

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: . Case No. 25-16137 (MBK)
. Chapter 11
POWIN, LLC, ET AL., . (Joint Administration Requested)
. .
Debtor. . U.S. Courthouse
. 402 East State Street
. Trenton, NJ 08608
. .
. June 12, 2025
. 9:31 a.m.
.

TRANSCRIPT OF FIRST-DAY MOTIONS
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commenced at 9:31 a.m.)

2 THE COURT: All right. Good morning, folks. This is
3 Judge Kaplan.

4 We'll be hearing the Powin matters. Hold on one
5 second. Let everybody adjust their monitors.

6 This morning's hearing is being conducted on a hybrid
7 basis with counsel in the Court, which is a nice change, plus
8 remote appearances. For those who are appearing remotely and
9 wish to be heard, please make use of the "raise hand" function
10 and we will do our best to spot you.

11 For those in Court, I'll ask that we have
12 appearances.

13 Good morning, Mr. Togut. How are you?

14 MR. TOGUT: I'm fine, Your Honor. I've been here
15 many times, but only by Zoom. So it's a pleasure to be here in
16 person.

17 THE COURT: It threatens different when it's live.

18 MR. TOGUT: Well, you have a beautiful courtroom.
19 It's very nice.

20 THE COURT: Thank you.

21 MR. TOGUT: You can't really see all that so well on
22 Zoom.

23 We're pleased to be here. We filed these cases very
24 late on Monday night. I want to thank your staff, the clerk of
25 the Court, the U.S. Trustee, for just being incredibly helpful

1 in doing what we needed to do to be able to be here today.

2 With me for my team is Eitan Blander, who will be
3 presenting some of the first days. The rest of my team is
4 watching by Zoom, headed by Frank Oswald, who really led the
5 effort for my firm.

6 I'd like to introduce Van Durrer from the Dentons
7 firm, and he will do most of the talking. I'll sit down.

8 THE COURT: All right. Thank you.

9 MR. TOGUT: Thank you.

10 THE COURT: Good morning, Mr. Durrer.

11 MR. DURRER: Good morning, Your Honor. Van Durrer of
12 Dentons.

13 I don't think I've seen you since the November Mass
14 Tort Bench Bar Conference up in D.C., but it's a pleasure to be
15 in your courtroom.

16 THE COURT: Pleasure not to have a mass tort.

17 (Laughter)

18 MR. DURRER: I will second that emotion.

19 As Your Honor is aware and as Mr. Togut mentioned,
20 these debtors did not enter Chapter 11 on the typical cadence.
21 So I want to echo Mr. Togut's remarks about the resilience,
22 diligence, and professionalism of all the Court staff,
23 including chamber staff.

24 I also want to remark, I think Mr. Sponder is with us
25 by Zoom. I wanted to remark that the United States Trustee's

1 Office actually provided comments and suggestions on our first
2 days in less than 24 hours from when we filed the papers,
3 vastly overexceeding what they had promised. So thanks for
4 that.

5 I want to start, Your Honor, with a few
6 introductions. First of all, our CEO, Brian Kane, is here with
7 us.

8 THE COURT: Good morning.

9 MR. DURRER: Mr. Kane hails from Collingswood, New
10 Jersey, just a bit further down the road and is a proud alum of
11 Rutgers. These days, he lives a little further up north.

12 Also Gerard Uzzi is the CRO of the company. He also
13 lives right here in New Jersey.

14 Finally, Mitchner Turnipseed is our investment banker
15 from Huron Transaction Advisory.

16 From Dentons, my partner John Beck is here, who will
17 be presenting cash collateral and cash management. And our
18 Houston colleague, Casey Doherty, will be presenting the wages
19 motion.

20 Tania Moyron, the chair of our restructuring practice
21 at Dentons, is also on Zoom. Among other things, she worked
22 tirelessly over the past couple of weeks on dealing with the
23 company's complex labor situation on three continents around
24 the globe, but we are not seeking any relief on those matters.

25 THE COURT: All right. Good morning.

1 MR. DURRER: When the advisory team was originally
2 engaged, Your Honor, just a short bit ago, we quickly
3 discovered that Powin was deeply troubled and severely
4 liquidity constrained, more so than we had originally
5 understood. Indeed, there are macroeconomic factors at play.
6 Due to certain policy changes, \$8 billion worth of clean energy
7 deals have been canceled, even this year, 2025.

8 Two energy companies, Mosaic and Sunnova, have filed
9 in recent days. To give you a sense of what the company does,
10 Powin engineers, supervises the installation of, and services
11 battery energy storage systems for green energy plants around
12 the planet. Many of these systems, including in particular
13 solar, are really only sustainable where a battery system is
14 also deployed so that the system can run around the clock when
15 the sun goes down, for example.

16 Among the companies that supply this service, and
17 especially the ongoing repair and maintenance function, Powin
18 holds a 20 percent market share and is the largest provider,
19 according to some estimates. Indeed, every other player in the
20 marketplace has teens or single digits market share. Powin is
21 the largest.

22 So in short, Powin's failure would have a devastating
23 impact on that marketplace because it would effectively cut
24 customers off from critical data, functionality, and services.
25 With that understanding, we naturally turned to Powin's

1 customers to develop a pathway forward.

2 After a lot of engagement, the feedback from
3 customers was clear. There was a strong desire for Powin to
4 remain viable on the one hand, but customers wanted some
5 assurance that projects would not be plagued with Powin's
6 legacy problems, on the other hand. To that end, Powin formed
7 Powin Project LLC here in New Jersey. Given the aforementioned
8 ties to the area, Powin's largest creditor has key personnel in
9 New Jersey as well.

10 So pending the customer relief we'll talk about soon,
11 Powin Project's primary asset today is a cash account held here
12 in Trenton. Once we get through today's hearing, Your Honor,
13 hopefully successfully, we will turn to the business of our
14 employees. We need to develop retention programs for them.
15 They're vital to the success of Powin, and that will be a top
16 priority once we clear today.

17 So on the basis of this customer strategy that we're
18 developing, a vital element of that was the debtors'
19 pre-petition secured lenders agreeing to allow the consensual
20 use of cash collateral. That agreement is not without material
21 risk on their part, and we agreed to a commercial deal that
22 accommodates that risk and takes it into account and fairly
23 compensates them for it. Candidly, the lenders have been very
24 good partners, and we would be in a very different place
25 without their support.

26 That's all I have to open, Your Honor, except for one

1 thing. I do want to move the admission of Mr. Uzzi's first-day
2 declaration, if Your Honor will accept that into evidence.

3 THE COURT: All right. Let me hear from counsel
4 either present or appearing remotely, any objection to the
5 admission of the Uzzi declaration?

6 (No audible response)

7 THE COURT: Counsel?

8 MR. DURRER: Oh, pardon me.

9 MS. TANCREDI: Good morning, Your Honor. Lisa
10 Tancredi on behalf of the surety bond provider in this case.

11 We have a \$20 million customs bond that benefits the
12 debtor. I have no objection to the admission of the
13 declaration so long as he's subject to cross-examination.

14 THE COURT: Do you intend to cross-examine?

15 MS. TANCREDI: I do have a few questions for him,
16 yes.

17 THE COURT: All right. We'll admit the declaration
18 subject to the cross-examination.

19 (Declaration of Gerard Uzzi admitted to evidence)

20 MR. DURRER: Thank you, Your Honor.

21 THE COURT: All right.

22 MR. DURRER: I'm just going to yield the floor to
23 Mr. Blander to go over his matters, Your Honor.

24 THE COURT: All right. Thank you.

25 MR. BLANDER: Good morning, Your Honor. Eitan

1 Blander, Togut, Segal & Segal, co-counsel for the debtors. My
2 Pro Hac Vice application was submitted previously. It's at
3 Docket Number 20.

4 If acceptable, Your Honor, I'll continue with the
5 administrative motions which constitute the first five agenda
6 items.

7 THE COURT: Welcome to New Jersey, yes.

8 MR. BLANDER: Thank you, Your Honor.

9 I'm actually going to start with the second agenda
10 item, which is the debtors' motion for an order directing joint
11 administration of the Chapter 11 cases. This was filed at
12 Docket Number 3. We provided copies of the motion to the U.S.
13 Trustee with minor comments to the preamble of the order which
14 were incorporated in the red line that was sent to chambers
15 last night. This is a standard motion, and unless Your Honor
16 has any questions, we'd ask that it be granted.

