

UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE UNITED STATES TRUSTEE  
ANDREW R. VARA  
UNITED STATES TRUSTEE, REGIONS 3 & 9  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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|                                  |   |                                 |
|----------------------------------|---|---------------------------------|
| In re:                           | : | Case No. 26-10910 (MBK)         |
|                                  | : | jointly administered            |
|                                  | : |                                 |
| Multi-Color Corporation, et al., | : | Chapter 11                      |
|                                  | : |                                 |
|                                  | : | The Honorable Michael B. Kaplan |
| Debtor.                          | : |                                 |
|                                  | : | Hearing Date:                   |

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**NOTICE OF MOTION BY THE UNITED STATES TRUSTEE TO: (i)  
DISMISS CASE OF DEBTOR MCC-NORWOOD, LLC PURSUANT TO 11  
U.S.C. § 1112(b); AND (ii) TRANSFER VENUE OR DISMISS CASES OF  
ALL DEBTORS PURUSANT TO 28 U.S.C. §§ 1406, 1408, AND 1412 AND  
FED. R. BANKR. P. 1014(a)**

**TO: ALL PERSONS ON ATTACHED CERTIFICATE OF SERVICE**

**PLEASE TAKE NOTICE** that the United States Trustee, by and through his counsel, shall move before the Honorable Michael B. Kaplan, Judge of United States Bankruptcy Court for the District of New Jersey, on February 25, 2026 at 11:30 a.m., at the United States Bankruptcy Court, District of New Jersey, 402 East State Street, Trenton, New Jersey, under 11 U.S.C. § 1112(b), for an Order Dismissing the Case of Debtor, MCC-Norwood, LLC, and under §§ 1406, 1408, and 1412 and Fed. R. Bankr. P. 1014(a), for an Order transferring venue or dismissing the cases of all Debtors, and for such other and further relief as this Court deems just and appropriate.

**PLEASE TAKE FURTHER NOTICE** that the United States Trustee shall rely upon the Memorandum of Law and Certification submitted herewith.

**PLEASE TAKE FURTHER NOTICE** that any papers in opposition to the Motion must be filed with the Court and served upon the United States Trustee as stated in the Order Shortening Time.

**PLEASE TAKE FURTHER NOTICE** that if opposing papers are not filed and served within the required time as stated in the Order Shortening Time unless oral argument may be presented at the hearing, the Motion shall be deemed uncontested pursuant to District of New Jersey Local Bankruptcy Rule 9013-3(d) and an Order dismissing the MCC-Norwood LLC and/or transferring venue or dismissing the cases of all Debtors may be signed and entered in the Court's discretion.

ANDREW R. VARA  
UNITED STATES TRUSTEE  
REGIONS 3 & 9

Dated: February 17, 2026

By: /s/ Jeffrey M. Sponder  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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| In re:                          | : | Case No. 26-10910 (MBK)         |
|                                 | : |                                 |
|                                 | : | Chapter 11                      |
| MULTI-COLOR CORPORATION, et al. | : |                                 |
|                                 | : | The Honorable Michael B. Kaplan |
| Debtors.                        | : |                                 |
|                                 | : |                                 |
|                                 | : |                                 |
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**MOTION OF THE UNITED STATES TRUSTEE TO (i) DISMISS CASE  
OF DEBTOR MCC-NORWOOD, LLC PURSUANT TO 11 U.S.C. § 1112(b)  
AND (ii) TRANSFER VENUE OR DISMISS CASES OF ALL DEBTORS  
PURSUANT TO 28 U.S.C. §§ 1406, 1408, AND 1412 AND  
FED. R. BANKR. P. 1014(a)**

Andrew R. Vara, the United States Trustee for Regions 3 and 9 (the “U.S. Trustee”), by his undersigned counsel, and in furtherance of his duties pursuant to 28 U.S.C. §§ 586(a)(3) and (5), respectfully moves for an order: (i) dismissing the chapter 11 petition of debtor MCC-Norwood, LLC (“Norwood”) pursuant to 11 U.S.C. § 1112(b) and/or (ii) transferring the venue of, or in the alternative dismissing, all above-captioned chapter 11 cases pursuant to 28 U.S.C. §§ 1406, 1408, and 1412 and Fed. R. Bankr. P. 1014(a), and respectfully represents as follows:

### **PRELIMINARY STATEMENT**

Title 28 of the United States Code gives business bankruptcy debtors broad flexibility in choosing a venue in which to seek relief. But that flexibility is not unlimited. A debtor filing for bankruptcy relief must satisfy one of four grounds for venue specified in 28 U.S.C. § 1408; if it cannot do so, the bankruptcy court may not retain the case but must either dismiss the case or transfer it to another district where venue is proper. 28 U.S.C. § 1406; Fed. R. Bankr. P. 1014(a).

