want if you'll walk away and nobody else is going to care.

MR. ROSENBAUM: No, no. I don't want --

THE COURT: So --

MR. ROSENBAUM: -- a damages claim. But what I'm suggesting is, is that -- I'm absorbing Your Honor's question, which is can you -- that same exercise or a similar -- at least say it's a similar exercise, which is, when you do that, because there is a pot -- there's one pizza pie and the Court has to decide who gets how many slices. And you know, and can the Court take that pizza pie and fashion the remedy -- right? Who gets the slices based on what our actual -- what the Court considers to be our actual harm as a consequence of the breach was.

That -- and I'm going to reserve -- I think I know what I -- how I feel about that. I just -- it's a big question and I think the law is not as clear as any of us -- if it was so clear, we would all have pointed to the case that said it.

THE COURT: That's -- well, I'll let Mr. Lavine finish, but that's an important, at least legal stake in the ground, where I wasn't sure after Mr. Lavine started that I was right because I had assumed that staying that you still had a first lien was legal. He raised the specter that it might be equitable. I think you're saying it is, in fact, legal.

MR. ROSENBAUM: I think it's legal because I --

THE COURT: And so that then brings into focus the question of whether I can adjust your legal remedy by counterbalancing it with some things --

MR. ROSENBAUM: Yeah.

THE COURT: -- on the side.

MR. ROSENBAUM: And the reason --

THE COURT: Because look, in the end, here's what's going to happen. In the end, there will be a judgment. And the judgment is going to -- let's say it's an equitable judgment. It's going to say we ought to be dealing with it this way.

And then I'm not going to propose who then owns what

shares in the Debtor or who's going to get debt out of this case. We're then going to get a typical capital structure that then results in a plan.

MR. ROSENBAUM: Right.

THE COURT: And that's going to be up to the parties to negotiate what that plan looks like, but they're going to do that negotiation in the context of the declaration of the future capital structure. But that future capital structure will then get torn apart and allocated out in a plan, and I am not going to tell somebody how to do the plan. It may be that some people get debt and other people get equity in order to get their value out of there in some plan value estimate, and that's not what this judgment is going to do. This judgment will say here is the -- here is the capital structure around which a plan needs to be built.

MR. ROSENBAUM: (Indiscernible).

THE COURT: If we go there. And we may not. We may be stuck with only doing legal relief. And then you have this problem of should I pick under-compensating you or overcompensating you in real life by voiding -- by preserving your lien versus my giving you an unsecured claim. One overcompensates; one under-compensates. I don't like either alternative.

MR. ROSENBAUM: Right. And I think -- two responses, I think:

And this -- the first one, I think Mr. Lavine was well prepared to explain why that -- it's not just an inequitable remedy, it's no remedy at all (indiscernible).

THE COURT: Yeah. But if all you're entitled to is no remedy at all under the law, then all you're entitled to is no remedy at all under the law and --

MR. ROSENBAUM: No, I know and -- but I --

THE COURT: -- and I shouldn't come in and apply equity to it. And if you're entitled to more -- so that's the -- that is the heart of the question --

MR. ROSENBAUM: Yeah, I know. I --

THE COURT: -- is can I take my two opposite spectrum ends of legal remedy, one that overcompensates, one that under-compensates -- I shouldn't be splitting the baby on that. If I'm going to do anything with that, I then need to figure out something that's fair.

MR. ROSENBAUM: Right. And I think I -- this is also for another day. But I do think, you know, there are the tort claims. And I think Your Honor might have even said it, which is these aren't bonafide purchases for value; in other words, it's a dangerous game, right? In other words, if you're going to come in and want -- and this is the relevance -- Your Honor questioned why I was mentioning (indiscernible) I agree with you.

If you're entitled to make the money, make as much

as you can. But with risk -- right? Comes reward, but also comes volatility. And if you're going to take that much risk and it's going to harm somebody else, then you should bear all of the downside consequences.

THE COURT: I'm not asking you what the equitable remedy ought to be, I'm asking you if I have the authority, does a United States Bankruptcy Judge, under 20 U.S.C., Section 1334, to utilize Pepper v. Litton and 510 to overcome legal relief and grant, instead, equitable relief.

MR. ROSENBAUM: Yeah. And I don't think -- I don't think I can answer that definitively today. But I do think --

THE COURT: Okay.

MR. ROSENBAUM: -- I can turn it back to Mr. Lavine. And I do appreciate, as always, this type of engagement.

THE COURT: Thank you.

Mr. Lavine, I'll let you finish what you started.

MR. LAVINE: Thank you, Your Honor.

And I actually think that a lot of the presentation today is effectively moot because of that threshold question, but also the overall information that the Court has expressed.

But I did -- and we can rely on our papers, for the most part, on this point. But we do think that, under any circumstance, is the mere unsecured claim an option here, given the extensive history of many decades establishing that unsecured claims is not a sufficient remedy for the loss of

someone's security.

And I'd also point out that the equitable subordination remedy itself -- you mentioned 510(c) and Pepper v. Litton -- at least on the summary judgment motion, had been dismissed on behalf of our holders under a theory that that was a claim that belonged to the estate. And our papers on summary judgment explained why that remedy and that claim was certainly belonging to the 2024/2026 holders. And if that is something that the other side intends to address today, then I'd like to respond to it.

But in short, Your Honor, you know, Your Honor has already found that the claims themselves, the contract claims, are property of the 2024/2026 holders, they belong to them. And moreover, it can't be the case that the claims belong to the holders, but the remedies do not, that -- particularly where our remedies existed before the petition date and we asserted both -- and we asserted legal and equitable remedies in a New York State Court complaint prior to the petition date. So --

THE COURT: Adjusting the capital structure between you and the parties that put up the two hundred and fifty or $200 million, I don't know what category that fits in, probably more Pepper v. Litton. And I've learned so much since the summary judgment motion.

MR. LAVINE: Exactly, Your Honor. I think, under

this record, there can be no doubt, based on the facts, of the harm that the transaction did to our client group.

And you know, I'll just -- I'll end the presentation early and without going through more slides on topics which I think are both covered in the briefs and largely irrelevant at this point. But I'll just say that, as I said, there -- you know, there needs to be a remedy for the existence of these claims, which are claims, as Your Honor knows, that belong to us as of the petition date.

THE COURT: Thank you.

MR. LAVINE: Thank you.

THE COURT: Mr. Kirpalani.

MR. KIRPALANI: Good afternoon, Your Honor. Susheel Kirpalani, Quinn, Emanuel, Urquhart & Sullivan, special counsel to the Debtors.

I have slides, Your Honor; however, I'm going to be as blunt as I've ever been with you. I'm not sure exactly what we are discussing because what Your Honor described a little while ago as legal doctrine in your mind, to me, is an equitable doctrine. There is no legal doctrine, other than breach of contract, that third-party beneficiaries of an indenture have.

This indenture expressly says, if my client violated a negative covenant -- thou shalt not borrow more money without the right consent, thou shalt not incur liens without

the consent -- and then I went ahead and did it anyway with my counterparty to the contract, the indenture trustee, and they signed it, the indenture itself has a provision saying that's an effective amendment.

It doesn't mean it didn't cause a breach. If somebody you breached my contract, which they could have done -- they could have accelerated the debt, put us into bankruptcy, and unwound that preference because it was -- we preferred one group of noteholders to another.

THE COURT: That's not a -- that's not a "preference" in the 547 sense.

MR. KIRPALANI: It is. I think it is because it was a transfer of property that favored one -- everybody was -- everybody had one lien; and then, in the next moment, that lien --

THE COURT: If you were in --

MR. KIRPALANI: -- was only given to --

THE COURT: If you were insolvent, it's a preference. But I don't think --

MR. KIRPALANI: True.

THE COURT: -- you were insolvent on the date of the transaction.