17 THE COURT: Mr. Sponder or Ms. Bielskie. I see
18 Mr. Sponder's name on the screen. I understand that you're
19 engaged in juggling a couple of projects at the moment. So to
20 make things more expedient, to the extent there are any
21 concerns of the U.S. Trustee's Office that go beyond the
22 comments that have already been submitted to the parties-in-
23 interest, you'll advise and you'll use either the raise-hand
24 function or simply weigh in. Otherwise, I'll assume that your
25 concerns have been addressed. Is that fair enough,

1 Mr. Sponder?

2 MR. SPONDER: Thank you, Your Honor. Jeff Sponder
3 from the Office of the United States Trustee.

4 I maybe can make it a little bit easier than that,
5 Your Honor.

6 THE COURT: All right.

7 MR. SPONDER: With respect to joint administration,
8 insurance, wages, cash management, the notice agent, creditor
9 matrix, the complex case designation, and then extension of
10 schedules, we were resolved on all eight of those motions and
11 the orders. I will say that I believe we ended up with the
12 extension of schedules to July 17th with a proposed 341 date of
13 July 23.

14 But I understand all of our requested revisions have
15 been incorporated in those eight orders and what we have issues
16 with would just be the cash collateral and the customer program
17 one.

18 Thank you, Your Honor.

19 THE COURT: All right. Thank you. That helps
20 tremendously.

21 Then, with respect to the second item on the agenda,
22 seeing no other raised hands, motion granted.

23 MR. BLANDER: Thank you, Your Honor.

24 I'll then turn to the first agenda item, which is the
25 debtors' application for designation as a complex Chapter 11

1 case. This was filed at Docket Number 6.

2 As stated in the application, these cases satisfy the
3 criteria as a complex case pursuant to Local Rule 1002(2).
4 Among other things, the debtors have more than \$50 million in
5 assets and liabilities, and there are likely to be more than
6 1,000 creditors.

7 Unless Your Honor has any questions, we'd request
8 that the order be entered.

9 THE COURT: All right. Any opposition?

10 (No audible response)

11 THE COURT: Motion granted.

12 MR. BLANDER: Thank you, Your Honor.

13 I'll then turn to Agenda Item Number 3, which is the
14 debtors' motion for an order extending the time to file
15 schedules and statements. This was filed at Docket Number 10.

16 In the motion, the debtors had originally sought an
17 extension of 28 days, an additional extension for 28 days for a
18 total of 42 days. As Mr. Sponder has stated, we have since
19 agreed to reduce the extension to, I believe, 24 days, which
20 would set the deadline at July 17, 2025. This was not in the
21 red lines that were sent to chambers last night. This is a
22 recent development, but they will be reflected in the red lines
23 to be sent after this hearing.

24 Unless Your Honor has any questions, we'd ask that
25 the order be entered.

1 THE COURT: All right. Again, I see no objections.
2 Motion will be granted.

3 With respect to all of the orders, the final
4 versions, with language that the parties have negotiated and
5 agreed upon, send them in one batch to chambers after the
6 hearing and that way, we don't get confused and enter an
7 earlier version. All right.

8 MR. BLANDER: We'll do Your Honor.

9 THE COURT: Thank you.

10 MR. BLANDER: Next is Agenda Item Number 4, which is
11 the debtors' motion for orders authorizing the filing of a
12 consolidated list of the 50 largest unsecured creditors, the
13 filing of a consolidated list of creditors in lieu of
14 submitting a separate matrix for each debtor, and authority to
15 redact certain personally identifiable information.

16 We've received minor comments from the U.S. Trustee
17 which were submitted in the red line to chambers last night.
18 This is common relief in this district, and unless Your Honor
19 has any questions, we'd again ask that this order be entered.

20 THE COURT: I see no opposition. Granted. Thank
21 you.

22 MR. BLANDER: Thank you, Your Honor.

23 The fifth agenda item is the debtors' application to
24 appoint KCC, doing business as Verita Global, as claims and
25 noticing agent effective as of the petition date. This was

1 filed at Docket Number 9.

2 We received comments from the U.S. Trustee's office
3 which have been incorporated into the red lines that were sent
4 to chambers last night, and these have also been agreed to by
5 Verita.

6 Unless Your Honor has any questions, we'd ask that
7 the order be entered.

8 THE COURT: All right. Again, no opposition. Motion
9 granted.

10 Thank you.

11 MR. BLANDER: Thank you, Your Honor.

12 I will yield the podium to the Dentons team.

13 THE COURT: Good morning, Counsel.

14 MR. BECK: Good morning, Your Honor. John Beck of
15 Dentons on behalf of the debtors and debtors-in-possession,
16 Your Honor.

17 I will be addressing the debtors' cash collateral
18 motion, which we filed on Tuesday at Docket Number 11. Your
19 Honor, we also submitted red lines to Your Honor's chamber this
20 morning that detail changes that we've made after conversations
21 with a number of parties and also the U.S. Trustee's office. I
22 think we have accepted and resolved most of the U.S. Trustee's
23 comments, except for a handful of issues, which I'll walk Your
24 Honor through, here in a minute.

25 The first, Your Honor, is Section 9, which is the

1 project contribution to the new Powin Project LLC of the IP.
2 The debtors have agreed to make that provision subject to the
3 final order so that it will not be sought in interim relief.
4 However, one caveat, Your Honor, and Mr. Zatz from White & Case
5 can speak to this if he'd like, but the pre-petition secured
6 lenders would like to go ahead and be able to perfect against
7 that entity, file UCC-1's, and anything else that they need to
8 perfect their liens against that entity. But the actual IP
9 transfer to that entity would not happen until it is approved,
10 at the final order, Your Honor.

11 THE COURT: All right.

12 MR. BECK: Next, Your Honor, is -- it's really the
13 same issue that appears in both Sections 20 and 23. Your
14 Honor, the U.S. Trustee had a number of comments that dealt
15 with the scope of the debtors' stipulations and whether or not
16 and to what extent they were binding on a Chapter 7 trustee.
17 We have not accepted the U.S. Trustee's language in total but
18 we have provided language that we believe addresses the same
19 issues, and that is we have extended the challenge period of
20 time to the earlier of 75 days from the interim order or 60
21 days from the time the committee is appointed.

22 And then, in addition, there is also a mechanism by
23 which if this case converts to Chapter 7, a Chapter 7 trustee
24 would get the later of 15 days from the Chapter 7 trustee's
25 appointment or the regularly scheduled challenge period if that

1 were further in time.

2 So that is our proposal to address the U.S.
3 Trustee's comments with regard to the challenge period.
4 However, we do think that it's important that the debtors'
5 stipulations are binding on its successors, including a
6 Chapter 7 trustee, subject to the challenge rights that are in
7 the DIP order.

8 Finally, Your Honor, is Section 7(b), which we
9 received comments from the U.S. Trustee's Office, as well as a
10 number of creditors, including a group of customers that filed
11 a limited objection this morning, I believe at Docket
12 Number 38.

13 THE COURT: Licensees?

14 MR. BECK: Yes, they are customers that have IP
15 escrows that the licenses are in the escrow accounts.

16 We have sought to address their objections with
17 language that I'll read to Your Honor that would go at the end
18 of section, it's now 10(b), I believe, but it will be 9(b) once
19 the project dropdown is removed or adjusted. So, Your Honor,
20 that language is, "For the avoidance of doubt, if the
21 pre-petition liens are determined to be junior to any prior
22 permitted liens," which is a defined term in the document, "the
23 AP liens, or the adequate protection liens, shall also be
24 junior to such permitted prior liens to the same extent and the
25 same relative priority. Furthermore, the adequate protection

1 liens shall not attach to any assets that are not or do not
2 become property of the debtors' estate."

3 And, Your Honor, I think the parties are on the line
4 so they can correct me if I'm wrong, but I believe that for the
5 interim order only, this language satisfies the customer
6 objectors represented by Mayer Brown and also satisfies Pulse
7 Clean Energy that gave us an informal comment in this regard.

8 It, however, does not, I think, they've been talking
9 about in the hall, right up until the moment I took the podium.
10 I think additional language is needed for Applied Surety
11 Underwriters who is here today and reserved the right to
12 cross-examine Mr. Uzzi. So I don't know if we have a
13 resolution on that? So I'm hoping that they have a resolution
14 in the hallway to address that point.

15 And finally, Your Honor, is the U.S. Trustee made
16 informal comments because the pre-petition secured lenders are
17 seeking on the interim order to have adequate protection liens
18 on proceeds of avoidance actions. We think that that is
19 appropriate in this case, as Mr. Durrer alluded to. The
20 lenders here really have been cooperative and we would not be
21 in this situation without their efforts to support this company
22 and provide liquidity at a very crucial time. We think that it
23 is a fair trade-off for the risks that they are undertaking to
24 support the company at this time to provide them liens on those
25 avoidance action proceeds, even at the interim period, Your

1 Honor.

2 So with that, I'll cede the podium to Mr. Zatz, and
3 I'll address any questions or comments.

4 THE COURT: All right. Mr. Zatz, do you wish to
5 wait? I mean, there are those raised hands, wish to comment or
6 object. Do you want to address all, or do you want to --

7 MR. ZATZ: I think, Your Honor, if it's all right,
8 I'd like to make some comments and then I'm happy to reappear
9 to address any additional objections --

10 THE COURT: All right.

11 MR. ZATZ: -- that debtors haven't already flagged.
12 But perhaps I can get ahead of them and help streamline things.

13 THE COURT: Sure.

14 MR. ZATZ: But first, I would like to make a few
15 introductory remarks, if I may. Andrew Zatz from White & Case
16 on behalf of Certain Funds and Accounts Managed by KKR. And
17 I'm joined by John Mairo of Gibbons as co-counsel.

