Docket #0420 Date Filed: 10/30/2026

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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|---|---|
| In re:<br><br>Noble Supply & Logistics, LLC, *et al.*,<br><br>Debtors.[1] | Chapter 11<br><br>Case No. 26-11369 (CTG)<br><br>(Jointly Administered) |
| United States of America,<br><br>Appellant,<br><br>v.<br><br>Noble Supply & Logistics, LLC, *et al.*,<br><br>Appellees. | Civil Action No. 26-cv-01279-JLH |

**APPELLEES' COUNTER-DESIGNATION OF THE ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND LOCAL RULE 8009-1 INDEX**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure and Rule 8009-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Noble Supply & Logistics, LLC and its affiliated debtors and debtors in possession (collectively, the "Debtors" or "Appellees"), respectfully submit this designation of additional items to be included in the record of appeal of the United States of America, on behalf of the Defense Logistics Agency ("Appellant") from the *Order* [D.I. 151] entered by the United States Bankruptcy Court for the

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Noble Supply & Logistics, LLC (7926); COTS Solutions, LLC (4477); Federal Resources Supply Company, LLC (3636); FRS Holdings, LLC (2327); K.D. Analytical Consulting, LLC (6637); KDA Acquisition, LLC (5870); Noble Defense Corporation (N/A); Noble Equity Holdings, LLC (0851); Noble.com, LLC (4712); Noble Mission Support, LLC (7908); and Tactical & Survival Specialties, LLC (2266). The location of the Debtors' principal place of business and the Debtors' service address in these Chapter 11 Cases is 1 Marina Park Drive, Suite 220, Boston, MA 02210.

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District of Delaware, Honorable Craig T. Goldblatt, on September 18, 2026, and related index. In addition to those items designated by the Appellant, the Debtors designate the following items.

**COUNTER-DESIGNATION AND LOCAL RULE 8009-1 INDEX**

1. All documents designated by any other party.

2. Transcript of hearing before the Bankruptcy Court on October 28, 2026, at 10:00 a.m., attached hereto as **Exhibit A**.

3. The items listed below:

| ***In re Noble Supply & Logistics, LLC, et al.,* Case No. 26-11369 (CTG) (Bankr. D. Del.)** | | |
|---|---|---|
| **Document** | **Filing Date** | **D.I. No.** |
| Interim Order (I) Authorizing Limited Use of Cash Collateral, (II) Granting Adequate Protection Liens and Superpriority Administrative Expense Claims to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief | 9/1/2026 | 73 |
| Second Interim Order (I) Authorizing Limited Use of Cash Collateral, (II) Granting Adequate Protection Liens and Superpriority Administrative Expense Claims to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief | 9/26/2026 | 218 |
| Third Interim Order (I) Authorizing Limited Use of Cash Collateral, (II) Granting Adequate Protection Liens and Superpriority Administrative Expense Claims to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief | 10/14/2026 | 338 |
| Debtors' Objection to United States' Motion for Entry of an Order (I) Granting Adequate Protection Under Sections 361, 363(e), and 553 of the Bankruptcy Code and (II) Granting Related Relief | 10/21/2026 | 366 |

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| United States' Reply to Debtors' Objection to its Motion for Entry of an Order (I) Granting Adequate Protection Under Sections 361, 363(e), and 553 of the Bankruptcy Code and (II) Granting Related Relief | 10/23/2026 | 395 |

**RESERVATION OF RIGHTS**

The Appellees reserve and do not waive their right to supplement the foregoing Counter-Designation and index and/or to incorporate by reference, object to, or otherwise supplement, counter-designate, or move to strike or modify, any additional items designated for inclusion in the record on appeal by other parties. This filing is made subject to, and without waiver of, any rights, remedies, challenges, and objections.

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Dated: October 30, 2026
Wilmington, Delaware

*/s/ G. David Dean*

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**Exhibit A**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

| | | |
|---|---|---|
| IN RE: | . | Chapter 11 |
| | . | Case No. 26-11369 (CTG) |
| NOBLE SUPPLY & LOGISTICS, LLC, *et al.*, | . | (Jointly Administered) |
| Debtors. | . | |
| . . . . . | . | |
| NOBLE SUPPLY & LOGISTICS, LLC, | . | Adversary Proceeding No. 26-50885 (CTG) |
| Plaintiff, | . | |
| v. | . | |
| DEFENSE LOGISTICS AGENCY, | . | Courtroom No. 7<br>824 Market Street<br>Wilmington, Delaware 19801 |
| Debtors. | . | |
| | . | Wednesday, October 28, 2026 |
| . . . . . | . | 10:00 a.m. |

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

Audio Operator: Alyce Doody, ECRO

Transcription Company: Reliable
The Nemours Building
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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Court's Ruling:

Agenda Item 6: Motion of Noble Supply & Logistics, LLC for Partial Summary Judgment (Filed October 6, 2026) [Noble Supply & Logistics, LLC v. Defense Logistics Agency, Adv. Proc. No. 26-50885] [Adv. Docket No. 3]

Court's Ruling:

Agenda Item 7: United States' Motion to Dismiss the Complaint (Filed October 20, 2026) [Noble Supply & Logistics, LLC v. Defense Logistics Agency, Adv. Proc. No. 26-50885] [Adv. Docket No. 17]

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Agenda Item 8: United States' Cross-Motion for Summary Judgment (Filed October 21, 2026) [Noble Supply & Logistics, LLC v. Defense Logistics Agency, Adv. Proc. No. 26-50885] [Adv. Docket No. 23]

Court's Ruling:

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(Proceedings commenced at 10:00 a.m.)

THE CLERK: All rise.

THE COURT: Be seated.

Good morning. We're on the record in In Re: Noble Supply & Logistics, LLC, which is Case Number 26-11369, as well as the adversary. That's Noble Supply & Logistics v. Defense Logistics Agency, which is Adversary Number 26-50885.

Mr. Dean?

MR. DEAN: Good morning, Your Honor.

David Dean, of Cole Schotz, on behalf of the debtors, and with me are my co-counsel and also with us today is Mr. Albergotti, the debtor's Chief Transformation Officer, who you'll hear from later today when we get to the lift stay supplemental direct.

I'd like to start by thanking the Court for starting this hearing a little bit earlier than 2:00, given the important and number of adversary matters that we have scheduled before the Court today.

Before I dive into the agenda and walk the Court through that, I'd like to just give the Court a brief case update.

THE COURT: Yeah, that would be helpful.

MR. DEAN: At the last scheduling conference though, you asked a very fair question, and that was how do

the ongoing disputes with the Government affect the sale process, given that we're in the business of government contracting and the debtor's position from the onset has been that we won't try to assume and assign contracts without the Government's consent.

In other words, is there a real Chapter 11 case here if the debtors and the Government aren't willing -- aren't able to get on the same page, and the answer to that question is yes, Your Honor.

I just want to let the Court know the bid deadline is in two days. It's on Friday and, as of today, we have about a dozen prospective bidders in the data room working with our banking team. We have prospective bidders looking at the Noble IQ business that does not involve the contracts with the DLA. We have bidders considering a full business bid that would not be conditioned on contract novations.

Now, no one, of course, knows how this is going to end, Your Honor, but I think the important point for today is the DLA, Noble's largest customer, made it clear to the world weeks ago in its filings that it would not novate our contracts and, despite that, Your Honor, all of these prospective bidders continue to do their work and, with a successful sale process, Your Honor, with the timely collection of the funds that the DLA has wrongfully withheld from us, we're confident that our primary stakeholders, the

term lenders represented by McDermott, the Creditors' Committee, represented by Brown Rudnick, both of whom have been incredibly supportive of our efforts to date -- we're confident that they'll help us find an appropriate path to confirmation and a sale.

Now, I'd like to also confirm that since our last hearing, we have engaged with settlement discussions with the Government and, as I'm sure is obvious by the pleadings that had been filed recently and the fact that we're here today, we have not yet been able to reach any resolution with the Government on any of the pending matters before the Court.

So, we're hoping that the Court's decisions that we'll seek today will give some clarity on the various issues surrounding the payment obligations of DLA, which will allow us, hopefully, to fund the rest of these cases and get to a successful sale.

Now, with that background, Your Honor, I'd like to just walk through the agenda for today's hearing just to set the stage for a bit, including some of the evidentiary agreements that we've reached with the DLA on the exhibits.

THE COURT: Okay. And I should say before you get too much further, you know, I appreciate that this is a situation where time is of some importance and the issues presented in the papers are quite interesting, but this isn't a circumstance that would -- where I have the luxury of

stewing around interesting issues and writing a long opinion with my thoughts on them.

So I appreciate that this is a circumstance where you're going to need decisions and so I've, therefore, given some thought to the questions that have -- just from what I know in the papers and it probably, at some point before we launch -- I -- look, in a normal world, I would have written something down and sent it out a couple days ago to give you all the benefit of this before you come in and life is imperfect in that regard and so I wasn't able to do that.

I do want to hear sort of where you are and what you've agreed to and give you all a chance to say what I -- what you think I should know before we go too far but I also think it might be helpful to the process just -- again, nothing I'm going to say is a ruling, but I think it might be helpful to all of you -- I used to appreciate understanding what the judge was thinking going in so that I know what the target is at which I'm shooting and so I want to give you that at whatever point it would be helpful.

MR. DEAN: Yeah, and I think where that would be helpful is if -- if I could just set the stage and walk through the agenda and kind of give you an overview of how we see things going today before -- and then I was planning on, after going through all of that and the exhibits, turning it over to the Government to present the main case motions, and

I think at that point, I think that your --

THE COURT: Okay.

MR. DEAN: -- those comments would be most helpful.

Now, as far as order is concerned, we would propose to deal with the adequate protection motion first because that one is not going to result in any evidentiary presentation.

The parties have agreed to stipulate to the admission of the declaration submitted with the motion and to argue that one on the papers, subject to the Court's approval.

So we'd like to have the Government present that first, followed by the lift stay motion and then we would roll into the adversary motion.

THE COURT: Okay.

MR. DEAN: So that's how we propose to deal with it and we would call Mr. Albergotti to the stand in connection with the lift stay motion for supplemental.

Now, today, Your Honor --

THE COURT: Can I ask you this? I don't want to get too far ahead of the parties, but if I understand the universe correctly, the difference between the parties' positions on the lift stay is pretty narrow, right?

MR. DEAN: It's even narrower than it was in the

papers because --

THE COURT: Okay.

MR. DEAN: -- we've actually provided you with an exhibit book and your clerk and there's on the stand and --

THE COURT: Okay.

MR. DEAN: -- it -- and when I get to the exhibits, I'll kind of walk you through it.

THE COURT: All right.

MR. DEAN: But we've narrowed the issues.

THE COURT: Okay.

MR. DEAN: And when I get to that, I'll tell you about that.

THE COURT: All right.

MR. DEAN: So today, Your Honor, the Court, in total, is being asked to decide five motions, starting with the Government's adequate protection motion which it elected to file in lieu of a motion to establish disputed setoff rights through an estimation process and through which the Government seeks an escrow of all sale proceeds of the superpriority claim that would prime our secured lenders. As I noted, the parties are in agreement on that declaration and we would argue that on the paper.

Next is we were just discussing we have the lift stay motion. We filed a limited objection to that motion. Our basis objection is we don't want them terminating on

orders that have already been delivered. They filed a reply contesting the evidentiary declaration of Mr. Albergotti and the sufficiency of it because he basically said in his declaration I went through and -- I went through their schedule, I looked at the company's records, and I run a blackline comparing what we think had been delivered and some of which -- much of which, ironically, have already been paid for.

And over the weekend, we spent -- and Mr. Albergotti's team spent a lot of time trying to narrow that -- those 2,000 lines that we contested down to a few hundred. Some of them were so small and the exercise was so difficult to do over the weekend that we've limited our objections to the larger ones that we can prove at this hearing and we actually gave the Government, on Sunday, a production of documents to underline the voluminous record exhibit that are in the witness binders that we handed up. So we'll go through all of that as we go through the lift stay.

Now, finally, Your Honor, we have the three adversary motions. Our summary judgment motion for turnover and, in the alternative, for breach of contract, but it's primarily for turnover, and the Government's cross motion for summary judgment and a corollary 12(b)(6) motion, and the underlying question, Your Honor, of whether there's a *bona*

*fide* dispute over the goods and services delivered to and retained by the Government under the foreign applicable law. That will be argued, of course, by the parties on the papers because it's summary judgment and we'll be relying on the submissions provided therein.

Now, each of the motions, Your Honor, we'll hear today all come with a common theme, and that's the Government's nonpayment for goods and services by its own admission. It received, retained, did not reject, but now will not pay for or process.

Every motion today is derivative of that them, Your Honor. We still don't get why. It's never been explained to us by the Government. But, unfortunately, we're out of time for those explanations. Noble needs to be paid what it's rightfully owed and needs the funding the maximize value for the stakeholders.

So with that, as I previewed, I'd like to just talk briefly about the exhibits because I think it's helpful to deal with all of these up front, since we have stipulations. We filed one list of exhibits for the whole hearing and covered everything.

We did not put the summary judgment exhibits in our exhibit binder because our view is it's not an evidentiary hearing so we would just be relying on the record.

Our exhibit list is found at Docket Number 397. We have -- we submitted 12 exhibits, Your Honor. The Government has stipulated to the admissibility of all of the exhibits except for Exhibits 5 and 6, which are the exhibits that are in the witness binder and the witness binder for Mr. Albergotti is tabbed 4, 5, and 6. So it correlates with the numbering of the exhibit list.

4 is his opening declaration in support of the lift stay. There's an agreement that that would come into evidence as his direct. We would then call him for supplemental direct to deal with the evidentiary objections raised in the reply and discuss and then move into evidence during that examination Exhibits 5 and 6.

The Government's exhibit list is found at Docket 400. They submitted 11 exhibits. Some of them are overlapping with the exhibits that we submitted but the debtors have stipulated to the admissibility of all of the Government's exhibits for the purposes of the hearing.

And so at this time, before we move to the various motions, Your Honor -- and I'll just do this globally, just for convenience and brevity, I would move in all of the exhibits on the debtors' list, 1 through 12, other than 5 and 6, and I would also ask, under the stipulation, that the Government's exhibits also be admitted for the purposes of today's hearings.

THE COURT: Okay. Any objection from the Government?

MR. LAMB: No objection, Your Honor.

THE COURT: Okay. So just so I understand it -- so what I've got in front of me are two binders of Government exhibits and they run 1 through 9. And I also have what's labeled Albergotti Exhibit Binder and it's got 4, 5, and 6. I take it -- so help me understand --

MR. DEAN: Yeah, let me --

THE COURT: -- what I've just admitted into evidence.

MR. LAMB: Your Honor, there should only be one binder for the U.S. exhibits.

THE COURT: And for the United States.

MR. LAMB: For the United States.

THE COURT: So I don't have any confusion there.

MR. LAMB: Okay. Okay.

THE COURT: So for the United States, I've got a single binder and its exhibits are labeled U.S. 1 through U.S. 11, and those I understand are all admitted, right?

MR. LAMB: Correct.

(Government Exhibits 1 through 11, received in evidence)

THE COURT: Okay. So that much I understand. With respect --

MR. DEAN: And then our global exhibit binder has 12 exhibits in it.

THE COURT: Okay.

MR. DEAN: 1 through 12.

THE COURT: All right. So I only go through 9 but we'll worry about that when we get there.

MR. DEAN: I -- we have extra copies if you need --

THE COURT: If --

MR. DEAN: -- another one.

THE COURT: Unless I'm missing something.

MR. DEAN: Two --

THE COURT: Is this --

MR. DEAN: Are there two volumes?

THE COURT: The second version I have has X through 9 in it.

MR. DEAN: Okay. I have a Volume 1 that I can hand up with 1 through 5.

THE COURT: All right. So that I seem to have. I've got Volume 1 with 1 through 5. It's Volume 2 that I've got that ends at 9.

MR. DEAN: Volume 1 -- that's right. Volume 1 is 1 through 5 and Volume 2 is 6 through 9.

THE COURT: Okay. So you told me there were 12. So help me.

MR. DEAN: One second, please.

(Pause)

MR. DEAN: Oh, I'm sorry. I misread the exhibit list. The last three are reservations to call extra witnesses and things. So it's 1 through 9. I'm sorry.

THE COURT: Got it. Okay.

MR. DEAN: So 1 through --

THE COURT: All good. No worries.

MR. DEAN: 1 through 9, except for 5 and 6, and everything in all of the exhibits are docketed except for 5, 6, and 7. Exhibit 7 is the FSG work order contract.

THE COURT: Okay.

MR. DEAN: Okay?

THE COURT: All right. Very well.

MR. DEAN: Sorry about that, Your Honor.

THE COURT: I appreciate that.

MR. DEAN: Apologize.

THE COURT: No, no, no. I'm sorry for being the slowest one in the room, though those of you who come here often are used to that.

(Debtors' Exhibits 1 through 4 and 7 through 9, received in evidence)

MR. DEAN: So, Your Honor, with that -- with those opening remarks and the exhibits, I would then turn it over for the Government to present the adequate protection motion

but we'd love to hear your thoughts --

THE COURT: Yeah, why don't --

MR. DEAN: -- as well.

THE COURT: Before I offer my overarching thoughts, why don't I hear -- if the Government wants to respond to any -- what you just said. That seems only fair. And then we can see where we are.

Happy to hear from either or both of you.

MR. LAMB: Thank you, Your Honor.

Ryan Lamb, for the United States. We don't have any disagreement with what was just presented.

THE COURT: Okay. All right. So do the parties agree it makes sense, to the extent I've got thoughts, to share them at this point?

MR. LAMB: Yes, Your Honor.

THE COURT: All right. And, again, let me say none of what I'm about to say is a ruling. It's sort of my best effort to describe to you what I'm thinking after having reviewed the papers and all of your rights to tell me that any and all of what I'm about to say is wrong or totally reserved.

But just because there's, you know, some time sensitivity to getting to a resolution of these matters, I thought it would be efficient so -- for you to know where I am.

So before I talk about the motions themselves, let me just say a couple of words about the -- there's this back and forth in the papers about either -- sort of how things have unfolded in this case until today. The debtor accuses the Government of bringing a collateral attack on a prior order. The Government makes allegations about information that wasn't called to my attention at a prior hearing and argues all of that should have been disclosed sooner.

And at least as I start today, I've got to say my instinct on all of these issues is I remain inclined to believe that all of the lawyers who are appearing in front of me are acting in good faith, that everyone is doing their best in a fast-moving environment, that, you know one could -- you know, with the benefit of hindsight, do lots of things differently.

But under the circumstances where we've got a fast-moving case; there's information that was under seal at the time of a prior hearing, I'm not inclined to start out overly critical of any of the lawyers or their clients with respect to how folks have made real-time decisions to deal with things in a fast-moving environment.

My inclination is to do my best to figure out what the circumstances of the case now and to do my best to get to the right decision based on the information that is now available and not to dwell, for its own sake, on who could or

should or might have told me something sooner that might have been helpful. So, for what it's worth, that's where I start today.

With respect to the sort of -- I understand there are five motions, but I guess the way I think about it is there's the -- let me start with adequate protection, then talk about relief from stay, and then talk about the adversary just to correspond with how the parties have determined to present things.

With respect to adequate protection, I've got to say I'm pretty skeptical of the Government's position there. It asks me for a superpriority claim as a form of adequate protection of its right of setoff and I start out disinclined to grant that relief for a few reasons.

So, first, adequate protection is available under Section 363(e) to a party that has an interest in property of the estate and, generally speaking, unsecured creditors don't have the ability to seek adequate protection.

You know, to be sure, where there is a right of setoff, rights of setoff are tantamount under the Bankruptcy Code to security interests and so a party that has a present right of setoff may well be entitled to adequate protection. That's what Section 506(a)(1) is doing when it talks about a claim being secured by a right of setoff.

