

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, . (Jointly Administered)  
.   
. U.S. Courthouse  
Debtors. . 402 East State Street  
. Trenton, NJ 08608  
.   
. July 15, 2025  
. 11:40 a.m.  
. . . . .

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

APPEARANCES:

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1 THE COURT: All right. Once again, good morning for  
2 those who are watching remotely, with Judge Kaplan. We'll hear  
3 the Powin matters on for today this morning. We have counsel  
4 both in court, and I believe some counsel appearing remotely.  
5 For those who are appearing remotely, I'll remind them to  
6 please use the raise hand function, and we'll be able to  
7 identify you and call upon you.

8 Good morn -- Mr. Oswald, good morning.

9 MR. OSWALD: Good morning, Your Honor. Frank Oswald,  
10 Togut, Segal & Segal, co-counsel for the debtors, here today  
11 together with my colleagues from the Dentons firm, who will  
12 approach later.

13 Your Honor, first let me say once again thank you to  
14 the Court chambers personnel. We know we've had a lot of  
15 papers being filed and submitted, including those requesting a  
16 short notice. And the Court has been just absolutely fantastic  
17 on all of that.

18 Today, I'm going to handle the first six matters, all  
19 of which are presented to the Court without objection and with  
20 proposed changes that we've submitted to the proposed orders,  
21 which incorporate comments from both the U.S. Trustee's Office  
22 and our friends with the Committee represented by Brown Rudnick  
23 and Mr. Stolz's firm.

24 So, with your permission, I'll get right to those  
25 matters before turning over the podium to the more -- what I'll

1 call, substantive matters, to the Dentons firm.

2 THE COURT: All right. Will that include -- I know  
3 we have one contested adjournment matter, unless you all have  
4 worked out a resolution of the Mainfreight.

5 MR. CAPUZZI: There is a settlement we'd like to put  
6 on the record on Mainfreight, Your Honor.

7 THE COURT: Oh, all right. There goes all that  
8 research I did.

9 (Laughter)

10 THE COURT: All right, Mr. Oswald.

11 MR. OSWALD: Trying to make it easier for the Court  
12 today, Your Honor. So, the first matter, running down on what  
13 we've -- I got on the agenda is second day matters was the wage  
14 motion at Docket Number 7. The Court had entered an interim  
15 order following the first day hearing. And as I say, based  
16 upon some comments and questions raised by both the U.S.  
17 Trustee's Office and the Committee, we've submitted a revised  
18 order, as well as a certificate of no objection at Docket  
19 Number 377. Unless Your Honor has any questions regarding the  
20 form of final order, we would respectfully request that the  
21 order be entered at the Court's convenience.

22 THE COURT: I'm looking on the screen to see who I  
23 have in the U.S. -- oh, not on the screen. Mr. Sponder, just  
24 --

25 MR. SPONDER: Good morning, Your Honor.

1 THE COURT: -- here from your office. Good morning.

2 MR. SPONDER: Thank you. Jeff Sponder from the  
3 Office of the United States Trustee. I wanted to see you in  
4 person today instead of on the screen.

5 To make it easier, Your Honor, the first six motions,  
6 wages, insurance, cash management, creditor matrix, utilities,  
7 and taxes, all of our requests for revisions as I understand it  
8 are included in the final orders. So, as a result, we no  
9 longer have any objection to entry of those orders. Thank you,  
10 Your Honor.

11 THE COURT: For that, you came down?

12 (Laughter)

13 MR. SPONDER: Yes and no.

14 MR. OSWALD: Okay. I could do it -- I could do the  
15 other five in that summary fashion, but maybe best for the  
16 record that I just --

17 THE COURT: Why don't we go through it one by one?  
18 We'll do it quickly. But, as to the -- as to the current  
19 matter, given that there's no other objections, the matter will  
20 be marked granted. And, again, do we have the final versions  
21 of the orders or will they be sent down?

22 MR. OSWALD: I believe we've submitted them.

23 THE COURT: All right. If we have a problem, we'll  
24 check with Janice.

25 MR. OSWALD: And we'll confirm that after the hearing

1 with chambers. Thank you, Your Honor.

2 Item 2 is the insurance motion to maintain and renew  
3 and amend the existing insurance policies. That was filed  
4 originally at Docket Number 8. We did file the certificate of  
5 no objection at Docket Number 378. And as I say, the proposed  
6 form of order, the final proposed form of order, incorporates  
7 both U.S. Trustee and Committee counsel comments. So, unless  
8 the Court has any questions, we would ask that the order be  
9 entered at your convenience.

10 THE COURT: All right. I see no hands raised. Mark  
11 granted. Thank you.

12 MR. OSWALD: Thank you. Item Number 3, Your Honor,  
13 is the cash management motion, which was filed at Docket Number  
14 12 originally. The certificate of no objection was filed last  
15 night at Docket Number 380. And, again, the proposed form of  
16 final order has been submitted.

17 THE COURT: Again, granted. I see no objections.

18 MR. OSWALD: Thank you. Item Number 4 is our  
19 consolidated creditor motion. I think that one may have -- the  
20 proposed order may have come in a little late, Your Honor, but  
21 the original motion was at Docket Number 14. Our certificate  
22 of no objection was filed at 381. And the proposed order  
23 should be with chambers. But, again, I'll confirm that after  
24 the hearing.

25 THE COURT: All right. We'll mark that granted.

1 Thank you.

2 MR. OSWALD: Item Number 5 under the uncontested  
3 matters is our motion establishing adequate assurance for our  
4 utilities. The original motion was at Docket Number 112. We  
5 have established our account for the security deposit funds.  
6 We will have, I think if not filed already, shortly, the  
7 certificate of no objection on that, and submit the proposed  
8 order.

9 THE COURT: That's fine. All right. Again, I see no  
10 objection. Mark it granted.

11 MR. OSWALD: Thank you, Your Honor. And Item 6 is a  
12 motion for authority to pay the pre-petition accrued taxes.  
13 That motion was originally filed at Docket Number 99. No  
14 objections were received. Again, we've incorporated some  
15 comments from both counsel of the U.S. Trustee and the  
16 Committee. The agenda doesn't reflect our certificate of no  
17 objection, but one has been prepared and may have been filed  
18 since we came into the courtroom. Proposed order as well will  
19 be submitted to chambers.

20 THE COURT: All right. Again, mark it granted.  
21 Thank you.

22 MR. OSWALD: Good. Your Honor, that takes us to Item  
23 7, cash collateral. And I think it was our thought, if it was  
24 okay with the Court, we'd deal with the cash collateral and the  
25 DIP together. My colleague, Mr. Beck, from the Dentons firm.



1 THE COURT: All right. Thank you.

2 MR. BECK: Good morning, Your Honor. John Beck of  
3 Dentons on behalf of the debtors.

4 THE COURT: Good morning.

5 MR. BECK: As Mr. Oswald alluded to, I will be  
6 addressing both the debtor's cash collateral motion and the  
7 debtor's debtor in possession financing motion. Because these  
8 motions largely deal with the same issues, incorporating  
9 comments from the Committee, I thought it would be most  
10 efficient if I ran through the changes to both orders before  
11 ceding the podium to other parties who wanted to address the  
12 issues, if that pleases Your Honor.

13 THE COURT: That's fine. Thank you.

14 MR. BECK: So, the first motion, Your Honor, is the  
15 order approving cash collateral use, which we originally filed  
16 at Docket Number 11. Your Honor entered the interim order on  
17 June 13th, 2025, and there have been a number of moving parts  
18 since that time. Most notably, that the debt has actually  
19 changed hands and is now owned by Keyframe.

20 And we are here largely on a consensual basis, except  
21 for two issues raised by the U.S. Trustee, which I will cover  
22 in just a moment. We would like to thank the U.S. Trustee for  
23 their comments, and of course the DIP lenders, the Committee,  
24 and the pre-petition lender for working constructively to bring  
25 a largely consensual order before Your Honor.

1 Last Sunday night we filed a notice of revised orders  
2 at Docket Number 367. Attached as Exhibit 1 to that order is  
3 the revised final order granting cash collateral use and also a  
4 red line against the interim order. As I mentioned previously,  
5 most of those changes are to incorporate the fact that this is  
6 now a final instead of an interim order, and also to reflect  
7 the fact that a committee has now been appointed.

8 A number of substantive issues that I just wanted to  
9 walk Your Honor through. First, is in Section 3 or Paragraph  
10 3, the Committee has requested the ability to seek a seven-day  
11 extension of the sale process, and come to Your Honor and show  
12 that there is cause to do so. I think you'll hear a little bit  
13 about that in a number of motions. That is reflected both in  
14 cash collateral and DIP and also the sale process, which Mr.  
15 Durrer will talk about in a minute.