MR. KIRPALANI: I don't know that we were and I -- you know, I do think there's the presumption. But that's the remedy that's available. It wasn't exercised.

As Your Honor noted, the transaction did close. So is there a remedy in state law dealing with that? There is, it's recision. Let's undo it, it's not fair, it's -- recision is an equitable relief.

THE COURT: And that may -- maybe I should do recision and say that you get back -- you -- the -- I'm sorry -- that PIMCO and Silver Point get back their $200 million, they have a claim for that, and the transaction never occurred, so the first lien sits with the other side. That seems grossly unfair to the people that put in the $200 million.

MR. KIRPALANI: Yeah --

THE COURT: May I, in the circumstances that we're in, utilize Pepper v. Litton or 510 to come up with a fair result when I think that the alternative results are not reasonable in the context of what occurred?

MR. KIRPALANI: Sure. And I'm going to respond.

THE COURT: Okay.

MR. KIRPALANI: Yesterday and the day before, I talked a lot about instruction manuals. We have one, too, that's the Bankruptcy Code, that's what we've got. It's not perfect.

Judge, I've been in front of you and I've heard you on the phone with innocent *pro se* creditors until 10:00 o'clock at night who lost their life savings because things

were not fair and they wanted their money back, and they asked you if you could do something. And Your Honor responded to those people -- and you've done it more times than I've witnessed -- but my hands are tied by the Bankruptcy Code.

I think that's the exact same principle that applies in this case. I think the Bankruptcy Code has certain provisions that can't be pushed to the aside. One of them is the definition of a "claim" under 101(5)(b). It says the equitable remedy, which is what we think we're talking about here -- we can -- we all need to go back and look at the cases. I can promise you, in the last 18 months, Mr. Rosenbaum and his team and me and my team have scoured the universe for every single case that was an indenture dispute like this, looking for what remedies are available, and the one that Your Honor mentioned is not in any of those cases.

THE COURT: I agree with that.

MR. KIRPALANI: Okay. So now we're back to our instruction manual.

THE COURT: No, we're not --

MR. KIRPALANI: What --

THE COURT: -- because the -- we may have a more flexible code than what -- people may not have done something before, that doesn't mean they didn't have the authority to do it. I'm looking for whether -- not for whether what I'm talking about doing is the right answer, but do I have the

authority to do anything other than pick a legal relief.

MR. KIRPALANI: You do under the Bankruptcy Code. The relief, however, would be the equitable tools that are available in the Bankruptcy Code. There are a few at play in this case, asserted in this case; fraudulent transfer is one. Fashioning remedies, if the criteria or elements of fraudulent transfer can be established and standing is granted, that is one remedy.

On that point, Your Honor, I want to remind the Court -- and I know Your Honor said you hadn't read it -- there is a pending settlement of the fraudulent transfer and other -- all claims against Silver Point and PIMCO, under the plan that was negotiated with the creditors' committee. I just want to put a pin in that, so you're aware that that's in the background. It may not be a settlement that Your Honor approves, that hasn't happened yet.

But in terms of what tools do we have, we are not without tools. Your Honor is with tools. You have the fraudulent transfer remedy under state law or federal law. You also have the equitable subordination remedy under Section 510(c), if the elements can be established.

THE COURT: I will say --

MR. KIRPALANI: What we don't --

THE COURT: -- I think --

MR. KIRPALANI: -- have is this --

THE COURT: -- 510(c) -- and one reason that we're having this hearing is 510(c) is hard because the inequitable conduct was -- none of that was done by the 2026 holders, best I can tell. I mean, they may have proffered some proposals that weren't perfect or whatever, but nothing that would justify 510 relief.

On the other hand, PIMCO and Silver Point may have done some things that would justify 510 relief. And what I'm talking about doing is actually reducing the legal remedy that might be available over to the plaintiffs to try and make things more fair. And that's why we're holding the hearing, is that 510(c) is not a perfect fit for that.

Pepper v. Litton is a pretty perfect fit. And I think it still just survives, it's just not used much. And it was decided under the act, it wasn't taken away in the code. So the case law, I believe, says Pepper v. Litton is still good law.

MR. KIRPALANI: I agree that Pepper v. Litton is good law.

I would say to the Court that, if the elements of 510(c) were established -- I think Your Honor is saying you're still thinking about that, based on the evidence, and that's exactly where you should be given where we are in this case, in terms of the trial. We don't believe the facts support it, but that's a question that hasn't been answered yet.

But if it did, Your Honor said there's only one outcome under 510(c). That I don't think is true. If 510(c) did apply, Your Honor has broad equitable powers to fashion the right type of relief.

THE COURT: Can I remove -- if the relief, though -- let's say it should be -- the legal relief is recision, let's just assume that for a moment.

MR. KIRPALANI: But that's not legal relief.

THE COURT: Okay. The relief under state law is recision.

MR. KIRPALANI: Yeah, that's equitable, but okay.

THE COURT: You're telling me I could rescind.

MR. KIRPALANI: No. I would say that's an equitable remedy not available once you file for bankruptcy.

THE COURT: Okay.

MR. KIRPALANI: Just like constructive trust.

THE COURT: So can I do --

MR. KIRPALANI: All those poor people who --

THE COURT: Can --

MR. KIRPALANI: -- lost their money --

THE COURT: May I --

MR. KIRPALANI: -- on fraud.

THE COURT: And you're telling me I can't declare lien remains in effect.

MR. KIRPALANI: I'm telling you, you can't declare

their lien remains in effect --

THE COURT: Okay.

MR. KIRPALANI: -- because that's an equitable remedy that could have occurred pre-bankruptcy --

THE COURT: Okay.

MR. KIRPALANI: -- cannot occur today, wouldn't have occurred pre-bankruptcy. I was going to say that, too, because state courts would say they had an adequate remedy at law, read the indenture, these are securities, that's what they say.

THE COURT: Why does the estate care?

MR. KIRPALANI: I'm not saying the estate cares. I'm trying to be responsive to --

THE COURT: No, that's fair.

MR. KIRPALANI: -- to the questions that --

THE COURT: That's fair.

MR. KIRPALANI: -- that are being presented. We certainly have no --

THE COURT: But I think --

MR. KIRPALANI: -- you know, thumb on the scale as to --

THE COURT: But in fairness --

MR. KIRPALANI: -- who --

THE COURT: -- I think I --

MR. KIRPALANI: -- who --

THE COURT: -- really ought to be hearing from --

MR. KIRPALANI: I agree --

THE COURT: -- PIMCO and --

MR. KIRPALANI: -- with that.

THE COURT: -- Silver Point --

MR. KIRPALANI: I'm happy to --

THE COURT: -- because --

MR. KIRPALANI: -- sit down.

THE COURT: No, and the reason I'm saying that is I -- if I'm in a position where my hands are tied in a way that I'm going to take away something from the non-wrongdoers, they may want me to have that ability and you may not have standing to complain about it. So I'm literally asking whether you -- the Debtor has any -- I don't think it cares who owns its capital structure, right?

MR. KIRPALANI: I would agree with that, other than the practical realty that we're going to need somebody else to refinance our DIP loan, we're going to need somebody -- I mean, it will have an impact on the company.

THE COURT: Right.

MR. KIRPALANI: I don't want to say there's no impact.

THE COURT: Okay.

MR. KIRPALANI: To change everything right now, Your Honor can figure out how destructive that would be. But I'm

not going to tell you that we have a thumb on the scale in favor of one set of stakeholders versus another because we don't.

THE COURT: Right.

MR. KIRPALANI: We stand by our transaction, we think we complied with our contracts, Your Honor is going to decide that. I'm just trying to answer the question about --

THE COURT: Right.

MR. KIRPALANI: -- where we go --

THE COURT: No, I got it.