18 KKR provided the entirety of a secured loan to Powin
19 in October 2024 with an overall commitment of \$200 million.
20 They are thus referred to in the debtors' papers as the
21 pre-petition secured lenders. The pre-petition agent, on
22 behalf of the pre-petition lenders, has all asset liens.
23 Approximately \$25.6 million of principal amount is currently
24 outstanding under the facility.

25 On March 24, 2025, the pre-petition lenders called a

1 default and took control of blocked accounts. After that, the
2 pre-petition lenders worked collaboratively with Powin to allow
3 the release of funds for ordinary course expenses, including
4 the payment of vendors and suppliers, and was negotiating the
5 terms of a potential forbearance with Powin and its equity
6 holders, which would have included a partial repayment of the
7 pre-petition lenders' loan.

8 Those negotiations broke down. And as a result, on
9 April 25, 2025, the pre-petition lenders exercised their proxy
10 rights to appoint Gerard Uzzi as independent manager and swept
11 an amount of cash from the blocked accounts that the company
12 had stated was expendable. Mr. Uzzi has no affiliation with
13 any of the pre-petition lenders.

14 Pre-petition lenders took this action specifically to
15 ensure that there was independent and experienced oversight and
16 to preserve the arm's-length relationship between themselves
17 and Powin. Once Mr. Uzzi was appointed and got up to speed, a
18 number of things became clear.

19 First, the company's liquidity position was not as
20 stable as the company had previously claimed. Second, it was
21 difficult for the company to get concessions from vendors,
22 suppliers, and customers as the company had already stretched
23 these third parties as far as possible, and Powin had serious
24 credibility issues.

25 And third, existing equity holders who still retained

1 their economic interests in Powin were not going to provide the
2 necessary capital to preserve the growing concern value of the
3 company. In the face of these urgent problems, the
4 pre-petition lenders permitted sufficient cash to be
5 transferred from the blocked account to the company and lent
6 back \$6.25 million to Powin.

7 At every turn, the pre-petition lenders have been a
8 supporter of Powin's business, going above and beyond what was
9 required of them. There were numerous opportunities for the
10 pre-petition lenders to exercise rights and remedies, including
11 by sweeping significant additional amounts of cash. Instead,
12 the pre-petition lenders refrained from taking such actions to
13 give Powin the best opportunity to continue its operations and
14 attempt to negotiate deals with customers and other third
15 parties.

16 Ultimately, it became clear that Powin needed a core
17 process to get to these deals in an organized fashion. It is
18 the pre-petition lenders' sincere hope that Powin can sell
19 assets and create value out of the project co-entity in these
20 Chapter 11 cases. Prior to the filing, the pre-petition
21 lenders entered into a forbearance and support agreement with
22 Powin, whereby the pre-petition lenders agreed not to exercise
23 rights in advance of filing.

24 The pre-petition lenders also successfully negotiated
25 with Powin on the terms of the consensual use of cash

1 collateral. But the pre-petition lenders have no intention of
2 continuing to provide capital to Powin, nor do they want to own
3 the company. The pre-petition lenders' goal is simply to be
4 repaid on their loan and hopefully give the company the freedom
5 to maximize value for other creditors. We've worked
6 collaboratively with the debtors and their counsel on the
7 first-day motions and are supportive of all of them.

8 With respect to cash collateral in particular, as our
9 friends at Dentons have just mentioned, we spent the last 12 to
10 18 hours in conversations with them and the United States
11 Trustee through them to try to resolve a fairly comprehensive
12 market that we received on the cash collateral order from the
13 U.S. Trustee. As was indicated, I think virtually all those
14 issues have been now resolved.

15 There is the issue of the liens on proceeds of
16 avoidance actions, and I will see if the U.S. Trustee wants to
17 press that objection in light of all the other concessions that
18 were made, and I think Dentons covered the issue well, so I'm
19 not going to expand on that for the time being.

20 On the issue of sureties and others who have raised
21 their hand looking for protective language, I think you heard
22 on the record the reservation that we are making, which I think
23 is fairly clear, but just to restate it in as clear terms as I
24 can put it. For any diminution in value of our existing
25 security interest during the case, we are getting adequate

1 protection liens on all of the debtors' assets. That's the
2 standard formulation that I think you'll see in every cash
3 collateral order.

4 We are not trying to have those adequate protection
5 liens prime liens that were ahead of our pre-petition liens,
6 nor are we trying to get liens on things that are not the
7 debtors' property, or will become the debtors' property. I
8 think perhaps one thing that is still left to be resolved that
9 we're amenable to resolving is there's a term "permitted prior
10 liens" that's meant to address liens that may be senior, if any
11 exist, to the pre-petition lender's pre-petition liens.

12 That term, as it currently exists in the order,
13 refers back to a term that is in our loan agreement which is
14 not on file. So I understand the concern. We're amenable to
15 working out language that separates that term from the external
16 document. The point is we're talking about valid, enforceable,
17 perfected liens that were senior to the pre-petition lenders'
18 liens as of the petition date. That's my off-the-dome
19 description of what we're getting at, but we can find the right
20 legalese to get at the notion.

21 With that, Your Honor, I will cede the podium and
22 reserve the right to reappear to address any objections that
23 are raised.

24 THE COURT: All right. Thank you, Mr. Zatz.

25 Let me first turn to the U.S. Trustee, Mr. Sponder.

1 Good morning, again.

2 MR. SPONDER: Good morning, again, Your Honor. Jeff
3 Sponder from the Office of the United States Trustee. Again, I
4 apologize if there's going to be any background noise. I
5 unfortunately cannot help that.

6 So with respect to the cash collateral order, Your
7 Honor, Paragraph 7(b) was discussed. And for that matter, let
8 me just start by saying that I do realize that a red line order
9 was submitted to the Court 7:00, 7:30'ish in the morning. I
10 did try to review as much of it as I could. I still need the
11 opportunity to review and decide whether or not revisions were
12 made that the United States Trustee requested.

13 As for Paragraph 7(b), Your Honor, Section 361(2), as
14 you know, allows for additional or replacement liens only to
15 the extent that such stay under 362 use, sale, lease, or grant
16 results in the decrease in the value of such entity's interest
17 in such property. As such, we revised the language in
18 Paragraph 7(b) to reflect that the secured creditors are
19 receiving, and I quote, "valid, binding, continuing,
20 enforceable, fully perfected, non-avoidable replacement liens
21 to the extent the pre-petition secured parties have
22 pre-petition liens under Section 361(2) of the Bankruptcy Code,
23 all such liens and security interests, the adequate protection
24 liens. To the extent cash collateral is used by the debtors,
25 to the same extent validity and priority and the debtors'

1 post-petition collateral as defined below, and proceeds thereof
2 that the pre-petition secured parties held in the debtors'
3 pre-petition collateral."

4 We believe that that is what the definition and what
5 adequate protection liens should be, and that's based on the
6 Code. All the other language in there should be removed, Your
7 Honor.

8 As to Paragraph 20, which is the effect of
9 stipulations on third parties, the U.S. Trustee requested 60
10 calendar days from entry of the final order for parties-in-
11 interest other than any statutory committees, and 60 calendar
12 days for the statutory committee from the date the statutory
13 committee is appointed.

14 The U.S. Trustee will agree to the 75 days from
15 interim order for parties-in-interest and 60 days for the
16 committee from appointment, but will not agree that it's the
17 earlier of. It should be 75 days then from interim for
18 purposes of parties-in-interest and 60 days for the committee.

19 Further with that, Your Honor, the U.S. Trustee
20 requested language that provided that basically provides this.
21 If prior to the end of the challenge period, the cases convert
22 to a Chapter 7 or a Chapter 11 trustee is appointed, then the
23 challenge period can be extended for the Chapter 7 trustee or
24 the Chapter 11 trustee by 45 days after their appointment or
25 such other time as the Court orders.

1 The U.S. Trustee believes that the lender is agreeing
2 to 15 days for a Chapter 7 trustee only. We request the 45
3 days for both Chapter 7 trustee and Chapter 11 trustee and in
4 fact that was actually agreed to in either the CBRM order or
5 the Rite Aid order that we just did, Your Honor.