But the Government's brief, as I understand it,

doesn't assert that it now holds a right of setoff and, indeed, the general rule is that the holder of a disputed and unliquidated claim cannot exercise setoff rights. And I do understand, from my own digging around, that there is -- there may be some authority that the general rule doesn't apply in exactly the same way to the United States as it does to other creditors but the Government doesn't make that argument in its brief and it says expressly that it's not now seeking to exercise a setoff right.

So, for that reason, at least I start off not really seeing a basis to grant adequate protection.

Relatedly, the granting of a superpriority claim similarly requires that one holds a secured claim. Section 507(b) talks about granting a superpriority claim to a creditor that is entitled to adequate protection in circumstances in which the adequate protection proves to be inadequate and the suggestion that a superpriority claim would come ahead of secured creditors is a puzzling proposition to me.

So -- but in sort of -- in any event, for the reasons described above, it doesn't seem to me that the Government holds a secured claim that would entitle it to adequate protection in the first instance.

So that's -- again, I want to give everyone a chance to be heard, but that's sort of where I start out with

respect to adequate protection.

Turning to the automatic stay -- and, again -- you know, to the extent any of what I say reflects a misunderstanding of your positions -- that's certainly a possibility, you should not be shy about telling me that.

But, here, the dispute between the parties strikes me as pretty narrow. As I understand it, the debtor largely consents to relief from stay but argues that some of the orders that the Government seeks to terminate are ones for which it has already completed performance.

And, here, I'm inclined to think that what the Government is saying in its reply is correct, which is, look, granting relief from the stay simply permits the Government to exercise whatever non-bankruptcy law rights it may have.

The parties' positions about the limits of those rights I don't think are properly before a court that is deciding whether to grant stay relief. So if the debtor is right about having completed performance, that would be a merits defense to an effort to terminate those contracts and the debtors' rights in that regard would be preserved.

But I'm inclined to think that I ought to grant stay relief to permit the Government to exercise whatever non-bankruptcy rights it has without prejudice to the rights of either party about the scope of those rights. Again, that's a preliminary action and if I'm misunderstanding

things, don't be shy about saying so, but that's my reaction upon my review of the papers.

Okay. Then let me offer a few reactions with respect to the adversary proceeding. Here's -- and the -- let me first talk about the sort of jurisdictional/sovereign immunity questions and -- before getting into what I understand to be sort of the merits.

And the adversary -- yeah, right. And with respect to the adversary proceeding, I'm referring both, of course, to the turnover motion, as well as -- or turnover count, as well as the breach of contract count.

And so here's how I see it. Section 106(a) expressly waives sovereign immunity as to a turnover action and so that means that, to the extent the debtor can establish the elements of a claim for turnover under Section 542(b), I believe the Government can be required to turn over to the trustee -- here, the debtor-in-possession, any debt that it owes that satisfies the statutory requirements set forth in 542(b).

I don't believe the fact that the debtors' rights arise under a government contract eliminate the debtors' ability to invoke turnover under Section 542(b) if the debtor can establish its entitlement to payment to the satisfaction of the statutory requirement.

And, as I understand the Government's position, I

think it's saying because the claims -- the source of the obligation is a contract, 542(b) is categorically unavailable. I am disinclined to take that view. I don't think that that's correct.

On the other hand, it is clear that turnover is not available as a means to resolve a real dispute about contractual obligations. As the statute says, the amount due must have matured and be payable on demand.

So what does that mean? On the one hand, if there's a real dispute about the parties' obligation to pay a debtor, it means that turnover is not available as a remedy. On the other hand, I also think it's true that if the requirements of 542(b) are in fact met, a party cannot avoid turnover simply by saying I dispute I owe you the money. There needs to be a real dispute.

So what's the standard that courts should apply to separate what's a real dispute that can't be the subject of turnover from a claim that can be, I spent some time with this and I've twisted my hands.

As far as I can tell, the standard in practice does look a lot like -- I'm not saying it's exactly -- I'm not sure it matters exactly what it is, but I think, in practice, it looks a lot like the standards that courts use under Rule 56 to determine whether the entry of summary judgment is appropriate.

That is, the parties look at what the parties are saying and that the evidence they proffer -- they look at those things objectively and they make a judgment about whether there is or isn't a real dispute here about the debtors' right to payment.

Again, to the extent any of you has additional thoughts or aware of authority that I might have missed on this point, I'm all ears. But, based on my own effort to try to get to the bottom of that, that's the best I could come up with.

Okay. So then what do I do about any claims for breach of contract that would not be effectively resolved by the claim for turnover?

Here, my instinct is that the Government is probably correct that I lack subject matter jurisdiction over those claims because they are the subject -- they are subject to federal sovereign immunity.

The law here is pretty complex so let me take a second to explain my thinking. Right? So, to begin, it's common ground that the United States has sovereign immunity from any suits seeking money damages in the absence of a waiver of that immunity.

It's also common ground that the Tucker Act operates to waive federal sovereign immunity in a breach of contract action.

And -- back up. I skipped over my earlier discussion of turnover that Section 106(a) expressly waives sovereign immunity with respect to claims under 542. So I think -- I don't think there's a serious sovereign immunity argument with respect to turnover.

With respect to breach of contract, however, what we've got is the language of the Tucker Act. I'll talk in a minute about how the language of 106 I think sort of reinforces this.

But the Tucker Act says, "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the constitution or any act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States for liquidated or unliquidated damages in cases not sounding in tort." Period. Full stop. So that's 28 U.S.C. Section 491(a)(1).

So, by its terms -- if we're just reading that language in a vacuum, just like as a matter of English, I think one would say that that waiver applies only in actions brought in the Court of Federal Claims.

Now, what's confusing here is that the Federal Circuit has said -- at least there's language in the Federal Circuit's opinion in Quality Tooling that says the opposite and that it suggests that the waiver in the

Tucker Act applies in any lawsuit in a court that otherwise has competent jurisdiction over the action.

Now, in fairness to the debtor, when I raised this question with counsel for the United States earlier on, what counsel told me, consistent with what the Federal Circuit says in Quality Tooling, is that there is concurrent jurisdiction in this Court and the Court of Federal Claims.

The Government's more recent papers take the opposition position. In fairness and sort of consistent with my opening observations, there is no reason why counsel would have expected that issue to have arisen back when I asked the question and so I think it's only fair to permit the Government to have the chance to protect its interest, having now given the matter more complete consideration, so I'm not inclined to hold anyone to the earlier statement, sort of consistent with my view that I'm -- I want to do my best just to get it right.

Now, as the Government points out, Quality Tooling is factually different from the case before me here in that, there, the action was originally filed in the Court of Federal Claims but ended up in the Bankruptcy Court through a mechanic that the Federal Circuit's opinion leaves quite elliptical.

But, more fundamentally, I think that the reasoning of Quality Tooling is overtaken by subsequent

Supreme Court authority and, here, I'm going to say a little bit about the Supreme Court's decision in United States v. Miller.

That's a case from just two terms ago. It's a -- arose in the fraudulent conveyance context and the Court reads the waiver granted in Section 106(a) fairly narrowly, relying heavily and expressly on the principle that waivers of sovereign immunity must be narrowly construed.

Here, it's -- as I alluded to earlier, it's crystal clear that the 106(a) waiver doesn't extend to the claim for breach of contract. Indeed, the waiver for counterclaims under 106(b), if anything, reinforces the notion that, in the absence of a Government proof of claim, the Government isn't waiving sovereign immunity for a breach of contract action in the Bankruptcy Court.

And it seems to me that that specific language that limits the scope of the waiver needs to prevail, particularly under the reasoning of Miller, over the general grant of subject matter jurisdiction in 1334(b).

So I'm not really excited about disagreeing with the Federal Circuit on the question of the meaning of the Tucker Act. But, here -- you know, right, then that's obviously narrowed where that court has specialized expertise.

But the language with which I'm disagreeing really

wasn't clear that it was necessary to the decision because that case was at least filed originally in the Court of Federal Claims and, more fundamentally, I don't see how the broadest construction of that language can be reconciled with subsequent Supreme Court authority, including the Miller case that makes clear that waivers of sovereign immunity must be narrowly construed.

So, for that reason, for any part of the breach of contract claim that is not essentially overtaken by my ruling on what is subject to turnover, I incline to think that I don't have subject matter jurisdiction on account of federal sovereign immunity and, therefore -- and that leads me to sort of the docket entry that I made, I don't know, a couple days ago -- therefore, any part of that that's left likely ought to be transferred, under Section 1631, to the Court of Claims and there is language in the Third Circuit's decision in Seven Fields that suggests that a Bankruptcy Court may invoke 1631 to transfer a case to another court of competent jurisdiction.

So -- and then that leads me to the question of what is, in fact, subject to turnover in light of the pleadings and the declarations and the 108 lines of what Mr. Albergotti sets forth in his declaration and the Government's response to it and, there -- this is summary judgment, not testimony, but there I'm going to need help

from the parties working my -- I've spent time with the 108 lines, with the help of a fabulous law clerk, and I don't know the answers and I'm going to need to -- we're going to need to spend some time working through that.

So -- okay. That's been a lot of words for me. Let me make clear that as much as some of this might have sounded like a ruling, it's not intended to be. It's really intended to avoid the scenario in which, you know, you all come all the way here and get up and present your case and at the end, I give you a ruling that was written all along and you're like well, why did I spend all this time talking if you had already thought through this.

I want to tell you what I'm thinking. You know, again, it -- don't take it more seriously than it deserves. It is what I'm thinking but I brought you here for a reason.

So that's enough words for me and I'm happy to hear from the parties.

MR. DEAN: Just very quickly, Your Honor, thank you for that. It was very helpful.

Just on the adversary, I think we're on the same page. That's why we proceeded this way and filed the motion for summary judgment because we knew we would likely need to win that to win the turnover count anyway. So I think we're on the same page there, just to confirm.

I just have one comment on the lift stay aspect of

this.

THE COURT: Um-hum.

MR. DEAN: It may make sense for us to maybe have a short preliminary argument to see whether we can try to convince you otherwise because, otherwise, we're not going to call Mr. Albergotti to the stand for an hour to go through schedules that don't matter, if you're --

THE COURT: Right.

MR. DEAN: So I think --

THE COURT: That's --

MR. DEAN: -- we should try to have a little argument on that first and then --

THE COURT: I think if it's resolvable, as a matter of law, then there's no need to hear the evidence. If it turns out -- again, I want to allow you to present your case as you see fit but I -- part of why I was sharing what I was, was it might help you be efficient --

MR. DEAN: Yes.

THE COURT: -- if I've ruled against you, as a matter of law, and it doesn't matter what the facts are --

MR. DEAN: Yes.

THE COURT: -- then you can save yourself the time and energy.

MR. DEAN: Yes. We don't want to waste your time today with that testimony if it's not necessary, so I would

suggest we take that up on this preliminary --

THE COURT: All right.

MR. DEAN: -- argument first and then call him if necessary.

THE COURT: Okay.

MR. DEAN: So that would be my only suggestion.

THE COURT: That's fine with me.

MR. DEAN: Thank you.

THE COURT: Any objection from the Government about proceeding in that fashion?

MR. LAMB: No, Your Honor. I think that makes perfect sense.

THE COURT: Okay. Very well.

MR. DEAN: Okay.

THEC: Okay.

MR. DEAN: Thank you.

THE COURT: So, as I understand it, we've got the adequate protection motion first and the Government is the movant, so happy to hear from either of the lawyers from the Government, or both.

MR. LAMB: Your Honor, debtors' counsel suggested that the adequate protection would be first --

THE COURT: Right.

MR. LAMB: -- and then the stay motion. So we're doing adequate protection first?

THE COURT: That's my understanding.

MR. LAMB: Right. Thanks.

THE COURT: And, again, I mean if the parties agree to proceed that way --

MR. LAMB: I'm fine with that.

THE COURT: -- I'm not going to be in the way. If the parties have a different view, you know, I'm happy to resolve a dispute if there's one for me to resolve but if you agree, you can do it in whatever order you want.

MR. LAMB: Understood. Thank you, Your Honor.

THE COURT: Okay. Counsel?

MR. GESMUNDO: Good morning, Your Honor.

Alastair Gesmundo, on behalf of the United States.

Echoing opposing counsel's comments, I appreciate sort of the Court's attention to at least narrow the target for us.

And I want to address the Court's question because -- I'll start with the question of the Government's status. We include in our brief a cite to Lee v. Schweiker. That's a Third Circuit case and there it talks about the -- a setoff, in effect, elevating an unsecured claim to secured status.

And so what we're --

THE COURT: I agree with that, right?

MR. GESMUNDO: Yes.

THE COURT: So once you're -- then I think that flows from the language of 506 itself --

MR. GESMUNDO: Yes.

THE COURT: -- that talks about secured by a right of setoff. The question for me is -- as I understand it, right? We had a hearing a few weeks ago. We addressed what was addressable then.

What I now understand is that the Government contends that there is an additional False Claims Act liability that wasn't the subject of the prior hearing that gives rise to a right of setoff. Am I right about that?

MR. GESMUNDO: So, Your Honor, I think I -- I would frame it differently. It's that debtors' counsel started today with the fact that they have reached this point. They're very close to a sale. But the United States' position is that that's because we've been bankrolling the case, essentially.

The -- as the Government pays, via through DLA -- but it's actually coming straight from the Treasury -- or from the Treasury to DLA --

THE COURT: I understand.

MR. GESMUNDO: -- we're funding the bankruptcy without the adequate protection that we're entitled to.

THE COURT: Well, so let's -- that's -- and I get that at some level. But let me -- I think I may not have

been clear about why -- what -- where your right to adequate protection kicks in.

So the way I think about this -- and there are a number of cases and we can talk about them. They're not really addressed very much in the briefing, and that's okay. But the way I understand the law, when you have -- look, if you -- if two parties owe notes to one another and the amounts are fixed and liquidated and undisputed, there is a right of setoff and that makes the non-debtor party secured by its right of setoff and, therefore, it would be entitled to adequate protection.

On the one hand, if the non-debtor party holds an unliquidated and disputed claim that there isn't a right of setoff until that claim is fixed and, therefore, they remain an unsecured creditor and -- because you don't get -- an unsecured creditor doesn't get -- an unsecured creditor whose claim is unliquidated and disputed typically doesn't have a right of setoff. You can't set off an unliquidated amount. And so as long as the amount is unliquidated and disputed, there isn't a right of setoff.

That's sort of a -- there are lots of old cases that say that. That's sort of a general proposition about when a party is entitled to setoff. And it seems to me that as long as the Government's claim against the debtor is unliquidated and disputed, there isn't yet a right of setoff

and, therefore, there's nothing to give rise to a claim for adequate protection.

So that's -- again, if people want to tell me I'm wrong and why, I'm happy to listen, but that -- just to me, this is just for principle stuff and I think those are what the principles are, which is what led me to say I was disinclined to grant a motion for adequate protection.

And even if I got there, I've got other questions about the extravagant use of 507, but we can talk about that if we get there but I don't think we do.

MR. GESMUNDO: Understood, Your Honor.

THE COURT: Does that make -- am I making sense?

MR. GESMUNDO: You're making sense, Your Honor, and I understand. But I think Your Honor alluded to and, admittedly, it wasn't briefed thoroughly as to why the Government's claim that Your Honor referred to -- treatment of Government's claim differently than all other secured creditor -- or all other unsecured creditors and so that's part of why -- the significance of the debt at issue that, admittedly, is not fixed yet but will be once -- whether it's -- it's because it becomes a liquidated claim by virtue of settlement on the FCA claim --

THE COURT: So this is why when we started I started out by saying -- because, look, I get the potential unfairness to a holder of an unliquidated claim and, to me,

from first principles again, the logical solution to that would be estimation. Then we fix your claim and we avoid that unfairness and we fix it in a way that's quick and dirty and imperfect because life is imperfect. But as among the unfairnesses, that strikes me as -- you know, in bankruptcy, often we deal with the fact that things are fast-moving and we've got to do the best we can with the time we've got.

This case sort of speaks that quite loudly. And that's, to me, the rationale behind having an estimation in a case like this so that we can then fix the amount and then, once it's fixed, for -- you know, for better or for worse, then a right of setoff would attach.

But I -- you know, no one has taken me up on that. I'm not faulting anyone. But we are sort of where we are and so where we are is you're the holder of a claim that's unliquidated and disputed and, therefore, not subject, by my lights, to a claim of setoff.

Look, the -- on the question whether the Government is different, the -- for what it's worth, there's an old case that says it's not. It's United States v. Robeson, 34 U.S. 319 (1835). There's some more recent authority that suggests -- possibly suggests otherwise.

And, again, I don't want to be overly harsh but none of that authority was cited to me so I'm not going there.

MR. GESMUNDO: Sure.

THE COURT: And so I'm inclined to think, under ordinary principles of setoff, the holder of an unliquidated disputed claim -- and I don't think you're telling me, as of today, you have anything other than that -- am I misunderstanding your position?

MR. GESMUNDO: Not as far as what I can disclose in terms of what the Government continues to -- exists.

THE COURT: Okay. And, look, again, I'm not faulting anyone.

MR. GESMUNDO: Correct.

THE COURT: And I appreciate the sensitivity and the difficulty --

MR. GESMUNDO: Yes.

THE COURT: -- and so I want to be highly sensitive to not putting anyone in an unfair spot.

MR. GESMUNDO: Right.

THE COURT: But that's it. I can only decide cases based on the information that you give me.

MR. GESMUNDO: Sure. I -- Your Honor --

THE COURT: Go ahead.

MR. GESMUNDO: May I?

THE COURT: Yes.

MR. GESMUNDO: So you mentioned sort of in the sort of spread of potential injustices or unfairness, I

should say. I would like to briefly speak on 506(a). I think Your Honor, in the earlier hearing, was concerned about liquidated debt amounts. But if -- under 506(a), I think our position is that the setoff interests -- let's take a step back.

The relevant facts for adequate protection is the amount of our interests in that security and so we're looking at the -- we're looking at the receivables going back and forth. So that's the payment at issue, not the debts that each of the sides are contending they have because we don't disagree at the time of the last hearing, both sides had disputed debts.

I think -- because, you know, this motion was brought before the -- Your Honor under 363(p) and it starts with the debtors' burden as -- burden of proof on adequate protection. We understand that under (p)(2), it -- as the entity asserting an interest in property, we have the burden of proof on the issue of validity, priority, or extent of such interest.

And so as to validity, our argument is that the Court has already recognized it -- United States' setoff rights by virtue of what happened last hearing. But, again, that was in the context of the Court considering the administrative freeze and what was appropriate to setoff at that time.

THE COURT: Right. But, there -- right, what the -- what was told to me at that time was there was -- and, again, I appreciate that life is more complicated than what I understood then but, basically -- I don't remember the numbers precisely but there was a larger amount that the Government was seeking and a smaller amount that the debtor conceded was due.

And I said, as to the smaller amount, that has a setoff right because that amount wasn't unliquidated and disputed. But I don't think anything I said suggests that, as to an unliquidated and disputed amount, there's a present right of setoff.

The whole point of my suggesting an estimation was a means to solve the problem that the holder of an unliquidated and disputed claim doesn't get to set off.

Does that make any sense?

MR. GESMUNDO: That would make sense, Your Honor, yes.

THE COURT: Okay. And I do -- I don't mean to cut you off. I want to make sure --

MR. GESMUNDO: Nope.

THE COURT: -- I've heard and understood your position.

MR. GESMUNDO: No, and I was just going to say because -- it's in the alternative, validity, priority, or

extent, and the extent that -- of our interests is in the money that continues to flow because, in compliance with the Court's order, the Government has continued to pay properly invoiced receivables.

THE COURT: Okay.

MR. GESMUNDO: And so Your Honor mentioned the request for -- under 507(b) and has expressed sort of its position on --

THE COURT: Right.

MR. GESMUNDO: -- either how extraordinary it is or --

THE COURT: Right.

MR. GESMUNDO: -- however you would --

THE COURT: Right.

MR. GESMUNDO: -- you'd like to phrase it.

THE COURT: And you don't really point to me any -- to any authority in which courts have ever done what you're asking me to do, have you?

MR. GESMUNDO: Not -- other -- you mean as far as ruled on as -- versus stipulations of adequate protection where the parties --

THE COURT: Stipulations --

MR. GESMUNDO: Yeah.