16 In Paragraph 4, Your Honor, we have -- and this is  
17 probably the most red on the page, but we have reformulated in  
18 the cash collateral order the testing and recording  
19 requirements. And the purpose of this was to align the  
20 testing, timing, and variance calculations to be both exactly  
21 the same in the DIP order and the cash collateral order. They  
22 were inconsistent before, and it was requiring, you know,  
23 different budgets, different testing periods, different  
24 variance calculations. And so the reason most of the red shows  
25 up in the cash collateral order is we largely adopted the

1 formulation that was in the DIP.

2 In Paragraph 7(a), Your Honor, I'm pleased to report  
3 that our new pre-petition lender has agreed to dispense of all  
4 the adequate protection payments, you know, the large weekly  
5 payments that the prior lender was requesting. And the only  
6 adequate protection payments in the order at this time is  
7 payment of the lenders' fees and expenses, which they have  
8 agreed to capitalize, and they are doing owing upon the closing  
9 of a sale if they are the ultimate bidder or upon a termination  
10 event under the cash collateral order.

11 In Paragraph 7(c), Your Honor, at the Committee's  
12 request, the pre-petition lenders have agreed to a soft  
13 marshaling concept where they will look to their collateral  
14 other than the avoidance actions and commercial tort claims in  
15 order to satisfy their claims prior to moving to those and in  
16 an effort to reserve those for the unsecured creditors.

17 THE COURT: Those are the reason -- the reasonable  
18 efforts language?

19 MR. BECK: It's actually a different formulation. In  
20 the DIP it is reasonable efforts, and in the cash collateral it  
21 is just they will do that.

22 THE COURT: Okay.

23 MR. BECK: Next, Your Honor, is Paragraph 9, which  
24 you'll recall from the first day hearing, is the concept of the  
25 IP transfer to the newly formed Powin Project, LLC. We are in

1 a very different world than when we first conceived of that  
2 concept. The debtors at this time do not intend to effectuate  
3 that transfer. However, we would like the provision to remain  
4 in the order and give us the discretion to do so in connection  
5 with the sale process if it makes sense for the prevailing  
6 bidder and the customers. We have added to that section that  
7 that transfer would only occur with the express consent of the  
8 DIP lender and also the pre-petition secured lender, Your  
9 Honor.

10 In Paragraph 26, Your Honor, is the reservation of  
11 rights language that a number of parties have requested both  
12 formally and informally. And what that language provides, and  
13 this was also discussed at the first day hearing, is that  
14 nothing will impair the 365(n) rights of the various parties,  
15 and that nothing will encumber or permit the transfer of assets  
16 that are not property of the estate.

17 And then, finally, an issue for a number of parties,  
18 but particularly Mainfreight, who's here today, is to preserve  
19 the concept of the permitted prior liens that nothing would  
20 impair any lien that would be senior prior to the petition  
21 date, Your Honor.

22 The last issue I want to discuss, and this is  
23 contested by the U.S. Trustee, is, Your Honor will note that in  
24 Paragraph 22, the challenge formulation has been -- has been  
25 modified fairly substantially. And I just wanted to walk Your

1 Honor through the debtor's motivations and also the Committee's  
2 motivations, and then you'll hear more about that from a number  
3 of parties.

4           The first is, since the debt has changed hands from  
5 KKR to Keyframe, Keyframe has very different motivations.  
6 You'll recall that they were the original proposed DIP lender,  
7 and we ultimately received a superior offer from our current  
8 DIP lender. But, they very much have still been engaged in the  
9 process and they bought the pre-petition debt with an eye  
10 towards participating in the sale process.

11           And so, for that reason, it's very important to them  
12 that they have the ability to credit bid. And so -- but we  
13 have agreed with the Committee is to effectively bifurcate the  
14 challenges. And so, what that has resulted in is that any  
15 challenge to the lien validity of the liens that Keyframe now  
16 holds or Keyframe's ability to credit bid that debt must be  
17 brought by July 24th, which is a few days before the auction.

18           And that gives Keyframe the certainty that they will  
19 be able to credit bid and the debtors and the Committee, you  
20 know, are trying to encourage them to be fully active in the  
21 process. Because the Committee hasn't had full time to  
22 investigate other potential claims against the pre-petition  
23 parties, we have segregated out monetary claims against what's  
24 called the accepted lenders. But, what it really means is, you  
25 know, the lenders that were involved at the time the debt was

1 actually originated, as opposed to the current lenders,  
2 Keyframe.

3 And it allows the Committee to pursue their  
4 investigation and any potential monetary claims against those  
5 parties at a later time, and most importantly, to the debtor  
6 after the sale process. So, it's really a carefully  
7 constructed bifurcation of the challenge designed to preserve  
8 the Committee's rights, but also give Keyframe comfort that  
9 they'll be able to credit bid, Your Honor.

10 THE COURT: What constitutes a challenge for the  
11 Committee by 7/24? Is it a filing of a complaint?

12 MR. BECK: I believe it's a motion for standing.

13 UNIDENTIFIED ATTORNEY: A motion for standing.

14 THE COURT: Motion for standing?

15 MR. BECK: A motion for standing attached in the  
16 complaint, I believe.

17 THE COURT: Okay.

18 MR. BECK: And then, Your Honor, just to walk you  
19 through a few quick points on the DIP, which is far less  
20 extensive of a mark-up. We filed the clean and red line of the  
21 revised DIP order at Docket Number 367. The orders are 367-2.  
22 The first, Your Honor, in Section 3(e) and 18(h) is again, this  
23 soft marshaling concept, away from the avoidance actions and  
24 the commercial tort claims.

25 In Section 5, we made some small tweaks to the budget

1 various -- variance mechanisms to carve out professional fees  
2 from that variance calculation.

3 And then in Section 9, we have the same concept of  
4 the Committee reserving rights to seek a seven-day extension,  
5 Your Honor.

6 And finally, Section 20 is again the preservation  
7 language that the parties have requested with respect to 365(n)  
8 and assets of the estate.

9 So, with that, Your Honor, unless you have any  
10 questions, the debtors would request that you enter both the  
11 cash collateral order and the DIP order. I'll cede the podium  
12 to other parties in interest who want to be heard.

13 THE COURT: All right. Thank you.

14 MR. BECK: Thank you, Your Honor.

15 THE COURT: Let me hear from the Committee. Mr.  
16 Aulet, good morning.

17 MR. AULET: Good morning, Your Honor. Kenneth Aulet  
18 of Brown Rudnick for the Committee. I'm joined by my co-  
19 counsel, Dan Stolz and Don Clarke of Genova Burns.

20 I'd like to discuss sort of the two key points that  
21 were important to the Committee in this and to the overall  
22 structure. First, as to the DIP, we just have to say that  
23 these are fantastic economics for the estate. The debtors have  
24 done an amazing job in securing what economics we'd like to see  
25 in every case, frankly, for a DIP. I don't know that we're

1 going to get there, but it was, you know, I have to put out  
2 there that that was a great result by the debtors.

3 As to the challenge periods, as the debtors went  
4 through, you know, the debt moving from KKR to Keyframe allowed  
5 this sort of compromise that really helps this case, because it  
6 bifurcates two issues. There is the validity of the debt,  
7 which is now held by Keyframe, which really had no involvement  
8 before the case started. And so when it comes to Keyframe,  
9 it's really just, are the liens good and is the debt good?

10 And that allows us to do a quick investigation of  
11 those issues, which are very limited. And both the debtors and  
12 Keyframe immediately provided us all of the relevant  
13 information when this shortened deadline was discussed.

14 And also as a practical matter, this is when the  
15 deadline was going to be to have any real effective relief,  
16 because this case needs to proceed to a sale in a relatively  
17 order of fashion. And it's very important to the Committee and  
18 to all parties in interest to have a good auction with at least  
19 two motivated bidders. And so we want the ability of course to  
20 investigate those claims and liens. But, if there's no issues,  
21 we want Keyframe to go in there with the confidence to bid and  
22 to get the best result for the estates.

23 And so by bifurcating these two issues, you know,  
24 look, this is a very short challenge period that only works in  
25 the very specific comports of this case. That it is very



1 limited to just the claims and the liens. That it is held by a  
2 third party. And that it is a case where there's just -- and  
3 we'll discuss this in a little bit, there's just not time to  
4 have a lengthy sale process.

5 In any other case, any other holder of the debt, I  
6 don't think that this works. But, here, in these really  
7 specific cases -- case, it works for the Committee and I think  
8 it works for all parties in interest.

9 And as for claims about everything that happened  
10 before the petition date, it gives the Committee the time to do  
11 a thoughtful investigation. It doesn't have to be rushed.  
12 Because these cases also just don't have the money and the time  
13 to be rushing issues that don't need to happen right now, and  
14 put those front and center before the appropriate time.