6 Moving on, the U.S. Trustee requests removal that
7 requires any motion filed with the Court seeking standing to
8 pursue a challenge, include a complaint. The U.S. Trustee also
9 requested language that any trustee appointed or elected in
10 these cases shall, until the expiration of the challenge period
11 and thereafter for the duration of any adversary proceeding or
12 contested matter, be deemed to be a party other than the
13 debtors and shall not for purposes of the adversary proceeding
14 or contested matter be bound by the acknowledgments,
15 admissions, confirmations, and stipulations of the debtors in
16 this interim order.

17 The U.S. Trustee also requested language that the
18 filing of a motion seeking standing to file a challenge action
19 before the challenge period which attaches a proposed challenge
20 action shall extend the period with respect to that party until
21 two business days after the Court approves the standing motion.
22 I think that one may be included, Your Honor, and I can be
23 corrected if I'm wrong, in the in the latest version.

24 Last, with respect to the cash collateral order, Your
25 Honor, we requested language concerning the fact that some of

1 these debtors are Delaware limited liability companies and we
2 requested language about the ability of creditors to file
3 derivative suits on behalf of those limited liability
4 companies. We've had that in several cases as well, but the
5 lender I don't believe agreed to include that. So that's with
6 respect to -- oh, I'm sorry, with just respect to the
7 stipulations.

8 Next, Your Honor, is Paragraph 23, which is the
9 binding effect. We just changed that large paragraph to say,
10 "The terms of this interim order shall be valid and binding
11 upon the debtors, all creditors of the debtors, and all
12 parties-in-interest from and after the entry of this interim
13 order by the Court." That's the binding effect. That should
14 be what's included.

15 Avoidance actions, Your Honor, those are typically
16 kept for the committee as you're aware. The United States
17 Trustee objects to the order requesting the proceeds be granted
18 at the interim order without a committee having the opportunity
19 to review and possibly object.

20 And then, with respect to Paragraph 9, Your Honor,
21 that's the ProjectCo and what we've been talking about with
22 respect to the transfer of assets. I understand that's going
23 to be revised and held over to the final hearing.

24 With respect to the UCCs at this time the United
25 States Trustee objects but, with that said, at the very least,

1 if the Court agrees to allow the UCCs to be filed, then
2 parties-in-interest, including the committee, should have the
3 ability to object and reserve their rights.

4 Thank you Your Honor.

5 THE COURT: All right thank you Mr. Sponder.

6 Let me turn to raised hands. I'll go left to right
7 on my screen.

8 Ms. Eisenberg.

9 MS. EISENBERG: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MS. EISENBERG: Leah Eisenberg from Pashman Stein.
12 We are serving as local counsel for Leeward Renewable Energy,
13 Longroad Energy, and DTE Energy. And I'd like to introduce you
14 to Joaquin C deBaca who is a partner with Mayer Brown. A Pro
15 Hac motion has been filed and we respectfully request that he
16 be permitted to speak today.

17 THE COURT: Sure.

18 MS. EISENBERG: Thank you.

19 THE COURT: Welcome Mr. C deBaca.

20 MR. C deBACA: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. C deBACA: Joaquin C deBaca from Mayer Brown on
23 behalf of Leeward Renewable Energy, Longroad, and DTE, as just
24 mentioned by my colleague Ms. Eisenberg.

25 Your Honor, I think there are two different issues

1 here. My colleagues at White & Case and Dentons have been
2 speaking about adequate protection liens. Our motion, or
3 rather our objection gets at something different than that.

4 THE COURT: That was the 365(n) issues, correct?

5 MR. C deBACA: Correct. That's right.

6 So each of my clients has very broad licenses to
7 existing IP. Those licenses arise under a variety of different
8 documents. But really the heart of the issue is that, as we
9 set forth in our objection, under Section 365(n)(4), it is
10 mandatory that we shall have access to the IP, such that we get
11 everything we need to perform the contract and for those
12 licenses to be performed.

13 So I don't think it's quite appropriate to entertain
14 exactly the carve out that was mentioned by Mr. Beck that, in
15 particular, this is not really a lien priority issue. This is
16 assurance that our interests in those IP licenses shall not be
17 impaired. So we would respectfully request that the proviso,
18 as set forth in our objection, the proviso that gets entered in
19 connection with this order.

20 I would also mention that I think in respect of
21 adequate protection, there is also a question of, and I think
22 it's appropriate to reserve on this until the final hearing, as
23 was mentioned by Mr. Beck, the transfer of that IP to the IP
24 Newco implicates use under Section 363(e), and parties that
25 have an interest in the IP specifically, as a result of their

1 licenses, should have the ability to seek adequate protection.

2 I think that does implicate potentially some of the
3 lien priority issues, but it's not apparent to me right now
4 that the construct that we would think about for an interest in
5 cash is precisely the same construct that we should be using
6 for an interest in IP, particularly to the extent that IP is
7 held in an escrow.

8 So we reserve our rights on that.

9 THE COURT: All right. Thank you.

10 Mr. Sponder, I see your hand still raised. I didn't
11 know if you needed to raise another issue.

12 MR. SPONDER: I didn't, Your Honor. I mistakenly did
13 not lower my hand, so I will do that now.

14 THE COURT: All right.

15 MR. SPONDER: Thank you, Your Honor.

16 THE COURT: Ms. Yenamandra, nice to see you again.

17 MS. YENAMANDRA: Good morning, Your Honor. Aparna
18 Yenamandra from K&E, on -- I almost said on behalf of the
19 debtors --

20 THE COURT: Nope.

21 MS. YENAMANDRA: -- because that's what I normally
22 say to you.

23 THE COURT: Not this time.

24 MS. YENAMANDRA: Not this time.

25 On behalf of Trilantic, Your Honor, which is one of

1 the equity sponsors.

2 Your Honor, we don't have any objection to any of the
3 relief that's in front of Your Honor today. We rise, in fact,
4 we're supportive of additional cash coming into the company,
5 and over the last couple months, we have been working for a
6 while constructively with the company and the lenders to try to
7 get some additional cash in the door.

8 I rise simply to say that there were parts of
9 Mr. Zatz's summary over the last couple months on the course of
10 negotiations that we don't agree with. Ultimately, though,
11 none of that is really relevant for today and the relief that's
12 being entered. So we will reserve our rights with respect to
13 those and address them in due course if and when they become
14 relevant.

15 But with that, Your Honor, we don't have any
16 objection to the remaining relief that's being sought today.

17 THE COURT: All right. Thank you.

18 Ms. Parlin, good morning.

19 Good morning.

20 MS. PARLIN: Good morning. Barbara Parlin, Holland &
21 Knight for Invenergy.

22 Our client has similar issues as were just raised in
23 the, not prior but two objections ago with respect to interest
24 in IP and IP escrows. So I just simply reserve our rights as
25 well in the same way.

1 THE COURT: All right. Thank you.

2 Let me ask this question at this juncture. I don't
3 see any more raised hands.

4 Before I address the cash collateral on an interim
5 basis, Ms. Tancredi, you indicated a desire to cross-examine.
6 I don't know if it was relative to the cash collateral. Do you
7 want to address your concerns now?

8 MS. TANCREDI: Yes, Your Honor. And I only have a
9 few questions. I am hopeful that we will be able to resolve
10 our issues in the hallway, but they're not resolved now. And
11 so I fear that if I don't ask now, I will be deemed --

12 THE COURT: Forever hold your peace.

13 MS. TANCREDI: Exactly.

14 THE COURT: All right.

15 Counsel?

16 MR. DURRER: We can pause this, Your Honor, and go on
17 to the wage motion after cash management if that makes sense to
18 give the parties some more time. Because I'm fully confident
19 that it won't get worked out, but I don't want to waste the
20 Court's time with testimony that becomes unnecessary.

21 THE COURT: Well, that's fine. Why don't we
22 continue? You have my attention for the morning, so we'll get
23 back.

24 Mr. Abramowitz?

25 MR. ABRAMOWITZ: Your Honor, I'd like to put a short

1 objection on the record that could be addressed so that at
2 least if there's going to be any delay or suspension of
3 proceedings, that could be addressed as well if I could just
4 have a moment.

5 THE COURT: Yes, please.

6 MR. ABRAMOWITZ: Yes, Arthur Abramowitz with Sherman
7 Silverstein representing Ace Engineering. I would note, Your
8 Honor, that Ace Engineering is probably the largest unsecured
9 creditor in the case with a claim of over \$100 million.

10 Again, I was just got involved in the case last
11 night, had an opportunity to review the cash collateral
12 application as well as the budget, and I would draw the Court's
13 attention to the following so that you can understand where I'm
14 going with this.