THE COURT: -- happen all the time. Right. But a court --

MR. GESMUNDO: Exactly.

THE COURT: -- over someone's objection says I'm going to give you an adequate protection claim that's going to come ahead of secured creditors. Right? There's no -- the Code doesn't allow -- parties can agree to whatever they want to agree to.

MR. GESMUNDO: Correct.

THE COURT: But the Code doesn't allow me to -- the debtor is not agreeing to that, the secured creditors aren't agreeing to that, and there's no authority to permit me to do that over their objection, right?

MR. GESMUNDO: Not that I'm aware of.

THE COURT: Okay.

MR. GESMUNDO: But --

THE COURT: Very well.

MR. GESMUNDO: -- the only other point I would point out as far as our request for relief was that -- and it's -- part of why we filed the motion is to sort of bridge that what we believe to be a gap with debtors' counsel about what we're asking for because their papers talk about an indiscriminate or inordinate amount or sort of not finite amount and what we're actually asking for is it would have a cap, right? It's limited to the lesser of the amounts flowing from the Government to the debtors versus what they would owe us and so that's what I would point out on that

front, Your Honor.

And so, ultimately, we feel like it's a reasonable ask from the Government to simply preserve their rights because the -- you know, the fixing of the claim, the disputes over those claims, those can be addressed at a later time.

But in the meanwhile -- at the -- at this point in time, the U.S. is the one that's continued to bear this risk, and you've spoken about the fairness of it.

THE COURT: Right, and I understand that. I think that's the -- that's just the consequence of the holding a disputed claim and I remain available if you file a motion for estimation to try to get it heard as promptly as possible.

I understand what leads you to say we shouldn't be paying cash out the door today when we are a net creditor who's owed money. I'm not unsympathetic to that concern but I'm just applying the law as I understand it to the facts as I understand them and I think, as I now understand it, that the Government's claim remains an unliquidated and disputed claim, which means you don't have setoff rights, which means you've got to meet your obligations to them, whatever those obligations are.

And, look, there are ways -- there are -- there -- the law permits contracts to create the right to set off

against unliquidated claims. The law doesn't do that by default and no one has pointed to language in this contract that changes the default.

So, again, I'm not unsympathetic to what you're saying. I just think the law here sort of is what it is and the answer is the holder of an unliquidated claim against a debtor who owes money to the debtor is required to pay the debtor the money it owes and, you know, its claim gets fixed when it gets fixed, and I'm available if you file a motion but I don't think the law gives you more than that.

So, for that reason, I'm inclined to deny the motion, unless Mr. Dean wants to get up and talk me out of that.

MR. GESMUNDO: Thank you.

MR. DEAN: I do not, Your Honor. Thank you.

THE COURT: All right.

MR. DEAN: I just want to address one issue because I know we're all getting along today, but we were accused of not being honest with the Court about this qui tam situation so I just want to note that we filed the motion to contempt. The Government had a chance to assert whatever claims they were going to assert against us and they did not mention these.

THE COURT: But in defense -- in their defense, it's -- right, the argument is it was under seal.

MR. DEAN: Agreed, from our perspective, too.

THE COURT: Right. Okay. No -- okay. So that's why I said what I did at the beginning, which is I get it.

MR. DEAN: I just want to make it --

THE COURT: And that's complicated.

MR. DEAN: -- clear though, we didn't know that they were going to use the qui tam to allege setoff. It wasn't even the subject of the hearing --

THE COURT: All right.

MR. DEAN: -- Your Honor. So I just want to make clear there was no --

THE COURT: All right.

MR. DEAN: -- intention on our part not to disclose something to you.

THE COURT: That -- I didn't think there was, which is why I said what I did at the top so --

MR. DEAN: That's all I have to say on this one, Your Honor.

THE COURT: Okay.

MR. DEAN: Thank you.

THE COURT: Okay.

MR. AXELROD: Your Honor, Tristan Axelrod, Brown Rudnick, for the Committee. Might I be heard --

THE COURT: You may.

MR. AXELROD: -- very briefly on this?

I want to say a few words, not because I disagree with the ruling just now. I very much don't. But I think there are issues that should be spoken to because the Government's response even just on the record right now feeds into some of the discussion that we're going to have in the next few minutes on what they allege is a contract dispute and I want to talk about how that is impacting my constituents like really by way of explaining why this is a bankruptcy issue that implicates this Court's jurisdiction.

Just taking a step back, Noble is a prime contractor. Like a general contractor for home building and so on, its job, for the most part, is not to be the manufacturer and supplier. I think everybody knows that. That's why we have hundreds of millions of dollars in debts to suppliers that are my constituents.

So the Government obtains the prime contracting services from Noble to meet its needs, supply -- for government purposes without having to deal with every single producer of screws and MREs and whatever else the Government might need.

The DLA pays the prime contractor a premium for the service and the prime contractor is essentially supposed to be a pass-through. It takes a fee. It takes a premium. And if it bids its contracts correctly and it maintains good relationships and so on, it should be profitable because it's

just passing costs back to the suppliers, taking its costs for itself, plus a margin.

Obviously, that did not happen successfully for Noble. There's been some ink spilled as to why. Noble covered some of its losses with secured debt and secured debt for other business purposes as well, I'm sure. The secured lenders were involved in the company for a time. And when the company ran out of funds over the last year, it stopped doing that pass-through process.

It took supplies from suppliers under contract. It delivered those supplies to the Government. It got the money from the Government, with exceptions that we're discussing today, and it sent those funds to the secured lenders.

In the two months before the bankruptcy, tens of millions of dollars went to pay down secured debt and this -- basically, the same amount caused an increase in supplier debt.

Why do I mention this? Well, partly, my constituents are very angry about it. But the Government -- I think one of the first things out of counsel's mouth was the Government is financing these cases. I think everybody who's in the courtroom today would say their clients are financing these cases. Certainly, the debtors; certainly the secured lenders; certainly my clients.

There are issues raised by the contract dispute and issues raised in the adequate protection motion. The Government says the reality of what's in the adversary proceeding is a contract dispute and, respectfully, there's no indication of that that we can see in the record.

The -- as been -- has been said, is going to be said -- I'm not going to speak too much on the evidence. The Government is holding goods. They were supplied by my constituents. The Government is not returning them. It's just refusing to pay and process paperwork and so on. But we don't have an allegation, to my knowledge, that the issue is that the goods are defective. It's a dispute over the services of the prime contractor.

Getting -- cutting to the point, Your Honor, the adequate protection motion, it is a motion for a claim and, in fact, it even says in the Government's reply at paragraph 9 that they plan to make proofs of claim for billions of -- over a billion dollars.

That implicates jurisdiction in a manner that I don't think was previously discussed, which is I think 106(c). The Government is going to have a proof of claim and we know that this contract dispute concerns its dispute over the services of the prime contractor.

So what it seems like the Government is saying is there's no basis for jurisdiction under 106(c) yet because

the Government bar date hasn't come yet but we're going to have a claim. At that point though this dispute will already be in the Court of Federal Claims and it's out of the hands of the parties and the stakeholders in the bankruptcy.

So that's why it connects to the adequate protection motion. That's why I wanted to bring this up now. I think there's a real issue beyond -- even when you get to whether this is a contract dispute. If it's a contract dispute that hinges on issues that are going to be the subject of a billion dollar claim in this bankruptcy that's essentially like a mandatory counterclaim, then it really ought to stay in this bankruptcy.

And all of the parties that are here today and might come later are going to want to participate in discussions of this contract dispute, whether it's here or in the Court of Federal Claims. But the nature of the bankruptcy suggests it really ought to be here.

THE COURT: All right. So what exactly am I supposed to do with that argument? Help me.

MR. AXELROD: Excuse me, Your Honor.

It's really trying to make the connection between --

THE COURT: So you're not saying that, under 106(b) and (c), a proof of claim that is likely to come but hasn't yet been filed is treated like a claim that's been

filed, are you?

MR. AXELROD: I am not.

THE COURT: Okay.

MR. AXELROD: But I am pointing to a fundamental unfairness of what would happen if -- on the basis of a claim not being filed yet, even though the Government promises to bring it --

THE COURT: Yeah. And the law -- so, look, let me say a couple of things just to -- about how I view my job.

You know, when -- because sort of what you're saying is it would really be best for the estate and parties in interest if I would do X and I should really take that very seriously, and I do. But when I've got a pure -- when I have a pure question of law, I've got to call it the way the statute is written and the cases come out.

When I've got a matter that's committed to my discretion, I am not shy about saying I care about having the cases succeed. I care about the purposes reflected in the code of maximizing value and facilitating reorganization and getting to good outcomes for the parties in the case and when given the choice, that's how I'll exercise my discretion.

But when I've got just a question of law and there's just an answer, I don't get to say I'd rather the law be different; it would be more consistent with the overarching purpose if the law were different and, therefore,

I can do what I feel like instead of what the law requires.

So, to the extent someone wants to get up and say, Judge, the law requires you to do X but it would be really better for my clients and the parties to the case if you would do the opposite, let me just tell you now you're going to lose. Okay? Is that -- am I clear enough?

MR. AXELROD: You're very clear, Your Honor.

THE COURT: Okay. Very well.

MR. AXELROD: I think our comments later in the day may be directed to why we believe you do have a choice.

THE COURT: Okay.

MR. AXELROD: But, clearly, I've made the point as far as I need to make it right now.

THE COURT: Very well.

MR. AXELROD: Thank you.

THE COURT: Okay. Anything else?

(No verbal response)

THE COURT: All right. So I'm going to deny the motion for adequate protection and we can talk about forms of order and all of that when we finish the other matters in front of us.

What's next?

MR. DEAN: Lift stay, Your Honor.

THE COURT: Very well.

MR. LAMB: Good morning, Your Honor.

Ryan Lamb, Department of Justice for the United States. With me is co-counsel, Alastair. Behind me is counsel for DLA, Steven Sosko and Andrew McQuire, as well as our declarants, Amanda Parker, John Cuorato, and Lauren Vendetti.

As we understand the Court's comments at the beginning of this hearing that all of the parties -- that Noble's rights and ability to contest any orders would be preserved if our order is entered. We fully agree with that position.

I mean I think our position is that if that's the Court's view, we wouldn't see the need to kind of go through --

THE COURT: Right.

MR. LAMB: -- testimony --

THE COURT: And that's --

MR. LAMB: -- and line-by-line.

THE COURT: -- this is a motion for relief from stay. So what you're asking me is the right, asking me for is the right to go exercise your non-bankruptcy rights.

You're not asking me to decide the metes and bounds of your non-bankruptcy rights. If the debtor wants language in the order that makes perfectly clear if there's any ambiguity that their rights, as to what their non-bankruptcy rights are, are not adjudicated in this motion,

are fully preserved, I take it you'd work with them to get to such language.

MR. LAMB: We totally agree with that, Your Honor.

THE COURT: Okay. All right.

Well, that's my -- my instinct is they're not really disputing -- and, again, I'll hear from the debtor -- but as I understand it, they're not saying they dispute your right to stay relief; they're saying, yeah, but by -- but some of the rights you're asking to exercise are rights you don't have under non-bankruptcy law and I think that's interesting. And they might well be right, but that this isn't the forum for that.

MR. LAMB: We would agree with that, Your Honor. I do not -- I didn't interpret -- and, certainly, debtors can correct me that they're asking for that. We would simply -- we're simply asking that the lift -- the automatic stay be lifted for the contracts so that if there are any rights that the debtors want to exercise or any rights that we want to exercise, that those are fully preserved --

THE COURT: Right.

MR. LAMB: -- non-bankruptcy rights are fully preserved.

THE COURT: Okay. All right.

So, why don't I hear from Mr. Dean or whoever else would like to help about how I'm thinking about this

question, just thinking about what a motion for relief from stay is.

MR. DEAN: Well, look, from our perspective, they have the initial burden under 362 to show good cause to lift the stay. And from our perspective, the Government cannot, by law, legally, terminate orders that have already been delivered. You won't hear that they think the --

THE COURT: No, but --

MR. DEAN: -- oh legal right to do that.

THE COURT: So I understand that, but, look, the question of cause, you don't really contest in the sense that --

MR. DEAN: In scope we do.

THE COURT: Okay. Imagine I read the motion to say the following, it's saying, Judge, to the extent we have non-bankruptcy rights, we'd like to exercise them, period.

MR. DEAN: Yes.

THE COURT: You know, we're not asking you to adjudicate what they are, but to the extent we have them, we want to go enforce those rights outside of bankruptcy.

Do you oppose that relief?

MR. DEAN: Not in a vacuum, but I would like to give an explanation as to why I think this would be unfair and that they have failed to meet their order on the delivered orders, because as you're going to hear today, we

believe that the Government improperly issued a termination notice with respect to orders that were delivered prior to the date of termination.

What this is, is just stage one of stage four and we're going to be right back in front of you on another turnover action again if they do this because they're going to use it -- they're going to improperly use this as a mechanism to refuse to process orders and not pay us again. We're trying to avoid --

THE COURT: So -- so --

MR. DEAN: -- an additional litigation on this matter.

THE COURT: So, I hear you there but I guess I see this question through the lens of a statute that says, to me as I read it, disputes between government contractors and the United States, that the meaning of those contracts are heard by the Court of Federal Claims. And I hear your argument as essentially trying to side door in a dispute that the statute means to send to a different court.

MR. DEAN: It's not a *bona fide* dispute, though, and I don't think you'll have --

THE COURT: To the extent it's not a *bona fide* dispute, then it'll be -- look, if I rule for you on turnover, that's presumably going to be binding against the Government and that will be that.

MR. DEAN: Okay. Fair enough.

I want to -- I do want to make one more comment about the form of order, though --

THE COURT: Okay.

MR. DEAN: -- and that is this. They've got this provision in there that says we have to go to the contracting officer to deal with disputes. We want to preserve our rights to come back here for turnover and we think -- we do not think you should be ruling on where the next fight happens.

THE COURT: I think by saying, "Everyone's rights are preserved," I mean everyone's rights are preserved. And so, you know, look, we'll address, in connection with the adversary, whatever we address. And whatever I decide, if I enter an order, is going to be as preclusive as it is.

MR. DEAN: Okay.

THE COURT: But that --

MR. DEAN: I understand your position. I hear you. Whatever happens on turnover is going to be applicable to this anyway, and --

THE COURT: Let me see if the Government disagrees with that. Mr. Lamb, do you disagree with that?

MR. LAMB: Disagree with the --

THE COURT: The proposition that if I enter a ruling on turnover -- you can disagree with that and you can

appeal it -- but that unless and until it's stayed or reversed, it's going to be binding on the Government and it has whatever consequence it has.

MR. LAMB: Yes, we would agree with that, I think, Your Honor.

THE COURT: Okay. So I think that ought to resolve this question, unless there's something I'm missing.

MR. DEAN: Yes. Just for the record, we would ask for the provision that they put in the order with the forum be stricken.

THE COURT: I'm going to have the parties meet and confer about the form of order and if there's a disagreement, I'll resolve it.

MR. DEAN: Okay. Very well, Your Honor.

But that ruling, I don't think we have a need to call Mr. Albergotti to the stand because the evidence is not -- we have a ruling as a matter of law.

THE COURT: Right. Okay. All right.

So, from the Government's perspective, I'm inclined to grant the motion, but it's not adjudicating any question of what the scope of their rights or adjudicating the question of where further disputes are to be resolved. We'll do this as generic an order as we can that says the Government has relief from the automatic stay in order to enforce its non-bankruptcy rights, period, and we'll stop

there.

MR. LAMB: That's perfectly acceptable, Your Honor.

THE COURT: Okay.

MR. LAMB: We're glad to work on a form of order.

THE COURT: All right. Very well.

MR. DEAN: Thank you, Your Honor.

THE COURT: Okay.

MR. DEAN: And then we may be here a while on the motion for summary judgment. Does it make sense to take a short break before we start that?

THE COURT: I think that probably does, but particularly if you're going to resolve it for me. But even if not --

(Laughter)

THE COURT: Very well. Okay.

So it is now 11:06. 11:15? What time works for the parties?

MR. DEAN: That's fine with us, Your Honor.

MR. LAMB: That's good enough.

THE COURT: All right. Very well.

So we'll see everyone at 11:15. Until then, we're at recess.

MR. DEAN: Thank you.

(Recess taken at 11:06 a.m.)

(Proceedings resumed at 11:15 a.m.)

THE CLERK: All rise.

THE COURT: Be seated.

MR. DEAN: Your Honor, in the opening paragraph of our reply brief, we make the sometimes dangerous decision to tell the Court that the question before the Court is a simple one, because when you peel back the onion --

THE COURT: I thought it was you're just trying to let me know that maybe I can understand it.

MR. DEAN: Yes. When you digest the various arguments that the Government has made questioning performance and when you compare those arguments against what is and what's not in the evidentiary record, what jumps off the page to us is not what is dispute, but rather what's not in dispute. So let's start with what's not in dispute.

The Government does not dispute that the orders were delivered by Noble prior to termination, save for 2.2 million of the 14 and a half. And on that two-two, they're clearly and objectively wrong. It's clearly contradicted by the evidence, as we lay out in paragraph 27 of our reply. The Government doesn't dispute that the orders were retained, save for three emails the Government identified that are wholly reviewed on their face, as described in paragraph 29 of our reply. The Government argues, but presents no evidence that the orders were rejected. The Government

doesn't dispute that none of the orders were refused or returned to Noble. The Government does not raise material issues with Noble's performance relative to its right to payment.

This is Contracts 101, Your Honor. We have purchase orders. We have deliveries prior to termination. We don't have evidence of any rejections. We certainly didn't get any of the goods back.

THE COURT: Mr. Dean, can I ask you this question, shipper believes -- sells -- sends widgets to buyer and buyer doesn't pay for the widgets. Shipper sues -- seller sues buyer for the value of the widgets and comes to court and says, I shipped the widgets. Here is my FedEx invoice showing delivery to buyer. Buyer gets up and has a witness say in a declaration, That's really interesting, but I didn't get them.

Is that resolvable on summary judgment?

MR. DEAN: I don't think that's what happened here --

THE COURT: Okay. All right. Okay.

MR. DEAN: -- but I will tell you, I would say it depends on what evidence contradicts that statement.

THE COURT: Fair enough. Fair enough.

But if -- there's a point --

MR. DEAN: Because there are -- what the

Government is doing here is saying your evidence of receipt isn't good enough or its shipping. They're not saying they didn't --

THE COURT: Well --

MR. DEAN: Nowhere will you hear them say they never received it.

THE COURT: Well, let's -- why don't --

MR. DEAN: Okay.

THE COURT: I mean, this is going to be sort of in the weeds --

MR. DEAN: Right.

THE COURT: -- but I think I'm going to need to get into the weeds and work my way through this.

MR. DEAN: Well, one of the other things we learn in Contract 101, I think we're getting to, is this concept of implied acceptance. It's not a controversial principle of commercial law. It's a facet of everyday life and it's not one that's contested as applied to the Government under the FAR either. If you order something and you don't want to pay for it and you want to return it, you best move quickly to return it. That's true, Your Honor, whether we're talking about what my kids bought on Amazon yesterday or with respect to Government contracts. The same principles apply.

THE COURT: Do they have your account?

(Laughter)

MR. DEAN: Unfortunately, Alexa orders things.

(Laughter)

MR. DEAN: Now, the Government here, Your Honor, says acceptance cannot be implied under the FAR without an affirmative act, which, of course, remains under their exclusive control, ironically. The Government is, of course, wrong about this because as I mentioned, the FAR explicitly incorporates the principle and implied acceptance in the face of untimely rejection and the case law clearly holds the Government to this contract principle.

But to be sure, the question before the Court, as I mentioned, is a simple one. Can the DLA withhold payment of goods and services that Noble provided to the Government and which the Government did not reject based on its own refusal to execute a validation form?