MR. KIRPALANI: -- from there.

THE COURT: I got it.

MR. KIRPALANI: I had one comment, though, on the -- away from argument, your modeling exercise, if you will. I think -- and I think you said this. Recall that the adding of 250 million of notes came in as *pari passu*, if the lien release didn't occur, is what I understand this trial to really be about. It's not whether or not the new notes were -- they were issued, money came in, it's whether the lien, whether that was -- had the effect of and whether the lien was released. Why wouldn't the answer simply be that there are all of the -- those 2026 have a first lien, and there's an additional two fifty *pari passu* first lien, why wouldn't that be the logical answer because expanding the basket only required a majority vote if it didn't require a lien release

under the Court's rubric.

So I -- that's what I was just going to ask you, to think about because that's how --

THE COURT: Well, look --

MR. KIRPALANI: -- I've been trying --

THE COURT: -- I think that will be --

MR. KIRPALANI: -- to analyze it.

THE COURT: -- a reasonable argument. If we ever get to whether we ought to do equitable relief --

MR. KIRPALANI: Right.

THE COURT: -- I think that's a reasonable argument.

MR. KIRPALANI: There -- right. And there's also a bunch of things, in addition, on equitable relief that I would like to point out to the Court, but not today. You know, they're in our brief. You have alluded to some of them, interest payments or some lost opportunity where JPMorgan and BlackRock might have been investing in things that made money with 250 million, that they didn't lose money. Silver Point and PIMCO --

THE COURT: Right.

MR. KIRPALANI: -- who invested two fifty are not getting two fifty back. Everyone -- yeah, so there's a lot of things that need to --

THE COURT: Yeah, so --

MR. KIRPALANI: -- go into it.

THE COURT: So that you know, in the model that I've done, which is not complete at all, it takes the net new money and it doesn't know what that number should be, by the way. So just there's a formula that takes net new money --

MR. KIRPALANI: Uh-huh.

THE COURT: -- and it treats it equally with the 1Ls. So it, effectively, does exactly what you've described in the model that I'm doing.

MR. KIRPALANI: Right.

THE COURT: But people may not like it.

But if I don't have the authority to do it, then it really doesn't matter what the matter I'm currently drafting says. I haven't even heard arguments as to whether what all I'm doing is correct. But I'm telling you that your argument makes so much sense that I think it's the identical result, in that sense, to what I've already got written down, where I say here's how much the 1Ls are entitled to -- the 2026s are entitled to, here is how much the new money was, let me treat them on the same level after I adjust both of them.

I should adjust down the amount of the 2026 claimants because they didn't put any of the money -- the new money in, and so then I should adjust these numbers up and down. And it's --

MR. KIRPALANI: I think --

THE COURT: It's complicated --

MR. KIRPALANI: I think --

THE COURT: -- to try and do it.

MR. KIRPALANI: -- Your Honor would have that authority if 510(c) applied, just to be very clear. I meant it when I said you -- the Court is not without a remedy. It just needs to find that the statute that gives the Court the equitable power --

THE COURT: But --

MR. KIRPALANI: -- because --

THE COURT: So --

MR. KIRPALANI: -- your equitable power stems from the statute.

THE COURT: Yeah. I think you're not following the initial question. Now let me just be sure I make this clear.

I think I could enter 510(c) relief, maybe -- and I have not reached this conclusion. But at least there's a potential for 510 relief adverse to Silver Point and PIMCO, right?

MR. KIRPALANI: I believe that's --

THE COURT: To harm them --

MR. KIRPALANI: -- what you're saying.

THE COURT: -- in the capital structure.

MR. KIRPALANI: Uh-huh.

THE COURT: What I'm talking about doing is taking legal relief away from the 2026 holders and giving them less

because I would do a 510(c) adjustment against them.

MR. KIRPALANI: I understand.

THE COURT: And so it's --

MR. KIRPALANI: I understand what --

THE COURT: -- this very --

MR. KIRPALANI: -- what Your Honor is --

THE COURT: -- difficult problem where I don't think I can use 510(c) to take money away from the 2026s. I need to know whether I have the authority to use general equitable principles --

MR. KIRPALANI: Right.

THE COURT: -- to do this.

MR. KIRPALANI: And I -- and I'm not surprised that Your Honor is looking to find the right answer. I've known you for several years now. That is not surprising at all.

What is surprising is that the premise that the legal relief that they are entitled to or could even attain legal relief that, in my mind, is recisionary [sic] relief, it doesn't exist.

THE COURT: Yeah, I --

MR. KIRPALANI: That's inequitable --

THE COURT: There is no way --

MR. KIRPALANI: -- as far as I understand it.

THE COURT: -- that the result of this trial, if it turns out that the additional 2026 notes was impermissible, is

going to merely be of an unsecured claim to the claimants because that was done by PIMCO and Silver Point in cooperation with the estate and Platinum, and that will not be the result.

MR. KIRPALANI: I understand.

THE COURT: So everybody needs to leave here knowing that will not be the result. I will find a way that that is not the result. That would be the worst possible thing I could do.

MR. KIRPALANI: I understand that, yeah.

I want to point out because you may not be focused on it that, in determining whether something is a fair outcome or not, our view is the Bankruptcy Code says what it says.

THE COURT: Uh-huh.

MR. KIRPALANI: We'll find out soon what the Supreme Court says about third-party releases, but they're not in our plan.

So it's not going to be a situation, if Your Honor finds that there was a breach, that there's no remedy, if they can meet the requirements of the remedy that they're seeking against third parties. I just wanted to point that out.

THE COURT: Yeah.

MR. KIRPALANI: I'm just --

THE COURT: I am --

MR. KIRPALANI: -- pointing it --

THE COURT: -- we are --

MR. KIRPALANI: -- out to you.

THE COURT: -- leaving --

MR. KIRPALANI: *Vis-a-vis* the Debtor, though --

THE COURT: We are going to leave here somehow with an adjustment in the capital structure, so that you can do a plan. And if I don't adjust the capital structure, you can't do a plan. I'm not going to at all say what your plan ought to be, but it will have to live with whatever the declared capital structure is.

And I'm not leaving this for another day, which is what you're suggesting. The odds of me leaving this for another day, please. I mean, no one -- you'll be the only vote in favor of that, if it's a democracy, so --

MR. KIRPALANI: Yeah.

THE COURT: -- I don't think we'll be doing that.

MR. KIRPALANI: I have nothing further. By the way --

THE COURT: Thank you.

MR. KIRPALANI: -- Your Honor, I forgot to mention, I met Rick Godfrey this morning in my offices here in Houston, and he mentioned that you were debate competitors many moons ago. And he told me how --

THE COURT: It's been a long time. It's been a very --

MR. KIRPALANI: -- an amazing debater you were at

age 30 --

THE COURT: Yeah.

MR. KIRPALANI: -- and I said I am definitely not surprised. So thank you, Your Honor.

THE COURT: Thank you.

Let me hear from PIMCO and Silver Point on whether they think I can engraft equitable relief into the scenario that would help your clients, versus non-equitable relief.

MR. HEIDLAGE: So, Your Honor, I'm going to answer your question with a statement. I think that -- I haven't had a chance to fully think this through because that's not the relief that I think has been sought in this case and I haven't had a -- it wasn't in the briefing. We do want to have a chance to fully brief that. I will tell you that's not my understanding of what relief is available to the Court. I do want to take it very seriously, I want to -- I want to think about it.

My understanding, for example, to take 510(c), the -- you suggested that it was PIMCO and Silver Point --

THE COURT: You're saying 510(c) -- I didn't say it was; I said it might be --

MR. HEIDLAGE: I --

THE COURT: -- and that there's now way that it's available against the 2026 holders, but it might, under the evidence, be available against your clients.