15 I would look at Docket 11, and in Paragraph 6 on
16 Page 14. I'm sorry, it's Page 41 of 79. It talks about the
17 limitations of use of cash collateral, and particularly, that
18 it does not allow payments that are not made in accordance with
19 the approved budget. Going further on Page 42 of 79, it then
20 refers to adequate protection payments.

21 The adequate protection payments in this case are \$4
22 million per week beginning June 13th on an outstanding debt
23 that was indicated to be about \$25 million. That's substantial
24 in terms of what will happen to the cash flow. I then took a
25 look at the budget which was attached, and I believe that's

1 attached at Page 64 of 79. And in looking at the budget, I did
2 not see the entry of the \$4 million weekly payments that are
3 being made as cash collateral, you know for protection for cash
4 collateral. So my question, or the objection is, if you look
5 at the impact of that on cash available, it's going to have a
6 substantial impact, to the point where it would almost be a
7 negative. And I just would like to raise the question so that
8 it is addressed during the argument before any order is
9 entered.

10 I would say, number one, that the \$4 million, in
11 light of the \$25 million, is a very difficult situation and is
12 not illustrated in the six weeks cash flow model. What's
13 interesting is that within that six week period, if money is
14 not being advanced, it appears that that \$25 million debt will
15 be pretty much extinguished, which I think is indicative of
16 what the lender has indicated that it would like to probably
17 sell assets and liquidate. But I think it's accelerating to
18 the point where it's going to leave the debtor cash strapped.

19 We'll reserve other questions that we have, but I
20 felt it was appropriate to bring this up to the Court at this
21 time.

22 THE COURT: Thank you, Mr. Abramowitz.

23 MR. ABRAMOWITZ: Thank you.

24 THE COURT: I appreciate the input.

25 MR. BECK: Your Honor, John Beck with Dentons on

1 behalf of the debtors.

2 THE COURT: Yes.

3 MR. BECK: I do want to address that point but I
4 think Mr. Durrer suggested that we move to cash management and
5 come back to cash collateral.

6 THE COURT: All right.

7 MR. BECK: I'm happy to do it however Your Honor
8 wants.

9 THE COURT: Why don't we defer on that issue and
10 resolve the other matters that can be addressed more easily.

11 MR. BECK: Okay, Your Honor.

12 So the debtors also filed a motion to approve
13 continuation of its current cash management system at Docket
14 Number 12, Your Honor. By this motion, the debtors seek to
15 continue to use their existing cash management system and
16 related practices. As the U.S. Trustee noted earlier on the
17 phone, we accepted and incorporated a number of comments to
18 that order and sent it to your chambers this morning and I
19 believe they are resolved on this issue.

20 Just for Your Honor's benefit, there are a lot of
21 accounts that are listed in the motion. But really to distill
22 it down into the most important facts, is there is a AR control
23 account that KKR has a DACA on and has control over that
24 account, and that's where all the receivables from the various
25 customers come in. And then, through that account, money is

1 sent to either the main operating account, also at HSBC, or to
2 fund payroll two days in advance of the payroll. So that's
3 really the core of the cash management system and a lot of the
4 other accounts or legacy accounts that may have *de minimis*
5 monies in there but are not actively contributing to the cash
6 management system, Your Honor.

7 Unless Your Honor has any questions on the cash
8 management motion, we would ask that Your Honor grant the
9 motion.

10 THE COURT: All right. I see no objections, hear no
11 objections, motion granted. Thank you.

12 MR. BECK: Thank you, Your Honor.

13 MR. DOHERTY: Good morning, Your Honor. Casey
14 Doherty --

15 THE COURT: Good morning.

16 MR. DOHERTY: -- representing the debtors and with
17 Dentons. I've had a Pro Hac application filed as Docket 49.
18 With Your Honor's permission, I'll honor, or I will argue the
19 wage motion --

20 THE COURT: Yes. Welcome.

21 MR. DOHERTY: -- filed as Docket 7.

22 Thank you, Your Honor.

23 My partner, in his opening remarks, mentioned that
24 the employees here are our priority and retaining and
25 incentivizing them are a top priority in the case, and that the

1 debtors, as they noted in the wage motion, hope to develop and
2 file further retention and incentive programs. But step one is
3 the wage motion, which have the same goals, which is to retain
4 and incentivize the remaining employees.

5 Employee motions are important in every case, but
6 here, it's especially important. As noted in the motion in the
7 first-day declaration, the employees here represent less than
8 20 percent of the workforce from January 1st. And to retain
9 and incentivize them, the debtor asks to continue the existing
10 compensation and benefits programs.

11 There's no objections on the docket to the motion
12 last I looked. We've received comments from the United States
13 Trustee and the order is presented to Your Honor. I'm happy to
14 go through what I believe are a couple of the substantive ones,
15 if Your Honor would wish.

16 THE COURT: Yes, please.

17 MR. DOHERTY: Sure.

18 In Paragraph 3 of the order, and I'll let the U.S.
19 Trustee counsel, of course if I mischaracterize it, speak up.
20 The United States Trustee provided for a proviso at the end
21 that says, "provided the debtors shall provide seven days
22 notice of any material changes to the employee compensation
23 benefits and any other programs described in the motion to the
24 U.S. Trustee and counsel to any statutory committees appointed
25 in the case." We have no objection to that provision.

1 In Paragraph 4, the United States Trustee struck
2 language that the debtor could pay above the priority cap under
3 Section 507 if required by applicable law on an interim basis,
4 and kept it just for the authority of an order of this Court,
5 which we also have no objections to.

6 THE COURT: All right.

7 MR. DOHERTY: With that, Your Honor, unless you have
8 any other questions, we would ask that you grant Docket
9 Number 7, the wage motion.

10 THE COURT: All right. I have no further questions.
11 I see no objections. I will mark the motion granted. All of
12 these are ordered to be submitted.

13 Thank you.

14 MR. DOHERTY: Thank you, Your Honor.

15 THE COURT: I believe that brings us to the customer
16 program?

17 MR. DURRER: Yes, the customer program, Your Honor.
18 Van Durrer, again, for the debtors at Dentons.

19 The customer motion.

20 THE COURT: And there's also the insurance motion. I
21 don't know. That seems to be pretty rogue.

22 MR. DURRER: Yeah, there was just out of order, Your
23 Honor, since you raised it. On the insurance motion, the U.S.
24 Trustee had requested that, to the extent the debtors engage in
25 any new programs or materially modified programs, that we would

1 disclose that, and if necessary, seek additional relief. That
2 comment is fine with us. But otherwise, that motion is
3 relatively routine and has no objections.

4 THE COURT: Then why don't we just address that now
5 and grant it. I don't see any objections subject to inclusion
6 of that language.

7 MR. DURRER: Thank you, Your Honor.

8 And then, that takes us to the last item, other than
9 the reserve cash collateral, is Docket Number 15, the debtors'
10 motion to implement the customer program on a final basis.

11 I do have a brief proffer, Your Honor, of Mitchner
12 Turnipseed, the banker from Huron for Powin, if I may present
13 that.

14 THE COURT: Yes.

15 MR. DURRER: All right.

16 If called as a witness, Mr. Turnipseed is qualified
17 to and will testify as follows. He is a senior director at
18 Huron Transaction Advisory with over a decade of experience and
19 a master's of science from the University of Virginia McIntire
20 School of Commerce.

21 Mr. Turnipseed would testify that he was retained by
22 Powin in early May 2025 in connection with raising capital and
23 engaging in strategic transactions. After an initial review,
24 (indiscernible) initially recommended that the company take
25 advantage of Chapter 11 to stabilize the company and work

1 directly with customers who stood to benefit substantially and
2 immediately from Powin remaining in business, particularly with
3 respect to their long-term service agreement business, a
4 servicing element where Powin provides services to customers
5 who have already had their battery systems installed at their
6 sites.

7 Mr. Turnipseed would testify he worked closely with
8 management to develop a working business model with three major
9 drivers for that business. One, a reduced suite of service
10 offerings in a new services company. Two, increased pricing to
11 support that business line. And, three, customer commitments
12 to provide funding through upfront and periodic service
13 payments.

14 Mr. Turnipseed would testify that an important
15 element of the feedback that he received from customers
16 directly was that they wanted clear delineation between legacy
17 Powin, on the one hand and its problems, and the new services
18 company. That is why the debtors determined to form Powin
19 Project LLC for this effort.

20 In fact, the cash collateral agreement that Powin was
21 successful in negotiating with the secured creditors provides
22 that Powin Project is not required to make adequate protection
23 payments to the secured creditors during the initial term of
24 the cash collateral order.

25 Mr. Turnipseed would further testify that customers

1 obtain an enormous amount of vital data regarding their
2 projects and the Powin battery system performance and operation
3 from Powin's cloud-based proprietary technology. Powin's
4 personnel operate remote operating center and provide around
5 the clock call center support in the event of disruptions or
6 other technical needs. Powin also provides onsite services for
7 the routine and non-routine repair and maintenance of the
8 battery systems.