Dismissal or transfer is required here because venue in this District is facially improper. The petitions and first-day declarations filed under penalty of perjury establish that neither Multi-Color Corporation nor any of its 55 co-debtor affiliates (collectively, the “Debtors”) are incorporated in or organized under the laws of New Jersey. None of the Debtors list a headquarters or principal place of business in New Jersey. And based on the map of business operations attached to the Debtors’ first-day declaration, New Jersey is not among the numerous states in which the Debtors maintain a facility. *See* Declaration of Garrett Gabel in Support of Debtors’ Chapter 11 Petitions and First-Day Pleadings [ECF No. 23] (graphic following ¶ 25).

How, then, do the Debtors justify their decision to seek chapter 11 relief in this Court? For 55 of the 56 Debtors, venue is asserted under the “affiliate venue” rule of 28 U.S.C. § 1408(2), based on the allegedly proper venue in this District of the first-filed Debtor, Norwood. But Norwood’s petition discloses no basis for venue in New Jersey, and it was not until the first-day hearing that the Debtors (through an unsworn statement of counsel) first proposed a rationale for New Jersey venue, based on certain funds allegedly held by Norwood in a New Jersey bank.

The Debtors’ strategy here is nothing less than “venue by declaration.” By choosing a venue that is facially unsupported by their own petitions, and counsel only belatedly offering a

justification of their choice, the Debtors have placed creditors and other parties in the untenable position of being forced to engage in costly and time-consuming discovery to uncover facts and theories that should have been disclosed by the Debtors at the very outset. And in a fast-moving case such as this, the Debtors may wrongly invoke a delay of their own making to defeat the creditors' statutory right to have the case heard in a legally authorized venue. The Court should reject the Debtors' gamesmanship. Rather, consistent with the requirement of Official Bankruptcy Form 201, the Court should evaluate the Debtors' claim of venue based on the information sworn to in their petitions. Because it is undisputed that there is no factual basis for the New Jersey venue alleged in those petitions, these cases should be transferred or dismissed.

But even if the Court considered the Debtors' belated argument supporting their venue choice, the result would be no different. The Debtors' current theory is premised on the argument that Norwood has "principal assets" in New Jersey in the form of bank accounts. But a bank account is an intangible asset, accessible anywhere; under longstanding principles of common law, the "location" of such assets, if any, is simply the location of their owner. And even if the law were otherwise, the Debtors have provided no evidence that Norwood's cash is actually located in New Jersey in any meaningful sense: the Court has no information about when and where the accounts were opened, how the cash in the account is accessed, or the location from which Norwood conducts its banking activities.

Just as critically, the Debtors fail to disclose whether Norwood's bank accounts, which apparently were assigned to it shortly before the petition date, are the only assets owned by the Debtors. But *regardless of how this question is answered*, transfer or dismissal is required, although under different rationales. If Norwood had other assets during the 180 days before bankruptcy and before it acquired its bank accounts, New Jersey cannot qualify as its place of

principal assets under the plain terms of section 1408(1) because the location of those other assets will take precedence. If, on the other hand, no such assets exist, it may be presumed that Norwood is a corporate shell with no business outside of its role as a venue hook in this case, no need for reorganization, and no prospect of receiving a bankruptcy discharge. If so, Norwood lacks the good faith necessary to be a chapter 11 debtor under the rule stated by the Third Circuit's holding in *In re LTL Mgmt., LLC*, 64 F.4th 84, 101 (3d Cir. 2023). Under this scenario, the Court must dismiss Norwood's case under section 1112(b) of the Bankruptcy Code, a result that would eliminate the only asserted basis for venue of the other 55 Debtors.

Because the Debtors have not established proper venue under 28 U.S.C. § 1408, the Court must either dismiss these cases or transfer them to a district with proper venue under 28 U.S.C. § 1406 and Bankruptcy Rule 1014(a). In the alternative, because the Debtors' effort to manufacture venue in this District is contrary to the purposes of the federal bankruptcy venue laws, the Court may also exercise its discretion to transfer these cases in the interest of justice under 28 U.S.C. § 1412.

### **STATUTORY FRAMEWORK**

1. Under section 1408 of title 28, United States Code, a debtor may file a bankruptcy petition only in a district that is one:

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

2. In some cases, section 1408 may provide a debtor with multiple possible venues because the debtor's domicile may not be the same as its principal place of business or the location of its principal assets. In addition, for affiliated debtors, the venue for a single affiliate can serve as the basis for venue for all other affiliates. *See, e.g., In re Dunmore Homes, Inc.*, 380 B.R. 663, 670 (Bankr. S.D.N.Y. 2008) (section 1408 "is written in the disjunctive making venue proper in any of the listed locations"). But deference to a debtor's choices is not unlimited, and a debtor may not forum shop by filing for bankruptcy in a district where it lacks any of section 1408's four connections. *See In re Houghton Mifflin Harcourt Pub. Co.*, 474 B.R. 122, 134 (Bankr. S.D.N.Y. 2012) (transferring case as improperly venued where "the Court cannot find satisfaction of any of the four bases under § 1408(1)").