The answer to that question, Your Honor, is, of course, no. There are no material disputes of fact or *bona fide* disputes that need to be resolved to decide this issue; in fact, the Government admits in its own filing that the critical issue is whether the goods or services were delivered after August 27th, when the termination notice was issued. For goods and services delivered on or before that date, the Government had an obligation to validate their delivery. This is consistent with its own termination notice, which expressly agreed the process for payment of

goods and services delivered on or before the termination date.

Now, Your Honor, despite what the Government expressly said in the termination notice with the contract officer and for reasons unknown to us to this date, the Government decided just to stop validating any orders after the termination date, even the pre-termination orders that the termination notice said would not be affected by the termination. The Government has provided no reason for refusing to validate these, other than to maintain this litigation posture or preserve whatever setoff rights they may attempt to prove in the future.

More, and this is important, does the Government offer any explanation whatsoever as to why 60-plus days might be necessary to validate orders, given their own stated internal policy and the undisputed course of conduct that saw it done here in five to seven business days on a regular basis, prior to the termination. There is no explanation, Your Honor, or evidence of a *bona fide* dispute.

The Government's other challenges, which are fully addressed in our papers and I'm not going to belabor all of them, though, we might get into some back-and-forth about the lines, so I welcome that --

THE COURT: Right.

MR. DEAN: -- are artificial and immaterial to

Noble's matured right to payment. We submitted proof of delivery of all of the pre-termination goods and services provided. The Government didn't rebut any of this proof with any admissible evidence showing that the goods and services were not delivered or provided. They just say you're tracking is not good enough. You needed a goods receipt from the customer, which is completely inconsistent with the common practice of them posting and validating the deliveries prior to this dispute.

The Government has provided no legitimate excuse for which discovery would be helpful as to why it is still refused to this day, for more than 60 days, and for much longer than that in some cases, to validate deliveries that ordinarily and undisputedly take a week or less.

Now, turning to the Government's objection to our evidence, the objection to the admissibility of the schedule attached to the Albergotti declaration should be overruled. The declaration filed with the opening brief and its corresponding chart is a voluminous record compilation that's admissible under Federal Rule of Evidence 1006. As the Government acknowledged, we provided them with the underlying supporting files in a document production at the time we filed the exhibit.

Now, they misread a couple of those underlying files, so we brought those ones that they misread, into the

record in our reply. And there was one that they pointed out involving about $30,000 that was a mistake in download by the company that we corrected in the reply to show the appropriate order confirmation.

Now, we were not required to submit the voluminous files, themselves, to the Court and I can assure you that you would not have wanted us to do so. The Rule requires us to provide the other party access to them and Mr. Albergotti is more than qualified to examine and testify as to what the corporate records show. The DLA's suggestion that Mr. Albergotti must have physically witnessed each delivery to possess the requisite knowledge to testify as to the corporate records showing delivery dates and to make a *prima facie* showing of delivery dates, should be rejected out of hand.

And so for those reasons, Your Honor, we think that the summary judgment motion, itself, should be granted and the cross-motion and the 12(b)(6) motion should be summarily denied. As we detailed in the briefing, Your Honor, turnover -- and I think -- and the Court's preliminary rulings address this -- but just for the record, I will note that we agree with you, that turnover is certainly appropriate and can be appropriate when matters involve contracts if the standard is met. And the Government's existence in a turnover dispute has no bearing because, as

you noted in your preliminarily remarks, Section 106 provides the express waiver of sovereign immunity with respect to 542 and a point that I just want to observe was notably absent from any of the Government's filings. They failed to recognize it at all.

Now, as for the amounts not subject to summary judgment, so we're talking about the four million that were not part of the summary judgment --

THE COURT: And any amount in which I might rule against you.

MR. DEAN: And any amount that you might rule against us on, the Court should accept the allegations as true under Iqbal, with respect to the 12(b)(6) piece of this and --

THE COURT: Yeah, but that's not -- the question is whether it's within the exclusive authority of the Court of Federal Claims.

MR. DEAN: Well, it is, but we allege in the pleadings that these are undisputed and I think you have to accept the allegation as true --

THE COURT: I understand that.

MR. DEAN: -- for purposes of 12(b)(6).

THE COURT: I understand that --

MR. DEAN: Now --

THE COURT: -- but I can also take notice of the

fact that the Defendant is the Government, right?

MR. DEAN: You can, absolutely.

THE COURT: Okay.

MR. DEAN: You can. But the question of whether the turnover elements have been satisfied --

THE COURT: Oh, I understand --

MR. DEAN: -- is another question.

THE COURT: -- I understand that.

MR. DEAN: On count -- on the portion of the four million relating to Count 1, that's -- okay, let me clarify. And then there's Count 2, which also relates --

THE COURT: Right.

MR. DEAN: -- to both, as well.

Now, we obviously argued in our papers that you should accept the D.C. Circuit Court's view of the contract count and we hear you. We understand.

THE COURT: Yeah, the Federal Circuit.

MR. DEAN: I don't think -- I don't think I'm going to convince you otherwise of that in argument --

THE COURT: Right.

MR. DEAN: -- so I will just say -- and I spoke to Mr. Lamb at break about this -- I think we are both in agreement that if there are any pieces remaining from this on Count 2 and you decide you don't have jurisdiction and dismiss, we would prefer a without prejudice dismissal

because we actually don't want -- we would actually rather prepare a separate suit to deal with --

THE COURT: Fine.

MR. DEAN: -- some issues that they raised about the contracting officer and the like and eliminate the turnover counts and clean it up a little bit if we decide we have to go down that road.

THE COURT: And, Mr. Lamb, do you disagree with that?

MR. LAMB: No, we agree.

THE COURT: Okay. Very well.

Okay. So what I'll do, then, is whatever I think I don't have jurisdiction to hear, to the extent there's anything -- and we'll come back to that -- but to the extent that's my decision, I'm happy to, then, just dismiss whatever is left without prejudice and you can all do whatever you want wherever you want.

MR. DEAN: Thank you, Your Honor.

THE COURT: All right.

MR. DEAN: I have nothing further, unless you have questions for me at this point.

THE COURT: So, look, I have to say, look, I understand that this is a voluminous amount of material and that this is complicated, but the sort of overlapping objections and the like make it hard for me to sort of figure

out on an issue-by-issue basis which of these 108 lines is subject to dispute and which isn't and what's the reason for each of them.

MR. DEAN: Uh-huh.

THE COURT: And so what I am inclined to think I ought to do -- and I apologize if this is going to be burdensome for everybody -- is to have us all do our best to sort of group these into categories and for me to rule on, is there a material dispute of fact or not on each, and then have that apply to the chart however it does.

MR. DEAN: I think the best way to do that is to look at the Cuorato declaration where the object -- and it's at Docket 19-2 -- and I'm happy to walk you through all of these --

THE COURT: No, so that's -- I'm on page -- what's sort of page 10 of the chart, the annotated chart. Is that where you are or...

MR. DEAN: Well, I'm looking at the filed declaration --

THE COURT: Okay.

MR. DEAN: -- and the groupings that he has.

THE COURT: Okay. We can certainly do it.

MR. DEAN: He actually groups them in narrative form --

THE COURT: Okay.

MR. DEAN: -- starting at paragraph -- the section starts on page 3 of paragraph 8 --

THE COURT: Hold on, I --

MR. DEAN: -- but the first one starts on paragraph 9 and goes through 17. And there are seven or eight of these groupings and they start with this.

THE COURT: Yeah, hold on one second, because I've turned the PDF sideways so I could read the chart --

MR. DEAN: Oh.

THE COURT: -- so now I need to turn it back so I can find that. Hold on.

(Pause)

THE COURT: So in the declaration, itself, you're -- I'm sorry, can you just give me the page number again?

MR. DEAN: It's Docket 19-2 --

THE COURT: Yeah.

MR. DEAN: -- starting on page 3 of the PDF. It's on paragraph -- it's starting on paragraph 8. It's kind of the introductory paragraph.

THE COURT: Is it -- it against with Exhibit E?

MR. DEAN: Yes.

So that's sort of the summary of the 108 lines.

THE COURT: Okay.

MR. DEAN: And then if you look at italicized

categories that they're objecting to, I think we should just walk through those groupings.

THE COURT: All right. Why don't -- before we do that, why don't I hear from the Government, big picture, and then we'll --

MR. DEAN: We'll do that.

THE COURT: -- sort of turn to the detail after we orient ourselves if that's agreeable?

MR. DEAN: Thank you.

THE COURT: Mr. Lamb?

MR. LAMB: Thank you, Your Honor.

Ryan Lamb for the United States.

I think, you know, the United States certainly does identify that --

THE COURT: So, Mr. Lamb, before we get into the detail --

MR. LAMB: Yeah.

THE COURT: -- I want to make -- because, look, and you don't -- I want to make sure I've given you the chance to be heard because I -- before we get into the detail, I tentatively concluded that to the extent there's something that turnover applies to the Government the way it does to everybody else. Let me pause there for a second. In light of the 106(a) waiver as to 542, if something meets the statutory requirement for turnover, it applies to Government,

even if the underlying source of the obligation is contractual.

Do you disagree with that?

MR. LAMB: Do not disagree with that, Your Honor.

THE COURT: Okay. And so then there's the question -- and I accept your argument that real disputes about what's owed aren't amenable. There are a lot of cases that say that to resolution by turnover and so the question is, where's the line? And there's no case that tells me exactly that the question is the same line that's drawn by Rule 56, but I don't have a better alternative. But before I adopt that, I want to hear you out. If you think that's wrong, I want to give you a chance.

MR. LAMB: I haven't -- we haven't had the opportunity to really look into that either. I do not believe you're wrong in that being the standard.

THE COURT: Okay. All right.

So then you agree, essentially, at least for conversation's sake, that to the extent they could establish their entitlement to money as a matter of summary judgment, then it's subject to turnover and then there's no sovereign immunity. And so the question I really have is, is there a real dispute about these amounts or not?

Okay. So, I think we're in agreement about the exercise, then?

MR. LAMB: I think we are, Your Honor. We had taken the approach of the total amount and is there any -- is there disputes or are any of the amounts -- any amount of the 14 million, is that subject to, you know, does it qualify for turnover as a block amount. That's how we approach --

THE COURT: Okay. So I don't think that's the right way to think about this.

MR. LAMB: All right.

THE COURT: They're thinking of turnover of, like, on a dollar-by-dollar basis --

MR. LAMB: Okay.

THE COURT: -- or line -- let's think of it as line-by-line --

MR. LAMB: Right.

THE COURT: -- through the 108 lines. We have to ask that question individually. And that just seems to me just subject to the ordinary way you think of a contract dispute when there's lots of different line items, you view each of them, either it gives rise to a claim or it doesn't.

MR. LAMB: Right.

THE COURT: And then a dispute as to one doesn't mean there's a dispute as to all.

So, okay. So then I think what we've got to do is figure out, as to the 14-some -- and let me ask this question and this may be to both of you -- in the papers, when I read

them, there were some amounts where the Government said, we're going to pay you on October 21st. It's now October 28th.

I take it, as to those amounts, those have been paid and that's no longer in front of me?

MR. LAMB: I haven't been told otherwise. I presume that they've been paid.

THE COURT: Does -- Mr. Dean?

MR. DEAN: I don't know the answer to that. I can check with the company.

THE COURT: Okay. Let me suggest at some point we should figure out the answer to that because if there's something that is, in fact, moot, I don't think I ought to be exercising judicial authority and giving you a decision.

MR. DEAN: We're checking on that now.

THE COURT: Okay. Very well.

So, do you disagree with Mr. Dean's suggestion that -- well, I guess we can -- we can have a conversation about whether the declarations that they've submitted are properly cognizable on summary judgment, right. What is your -- and I take it the bid and ask there is Mr. Dean saying this is a summary of voluminous documents that's admissible under the rule that permits that and we've given you access to all the underlying documents.

And, again, this is just -- you know, the standard

at summary judgment isn't exactly the same as at trial. It just needs to be something that is likely to become admissible. So, what's your argument that what they're -- what they've given me isn't likely to become admissible?

MR. LAMB: So it is our understanding that the declaration relied upon review of the debtors' internal, what they call their NetSuite invoicing system. We have not been made -- those documents and records have not been available to us to review, so the summary is a summary of a review of those documents or of that system that we haven't reviewed.

What was provided for the Government to review was a series of emails and UPS receipts and matters like that.

THE COURT: And the underlying invoices, right; the things that feed into the NetSuite system, you had access, to, at least?

MR. LAMB: That's our understanding.

THE COURT: Okay. So I guess I'm inclined to think, then, at least for summary judgment purposes that's sufficient.

MR. LAMB: Uh-huh.

THE COURT: That, look, if we had a trial, we'd have to bottom it out more thoroughly, but that there's no particular prejudice. If you had the underlying material and had the ability to do the math to figure out does this map, and I take it you don't dispute that you've had that

opportunity?

MR. LAMB: We've had the opportunity to review what they provided to us --

THE COURT: Okay. And --

MR. LAMB: -- to map it out to the extent we were able to.

THE COURT: Okay. And so, to the extent the math didn't add up, you have the ability to come and tell me, Judge, you know, they're saying two and two is seven and they're wrong.

MR. LAMB: Correct.

THE COURT: Okay. So then I don't think there's prejudice to -- so I'm going to -- I don't have an admissibility question, *per se*, but I'm not going to strike the declaration. I think that I can work my way through this because we're all looking at the same numbers.

MR. LAMB: Understood.

THE COURT: To the extent we're concerned about substantive fairness, I want to be careful about it, but I don't think they're saying we believe they made these numbers up.

MR. LAMB: We don't believe they've made the numbers up, Your Honor.

THE COURT: Okay. Very well. So, then, we're just going to work with the numbers.

And I think what I want to understand, and Mr. Dean's suggestion is that we go through the categories of objections that are in sort of your declaration so that I can understand where there's a factual dispute. I start out with the view that having a party say, I've shipped you the stuff; you owe me the money, is a starting point and that you have the opportunity to say, No, there's a factual dispute about whether we owe you the money. Here's what it is.

MR. LAMB: Right.

THE COURT: And if that's a real dispute, then it's not subject to turnover and if it is, then -- right. Okay. So, I think we're on the same page.

So, and I think what we ought to do is go through, beginning with the bottom of page 3 of your declaration, the bases for saying particular lines are disputed, and then I'll try to do my best to make decisions about each of them and we'll see where we are. Does that make sense?

MR. LAMB: I think I understand, Your Honor.

THE COURT: Okay. So beginning of paragraph 8, paragraph 8 is introductory and then, so paragraph 9: Proof of delivery. DLA found Noble's proof of delivery insufficient for 73 lines and it's about $12 million. For most of them, nothing in the proof shows that the customer received the goods. For others, the proof of location shows a location other than the one the order requires.

So help me understand what the record before me shows with respect to this question.

MR. LAMB: So the debtors are required to provide a proof of delivery upon delivery of the items identified in the order. It's a document that's provided through the electronic system that the parties communicate through. What DLA found is for 73 of those lines, the proof of delivery that was supplied by Noble was insufficient in some material aspect and either didn't demonstrate that the customer received the goods or that it was -- or that it was delivered elsewhere.

THE COURT: Okay. And so where do I look for the detail? Is this reflected in the line-by-line?

MR. LAMB: My understanding is that it is, Your Honor.

THE COURT: Okay. So --

MR. LAMB: And just for clarity, Your Honor, we do have our declarant here if the Court does have questions.

THE COURT: Yeah, and I've got a motion --

MR. LAMB: And I understand, yeah.

THE COURT: -- and I'm sort of pointy-headed about what my task is.

MR. LAMB: I understand.

THE COURT: So let's sort of keep going through the categories so that maybe this will help. So paragraph 10

says receiving reports. Only 21 lines had a receiving report signed by a Government representative. For the other 87 lines, Noble's proof is a carrier's record, a contractor document, or an email.

So let's just talk about that for a second. Imagine they have a carrier's report that says we've delivered it to such and such place. I start out, as my question to Mr. Dean suggests, saying if you've got a witness who's saying I didn't get it, then I've got a dispute.

MR. LAMB: Uh-huh.

THE COURT: On the other hand if you're saying, I never signed for it, but I don't deny that I got it; I'm not sure that that's a factual -- that that's a dispute about your obligation to pay. So I sort of want to understand. Only 21 have a receiving report signed by a Government representative.

Are you saying there's some principle of federal contracting law that says you're obligation to pay turns on having a Government contracting officer sign the document?

MR. LAMB: It doesn't turn on when the Government entity or Government representative signs a receiving report.

THE COURT: Okay.

MR. LAMB: All that does, under the federal -- under the FAR is that begins a time to calculate any interest owed once confirmation of the goods is received and --

THE COURT: Okay. So they're not seeking --

MR. LAMB: -- later invoiced.

THE COURT: -- they're not seeking the interest, right?

MR. LAMB: They're not seeking the interest.

So all the receiving report demonstrates is that something was received on that date. It doesn't demonstrate what was in the box. There's no information as to whether those goods conformed to the item that was delivered or not.

THE COURT: Okay. Okay. But if -- I -- do you disagree with the proposition that if they come forward with a declaration that says, We shipped the things that they had ordered and here's the shipper's report saying they delivered it, that that's not conclusive, right. If you came in and said, I ordered eggs and you sent me milk, then that's one thing. But if they say, I sent you eggs and we've got a shipper's report, in the absence of your coming forward and saying, No, they weren't eggs, it was milk, then there's not a dispute.

MR. LAMB: There's a dispute because the Government hasn't had the opportunity to review, to open the box and confirm what is inside of it.

THE COURT: All right. Because that's essentially a 56(e) argument that you need more time for discovery. But because these are materials in your possession, I'm not

inclined to treat that as a dispute. I think that, you know, here we are and we're on -- I shortened notice, but I think the circumstances were appropriate. So I do think it's -- I think it's not inappropriate to impose on the Government, the obligation to come forward in connection with -- you did a terrific job with a long declaration explaining what the issues were, but I think I've got to go by what you've actually raised, not by things you wish you had more time to have raised.

MR. LAMB: So that, and Your Honor's recitation may go to the dispute. The other issue is going to be whether or not the debt is mature. And whether or not it's mature --

THE COURT: Okay. Help me --

MR. LAMB: -- is a completely separate issue.

THE COURT: So help me with that.

MR. LAMB: So that the --

THE COURT: When do these debts mature?

MR. LAMB: So debts mature under the FAR, under these contracts when the Government has received the item, confirmed that -- and the debtors have demonstrated through the system where the parties talk to each other, that it, in fact, delivered; the Government's inspected; and then the debtors have invoiced.

The debtors haven't invoiced the vast majority of

these and because they haven't invoiced, the debt is mature. The amount owed is not known until the invoice appears.

THE COURT: So if the language says -- let's just work through this -- this is the language of 542(b):

An entity that owes a debt that is property of the estate that is mature, payable on demand, or payable on order, shall pay a debt to the trustee.

And I take it you're saying, Listen, Judge -- you're being very polite and all of that -- but payable on demand is a term of art that covers, like, notes and the like that are written to be payable on demand.

MR. LAMB: Yes.

THE COURT: Payable on order is also such a thing and so if it's just a sort of ordinary trade obligation, it's either matured or it hasn't. And these haven't matured because the process hasn't run its course.

MR. LAMB: Yeah, and the contractual relationship describes how the debt becomes matured. And so that -- because it hasn't occurred yet, these debts would not be mature.

THE COURT: Is that your position, that that's true of all of these amounts?

MR. LAMB: It's my understanding that for all of the amounts for which the debtors haven't provided an invoice for, none of these debts are mature.

THE COURT: And of the 108 lines, how many of them is there not an invoice?

MR. LAMB: I would need a moment to go through the orders.

THE COURT: That's totally a fair ask.

Mister -- let me -- I don't mean to be playing ping-pong, but I'm just trying to do my best to get to the bottom of this -- so, Mr. Dean, what's your response to that point about the debts not being matured?

Well, before you do that, because I think I know what you're going to say, let me ask you this question, Mr. Lamb. Imagine the reason it hasn't matured is because you've wrongfully done something that you're legally obligated -- that you've failed to do something that you're legally obligated to do and that's why the debt hasn't matured.

What do I do about that?