9 In the absence of Powin providing these functions,
10 Mr. Turnipseed would testify that customers effectively have no
11 alternative and will suffer enormous harm increasing potential
12 claims against the debtors' estates.

13 Mr. Turnipseed would testify that successful launch
14 of this customer program will provide a platform on which Powin
15 can develop a sales process as a going concern. Failure to
16 timely launch the program will likely force a shift to a
17 pursuit of a liquidating transaction, which will have a severe
18 negative impact on value.

19 Finally, Mr. Turnipseed would testify that it's
20 important that Powin make a firm commitment to customers for
21 this program on a final basis. Any delay would cause
22 irreparable loss of value to legacy Powin creditors in general
23 and cause customers to become creditors more specifically.

24 THE COURT: All right. The Court will accept the
25 proffer. The Court will provide an opportunity to any counsel

1 or parties-in-interest wish the opportunity to cross-examine
2 Mr. Turnipseed.

3 (No audible response)

4 THE COURT: All right. Hearing and seeing no one, I
5 appreciate the proffer.

6 MR. DURRER: My understanding is that Mr. Sponder may
7 have comments with respect to this motion, Your Honor.

8 THE COURT: Yes.

9 MR. DURRER: I should note that we did agree with the
10 United States Trustee, as has already been stated in connection
11 with cash collateral, that transfers of assets to Powin Project
12 LLC will not occur pending, hopefully, final approval of the
13 Cash Collateral Award.

14 THE COURT: That's important to the Court. I
15 appreciate that. I do need to have in place a structure to
16 safeguard and to ensure the transfer is subject to review by a
17 committee, that there are protections for the estate, just like
18 the cash collateral that we've been discussing.

19 Mr. Sponder, I see your hand raised, again.

20 Thank you.

21 MR. SPONDER: This time, I lowered it again, Your
22 Honor. Thank you.

23 With respect to the customer program, the U.S.
24 Trustee understands the debtors' need for the approval of the
25 customer programs. However, Your Honor, when weighing this

1 against the rights of a committee to respond and/or object to
2 the order, I should say -- let me start over.

3 However, when weighing this against the rights of a
4 committee to respond and/or object, the order should be
5 interim, especially in light of the fact that this is day three
6 of these cases.

7 With that said, Your Honor, at the very least, the
8 U.S. Trustee requests that the order allow the committee the
9 ability to raise any issues with the motion after the order is
10 entered.

11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Sponder.
13 Counsel.

14 MR. DURRER: Yeah, Van Durrer from Dentons for the
15 Debtor, Your Honor.

16 We're amenable to that in concept. The U.S.
17 Trustee's Office had proposed language consistent with Local
18 Rule 9013(5)(e), which wouldn't necessarily include any
19 committee. If Mr. Sponder would like us to add, "including,
20 but not limited to, the committee," we're happy to do that.

21 THE COURT: All right.

22 I think those safeguards would satisfy the Court that
23 there can be eyes on this transaction, but the Court recognizes
24 from what it's heard and what it's read the importance of
25 giving the customers here, which will be the lifeblood of going

1 forward and revenue stream going forward, the confidence that
2 they're not going to be making an investment by making payments
3 and then be the target.

4 So I think it makes sense. I will grant the motion
5 subject to the protections of the language that can be agreed
6 upon to preserve the U.S. Trustee's concerns with the committee
7 having an opportunity to weigh in.

8 MR. DURRER: Thank you, Your Honor.

9 And with that, perhaps, Your Honor, we take a 15
10 minute recess.

11 THE COURT: Well, I was going to suggest this.

12 And what I've just said as to the customer program
13 carries forward those same general terms with cash collateral.
14 Obviously, the Court needs to be assured that there can be eyes
15 on the transaction, or at least an avenue in going forward.

16 Generally, this Court does not have issues with
17 allowing, for instance, the lenders to perfect their liens even
18 on an interim basis. To this extent, even the liens on
19 avoidance actions on an interim basis limited obviously to a
20 diminution in collateral. It's not just for all purposes. On
21 an interim basis, it would be a diminution in collateral.

22 The problem, of course, is the concern of the \$4
23 million payment. There's not going to be a diminution in value
24 if you have a payment. But if you have a payment that's going
25 to place this debtor in default right away, I don't know what

1 we've accomplished.

2 As to the other language, the Court's prepared to
3 make final rulings if you all can't come to an agreement on
4 language or provisions. I'm inclined to obviously approve an
5 interim collateral order, an arrangement that will facilitate
6 going forward with the intentions of right-tracking this
7 debtor.

8 I can, if presented with this is what we agree on,
9 this is where we just can't agree and throw it to the Court,
10 I'll make the call. See what you can.

11 Why don't we take -- I have hearings that start at
12 11:30, so how about we come back at ten to 11:00. Give you
13 roughly 25 minutes or so?

14 MR. DURRER: I would say quarter of, Your Honor.

15 THE COURT: Quarter of?

16 Well, I'll put more -- well, if you say quarter of,
17 it means ten of anyway.

18 So, why don't we come back at a quarter of?

19 MR. DURRER: Thank you, Your Honor.

20 THE COURT: All right. Thank you.

21 So, we'll be adjourned until 10:45.

22 Thank you.

23 (Recess at 10:26 a.m./Reconvened at 10:55 a.m.)

24 THE COURT: All right. As they say in production,
25 we're back.

1 MR. DURRER: Van Durrer with Dentons for the debtors,
2 Your Honor. Thanks for the break. I think it was productive.

3 On cash collateral, I'm going to yield the podium in
4 a moment to Mr. Beck, but he and Mr. Zatz were working with
5 Mr. Sponder while I was talking to Ms. Tancredi. So I think I
6 have a resolution with Ms. Tancredi that I'll recite and she
7 will correct me if I mess it up.

8 THE COURT: All right.

9 MR. DURRER: Ms. Tancredi's clients filed objections
10 at Docket Number 47 on behalf of a group of surety bond
11 providers. What we are stipulating to is as follows.

12 One, the cash collateral budget does not contain any
13 authorization or expected use to pay any customs duties that
14 are the subject of the bonds.

15 Number two, the budget does not contain any line item
16 or authorization to pay premiums to Ms. Tancredi's clients.
17 You might expect that might form the basis for a stay relief
18 motion on her client's behalf. She intends to file that
19 promptly, and the debtors have agreed to an expedited
20 scheduling of that.

21 We haven't discussed the specific schedule. Our aim
22 is to present you with a stipulated order on scheduling that.
23 Obviously, subject to Your Honor's availability, but we're
24 trying to be respectful of people's time and resources. But I
25 believe that that should resolve that docket item.

1 THE COURT: All right.

2 Ms. Tancredi?

3 MS. TANCREDI: Yes. That stipulation does as well as
4 language that was forwarded to me by counsel for KKR, which I
5 can read into the record, or do you want to read it into the
6 record.

7 MR. DURRER: Be my guest.

8 MS. TANCREDI: Okay.

9 "The adequate protection liens are subject and
10 subordinate only to those valid, enforceable, and non-avoidable
11 liens that are, one, in existence on the petition date; two,
12 either perfected as of the petition date or perfected
13 subsequent to the petition date solely to the extent permitted
14 by Section 546(b) of the Bankruptcy Code; and, three, senior in
15 priority to the pre-petition liens as of the petition date in
16 accordance with applicable law, such liens (indiscernible)
17 permitted prior liens.

18 THE COURT: Okay.

19 MS. TANCREDI: Thank you.

20 THE COURT: All right. Thank you.

21 Thank you, Counsel.

22 MR. BECK: Your Honor, John Beck of Dentons on behalf
23 of the debtors, again.

24 As Mr. Durrer alluded to, we spent the break with
25 Mr. Zatz and the U.S. Trustee trying to get through a number of

1 issues. I think we have resolved some of them, which I will
2 articulate for Your Honor. Some I'm not sure we have resolved.

3 First of all, for the challenge period timing, what
4 we would propose is to get rid of all the earliers and lateres,
5 etcetera, and it would simply be this construct where non-
6 committee challenges have 75 days. The committee will have 60
7 days from its appointment. And then, if a Chapter 7 trustee is
8 appointed prior to the expiration of the 75 challenge, it would
9 get 15 days flat. We do not agree to any extension of the
10 challenge period for a Chapter 11 trustee.

11 Second, Your Honor, is the debtors can agree to add
12 language preserving the Delaware limited liability company
13 defenses that the U.S. Trustee requested. So we will put that
14 in the turn of the order.

15 Next, Your Honor, we will add language to preserve
16 365(n) rights for the parties that were objecting on that
17 basis.