15 And so, for that -- for those reasons, we think that  
16 this challenge period compromise is a great compromise. It's  
17 very well suited for these cases.

18 THE COURT: Does the challenge on the monetary claims  
19 have a deadline or is it open ended?

20 MR. AULET: It is open ended, Your Honor.

21 THE COURT: Okay.

22 MR. AULET: And then as for the -- on the DIP, sort  
23 of, and cash collateral motions are a seven-day period. As  
24 you'll hear when we talk about the bidding procedures motion,  
25 the Committee, as you would expect, came into this case with

1 the expectation that there was going to need to be more time  
2 for a sale process.

3 This is a short sale process. But, we spent a lot of  
4 time talking to the debtors, talking to their investment  
5 bankers, talking to their counsel, and came away convinced that  
6 this schedule works and this schedule is value maximizing for  
7 these cases right now.

8 That said, the cash collateral is extended by a  
9 potential bidder and the DIP is extended by a potential bidder.  
10 And so we did have concerns that if there is something that  
11 comes up where in an ordinary case, of course, you would be  
12 able to negotiate those additional seven days, we're a little  
13 bit concerned that we wouldn't be able to get that sort of  
14 extension because you've got two bidders. Maybe they don't  
15 want to extend the process for a third bidder to come in or the  
16 like.

17 But, we have been convinced by the debtors and we've  
18 really diligenced this, that the current schedule works and  
19 that we don't want an automatic additional seven days. We only  
20 want that if there's a really good reason for it. And so that  
21 -- with that structure, we can come to Your Honor if need be to  
22 get that additional seven days. But, we want the schedule as  
23 it is, unless there's a good, good reason for those seven days.  
24 And we, at this point, don't see a reason why we would want  
25 more than seven days, because we want to keep the process on

1 the rails that it's on.

2 So, with that, Your Honor, we'd request -- we support  
3 the debtors and would request the entry of the revised cash  
4 collateral and DIP motions.

5 THE COURT: All right. Thank you, Mr. Aulet. Let me  
6 hear from others who wish to be heard. Mr. Sponder?

7 MR. SPONDER: Good morning again, Your Honor.

8 THE COURT: Good morning.

9 MR. SPONDER: Jeff Sponder from the Office of the  
10 United States Trustee. Your Honor, this challenge period is  
11 reduced to July 24th, 2025 for all parties, including the  
12 Committee. That is actually a reduction of 34 days as the  
13 interim order provided parties in interest 75 days after entry  
14 of the interim order.

15 As such, Your Honor, the United States Trustee  
16 objects to the reduction of the challenge period to the parties  
17 in interest. However, Your Honor, to the extent the Court  
18 allows a bifurcated challenge process or period, the order  
19 should be clear about this process, which it is not.

20 I've reviewed the order a few times and I spoke to  
21 debtor's counsel. And you have to look at this section and  
22 that section and this section. There should be in that  
23 Paragraph 22, exactly what was just said on the record today  
24 that if Your Honor agrees with that, that it's bifurcated and  
25 that the monetary part has no deadline, and all parties,

1 including the Committee, have that challenge period. Thank  
2 you, Your Honor.

3 THE COURT: All right. Thank you.

4 MR. CAPUZZI: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. CAPUZZI: For the record, Kevin Capuzzi, Benesch,  
7 Friedlander, Coplan & Aronoff. I represent Mainfreight, as  
8 well as its parents, subsidiaries, affiliates. Mr. Savin  
9 (phonetic) in the courtroom from Benabou (phonetic) is also  
10 acting as co-counsel for Mainfreight.

11 Your Honor, I rise, as you may recall, from the first  
12 day hearing, Mainfreight was a -- was the debtor's primary  
13 transportation service provider arranging freight from Asia to  
14 the United States by vessel, by air. Once in the United  
15 States, by land. Was warehousing and performing affiliated  
16 transportation services for the debtor, which resulted in a  
17 very large claim, which is currently secured, in our view, by  
18 maritime and possessory liens on the goods in our storage.

19 I'm not telling Your Honor anything new, because  
20 unfortunately you've read our motion and, you know, we are here  
21 today at least with a preliminary settlement that will adjourn  
22 that motion to the August 6th date. And it ties in a little  
23 bit to the DIP and the cash collateral, which is the reason I  
24 stand.

25 Your Honor, I do want to thank the debtors,

1 particularly Mr. Beck. I provided comments to the cash  
2 collateral and the DIP order, which the debtors were very  
3 responsive to and have worked into the proposed forms of order,  
4 specifically at Paragraph 26 of the cash collateral, preserving  
5 Mainfreight's asserted liens as permitted prior liens and  
6 reserving Mainfreight's right to seek adequate protection.

7 I rise with respect to the adequate protection piece  
8 because as you will hear in a little bit with respect to the  
9 settlement on the Mainfreight motion, part of that additional  
10 time that's being provided involves payment of storage costs  
11 that Mainfreight is undertaking, which we view as, you know,  
12 adequate protection, among other things.

13 So, I only rise to reserve my rights for -- to seek  
14 adequate protection. I'm not seeking it today. It's in the  
15 order. If we need to, we'll file a motion. But, otherwise, we  
16 are signed off on those orders and we thank the debtor and, you  
17 know, ask that they be entered.

18 THE COURT: Thank you, counsel.

19 MR. CAPUZZI: Thank you.

20 THE COURT: I appreciate your efforts.

21 MR. ZATZ: Hello, Your Honor. Andrew Zatz, White &  
22 Case, on behalf of KKR and its affiliated entities as pre-  
23 petition lenders. I would like to start by reiterating what I  
24 said at the last hearing, which is to commend the management  
25 and advisors of the company for getting the cases to the point

1 they're at today, which is a substantial improvement over where  
2 we found ourselves when these cases began.

3 And on a somewhat related note, as Mr. Beck noted,  
4 KKR has sold the vast majority of its loans to Keyframe. So,  
5 at this point, our role in the cases is very minimal and  
6 Keyframe is calling the shots as it pertains to the pre-  
7 petition secured loans, but for a few discreet sacred rights  
8 that KKR negotiated for a vote with respect to.

9 That resulted in the unique language in the final  
10 cash collateral order related to the term, accepted pre-  
11 petition lenders, which cutting through the terminology refers  
12 exclusively to KKR. We did not have a hand in negotiating the  
13 final cash collateral order, but have reviewed the changes to  
14 it. And the major change as it pertains to us, as was  
15 discussed by others, is carving KKR out of the challenge period  
16 in Paragraph 22 as it pertains to any direct monetary claims  
17 that could theoretically be asserted against it.

18 We believe that there are no such colorable claims  
19 and reserve all rights. But, in any event, the impact of these  
20 changes is that with respect to any such direct monetary  
21 claims, there's no expiration of the challenge period and the  
22 Committee's rights to investigate those claims don't have a  
23 specified end date.

24 So, with respect to that, there is an issue that this  
25 presents. I'm not objecting to the final cash collateral order

1 today or anything else on for today's hearing, but the issue  
2 that it raises is that KKR has a continuing indemnity right  
3 against the debtors, which remains a secured claim. Nothing in  
4 the final cash collateral order or the bidding procedures order  
5 seeks to alter those indemnity rights, but this very well could  
6 become an issue in connection with the approval of any sale.

7           And I raise this only for parties to be made aware of  
8 it and to flag that if we cannot get finality through the  
9 standard challenge provisions, we may need to find another way  
10 to get that finality to get a sale approved that's  
11 contemplated. We're happy to discuss this issue with the  
12 Committee and potential bidders in the hopes of resolving the  
13 indemnity issue. If we can't, we may be back and raising that  
14 in earnest at the sale hearing. Thank you, Your Honor.

15           THE COURT: Fair enough. Good morning.

16           MR. VISLOCKY: Good morning, Your Honor. Nick  
17 Vislocky, Reed Smith, on behalf of GLAS USA, administrative and  
18 collateral agent under the pre-petition secured credit  
19 facility. Your Honor, as agent and lienholder on behalf of the  
20 pre-petition secured parties, GLAS has reviewed the proposed  
21 orders, and in consultation with the requisite lenders under  
22 the pre-petition credit facility, including Keyframe and KKR,  
23 we rise to inform the Court that we have no objections to the  
24 relief sought by the debtors in the proposed orders and support  
25 entry.

1           Your Honor, I remain available to -- should the Court  
2 have any questions, otherwise we have nothing further to raise  
3 at this time.

