Docket #1169 Date Filed: 12/01/2025

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

IN RE:	.	Case No. 25-16137 (MBK)
	.	Chapter 11
POWIN, LLC, ET AL.,	.	(Jointly Administered)
	.	
	.	U.S. Courthouse
Debtors.	.	402 East State Street
	.	Trenton, NJ 08608
	.	
	.	November 25, 2025
. . . . .	.	11:31 a.m.

TRANSCRIPT OF CONFIRMATION HEARING
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

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THE COURT: All right. Good morning. It's still morning, everyone. This is Judge Kaplan. We will be starting today's hearings with respect to the Powin, LLC matters in a moment. Let everybody get up to speed with their videos for those appearing remotely and the Court will address.

All right, we do have counsel both in courtroom and appearing remotely. I'll remind those who are appearing remotely to make use of the raise-hand function, if I haven't called upon you, to ensure that we are able to bring you into the hearing and have you participate.

There have been a flurry of filings. You all have been busy the last few days, it looks like it's been very productive.

Let me have appearances from counsel who are in the courtroom. Good morning, Mr. Durrer.

MR. DURRER: Good morning, Your Honor, Van Durrer of Dentons on behalf of the debtors.

MR. DOHERTY: Good morning, Your Honor, Casey Doherty, Dentons, on behalf of the debtors.

THE COURT: Welcome.

MR. OSWALD: Good morning, Your Honor, Frank Oswald, Togut, Segal & Segal, co-counsel for the debtors.

THE COURT: Mr. Oswald.

MR. AULET: Good morning, Your Honor, Kenneth Aulet of Brown Rudnick for the committee, and I'm joined by my co-

counsel Daniel Stolz of Genova Burns.

THE COURT: Mr. Stolz and Mr. Abramowitz, good morning.

MR. ABRAMOWITZ: Good morning, Arthur Abramowitz on behalf of Ace Engineering.

THE COURT: All right. Thank you.

MR. SPONDER: Good morning again, Your Honor, Jeff Sponder from the Office of the United States Trustee.

THE COURT: Thank you, Mr. Sponder.

Mr. Lemkin.

MR. LEMKIN: Joe Lemkin of Stark & Stark on behalf of Spark Renewables.

THE COURT: Great. Thank you.

All right, that takes care of the courtroom personnel. Again, those appearing remotely, just enter appearance if and when you wish to participate.

Mr. Durrer.

MR. DURRER: Van Durrer again, Dentons, for the debtors, Your Honor. We did file an amended agenda, which we'll be operating from, at Docket 1138 just a short bit ago, and that was designed to create some order from the chaos of the filings over the past 18 or 24 hours.

Let me just start by saying again we appreciate very much the Court's time and diligence. I think -- notwithstanding this is a short holiday week, I think Your

Honor will agree that chambers will have put in a full work week by the time --

THE COURT: Yes.

MR. DURRER: -- we get to the holiday.

When these cases were filed back in June, you know, this was as traditional a free fall as there ever was, and here we are not even six months hence with a virtually consensual plan and a real, meaningful recovery opportunity for creditors.

I'm going to start with some introductions, briefly. In the courtroom, Your Honor, we do have Mr. Gerard Uzzi, who is the debtors' CRO. And if I had a nickel for every time he said during the past six months, well, then we'll just convert the case, I would have quite a few nickels.

(Laughter)

MR. DURRER: Let me also introduce my colleagues Tania Moyron, who is not only the chair of the restructuring group at Dentons, but also a dear, dear friend of mine, and also was recently selected as a fellow to the American College of Bankruptcy. So we're very happy for her for that honor.

THE COURT: Congratulations.

MR. DURRER: I want to pause and just say that, you know, we haven't -- we've had our share of raised voices and eye-rolling in this case, but not much of it has occurred in this room, and we're very proud of that, and, candidly, Tania Moyron is a big reason for why that happened.

And then, lastly, I'll introduce my partner John Beck. At the appropriate time, he's going to walk Your Honor through important agreements memorializing the form of confirmation order. And then, lastly, Mr. Doherty will present some of the customer proceedings, which I again believe are largely, if not completely resolved.

But the first item on the agenda belongs to Mr. Oswald. So, with that, I will turn it to Mr. Oswald. Thank you, Your Honor.

MR. OSWALD: Good morning again, Your Honor, Frank Oswald, Togut, Segal & Segal, co-counsel for the debtors.

Item 1 is an uncontested motion that we filed at Docket Number 1018. The motion, in sum and substance, sought several things: Number one, to estimate the claim of the surety, which we're calling Avalon, at zero, so for purposes of the plan and confirmation today; to seek the return of excess collateral, $8 million, over $12 million escrow that had been posted to cover Customs claims and duties; and then to establish some post-plan procedures for the settlement of open items.

Late last week, as I advised your chambers yesterday, we did get a reach-out from counsel from Avalon, I think Ms. Donner is appearing via Zoom today -- I don't know if you see her on your screen --

THE COURT: I see her.

MR. OSWALD: There you go. And --

MS. DONNER: Good morning, Your Honor.

THE COURT: Good morning, Ms. Donner.

MR. OSWALD: -- noting that the objection deadline had passed and apologizing on behalf of our client for that. She raised some questions and clarifications and some concerns regarding the motion, which fortunately we were able to talk through over the weekend and yesterday, late afternoon, at Docket Number 1133, we filed a revised form of consensual order on the motion. Again, in sum and substance, and of import to the estate, we will get, upon if the Court approves the motion, a prompt return of $8 million out of that 12.

I mentioned to Ms. Donner, we'll for the record, because it's not specifically in the order, certain of the factual recitations in the motion which the Avalon folks had some questions and debate about are not being attributed to Avalon, so we'll take those on the record as those are the debtors' recitations as to the facts.

The collateral agreement, which was dated October 30, I think inadvertently has an October 2023 date, we've agreed that that will remain in full force and effect as we go forward and have the remaining items liquidated. We believe there's only a handful of those and we also believe, good news to the creditors, that when those are resolved we will get back at least most of the remaining $4 million.

We've decided to defer for now the settlement procedures. Counsel for Avalon thought they were probably too cumbersome for what we need to do. We agreed there's no reason to spend a lot of time and estate fees on that, so that's why we've stricken the more voluminous procedures.

So, with that, I guess the only other item is we have agreed that Avalon -- we certainly had some informal notice of the claim, they'll be deemed to have filed a late claim in terms of their contingent and unliquidated claim. The committee was okay with that and I think it was the only issue we had some back and forth on. But, again, based upon all the information we have at least today, we don't believe there will be any claim back to the estate.

So, unless Your Honor has any questions or Ms. Donner wants to correct anything I've said, we would ask that the motion be granted based upon the revised form of order, which has been reviewed by committee counsel and it's acceptable to them.

THE COURT: All right. Thank you. Let me hear -- thank you, Mr. Oswald. I did have a chance to go through the redline version of the order. I think it was on ECF-1018.

Ms. Donner, is there anything you wish to add or highlight for the Court?

MR. DONNER: I don't believe so, Your Honor. I think Mr. Oswald stated everything correctly and that the order,

other than paragraph 6, which has October 20th instead of October 30th, 2023, the order is acceptable and is what the parties agreed to.

THE COURT: All right then. I did see Ms. Tancredi, I see a hand raised.

MS. TANCREDI: Yes. Thank you, Your Honor.

So, with respect to the $4 million that's remaining with the surety, it is our understanding -- I represent Applied Surety, which is another surety in this case -- that the debtor would be making good faith efforts to move for a channeling injunction to channel Customs claims to that, you know, some res to be created from those proceeds. I wanted to raise my hand and make sure that that was still the debtors' intention because that was the basis for our agreement with the debtor.

THE COURT: There is another settlement or resolution with the surety, correct --

MR. DURRER: Yes, Your Honor.

THE COURT: -- that this touches on?

MR. DURRER: We've actually -- so, as Mr. Oswald explained, this motion, Docket 1018, came in three parts; one was the estimation of the claims, two was the return of the eight million, and the third was the settlement procedures. Given Ms. Donner's very recent involvement and the circumstances that Mr. Oswald explained, she was not prepared to take that third step and, as Mr. Oswald, we took that off

the table with respect to her; Ms. Tancredi and her clients are at that step and so it was our intention to bring that up in the context of confirmation, but here we are.

So, yes, it is still our intention to pursue that avenue. We just wanted to give Ms. Donner, since her client has that money, to get more up to speed and have an opportunity to explore that with us and with Ms. Tancredi, which we're optimistic that we'll be able to accomplish in the coming days.

THE COURT: All right. Ms. Tancredi, did that address your concerns?

MS. TANCREDI: It did. Thank you very much.

THE COURT: You're welcome. And thank you, Ms. Donner. The Court has no issue with the form of order.