18 And then, finally, Your Honor, with respect to 7(b),
19 which I don't think we are agreed on on the language, we think
20 that the language as proposed addresses the concerns that
21 Mr. Sponder is raising. And basically, the crux of the issue
22 is, I think we agree that to the extent that the pre-petition
23 secured parties did not have a lien or had a certain priority
24 prior to the petition date, that the adequate protection liens
25 would be to the same extent and the same relative priority as

1 those liens.

2 I think the issue is that the Trustee has preferred
3 language, which we just frankly don't understand, and we think
4 that our language is limited to the diminution in value as it
5 has to be. So to the extent that the liens are invalidated or
6 something happens to where the actual underlying lien is cut
7 out, then by necessity, there's no diminution in value because
8 they never had a lien in the first place.

9 And so we think that the language that is already in
10 there, subject to the things we've read on the record today,
11 adequately addresses the U.S. Trustee's concerns. I think he
12 has different language and we just aren't prepared to agree to
13 that, Your Honor.

14 THE COURT: All right. What about other issues that
15 were raised as far as the liens on avoidance claims, and the
16 payment, I guess what Mr. Abramowitz had raised, the payment of
17 the fees started to KKR.

18 MR. BECK: Yes, Your Honor.

19 So on the avoidance actions, Your Honor, and Mr. Zatz
20 can speak to this, the pre-petition secured lenders do want
21 liens on proceeds avoidance actions at the interim period.
22 They do believe that, given the nature of the debtors'
23 liquidity situation and what they've been asked to do to
24 support this company warrants it in this circumstance.

25 With respect to the payments, the debtors would not

1 agree to this if we didn't think that we would be able to
2 either pay for it or that we have the trust of our lenders who
3 have worked constructively with us so far to waive that in
4 reasonable circumstances as they are required to do.

5 With respect to the budget, there are a lot of timing
6 issues that move around with the budget, and so I can
7 understand how it looks. The debtors actually received a large
8 receivable last night at 5.6 million that's not reflected in
9 the budget. So the debtors are confident that they will be
10 able to pay that payment.

11 And it really makes sense, Your Honor, because the
12 pre-petition secured lenders are allowing us to use their cash
13 collateral and don't want to be stuck in a long drawn-out
14 process, and so they want to see progress with the customer
15 program that we're trying to implement and various things and
16 they don't want to get paid down. But if we are making
17 progress, then they are willing to work with us, and that's
18 really what the construct is meant to address.

19 THE COURT: All right. Thank you.

20 Mr. Abramowitz.

21 MR. ABRAMOWITZ: Yes.

22 I'm not going to repeat the objection, but I would
23 note two items.

24 One, the cash flow is for six weeks, which to me is a
25 bit troublesome because I know in the long run we're all dead,

1 but the question is what is the long run? Normally, when I see
2 these, it's usually 60 to 90 days. I don't know that it's a
3 coincidence that it's a six-week period and that's about the
4 extent of the \$4 million that would satisfy the debt. So that
5 I believe that the cash flow, the projection should be extended
6 if possible to reflect what the debtor anticipates its ability
7 to sustain itself for the next 60 to 90 days. I don't think
8 that's unreasonable.

9 I also don't think it's unreasonable that we have to
10 take into effect what the impact will be of that \$4 million
11 payment per week on available cash. If you look at the
12 projections, while it may be that they've received X millions
13 of dollars last night, I'd like to see that and I'd like to see
14 what the impact is because I'm uncertain where you are in other
15 weeks where you have cash flow being a negative.

16 Again, I understand that these are estimates. But I
17 think that they should be accurate. We know one thing, while
18 we can't tell about what the receivables may be, we know that
19 there's going to be a \$4 million payment per week, so that
20 should be reflected in the budgets.

21 Thank you.

22 THE COURT: Thank you.

23 All right. Mr. Zatz.

24 MR. ZATZ: Yes. Thank you, Your Honor.

25 I did want to make a few additional comments if I

1 may. I (indiscernible) the objection. Again, Andrew Zatz from
2 White & Case on behalf of KKR as the pre-petition lender.

3 Mr. Beck accurately stated the state of play in terms
4 of what we're willing to do in response to the objections that
5 have been raised. But I want to add some additional color.

6 On the Paragraph 7(b) issue, it feels like we're just
7 in a jam on drafting. But, again, the key from our perspective
8 is that it all ties to diminution in value. If there is a
9 diminution in value of our pre-petition liens, to the extent
10 they are deemed to be valid during this interim period, it
11 creates adequate protection liens on all the debtors' assets.
12 That's my layman's view. And if Your Honor sees anything in
13 the drafting there that seems to state otherwise, I'm happy to
14 address it, but I think it's clear.

15 On liens on avoidance actions, this is I think
16 Mr. Beck accurately stated. This is important to our clients
17 under the circumstances. I know we don't have a committee yet
18 and I know that committees have a tendency to point at this as
19 something to argue about or perhaps trade. At the end of the
20 day, this is an interim order.

21 There would have to be a diminution in value during
22 this interim period taking into account adequate protection
23 payments that we receive to extend the liens to those avoidance
24 actions. I'm not saying that that's an unlikely occurrence,
25 but I am saying it limits, to some degree, what we're asking

1 for today. And if a committee gets appointed between now and
2 the second-day hearing and wants to revisit this issue on a go-
3 forward basis beyond the interim period, we can address that.

4 But we think, ultimately, the ask is extremely fair.
5 These are unencumbered assets like any other. I know
6 committees want to find unencumbered assets, but we need real
7 adequate protection here. We have all asset liens. We need
8 something beyond our existing package to look to.

9 On the adequate protection payments, this is a unique
10 case and it's tricky. The customer programs order that Your
11 Honor indicated you're inclined to enter is key to the success
12 of these cases and how the next few weeks are going to
13 progress. The budget shows my understanding, and it's the
14 debtors' budget, not ours.

15 But my understanding is it shows expected receivables
16 that they intend to collect compared to the operating expenses
17 of the business. But there is very much a need to get to deals
18 with customers here. Powin needs to engage with customers
19 pretty much immediately, and I think they already are well in
20 the process of doing so, on the customer programs framework to
21 get to deals, to get customers what they need to complete
22 projects, and to get the services that the company offers and
23 to bring revenue into the company.

24 If that can't be achieved, then these cases are
25 simply not going to be a success. And I can't promise

1 Mr. Abramowitz or anyone else that there's going to be a great
2 end-game here or that there's going to be a 13-week budget.
3 That's the ambition that we're all playing into, and we really
4 hope to get engagement and for it to be a success. But there
5 simply is no way to promise that everything is going to land
6 the way we want it to. It's just the nature of the kind of
7 situation we find ourselves in.

8 But the adequate protection payments are crucial to
9 our clients and are the fair quid-pro-quo for what they're
10 allowing the rest of the cash to be used for here.

11 THE COURT: All right. Thank you, Mr. Zatz.

12 MR. ZATZ: Thank you, Your Honor.

13 THE COURT: I am looking at, I guess, a final hearing
14 date of July 7th. It's a Monday. I will be traveling, so I
15 will be doing this -- it will be remote. If it turns out that
16 an evidentiary hearing is required, we're going to push it a
17 week to the 14th. But to the extent we can do it remotely,
18 even if testimony is limited, I prefer that route. I think it
19 makes sense for this case and this party.

20 So fixing a final hearing and a second-day hearing on
21 anything that was an interim to July 7th puts us from now about
22 three and a half weeks. Today is the 12th, so it takes us past
23 the July 4th holiday.

24 I will approve use of cash, including the adequate
25 protection payments, but no more than two payments. I'll let

1 the parties decide how to spread it out. I think that will --
2 and when I -- and -- well, I'm sorry.

3 Mr. Sponder, I do see your hand. I just saw that.
4 You wish to be heard?

5 MR. SPONDER: I'm sorry, Your Honor. Jeff Sponder
6 from the Office of the United States Trustee.

7 I was going to chime in also about the \$4 million
8 payments that Mr. Abramowitz raised and neglected to do so and
9 apologize for that.

10 There is also a \$1.5 million consent fee that's being
11 paid to the lenders. So there are a lot of payments being made
12 here. What I want to make clear and understood, Your Honor, is
13 that with respect to Paragraph 7(b) and adequate protection,
14 that the lender is only receiving a replacement lien as
15 adequate protection. That's really all I'm asking for.

16 If that's what's being done here, then great. That's
17 what the language provides, but it has more words than simply
18 the lender is receiving a replacement lien.

19 As to the challenge period, Your Honor, we are fine
20 again with the 75 days for all parties-in-interest other than
21 the committee from date of the interim and 60 days from
22 appointment for the committee, but we still believe a
23 Chapter 11 trustee should be included, as well as a Chapter 7
24 trustee and that it should be 45 days instead of 15 days to
25 allow those independent fiduciaries to get up to speed.