I also said that the new money was very much needed and that I wanted to respect the fact that a lot of money came in. And I don't want to be in a position, if I can avoid it, to discourage people from putting new money into insolvency situations. So there's a lot that is in all of that.

MR. HEIDLAGE: Right. So --

THE COURT: I'm sorry, I've got -- we may have somebody that's objecting. I apologize.

From 646-964-8330, who do we have on the phone.

MR. MARINUZZI: Good afternoon, Your Honor. It's Lorenzo Marinuzzi from Morrison & Foerster on behalf of the committee.

I raised my hand because I thought you were sticking to one side of the table. I didn't realize that you wanted to speak with the lenders first. It's up to Your Honor whether I speak last or you want to hear from me now.

THE COURT: That's fine. We'll let you speak last. So let me let --

MR. MARINUZZI: Oh, okay.

THE COURT: I'll leave --

MR. MARINUZZI: Fine.

THE COURT: -- your line open. I apologize. I just didn't look over at the phone before and I thought you were now objecting to --

MR. MARINUZZI: Okay.

MR. HEIDLAGE: Right. So I think I'm struggling with a couple of things, Your Honor, just to be perfectly blunt about it.

First is I think, you know -- let -- if you don't mind, let me sort of walk through how I view the world. And I hope that I can answer your question. And I'll start with by saying I hear loud and clear what you said about your view of money damages in this case. That is our position as to what we think the law requires. I understand that you are -- strongly do not believe that that -- that the law either requires it or that it would be equitable to do that. I heard you say that to Mr. Kirpalani. I do think that is, in fact, what it requires.

I think, on the issue of --

THE COURT: So that -- if what I do is award money damages, then your clients get the entire benefit of their bargain knowing that they cheated. That's not happening.

MR. HEIDLAGE: I understand, Your Honor. If I may respond that, as -- the question is, is what is the remedy at law and --

THE COURT: Well, no.

MR. HEIDLAGE: No, I'm saying --

THE COURT: Not necessarily.

MR. HEIDLAGE: I understand. But a -- the remedy at law -- and in fact, Mr. Rosenbaum said this straight up --

would be money damages. And we can see -- and if you don't mind if I might put up some slides --

THE COURT: Sure.

MR. HEIDLAGE: -- because it will help me walk through this.

THE COURT: Can I get your tech to turn on their camera, please? Oh, here it is, I found it.

MR. HEIDLAGE: Your Honor, may I approach?

THE COURT: Yes, sir.

(Pause in proceedings)

THE COURT: So, just looking at the title of this, I want to know whether I have the authority, not what the right way to use the authority is, because you specifically asked me to reserve that and I told you I would respect that. So I'm not going to figure out the right thing to do today. I want to know do I have the authority to interpose equitable relief here or not.

If you're telling me I don't, then -- frankly, if the two -- if the side of the room for which I'm going to -- for which I want to use this for their benefit all tell me that I can't do it, then that's fine because you're telling me you don't want equitable relief on your side. And I'm fine just to end the hearing if that's your position because I'll just grant legal relief at that point or at least what I think is legal relief, if it's appropriate to do so, and I won't

worry about whether it's unfair to your side.

MR. HEIDLAGE: So --

THE COURT: So do you want me -- do you think I have the authority to engraft equitable relief on top of legal relief to minimize the effect of the legal relief that might otherwise be appropriate?

MR. LAVINE: I have two answers:

My first one is that I don't think so.

THE COURT: Okay.

MR. LAVINE: But the second -- outside of what the scriptures are in the Bankruptcy Code in 510(c), as an example --

THE COURT: What about Pepper v. Litton. It's there and it says I can do justice to make things right, effectively.

MR. HEIDLAGE: I --

THE COURT: It's this wonderful case, right?

MR. HEIDLAGE: I -- first thing, you know, it wasn't what was requested, so I am thinking a little bit on the --

THE COURT: I just want to know --

MR. HEIDLAGE: And --

THE COURT: -- if you think that I can do it because, if you don't think I can and if the Debtor doesn't think I can, I'm happy to end to hearing with just concluding that I can't because I'm not thinking of using it against you,

I'm thinking of using it for you.

MR. HEIDLAGE: No, I --

THE COURT: So we can just end the hearing.

MR. HEIDLAGE: I understand, Your Honor.

I do think that if equitable relief is going to be awarded, and I do think that -- for example, some type of recision, and I don't think recision is available. That is an equitable relief. I do think that, if equitable relief is being awarded, it needs to be equitable. And so, you know, I think, on that front --

THE COURT: That gets into the merits.

What I want to know is do I have the authority to not award legal relief, but instead award equitable relief. It's just an authority question. If I don't have that authority, if your clients think I don't have that authority and the Debtor doesn't think I have the authority, I don't want the authority, right? Because I'm thinking of doing it for your sake.

What I don't want to do is to exercise it in your benefit and then you come back and say no, he didn't even have the authority to do that, he should have granted this other form of legal relief because I'm not going to grant something that you don't think I can grant that helps you, and then you're telling me I don't have the authority to help you. Fine, I just won't help you. So do I have that authority or

not?

MR. HEIDLAGE: So, Your Honor, to be blunt, I do think I need an opportunity to, again, brief this. I don't -- to be honest with you, I don't think that I have seen anything that says that there's wide power to override whatever the remedies that are available at state law or under the Bankruptcy Code to just apply equitable relief.

That said, I haven't really looked at it. That wasn't what I understood the other side to be asking. Frankly, it wasn't even -- I -- just to be perfectly up front, it wasn't what I understood you to be asking at the 510(c) hearing. I thought we were focused then on what were the available powers under 510(c). And so I understand what you're asking me.

THE COURT: No, I --

MR. HEIDLAGE: I haven't --

THE COURT: I do --

MR. HEIDLAGE: -- seen that --

THE COURT: I do --

MR. HEIDLAGE: -- and it --

THE COURT: I --

MR. HEIDLAGE: I just don't want -- I --

THE COURT: I do think, historically, I've only referred to 510(c) when I'm talking about general equitable powers and I did not mean to confuse people and I think that's

a fair comment.

MR. HEIDLAGE: So, I mean, I think the short answer is, if an equitable remedy is going to be applied -- and I think recision, as an example -- and there are separate issues I would like to get into about recision -- but recision, for example, would be applied, I do think that equity would be done. And it's not -- an equitable remedy that's grossly inequitable is not appropriate, either.

And it's one of the reasons, by the way, that, oftentimes, especially in a circumstance like this, equitable relief is not awarded and money damages are the appropriate remedy. And you can't, for example, unscramble the egg, or when you can't, for example, what the but for world would be back in 2022, when, for example, what would an alternative transaction look like, if one was available. I don't know. Would there be --

THE COURT: No, I think --

MR. HEIDLAGE: So -- but --

THE COURT: -- we do know. There --

MR. HEIDLAGE: I actually don't think we do, Your Honor.

THE COURT: We do because your client said that they would put in that money, but they would not do so on a pro rata basis. There was an offer to do it on a pro rata basis, they turned it down. No problem. They thought they were

going to get two-thirds of the vote, right? They didn't, they decided to proceed anyway. We know what the alternative transaction would have been.

MR. HEIDLAGE: Respectfully, Your Honor, I actually don't think the evidence supports what an alternative transaction would have been.

THE COURT: Well, your clients may not have been willing to put in the money, at which point the alternative was bankruptcy. So it's either bankruptcy or a pro rata transaction, I agree with that.

MR. HEIDLAGE: And I think there could have been a pro rata transaction on different terms, too, different interests. I mean, there's a lot of different --

THE COURT: Right.

MR. HEIDLAGE: This is my point, Your Honor, is that --

THE COURT: It makes equity hard to do.

MR. HEIDLAGE: I --

THE COURT: Do I have the authority to do that hard thing or not?