What I'm going to suggest for all the orders that are going to be entered today -- and I know you've given drafts and provided my chambers with redline versions -- let's post-hearing just send them down to chambers with the request to enter these orders. I want to make sure I get the right ones entered. All right? And thank you, Mr. Oswald.

MR. OSWALD: Thank you.

THE COURT: The motion will be granted.

MS. TANCREDI: Your Honor, may I be excused?

THE COURT: You may. Thank you for your participation.

MS. TANCREDI: Thank you.

THE COURT: You're welcome.

MS. TANCREDI: Thank you for allowing me to appear remotely.

THE COURT: No problem.

MS. TANCREDI: All right. Good luck to you all.

THE COURT: Thank you. All right.

MS. MOYRON: Good morning, Your Honor --

THE COURT: Good morning.

MS. MOYRON: -- Tania Moyron of Dentons on behalf of the debtors.

So, this is Agenda Item Number 2, and, Your Honor, this is the Ace settlement. And as you probably know from the papers, Your Honor, Ace is the largest unsecured claim filed in these cases. Ace also had a priority -- excuse me, an administrative claim it asserted in the tune of $13 million. We are happy and pleased that we were able to resolve the Ace claim, and we are very thankful for Mr. Walsh, who has been constructive, and for committee counsel, who has been incredibly constructive. And so, we received no objection.

At the highest levels, Your Honor, the settlement allows an administrative claim in the amount of five million, and there's going to be $1 million that's paid on the effective date. What the settlement does is it also allows an unsecured claim in the approximate amount of $105,228,000.

And, in addition to that, there are some other

agreements that were reached. For example, they're going to contribute their direct claims to the direct trust. They also were able to choose the liquidating trustee. And so in the settlement agreement you probably saw that that will be Phoenix Management, and that was obviously subject to approval by the committee.

So with that, Your Honor, unless you have questions, and perhaps Mr. Walsh or Mr. Aulet want to be heard, I have nothing else other than seek approval.

THE COURT: All right, thank you. So, the balance of the four million will be paid through the liquidating trust?

MS. MOYRON: Yes, and there's specific language about that four million. It will be paid *pari passu* with other administrative claims and that will be up to the discretion of a liquidating trustee.

THE COURT: The trustee, and that is Phoenix Management, correct?

MS. MOYRON: Exactly.

THE COURT: All right, thank you.

Mr. Walsh, good morning.

MR. WALSH: Good morning, Your Honor, Tim Walsh from Steptoe on behalf of Ace. Everything that was recited is accurate, Your Honor. The debtors and the committee and my client did work hard in good faith negotiations, they were tough, but they were good, and the client is happy where we sit

right now with the settlement and so hopefully Your Honor will approve it.

THE COURT: All right. Thank you, Mr. Walsh, thank you for your efforts and that of -- and local counsel as well.

Mr. Aulet?

MR. AULET: Good morning, Your Honor, Kenneth Aulet of Brown Rudnick. The committee also supports this settlement. This is a key part of getting to a plan and we respectfully request Your Honor approve the settlement. Thank you.

THE COURT: All right. Anything --

MS. MOYRON: Thank you, Your Honor. And my partner John Beck also just informed me that I should probably put on the record the fact that their ballot was contingent on approval of this settlement agreement. So, as we walk through confirmation today, I'm sure Mr. Durrer will go through the ballots and the tabulation and calculations and mention that.

So, with that --

THE COURT: All right. Thank you.

MS. MOYRON: -- I would just -- thank you.

THE COURT: For clarity then, the Court is approving the settlement, having been properly noticed and certainly in the best interests of the estate. The Court recognizes that it was a critical element of any global pathway towards a confirmable plan. And we'll enter an order, submit this as part of a package coming down post-hearing. Thank you.

MS. MOYRON: Thank you, we appreciate it.

The next item on the agenda, Your Honor, is another settlement, and that settlement is just as important, and the settlement resolves the WARN adversary proceeding that was commenced on the petition date. And, similar to the statements I made with respect to Ace, we'd like to thank plaintiff's counsel, who have been incredibly helpful, and again Mr. Aulet and the committee and advisers to -- for helping us facilitate this settlement.

So, at the highest level, Your Honor, this is a settlement under 9019 that seeks to approve an allowed claim for these WARN claimants in the amount of 3.5 million; 500,000 will be paid on the effective date. Because of the nature of the class, we also in the motion, as you probably noted, seek to approve and certify this class under Federal Rule of Civil Procedure 23, incorporated by Federal Rule of Bankruptcy Procedure 7023.

And there's two parts, you probably noticed as well, today would be the preliminary hearing because, as plaintiff's counsel will note, they have to facilitate notice --

THE COURT: Correct.

MS. MOYRON: -- out to all of the members of the class, and the second part will be a fairness hearing, and that really is the final hearing, Your Honor.

In the settlement, there are obviously other terms as

well. There are terms related to a nominal fee for class representatives, there is a section related to counsel fees, and there's various sections I don't think we need to put on the record.

But with that, Your Honor, we would seek approval of that today. We also did not receive any objections, and I'm sure others will want to be heard, so I will pause there.

THE COURT: All right. Obviously, everything was brought on shortened time to allow anybody to raise objections at the hearing.

First, before I turn to any potential objections, let me turn to Mr. Raisner. It's good to see you again.

MR. RAISNER: Good morning, Your Honor. I can attest that you've been busy in these past couple of days and I especially appreciate your allowing us to go forward today and all your accommodations, and I have to compliment my colleagues.

This is a case, Your Honor, where the ideal pursuit is the maximization of creditor value with the minimizing of needless extra litigation and professional fees and costs to the process. And the four counsel, debtors and committee, prime counsel and local counsel, are all professionals we have dealt with before who have been around the track, who have the experience to recognize an opportunity to really do what is the optimum in a case and I'm just, you know, beside myself really

with being able to tell you what the difference is in this case versus other cases.

And, from our perspective, I would also like to hand bouquets to the other creditors in this case who had to make significant concessions in order to make this work. I don't think they often get enough credit sometimes in these accommodations, but here really hats off to our colleagues.

Your Honor, I really don't have much to add that's not in the papers or in Ms. Moyron's presentation so far, but I'm happy to entertain any questions Your Honor might have; otherwise, we can, you know, proceed. Again, it's a long afternoon.

THE COURT: Let me just ask this: What were we looking at as far as a fairness hearing timing-wise?

MR. RAISNER: Looking at it approximately mid-January, at least 45 days from now, and less than 60. January 20th is a day that we haven't vetted yet with our colleagues, but is approximately where this would fit in.

THE COURT: All right. I would suggest you reach out with chambers at that point as we get closer, we can schedule. Again, likely to be in January, remote -- absent the need for an evidentiary hearing of substance, we can handle this remotely. But thank you, Mr. Raisner.

MR. RAISNER: Your Honor, if I could just say? The order that we put before you asks for the setting of the

fairness hearing date now and we work off of that in terms of the --

THE COURT: Oh, okay.

MR. RAISNER: -- progression of steps. So that is actually the only blank, I think, in the proposed order.

THE COURT: Then let's fill in that blank: January 22nd at 11:30.

MR. RAISNER: Okay. Thank you very much, Your Honor.

THE COURT: All right. Thank you.

Mr. Aulet, anything you want to add?

MR. AULET: Your Honor, I'd just echo Mr. Raisner and Ms. Moyron's comments that this is another example of the way that in this case -- there's not a lot of money here and we've been able to get to the right result without tremendous litigation expense or -- and, again, this is a critical component of the overall plan. We would respectfully request that the settlement be approved.

THE COURT: All right. Certainly the Court finds that the settlement meets the standards under 9019 as being in the -- far exceeding the lowest point of reasonableness. It's in the estate's best interest to resolve these issues. Litigating WARN Act claims can only add delay and costs and risk to the estate of a much larger number. It's a fair compromise, as presented. The Court also finds that the Rule 23(a) and 23(b) requirements have been met at this juncture,

subject to the fairness hearing in January.

So the Court will enter, again, the final order.

MS. MOYRON: Thank you, Your Honor. We appreciate it.

THE COURT: Thank you. And those of you who don't wish to have more entertainment value are excused. Thank you.

Counsel?

MR. DOHERTY: Good morning, Your Honor. I believe it's still morning.

THE COURT: A couple more minutes.

MR. DOHERTY: I hope I end in the morning as well, but I'll try. I am here -- and I'm not sure if Ms. Kanzer from Vinson & Elkins is on the line, as she is a movant for the motion to compel --

THE COURT: Yes.

MR. DOHERTY: -- warranties, but I believe we have the issues resolved. So, with her permission, I can present the resolution along with the joining parties.

THE COURT: Thank you. Please, go ahead.

MR. DOHERTY: Thank you.

Your Honor, I'm here to present on the docket Number 956, which is a motion to compel warranties. Related motions are Docket 297, which is also filed by the Ad Hoc Customer Group, which is a motion for adequate protection, and Docket Number 117, and the joinders to those documents. 117 has been

officially withdrawn, which was filed by Leeward and Longroad, but a lot of customers have joined.