1 Avoidance actions, Your Honor, as I'm sure you know
2 we always raise it, it should be left for the committee or at
3 least Your Honor to reserve the right to the committee at the
4 final hearing. That's all I have.

5 Thank you, Your Honor.

6 THE COURT: All right. Thank you, Mr. Sponder.

7 Mr. C deBaca.

8 MR. C deBACA: Yes. Thank you, Your Honor.

9 My clients don't have an issue with any of what was
10 just discussed in respect of adequate protection payments or
11 liens. However, I did want to just take a moment to pick back
12 up on my earlier comments about Section 363(b), in particular,
13 and describe how I think that changes the landscape with
14 respect to IP in particular, that, I'm not lodging a request or
15 an objection right now. However, I do think it's important to
16 note that adequate protection can take the form of more than
17 just liens, payments, and in particular, with respect to IP,
18 that protection may need to take the form of having my clients
19 get access to necessary IP to be able to protect their
20 projects.

21 So, for example, to the extent they need passwords to
22 get administrative access to critical software to be able to
23 run their projects, we may need to, to the extent we can't
24 consensually agree on a protocol to get that type of
25 information, we may need to revisit this issue in the broader

1 context of the final hearing.

2 THE COURT: Fair enough. Rights are reserved to
3 raise these issues as part of the final hearing.

4 Ms. Parlin.

5 MS. PARLIN: I'm just going to piggyback on what my
6 learned colleague just said for our client is the same issues.
7 We are very concerned about access to the IP and access to the
8 process. And I understand that my client is in the process of
9 talking with the debtors about the very type of new customer
10 program agreement as Mr. Durrer explained to the Court would be
11 crucial to the debtors' success going forward.

12 But, in any case, our client certainly has 365(n)
13 rights for the IP and the information and needs to preserve all
14 of its rights. So, again, we reserve all of our rights on
15 behalf of Invenergy.

16 THE COURT: Fair enough. Court recognizes the
17 reservation of rights. Thank you.

18 All right. So as I indicated, I'm going to approve
19 cash collateral. I'm going to authorize the payment of the
20 adequate protection fee of only two payments over that period
21 of time pending final hearing. That should give the committee
22 that gets appointed an opportunity to vet the transaction.

23 The adequate protection liens that are being
24 proposed, I think we all agree on the concept. They are to
25 serve as a form of adequate protection, the additional liens,

1 even on the avoidance actions.

2 If we're having \$8 million in payments, I seriously
3 doubt we're going to have a diminution in value of the
4 collateral more than that amount in three and a half weeks. If
5 we do, we're all in trouble in this case.

6 So I don't believe it's threatening the position of
7 the estate at this point to give the liens on the avoidance
8 actions on an interim basis only. All bets are off as far as a
9 final subject to parties coming in and making their case.

10 As to the language on Paragraph 7, I think we're
11 there. What I would ask is to submit the form of order with
12 the language you agree upon, highlight for me what's not in
13 agreement, and I'll see if I can massage it or choose one or
14 the other.

15 I believe rights are being preserved with respect to
16 the 365(n) issue, as well as the issues raised as far as
17 adequate protection for those licensees.

18 Have I missed anything, counsel?

19 MR. DURRER: I'm sorry, Your Honor. I'm loathe to
20 mess with success here, but I'd want to make sure when we go
21 back to negotiate the COC order with everyone that we're on the
22 same page, because I think there was one issue that fell by the
23 wayside. It's this paragraph near the end about the binding
24 effect of the order.

25 We have competing language with the U.S. Trustee. I

1 don't think there's a huge difference, substantively. I think
2 the key from our perspective is we are counting on the active
3 protection package here, and that includes in the hopefully
4 unlikely instance that the case converts. So we felt it was
5 important to make the mention of the successor cases in that
6 paragraph.

7 We'll try if we can find a resolution with the U.S.
8 Trustee. If not, we'll do like you said, competing language
9 for you to work with.

10 THE COURT: That's fine.

11 I recognize. Again, I don't see on an interim basis
12 a Chapter 11 trustee being an issue in three and a half weeks.
13 So I don't think we have to stumble over that.

14 MR. DURRER: Okay. Thank you, Your Honor.

15 THE COURT: Thank you.

16 UNIDENTIFIED SPEAKER: Just a related issue, Your
17 Honor. I think we need your guidance on the challenge period
18 duration.

19 THE COURT: I thought there was a consensus.

20 It's 75 days for all parties.

21 UNIDENTIFIED SPEAKER: I don't think they've agreed
22 on the 15 days for the Chapter 7 trustee or the exclusion of
23 the Chapter 11 trustee.

24 THE COURT: I'm comfortable just allowing the 15
25 days. I don't think 15 or 30 days is going to make a

1 difference with a Chapter 7 trustee at that point. So they'll
2 get their act together quickly if need be. And, again, I don't
3 see, I'm not going to require the inclusion of a Chapter 11
4 trustee. I just don't think it's going to be relevant.

5 Counsel?

6 MR. DURRER: Van Durrer of Dentons for the debtors,
7 Your Honor.

8 I think that's all we needed today. We appreciate
9 the Court's time and going over time.

10 Just as a matter of housekeeping, if possible, if we
11 could move those suggested hearing dates to the Tuesday, just I
12 think it'll enhance our opportunity to present you with a
13 cleaner consensual package as opposed to the Monday. So the
14 8th and the 15th, as opposed to the 7th and the 14th.

15 And as promised, I will work with Ms. Tancredi to
16 decide whether we even need a motion for lift stay. But we
17 will, as I said, agree to expedite that. So probably the last
18 week of June, if we do have to have a hearing, and we're fine
19 with that being virtual, if Ms. Tancredi is.

20 THE COURT: All right. Ms. Tancredi, check with
21 chambers. It gets tight timeframe.

22 I don't have an issue if the parties are comfortable
23 with being the, nobody wants to start things on a Monday, but
24 the 8th and the 15th, that works for us.

25 All right.

1 MS. TANCREDI: Thank you.

2 THE COURT: All right.

3 And I thank you all. I don't see any more raised
4 hands remotely. So I appreciate all of the counsel --

5 MR. DURRER: I apologize. One more thing, Your
6 Honor. Van Duren for the debtors.

7 We're working closely with the U.S. Trustee on
8 retention applications. We would seek to make those *nunc pro*
9 *tunc*, there's been quite a bit of activity. I'm just not
10 asking you to comment on that, Your Honor, but I wanted
11 Mr. Sponder to be aware. I think he is, but I would be remiss
12 for all the professionals on my side of the aisle if I didn't
13 comment on that.

14 THE COURT: That's fair enough. I think we have a
15 significant practice here in Jersey of accommodating.

16 Thank you.

17 MR. DURRER: Thank you, Your Honor.

18 THE COURT: All right.

19 Thank you, folks. I appreciate all of your time and
20 efforts.

21 THE CLERK: A few more hands we have.

22 We have a few more hands. Oh. I tried.

23 (Laughter)

24 THE COURT: Mr. Sponder.

25 (No audible response)

1 THE COURT: Mr. Sponder, are you there?

2 MR. SPONDER: Yes, Your Honor. Can you hear me now?

3 THE COURT: I can. Thank you.

4 MR. SPONDER: Great.

5 Your Honor, if we're going to do July 8th, I have a
6 341(a) meeting at 10:00 a.m., so I was hopeful that possibly we
7 could start at 11:30, unless that's a problem for everyone
8 else. If it is, then I can hand off something, but it's one of
9 the larger cases, as well.

10 THE COURT: It works for the Court as well. 11:30 is
11 fine.

12 Thank you.

13 MR. SPONDER: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 Mr. Oswald. Good morning, still.

16 MR. OSWALD: Good morning, Your Honor. Good to see
17 you.

18 THE COURT: Yes.

19 MR. OSWALD: I was just going to ask for that clarity
20 time of the hearing. I got the two dates, but thank you,
21 11:30.

22 THE COURT: 11:30. And, oh, let me also include that
23 those are final hearings. Any opposition to the final hearing,
24 let's have close of business, July 1st. All right?

25 MR. OSWALD: Thank you.

1 THE COURT: And, for all your benefit, we consider
2 close of business to be 4:30 when the clerk's office closes up.
3 I know it changes for the real world.

4 All right. Thank you.

5 Thank you, folks. Take care.

6 MR. BECK: Thank you, Your Honor.

7 (Proceedings concluded at 11:20 a.m.)

8 * * * * *

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

I, Karen K. Watson, court-approved transcriber,
hereby certify that the foregoing is a correct transcript from
the official electronic sound recording of the proceedings in
the above-entitled matter, and to the best of my ability.

/s/ Karen Watson
KAREN WATSON, AAERT CET-1039

DATE: June 13, 2025

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