MR. LAMB: So for any -- so you're referring to the Government hadn't provided a goods receipt?

THE COURT: Right.

MR. LAMB: Yeah.

THE COURT: And you've done that because -- imagine -- again, you know, I'm not saying there's evidence that says this -- but imagine the Government just didn't want to pay and it was obligated to pay, but it just decided, we're going to throw sand in the gears, so we're just not

going to do these things we're obligated to do and then we'll say it's note matured because they can't invoice us.

Would that exempt that debt from 542, is that sufficient?

MR. LAMB: Can you rephrase your question, Your Honor, just so I understand?

THE COURT: Yeah. Right.

In order to mature it --

MR. LAMB: Yeah.

THE COURT: -- in order for the debt to be matured, you need to check a box, essentially, right --

MR. LAMB: Correct.

THE COURT: -- and you haven't checked the boxes. Well, imagine you were legally obligated to check the box, you just didn't because you didn't want it to mature. In that case, does the that preclude turnover from being available?

MR. LAMB: These, all of these contracts relate to the terminated -- to the contract that was terminated prepetition.

THE COURT: Right.

MR. LAMB: To the extent that the termination order controls whether or not DLA can or is even able to issue a goods receipt is controlled by that termination notice.

THE COURT: Okay.

MR. LAMB: So to the extent that DLA has received an appropriate, acceptable delivery notice and is unable to issue a goods receipt due to the termination notice, DLA is simply following its -- the termination notice issued to the debtors prepetition, which is exercising its rights under non -- of equitable non-bankruptcy law.

THE COURT: So help me with this. The termination notice says, We're done buying from you, right, essentially?

MR. LAMB: Yes.

THE COURT: And so help me understand, what's the effect of the termination?

MR. LAMB: The termination notice does a couple of things. It terminates the underlying IDIQ, which allows for the Government to make orders in the future.

THE COURT: Okay.

MR. LAMB: So it terminates the ability to make any orders.

THE COURT: Okay.

MR. LAMB: So that's thing one.

Thing two, it terminates -- it precludes the debtors from, or the recipient of this, from delivering any goods that are -- haven't been fully delivered and complied with the requirements under the FAR.

THE COURT: Okay. So if there are orders that are

in process, what's the consequence of the termination notice for orders that are in process?

MR. LAMB: So goods, let's say they're in transit --

THE COURT: Right.

MR. LAMB: -- they're on a truck somewhere.

THE COURT: Right.

MR. LAMB: It is, for those goods, it is my understanding that Noble's obligation is to issue a return to sender to prevent those goods from being delivered. The DLA -- the customers of the DLA are not obligated to accept those items.

THE COURT: The customers of --

MR. LAMB: So the DLA does contracting for the military. So the customers of DLA are the Army, the Navy, the --

THE COURT: All right. But if they're shipped and actually received and not returned to sender, is that the allegation here, with respect to the sum of this $14 million?

MR. LAMB: Well, the obligation would be on the sender, on Noble to have the goods returned. To the goods either schedule them to be shipped back or what have you. Because the contract is terminated, the DLA cannot accept any goods after the termination event.

THE COURT: And so if, in fact, you have them,

then what? They should come pick them up?

MR. LAMB: Exactly, Your Honor.

THE COURT: All right. So, look, I'm going to -- so, I'm not a Government contracts expert, but I -- you know, I want to be respectful, but I sort of want to -- what I would like to do is try to figure out how do I put these disputes into categories and give -- do my best, by my lights, whatever that is, to answer the questions on a category-by-category basis.

Is there an easy way, easier than going through this declaration, to put these into categories like that or what's the best way, by your lights, to identify, here are the categories of questions that are raised by our dispute.

MR. LAMB: Certainly. I don't have an answer for you right now, but thankfully, we do have DLA counsel in the courtroom today.

THE COURT: Okay.

MR. LAMB: If we have a brief recess, we could come back to you with an answer to the question.

THE COURT: Would that be a useful exercise to get -- to have the parties talk and say, Judge, there are really six questions; here's what they are. I mean, I'm not -- I don't want to resist just doing my job and going through this and if you think it's all fully percolated in the papers, I'm happy to just keep going, but I'm struggling

to understand in a concrete way what the specific disputes are.

Mr. Dean, you look like you want to try to be helpful.

MR. DEAN: Well, that may be a good idea if we get stuck, but I think if you and I have a conversation first before that, I may be able to guide you in the right direction.

THE COURT: Let me give you that opportunity and then we'll come -- and Mr. Lamb, you're welcome to jump in whenever you'd like, so...

MR. LAMB: Thank you, Your Honor.

THE COURT: Okay. So if you have a view about the categories?

MR. DEAN: I do. I'd like to just tell you what our view is walking through them and then I think that'll clarify some things.

THE COURT: Okay.

MR. DEAN: And then if we have open issues, I'm happy to talk and go off the record.

THE COURT: Okay.

MR. DEAN: But I think some of this may be answered by some of the discussion that we're going to have.

THE COURT: Okay.

MR. DEAN: I first just want to confirm one thing

that you and Mr. Lamb were just talking about. This summary judgment motion has nothing to do with the goods that were on the truck or that were not received or delivered before the date of the termination notice. That's part of the four. And we intentionally did not bring those because we thought there may be, arguably -- these were the easier ones to deal with on summary judgment. So once --

THE COURT: All right. Tell me about the categories of things that are before me.

MR. DEAN: And I also have confirmation of what's been paid, by the way.

THE COURT: Okay.

MR. DEAN: So, let's -- if you look at the declaration, starting on paragraph 9, every time there's an italics --

THE COURT: Yeah.

MR. DEAN: -- that's a category. So that's what I want to kind of walk you through.

THE COURT: Okay. So let's go through that, then.

MR. DEAN: So the proof of delivery, basically, what they're saying is that we don't agree that the customer received it because we don't agree with your shipping confirmation. But the language is important because it says nothing in the proof shows that the customer received the goods, but they don't say that the customer didn't receive

the goods. They didn't come into court and say, We never got this --

THE COURT: Right.

MR. DEAN: -- or it's apples or it's oranges --

THE COURT: All right. Let me stop you there. When we look at your evidence, where do you come forward and say, We gave them the goods?

MR. DEAN: We gave them confirmation from the carriers that the goods were delivered. And they're saying because the customer didn't sign a receiving report, that's not good enough.

THE COURT: All right. I understand. I just want to --

MR. DEAN: That's the issue.

THE COURT: Let me just -- can we look at your declaration for a second? So that's D.I. 5, right?

MR. DEAN: I want to get the whole declaration, because I have it.

(Pause)

MR. DEAN: Okay. I have Exhibit 5 and the 108-line Exhibit E.

(Pause)

THE COURT: I understand that, but I guess I'm looking for, is there a textual statement that says, The stuff on Exhibit E is stuff that we shipped to DLA.

MR. DEAN: One second, Your Honor.

(Pause)

MR. DEAN: So at paragraph 19, Mr. Albergotti says, Attached is Exhibit C, identifying the contract number, the invoice number, the item delivered, the quantity delivered, and, critically here, the date of delivery. And the way that we calculated the date of delivery was either to look at the receiving report signed by the customer if we had it. We don't always have it.

THE COURT: Can we go back to paragraph 17, right. Paragraph 17 says Noble delivered certain goods to the contractually agreed-upon destinations or provided services to the appropriate party through the date of DLA's purported termination on August 26th.

MR. DEAN: Yes.

THE COURT: The Government retained possession of such goods, and this is a pre-termination delivery order.

Is all of the amount that you're seeking in that category?

MR. DEAN: Yes.

THE COURT: Okay. So I've got, now, a declaration that says we shipped the goods and the Government kept them.

MR. DEAN: And we provided them the underlying receipts.

THE COURT: All right. And for each order, either

the Government signed a receiving report or we've got proof of delivery and the Government hasn't raised any defects or non-conformities.

Okay. So that -- I just wanted to work through this from the starting point.

MR. DEAN: Correct.

THE COURT: So what we're talking about is $14 and a half million of stuff where I've got a declaration by a witness who says, This $14 and a half million of stuff was shipped and delivered and no one's complained to me that the stuff doesn't work.

MR. DEAN: That is correct.

THE COURT: Okay. And so then, from there -- and I apologize -- and it's all identified in the schedules and so forth and so on -- and so then, we've got the response that says, No, no, no, Judge, there are the following problems. And those problems are, first, as you're saying, for $11 million, we found the proof of delivery insufficient.

Okay. Now, I -- so let's talk about that. Is their finding the proof of delivery to be sufficient necessary for the debt to mature?

MR. DEAN: No, not from our perspective.

THE COURT: Let me pause there.

Mr. Lamb, do you disagree with that?

MR. LAMB: I very much disagree with that, Your

Honor. The debtors are conflating delivery with acceptance, which is a requirement under the FAR.

THE COURT: So now someone's got to show me the FAR. Where -- and that's in this record somewhere?

MR. LAMB: Yes, Your Honor.

So under the contracts, Your Honor, just to be clear, the party delivers the goods to wherever they're supposed to be delivered. Party -- Noble or the shipper provides a proof of delivery through the system where DLA and Noble communicate. The proof of delivery, then, triggers a review of the goods that were delivered to make sure they conform to the contract. If they do, DLA, then, provides a goods receipt in that system.

Upon the goods receipt being entered into the system, that allows Noble to provide an invoice in the system, which then triggers the payment obligation. It's the filing of the notice that makes the debt mature.

THE COURT: Okay. And what's your response?

MR. DEAN: The problem with that is that we can't issue the invoice until they acknowledge the receipt. And when they sent this termination notice, instead of doing it in the five to seven days they normally do, they just stopped. They stopped on everything, despite the fact that the text of the termination order that you were just hearing about. I would direct Your Honor to that at Exhibit D(1),

Docket 5-1. It's one of three. It's D(1) to D(3), but the relevant language is the same for all.

And the one I'm looking at now is Docket 5-1 at page 186 of 205 of that filing, and I think the language of this is important.

THE COURT: Hold on one second.

(Pause)

THE COURT: I'm sorry, this is Docket 51?

MR. DEAN: 5-1.

THE COURT: Oh, 5-1. I'm sorry. I'm sorry.

MR. DEAN: No worries.

THE COURT: I got it.

MR. DEAN: Exhibit D(1) of the declaration --

THE COURT: Got it. I apologize.

MR. DEAN: -- in the adversary.

THE COURT: Yep, yep, yep. Hold on. 5-1.

What page? Do you have the --

MR. DEAN: The second page of the letter, about three-quarters of the way down where it says, "Delivery of material after..."

THE COURT: Hold on. So 5-1, Exhibit?

MR. DEAN: D(1) and it's on page 187 of 205 --

THE COURT: Oh, thank you. Perfect. 187 of 205.

MR. DEAN: -- about two-thirds down.

THE COURT: Hold on. Let me get there in a

second.

(Pause)

THE COURT: Okay. I'm on page 187 of 205.

MR. DEAN: And this is the same for all three of the letters, but so --

THE COURT: Yep, I understand.

MR. DEAN: -- it starts with, "Delivery of material..."

Are you with me? It's the third-to-last paragraph.

THE COURT: Delivery of the material after the date of this notice.

MR. DEAN: Okay. So here's what the order says that you were just being told about. Delivery of material after the date of this notice -- so, that means stuff on the truck or stuff that hasn't even been put on the truck, which we're not dealing with here --

THE COURT: Uh-huh.

MR. DEAN: -- will not be considered for goods received -- that's not what we're dealing with -- posting and proof of deliveries indicating delivery of material -- delivery of material --

THE COURT: Yeah.

MR. DEAN: -- after the date -- delivery of material --

THE COURT: Right.

MR. DEAN: -- after. It doesn't say that they cannot post and confirm delivery of stuff after the termination notice that was delivered previously. But that's what they've done here and that's why we have a problem.

THE COURT: I understand that, but Mr. Dean, the -- I think the argument that the Government is making is, I understand that, and we may have breached our contract in that regard, but that's a claim for breach of contract, not a claim for a debt that is matured within the meaning of 542(b) and so that's an argument that you can take to the Court of Claims.

MR. DEAN: I -- if you took that interpretation, Your Honor, you would never be able to hold that a contract claim could fall within the scope of 542. If you allow the counterparty to the contract --

THE COURT: They usually don't. They usually don't. They do only when it's really obvious and when -- then it's matured.

MR. DEAN: Well --

THE COURT: And if there's a barrier to maturity, that is a contract violation. Then we've got a contract dispute, not a turnover action.

MR. DEAN: But, Your Honor, our argument is that they normally did this in five to seven days. They stopped,

and by stopping, they have constructively accepted the goods and they owe us the money. And the only thing to do is to allow us to invoice them.

This is the same hard argue -- fight that we had at the setoff hearing where they were blocking the CAGE codes and not letting us put the invoices in. This is what's going on here.

THE COURT: Let me hear Mr. Lamb, your response.

MR. LAMB: The parties are merely complying with their understanding of the contract, Your Honor. This really is a --

THE COURT: Do you dispute that, to the extent you received goods before the termination, that you're obligated to process them in the ordinary course?

MR. LAMB: (No audible response.)

THE COURT: You received them before the termination. So at the time they arrived, there was a valid contract.

MR. LAMB: Right.

THE COURT: You're saying you've got the goods. Do you get to say we're going to strangle the supplier and just stop the exercise of processing payments?

MR. LAMB: I believe the answer is, Your Honor, that if we received the goods and received a delivery report from the debtors, that their obligation to provide proof of

delivery --

THE COURT: Uh-huh.

MR. LAMB: -- if that happened prior to termination, then they would be processed in the normal course.

THE COURT: Okay. And imagine the evidence is that they were delivered and that you didn't process it in the ordinary course. Then what?

MR. LAMB: If we -- in the -- so, this presumes the debtors filed a proof of delivery and the Government hasn't filed its good receipt, which then triggers the invoice?

THE COURT: Right.

Is that -- Mr. Dean, that's the circumstance that you think we have here?

MR. DEAN: Yes, Your Honor. They're not engaging with us to -- in this process that they normally would engage with to get all of this done. They stopped engaging with us when the termination of this issue, so we cannot complete the paperwork because they refuse to engage with us on pre-termination delivery orders at all. This is a back-and-forth. This is an engagement. It isn't like, they have -- the people have conversations, send emails, they work it out. They literally stopped engaging with us at all on these issues and will not agree to allow us to put these invoices

in. And so that's why we've made the constructive acceptance argument that we've made because not only are they sitting around not doing anything, they haven't given us our stuff back. They still have it.

Think about, Your Honor, the way this could work. If the Government just decided they wanted to get a bunch of our stuff, not pay for it. They just issue a termination notice that day and say I'm not going to process anything. That's what's going on.

THE COURT: Well, look, so I understand that, Mr. Dean. The question that I'm struggling with is when do we say that's now a matured obligation and it's subject to turnover versus saying, you know, now you've got a claim against the Government for breach of contract that's hearable in the Court of Claims. That's where I'm struggling.

And I hear your point that says, look, there's got to be a limit. You don't get to, through, you know, sort of egregious misconduct, deprive someone of their rights. So I'm not unsympathetic to the common sense of that, but I'm just trying --

MR. DEAN: Well --

THE COURT: -- to get to the bottom of, what is -- again, I want to sort of wrap my brain around what exactly is the dispute in front of me based on the record before me.

MR. DEAN: Your Honor, the -- we believe the law

is when the debtor performs the obligations that it is supposed to perform to get paid and all that is left is this perfunctory action that somebody else hasn't taken, that's not --

THE COURT: No, I hear you.

MR. DEAN: -- that's no different than somebody just not paying us.

THE COURT: I'm open to the proposition that if the record shows that the only reason this debt isn't matured is because the Government hasn't taken a ministerial act that it's legally obligated to take, that that's insufficient to treat it as matured. And I'm trying to understand is that what's happening here or is there something else, based on the record before me?

MR. LAMB: I would say that's not what happened here, Your Honor.

THE COURT: Okay. So help me with the record, then.

MR. LAMB: So the record -- so the debtors have provided evidence suggesting delivery of something somewhere.

THE COURT: Right --

MR. LAMB: Right.

THE COURT: -- at the very least.

MR. LAMB: So all we know is that something was delivered somewhere.

THE COURT: Right.

MR. LAMB: We don't know what is in that because the debtors have not provided the proof of delivery.

THE COURT: Well, for some of them, they say they have provided proof of delivery, right?

MR. LAMB: For some they have. For many they haven't. And that proof of delivery is insufficient. It needs to happen prior to the termination.

THE COURT: No, that can't possibly be the answer, right, that -- what if -- if they've delivered the goods, right, and then, and you've -- and so you've got the goods and then there's a process that involves giving you the proof that involves -- because what the letter that is in the record says is basically, Stop sending me stuff. We don't want new stuff after today. But there's at least implicit, that to the extent there's stuff that you've already got, we're just going to run the course and pay you the normal way.

Do you disagree with that?

MR. LAMB: I don't disagree with that.

The issue is what the proof of delivery is insufficient for a wide number of the deliveries.

THE COURT: All right. So show me -- so, look, they -- where they have proofs of delivery, what in the record is here that says this delivery was insufficient and

here's why.

(Pause)

MR. LAMB: So, Your Honor, that would be in the spreadsheet to our declaration --

THE COURT: Uh-huh.

MR. LAMB: -- under the column "proof type." So carry -- and it describes carrier records, Government receiving reports, carrier records.

Carrier records are not proof of delivery. Carrier records are UPS delivered -- a receipt that UPS delivered something somewhere.

THE COURT: As to any of those goods, are you denying that you received them?

MR. LAMB: We're not denying that we received something, but we don't know what we received because the debtors never provided proof of delivery that identifies what's in the box and what -- and that what's in the box matches what's in the contract.

THE COURT: All right. So let me look at your exhibit real quickly.

(Pause)

THE COURT: So looking at your exhibit for a second, your chart, if you look at exhibit line 11, it says there's a carrier record and then next to it, it says, yes. I take it meaning that the carrier record is sufficient;

whereas, line 16 says carrier record and no.

Is that the relevant distinction between where you think the carrier record -- the yes/no column to the right of -- right -- the -- there's a column. It's the one, two, three, four, five, six, seven, eight, nine, tenth -- tenth column on your chart. What does the yes/no mean here?

(Pause)

MR. LAMB: Give me a moment, Your Honor.

THE COURT: All right. So, look, it's 12:15. I'm totally prepared to do my job to the best of my ability to stick through this, and while it's a slog, go through it all. Another alternative is for you to take a break and see if there's a way to organize this more cleanly.

And let me say the following, just notionally, I'm interested in understanding -- I take the statutory language seriously. That probably wouldn't surprise any of you. The debt needs to be matured to be subject to turnover. If there is evidence in the record that the debt didn't mature because there's a *bona fide* dispute about what your obligations are, then I'm inclined to say it hasn't matured. If the reason the debt hasn't matured is simply because the Government hasn't taken a ministerial step that it's legally obligated to take, then I'm less inclined to say that's an unmatured debt.

And so I'd like your help in understanding how do

I put the $14 and a half million into categories based on that principle. Does that make sense?

MR. LAMB: That completely makes sense, Your Honor.

MR. DEAN: It does.

THE COURT: All right. So why don't we take a break, unless there's something else that you think -- where I can be helpful to you all before then.

MR. DEAN: I don't think so, Your Honor. I think that works.

THE COURT: All right. So why don't you see if there's a way to sharpen -- and I'm not -- and, again, I'm -- I don't mean to be moving my job to you. I'm happy to be the one who makes decisions and, you know, and I'll stand behind whatever those decisions are. But I also, when we've got a detailed and complex record that you know better than I do, I want to see if we can put this into categories that facilitate the disposition of the case.

Does that --

MR. LAMB: That completely makes sense, Your Honor. We're happy to make your job as easy as possible.

THE COURT: All right. Okay.

All right. So why don't we do that. How long should we take at that break to give you all a reasonable opportunity? Should we break until 1:30? Is that -- longer?

Shorter?

MR. DEAN: I don't think we need that long --

THE COURT: Okay.