As Your Honor is familiar with, we've had multiple hearings and status conferences where things have been continued and pushed together on customer issues.

THE COURT: They stayed on the calendar from day one through confirmation, you don't often see that.

MR. DOHERTY: That's correct. I've had -- I'm now a VIP in the Princeton Hotel because of the customer issues here and I appreciate it.

To give some background here, you know, Powin's prepetition business concerned on a high level, as from the first day declaration testified about, selling and servicing equipment. When we filed this case, as my partner alluded to, Powin didn't know how they were going to restructure, and they filed a motion to be able to restructure their customer agreements. These agreements include obligations for Powin to provide service, and they also included, as Mr. Uzzi testified to in his declaration, warranties and guarantees for the equipment. So, if something goes wrong, Powin could ask the supplier to perform under their warranty.

As this case, you know, turned into a sale and where Powin sold some equipment, did not sell some equipment, and customers retained some of the equipment, the contracts connected to the equipment were rejected by the debtors. They

filed a motion on June 17th and asked to reject the contracts. So it's the debtors' position that this is also a rejection of the warranty agreements.

We had a lot of customers object. The debtors replied that we would not assign warranties unless we decided it was in our business judgment to do so and on the terms.

After we had multiple hearings, the ad hoc group filed a motion on October 23rd to compel warranties, a lot of parties have joined. In that period, we worked with the movants and the joining parties and our customers to resolve the issues. We've created a solution where we will, as alluded to in our response, quitclaim assign any guarantees and warranties we have to the equipment. We're not warrantying that we have it or that we have the right to assign it, but if we do that we give it to them.

We've been in conversation with the customers and the joining parties to provide a, say, schedule. We sent them a form of a quitclaim with a Schedule A, which includes -- you know, according to the customer, will list the equipment and the warranties. We've had a lot of engagement with that. We've executed a couple -- have a couple very close to execution, and I believe we're resolved with the customers; on a broad level, we have reached terms.

We will not go -- as I understand it, we will not go effective until the end of next week, so we have time. As I've

told my counterparties that it's a simple form, we believe we have a substantive agreement, and I note the Thanksgiving holidays are coming up, but we should be -- we will be, the debtors, and we'll be able to execute and effectuate these documents through next week. I think everybody probably knows my number now, the joining parties. So, we'll get this done, we will get this done.

Another item some of the customers have asked me to confirm on the record is that, given our limited resources, some customers have asked for us to send them applicable warranties connected to the equipment; instead, we have given them access to our sale data room where they can find the agreements themselves. This has been successful for the parties that have been granted data room access and, to the extent joining parties and moving parties haven't been given data room access, we'll give it to them.

Another item a couple customers have asked me to confirm on the record. As alluded to at a couple of the status conferences before, the debtor had sent invoices for post-petition services that were unpaid; that is severed from this warranty issue. Both parties are going to reserve rights. The liquidating trustee will inherit all causes of action, including any rights to pursue those, the customers have their defenses.

One carveout is Spark Power filed a limited objection

concerning he assignment of the EsVolta and EDF warranties, and they're represented by Orrick, Ms. McGowen. I understand, but I'll cede the podium, if need be, that Spark and EDF and EsVolta have reached an agreement on the quitclaim assignment that we will sign and that it's been agreed to by Spark. Of course, if that's not the case, they can speak up.

THE COURT: But that's limited to that warranty?

MR. DOHERTY: As to those --

THE COURT: That's --

MR. DOHERTY: -- I'm not sure if it's one or two warranties, but if it's implicated it will be carved out by language that those two parties have agreed to, so the debtors are not doing anything that violates that objection.

I have -- I believe the colleagues, including the movants, are on the line, and I have tried to say everything, I will see with my seven other lawyers if I did. And, you know, certainly if I didn't say anything accurate with the resolution, I know that they'll correct me. Thank you. And if Your Honor has any questions as well.

THE COURT: All right. Thank you, I appreciate it. It all makes sense to the Court, but let me go around the virtual room, so to speak.

First, Ms. Kanzer, did you want to be heard?

MS. KANZER: Yes, please, Your Honor, Lauren Kanzer of Vinson & Elkins on behalf of the ad hoc group of customers.

As Mr. Doherty noted, we have resolved with them the motion to compel the assignment of the warranties. Given the number of joinders filed, we didn't want to withdraw that motion in advance of the hearing, but my clients are withdrawing their participation in that motion.

We also do have the motion for adequate protection pending, which we have, as noted, adjourned a number of times. One of my clients is still participating in that motion and would like to further adjourn it. I recognize that may be moot at some point following confirmation, but we are going to leave that motion open, and I think there's an omnibus hearing scheduled for December 17th, perhaps we just adjourn it to that date while we continue to work with FlexGen to resolve open issues on that.

THE COURT: All right. So, let me just clarify before I go to other counsel, the matter -- there are essentially three matters on for today, two of the holdover emergent motions and the motion with respect to the warranty. The warranty motion is being resolved, order to be submitted, I get a sense, the other two we want to carry to the omnibus date?

MR. DOHERTY: I -- if Ms. Kanzer would like to move her motion, we don't have an opposition to that, but our preference would be that, unless someone requests to carry, they are resolved. They're interrelated; in fact, in the

response to our rejection motion and in joinders, people asked for the assignment of warranties.

So, from the debtors' perspective, carving out the request to continue out for a request from FlexGen, unless someone speaks up to continue, we would like to consider all of those matters resolved.

THE COURT: All resolved. I mean, the Court's inclination is simply to mark all of the matters order to be submitted and with the proviso that, if anyone wishes to renew a motion, all they need to do is send a letter to the Court and we can put it back on the docket, rather than continuously carrying multiple joinders and responses and pleadings. It will be a cleaner docket.

So -- but let me hear from others, I see all the raised hands, and we'll see where we go.

Ms. McGowen?

MS. MCGOWEN: Good afternoon, Your Honor, and thank you for allowing me to participate remotely. Lorraine McGowen from Orrick, Herrington & Sutcliffe on behalf of EsVolta and EDF.

Your Honor, I first want to thank the debtors for the resolution on the warranty motion. As mentioned, we are in the process of finalizing with the debtors' counsel the quitclaim deeds. And I would also like to confirm on the record the agreement that was reached with Spark Power Renewables that the

quitclaim deeds for Esvolta and EDF will include a carveout specifically for any assignment of warranties from Spark Power Renewables USA Inc. or its affiliates, and I think that resolved the issue that Spark Power had filed an objection to the assignment of warranties by the debtors.

With respect to the other two matters, Your Honor, I appreciate -- we are very, very close to finalizing agreements with FlexGen. The forms of the agreements are out to counsel and their clients, and so we expect to have all of the issues associated with FlexGen resolved quickly.

THE COURT: All right. Thank you, Ms. McGowen.

Mr. C de Baca?

MR. C DE BACA: Good morning, Your Honor. Can you hear me?

THE COURT: Yes, I can.

MR. C DE BACA: Great. Thank you.

I just wanted to say that -- well, first of all, Joaquin C de Baca with Mayer Brown appearing on behalf of Leeward, Strata, Longroad, and DTE. Several of our clients joined in to the motion with respect to these warranties. We wanted to echo counsel's comments. We appreciate the constructive approach that the debtors have taken with respect to this matter and our objections are resolved on that basis.

I just wanted to speak up to note that we had objected in a couple of other places as well with respect to

insurance and some language in the plan. We wanted to make sure that -- and we had some agreed language to that effect, we wanted to make sure that the debtors confirm that that is the intention. We can of course address those matters when we get to those items on the agenda, but they are to some degree linked with the submission of these warranty assignment forms.

THE COURT: All right. Did you want to address that now or later?

MR. DOHERTY: I believe my partner will address that subsequently on the next matter.

THE COURT: All right, we'll make sure it gets addressed. Thank you, Counsel.

Mr. Theisen.

MR. THEISEN: Good afternoon, Your Honor, Brett Theisen --

THE COURT: Theisen, yes.

MR. THEISEN: -- of Gibbons PC on behalf of Galp Energia and its affiliates.

We had also filed a joinder to the warranty motion. We are resolved in principle, I guess, subject to, like some of the others, a submission of -- execution of the quitclaim assignment --

(Voices on Zoom)

THE COURT: All right.

MR. THEISEN: Sorry.

THE COURT: No, that's fine.

MR. THEISEN: And I just -- I was going to speak today just to ask that we carry our joinder to the next omnibus date while we finalize that agreement, but with Your Honor's comments and recognizing that carrying a joinder when the motion is resolved is a little maybe procedurally improper, we're fine with Your Honor's comments that, you know, we can re-raise that issue at a later date if there's some issue with executing the final agreement, which I don't think there will be.

THE COURT: All right.

MR. DOHERTY: And I'd note, in our revised form of confirmation order, there is a paragraph where these quitclaim forms are acknowledged and that there's approval of them being executed. So, people will have that order on that.