4           THE COURT: All right. Thank you.

5           MR. VISLOCKY: Thank you.

6           THE COURT: Is there anyone else here present in  
7 court? I see a raised hand. John Monaghan?

8           MR. MONAGHAN: Your Honor, good morning and thank  
9 you. I'm John Monaghan from Holland & Knight, counsel to Yuma  
10 Energy. You'll see on the agenda that Yuma is -- was an  
11 objector to the -- the cash collateral motion. And that  
12 objection was focused on one paragraph and one paragraph alone.  
13 It was Paragraph 9 with the ProjectCo contribution of its  
14 intellectual -- excuse me, the company's contribution of the  
15 intellectual property assets to ProjectCo.

16           That objection was born largely out of concern about  
17 sequencing issues. For example, a rejection hearing that was  
18 previously scheduled for today, and when the contribution might  
19 take place, and how it would relate to that in the prior  
20 provisions in that motion for resurrection of previously  
21 rejected contracts.

22           Your Honor, the change in the sequencing, that is,  
23 now the rejection hearing is going to be on August 6th, and the  
24 reservation of rights provisions that have been inserted into  
25 the current draft of the cash collateral motion satisfy Yuma as



1 to the -- as to the basis for its objection. And, so I rise  
2 simply to make the record clear that Yuma does consent to the  
3 entry of the cash collateral order, notwithstanding its prior  
4 filed objection.

5 THE COURT: All right. Thank you, counsel, for the  
6 clarification. Is there -- I'm looking. Bear with me one  
7 second. I don't see any other raised hands. I don't see  
8 anyone else in the courtroom.

9 With respect to the objection raised by the U.S.  
10 Trustee as to the shortening or modification of the objection  
11 period, I think the compromise that's been reached and  
12 supported by the Committee makes sense. It allows the sale to  
13 proceed unimpeded, but yet preserves the right to allow the  
14 trustee to investigate the merits of any defects or issues with  
15 the validity of the lien or the underlying debt, and also  
16 preserves the opportunity for greater time to allow the trustee  
17 to more thoroughly investigate the merits of any claims, to the  
18 extent there are any, with the prior lender. I think it's a  
19 good balance. And it makes sense.

20 In candor, I don't see apart from the Committee, and  
21 to address Mr. Sponder's concern, that the changes affect all  
22 parties, I don't see any creditor or any party in interest  
23 undertaking the work necessary to be done by the Committee, in  
24 lieu of the Committee. And if the Committee's comfortable with  
25 the schedule in place, the Court's not going to second guess

1 the judgment of the Committee and its professionals.

2 And I do agree with Mr. Sponder that there should be  
3 clarity in the order. So, what I'm going to suggest, I'm going  
4 to approve both the DIP and the use of cash collateral from the  
5 bench at this moment. I'm going to ask if the parties can work  
6 on fine tuning the language that concerns Mr. Sponder. To the  
7 extent you can do that before the end of the day or tomorrow  
8 morning, great. We'll -- I'll enter that order.

9 If there is no consensus on it or if it becomes  
10 apparent there won't be a consensus on the language, get it to  
11 me this afternoon, get it to me early tomorrow morning. I'll  
12 make the call on the competing versions. I don't want this to  
13 languish. But, if we can accommodate the concerns of the U.S.  
14 Trustee with clarity in the language, not the substance,  
15 because I think that the substance has been laid out and the  
16 Court approves of the substance. And I think what Mr. Sponder  
17 was looking for was the same clarity in the presentation as it  
18 is in the order, which would always be good.

19 So, to the extent you can accomplish that without the  
20 Court's involvement, great. But, I would prefer, and if it  
21 could be done before the end of the day or by tomorrow morning,  
22 I'll give you the night, one way or the other, we'll get it  
23 resolved and get an order entered that is at least clear to the  
24 Court. That's the first threshold. As long as I can  
25 understand it, the hell with you all.

1 (Laughter)

2 THE COURT: So, we'll go from there. That takes us  
3 to -- through the DIP and the cash collateral. We have the  
4 bidding procedures and the settlement with Mainfreight. Is  
5 that correct?

6 MR. OSWALD: Yes, Your Honor. I think it makes sense  
7 to go in the order of the agenda with the Mainfreight case  
8 next, because that actually resolves a piece of the bidding  
9 procedures.

10 THE COURT: That's fine. And good afternoon, Mr.  
11 Durrer.

12 MR. OSWALD: Good afternoon. I'll -- Mr. Capuzzi, do  
13 you want to? Thank you, Your Honor.

14 MR. CAPUZZI: Good afternoon again, Your Honor.  
15 Kevin Capuzzi of Benesch, Friedlander, Coplan & Aronoff,  
16 counsel for Mainfreight. As Your Honor's aware, Mainfreight  
17 filed a motion seeking the limited relief that it's -- that  
18 certain property of -- that -- I should rephrase, that certain  
19 property that Mainfreight is holding subject to its maritime  
20 and possessory liens is not property of the estate and can  
21 therefore be sold and subjected to the liens. Specifically,  
22 that is property that Mainfreight believes was transferred  
23 prior to the petition date to a affiliate of Berkshire Hathaway  
24 dealing with a project in West Virginia.

25 Since the filing of the motion, the parties have

1 cooperated in good faith. It has been a exercise of the  
2 bankruptcy process at its finest with the professionals coming  
3 together and trying to figure out a protocol, not only to deal  
4 with these goods in Mainfreight's possession belonging,  
5 purportedly belonging, to Berkshire Hathaway, but all of the  
6 goods in Mainfreight's possession.

7 Mainfreight believes it's owed approximately \$13  
8 million. The debtors have a different view of that. But, I  
9 think all parties agree that the collateral that Mainfreight is  
10 holding exceeds that amount. So, there should be some sort of  
11 constructive process that we can work through to hopefully get  
12 those goods sold and maximize value for the estate and pay down  
13 Mainfreight's claim.

14 The problem, Your Honor, initially, and the reason  
15 why we opposed an adjournment was that the debtors were  
16 requesting 60 days. Sixty days in our view was too long when  
17 you had an accelerated sale process running at the same time  
18 that potentially dealt with all the same goods. So, it wasn't  
19 saying no to an adjournment for the sake of being difficult.  
20 It was saying no because practically we wanted to make sure  
21 that, you know, we weren't going to run a sale process and  
22 still be left with a lot of these same issues at the end of the  
23 day.

24 So, Your Honor, the parties have agreed to -- and  
25 when I say the parties, the debtors, Mainfreight -- the

1 debtors, Mainfreight, and Berkshire Hathaway, have agreed to  
2 adjourn Mainfreight's motion to the August 6th hearing with a  
3 couple conditions. The first -- are you okay with me going  
4 into the terms?

5 MR. OSWALD: Please go.

6 MR. CAPUZZI: The first, as a condition to the  
7 adjournment, Mainfreight has requested storage fees.  
8 Mainfreight is paying storage at various warehouses and laydown  
9 yards, some of which are owned by Mainfreight, some of which it  
10 leases space from third parties. So, Mainfreight has gone out-  
11 of-pocket to make sure that these goods are adequately secured  
12 and protected from the elements, protected from third parties,  
13 from theft, et cetera. And that is a cost that Mainfreight has  
14 born since the petition date and has not been reimbursed by the  
15 debtors or by any of their customers.

16 So, as an initial matter, the debtors have agreed  
17 that by August 15th, they will use their good faith commercial  
18 efforts to seek payment of those storage fees from the  
19 respective customers of the debtors for whom Mainfreight is  
20 storing the goods. That includes Berkshire Hathaway and a  
21 number of other parties in interest, some of whom have been  
22 named in the motion, some of whom have been not.

23 The debtors have agreed to backstop up to thirty  
24 thousand of that. The storage fees, Your Honor, are between  
25 four hundred and five hundred thousand dollars, so they're

1 pretty -- they're pretty sizeable. But, that relates in large  
2 part to the fact that the majority of the Berkshire Hathaway  
3 goods were being stored at the port of Newark -- the port of  
4 Norfolk, Virginia. When goods are being stored at the port,  
5 they incur a per item daily fee for detention and demurrage and  
6 related costs. So, approximately 50 percent of that amount  
7 relates to Berkshire Hathaway.

8 But, we're going to -- the parties have a spreadsheet  
9 circulating. They're going to work through that spreadsheet.  
10 They're going to share invoices and other back-up and come to  
11 ground on what the storage costs are from the petition date to  
12 August 6th, and come up with a proposal to pay those fees,  
13 whether it's from the customers or from the debtors, up to  
14 \$30,000. So, that's Part 1.

15 THE COURT: The Berkshire goods have been moved,  
16 correct? I think --

17 MR. CAPUZZI: The Berkshire goods have now been moved  
18 --

19 THE COURT: -- you said out of the port?

20 MR. CAPUZZI: -- off of the port to West Virginia.  
21 And I'm happy to report that that reduced it from about  
22 \$100,000 per week clip to about \$3,500 per month.