MR. HEIDLAGE: I don't think -- I have not seen an equitable tool that simply allows a complete recreation of the capital structure. I haven't seen it. Again, I would appreciate an opportunity to think about this very specific question, which is -- because I do think, for example --

recision is a good example. That is not -- that is an equitable remedy, it's not a legal remedy. And if equitable relief is going to be awarded, I don't think that courts would apply, for example, a recisory [sic] remedy, there's other issues with that that I think would be effectively legal --

THE COURT: You're getting into which equitable relief I should order and that's --

MR. HEIDLAGE: But I think -- I'm sorry. I apologize.

THE COURT: No, I just -- somehow my message is not -- just not getting across. If you want time to think about whether I have brought equitable powers to say that the legal relief that I would seriously consider, which would not include -- I'm telling you up front it's not going to include giving them just an unsecured claim that they already have. That gives them zero relief. So, if you think that, if the wrongdoing occurred with intent, that I'm going to give them zero effective relief, you're wrong. I'm going to find relief to give to them.

If I am limited in what that can be and I can't apply equitable principles to it, then I'm just going to do that. So why don't you take some time, think about whether I have the authority to temper legal relief with equitable relief, some of which may come out adverse to your client, some of which may be beneficial to your client. But if I

don't have that authority, I think that's just fair.

And then you're getting legal relief. And let's say the legal relief is their first lien remains, right? And that's it. And if you all want to argue to me that I've made a mistake or argue to an appellate court that I made a mistake because all I can do is give them a money damages award, fine. But I don't think you should then come in and say that turned out to be more legal relief than what's fair, it was all that was available, but it wasn't fair because it didn't recognize our new money, well, no, because that wouldn't be legal relief to recognize your new money and what ought to happen with that, right?

MR. HEIDLAGE: I have to be honest with you, one of the things that's confusing me, and maybe it's just nomenclature, recision or what I think you are calling "legal relief" I am hearing as "equitable relief."

THE COURT: So --

MR. HEIDLAGE: And so it's very hard for me to me --

THE COURT: At least according to Mr. Rosenbaum and what my initial inclination was, for me to declare that their first lien remained in effect, unimpaired by your purported first lien, he's telling me that's legal, I think that's legal. I may be wrong about that, he may be wrong about that.

But assume for this discussion that that is legal relief. You're telling me that you're not sure -- and I'm

actually hearing that and I think it's fair that you're not sure because of the way I framed things. But you're telling me that your guess is I can't temper that with equity.

And I think that's okay because that would then give you sort of the really core challenge that you think is fair for you to be able to make, which is all they should get is an unsecured claim.

MR. HEIDLAGE: And so I think --

THE COURT: And I think that's okay. I don't have a problem with that.

MR. HEIDLAGE: May I ask a question?

THE COURT: Yeah.

MR. HEIDLAGE: Because I think this is what's -- one of the things that's hanging (indiscernible) what I understood their relief to be, based on their pleadings, under the contract claim (indiscernible) was some type of relief -- specific performance, I think was what was -- what they briefed, et cetera, where they got a lien.

What I didn't understand, just to be clear, and what we would absolutely want an opportunity to brief because this has basically never been briefed, as far as we know, is that somehow that would impair or remove the lien that -- either on our two fifty or on our other 1L notes, we -- which are all 1L notes. They're existing securities. They were issued --

THE COURT: Tough. They're not BFPs, they didn't

get their lien, no -- they got their lien, PIMCO and Silver Point got their lien knowing that there was an existing first lien. They took it anyway, believing that the first lien was going to be wiped out. If they're not BFPs, they're not senior to that lien, period.

MR. HEIDLAGE: Well, I guess --

THE COURT: This is a property right that was owned through their interests in the indenture that the 2026s held. You took their property. If you think there won't be a remedy for that, argue it to me, argue it to the District Court, argue it to the Circuit, argue it to the Supreme Court. My hands are not so tied. But it may me I've got to give them more relief than is fair.

MR. HEIDLAGE: I -- so, just to be clear -- and here, at this point, just to be honest with you, I'm just trying to make sure I understand where you're thinking. So, for example --

THE COURT: My thinking is, very clearly --

MR. HEIDLAGE: I --

THE COURT: -- that I'm going to just leave their lien in place as a first lien.

MR. HEIDLAGE: But I don't understand why the two fifty that comes in is not at least *pari* as additional 2026 notes, since as Mr. Kirpalani referenced, the -- there was --

THE COURT: Because the two fifty coming in was

authorized with an illegal agreement and, therefore, not authorized. As I found yesterday, your argument that you could have interrupted by -- that someone else could have interrupted by withdrawing their signatures is wrong. And that means -- and I'm going to tell you I've now concluded this with a high degree of certainty, and it's going to be in the opinion -- that the new money was -- came in unauthorized.

So now what do you have? They did get the money, but they didn't get anything for it; they, therefore, have an unsecured claim. Good luck. I think that's totally unfair. But that's what your clients did. They advanced two fifty under an agreement that's illegal. If you think that they win because of that then you've not practiced before me very much. And you've practiced before me a lot, so you --

MR. HEIDLAGE: I --

THE COURT: -- you know what I'm saying to you.

MR. HEIDLAGE: I do know what you're saying. I do think I would like an opportunity, at the very least, to brief this because I don't think this is the request for relief that was being sought, and so it's not something that --

THE COURT: Relief by a federal court is granted as proven in the evidentiary record.

MR. HEIDLAGE: I understand that, Your Honor, and I'm not --

THE COURT: And the proof I have in the evidentiary

record, frankly by clear and convincing evidence, is that the new two fifty came in without authorization under the indenture, period. You don't want that world.

MR. HEIDLAGE: That is true I do not want that world.

THE COURT: But that's the world that I may have to award. That's what I'm trying to avoid.

When do you want to file your brief?

MR. HEIDLAGE: I can file it -- may I have five minutes, ten minutes just to confer with my colleagues, please.

THE COURT: Sure. Do want me to just come back in a few minutes?

MR. HEIDLAGE: I'm sorry. I'm sorry. I just didn't catch that.

THE COURT: Yeah, I'll come back in ten minutes. Thank you.

(Recess taken from 3:25 p.m. to 3:35 p.m.)

THE COURT: Mr. Heidlage?

MR. HEIDLAGE: I'm sorry, Your Honor. I'm happy to start, but my understanding is that --

THE COURT: Oh, I didn't even look over there.

(Pause in proceedings)

THE COURT: All right. Mr. Heidlage, how much time do you want to file the brief?

MR. HEIDLAGE: I'd like to be able to file something on Monday, so that we can have the weekend.

THE COURT: I think that's fine.

MR. HEIDLAGE: And if I could have an extra day or two, I would take it. I also didn't want to push my luck, so.

THE COURT: No, no. How long -- I think it's an important question.

MR. HEIDLAGE: I agree.

THE COURT: How long --

MR. HEIDLAGE: Very much so.

THE COURT: -- do you need to -- how long do you need to file your brief?

MR. HEIDLAGE: If you would be willing to give me until Wednesday, so that I could have a full week to do it and also consult with my clients, I would be grateful.

THE COURT: Sure. And so your briefing on whether I can interpose equitable relief on top of what otherwise might be legal relief will be due on the 3rd of July.

MR. HEIDLAGE: If I may, Your Honor, I -- just so that you're not surprised, I do think that one of the things that we will address are the -- what I'll call the "recisory remedy." I think it's important. We feel very strongly that it's important.

THE COURT: I am not authorizing you to file a brief on what the equitable relief might be. All that I want to

know is whether I have the authority to issue equitable relief. If I don't, I don't; if I do, I do. And I'm going to decide what the equity is.

I'm not even thinking of doing the recision, if that matters to you. But they would get a first lien, your clients would have no lien.