THE COURT: Great, and then we'll address what need be.

One more, Mr. Lemkin, just -- Mr. Melko?

MR. MELKO: Good morning, Your Honor -- or good afternoon, Your Honor, John Melko, Foley & Lardner, on behalf of the PureSky entities. I believe Counsel was referring to paragraph -- to cradle paragraph 54 of the confirmation order, which accurately reflects the agreement we have. We joined in the ad hoc customers group motion with respect to the assignment of the warranties.

THE COURT: Great. Thank you, Counsel.

Mr. Lemkin?

MR. LEMKIN: Joe Lemkin of Stark & Stark on behalf of Spark Power Renewables. We are the ones that filed the only objection probably to the warranty motion.

I did hear about the resolution, which is absolutely correct. I just wanted to clarify that this would apply to all the joining parties, not simply Ms. McGowen's client.

THE COURT: Right.

MR. LEMKIN: So, I just wanted to make sure that each will be providing -- each quitclaim deed -- I mean quitclaim assignment would be providing the carveout for Spark Power.

THE COURT: All right. Thank you, Mr. Lemkin.

All right. So, for the most part, the Court heard probable resolution, likely resolution, verge of resolution, I'm treating it as resolutions. This is with respect to Items 4, 5, and 6 on the agenda for today, specifically Docket -- ECF Dockets 117, 297, and 956, I believe. We're going to mark these as orders to be submitted and we'll wait for everybody to finish up the paperwork, but just to confirm, to the extent issues remain or parties need to address issues, the Court is available. We can reschedule just upon an email request or schedule a status conference to try to address and resolve any open issues.

Thank you.

MR. DOHERTY: Thank you, Your Honor. Good afternoon.

THE COURT: Thank you. Yes, we hit it.

All right, I think that brings us to confirmation.

MR. DURRER: Van Durrer, Dentons, for the debtors again. Yes, Your Honor, you are absolutely correct. We are now up to Item Number 7 on the amended agenda, Docket 1138, which relates to confirmation.

Actually, we're also going to take, Your Honor, with Your Honor's permission, Agenda Items 7 and 8 together. 8 relates to disputes we had with FlexGen, which we have agreed to resolve, at least on an interim basis, and I'll walk Your Honor through that.

And as I mentioned, Mr. Beck is going to walk through the detail of the confirmation order, but what I propose to do, Your Honor, is walk through the evidence, explain the resolution with FlexGen first, and then we will have some matters to talk about with the United States Trustee. And then, as I mentioned, Mr. Beck will walk through the details.

THE COURT: Sounds good.

MR. DURRER: So, to begin, Your Honor, it's only natural as we enter -- excuse me -- the end-of-year holidays to have a bit of nostalgia, and this case is a classic example of what can be accomplished in the crucible of Chapter 11 to take a bunch of lemons and make some lemonade.

And I would be remiss if I didn't pause and echo

comments that have already been made, but we've maintained our record of not a single contested matter in this case with the creditors committee, and that's due in large part, if not exclusive part, to the efforts of the committee's advisers, Brown Rudnick and Alvarez & Marsal. We really appreciate the efficient and thoughtful contributions that they've made here, including up and through today.

In terms of the evidence, Your Honor, you have the declaration of Gerard Uzzi, the CRO, which is Docket 1102, and the declaration of Darlene Calderon of Verita, who is on the Zoom with us, in connection with the tabulation of votes, and her declaration is Docket Number 1095, and we would move those into evidence, Your Honor, subject to cross-examination.

THE COURT: All right. Is there anyone, any counsel or party present who wishes to object to the admission into evidence of either the Uzzi declaration or the Calderon declaration?

(No audible response)

THE COURT: Is there anyone who wishes to take an opportunity to cross-examine the deponents with respect to their declarations -- or declarants?

(No audible response)

THE COURT: All right. Then the Uzzi declaration comes in as D-1; Calderon, with respect to tabulation, comes in as D-2.

(Debtors' Exhibits D-1 and D-2 admitted into evidence)

MR. DURRER: I'm not going to belabor Ms. Calderon's declaration, but suffice it to say that the plan overwhelmingly received sufficient support under Section 1129 of the Bankruptcy Code to carry the vote, including with the Ace vote being now an unqualified vote given Your Honor's approval of the Ace settlement.

When Powin entered Chapter 11, you know, this isn't the biggest case that any one of us in the room have seen, but we entered the case with 87 employees, and I'm proud to say that 46 of those employees moved on to FlexGen Power Systems, LLC and kept their jobs, and that's part of the mission, that's part of why we do this.

With respect to FlexGen, I'd like to offer a proffer of Mr. Uzzi with respect to the FlexGen settlement.

THE COURT: Yes, please.

MR. DURRER: And, just for the record, we lodged that settlement agreement at Docket Number 1136, and it comes in two parts. There are provisions of the confirmation order that relate to that settlement, I'll get to that in a moment, but we had in essence two disputes with FlexGen as we entered the month of November, one was with respect to -- well, both were with respect to two different sets of inventories.

One set of inventory, which I'll get to in a moment, related to inventory that was held by an entity known as R.H.

Shipping, and we lodged the settlement with R.H. Shipping at Docket 1132, and I'll walk through that in a bit, Your Honor. And then the other related to inventory that was held by Welldex.

With respect to Welldex, notwithstanding -- and just to be clear, Your Honor, we have a settlement, so I'm offering the debtors' perspective on this and I'm not purporting to, you know, bind FlexGen to any of the facts I'm going to recite, but this is what, you know, Mr. Uzzi would testify to in support of the settlement.

So, Welldex was one of the entities that had control over -- possession, I should say, over the inventory, and at the time of the closing of the sale back in August the debtors had transferred -- in our view, had transferred title to that inventory to FlexGen. Subsequent to the approval of the sale, the debtors learned that in fact Welldex and its affiliates had actually destroyed some of that inventory in violation of the automatic stay. In the case of R.H. Shipping, R.H. Shipping asserted additional claims beyond what the debtors had scheduled in the cure claims that the debtors had paid. What the settlement that is reflected at, again, Docket 1136 relates primarily to that Welldex inventory. And what we've done, Your Honor, is we have proposed a substitution of inventory.

You may recall, Your Honor, back in August that one entity, Solar Carver, had objected to the sale, their objection

was Docket 619, and at that time we had agreed to exclude that inventory from the sale, and we were going to continue to work with the parties to see what we could do with respect to the inventory. Ultimately, we did offer Solar Carver the opportunity to purchase that inventory; Solar Carver did indeed decline to purchase that inventory. Subsequently, the debtors filed a motion for authority to sell or abandon all remaining inventory that wasn't disposed of in the August sale to FlexGen, and we obtained an order with respect to that relief at Docket 1031. Solar Carver was served with that order and never objected.

Under the proposed settlement that we have now, we're going to provide that inventory to FlexGen, and that will resolve the dispute over the destruction of the Welldex inventory. Specifically, Your Honor, we are seeking -- and it's important, vital in fact, to that settlement that the confirmation order not only approve that settlement, but also approve the transfer of that Solar Carver inventory from the debtors to FlexGen.

And when I say Solar Carver inventory, that is for convenience. The debtors' view and Mr. Uzzi's testimony would be that this is the debtors' inventory --

THE COURT: The debtors' inventory, right.

MR. DURRER: Absolutely.

THE COURT: Just by designation.

MR. DURRER: Yes, Your Honor. So that is -- and also, Your Honor, the other element of the Welldex settlement with FlexGen is that, in the context of the APA with FlexGen from the summer, FlexGen had transferred to the debtors $469,000, which was designed to pay cure and storage costs to Welldex. We all agree that Welldex doesn't deserve that money because the stuff is not there anymore. So, we are returning as part of the confirmation order that $469,000 to FlexGen.

THE COURT: All right. This is not a separate motion, this is being resolved under the plan pursuant to 1123 and 9019. The Court -- well, let me make it clear -- is prepared, having reviewed the proposed settlement, to make the necessary findings that it certainly satisfies the 9019 standards, for the same reason I've said previously, it's critical to a global resolution. The cost, delay, and risk associated with litigating the entitlement and challenging the enforcement of the APA, which we might be doing with respect to the other inventory, but this makes sense certainly to -- that it far exceeds the lowest point of reasonableness, as required under In re Martin.

The Court is prepared to include within the confirmation order the necessary language to address approval of this settlement with FlexGen as to the Welldex inventory.

Now, having said that, I don't see any other raised hands. Let me just make sure, since everything is on shortened

notice, does someone want to be heard? Mr. Mispagel?

MR. MISPAGEL: Good afternoon, Your Honor, Jeff Mispagel from Latham & Watkins on behalf of FlexGen, the DIP lender and purchaser, and now claimant.