23 THE COURT: Quite a bit at the port.

24 MR. CAPUZZI: Quite a bit.

25 THE COURT: But, go ahead.

1 MR. CAPUZZI: Quite a bit. So, that -- that's a good  
2 thing. So, Point Number 1 of the settlement is going to be the  
3 payment of the storage costs through the new hearing, with an  
4 outside date of August 15th for that payment.

5 The second is, as I noted in my introductory remarks,  
6 there's a dispute on whether Mainfreight's claim is \$13 million  
7 or if it's something more in the nature of \$6 or \$7 million.  
8 This is not before the Court. There's nothing in the record  
9 about this. But, the dispute relates to what we refer to as a  
10 turnaround vessel or a dead freight issue.

11 A dead freight is essentially where the debtors would  
12 book passage on a vessel and then ultimately when the time came  
13 for the vessel to depart the port in Asia, the goods were not  
14 ready to be boarded. So, essentially, it's space that they  
15 reserved and didn't use.

16 We are agreeing to work in good faith over the next  
17 two or three weeks to come to ground on that issue. We're not  
18 seeking formal discovery or informal discovery, but we're going  
19 to work in good faith to try to come to ground on what that  
20 claim amount is. The fear being, we didn't want to get here on  
21 August 6th with, you know, all the customers in agreement on  
22 what they're going to pay towards our claim, but still having a  
23 dispute as to the claim amount. So, it's just an agreement  
24 between Mainfreight and the debtors to work in good faith to  
25 resolve the claim amount.

1           The third, and this ties in to the bidding  
2 procedures, Mainfreight filed a limited objection to the  
3 bidding procedures to the extent that the debtors were seeking  
4 to sell any of the Mainfreight collateral that would be subject  
5 to our lien. The debtors have agreed to amend the procedures  
6 to name Mainfreight as a consultation party solely with respect  
7 to any bids that involve the Mainfreight collateral. With that  
8 and with the language resolving the limited objection, that --  
9 that issue is resolved.

10           And then the fourth point, the final point,  
11 noncontroversial, the debtors have -- are permitting  
12 Mainfreight to speak with any of the customers directly to  
13 negotiate a resolution without fear that that could be  
14 violating the stay in any way. So, we're all partners in this.  
15 We're going to try to go out and broker a deal and bring it to  
16 the debtors and see if we can get it done.

17           So, Your Honor, I think just -- just summarizing, we  
18 consent to an adjournment to August 6th on the four points,  
19 that being the protocol to pay storage, the agreement to work  
20 in good faith as to the claim, the consultation party language  
21 on the Mainfreight collateral, and the ability to talk to  
22 customers.

23           So, I will take a breath and step back and let Mr.  
24 Durrer jump in if I misstated or didn't accurately state  
25 anything. But, with that, our motion would be carried to



1 August 6th.

2 THE COURT: All right.

3 MR. CAPUZZI: Does Your Honor have any questions  
4 before I cede the podium?

5 THE COURT: I do not. I'll have a comment, but let  
6 me hear from other counsel if there's anybody who wants to  
7 weigh in. Mr. Abramowitz?

8 MR. ABRAMOWITZ: Your Honor, Arthur Abramowitz  
9 appearing with Steptoe, on behalf of Ace Engineering. As you  
10 know, we filed a pleading contesting the priority that is being  
11 asserted at this point. We have no objection to the delay.  
12 We're reserving all rights. We'll be addressing it at the  
13 August 6th, Your Honor. Thank you.

14 THE COURT: Fair enough. Thank you.

15 MR. COHEN: Good afternoon, Your Honor. Michael  
16 Cohen, Gibson, Dunn & Crutcher, on behalf of BHER Ravenswood  
17 Solar 1, LLC, the Berkshire affiliate on the discussion under  
18 this settlement. We confirm the nature of these terms, the  
19 main items, the storage cost fees. We're working with counsel  
20 to verify some of the data. But, we would encourage the  
21 parties to, you know, continue this cooperation because we  
22 would like to get the property released and work with the  
23 debtors and Mainfreight on the process.

24 THE COURT: Great.

25 MR. COHEN: Thank you.

1 THE COURT: Thank you.

2 MR. CAPUZZI: Your Honor, before Ms. Moyron jumps up,  
3 I did just want to clarify a reference that we would work with  
4 the debtors and the customers. We will also work in good faith  
5 with Mr. Abramowitz's client, Ace, who is not technically a  
6 customer, but --

7 THE COURT: Parties in interest.

8 MR. CAPUZZI: Party in interest. Thank you.

9 THE COURT: Fair enough.

10 MS. MOYRON: Good morning, Your Honor. Tania Moyron  
11 of Dentons on behalf of the debtors. And as Mr. Capuzzi said,  
12 I was jumping up, but I'm only jumping up, Your Honor, to say  
13 that we are in agreement and Mr. Capuzzi's four points with  
14 respect to the settlement are accurate. They're consistent  
15 with our discussions.

16 Obviously, on behalf of the debtors, we are aligned  
17 with Mr. Capuzzi to the extent that his client is paid, it's  
18 better for the estates. And so, I don't have anything other to  
19 add, unless you have a question, Your Honor.

20 THE COURT: I do not. I appreciate the work. Thank  
21 you.

22 MS. MOYRON: Thank you.

23 THE COURT: And, Mr. Aulet, I assume -- the Committee  
24 had filed a late joinder in the objections to the motion. Is  
25 the Committee on board with the four conditions?

1 MR. AULET: Yes. We actually hadn't gotten this  
2 previewed. But, we are in agreement on kicking this to August  
3 6th. I think, obviously, we're going to reserve our rights on,  
4 you know, the amount of the claim. We have no objection to any  
5 of the other points. You know, thirty thousand is not a huge  
6 amount for the debtors to backstop. Had that been considerably  
7 more, I think we would have been reserving rights on that as  
8 well.

9 THE COURT: All right. Thank you. I see nobody  
10 appearing remotely. I appreciate the party's concerted and  
11 cooperative efforts to try to bring this issue to a head, to  
12 resolve it, or work towards a resolution. I think it does make  
13 sense for all parties in interest. I think the approach is  
14 sensible. The conditions reasonable. And certainly I would  
15 say I look forward to hearing the arguments on the 6th, but I  
16 don't. But, I'm hoping you can -- you do in fact get to a  
17 conclusion.

18 In the event you don't and it's argued, I'm going to  
19 ask the parties to address one additional issue on the motion.  
20 The motion was tailored very narrowly. It was seeking a  
21 declaration that the stay was not in effect given that it was  
22 -- the property is alleged to be not property of the estate. I  
23 mean, in sum and substance.

24 I would like to hear from the parties as to what the  
25 impact of Section 362(a)(6) would be. 362(a)(6) operates to

1 stay any act to collect, assess, or recover a claim against the  
2 debtor that arose before the commencement of the case under  
3 this title. So, it's not just focused on property of the  
4 estate. It's any efforts to -- usually in personam efforts to  
5 collect, but it's been extended. In fact, I'll just give you  
6 all a leg up to take a look at In re Silver, 303 B.R. 849.  
7 It's a Tenth Circuit decision.

8 If I'm being asked to determine whether the stay  
9 applies, the stay has many sections. So, let's -- let's have  
10 -- and I don't want to retard the process. I don't want to  
11 spring it on you on the 6th. Take a look at it. If it's  
12 relevant, it's relevant. If it's not relevant, so be it. Then  
13 you at least will have it addressed. All right? Hopefully  
14 it's a moot issue. But, I thank you for your time.

15 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

16 THE COURT: Mr. Durrer?

17 MR. DURRER: Good morning, Your Honor. Van Durrer,  
18 Dentons, on behalf of the debtors. I rise in connection with  
19 Matter 10 on the agenda, which is Docket Number 228, the  
20 bidding procedures motion. This is largely resolved -- the  
21 United States Trustee did file an objection on a couple of  
22 issues, because those issues are, in our view, largely factual.

23 We have a very short proffer of Mr. Uzzi, the chief  
24 restructuring officer, to put on the record. And then Ms.  
25 Moyron is available to walk through the changes to the form of

1 bidding procedures that we've made in connection with a number  
2 of parties, some 365(n), some to address comments and questions  
3 by the Committee and other parties. So, with that, Your Honor,  
4 I'm happy to walk through that proffer.