MR. HEIDLAGE: So --

THE COURT: It's easy.

MR. HEIDLAGE: So -- and I -- and look, I'm really not trying to fight with you.

THE COURT: No.

MR. HEIDLAGE: I really just wanted, generally --

THE COURT: Yeah.

MR. HEIDLAGE: -- to understand. So I think -- when I say -- when you say a "legal remedy," I don't -- and I'll -- maybe I just don't understand. I don't understand how a legal remedy, as opposed to, for example, an equitable remedy like recision --

THE COURT: I'm not --

MR. HEIDLAGE: -- can't --

THE COURT: No. What I would declare is that that whole transaction was invalid. You all got no liens, you got not notes, you got no nothing. It's prohibited by the indenture; therefore, they still have the first lien, the Debtors have $250 million of your clients' money. I believe

that entitles your client to an unsecured claim and we just move ahead with a plan on that basis.

I've got lots of other things I need to rule on. But on that issue, I would just make the simple ruling. I think it's very unfair, but I think that's what the documents would require me to do. And it's very simple, it makes my life a hell of a lot easier, happy to do it that way. I just think -- I'm not happy any time I'm required to do something that's unfair.

But if the people that -- if the people that would benefit from my exercise of my sense of fairness don't want it -- and I don't mean that at all rudely because they may prefer a pure appeal of what I'm doing, and I think that's fair and they get to do that, believe me they get to do that. But that's going to be the result and I just -- I don't know if there's going to be any secret about that.

So your clients largely get to pick here because I am not going to exercise relief in their favor if they tell me I don't have the authority to give them relief in their favor. That seems like a horrible path for everybody.

MR. HEIDLAGE: Right.

THE COURT: So let me know.

MR. HEIDLAGE: And just so you know, I mean, I think that -- I do think we would like an opportunity to brief the question as to whether or not the declaration that you just

described is something that is even available. We haven't heard that being requested --

THE COURT: Well --

MR. HEIDLAGE: -- so far.

THE COURT: -- you may want -- you may have an opportunity to do that at some point. Let's wait and see if it's appropriate. For now, that's not the briefing that I'm asking for and I'm not going to permit it. All that I want to know is: May I issue equitable relief in lieu of a declaration -- which I believe to be legal, but maybe it's equitable -- in lieu of a declaration as to the rights of the parties under the contract?

And the rights of the parties under the contract, to me, at this stage, are, by clear and convincing evidence, the new money came in without authority. I'll make all those detailed findings as to why I've gotten there, but I've gotten there without any question. And therefore, there's still a first lien in favor of the -- all 2026 and all 2024 bondholders. It's there because whether the 2024s consented to it or not, the transaction wasn't authorized, so your clients have an unsecured claim along with other people. Congratulations. I hope you'll let me do the right thing.

MR. HEIDLAGE: I understand what you're saying, Your Honor. I do think that we would want the opportunity --and I realize it may be a motion for reconsideration or something

like that, but --

THE COURT: No, it may come --

MR. HEIDLAGE: -- I mean, we do --

THE COURT: It may come before I issue the judgment because I'll -- I've told you I'm going to announce the liability side before the judgment. It's just there will be virtually no damages here, if that's the relief, and so we'll eliminate all of that.

But I want to tell you, I know it sounds like -- that I'm criticizing that decision. That may be a great decision if you went on appeal, and I perfectly recognize that that's legitimate for parties to consider that. And if that's what you all want to do, you're not going to get a hard time from me about that at all. But you're not going to like the outcome if you lose the appeal. If you win the appeal, that's fantastic. You know, then my life is easy, too, because they'll tell me what to do.

I'm asking if I can take the hard route and do the right thing. And I think you're making legitimate arguments that I can't and I'm just not going to fight that battle with you.

MR. HEIDLAGE: No, and I understand that. And I think what I want to make sure, that -- I want to make you -- sure you understand where our position is, is that it -- you know, there are new 1L notes, they got issued, the --

THE COURT: They got issued to people who weren't BFPs, right? There's no argument that your client is a BFP, right? Zero. They knew exactly what was happening.

MR. HEIDLAGE: I think that they are -- I certainly think that they believed that they were getting 1L --

THE COURT: They believed that because they misinterpreted the law. But they knew exactly what they were getting, which makes them not a BFP. If they misinterpreted the law, they misinterpreted the law. If they are telling you they misunderstood the law, it doesn't matter whether they really misunderstood it or thought they misunderstood it because I'm not going to enter any adverse relief to them based on their mental state. I've already said the new money was overwhelmingly beneficial, from viewed at the time.

MR. HEIDLAGE: Uh-huh.

THE COURT: But that doesn't mean that they get a lien. It means that they sent in $250 million or $210 million, whatever actually got sent in, and they didn't get anything for it in return, and that may be the consequence.

MR. HEIDLAGE: Okay. I would be remiss if I said -- you know, I do think the mechanics of how the transaction took place, in particular with the notes collateral agent and the authority of the notes collateral agent had, what it did and whether or not that was effective. I understand that you may disagree.

I do want an opportunity and I think it's important for the Court to be able to hear that because I do think that affects what the Court is able to do, so -- but I hear that now is not the time --

THE COURT: Well, I --

MR. HEIDLAGE: -- from what I understand. And I don't want to -- and I don't want to push my luck because I'm just trying to --

THE COURT: No. Look, I went through the steps yesterday. And the only step that you said might interrupt this automatic chain was to withdraw the signatures. I will tell you I've done that work, the signatures were not withdrawn at that point, which means that everything was automatic, which means that the direct effect of the entry into that agreement was to grant impermissible liens, which means that the entire agreement was void. So your client sent two fifty and got nothing for it, terrible result, terrible -- terribly unfair result, don't want that result.

But I understand that you lose a lot of appellate rights if you agree that I can interpose equitable relief, and you all may choose to challenge what I'm doing. But those are my choices and they're stark choices. I hope I'm not forced to make them. But your clients made the decision before that they thought they could deal with a majority vote. Turns out they were wrong.

MR. HEIDLAGE: Well --

THE COURT: Bad choice. They can make another bad choice.

MR. HEIDLAGE: I do hope that we have an opportunity to walk you through our position on that. I'm hearing you loud and clear.

THE COURT: I think you've walked me through your position on that --

MR. HEIDLAGE: No, I --

THE COURT: -- already.

MR. HEIDLAGE: I really -- actually, I think I am -- just to be clear, I'm not talking about the withdrawal of the signature thing or trying to even argue with you on like --

THE COURT: No, the mechanics of the closing, I though you were --

MR. HEIDLAGE: No.

THE COURT: -- talking about.

MR. HEIDLAGE: No, no. I'm sorry, Your Honor.

THE COURT: Okay.

MR. HEIDLAGE: That's not what I was referring to.

THE COURT: What mechanics are you talking about?

MR. HEIDLAGE: So the lien that we're talking about, right? It's held by a notes collateral agent.

THE COURT: Correct.

MR. HEIDLAGE: And it had instructions that it was

entitled to follow and it did follow and it released the liens.

THE COURT: Uh-huh.

MR. HEIDLAGE: And that's binding.

THE COURT: And you were the beneficiary of those and you weren't a BFP and they should have never been issued and you all knew that when you got them and you're not going to keep them. I hope that's clear.

MR. HEIDLAGE: I understand what you're saying. I just -- I do want an opportunity at some point -- and I understand. But I understand also that I have a brief -- is it on next Wednesday, is that --

THE COURT: Your brief is due next Wednesday, but I want it limited to the question that I'm asking.

MR. HEIDLAGE: I totally -- I hear you.

THE COURT: Okay. Everybody else can file a brief by next Wednesday, as well. We're not going to do any cross-briefing. Briefing is due not later than 5:00 o'clock -- I would rather do it, if -- I'm not trying to shorten your time, I'm trying to give people a 4th of July with their families. Can I say by noon on the 3rd without impairing anyone?