MR. DEAN: -- but it's up --

THE COURT: No? 1:15?

MR. DEAN: 1:15 is fine.

MR. LAMB: I would kind of prefer 1:30, Your Honor, just so we have the opportunity to talk internally and then we can talk with --

THE COURT: That's fine. You're going to want to talk to your clients. That's fine.

Why don't I do that. So we're going to recess. We'll come back at 1:30 and we'll see where we are. And, again, I don't mean to be punting, so to the extent you tell me, Judge, you need to decide this, you're allowed to tell me that.

Okay. Very well. I appreciate this -- the terrific help. Until then, we're in recess. Thank you.

(Recess taken at 12:15 p.m.)

(Proceedings resumed at 1:30 p.m.)

THE CLERK: All rise.

THE COURT: Okay. We're back on the record.

I hope that the break was constructive. I'm happy to hear from the parties.

MR. DEAN: Thank you, Your Honor and thank you for

the break. I think we've agreed that it probably makes sense just to go through the exercise of going through the declaration, but I'll deal with some framework this time --

THE COURT: Okay.

MR. DEAN: -- to try to help you. So I'd like to just present our positions on what they said in the declaration and give you some explanation of things and I'll sure you'll want to hear from the Government on that, as well --

THE COURT: Okay.

MR. DEAN: -- on that. And I'll deal within the framework of what do I think is important here and what do we have to show and what I think the Court cares about. So I think showing delivery of the goods on or before the August 27th termination date is important. Those are the pre-delivery termination orders that we've defined under the subject to summary judgment. So I'm just going through sort of an elements of proof here to show that the debts are unmatured in the order.

So, then we have to show proof of delivery that the goods that we say were delivered were actually delivered either before or after the termination date, according to their own termination notice. I think the date that they received the proof of delivery is also important, and I'm going to walk you all through the evidence on this because

their failure to engage with us -- and just -- I think it's helpful to understand, like, how this process works. So when we get a proof of delivery, whether it's the customer signs the slip or we get a FedEx tracking number or something, we compile a package and somebody from Noble emails it to someone from the DLA and says: Here's the notice; here's this; here's that. Do you approve? And sometimes the DLA comes back and says, Looks good. Goods receipt. It's going to be posted now and that is what allows us to upload the invoice for 30 days or less, if it's a fast-pay in payment terms.

If they have a problem, we work through it together over the next couple of days. We make whatever corrections. If something was delivered to one address and when the manufacturer and the end-user worked out a different address, they might point that out and we'll correct the address and we'll get paid for that, as well. So there's sometimes a couple of days of back-and-forth through email to clarify or fix whatever the issue is and then they post the goods receipt.

The problem that we have here is that they have completely failed to engage with us because they've taken the position that if the goods receipt wasn't posted prior to the termination date, regardless of when the delivery was made, that they're not going to pay or they're not going to post it

at all. So they've just gone radio silent.

And all that happened, with a couple of minor exceptions, more than 30 days ago. So had they done what they were supposed to do more than 30 days ago when they acknowledged they first received the proof of delivery, we would have been paid by now.

THE COURT: And the obligation to act within 30 days comes from where?

MR. DEAN: The contracts.

THE COURT: Okay.

MR. DEAN: Well, the invoices would be due and payable in 30 days, generally speaking, unless there's a fast-paying component of it that allows us to invoice before the goods receipt is posted.

THE COURT: So if they've got a problem, they should tell you that within the 30 days?

MR. DEAN: If they have a problem, they normally tell us within five -- they tell us immediately.

THE COURT: I'm trying to separate. I mean, there may be things that they do in the ordinary course of business that they're not legally required to do and so what I'm trying to figure out, right, just as I'm thinking about this, is if they decide to slow-pay you within their rights, like, you know it could be that they're required to pay within 30 days; they would typically pay you in 7. If they decide

we're mad for any reason or no reason and we're now going to take the full 30 days, that doesn't violate the contract, right?

MR. DEAN: I think that we're mixing up two issues.

THE COURT: No, I understand, but I guess what I'm trying to understand is it seems to me that the contract, by its terms, is basically a 30-day pay following X, Y, and Z. And you deliver whatever you're supposed to deliver, if they were required to pay that within 30 days, I think it's reasonably implicit that if there's something wrong with what you've given them, they've got to tell you what that is within the period they would otherwise be required to pay you.

MR. DEAN: Right. And that's correct and they always do it much earlier than that. And they have a policy that says that this is what they're supposed to do.

THE COURT: Okay.

MR. DEAN: And we cited that in the pleadings, okay.

But I agree with that proposition, as well, but either way, it would result in we would be paid by now, had they done what they were supposed to do.

So let me do that this time in the context of walking you through the record.

THE COURT: Okay.

MR. DEAN: And I'll start with paragraph 9 of the Cuorato declaration, the proof of delivery. We've kind of gone over this one a bunch and I think you understand the issue there. We've provided the proof. All they said is yes or no, but -- in their chart, but they provided no explanation as to what yes or no means.

And from our perspective, you can't just say I disagree and not provide any reason as to why the order wasn't valid. And even if the proof was insufficient after they had reviewed it, they would have had an obligation to tell us by now and pay us and work it out and solve the problem, but they didn't.

Now, I just want to detour to the chart for a second that they provided, because we don't have to guess on this issue. They told us. They told us when the proof of delivery was first received by Noble. This is when they should have told us whether there was a problem or posted the goods receipt and paid us. And if you look, Your Honor, most of them happened before August 31st. That was more than two months ago or about approximately two months ago from today. A couple of them, at lines 7 through 9, occurred on the 28th and 29th. So, like, maybe they'd be doing it a couple -- a day or two from now on those.

There's one on the 22nd at line 50. There's one

on the 21st at line 48. I mean, you get the point. But most of them are ones that we provided them in August, almost 60 days ago. Not just the delivery date, but we actually provided them the actually proof of delivery as they have admitted in their own filing.

THE COURT: So this column, so help me with this. So, if I -- just reading this chart, the first column is just numbers. The second and third are presumably order numbers or the like, right? With me so far?

MR. DEAN: Yes.

THE COURT: The fourth column, is this, like, a quantity? Do you know what that is?

MR. DEAN: The claim number?

THE COURT: Oh, I see.

MR. DEAN: That's the contract line number.

THE COURT: Got it. Okay.

So the version I'm looking at doesn't have titles to the columns.

MR. DEAN: I'm looking at -- I'm looking at their -- so they recreated this version of the Excel in Cuorato's declaration, so it's at Docket 19-2.

THE COURT: Right. Page 10 of 14.

MR. DEAN: Correct.

THE COURT: And at least the version on my screen, the very top line, for whatever reason, doesn't have titles.

MR. DEAN: Oh, it may be cut off on the -- would you like us to get you a clean copy of that, because it may be cut off on your --

THE COURT: Does it exist in this record somewhere?

MR. DEAN: It does. It should be in the agenda binder and in their exhibit binder.

(Counsel confers)

MR. DEAN: One second, please.

(Pause)

THE COURT: U.S. 4?

MR. DEAN: U.S. 2.

MR. LAMB: It's U.S. 2, Your Honor.

MR. DEAN: U.S. 4 is the Albergotti dec.

THE COURT: Okay.

MR. DEAN: So U.S. 2 is theirs.

And then I'm looking at the schedule --

THE COURT: Okay. I see. Got it. I now have it.

MR. DEAN: -- to that one.

THE COURT: Sorry about that.

So this is -- so, I think U.S. 2 -- U.S. 2 is the same declaration that's attached to D.I. 19?

MR. DEAN: We didn't prepare that binder, but I believe it is. It says it is, but we're happy to provide you with a copy of it, too, but maybe I'll defer to.

UNIDENTIFIED MALE SPEAKER: Well, I'm -- this is the wrong one. This is the Cuorato declaration for the stay relief.

THE COURT: Yeah.

MR. DEAN: Oh, that's a stay relief Cuorato declaration. Okay, sorry. Let me --

(Counsel confers)

MR. DEAN: It's also an attachment to the brief -- to their brief.

THE COURT: See, that's the version I've got on my screen. It's just that that version doesn't have headers on the columns.

MR. DEAN: Let us try to get you a copy of that. It must be an issue, because the version that I have that's printed from the docket has all the headers. So, I don't know what's going on there.

(Counsel confers)

MR. DEAN: Let me -- can I just confer to get you another copy?

THE COURT: You may. Thank you.

(Counsel confers)

THE COURT: So, with the help from my law clerk, I've got a version that does have headers printed on it.

MR. DEAN: Okay. Great.

THE COURT: So that is helpful.

MR. DEAN: Okay. Thank you.

THE COURT: And I apologize for misunderstanding earlier. Okay. So now I understand, so the -- what you were just explaining to me and I would have understood if I had the headers in front of me, is that their chart indicates the date when the Government first received proof of delivery --

MR. DEAN: That's correct.

THE COURT: -- and the column is titled "proof first received."

MR. DEAN: And then they tell you what it is and then they tell you whether it's acceptable.

MR. LAMB: Your Honor, that's not entirely correct.

The proof received for some of them is when the proof was -- that an adequate form of proof was received. So for -- I'm sorry, give me one moment, Your Honor.

THE COURT: Go ahead. Take your time. And I'm happy to do this sort of informally. I don't mean to encourage folks to cut each other off, but where we can get to the bottom of it --

MR. DEAN: I'm -- I think this is helpful.

THE COURT: Yeah.

MR. DEAN: I think this is helpful.

THE COURT: Yeah, okay. We're all on the same page.

(Pause)

MR. DEAN: It's their chart. I don't want to misrepresent what it means anyway, so I'm just telling you what I'm reading.

MR. LAMB: So, Your Honor, for example, line 58 --

THE COURT: Yup.

MR. LAMB: -- states that proof first received 9/9/26. The notes state that October 7th production shows an earlier email sending proof.

THE COURT: I see. So, where the proof is acceptable you have listed the date when it was --

MR. LAMB: First received.

THE COURT: -- first acceptable.

MR. LAMB: The first acceptable proof, correct.

THE COURT: Okay. All right.

MR. LAMB: If it is acceptable.

THE COURT: If it's acceptable and where it's not acceptable it's the date where you got whatever you got that you found to be unacceptable.

MR. LAMB: I believe that is correct, Your Honor. Yes.

THE COURT: Okay. So, we're on the same page there.

So, Mr. Dean, let me let you continue in an orderly way. I will try not to cut you off and make sure I

will --

MR. DEAN: No, its fine. I actually like when you cut me off. It's not a problem for me. I prefer having conversations then talking to myself in any event. So, it's completely fine.

So, the point that I was trying to make here, Your Honor, is I think Mr. Lamb just even made the point even stronger for me is that many of these have actually already been -- they have already said the proof is acceptable and they're still not paying us because they argue, as I will go through in a minute, that the proof was sent after the termination date which is, obviously, incorrect.

So, just going back to the text of the affidavit we've got the Paragraph 10 of receipting report issue. I think we have covered that. I think Mr. Lamb acknowledged that that was not material to the contract requirements related to the interest issue that we're not going after.

Eleven, this is really the critical point and this is where we're having a lot of problems here is that they take the position -- and they do it here -- that when Noble sent the proof actually matters, not when the delivery occurred. That is completely inconsistent with what their own -- with what the contracting officer's order said was going to happen.

This shows that what they did was they just

stopped engaging with us at the point in time when the termination order was entered and they have taken the position with us, and they have taken it here, that if the goods receipt wasn't posted by the time of the termination notice then we're not going to post it regardless of whether the delivery occurred and we're keeping the stuff and not paying for it.

So, to us 11 is a legal defect and it's something that is irrelevant as to when we provided the proof. As long as we provided it to them within 30 days to be paid that that would be, otherwise, matured due to nothing other than their own failure to engage and tell us what is wrong or post.

The destination line, this largely relates to a bunch of drone deliveries. And I will represent to you, Your Honor, there is no chance that Noble would be sending drones to addresses that we were not told to do so by the Army. And that is exactly largely what happened here with the Fort Bragg one, which is the big one. The Army called the supplier directly, the manufacturer, and they worked out a new address.

So, what generally happens here is we will send the goods -- we will send the documentation to DLA. If they notice that the address is different then what was in the contract they will -- sometimes they will point it out to us and sometimes they won't. If they point it out to us then we

just make a correction in the paperwork and say, oh, well, the -- in this case the military officer and the Army directed the manufacturer to send it directly to Fort Bragg instead of somewhere else, let's just make the change.

But because they completely failed to engage with us when we submit the addresses that show the actual delivery that are different then what is in the contract they just say, oh, well, its defective because the address is different then what is in the contract.

THE COURT: Does -- where does Mr. Albergotti's declaration tell me what you just did explaining that this is the story?

MR. DEAN: That -- the story about the army officer that I just told you that is just me trying to give you some background as to how this came up.

THE COURT: And I appreciate that but --

MR. DEAN: It's not in the record.

THE COURT: -- even the broader point that says, listen, to the extent there is a discrepancy between the address where it was delivered and what the contract says, the reason for that is such and such.

MR. DEAN: That is not expressly in the record. So, what I will say to that is that is just more background for me to explain to you.

THE COURT: No, I understand. You understand why

I'm asking this question.

MR. DEAN: No, I get it. I totally get it but our response to that is had they engaged with us when we submitted the proof we would have fixed the address and we would have gotten paid.

Now, our alternative argument on these is that they have constructively accepted the goods at the addresses because they have not taken issue with the address.

THE COURT: Okay. I understand.

MR. DEAN: So, those are the two alternative arguments in category destination.

THE COURT: Okay.

MR. DEAN: The goods receipt -- again, Your Honor, this is the same flawed argument that they have -- they're arguing that they didn't post goods receipt until after the termination date. Their telling you when the goods receipts were posted or that they hadn't posted it within certain periods of time.

Now, on Paragraph 14 you asked about this at the beginning of the hearing, so I got an answer for you there. Everything in lines -- everything in all of the lines here except for the last sentence, at line 76, had been paid. So, the $1,000 at line 76 has not been paid but everything on 14 has now been paid. I can confirm that for you. So, I don't think that you need to rule on that.

So, again, there is an issue on dates at 15. They're challenging --

THE COURT: I'm sorry, slow down. I just want to make sure -- I apologize for being slow. 13 -- the issue in 13 is that you haven't invoiced -- DLA has posted a goods receipt for only nine lines and then it identifies those nine lines. Four of them are the lines DLA did not terminate. DLA posted goods receipts for three of those four. Noble hasn't invoiced for any of those four. The other five are fast payments.

When I issued the termination notice, DLA had posted no goods receipt for any line terminated -- on a terminated order line. DLA has posted no receipts for the other 99 lines.

So, I'm sorry, I'm just not following what the point is here. So, if you can help me understand what the issue is.

MR. DEAN: I think what they're saying is that because they didn't post goods receipts prior to the termination that they didn't.

THE COURT: Okay.

MR. DEAN: I think that is -- but I will defer to Mr. Lamb on that as to what --

THE COURT: Mr. Lamb, help me understand this.

MR. LAMB: So, for four of them they were never

terminated. They were never on the terminated list. Those have been paid. They were not subject to the termination.

THE COURT: So, that is not in front of me.

MR. LAMB: That is not in front of you.

THE COURT: I don't have to worry about that.

MR. LAMB: Correct. The other five -- so, the concern the Court is the other five are fast payment lines described at Paragraph 14.

THE COURT: I see. So, nothing in 13 matters because either it's not at issue -- it either is never at issue or its been paid by now.

MR. DEAN: That's correct or it's a fast pay where the goods receipt doesn't need to be posted and we can invoice it.

THE COURT: Okay. So, 13 -- on the list of things we need to worry about, Paragraph 13 should fall off of that list.

MR. LAMB: Yes, sir.

THE COURT: Okay, I'm with you.

MR. DEAN: And 14 is the same other than the small amount at line 76 on the last sentence, which is --

THE COURT: Which is $1,500.

MR. DEAN: That's correct.

THE COURT: Okay. So, let's assume that we're not going to worry about the $1,500 for this purpose because

we're going to burn more than that trying to figure out the answer.

MR. DEAN: Fair enough. Fair enough.

THE COURT: Okay. Though my rate is very fair, I just want you all to know.

(Laughter)

THE COURT: Really bargain at any price.

Okay. Paragraph 15.

MR. DEAN: So, here they're challenging whether the dates that we provided are actually the dates of delivery and Sub (a) they are correct that some of the delivery dates were off but they all were still prior to August 27th, and we describe this in the reply. So, it does not matter for the purposes of whether we're entitled to payment on (a).

THE COURT: Okay.

MR. DEAN: For the issue on (b) it's a little convoluted. We attached the document in reply but, effectively, somebody looked at a 9/4 date on the top right of an invoice but it says on the invoice that the delivery date was prior to the termination date. So, someone just misread it and put an email and said delivery date was 9/4 but it was just somebody misreading the document. So, we explain that in the reply and put the actual document in so the Court can see why there was some confusion about the actual delivery date but it was, in fact, delivered prior to

the termination date.

THE COURT: Okay, I see.

MR. DEAN: Okay. And that is in the transmittal declaration, Exhibit B to the reply.

THE COURT: Okay. What about 15(c)?

MR. DEAN: This -- lines 83 and 84 --

THE COURT: No, that's (b).

MR. DEAN: Right, but it's also noted in (c). It's a duplicative -- some of this stuff overlaps. They're raising multiple issues.

THE COURT: I'm sorry, yup.

MR. DEAN: These were in a folder that they misinterpreted the label in the folder that we produced to them, okay, but this 83 and 84 why they say on or after August 27th is because those are the two that they were taking the position it occurred after August 27th due to the issue I just explained to you. So, that is 1.2 of the 1.3.

The other ones totaling about $100,000 at lines 94 to 108, just due to the -- we don't have all of those in the record but we did doublecheck and I think when you look at this language it actually matches up. They say it took place on or after August 27th but if it was delivered on August 27th, which all of these were other than the two I mentioned before with the 9/4 issue, they would have been carved out of the termination notice because the termination

notice says anything delivered after the date of the termination notice.

So, everything except -- all of this was delivered on August 27th or before. It's just that this invoice had the 9/4 date on it, so it lead to some confusion.

THE COURT: Okay.

MR. DEAN: There's a couple of minor issues that I won't spend a lot of time on was on 16 but the first one is in (a), lines 63 and 68, they say those were for two -- we double billed them for that training course but that is actually not accurate. We submitted -- the amounts were the same, it looked like a dupe but when you look at the two invoices submitted with the reply transmittal declaration there's like different transaction numbers on the invoice. So, this was just the same course twice for the same amount. So, this is one of the ones I mentioned that they just misread from the production that we brought out in the reply to confirm that they misread it.

And then the other issue in (b) is that, and we described this in the reply as well, that line 9 lists three units but the packing slip shows 10 and that is because the packing slip showed products and services and the three were just the products. We explained that in the reply. It's a small issue. Then for line 10 we can live with the 15th instead of the 16th.

Then the final issue that they raised, Your Honor, is the need to go get customer records and I think we've already addressed that they control all of this and that they don't need additional discovery for that. I am happy to address that if you need to, Your Honor, but they have access and control, and can gather, and has gathered in five to seven days throughout this process when they wanted to cooperate all of these records.

So, I think that they are putting that out there to try to form the basis for a Rule 56(d) motion, which I think we have already discussed, so I won't address it unless the Court has any other questions.

So, just to summarize, Your Honor, we submitted sufficient evidence to show that all of the goods and services were provided and/or delivered on or before August 27th, 2026 when the termination notice was issued. The government admits that we provided them with proof of delivery at least 30 days ago except for the one or two that are like 9/28 and 9/29.

They decided not to engage with us to try to approve it, provide us corrections, tell us to make a change, do whatever needs to be done to post the goods receipt. That is the only reason why the goods receipt has not been posted and we can't invoice them until, obviously, the goods receipt is posted.

So, we would submit that we have submitted more than sufficient evidence to show that we delivered these goods. They have not objected to them. They have not returned them. They have kept them all. They admit that we gave them proof of delivery. They, I think, admitted that they didn't engage with us because of the termination notice even though that is actually inconsistent with the language of the order. And that they would have owed us the money had they not done so.