5 THE COURT: That would be great. What number on the  
6 agenda is this?

7 MR. DURRER: This is Number 10, Your Honor.

8 THE COURT: Oh, 10, that's right.

9 MR. DURRER: And the last.

10 THE COURT: Yes.

11 MR. DURRER: Today.

12 THE COURT: All right. Yes, please.

13 MR. DURRER: Thank you, Your Honor. So, as I  
14 mentioned, Your Honor, Gerard Uzzi is the CRO of Powin. He's  
15 also the managing partner and founder of CBMN Advisors, LLC,  
16 doing business as Uzzi & Lall. If called to testify, Mr. Uzzi  
17 would testify that he has extensive experience advising  
18 companies, boards, senior management, all range of stakeholders  
19 in distress situations, including Chapter 11 across the country  
20 and the world over the past 30 or so years. He asked me not to  
21 be precise about that.

22 Specifically, Mr. Uzzi would testify that he's been  
23 involved in countless Section 363 sales involving numerous  
24 stalking horse bidders and bidding protections. Mr. Uzzi was  
25 personally involved in the development, consideration, and

1 approval of the FlexGen Power System stalking horse APA before  
2 Your Honor today.

3 Mr. Uzzi would testify that, as disclosed in the  
4 debtor's motion, there's ample precedent for approval of a  
5 break-up fee in the range proposed, which has two components, a  
6 \$1.1 million break-up fee, plus up to a \$500,000 expense  
7 reimbursement.

8 Mr. Uzzi would testify that the debtors and the  
9 stalking horse bidder arrived at the break-up fee through an  
10 arms-length negotiated process among multiple bidders, which is  
11 unusual, and the debtors. For instance, as the Court is aware,  
12 the debtors had multiple suitors bid for the debtor's DIP  
13 financing, coincident with the presentation by each of  
14 competing stalking horse term sheets.

15 Through that process, because we didn't quite get  
16 finished with the stalking horse element, the debtor  
17 successfully obtained approval of the DIP financing, not tied  
18 to a specific stalking horse bid, but the DIP financing did  
19 require milestones related to having a stalking horse in place  
20 tied to specific timelines that are relevant, and then Mr.  
21 Aulet also actually spoke to the importance of those timing  
22 elements in connection with the case as a whole.

23 Mr. Uzzi would testify that as a consequence, the  
24 debtors proposed to both stalking horse bidders a formula for  
25 originally a three percent all in break-up fee. Neither

1 stalking horse bidder, potential stalking horse bidder  
2 candidate, was prepared to engage on that formula. Ultimately,  
3 FlexGen did agree to serve as a stalking horse bidder in line  
4 with the break-up fee that is in the bidding procedures that  
5 Your Honor has before you.

6           Mr. Uzzi would also testify that there's no risk of  
7 the bidding procedures chilling the bidding in his view. Not  
8 only did multiple bidders have the opportunity to obtain the  
9 bidding protections for themselves, but the feedback we  
10 received is that multiple bidders, beyond these just two, are  
11 willing to engage at the opening bidding price of \$38 million  
12 .32 mil -- or .32, plus the additional assumed liabilities that  
13 are in the stalking horse APA.

14           Mr. Uzzi would testify that following our engagement  
15 in this process working with the other advisors, that he  
16 determined that this was the appropriate way to proceed.

17           Mr. Uzzi would also testify -- and this was a  
18 specific issue raised by the United States Trustee, that  
19 FlexGen's due diligence was not actually pursued pre-petition.  
20 They only signed an NDA as we entered the case. So, the  
21 majority of their due diligence has been done post-petition,  
22 and in that fashion, the stalking horse protections do add  
23 value to the estate by locking them into their opening bid.

24           Mr. Uzzi would further testify that the debtors  
25 believe, and Mr. Uzzi's experience supports, the notion that

1 it's highly valuable to set a floor and structure for the sale  
2 process through this stalking horse APA. In this manner, the  
3 debtors are confident the sale process will maximize value far  
4 more than an unstructured come-one, come-all approach to a  
5 bidding process.

6 Mr. Uzzi would finally testify that the timing of the  
7 sale process is very important to the success of these cases.  
8 As the debtor's aware, Powin entered Chapter 11 in a pretty  
9 precarious liquidity position. Through everyone's work,  
10 including by the way, the cooperation and value ad from the  
11 committee. Well, the committee's advisors, we've arrived at a  
12 process we think will actually be very successful here.

13 So, that, Your Honor, that's the evidentiary  
14 presentation. I would offer that into evidence. And Mr. Uzzi  
15 is here.

16 THE COURT: All right. First I'll ask, does anyone  
17 in the courtroom, any counsel for any party, wish the  
18 opportunity to cross examine Mr. Uzzi with respect to the  
19 proffer?

20 (No audible response)

21 THE COURT: Hearing and seeing no one, the Court will  
22 accept the proffer in support of the proposed motion to approve  
23 the articulated bidding procedures.

24 MR. DURRER: I'll cede the podium to Mr. Sponder to  
25 make his arguments, Your Honor.



1 THE COURT: All right. Mr. Sponder?

2 MR. SPONDER: Thank you. Good afternoon again, Your  
3 Honor. Jeff Sponder on behalf of the United States Trustee.  
4 Your Honor, the United States Trustee filed an objection to the  
5 debtor's bidding procedures motion at Docket 369. The  
6 objection contained three arguments, including the proposed bid  
7 protections, the bid and auction deadlines, and the overbids.

8 Starting with the first argument concerning the bid  
9 protections. Although the break-up fee is close to the three  
10 percent allowed by many courts, including this court, it is  
11 unclear why a floor was necessary when, as just proffered on  
12 behalf of Mr. Uzzi, there are already two or more competing  
13 bidders. There is no evidence in the record that the break-up  
14 fee will promote more competitive bidding or that the break-up  
15 fee induced a bid that would otherwise have not been made.

16 To receive bid protections as an administrative claim  
17 under Section 503(b) and Third Circuit precedent, the debtors  
18 must show that the bid protections actually confer to benefit  
19 to the estate, which can only be discerned after the sale to  
20 another bidder at a price more beneficial to the estate.

21 At the very least, Your Honor, to the extent the  
22 Court preapproves the break-up fee, it is requested that the up  
23 to \$500,000 expense reimbursement not be preapproved and that  
24 the expense reimbursement should only be approved after the  
25 auction occurs and upon a showing made by the stalking horse.

1           Next, Your Honor, the debtors seek to conduct the bid  
2 process at Holden (phonetic) Auction over the next 15 days.  
3 Potential bidders have until tomorrow to submit non-binding  
4 indications of interest. They have until July 28th of 2025,  
5 which is 13 days from today, to submit bids. And an auction is  
6 scheduled for July 30th, which is 15 days from today.

7           The United States Trustee requests that these  
8 deadlines be extended by approximately a week to allow more  
9 time for bids to be submitted. The United States Trustee  
10 understands that there may be a milestone set for August 11th,  
11 2025 concerning the sale of the debtor's assets. If the  
12 milestone cannot be moved, it is requested that the sale  
13 hearing be moved from August 6, 2025 to August 11, 2025, and  
14 that all other deadlines be revised.

15           The debtors have filed a revised bidding procedures  
16 order that reflects a change from August 4th, 2025 to August  
17 2nd, 2025 for the debtors to file a sale order, but all other  
18 deadlines remain the same.

19           The United States Trustee requests a slight tweak to  
20 the process and requests the following deadlines: July 21st,  
21 expression of interest; July 22nd, assumption and assignment;  
22 August 2nd, submission of bids and deadline for objections to  
23 cure amounts; August 3rd, baseline bid deadline; August 4th,  
24 the auction; August 6th, sale order deadline; August 8th, the  
25 objection deadline and deadline to object to winning bidder;

1 and August 11th at 9:30, the sale hearing. Which, if the sale  
2 hearing and the sale is approved, it would be under the  
3 milestone and it would give bidders an extra five or so days to  
4 put their bids in.

5 The United States Trustee realizes the request to  
6 revise the deadlines is minimal, but it will provide more time  
7 for those bidders expressing an interest in bidding to  
8 formulate and submit a bid.

9 The U.S. Trustee was also just advised and made aware  
10 of, similar to Your Honor, of a carve-out that the Committee  
11 has with respect to the -- to the process. And that's a seven-  
12 day extension that the Committee can request. However, the  
13 United States Trustee believes that the schedule should be  
14 extended now.

15 The United States Trustee also objected, Your Honor,  
16 to the use of the phrase, as soon as reasonably practical, to  
17 serve the auction and sale hearing notice and the notice of  
18 winning bidder. I understand that the revised bidding  
19 procedure order that was filed with the Court removed such  
20 language and replaces it with, immediately or with one business  
21 day, which is acceptable to the United States Trustee.

22 I also understand that all of the other requested  
23 revisions that we made to the proposed bidding procedures order  
24 are included in the order that was submitted to Your Honor.