MR. HEIDLAGE: You won't impair me. I'll take whatever time you will give me, so I appreciate it.

THE COURT: Okay. Noon on the 3rd is briefing, so that people can prepare for spending the 4th with their

families.

Okay. I think that concludes today's hearing. Oh, hold on.

MS. OBERWETTER: Your Honor.

THE COURT: I'm sorry. Wait a second.

MS. OBERWETTER: Your Honor, if I can --

THE COURT: I'm sorry. This does not conclude today's hearing.

(Laughter)

THE COURT: And I've also got on the phone, I think, Mr. Marinuzzi. No, I've got Mr. Clareman and Mr. Marinuzzi. I've got several people on the phone, so we are not concluding the hearing.

Ms. Oberwetter.

MS. OBERWETTER: Thank you, Your Honor. Ellen Oberwetter on behalf of the Platinum Defendants. This won't take long.

All I want to say is -- I don't have much of anything to add to the substance (indiscernible) today. And I just want to make sure, over the course of the past two and a half days, I have not done (indiscernible) of Platinum's version of events in the nature of closing argument, which I have been prepared to do. I feel like --

THE COURT: I think that comes with, though, the second round that we -- that comes in a couple of weeks,

right?

MS. OBERWETTER: That's all I wanted to confirm, Your Honor.

THE COURT: Yeah.

MS. OBERWETTER: And with that, I have (indiscernible).

THE COURT: In terms of the direct claims made by the 2027 holders against Platinum, I will tell you I've not even made any preliminary decisions on what to do about that. I'm waiting --

MS. OBERWETTER: Okay.

THE COURT: I'm waiting for those closing arguments.

MS. OBERWETTER: Thank you, Your Honor. As long as, before there's any finding about Platinum, either from an equitable (indiscernible) standpoint or otherwise, that I would have the opportunity to make that clarification. I don't think we have anything to contribute in that regard, given the nature of Platinum's holdings, so I don't think it's a part of the solution here, anyway.

THE COURT: I don't think it is. And I'm not -- the only part I want to be careful about is whether -- there was a little bit of the 2027, worrying about the capital structure within the Debtor, that would be a Platinum ownership of something that I think you've said you don't think is very valuable.

MS. OBERWETTER: Correct.

THE COURT: So that decision, which I haven't made yet, will probably be part of what I make. But it is not going to then determine -- it will determine, potentially, whether you have a claim against the estate, but it will not determine whether it has any -- anyone has any claim against you, which is what I think we've reserved.

MS. OBERWETTER: I understand that, Your Honor. My primary concern is not the economics of it, but making sure I would have a chance to address the inequitable or equitable --

THE COURT: Right.

MS. OBERWETTER: -- nature of Platinum's conduct before --

THE COURT: So --

MS. OBERWETTER: -- there was any contrary finding is the point I'm trying to make.

THE COURT: Fair enough.

MS. OBERWETTER: Yes.

THE COURT: You will. Thank you.

MS. OBERWETTER: Thank you, Your Honor.

THE COURT: All right. Mr. Marinuzzi.

MR. MARINUZZI: Thank you, Your Honor. Can you hear me?

THE COURT: I can. Thank you.

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

By the way, I can't see your camera, not that it matters. I just wanted to make the Court aware, in case you wanted to turn it back on.

First of all, I just want to thank the Court. You've sat through five-plus months of testimony and arguments over thirty-plus days and paid a lot of attention to a lot of detail, and so thank you for that.

I just want to point out a couple of things for the Court that I think are important, as Your Honor considers how to fashion a remedy here. And a lot of what the Court said (indiscernible) people that were wronged, righting those wrongs, putting people back into position, and taking away ill-gotten gains, effectively.

And I just want to point out that there is a group of unsecured creditors that existed before the '22 transaction and still existed as of the petition date and do today. And if you look at the capital structure of this company the day before the 2022 transaction -- and there is a demonstrative that came from a board presentation, it's Docket Number 536-24 and it lays this out for you. And Your Honor can see that the total secured debt, funded secured debt before the transaction was $1,939,000,000 so just under $2 billion. And then, after the transaction, with the additional money, it was 2.164 billion. So it went up marginally, but it was still 2.1 billion.

As the Court considers with the formerly secured noteholders who are outside of the 2.1 billion, were Your Honor to simply add them to the first lien secured debt tranche or put them ahead of all the unsecured creditors, that means the 104 million of '27 notes and another $100 million, roughly, of unsecured trade claims are now behind $2.7 billion of debt. And so those unsecured creditors who didn't participate in the transaction and did nothing wrong will find themselves further our of the money.

Now Mr. Kirpalani mentioned the settlement that we cut. And recall, Your Honor, we filed on December 4th of 2023, I believe, a motion asking for authority to bring a claim associated with the 2020 LBO and the 2022 up-tier transaction. So the theory was the 2020 LBO gave rise to avoidable fraudulent conveyance claims, that the debt that LBO (indiscernible) the company obligates itself to pay it back a large portion of that money, didn't pay, the company then went out to buy Wesco, leaving the company saddled with debt and the company not receiving reasonably equivalent value for it. And then, in 2022, this invalid debt was exchanged for new debt. And so the attack is basically a two-step attack on the capital structure as it existed on the petition date.

We've settled those claims, pursuant to a settlement where the company agreed to earmark three and a half percent of the reorganized equity for the unsecured creditors and then

a pot of cash for the pure trades. We're prepared to live with that settlement, as we always said.

I don't know where we wind up when Your Honor is done fashioning a remedy. But I wanted the Court to be aware we like our settlement, hopefully people can live with it, we're not sure. If too many changes are made to the capital structure, where it's no longer a good decision for the committee to (indiscernible) the Debtors can (indiscernible) get out of it, I'm not sure they can.

But more important is understanding that there is a group of unsecured creditors that exist that had nothing to do with the 2022 transaction, didn't commit any wrongdoing, didn't benefit from it. And it would be a shame if they're harmed by being put further out of the money by increasing the amount of secured debt ahead of them, as opposed to, for example, breaking it up as senior debt, and then requiring that that debt be shared pro rata with all of the new (indiscernible) including the formerly --

THE COURT: So I'm going to --

MR. MARINUZZI: -- (indiscernible).

THE COURT: -- interrupt you a little bit, Mr. Marinuzzi. You're talking to me about the nature of what equitable relief might look like. I think the question is --

MR. MARINUZZI: Correct.

THE COURT: -- do you believe that I have the

authority in the adversary proceeding to take away someone's legal remedy and grant less than that to try and create equity on the other side?

MR. MARINUZZI: Yeah. So the answer is that, Your Honor, I think you have broad authority to do a lot of things.

THE COURT: Yeah. But is that one of them?

MR. MARINUZZI: And --

THE COURT: Is that one of them? I mean, I knew that answer --

MR. MARINUZZI: And --

THE COURT: -- before you gave it. Is that one of them?

MR. MARINUZZI: And I think, as I've been thinking about this -- and I think we've been thinking about this for awhile now, about where does this end up. So it's not like this just dawned on us yesterday, and like I said, we're trying to think about these things. We did talk about the very possibility of relief that the Court could issue. And although the combination that the Court is describing now wasn't exactly on the menu that we were looking at, it doesn't shock the conscience to me that Your Honor could fashion a remedy as you've been describing.

THE COURT: Do you believe I have the authority to do that remedy?

MR. MARINUZZI: I believe Your Honor has broad

authority, including the authority for this remedy.

THE COURT: Okay. Thank you, Mr. Marinuzzi.

MR. MARINUZZI: You're welcome.

THE COURT: Mr. Clareman.