Thank you, Your Honor, for approving the settlement. The only reason I wanted to speak was just to note that there was one sentence in our resolution with the debtors that did not make its way into the confirmation order, and the debtors have indicated that they'll submit a revised form of order with that sentence, but I figured we should note that for the Court as well.

The sentence -- I'll just read it rather than try to explain it -- it just says, following the sentence that establishes a reserve for FlexGen's claim, the sentence just says, "In the event that any FlexGen sale claims are allowed, they shall be payable upon the entry of an order allowing such FlexGen sale claim without the requirement that such order be a final order of the Bankruptcy Court, provided such payment shall not waive any rights of the debtors to recover such payment if such FlexGen sale claim seeks to be allowed."

THE COURT: All right. Is this touching on the other aspect, the R.H. --

MR. DURRER: Yeah, I was going to go into that, Your Honor.

THE COURT: -- the $3 million reserve, et cetera.

MR. DURRER: Precisely.

THE COURT: All right. Thank you, Mr. Mispagel. The Court notes the sentence. So there's not going to be a separate order on the Welldex; it will be included as part of the confirmation order, correct?

MR. DURRER: That's right, Your Honor.

THE COURT: All right.

MR. DURRER: And I apologize, Your Honor, we've been casually referring to this as Welldex, the entity that destroyed the inventory is known as CEVA --

THE COURT: Right.

MR. DURRER: -- I believe there's a relationship, but apologies for the misstatement there.

What I wanted to do next, Your Honor, was walk through some feasibility issues, which touches on the R.H. piece because it's an important element.

So, again, just to remind Your Honor, the stipulation agreement with R.H. Shipping is at Docket 1132, and I also refer Your Honor to Mr. Uzzi's declaration again. Exhibit 1 to that declaration is an effective date, sources and uses.

And, as I mentioned, in connection with the APA we had scheduled R.H. with a cure claim of approximately $3 million, which FlexGen advanced under the APA and we faithfully paid over to R.H. R.H. asserted additional amounts, and so there was a delay in getting that inventory accessible by

FlexGen. The debtors' view was that we did all we were supposed to do. We, you know, executed a bill of sale. FlexGen has a different perspective, which, again, is not for today, but what we have agreed is we have agreed to set aside a $3 million reserve for those issues. And then the confirmation order, Your Honor, also contains a schedule.

So, Item Number 8 and its related items, the actual administrative claim that FlexGen did lodge will be pushed for hearing on December 17, and responses to that would be due on the ordinary cadence, December 10, and we would have a reply deadline on December 15, all with the goal of course of working out a better deal, but in the meantime we wanted to resolve the R.H. with R.H. because they relate to administrative claims and feasibility.

So, again, walking back to Exhibit 1 to Mr. Uzzi's declaration, once we pay on the effective date the FlexGen payment that I mentioned, the $469,000 return of monies that are no longer going to be paid out to CEVA/Welldex, when we pay the original deposit, I'll call it, for Ace in connection with the Ace settlement that Ms. Moyron explained, and then the payments called for under the R.H. stipulation as of the effective date, $77,000 to the R.H. U.S. entity and $425,000 to the R.H. Mexico entity, and then other plan payments. There's been a host of people that stayed with the debtor, thankfully, to get us here, the plan proposed and we believe it's

reasonable under the requirements of the Code to pay these additional amounts for sticking it out with the debtor and not going on to other opportunities. It would have been devastating to get to this place where we are. And then various other reserves and items that are mentioned on that exhibit, we actually end up with approximately $10 million to go to the trust.

Now, because this has all been moving very quickly, what Exhibit 1 to the Uzzi declaration does not contain are two things; one is the $8 million inflow from Avalon, which Mr. Oswald talked about, and then the $3 million reserve for FlexGen pending litigation or settlement of our remaining disputes with FlexGen, but the net effect is that the estate and the liquidating trust are still $5 million to the good.

So, from a feasibility perspective, we feel that that's a mighty tasty glass of lemonade that we've ended up with.

That leaves us primarily with the United States Trustee's issues and --

THE COURT: Let me just stop you for one second.

MR. DURRER: Yes, Your Honor.

THE COURT: Just for the benefit of the record and for Linda. The emergency motion that's Number 8, docketed at 1103, is being carried now to December 17th, I just want to make sure --

MR. DURRER: Yes, Your Honor.

THE COURT: -- that's clarified.

MR. DURRER: And that is in the confirmation order.

THE COURT: It's in the confirmation order, I just want to make sure it's on our calendar, and then the balance of the motion is addressed as part of the Welldex settlement.

MR. DURRER: Yes.

THE COURT: All right, we get to the U.S. Trustee's concerns.

MR. DURRER: Yes. So I'm going to address these sort of by category and I'm going to -- I'm not going to waste the time of the Court or the parties with a lot of this because I know Your Honor spent quite a bit of time on this yesterday in Rite Aid, but I would appreciate, Your Honor, to the extent that your rulings and the issues in Rite Aid are virtually identical to what we're dealing with today that if we could sort of borrow from the proceedings yesterday for efficiency, but we do -- it is important to the debtors in the event that there is an appeal that we have a record, an ample record. So I would ask for Your Honor's help with that, if you don't mind.

So, first, with respect to a category of -- and I'm going to -- Mr. Sponder and I spoke -- I'm going to give you the debtors' position just because I'm already standing here with a full reservation of rights for Mr. Sponder to make whatever comments and arguments he wants to make. So, I'm not

purporting to cut him off in any way.

The first category of issues that the United States Trustee raised about the plan was with respect to exculpation, and this comes in sort of two flavors. One flavor related to a concern that we were overusing the word or predetermining good faith. Not our intention, we've addressed that with language with the U.S. Trustee. And there was also a concern that the description of the parties that were covered by the exculpation was overly broad, right? You've heard the argument many times before I'm sure about estate fiduciaries.

Candidly, I was a partner with one of the drafters of the Code, one of the original drafters of the Code for several years, and we don't see eye-to-eye on every sentence in the statute, but I do believe that 1125(e) is actually one of the most elegant because it's interesting to me, it doesn't -- the words don't say debtor, right? They say a person, a person that participates in the solicitation of acceptances in support of a plan.

And why does Congress do that? Well, because back in 1978 this was a pretty new creature, pretty cutting-edge, it certainly remained so in a lot of parts of the world. We have a very unique insolvency regime here that I think is admired far and wide. But what I like about this particular statute is it's designed to encourage people to come into this process, and that exculpation is vital to encourage people to do this

because, for a lot of people that are involved in a company in distress, it's hard; it's foreign, it's uncertain, and so we want to embrace that. We want to -- people that are willing to come into this room and -- you know, for example, Brian Kane, who became our CEO on, you know, days before the case filed, it's important to people like that that have to steward that process to know that the process has their back and is willing to support them for the good of all the stakeholders involved.

The next item, Your Honor, is with respect to the injunctions. Mr. Sponder proposed language that added basically a temporal element to the scope of the permanent injunction under the plan, and we've agreed to that.

One area, which I'll come back to, where we still disagree is on the waiver of the Rule 3020(e) automatic stay of the confirmation order. We did, however, agree to remove various references to compromised settlement, releases, and discharge where they were a little bit beyond the scope of what was actually happening, right? If there was an actual compromise, the U.S. Trustee was comfortable with that language, but where there was actually no direct engagement from estate and creditor, we've pared back that language.

THE COURT: Let me just, if I may, clarify going back to exculpation.

MR. DURRER: Yes.

THE COURT: And apart from 1125(e), which addresses

solicitation of the plan, is the joint plan and the proponents taking the position that exculpation should apply to a broader category than estate fiduciaries, because I think that's -- and I just wanted clarity, I'll address it, but are you looking to apply it beyond what is traditionally the debtor, the committee, and the estate of professionals?

MR. DURRER: I think that the language that we've landed on does not expand beyond estate fiduciaries.

THE COURT: Okay, so that comports with the U.S. Trustee's objection. Mark that off my list.

MR. DURRER: And then finally, Your Honor, with respect to substantial consummation, I think the element that Mr. Sponder and the U.S. Trustee's Office was concerned about was whether distributions were actually being made on the effective date; as I've walked Your Honor through Exhibit 1 to the Uzzi declaration, in fact there are, and so we've agreed to accommodate Mr. Sponder's request that we just adopt the statutory language for what is substantial consummation. So that issue is also resolved.

THE COURT: All right.

MR. DURRER: All right. So that leaves us with the releases and Rule 3020(e). So, with respect to Rule 3020(e), I wanted to make a brief proffer again for Mr. Uzzi.

If called to testify, Mr. Uzzi would testify that although the debtors are well positioned to exit Chapter 11 on

a firm footing, the reality is that any delay in the effective date would have a serious adverse impact on creditors and stakeholders. Specifically, as I've mentioned, we've had a number of employees -- if you'll recall, the sale closed, I think, the third week of August and we're standing here, you know, on the eve of Thanksgiving eve, and people have hung around, quite a number, and have continued to support the debtors. We want to respect them by putting -- you know, by closing the book on this.