So, for those reasons, Your Honor, and that includes the address changes, by the way. Like those would have been corrected and we would have been paid on those. As I said alternatively, they constructively accepted those at the alternative address in any event because there's never been an issue raised, nor would they raise any issue in the paper with the actual address we delivered to. They just said, oh, the address on your piece of paper is different then what is in the contract but they didn't -- and they say we didn't approve it in advance but they never told us to come get it. They never returned it. They never said here is the issue, here is how to fix it. They just didn't engage.

So, for all those reasons, Your Honor, we would submit that there is no *bona fide* dispute here as to the fact that the debt is owing, the debt is matured and the only reason that the debt is not due and owing today is solely due

to the government's failure to engage when we provided the proofs of delivery to them, Your Honor.

Thank you.

THE COURT: Thank you.

MR. LAMB: Your Honor, Ryan Lamb for the United States.

We would like to kind of go through in the same fashion. And I think before we do that, I think it bears some discussion as to the type of contracts that Noble has with the United States.

These contracts are controlled by the FAR. These contracts are somewhat unique in the world of contracting. They are different and apart from regular standard commercial contracts. The termination rights afforded to the United States under the FAR, incorporated into these contracts, is exceptionally unique in the world of contracting. And I think it bears to keep in mind that these contracts, again, are completely separate and apart from your standard contract.

They incorporate the FAR -- one moment, Your Honor.

THE COURT: Take your time.

MR. LAMB: Section 52-212-4(m), which states termination for cause.

THE COURT: 52-212 --

MR. LAMB: -- dash 4(m).

THE COURT: Okay. Tell me what it says.

MR. LAMB: That states, and I'm just going to read it into the record, termination for cause:

"The Government may terminate this contract or any part there hereof for cause in the event of any default by the contractor or if the contractor fails to comply with any contract terms and conditions or fails to provide the government upon request with adequate assurance of future performance. In the event of termination for cause, the Government shall not be liable to the contractor for any amount of supplies or services not accepted and the contractor shall be liable to the Government for any and all rights and remedies provided by law. If its determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience."

The important sentence in this for purposes of this hearing is "In the event of termination for cause the Government shall not be liable to the contractor for any amount of supplies or services not accepted." And that is the important component here.

The debtors were informed of the termination for cause on August 27th. The debtors were provided information --

THE COURT: We're only talking about goods you would have received before August 27th, right?

MR. LAMB: So, received -- the definition of received is somewhat unique in FAR contracting, Your Honor. So, in the termination for -- in the letter that they received it stated that delivery for material after the date of this notice will not be considered for goods receipt posting and proof of deliveries indicating delivery of material after the date of this notice will not be accepted or viewed by DLA.

THE COURT: Right.

MR. LAMB: There is a second paragraph, Your Honor, that says:

"Accepting the above, delivery orders with partial performance will have their outstanding balances terminated. Any receipted balance will remain receipted and if an invoice has not been submitted to date, Noble must invoice for the outstanding amount that has been receipted."

THE COURT: Right. That is exactly what they say they have done.

MR. LAMB: So, what this states, Your Honor, is that any partial orders will have their outstanding balance terminated. So, any partially performed orders cannot -- you know --

THE COURT: I don't -- I just don't think in

English that is what those words mean. I think what that says is to the extent you have already delivered it we will process it in the ordinary course. If we haven't yet gotten it then we're not going to touch it.

I don't read any -- just listening to the way you read that, read to me again the words that suggest that for things where they have already delivered the goods you get to keep the goods and not pay for them no matter what. That there is nothing the contractor can do. They have delivered the goods and now we get the benefit of the goods and you don't get paid too bad.

I mean, everything you read made commercial sense to me but the position you're taking doesn't.

MR. LAMB: So, under the termination FAR and under the language provided to the debtors in the termination notice, any balance that -- any receipted balance -- so, if the Government has provided a goods receipt, the Government has reviewed and confirmed that the order has been -- is appropriately delivered debtors are then obliged or they can provide an invoice which triggers payment.

THE COURT: I'm sorry, so this letter is in the declaration you submitted to me. Can you just point me to where it is so I am actually looking at the same language?

MR. GESMUNDO: Your Honor, this letter is -- its actually an exhibit to the -- it's in 5-1, it's the

debtors --

MR. DEAN: It's in our declaration.

MR. LAMB: Yeah, it's an exhibit to debtors declaration.

THE COURT: Got it.

MR. LAMB: I'm looking at 5-1, page 191.

THE COURT: Okay. That is helpful. I appreciate it. So, I've got that too. All right. Delivery of material, right, after date of this notice will not be considered for goods received posting and proof of delivery indicating delivery of material after that date will not be accepted or reviewed by DLA. So, that makes perfect sense. You're saying you want to send me something after the date of termination, do that at your own risk but we're not going to touch that stuff. So, don't expect to get paid, right. I understand that, accepting the above, colon.

So, I think that that is saying for stuff that was received before delivery orders with partial performance, right, which is to say you have delivered the stuff but the process hasn't run its course. Are we talking about the same universe?

MR. LAMB: Yeah. The Government ordered 20 widgets, you delivered 10.

THE COURT: Okay. Or you have delivered -- okay, if you delivered 10 widgets out of the 20 that's fine. That

is partial performance. We will have their outstanding balances terminated, right. So, that means if you delivered me 10 widgets -- if I ordered 20, you delivered 10, I will pay you on the 10, keep the other 10. I don't want to hear from you about the 10 you haven't delivered. Any receipted balance will remain receipted. So, if you charged me for the 10 that you have delivered we will deal with that.

MR. LAMB: One correction to your previous sentence, Your Honor.

THE COURT: Yeah, go ahead.

MR. LAMB: It wouldn't mean that we're going to pay you -- we're not agreeing to pay you for the 10 you delivered, it's that those 10 have been delivered.

THE COURT: Right.

MR. LAMB: If there's 20 ordered then the rest of them are terminated.

THE COURT: Exactly. We both picked a bad example of using 20 with 10 and 10 but if you delivered 13 and there are seven that you haven't delivered we will deal with the 13 and we will go through the process of paying you for the 13. For the seven that you haven't delivered keep those.

MR. LAMB: Maybe not go through the process of paying but to the extent that 13 have been delivered the process -- we're going to be held to the terms of the contract for those 13.

THE COURT: Okay. We're on exactly the same page. Any receipted balance will remain receipted. I take it that's their way of saying if you -- if we've gotten the goods we're not going to un-get the goods.

MR. LAMB: So, what that means is that receipted refers to goods received. So, if the Government has provided a goods receipt for those deliveries that goods receipt is still good.

THE COURT: And if an invoice has not been submitted to date Noble must invoice for the outstanding amount that has been receipted.

MR. LAMB: Correct. So, to refresh the Court's recollection, the posting of the goods receipt triggers the ability for Noble to provide an invoice that then DLA pays.

THE COURT: Okay. If Noble has already submitted an invoice for that receipted balance no further action is needed. So, all of what this says seems to me to be non-controversial and probably doesn't answer the question that's before us now.

What we are talking about, I think, are goods that were delivered by the date of termination, right, where they've provided proof of delivery but where you have not, I think -- tell me if I've got this -- either of you should tell me if I've got this wrong, the term "receipted" here is a term of art and it means the Government has acknowledged

receipt.

MR. LAMB: The Government acknowledged receipt because Noble provided proof of delivery by the 27th.

THE COURT: That was acceptable to the Government, right.

MR. LAMB: Yes. So, the 27th is the cutoff date for the acceptable proof of delivery.

THE COURT: Understood. The universe of things that I think we're talking about now are goods where Noble's position is they delivered them and they provided proof of receipt before the 27th and the Government has not acted on that proof of receipt.

MR. LAMB: Any goods -- any proof of delivery provided after the 27th under the terms of this letter and under the FAR cannot be acted on because this letter states that no goods receipt will be provided for any later --

THE COURT: So, let's hold on and hold aside the question of goods that are received on the 26th where proof of delivery happens on the 28th. Hold that to one side.

Let's talk about goods that were received on the 25th and proof of delivery happens on the 26th. So, all of those -- both of those things have happened by the 27th. Why does this letter say we don't have to process this delivery and pay for it subject to our ability to say I ordered eggs and you sent me milk or even let's hold aside

for this purpose I ordered it in location A and you sent it to location B. But where you don't have one of those disputes, what here says if I've received it before the termination date and the contractor has provided proof of delivery before the termination date I can stop the process of paying you.

MR. LAMB: In the grand scheme of this 108 lines that amount is very meniscal, Your Honor.

THE COURT: All right. Help me with that because I thought that there was this category -- there is this thing that says proof first received, right, which is the one, two, three, four, five, six, seventh column in your chart. And what I think this says is that -- oh, I see, some number of these proofs first received, I mean many of them are before August 27th and some of them are after.

First, let's talk about the ones where proof is received before August 27th. What is your position as to why you don't have to pay those?

MR. LAMB: So, our position on why we shouldn't have to pay those or can't pay those is not a the Government is refusing to post a goods receipt for those, it's that legally under the FAR the Government doesn't have the ability to because the contract has been terminated.

THE COURT: But that is inconsistent with what you just said to me. You just said to -- and I think, unless I'm

misunderstanding -- is that if we don't have received proof of delivery by the 27th let's -- we can have a conversation about whether what this does deals with deliveries by the 27th or proof of delivery by the 27th. Let's treat that as a thing that we have to talk about.

First, let's start with the easier case for the debtor which is, no, we're talking about ones where the goods were delivered on August 1st, we sent you proof of delivery on August 2nd, nothing happened in the meantime, and on August 27th you terminated. And you're saying I can't pay those because why, because the FAR stops you. So, that is the conclusion. Say a few more words.

MR. LAMB: There is actually two categories in that group.

THE COURT: Okay.

MR. LAMB: There's ones where the debtors have, you know, pro -- they say it was delivered, they provided proof of delivery, that proof of delivery is insufficient for whatever reason.

THE COURT: Okay. So, there if they've provided me proof of delivery and you're contention is I don't have to pay it because their proof is insufficient do you have an obligation to tell me what is insufficient about it and show me what is insufficient or do I just have to trust you?

MR. LAMB: I don't want to say that the Court has

to trust us, Your Honor, but the debtors have the obligation and were informed before all of this through the conversations with DLA prior to the termination that the proof of delivery was insufficient for X, Y, and Z. They had the opportunity to correct that. They did not. They were fully aware of why the proof was insufficient.

THE COURT: I'm actually now thinking more about summary judgment standards than anything else. If -- it seems me that -- look, if someone comes -- this is the hypothetical I started with, right, if someone comes forward and says goods were delivered and someone says in response, no, I didn't get them, then I've got a factual dispute but just hearing the conclusion your proof was insufficient without any flesh on the bones doesn't seem to me to create a genuine dispute.

MR. LAMB: To the extent that debtors proofs they have brought to the Court that the delivery was adequate and identified with very important specificity as to what was in the delivery, that it conforms to the reorder --

THE COURT: So, isn't that what the Albergotti declaration says? It says, look, we delivered the goods, here's the description, here are the attached invoices, here's a chart showing what it is. They have never responded by telling us there was a problem with any of these goods.

MR. LAMB: In fact, DLA did respond and say there

was a problem with a lot of delivery orders. They identified that in the conversation they had.

THE COURT: Where is that in the summary judgment record?

MR. LAMB: In the summary judgment record that would be in debtors declaration Exhibit 5-1 where they attach the addition to the notice of termination for cause they have identified the -- I'm just scrolling, Your Honor.

THE COURT: Yeah.

MR. LAMB: They have identified notice of termination for cause for the contracts. They also identified the requests by DLA prior to the termination responding -- includes response to the cure notice and they provided the cure notice issued by DLA or DLA is requesting Noble to identify and provide a cure notice.

THE COURT: But I thought all of this was about assurance of future performance, not about problems with the deliveries as made. I mean, I confess that I read this long stack of documents, you know, not with excruciating care but I did work my way through it and I read this to be saying we -- to say what it says is we're not -- we want adequate assurance of your performance. That is about saying we are concerned that in the future you are not going to be able to perform, so we're terminating. Not what you sent me wasn't the right stuff.

MR. LAMB: Give me a moment, Your Honor. I apologize again.

THE COURT: No, it's okay. Look, this is a pretty thick record and I want us to get it right.

MR. LAMB: So, DLA provided show cause notices which debtors have included in their declaration at 5-1. There is numerous of them. An example of one is page 119 of 5-1. That is where DLA identifies that they have not -- there is delinquent deliveries or delivery orders. The reason why those delinquent deliveries -- why this show cause notice has been provided for the delinquent deliveries is because DLA hasn't received a proper delivery notice, proof of delivery.

If, in fact, Noble believed that it did deliver these goods appropriately then its response to the show cause notice would have been, should have been we provided delivery, here is proof of delivery.

THE COURT: Okay, let me pause here. Mr. Dean, are the deliveries that are the subject of the show cause notice part of the 108 deliveries that are at issue before me now?

MR. DEAN: I would say it covered some of the stuff that got delivered after the show cause notice but before the termination notice, before the decision to terminate. So, some of it was already in transit and being

delivered. We tried to respond and explain, they didn't buy the explanation. There were things that were delivered in the interim but what we're talking about here are only things that were delivered before the date of termination notice.

THE COURT: If they ordered it and you were required to deliver it by day one and, in fact, deliver it on day two what happens then?

MR. DEAN: They can accept it or not.

THE COURT: And is there a mechanism for not accepting delivery.

MR. DEAN: Yes. And, in fact, the provision of the FAR that Mr. Lamb didn't tell you about is 46-407, which I have on my screen right now, (g), and that actually provides that the Government has to timely provide a notice of rejection of delivery of goods within a reasonable period of time where they will be deemed to have constructively accepted them as a matter of law.

THE COURT: And Mr. Albergotti's declaration says that they received no such notice.

MR. DEAN: We received no such notice.

THE COURT: Mr. Lamb, can I -- I just want to try to simplify this from my little brain. Let's start with line 1 of the chart. Line 1 says that proof of delivery was received on January 22nd, 2026 and that proof was acceptable.

MR. LAMB: I'm sorry, Your Honor, can you hold on

for one second. I'm sorry, let me make sure I have --

THE COURT: Absolutely. I have asked for your patience too, so that is only fair.

MR. LAMB: I appreciate that, Your Honor.

(Pause)

MR. LAMB: Okay. I'm sorry, Your Honor, I am looking at line 1.

THE COURT: Line 1, so what we know about this is that the -- you've told me that if the proof of delivery is after August 27th you take the position that you're not obligated to pay that. We will come back to that question.

Now, let's talk about the ones where the delivery is before August 27th, right. So, like line 1 is such a thing. So far we agree?

MR. LAMB: Yes, Your Honor.

THE COURT: Then you said there are some where the proof was not acceptable to the Government but here it says proof acceptable, yes. Right, this is your declaration. So, explain to me if delivery -- if the delivery was received before the termination and the proof was acceptable why you get to not pay that.

MR. LAMB: I don't have an answer for you, Your Honor.

THE COURT: All right. So, in the absence of an answer I'm going to order turnover with respect to those

amounts.

I think, if I understand the disputes your raising, I want to take them one by one. Let me go back to your declaration.

(Pause)

THE COURT: So, look, let me -- I am not right now announcing rulings but let me share my reactions to where I am on these various categories of dispute. And we will see if this moves the ball forward.

It seems to me that where delivery, in fact, occurred by August 27th and you, in fact, received proof of receipt before then and the form of -- and the proof was acceptable to the Government seems to me that there is no dispute about the Government's obligation to pay that and I'm going to order that subject to turnover. So, line 1 is an example of that by my count, and this is me taking credit for the work of the a terrific law clerk which is kind of what I do for a living. That is true of lines 1 through 6, and 23 to 25, and 27 to 31, and 56. So, that is however many of those.

And as I understand it, as to those, I don't get from your chart what you're disputing. So, therefore, I am inclined to say you haven't' shown me a dispute and applying the principles that we started with that -- oh, I'm sorry, in 51 I'm told. Okay. In any event, we can all sit down and

do the math and get it right but where there is delivery that occurred before the termination and the proof was acceptable, in the absence of some other issue, and we will talk about whatever the other issues are, it seems to me that those are subject to -- those debts are subject to turnover because they're not disputed debts. They're matured, they fit within the language of 542(b).

MR. LAMB: Your Honor, where the proof of delivery was acceptable before the 27th?

THE COURT: Where the proof of delivery arrived before the 27th and turned out to be acceptable.

MR. LAMB: Understood.

THE COURT: And, look, I don't want to be creating more work for the parties but I don't know that I've got an alternative. Here is -- let's just go through the issues and we can talk more about this one by one.

So, Paragraph 10 says that for a number of reports DLA found the proof insufficient for 71 of them. I don't think a conclusory statement that proof is insufficient makes it a real dispute. If there is something in this record. As to any line where you can show me something in the record that identifies the reason why the proof was unacceptable and that is an objectively reasonable basis to challenge it then we've got a dispute and I'm not going to resolve such a dispute. That is going to go to the Court of claims.

But you have got to show me something that is non-conclusory that -- again, I'm just applying ordinary principles. Something non-conclusory, genuine factual dispute that this is actually not sufficient because and it's got to be something in the existing summary judgment record. So, to the extent that you can show me what those are, then I've got a genuine dispute, and I don't get to resolve those. They're not subject to turnover but in the absence of it the mere conclusory statement is insufficient.

So far, are we on the same page?

MR. LAMB: I understand where you're coming from.

THE COURT: Okay, that's fine. You don't have to agree but I want to, at least, give you something actionable.

I want to come back to the question of receipt of proof after August 27th because I want to give you both the chance to be heard a little bit further on that because I'm not sure I understand enough to have a clear answer in my head on that question.

I will say this, where the Government hasn't -- takes the position that the goods were delivered to the wrong place there I'm going to shift the burden the other way and the debtor is going to have to show me where in the record it shows that that was okay. In the absence of that, then we've got a factual dispute that isn't subject to turnover.

So, if there is a real dispute about whether that

was the right location to send it then we've got a contract dispute not resolvable on turnover and only if the record is really clear that the Government said, no, send it to location B instead. If they can show me that then that is a different thing.

I think we would agree that Paragraph 13 there is nothing for me to decide -- or Paragraph 14.

With respect to this question of if there is an agreement that delivery occurred and -- look, we're only talking here about things that were delivered before the termination date. If there is a delivery after the agreed delivery date but before the termination date, which is what I think Paragraph 15 is talking about, there I think applying the principles that were described there's an obligation to pay unless you can show rejection so that -- as I understand the principle if its ordered for the 1st and it comes on the 2nd that gives the recipient the right to say, no, I don't want this anymore but if you keep the thing then you need to pay for it. I think that it was the language from the FAR that you were reading to me says.

MR. LAMB: And to add onto that, Your Honor, the August 27th letter specifically states that it will not accept any deliveries after the 27th.

THE COURT: Exactly. I don't think the debtor is asking to be paid for any deliveries after the 27th. So, if

they were you'd win on that, at least on this basis. So, I am only talking about deliveries before the 27th.

MR. LAMB: Right.

THE COURT: So, we're, otherwise, together so far about deliveries --

MR. LAMB: I understood your previous statement to mean any orders that were agreed to be delivered before the 27th but they were delivered in September.

THE COURT: No. If it delivered after the 27th the termination precludes it. I am talking about the delivery was agreed to be on the 1st, it actually came on the 5th, what happens then. And there if you show me, no, I said I don't want it anymore come pick it back up that is one thing but in the absence of that you don't get to both keep the thing and not pay for it.

MR. LAMB: Understood, Your Honor.

THE COURT: Again, that's only if its delivered before the 27th.

MR. DEAN: Do you want me to chime in on this or do you want me to -- I have a comment on the -- I don't think that is what 15 says but I'm happy to --

THE COURT: Tell me what 15 says then.