MR. CLAREMAN: Thank you, Your Honor. Billy Clareman from Paul Weiss on behalf of Carlyle and Spring Creek.

And I want to start by actually thanking Your Honor again for the accommodation, in light of my family commitment, to appear virtually. I really do appreciate it.

I want to just make a couple of observations and, if I can, try to get clarity, in terms of where Carlyle and Spring Creek fit, *vis-a-vis* the question that the Court is most interested in and wants briefing on next week, so that I can advise my clients and --

THE COURT: Actually, I would --

MR. CLAREMAN: -- start a course --

THE COURT: I would --

MR. CLAREMAN: -- of action.

THE COURT: -- prefer just to get the answer today. I'm not trying to make people do briefs.

MR. CLAREMAN: Okay.

THE COURT: I think that --

MR. CLAREMAN: Yeah.

THE COURT: -- counsel wanted to do a brief and I

wanted to let him do that, if that's what he wants. But if you're prepared to tell me today that you believe I have the authority to engraft equity onto legal relief, I would love to have that answer today, and then you don't --

MR. CLAREMAN: Well, I --

THE COURT: -- file a brief.

MR. CLAREMAN: Well, I'd like to actually come at this a slightly different way, if I may. Maybe we'll end up with the same place. And that is to observe a couple of things that I think are unique about where Carlyle and Spring Creek fit as it relates to the specific form of relief that we've been talking about today, which is the issue -- which is potentially giving first lien lenders, who were formerly secured lenders, our first lien back.

Carlyle and Spring Creek, as a result of the transaction, have a second lien position. As Your Honor knows, that second lien position is out of the money. So, if there is more debt that is put ahead of us, economically, we're in the same place. And so, from the standpoint of fashioning equitable relief as it relates to the '24 and '26 holders, just as an economic matter, I don't think that that has an effect on me or is something that should or needs to affect me.

And I would add just further that we are the only party that they haven't actually sued. They have a standing

motion, we're named as defendants in the standing motion relating to equitable subordination and equitable lien, but they don't have direct claims for liability against Carlyle and Spring Creek, they're not asking for a declaration of liability against Carlyle and Spring Creek.

And so, given that sort of unique posture, I would be inclined -- but again, if this is something that Your Honor thinks I shouldn't do -- to sit out a part of this argument because I have aggrieved parties who really want their lien back. I mean, they don't want my lien, nobody wants my lien, not even Mr. Bennett and his clients want my lien.

So, from that standpoint, there are, I think, hard issues here. And I think a lot of people need to spend a lot of time thinking about them. But given the fact that there's no claim for liability, the relief that's really being sought by the formerly secured holders is they want their liens back, then, you know, that is -- if I'm just behind more debt, I'm behind more debt, from the standpoint of sitting at the second lien.

But I wanted to raise that with Your Honor because it is a little bit different than where some of the other parties sit. And sometimes there's discussion of, quote, "unwinding the transaction" --

THE COURT: I think, though --

MR. CLAREMAN: -- and that's a little vague.

THE COURT: I think this argument goes towards the nature of the relief that would be -- the nature of equitable relief, but it doesn't go to whether I have the authority to issue equitable relief.

Do you believe that, if the legal relief produces a certain result, that I can temper it with equitable relief that takes away some of the legal relief?

MR. CLAREMAN: So, without having given the question adequate study, my answer would always be -- and I think you and Mr. Rosenbaum commented as much -- that the relief is always discretionary with the Court, in order to fashion an appropriate remedy, not produce windfalls and not under-compensate injured parties. So I think the authority to fashion that relief is rightly to -- you know, is sort of inherent in the nature of awarding relief. But I also don't want to get out ahead of a lot of people who have a lot of -- would have --

THE COURT: Okay.

MR. CLAREMAN: -- a more significant --

THE COURT: Look. I'll take that as a -- I'll take that as a statement that, if I think that the legal relief exceeds the appropriate level of legal relief, that I have the authority to temper it with equity, and I appreciate that. I don't know that it directly affects your client, but I appreciate the statement. Thank you.

Anybody else?

(No verbal response)

THE COURT: All right. Now we're in recess. I will -- oh, we do have a hearing set for July 1 on the main case and I think we ought to just cancel that. I know that you all are working right now with Mr. Laws to get it canceled and rescheduled, and I'm fine with all of that. But I just want to free up people's calendars. There's no point in leaving that on there, right?

MR. KIRPALANI: Oh, okay. I wasn't aware of this. This is July 1, main docket?

THE COURT: There's a July 1 confirmation hearing.

UNIDENTIFIED: Confirmation.

MR. KIRPALANI: Oh, I didn't think that's (indiscernible) but let me --

THE COURT: I'm going to go ahead and just take it --

MR. KIRPALANI: Absolutely, we can cancel it.

THE COURT: I'm going to take that off the docket.

MR. KIRPALANI: Yeah, absolutely.

THE COURT: Just that will free up your calendars for that day.

MR. KIRPALANI: And before we leave, I wanted to thank you and your staff for the amount of attention and energy, it is inspiring, that all of you have put into this

case. And we'll march forward and keep working. Thank you.

THE COURT: Thank you. Hopefully -- wait, I have somebody else who wanted to speak.

(Pause in proceedings)

THE COURT: Mr. LeBlanc, good afternoon.

MR. LEBLANC: Your Honor, it's Andrew LeBlanc of Milbank.

I was just going to confirm you can cancel the July 1st hearing, and we're working with your chambers. We'll obviously adjust based on Your Honor's decision, forthcoming decision with respect to the timing of confirmation. But we were -- I think we were looking at a late July hearing date. But you can obviously take the July 1st off your calendar.

THE COURT: Thank you, Mr. LeBlanc. Fair enough.

I will wait and consider the briefing when it comes in. Depending on how it comes in, there may not need to be a damages follow-on hearing, but we will determine that once that comes in. This may just result in a final judgment.

There are other issues out there and I haven't thought through the other issues and whether they might need a damages hearing. I think it's clear that, if we delve into whether we should issue equitable relief, that we will need a further, quote/unquote, "damages hearing" to figure out what fair equitable relief might be because there's -- I just don't have the components in the record right now for figuring that

out.

I will see you all later. Thank you.

(Proceedings concluded at 4:02 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 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337*

JUDICIAL TRANSCRIBERS OF TEXAS, LLC

JTT TRANSCRIPT #68809

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

NOTICE OF FILING OF OFFICIAL TRANSCRIPT

An official transcript has been filed in this case and it may contain information protected under the E-Government Act of 2002, and Fed. R. Bank. P. 9037.

Transcripts will be electronically available on PACER to the public 90 days after their filing with the court. To comply with privacy requirements of Fed. R. Bank. P. 9037, the parties must ensure that certain protected information is redacted from transcripts prior to their availability on PACER.

If redaction is necessary, the parties must file a statement of redaction listing the items to be redacted, citing the transcript's docket number, the item's location by page and line, and including only the following portions of the protected information. This statement must be filed within 21 days of the transcript being filed. A suggested form for the statement of redaction is available at https://www.txs.uscourts.gov/.

- the last four digits of the social security number or taxpayer identification number;
- the year of the individual's birth;
- the minor's initials;
- the last four digits of the financial account number; and
- the city and state of the home address.

Any additional redaction requires a separate motion and Court approval.

A party may review the transcript at the Clerk's Office public terminals or purchase it by following the instruction on our website at https://www.txs.uscourts.gov/ or by calling (713) 250−5500 . A party is only responsible for reviewing the:

- opening and closing statements made on the party's behalf;
- statements of the party;
- testimony of any witness called by the party; and
- any other portion of the transcript as ordered by the court.

Redaction is your responsibility. The Clerk, court reporter, or transcriber will not review this transcript for compliance.

Nathan Ochsner
Clerk of Court