25 The last argument that we have, Your Honor, involves

1 the initial overbid and overbids. By allowing the bid  
2 protections, the initial overbid will have to be \$2.232  
3 million, which includes the \$1.1 million break-up fee, the  
4 \$500,000 expense reimbursement, and an initial bid of \$720,000.  
5 To the extent the bid protections are allowed, at the very  
6 least, Your Honor, the initial overbid and successive overbids  
7 should be reduced in half from \$720,000 to \$360,000 or less.  
8 If reduced to \$360,000, at least the initial overbid will be  
9 less than \$2 million.

10 The bid protections together with the initial overbid  
11 and successive overbids could potentially chill bidding here,  
12 Your Honor.

13 With that, Your Honor, those were the United States  
14 Trustee's objections, and I thank Your Honor for the time.

15 THE COURT: All right. Thank you. Does anybody wish  
16 to -- else to be heard before I ask for counsel to address the  
17 U.S. Trustee's concerns?

18 (No audible response)

19 THE COURT: All right. So, let me address. With  
20 respect to the bidding protections, the Court finds them  
21 reasonable. I have said repeatedly in prior cases over the  
22 years that -- well, 19 years, I've yet to see bidding  
23 protections that ended up being detrimental to the process.  
24 And that there is some significant value in coming forward and  
25 having a floor that the Court can recognize presently, without

1 any after-the-fact review.

2           The establishment of a floor serves to augment the  
3 bidding process. And the percentages that have been  
4 negotiated, fall well within reason and within prior approvals,  
5 as noted by the U.S. Trustee. So, I'm going to approve the  
6 bidding protections as is, except require with respect -- I'm  
7 not going -- I'm going to approve the \$500,000 for cost  
8 reimbursement, but require that there be back-up provided both  
9 the Committee and the debtor and the U.S. Trustee's Office with  
10 respect to any such reimbursements.

11           I'm going to ask the parties to address why the Court  
12 shouldn't add, essentially, the five days to the process,  
13 leaving the sale hearing the same. In other words, the end  
14 date will be the same. But, can and why the process shouldn't  
15 be extended to the max, basically expand the rubber band as  
16 much as it can go before it snaps?

17           As long as the Court is prepared, and the Court is  
18 prepared to have the sale hearing on the date negotiated by and  
19 among the parties. So, whether you need some time to talk or  
20 whether there's a reason that you need to, you'll explain to  
21 the Court why we can't accommodate that concern raised by the  
22 U.S. Trustee.

23           I'll also overrule now the overbidding modifications.  
24 This case will not rise or fall on the -- on having the  
25 overbids. Either there's interest there or there's not. And I

1 don't see a reason to substitute the U.S. Trustee's judgment or  
2 this Court's judgment for the business judgment of the parties  
3 in fixing the overbid amounts.

4           So, the question for you all is, can you accommodate  
5 the five-day extension?

6           MR. DURRER: Your Honor, I'm happy to address that.  
7 And thank you. Van Durrer again for the debtors. There's --  
8 there's a number of motivations behind the dates. As Your  
9 Honor's aware, the debtor is not a revenue producing enterprise  
10 at this stage. So, the debtor only burns cash. We did -- we  
11 were successful, and thanks to Mr. Aulet for his comments, we  
12 were successful in getting a very favorable DIP financing, but  
13 we're still paying over 18 percent interest on the pre-petition  
14 debt. So, we need to move fast.

15           We have a number of interested parties that are ready  
16 to engage. And as Your Honor's aware, August tends to be a  
17 dead month for a lot of people. People have already made plans  
18 and arrangements to attend an auction on July 30th here --  
19 well, up the road, in New York. I'm trying to create a central  
20 location that's easy for people to get to.

21           And if we just look at the calendar, right, August  
22 6th is a Wednesday. That was the omnibus date that Your Honor  
23 afforded to us. That is the prior -- the Wednesday just prior  
24 to the August 11 DIP maturity date.

25           THE COURT: Right.

1 MR. DURRER: And with a July 30 auction with a  
2 significant number of interested parties, and I can tell you  
3 from the experience in this case, there was, you know, quite  
4 active bidding the weekend between filing our initial DIP  
5 motion and the DIP motion we ultimately presented to you the  
6 following Tuesday, such that there's going to be a lot of  
7 activity July 30, 31, and August 1st.

8 That's a good thing. We don't want to break that  
9 momentum. And so we want to take advantage of that. We want  
10 to afford people a reasonable opportunity to say what they have  
11 to say about the winning bidder in that August 4/August 5 time  
12 frame, which is that Monday/Tuesday. Get this approved. Stop  
13 the bleeding of this company on debt that we believe we will  
14 clear through this process.

15 And then we can get to the business of figuring out  
16 how we got here. We anticipate that that will be largely a  
17 Committee exercise. But, we will do it once we're no longer  
18 paying 18 percent on pre-petition debt and four percent on  
19 post-petition debt. So, it's -- it's not just moving fast.  
20 There are good reasons to move fast.

21 The last thing I'll say, Your Honor, with respect to  
22 the deadline that is tomorrow, first of all, we're not waiting  
23 to tell people that we'd like indications of interest tomorrow.  
24 We've already told them. And people are ready to mobilize for  
25 that. But, the debtors, to be clear, we have the flexibility

1 based upon our fiduciary duty and in working with the  
2 Committee. We don't expect to hold anybody to tomorrow's July  
3 16th indication of interest. We do expect to hold people to  
4 July 28th so that we can have a fruitful auction, an organized  
5 and efficient auction, on the 30th.

6 THE COURT: So, if I understand it correctly, if we  
7 were to bump the dates back by five days, the problem becomes  
8 more that we're bumping up against the August 6th date as well,  
9 because we need some certainty for that.

10 MR. DURRER: We're bumping up against vacations where  
11 we may lose decision makers. That's important to the success  
12 of the sale. And, I mean, candidly, Your Honor, we're picking  
13 the Committee's pocket for 18 percent of the pre-petition debt.

14 THE COURT: All right. Mr. Sponder, any thoughts?

15 MR. SPONDER: Thank you, Your Honor. Jeff Sponder  
16 for the Office of the United States Trustee. Your Honor, I  
17 understand the predicament. We're talking about five days.  
18 That's been several days that we've been in bankruptcy. You  
19 know, that's the price of being here.

20 It just seems that this is a very quick process. I  
21 understand it. I understand the need for it. But, we are  
22 talking about five days. If it's less than five days, if  
23 there's some way to move it around so that bids can be a little  
24 bit later, I don't see why moving the auction date from July  
25 30th to a date in August would -- would take away from all the



1 movement over the weekend or the movement the day before.

2 I mean, listen, just today I received a call from  
3 debtor's counsel to discuss, you know, the objections. I mean,  
4 that's how this happens all the time in these cases. So, it is  
5 just five days, Your Honor. But, as always, I respect your  
6 decision and your opinion. Thank you, Your Honor.

7 THE COURT: Mr. Aulet?

8 MR. AULET: Again, for the record, Kenneth Aulet of  
9 Brown Rudnick for the Committee. Your Honor, a few points.  
10 First, if at any point between now and the sale hearing that  
11 the Committee believes that a few more days are going to be  
12 advantageous to the process, the debtors will hear from us.  
13 And if not, if we don't get relief, you will hear from us.

14 So, from that respect, the Committee is satisfied  
15 that given the current schedule, we do have the flexibility if  
16 it will be value accretive to move it. And the ability to say,  
17 no, we're not moving it if it will not be value accretive.

18 The only other point I'd like to make is just, look,  
19 the DIP matures on August 11th. The DIP -- we do have the  
20 ability to extend that if necessary. But, I don't love the  
21 sale being approved on the 11th, needing to close that night --

22 THE COURT: Right.

23 MR. AULET: -- to get the DIP paid off before it  
24 defaults.

25 So, with that, Your Honor, I think that the

1 concessions that the Committee secured in the DIP give  
2 flexibility if this time is helpful. But, ensure that if the  
3 time is detrimental, that it is as debtors has said, you know,  
4 there are potential downsides to extending the time.

5 THE COURT: Thank you, Mr. Aulet. I appreciate the  
6 concerns raised by the U.S. Trustee. And the knee-jerk  
7 reaction of the Court is always to try to find a middle ground  
8 and bump it to -- from the 30th to the Friday, the August 1st.  
9 And then I think we're spinning wheels. We're putting  
10 something, a process at risk that's been thought out, on  
11 speculation that it's going to restrict the active and  
12 competitive bidding that we're anticipating.