In addition, there are other expenses that the debtors would continue to incur but for being able to close and go effective, and those additional expenses and charges would directly negatively impact unsecured creditors and their recoveries and, you know, Mr. Aulet's clients. So, we feel it's important to cut those expenses off as well.

And then, finally, what's interesting about the rule, it says, you know, 14-day automatic stay unless the Court orders otherwise. And, obviously, Your Honor has a great deal of discretion there. The debtors volunteer that we are aiming at December 5 as a plan effective date. It's a nice end-of-week cutoff, it allows for all the mechanics of paying the folks who have continued to help the debtors out; it's a clear line in the sand in terms of cutting off other expenses as well.

So, we're not asking for a blanket -- you know, one

of the objections that the U.S. Trustee had raised was this is designed to create mootness. It's not in this case, right? It's designed to ensure that we can provide the greatest value to creditors and the human beings that helped us through this process that we can, but it's not designed to cut off people's rights.

So, in our view, Your Honor, between now and December 5 is plenty of time, if people want to appeal and seek a stay, they have an opportunity to do that. So Your Honor can waive the time period with the understanding that this is not designed to create mootness, so I think that one argument was a little unfounded. So, we think there is cause for Your Honor to modify the provisions of -- the ordinary provisions of Rule 3020(e).

Lastly, Your Honor, I want to talk about the releases. And, as I said, I know Your Honor spent quite a bit of time on this lately, so I'm going to be brief, and I think Mr. Sponder has likewise offered to be brief.

I remember Your Honor's comments from yesterday. One of the things Your Honor pointed out was, you know, this is an area where it makes sense to have a federal procedural standard. And I know that other case law talks about that we really need to look to state law to determine what consent is. I do highlight that the Supreme Court in Purdue specifically left open that question and they absolutely -- I don't think

it's arguable that they absolutely expected further case law development. I think the Supreme Court understood that it wasn't writing on a clean slate, that there was quite a bit of case law over the past however many years on this topic, and so they left it for further proceedings.

Now, I note, in today's world -- and you need look no further, right, than Rule 23 with respect to class actions, and Your Honor mentioned it in connection with the WARN settlement, there's already Federal Rules that say, if you don't want to be part of this transaction, you need to raise your hand and send in a piece of paper and check a box. And I did a little bit of research on this and, candidly, this is pretty normal. You know, everyday people deal with this all the time from responding to a lawsuit, right? If you don't respond timely, your rights are going to be changed. Objecting to evidence in a court, right, if you sit silent while evidence gets admitted, you're stuck on that. Adverse possession, right? All the lawyers in the room know from Property 101 that if you don't, you know, enforce your rights diligently, you could lose them.

So the point being, Your Honor, that there's a long tradition of, if you don't react, things will happen to you.

And what I note from the record here, interestingly, we verified this, over 41 claimants in this case actually sent in forms opting out of the releases, and what's noteworthy is that the vast majority of those 41 were actually submitted by

non-voting parties. So, again, even if you got a piece of paper in the mail that said you don't have to do anything, you're getting paid in full, like dozens of people went ahead and said, you know what, that's cool, but I don't want to be a part of this release. So, I think that we have sort of a unique record here.

I'll stop there and cede the podium to Mr. Sponder to give his thoughts.

THE COURT: All right. Thank you.

Mr. Sponder, good afternoon.

MR. SPONDER: Good afternoon, Your Honor, Jeff Sponder from the Office of the United States Trustee.

Your Honor, as I look back on this case, I will always remember these cases because, if Your Honor recalls, for these first days I was arguing from my vehicle at my daughter's softball tournament because of course these got scheduled on shortened time and I had already made plans. So, I will always remember that. Hopefully, it will be the first and last time I have to do that. But, Your Honor --

THE COURT: But did she win?

MR. SPONDER: She did win, thankfully --

THE COURT: Okay.

MR. SPONDER: -- not with any help from me.

Your Honor, the United States Trustee filed an objection to confirmation of this plan at Docket Number 1070,

which included eight separate objections, including some that have been resolved. I know you've heard some of those resolutions, I just want to mention them on the record just to make sure that we're on the same page.

First, Your Honor, the debtors have and -- I should say the plan proponents have agreed to remove the following parties from the definition of released parties, which are -- well, the parties in subsections (d), (e), and (g). I won't read them, but those were the subsections that would be removed.

As to exculpated parties, Your Honor, that definition, subsections (d) and (g) will be removed. Two of those -- the sections in the exculpated parties I think are the same -- two of the same in the released parties. So that takes care of that part of the exculpation. And, as Mr. Durrer explained, the good faith issue has been resolved as well as that has been removed from the exculpation provision.

Next, Your Honor, as Mr. Durrer explained, the removal of the compromised settlement and release discharge, that language was removed from 9.1(b) and 9.2(b) of the plan.

The plan proponents adopted the United States Trustee's statutory fee language, which was set forth in the United States Trustee's objection.

The revisions to the injunction language, as Mr. Durrer explained, enjoins parties until all property has been

distributed and liquidated by the trust.

And so what remains, Your Honor, is of course the third party releases, debtor releases, and a Rule 3020(e) waiver.

Again, Your Honor, as I mentioned yesterday in the Rite Aid hearings, the United States Trustee acknowledges Your Honor's pre-Purdue and post-Purdue decisions concerning nonconsensual releases, opt-out plans, injunctions, exculpations, and gate-keeping, as well as Your Honor's decision yesterday in the Rite Aid cases.

Notwithstanding Your Honor's rulings, I know you find this hard to believe, Your Honor, but the United States Trustee continues to object to these provisions, but instead of going through as I did yesterday a little bit of those arguments we're just going to rely on our papers, written papers today, Your Honor, and not have to go through the same arguments.

Turning to debtor releases, Your Honor, the debtors seek to release certain parties that are included in that definition. I think what they've done by removing those three provisions has made that a little bit easier, but we do think that it's still too broad. We also believe that estate fiduciaries are included in the release. And, as I've said before, estate fiduciaries are of course being exculpated and should just get an exculpation, not a release.

And last, Your Honor, is the Rule 3020(e) waiver. As

Mr. Durrer advised -- and I know you just did this in the Rite Aid case, the same type of thing -- he says December 5th is that date. If Your Honor is willing to do that, my thought would be that perhaps some type of language that would say December 5th or the earlier of the effective date, or 14 days from the time the plan is -- the date the plan is confirmed, so that if the effective date does not occur on the 5th, but occurs on the 10th or the 11th or whatnot, it would be whatever the 14 days actually would be. That would be my suggestion as to that.

And otherwise, Your Honor, that's all I have.

THE COURT: All right. Thank you.

I guess my concern with that language on the effective date, because I'm comfortable and you saw what I just did with Rite Aid to make it co-extant with the effective date, was that if I leave it to whichever the effective date occurs, that's not telling anybody whether there's a stay in place.

Your thoughts?

MR. DURRER: It's better for the estate, so --

THE COURT: I mean --

MR. DURRER: -- I'm surprised, but I'll take it.

MR. SPONDER: My thought was that the stay would stay in place until the earlier of the effective --

THE COURT: Whether it's effective or whatever the effective date occurs, but no later than the 14 days.

MR. SPONDER: Right.

THE COURT: I'm comfortable with that if the debtor will make the proper adjustments.

MR. DURRER: That's fine, Your Honor, yeah. Like I said, it's better for the estate.

THE COURT: All right. The committee, Mr. Aulet?

MR. AULET: Good afternoon, Your Honor, Kenneth Aulet of Brown Rudnick for the committee.

Your Honor, as I've said before, this is a tough case. Creditors are out hundreds of millions of dollars and the estates' primary assets sold for about a tenth of that. There's been a lot of tough pills for creditors to swallow to get here, but I just want to note the committee and all of its members have been engaged throughout. Each member has been looking at this case pretty much throughout the case and saying, look, this is not going to be an easy return, this is not going to be an easy case, but they have been committed and diligent throughout the case making sure that everything gets done right.

And I just want to reiterate Mr. Durrer's comments that we've been able to work hand-in-glove with the debtors throughout this case. Every time we've had an issue and needed to speak to Mr. Durrer or Ms. Moyron, or even Mr. Uzzi or Mr. Oswald, we've been able to get them on the phone, we've been able to get things resolved, and that's been critically

important in this case because -- look, this is a tough case and it took a lot to get from the beginning of this case to the end of this case. There's been creative problem-solving throughout and only a couple days ago was the very first objection that the committee filed in this case, and that was even a joint objection with the debtors. And, you know, that is being kicked to the 17th, so the committee, as it were, will not be litigating that objection.

This plan allows us to get to the end of the beginning of these cases. There's still a great deal of work to do. The liquidating trust here is very important because there's a number of assets to be monetized. There's a number of causes of action, both disclosed in the plan and ones that continue to be investigated, that offer a serious potential of real recoveries for unsecured creditors, but that is going to require a tremendous amount of additional work and in that case we're glad to have a plan like this; it will put creditors in charge, be able to cut the costs of bankruptcy, have a trustee, an oversight committee, and creditors to be able to get the real work of getting these additional recoveries that this plan has set up.