MR. DEAN: I think what 15 is saying is that they interpreted the records that we gave them that some of the stuff was delivered --

THE COURT: Oh, I see.

MR. DEAN: -- after the 27th. It doesn't amount to when it was due.

THE COURT: I understand. You're right and that's what you told me the first time and that's what my notes, which is a happy coincidence. I just read 15 incorrectly when I read it myself.

So, look, on these questions of there was a misunderstanding about the paperwork, to me I want to get to the bottom of what the paperwork actually says based on what's in the summary judgment record. So, I think we can just apply the principles I've described in light of what the actual paperwork says, appreciating that no one is finding new pieces of paper now. We've got the existing summary judgment record and I'm going to resolve the motion in front of me based on that record.

And with respect to this question of double billing it sounds to me that that was also, sort of, a paperwork mistake, like a misunderstanding of the paper and that if the paper -- if it's clear that there wasn't actually double billing but it was a legitimate misunderstanding because the same number appeared twice but it was actually for two separate invoices then it seems to me, in the absence of a dispute, again in the absence of some other basis to dispute it, it ought to be paid.

So, I haven't done the math to figure out what that turns out to be but I guess what I'm inclined to do is direct you to meet and confer to apply those principles.

Well, let me first see if any of you want to be heard to say -- I want to give you a chance to say, no, Judge, you're wrong about these principles and I want to make sure I -- before I overrule anyone's objection I want to make sure I really understand the objection. But that is my initial take about what the substance of this ought to be. If you disagree let me give you a chance to tell me why.

MR. LAMB: Your Honor, I don't want to say I disagree with your approach --

THE COURT: You're allowed to.

MR. LAMB: -- but I believe the Court is applying the burden on whose burden it is to demonstrate that the goods were not -- did not conform or the goods were appropriately delivered to the wrong party here.

THE COURT: So, the way I'm thinking about the burden is not really from a contract law basis. It's on a summary judgment basis, which is I've got a declaration that says -- Mr. Albergotti's declaration says what it says and what I'm trying to figure out is do I have a genuine issue of fact that is a dispute that, therefore, I should resolve for applying the principle that we talked about or not.

So, it seems to me that to create a dispute, a

party who is challenging a declaration that says something has got to come back and show a dispute but that is just the ordinary application of Rule 56. So, that is how I'm thinking about it, which is I've got this declaration, here is what it says, saying I -- just filing a legal paper that says I dispute it is insufficient. You have got to show me a real dispute.

The way I'm thinking about this is asking the question based on the record before me where have you come forward with evidence that shows me a dispute and where not. Does that make --

MR. LAMB: I understand that, Your Honor. Thank you.

THE COURT: Okay. So, let me give you a chance to continue with your argument.

MR. LAMB: I mean, that was kind of my starting point and kind of my end point. I think -- we understand what the Court is asking for, I believe, to demonstrate in the papers where the disputes are as to the pre -- the pre-August 27th delivery. The items were delivered then. We're excluding from discussion any post-August deliveries.

THE COURT: Correct. Mr. Dean, am I right, you're not asking to be paid for anything that was delivered after August 27th from me today?

MR. DEAN: Not delivered but certainly proved,

proof of receipt.

THE COURT: We will come back to that question. That is the question I intentionally left open.

MR. LAMB: So, the issue that -- and that is exactly where I was going. So, the issue that we really will probably be focusing on in the next couple of days when we do the meet and confer, if we do it now even, is what about the deliveries where the proof of delivery wasn't provided prior to the 27th.

THE COURT: So, that is a legal question that I think I need to decide. So, I'm not making you agree about that. I am only making you agree where the question is what does this record show me.

MR. LAMB: Understood.

THE COURT: To the extent there are legal questions that is my job. As much as I sometimes would prefer not to have to do it, that is the job for which I signed up. So, on that question there is a category, and it's sizeable category, of deliveries that occurred before the 27th where the proof of delivery arrived afterwards. And the question is, is that a mature debt because there is just a ministerial act that the Government has to do and hasn't done or is the Government not obligated to do that for those deliveries and, therefore, it's not a ministerial act and, therefore, the debt is not matured.

I don't know the answer to that question, and I want to hear from both of you on that issue if you walk me through whatever -- and I don't want to be an expert in the way the FAR works. There is a good reason why Congress created the Court of Federal Claims but I feel like here I am and I think that that is kind of what I have to figure out.

So, let me give you both the chance to be heard.

MR. LAMB: Certainly, Your Honor. So, as to the FAR on that point, and that goes to Subparagraph (m) that I identified earlier. It states that the Government shall not be liable to any contractor -- or to the contractor for any amount for supplies or services not accepted and that -- the moment that occurred in this instance was August 27th.

THE COURT: Hold on one second, let me pull up that FAR language for a second.

(Pause)

THE COURT: The Government may terminate this contract or any part here of for cause in the event of default by the contract or if the contractor fails to comply with the contract terms and conditions or fails to provide the Government with adequate assurance of future performance.

MR. LAMB: That was all the actions that DLA took prior to the termination.

THE COURT: All good. In the event of termination for cause, the Government shall not be liable to the

contractor for any amounts, for supplies or services not accepted and the contractor shall be liable to the Government for any rights and remedies provided by law.

So, let me tell you, if it is determined that the Government improperly terminated the contract for default -- okay, and no one is saying that applies here. So, I've got a pure legal question of what does it mean to say for supplies or services not accepted. I guess my instinct on the answer to that is that there is a mechanism to address rejection that if it's been delivered and there's no dispute about its delivery and there is no evidence of rejection that the presumption is that it has, therefore, been accepted in the absence of some other reason to show that it was rejected. Tell me why that isn't a sensible way to read this.

MR. LAMB: So, there's two points on that.

THE COURT: Okay.

MR. LAMB: The Government's exception is an affirmative act. That is the posting of the goods received.

THE COURT: What is the authority that tells me that?

MR. LAMB: I don't have that in front of me. I'm happy to provide a supplemental brief on that point but that is --

THE COURT: Okay. I'm going to -- I'm sorry to delay this and I'm going to ask you to -- look, you

appreciate that this is a tight case where cash flows have to move. I am not going to tilt my decision one way or the other for that reason but I am going to try to speed it up for that reason. So, we're going to have to walk and chew gum and the stuff that is indisputably owed we're going to have to get to the bottom of that at the same time we're briefing the issues where there are disputes. And we're going to brief quickly too.

Look, I think that your point that -- and I will hear from Mr. Dean on this issue too, but I hear you that it's a non-insane reading of the language to say acceptance is an affirmative act by the Government and if there is authority that supports that proposition I want to make sure I have given you the chance to tell me what it is.

MR. LAMB: I am happy to find that for you. I can find that in probably 10 minutes, Your Honor.

So, the second point I would like to make is that the case law that the debtors cite for the constructive acceptance all points to instances where the Government used the goods provided.

THE COURT: I hear that.

MR. LAMB: The debtors haven't provided any proof that the goods have been used by the United States.

THE COURT: Okay. So, what we're talking about presumptively are goods that are sitting in a warehouse

somewhere, they've been shipped, they've been left there, no one has touched them since them.

MR. LAMB: And the debtors haven't come pick them up.

THE COURT: Right. You haven't told them to come pick them up. They've just sat there. You haven't said yes, you haven't said no, we're living in a world of like silence with respect to these deliveries, right?

MR. LAMB: There hasn't been a goods receipt -- there hasn't been a proof of delivery or goods receipt. So, the debtors have the ability to go retrieve estate property from wherever its sitting.

THE COURT: Okay. I understand your position.

So, is there anything else that you want to add on what we've talked about?

MR. LAMB: No. Just those -- well, those two points and then the incorporation of the termination notice language in each of these contracts specifically identifies that any non-receipted goods will not be later receipted. So, there -- so, any items that are delivered -- and for any items that DLA does not have a goods receipt for -- a proof of delivery for cannot be goods receipted.

THE COURT: So, let's go through that again because, again, that is not how I remember the language. So, this is in the termination notice itself?

MR. LAMB: Yes, Your Honor.

THE COURT: So, that is in Exhibit 5. Bring me to the language, I'm sorry.

MR. LAMB: I am right there with you, Your Honor. It's 5-1.

THE COURT: I see. Notice of termination for cause, is this -- I am, again, taking credit for the good work of others. Page 186 of 205.

MR. LAMB: Yes. Thank you very much, Your Honor.

THE COURT: I'm happy to take the credit for other people's good work.

MR. LAMB: You said page 187, Your Hoor, you're looking at?

THE COURT: Okay, yes. Delivery of material, is that where you are? We went through this. Delivery of material after this notice will not be considered for goods receipt and proof of delivery indicating delivery of material after the date of this notice will not be accepted or reviewed. So, to me reading that, if anything there is a negative inference that things that are delivered before that date will be.

So, the question is then does the next paragraph help you any. And the next paragraph is about partial deliveries which is speaking to a different question. So, it seems to -- so, any receipted balance will remain receipted

and if an invoice has not been submitted to date Noble must invoice for the outstanding amount that has been receipted.

So, to me this section doesn't -- this doesn't speak to the question of -- the prior paragraph clearly implies that material received before the date of the notice will be accepted or reviewed by DLA. To the extent there is a thing called being receipted, which is as grotesque as the English language gets, I think that has to happen. At least that is the way -- again, I'm not saying that this document is itself the legal obligation but I certainly don't read anything in this document to take the view that to the extent you've sent it to me and I've received it by the date of termination I am now off the hook.

MR. LAMB: If Your Honor doesn't read that in this language then Your Honor can read it in Paragraph (m) of the FAR where the Government's obligations full stop on August 27th.

THE COURT: I hear you. And that turns on my accepting your position that acceptance requires an affirmative act.

MR. LAMB: Correct.

THE COURT: So, it boils down to that. I don't think that that is obviously correct but nor do I think it's obviously incorrect. And you said you're going to give me more and I'm happy to hear you on that.

Anything else from your position?

MR. LAMB: We have really nothing else on our position at this time, Your Honor.

THE COURT: Okay. Let me hear from Mr. Dean.

MR. DEAN: So, the provision of the FAR that was just discussed it says that when a termination notice is issued the Government doesn't have liability for goods that are not accepted. It doesn't say accepted as of the day of termination notice. It says accepted period. So, it doesn't define when something has to be accepted.

So, that is why in the reply brief we spent so much time talking about what is constituting acceptance. It can't be that the Government just refuses to receipt goods that were delivered prior to the termination date because -- I mean, we couldn't have even provided the proof of delivery and got the goods receipted for much of these goods because it was so close to the termination and just keep our stuff and not pay for it, and that is why 46-407 of the FAR exists.

It says that promptness in giving a rejection notice shall be promptly furnished by the contractor. Promptness in giving this notice is essential. If timely nature of rejection is not furnished, acceptance may, in certain cases, be implied as a matter of law. This is what the FAR says about what acceptance provides for.

THE COURT: All right. So, look, Mr. Lamb has

asked for a chance to respond to that directly. I think he's entitled to that. I am going to ask for this in like a couple of days because I want to get you all a decision as promptly as I can and I'm trying to balance the needs of the case with, you know, common human decency but any disagreement with the notion of giving you a couple of days and then we will get a decision.

MR. DEAN: If Your Honor thinks it would be helpful to you that is all I --

THE COURT: Well, I want to be fair to the parties also.

MR. DEAN: We really needed to have this hearing before the end of the month and it's the 28th. So, we really need the money by the beginning of November.

THE COURT: No, I understand. I think some of it, you know, for the parts that we have talked about where there is not -- where based on these principles it doesn't turn on the answer to those questions we ought to get -- I mean, what I'm expecting is for the parties to put these things into buckets as promptly as possible. Ones where, based on what I've said there is no longer a dispute. That should just be paid.

Ones where, you know, you take the position that there is something in the record that caused it to fall on one side of the line or the other and on that you can show me

what it is in the record or those that turn on this legal question of what happens to goods that were delivered before the 27th but proof of delivery came afterwards and the Government is refusing to act. I will have to answer that question.

MR. DEAN: That is the vast majority of what we're dealing with here.

THE COURT: Okay. I will give you both a couple of days to set out your positions and they could be informal, it can be a letter, you can do it in whatever form you want and I will give you answer to that question as quickly as I can.

MR. DEAN: Okay. I mean, we will certainly do that.

If I could just make a couple of other points as we wrap up and we will do that.

THE COURT: Yeah, go ahead.

MR. DEAN: I don't know if you want us to do simultaneous or --

THE COURT: Yeah, I think under the circumstances we ought to do it simultaneously and I ought to get all of it by the end of the week and I will try to get you something over the weekend or on Monday.

MR. DEAN: Okay. Just to answer your question about from earlier whether Mr. Albergotti's declaration

provided evidence that there were no issues raised. In Paragraph 17, he specifically says the Government has not raised any defects or non-conformities with respect to the goods.

THE COURT: Right. That is why it seems to me -- that is what leads me to say that then requires the Government to show me that there is either acceptance is something affirmative or that it did something that is non-acceptance. Even if acceptance is affirmative there is still your argument that acceptance is implied under the terms of the FAR itself.

MR. DEAN: Right. Our position, and I think you're reading this contractors notice the same way we are that that notice certainly did not reject goods -- I mean, I think it's an inference that we're going to accept the proof of deliveries and post receipts but it's certainly not a rejection of the goods that were delivered prior to August 27th.

THE COURT: No. That is how I read that document. That document isn't itself -- that is just a notice that they wrote. So, if there is something else that doesn't preclude them from taking some different position.

MR. DEAN: Yeah, they haven't raise it yet.

THE COURT: Okay, fair enough. That is what I'm going to give you a chance to tell me.

MR. DEAN: Well, that is why I was suggesting I don't know what they're going to say and so to do a simultaneous submission --

THE COURT: So, look, we could do it in the other order. That delays the process and you're in a hurry. So, you tell me.

MR. DEAN: Give me -- let me confer.

THE COURT: Fair enough.

MR. LAMB: Your Honor, just to speak. If debtors prefer to sequentially informed the Court of our views we would respectfully request an opportunity to reply to whatever position --

MR. DEAN: I think we're okay with a Friday submission simultaneous letters to address the issues.

THE COURT: All right.

MR. LAMB: Friday is perfectly --

THE COURT: All right. Let's do it that way. If I could, not to be inhumane, could I get it by like, say, 2:00 p.m. on Friday so that I take it with me and spend --

MR. DEAN: Sure.

THE COURT: -- we ruin my weekend not yours.

MR. LAMB: Of course, Your Honor. Would you request a page limit?

THE COURT: No, there's no -- I will read as much as you -- I want to give you a chance. I'm not encouraging

you to go on and on but I'm not going to artificially tell you, you know, you have to do it in X pages.

MR. LAMB: Thank you, Your Honor.

THE COURT: It would surprise me if this is a very long piece of paper but sometimes I'm surprised.

MR. DEAN: And letter is fine?

THE COURT: Letter is fine.

MR. DEAN: Just one last point I want to raise on the delivery addresses in Paragraph 12 because you said you wanted us to point to the record. There are a bunch of emails that are quite confusing about this back and forth about the delivery addresses. So, we didn't bring them in.

Our position is that because there has been no rejection of the delivery addresses then they have accepted those too because we gave them the proof to engage with us.

THE COURT: So, look, in the letter point me to the emails. If they're already in the record you don't need to reproduce them. If they're in the summary judgment record, and I have it, but here I do think that -- just my instinct is if you say I delivered it to place X and they point to the contract that says delivery had to be in point Y, and you're saying that they have agreed to take it at point Y that is something where if they have shown me that it says X that that is enough to basically show the absence of a dispute you need to show me that they have agreed to Y. And if it's

confusing that's a problem for you but that sort of is what it is.

MR. LAMB: Your Honor, just to be clear, you're limiting the record we're relying on for this Friday submission to the record before the --

THE COURT: To what is already in the summary judgment record, exactly.

MR. LAMB: Okay. Because the debtors did provide numerous documents for review that are included in the record.

THE COURT: I'm going to rule based on the existing record. I feel like -- I'm asking for additional help in understanding the existing record, not in redoing summary judgment.

MR. LAMB: Understood, Your Honor. Thank you.

THE COURT: Okay.

MR. DEAN: Okay. Fair enough, Your Honor. I have nothing further unless you have any other questions for me. We will get you our letter by Friday and we thank you very much for your time today. I know this is a difficult motion and a difficult record to get through.

THE COURT: No, look, this is the job for which I signed up. So, I am not -- you are not going to hear me complaining about this.

MR. LAMB: Your Honor, if I may?

THE COURT: Yes, you may.

MR. LAMB: If the Court does order turnover today, it's unclear --

THE COURT: So, I'm not ordering it today because I haven't identified what the universe is. If -- what I'm asking you to do though is for the things were based on my ruling you don't have a basis to dispute the obligation to turn it over. I would like you to see if you can work out an order that you can submit under certification. I'd like to enter that order as quickly as I can.

So, where there are things where you're taking the position in light of everything I've said it's going to turn on my resolution of these letters. That is not going to be subject of that order but where there is no longer a good faith basis other then you disagree with me, which you can do in good faith, but I'm going to enter an order requiring turnover of that stuff.

Let me say this, that's going to be -- once you do that I'm going to order that the payment be made within five days of the order and that five days is an administrative stay. So, you have got to get -- I'm going to give you five days to get the District Court or the Third Circuit to grant a further stay pending appeal. I want to be respectful of them and not jam them unduly but I also think I have no choice but to jam them a bit under the circumstances of the

case.

MR. LAMB: Understood, Your Honor. That is exactly what I going to ask.

THE COURT: Okay, very well.

MR. DEAN: Can I just ask one clarifying question on the potential certification where you've kind of already told us where you are and what is not disputed. Are we really talking about the lines that your clerk identified?

THE COURT: I think so.

MR. DEAN: 1 through 6, 23, 25, 27 to 31, 51 and 56, is that -- I just want to make sure.

THE COURT: Why don't we ask Sandy that question.

(Pause)

THE COURT: I know my own limits.

MR. DEAN: I just want to make sure I wrote them down accurately so I don't mess it up.

(Off record discussion)

THE COURT: And, again, the principle is the one that we were talking about which is we're talking about deliveries before the 27th, proof received before the 27th, and where the column that says proof acceptable the answer is yes.

MR. DEAN: Understood.

THE COURT: And so that is what we're talking about.

MR. LAMB: Thank you, Your Honor.

THE COURT: Okay, very well. So if you can meet and confer about that and get me an order that would be great. Everyone's rights to challenge the order are a thousand percent preserved and then as to the other issues I will look for your next submissions and then I will do my best to get you an answer as quickly as I possibly can.

MR. DEAN: Thank you, Your Honor.

MR. LAMB: Thank you, Your Honor.

MR. GESMUNDO: Your Honor.

THE COURT: Yes.

MR. GESMUNDO: Your Honor, just on the motion of adequate protection on the order, so as to avoid -- I know everyone is under a time crunch. The order situation we had last time, would Your Honor be issuing its order denying the motion for adequate protection?

THE COURT: Yeah, so why don't -- let me ask you this: With respect to the motion for relief from stay, I sort of said on the record what that order ought to say. Can I ask you to give me that under certification?

MR. GESMUNDO: Yes, Your Honor.

THE COURT: Why don't you -- can you just do the same then for the order denying the motion for adequate protection?

MR. GESMUNDO: Yes, Your Honor.

THE COURT: Okay. So, if those can just come in under certification we will get them entered promptly when they come in and then everyone can then carry about however they see fit.

Anything else I can do to be helpful while we're here?

(No verbal response)

THE COURT: Look, I appreciate this is a little bit messy and I appreciate everyone's patience as I've done my best to make sense of this record, quite imperfectly I acknowledge. I think the supplemental letters will be helpful in working through the rest of the matters. And I really appreciate everyone's good faith and hard work to get us to here. So, if anything comes up where you need us you know how to find Chambers. Otherwise, we're adjourned.

Thank you.

(Proceedings concluded at 3:00 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling October 29, 2026

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Mary Zajaczkowski October 29, 2026

Mary Zajaczkowski, CET-531

Certified Court Transcriptionist

For Reliable