13 I'm confident with counsel that's on board for the  
14 Committee and the Committee's due diligence that we have a  
15 guardrail, as Mr. Aulet said. If there is a need, nobody's  
16 going to think twice about taking the steps to come back before  
17 me, and I'll be here if there's -- additional time would  
18 warrant or produce better results.

19 So, I'll leave it to the Committee to serve as the  
20 watchdog that it's supposed to be to come back to the Court if  
21 they can't reach an accord if there is a need to do it and  
22 leave the process that's been negotiated in place for now. So,  
23 to that extent, objection's overruled.

24 Do we have anything else up on tap?

25 MR. DURRER: Thank you, Your Honor. I mean, Ms.

1 Moyron is prepared to walk through the other changes to the  
2 order. I think -- would Your Honor like to hear that?

3 THE COURT: Yes. I don't know. Mr. Capuzzi's  
4 rising. Counsel?

5 MR. CAPUZZI: Your Honor, I thought we were done with  
6 bid procedures, so forgive me for coming back to Mainfreight.  
7 But, can I just ask Your Honor to so order that portion of the  
8 transcript dealing with the settlement that we talked about so  
9 that we don't have to put an order on?

10 THE COURT: Is there an objection?

11 UNIDENTIFIED ATTORNEY: No objection, Your Honor.

12 MR. CAPUZZI: Thank you.

13 THE COURT: So ordered.

14 MS. MOYRON: Tania Moyron on behalf of the debtors  
15 again, Your Honor. The changes to the bidding procedures order  
16 and the bid procedures are relatively straightforward, and I'm  
17 pleased to say that counsel for the Committee, counsel for the  
18 stalking horse bidder, and Mr. Sponder, have been very  
19 cooperative, and the changes they did have, we've been able to  
20 fold in to the order and to the procedures, except for the one  
21 issue that we were just talking about in connection with the  
22 bid protections.

23 So, first, the order, Your Honor. And this actually  
24 came up in the context of talking about all these dates and  
25 trying to see if we could do the mental gymnastics to move the

1 dates by five days, which we couldn't. But, what we did  
2 realize, Your Honor, is that we didn't have just a chart in the  
3 order to make it easy for you, to make it easy for all the  
4 parties, to just see in one place what are all these dates.

5 So, it looks like a lot of blue, but it's taking  
6 dates that were sprinkled in the order --

7 THE COURT: Right.

8 MS. MOYRON: -- and now you have it in one place.  
9 There are various changes in terms of, there were two  
10 objections. It was confusing. So, with counsel for the  
11 Committee, counsel for the stalking horse bidder, we agreed to  
12 make August 4th "the" sale deadline, right? So, really, that's  
13 just a set of changes and they relate to dates.

14 Separate and apart from that, Your Honor, there are  
15 consultation rights for the Committee that are sprinkled  
16 throughout. Some were requested by the United States Trustee  
17 of the Committee, but we also put those in. And so, I think  
18 it's fair to say that we're consulting with the Committee every  
19 step of the way. So, you see those throughout the order as  
20 well.

21 In terms of insertions, there was an insertion just  
22 to ensure that there were protections of 365(e) and in re, just  
23 making sure that this order didn't somehow limit the  
24 intellectual property licensee's rights. So, that's a new  
25 provision that is in the order that Your Honor will see.

1           And Mr. Sponder alluded to this. The only other  
2 change is, in two places, Your Honor, we had language where we  
3 said that we were going to serve a notice of the stalking horse  
4 -- I'm sorry, of the winning bid, and we were going to serve a  
5 notice of the auction and sell date as soon as reasonably  
6 practical. And the point was made that, what does that mean?  
7 Like, serve it immediately or within one day? We put that  
8 language in the order, as Mr. Sponder said, so that's in there.  
9 And really for the order, Your Honor, that's it.

10           THE COURT: I reviewed the marked up version that had  
11 been submitted down to the Court. I don't have any additional  
12 questions. The use of the chart does make life easier, I  
13 think, for all.

14           MS. MOYRON: Good.

15           THE COURT: And I -- and the Court's appreciative.

16           MS. MOYRON: Thank you, Your Honor. The only other  
17 thing I would point out is, you probably saw last night as well  
18 at Docket 384. We filed an amended stalking horse asset  
19 purchase agreement. And obviously today we're not asking you  
20 to approve that. But, it was important to Committee counsel,  
21 Mr. Aulet, I'll let him speak for himself. There were some  
22 obvious flaws as was characterized in the asset purchase  
23 agreement. So, the red line that you see on the asset purchase  
24 agreement just really reflects three changes in that asset  
25 purchase agreement.

1 And one, Your Honor, just deals with definitions.  
2 There are certain excluded claims that are being left for the  
3 estate that are important to the Committee. There's certain  
4 claims that are actually being sold to the stalking horse  
5 bidder with respect to customers' claims. Those were  
6 important. So, now when you look at the APA, I think we've  
7 done a good job of cleaning that up.

8 And the second issue that was raised by the Committee  
9 that was a great one is, in terms of the course of conduct of  
10 business that appears in Section 5.3, we should be able to  
11 reject contracts, right? And as it was worded, we could only  
12 reject it if the stalking horse bidder approved it. We have a  
13 rejection motion on file now and we want to reject a whole  
14 bunch of burdensome contracts. So, we kind of tweaked that  
15 language. You know, that was important.

16 And the other change is pretty minor at 8.1 that  
17 deals with termination rights. And, obviously, the stalking  
18 horse bidder has the ability to terminate the APA if we have an  
19 alternate transaction.

20 THE COURT: Right.

21 MS. MOYRON: Unless they're a back-up bidder. The  
22 way it was worded, it made it seem as though if they agreed to  
23 be a back-up bidder. But, bidding procedures dictate whether  
24 they're a back-up bidder or not. And so we cleaned up that  
25 language. So, I think that's dealt with. Again, we're not

1 seeking approval of that today, but we wanted to be thoughtful  
2 and we wanted to fold in Committee's point. So, with that, I  
3 will turn it over to you --

4 THE COURT: All right.

5 MS. MOYRON: -- Mr. Aulet --

6 THE COURT: Thank you, counsel.

7 MS. MOYRON: -- unless the Court has questions.

8 THE COURT: No, that's good. Mr. Aulet, those  
9 address your concerns?

10 MR. AULET: Again, Your Honor, Kenneth Aulet of Brown  
11 Rudnick, for the record. I apologize for using the phrase,  
12 obvious flaws, in my discussions with the debtors. But, yeah,  
13 those were a couple of key points that we thought would be  
14 helpful to fix at this point. The Committee obviously reserves  
15 all rights with regard to the APA. You know, there are things  
16 like the sale of customer claims, where we've indicated we're  
17 not on board with that at this point, and we certainly need to  
18 diligence it.

19 But, we do appreciate the debtors working  
20 constructively with us to get those issues resolved while  
21 preserving the Committee's rights to object to the APA should  
22 that become necessary.

23 THE COURT: All right. Then I thank you. Let me  
24 just confirm. All objections to this -- what's the objection  
25 deadline post-sale, post-auction?

1 MR. DURRER: August 4, Your Honor.

2 THE COURT: August 4th? That's one week before the  
3 hearing?

4 MR. DURRER: A couple of days.

5 THE COURT: Well, but before the -- yes. Okay.  
6 Anything else on your end?

7 MR. DURRER: The only other matters on the agenda,  
8 Your Honor, are 11, 12, and 13. These all relate to the  
9 debtor's motion to reject customer contracts, and certain  
10 customers desire to preserve 365 -- or assert 365(n) rights.  
11 As advertised, those are all continued to August 6th, Your  
12 Honor.

13 THE COURT: All right. Thank you. I have -- I guess  
14 there were motions that were filed without -- and have not been  
15 assigned or requested a date. A motion for stay relief with  
16 respect to a Toyota forklift. A motion to approve a  
17 compromise. And a motion for a ceiling. I guess we're just  
18 going to put those on the same August 6th --

19 MR. DURRER: That makes sense, Your Honor.

20 THE COURT: -- 11:30 deadline.

21 MR. DURRER: Thank you.

22 THE COURT: And is there anything else that I can --  
23 the Court can address for anyone? Either appearing remotely or  
24 otherwise.

25 (No audible response)



1 THE COURT: Then we're adjourned.

2 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

3 THE COURT: Thank you all. I appreciate your  
4 efforts.

5 \* \* \* \* \*

6  
7 **C E R T I F I C A T I O N**

8 I, KIM WEBER, court approved transcriber, certify  
9 that the foregoing is a correct transcript from the official  
10 electronic sound recording of the proceedings in the above-  
11 entitled matter, and to the best of my ability.

12  
13 /s/ Kim Weber

14 KIM WEBER

15 J&J COURT TRANSCRIBERS, INC. DATE: July 16, 2025

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