So, there's still a tremendous amount of work to do, but I'd just like to again reiterate the debtors have been a pleasure to work with and I think it -- the fact that this is a joint plan -- it's not just supported by the committee, but it

is a joint plan, is important here. I'm not going to reiterate all of the issues -- Mr. Durrer's points with the releases and such, but to the extent that it's important to Your Honor, again, this is not just supported by the committee, it's a committee plan; the committee is a plan proponent, the committee fully supports the releases embedded in the plan.

And with that, Your Honor, thank you, and we support entry of confirmation of the plan.

THE COURT: Thank you, Mr. Aulet.

Let me take this opportunity to pointedly thank the committee. I think the committee and committee's professionals did an extraordinary job in achieving a very difficult balance of both challenging the debtor where appropriate, and challenging the proofs or challenging the debtors' positions, but at the same time doing so in a cooperative manner and reaching a consensus that we don't get to see often in these cases, we would like to see them more. And in doing so creating a real return, a meaningful return for unsecured creditors, a meaningful opportunity to enhance the return, and doing so without litigation, because we know that with the litigation comes costs and delays and appeals that eat up the return that could actually put more dollars in the pockets of the creditors.

So, I appreciate the work of the estate professionals as a whole, the committee's professionals, and it's certainly

noted that this is a welcome achievement.

So, with that -- and I assume the debtor is resting on its proofs?

MR. DURRER: We did want to walk through some of the provisions, Your Honor --

THE COURT: Oh, I'm sorry. I forgot.

MR. DURRER: -- that we should call your attention. So, with that, I'll ask Mr. Beck to take the podium.

THE COURT: You mean the other evidence that I need to confirm a plan? Yes.

MR. DURRER: I think it's logistics more than anything else, but thank you, Your Honor.

MR. BECK: Good afternoon, Your Honor; for the record, John Beck of Dentons on behalf of the debtors.

Your Honor, we filed a form of proposed order at Docket Number 1135. I'm going to walk you through just some of the unique features in there, and then also some language that we've agreed to add subsequently in the order that will ultimately be submitted to Your Honor. But first, just on a personal basis, I wanted to also echo the gratitude that a number of parties have expressed in this case, particularly for the committee and their counsel who, as you noted, is the co-proponent of our plan, and also has worked very diligently with us to make this as smooth as possible.

You'll also note that there's a number of parties

listed in the confirmation order that have agreed on language with us or settled other claims, we would like to thank all of their counsel as well. There's obviously a lot of effort that goes into agreeing on a document that's this extensive.

First, Your Honor, with respect to some comments that Mr. Sponder made with respect to the released parties language and exculpated parties language, he mentioned that subsection (d), I believe it was, is being stricken. The debtors do agree with that except you'll note in that provision that it specifically names Brian Kane and Chad Paulson, and then there's some additional qualifying and other language that I believe the Trustee has an issue with. We are in agreement, as Mr. Sponder stated, that those -- that the definition will be modified, except that you'll see in -- on page 13 of the confirmation order -- and I'm referring to the ECF page numbers at the top -- subsection (d), the confirmation order is specifically providing that Brian Kane and Chad Paulson will be released parties.

So, although we are agreeing to move kind of the contingent and nebulous references to potential released parties, we do want to make clear that Brian Kane and Chad Paulson will be released parties under this order, Your Honor.

Second, Your Honor, with respect to DTE, which is one of the parties that raised issues with the language, that was just not made in time for filing of this order. The debtors

have agreed to two separate pieces of language, which I will describe to you, but they will be in the ultimately submitted order. One is similar language to the language that is in there with respect to CS, which deals with preserving claims against insurance proceeds and the like. The second issue, which I believe we are going to either be putting in the litigation -- or the liquidating trust agreement, or perhaps we'll put it in the order modifying the liquidating trust agreement, but it has to deal with preservation of records by the liquidating trust and what terms and conditions they're agreeing to in order to do that to avoid the spoliation of evidence and other issues.

I do believe -- and I'll let the committee speak for themselves, but I do believe that we have agreed on language, it just hasn't yet made its way into the order and the trust agreement.

Your Honor, the next provision that I wanted to point out for you is on page 24 and section 11. Your Honor previously entered an abandonment order, or I think it's referred to in here as the remaining inventory order, that provision transfers the debtors' rights under that order to the liquidating trust, but it deems that order amended solely to the extent that the order contemplates committee and U.S. Trustee approval of any abandonment or sale of inventory. Given that the liquidating trust would be post-effective date,

we believe that that no longer makes sense, particularly with respect to the committee, but also the U.S. Trustee that they would seek consent. So that provision is deeming modified that order solely with respect to those consents, but otherwise would be operable on liquidating trust.

Next, Your Honor, Mr. Sponder mentioned that in the exculpation provisions of the plan it mentions -- it mentioned good faith, and we've agreed to strike that, and that's reflected in paragraph 55 of the order, but there was also a remnant reference to good faith in section 42 of the order itself, which we will make that corresponding change so that good faith is also not mentioned in that order.

Next, Your Honor, I just wanted to confirm on the record: Mr. Mispagel, on behalf of FlexGen, he read a sentence into the record, the debtors do agree that that will be added in the order that is proposed. And, just for the record, that would be inserted after the first sentence in paragraph 48.

Next, Your Honor, the U.S. Trustee language which Mr. Durrer went through is embodied in paragraph 55. I won't belabor it, but basically we have modified certain terms of the plan based on comments from the U.S. Trustee's Office and the revised language is included therein.

Additionally, Your Honor, on paragraph 61 -- and this is a little bit of a unique situation, but we are having the order waive the requirement of Powin EKS to have a 341 meeting.

Powin EKS's schedules -- I haven't checked, but should have been filed right before this hearing, so I believe those are on the docket. But we do think, given that the plan hopefully will be confirmed, that dispensing of a requirement of a 341 meeting is appropriate here.

And finally, Your Honor, I just wanted to note, there is -- in the settlements section of the confirmation order there is a reference to the R.H. settlement. R.H. is represented by the same counsel as Mainfreight. I just wanted to note for Your Honor that, even though R.H. in particular is being dealt with in the confirmation order, there are separate stipulations on the docket with respect to those entities. R.H., the docket number is 1132, and Mainfreight, the docket number is 1064. We would also ask that Your Honor enter those stipulated orders with respect to those parties.

THE COURT: All right, make sure --

MR. BECK: Unless --

THE COURT: -- that they get sent down with the other proposed orders.

MR. BECK: Absolutely, Your Honor.

With that, unless Your Honor has any questions about any particular provisions of the order, I would cede the podium to any other parties who would like to be heard.

THE COURT: All right. Mr. Aulet?

MR. AULET: Yes, Your Honor, one additional thing

since the committee was responsible for dealing with CS Energy. There's a provision in the proposed order, we agreed on some slight modifications to the language with CS Energy this morning. I just wanted to note that for the record that there will be some slight updates to that language maintaining the general philosophy of it, but we spent a lot of time going back and forth on the fine details.

THE COURT: All right. Thank you, Mr. Aulet.

Mr. Sponder, I was just going to see if you wish to address any additional matters.

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

Your Honor, the United States Trustee reserves his rights to review the final confirmation order. I will note that we did provide further revisions and comments right before the hearing, which I don't believe have been incorporated or have been advised during the hearing.

The other thing, Your Honor, is I did forget to note about paragraph 61, and that is the waiver of the 341 meeting. It is of course the United States Trustee's position that a 341(a) meeting should always occur. We understand where this case is. I think Your Honor also did something similar in another case that I didn't appear on that case, but it was my case. And so, with that, that's our position and we'll leave it to Your Honor.

Thank you.

THE COURT: Thank you, Mr. Sponder.

I see nobody else in the courtroom standing. Is there anyone -- yes, Mr. Barbosa.

MR. BARBOSA: Good afternoon, Your Honor, Franklin Barbosa, Jr. of Schenck, Price, Smith & King on behalf of CS Energy. I'm just merely speaking to confirm what Mr. Aulet said, which is that there was a negotiation over the provision in the plan -- or the confirmation order, I should say, that would preserve the right of my client to pursue insurance proceeds by naming any of the debtors as nominal defendants, should my client opt to take that option as opposed to anything else.

I will also use the moment to echo earlier comments about the professionalism of both the debtors' counsel and the committee's counsel. They negotiated hard, but they were always negotiating in good faith and fair, and so I think they deserve credit for that.

And I would also be remiss, Your Honor, if I didn't also send some kudos to Your Honor's staff and your law clerks for being extremely responsive and really good at their jobs throughout the course of these proceedings.

THE COURT: Oh, sure, now they're going to want more money.

(Laughter)

THE COURT: All right. Thank you, Counsel, I appreciate it.

Mr. Durrer?

MR. DURRER: I just want to make one final remark, Your Honor, that I was actually remiss in not mentioning. Van Durrer, Dentons, for the debtors. It was really something to behold watching, you know, Mr. Uzzi, who I won't embarrass him by telling the Court how long he's been a veteran in this process, but working closely with Mr. Kane, who knows this business like the back of his hand, and Mr. Paulson, who knows this company like the back of his hand, it really was elegant to watch the three of them work together to get us to this place. We've already talked about the other stakeholders but, as I said, I would be remiss if I didn't remark on what an impressive job they did working together here.

THE COURT: All right. Thank you.

All right, I guess it's my turn. No other matters to address. Let's proceed to confirmation and Mr. Durrer's comments are a nice lead-in.

I think, at the outset, the Court wants to acknowledge the significant and extraordinary efforts of a host of individuals and groups, certainly the committee, the individual members of the committee, the debtor, Mr. Uzzi, those -- Mr. Kane and Paulson who worked with him, for an extraordinarily well managed Chapter 11 proceeding. Debtors'

counsel worked tirelessly, efficiently, as did committee counsel, in reaching a host of settlements, challenging resolutions of an inordinate amount of disputes, and I think it produced a remarkable outcome in a relatively short period. This is not a case that has gone on for an extended period of time, and I think it could be and should be a model for what can be accomplished in Chapter 11.

I also want to extend the Court's appreciation to the Office of the U.S. Trustee for working with the professionals on -- at times from ballfields, from positions where there's a lot on the U.S. Trustee's plate, the budget, you know, federal shutdowns, everything that could get thrown at our UST professionals they have overcome and managed significantly.

So, this ruling addresses the request for final approval of the disclosure statement and confirmation of the joint -- and it's nice to say joint combined disclosure statement and Chapter 11 plan of liquidation, with proponents being both Powin and its affiliates, as well as the Official Committee of Unsecured Creditors.

The Court has reviewed the disclosure statement, the joint plan, the declarations of Gerard Uzzi as well as Ms. Calderon, the debtors' supportive memorandum of law, as well as all initially filed objections. For the reasons set forth on the record today and summarized here, unless otherwise resolved, all objections are being overruled.

This Court will proceed and confirm this plan. The Court obviously does so with most of the objections having been resolved consensually and set forth on the record and included in the proposed draft of the confirmation order.

The Court has jurisdiction over this matter under 28 U.S.C. Section 1334, as well as 28 U.S.C. Section 157(b). It's obviously a core matter.

The evidentiary record, including the sworn declarations, financial projections, the liquidation analysis, are credible and sufficient to support both the disclosure obligations, as well as the feasibility and other standard requirements under 1129(a).

I am not going to go through all of the 1129(a) requirements. I'll simply note that the Court specifically finds Mr. Uzzi's declaration to be credible. Mr. Uzzi, as the Chief Restructuring Officer, provides an evidentiary foundation supporting confirmation of the joint combined disclosure statement and Chapter 11 plan. He was appointed effective June 9th of 2025, before the petition date, and he certainly, based on his testimony, has been engaged and assuming responsibility for liquidity issues, asset sales, negotiations with creditors, and the development of the plan. The plan included a significant amount of work to resolve potential WARN claims, a huge Ace administrative claim, deferred vendor agreements, and just to implement itself a wind-down structure.

The Court finds that the plan has met all of the 1129(a) requirements, including that of having been filed in good faith.

Again, I'm going to defer to the submissions and incorporate them by reference. I'm not going to detail each of the 1129(a) requirements. I will note the Court specifically finds based on the credibility and content of Mr. Uzzi's declaration that the plan does meet and address the feasibility requirements under 1129(a)(11). There are sufficient cash flows, as has been outlined today, to support satisfaction of all the obligations under the plan, including administration claims, and the amounts necessary for reserves for the liquidating trust and other required reserves.

The only true objection that remains that we haven't touched on, having resolved the 3020 objection and the Court overrules the very limited objections as to what remains as far as the debtor releases and exculpations of certain individuals, is the objection filed by the Office of the U.S. Trustee with respect to the opt-out mechanism.

And I appreciate -- it's been a long morning and a long afternoon, a long couple of days, I appreciate Mr. Sponder's decision to refrain from repeating his -- well, his and the U.S. Trustee's arguments in opposition to the opt-out mechanism for third party consensual releases. And I'm going to go through and put my position again on the record, as I did

yesterday, not because I like hearing myself speak, nor do I want to pile on in any situation, but just I think it's important that the record reflect in detail in the event that there is an appeal or a further review of the Court's decision.

The U.S. Trustee has taken the position that the opt-out mechanism provided under the joint plan here is insufficient under Purdue and applicable state law to support a consensual third party release under a plan. The U.S. Trustee has submitted written objections, a written objection that acknowledges that this Court has expressed its view in prior cases such as BlockFi, Bed Bath & Beyond, Invitae, and now two Rite Aid cases. To be clear, this Court has not changed its position and joins other courts in this district, the circuit, and many of the 93 other districts which approve the use of informed opt-out procedures to reflect consent to proposed consensual releases under Chapter 11 plans. Indeed, in the District of New Jersey, our Court has been rather uniform in recognizing opt-out provisions as fundamentally fair and consistent with due process and applicable bankruptcy law.

The Court respectfully disagrees with the parties, and several of my thoughtful colleagues on the bench in other districts, that offer policy reasons or challenge the use of opt-outs as being contrary to state law. I incorporate my reasoning and comments from past decisions, but I add the following.

First, this Court looks to the constitutional Bankruptcy power. Under the U.S. Constitution, Article I, Section 8, Clause 4, Congress has the authority to enact uniform bankruptcy laws. This power displaces state law where such state laws interfere with the uniformity or federal law directly governs the matter.

An opt-out consent procedure is governed by Federal Rules. The opt-out procedure involves questions concerning ballot structure, disclosure adequacy, plan solicitation, and release mechanisms, and can be seen as governed by sections of the Code, including 1125, adequate disclosure; 1126, voting mechanisms; as well as Federal Bankruptcy Rule of Procedure 3017 and 3018.

These are procedural Federal Rules and Federal substantive law, and Federal Courts maintain exclusive authority over them. State law cannot dictate the legal effects of a federal voting or solicitation process; applying state law would defeat national uniformity.

A Chapter 11 plan is not merely a contract, but it is a federal judgment. Confirmation under Section 1141 binds all creditors, including nonvoting, dissenting, and silent creditors. Courts have repeatedly emphasized that a Chapter 11 plan is a Federal Court order, not merely a private contract with state law consent requirements. And courts evaluating releases, therefore, apply Federal Bankruptcy standards such as

good faith, fairness, adequacy of notice, not necessarily state assent doctrines.

We have situations where bankruptcy law routinely treats silence as consent, it's been noted today of such situations. I've reference previously Sections 1126(f), where unimpaired classes are deemed to accept; 1126(g), where non-recovering classes are deemed to reject; Rule 3007, where claims objections are sustained if there is not a timely response; and Rule 4001, where stay relief can be granted if there's no opposition. There are plenty of other illustrations.

If state law contract doctrines controlled consent, creditors in 50 states would be subject to a lack of uniformity and different assent requirements. Some states require affirmative signatures, for instance, some states treat silence as acceptance only in limited circumstances, and some states impose a more heightened waiver standard for releases. The result would be a nonuniform, unmanageable Chapter 11 landscape, violating the very uniformity requirements inherent under the Bankruptcy clause.

Releases are validated through Federal judicial review, not state contract formation principles. We look to due process standards; has there been reasonable notice, has there been an opportunity to opt out or object, and has there been substantial fairness in the review by the court. Due

process does not require affirmative assent, nor does it incorporate state standards of consent. And, as I indicated yesterday, the Court's bottom line, for this Court there's a strong policy argument supporting the use of an opt-out mechanism, how to best protect those very disinterested creditors who do not read their mail.

Often, Chapter 11 plans will offer some measure of monetary incentives to creditors who grant third party releases. Creditors who ignore the plan process may indeed miss out if they are required to opt in. The very constituency that the Office of the U.S. Trustee and others wish to protect may fare worse in an opt-in process, all in the name of providing them with an opportunity to bring a lawsuit which, in reality, they are highly unlikely to pursue.

So, for those reasons, the Court approves the opt-out mechanism in this Chapter 11 proceeding.

I have nothing more to add. I believe I have addressed all of the objections.

Again, my kudos and appreciation to all involved in shepherding this case, well done, and I wish everyone a very restful -- you've worked hard -- Thanksgiving holiday weekend. Take care.

Thank you. We are adjourned.

MR. DURRER: Thank you, Your Honor.

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

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

/s/ Tracey J. Williams

TRACEY J. WILLIAMS

J&J COURT TRANSCRIBERS, INC. DATE: December 1, 2025