3. If a debtor cannot satisfy section 1408, transfer or dismissal is mandatory. Under the general venue statute applicable to all federal cases, "[the] court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406. Under Bankruptcy Rule 1014, if a petition is filed in an improper district, "the court may dismiss the case or transfer it to another district if the court determines that transfer is in the interest of justice or for the convenience of the parties." Fed. R. Bankr. P. 1014(a)(2); *see also* Fed. R. Bankr. P. 1014, 1987 Advisory Comm. Note (explaining that "[t]he rule is amended to delete the reference to retention of a case commenced in the improper district. Dismissal of a case commenced in the improper district as authorized by 28 U.S.C. § 1406 has been added to the rule"). Alternatively, a court may transfer a bankruptcy case to another district on a discretionary basis if it finds that doing so would be in the "interest of justice." 28 U.S.C. § 1412.

4. Under section 1112(b)(1) of the Bankruptcy Code, upon a request of a party in interest, and after notice and a hearing, a court shall convert or dismiss a case “for cause.” The Third Circuit and other courts have consistently recognized that a lack of good faith may be cause for dismissal. *See LTL*, 64 F.4th at 100; *In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197, 210 (3d Cir. 2003). The debtor bears the burden of establishing good faith on a motion to dismiss. *In re SGL Carbon Corp.*, 200 F.3d 154, 162 n.10 (3d Cir.1999).

### **FACTUAL BACKGROUND**

5. On January 29, 2026, each of the Debtors, including Norwood, filed a voluntary chapter 11 petition in this Court. *See* Case No. 26-10909 at ECF No. 1.

6. In response to question 4 of its petition, Norwood listed an address in Atlanta, Georgia as its “principal place of business.” *Id.*

7. Also in response to question 4, Norwood left blank a space marked “Location of principal assets, if different from principal place of business.” *Id.*

8. In response to question 11 of its petition, Norwood checked the box marked “Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.” *Id.*

9. As an exhibit to its petition, Norwood attached an Omnibus Written Consent listing each of the Debtors in these cases. That document identifies Ohio as Norwood’s state of formation. *Id.*

10. Norwood’s petition does not contain information about the total assets, debts, or creditors of Norwood individually. Rather, all such information is listed on a consolidated basis with the other Debtors in these cases. *Id.*

11. For each Debtor other than Norwood, the response to question 11 of the petition states that venue is proper because “[a] bankruptcy case concerning debtor’s affiliate, general partner, or partnership is pending in this district,” with reference to the bankruptcy case of Norwood. *See e.g.*, Lead Case at ECF No. 1.

12. Except where Norwood is included among a general list of the Debtor entities, or as part of the Debtors’ organizational chart, the documents filed by the Debtors (including the Norwood petition, the various declarations filed in support of first-day motions, and the proposed disclosure statement and plan) neither mention Norwood nor identify its separate operations, assets, or creditors, if any. The Debtors’ proposed plan does not assign any property to Norwood upon confirmation, nor does it specify any business Norwood will engage in after confirmation. *See* Lead Case at ECF No. 17.

13. On January 30, 2026, the Court conducted a first-day hearing. During that hearing, in response to concerns about venue raised by two creditor groups and the U.S. Trustee, counsel for the Debtors stated that “MCC Norwood . . . has only one asset of any value, and that is two bank accounts that are held at ConnectOne Bank, which is a bank located in New Jersey. And those banks [*sic*] are funded with cash and also are the banks that we expect to use as our adequate assurance account for the purpose of the utility motion in these cases.” *See* Jan. 30, 2026, Hearing Tr. at 28. Apart from this unsworn statement of counsel—contradicted by the petition itself signed under the penalty of perjury by the Debtors’ CFO that Norwood’s principal assets are located in Atlanta, Georgia—the record before the Court contains no information regarding Norwood’s bank account holdings, no information regarding when or under what circumstances those accounts were opened, and no information about any other assets (whether “of value” or not) owned by Norwood beyond that its principal assets are in Georgia.

## **ARGUMENT**

### **A. Norwood's Petition Fails to Establish Venue on its Face**

14. These cases should be transferred or dismissed because Norwood's petition does not allege facts establishing venue in the District of New Jersey. Indeed, to the contrary, the petition reveals that Norwood's principal place of business and location of its principal assets are in Georgia, while its domicile is in Ohio. Because judicial economy requires that venue issues be addressed as early as possible, business debtors are required to specifically state the factual basis for venue in the petition itself. *See* Official Bankruptcy Form 201, questions 4, 11 (requiring debtors to specify, among other things, location of principal place of business and location of principal assets). Those questions play an important role by placing courts and creditors on notice of the specific facts relied on by debtors in support of their assertion of venue, and courts have recognized that these facts must be "clearly stated" on the face of the petition. *In re Townsend*, 84 B.R. 764, 768 (Bankr. N.D. Fla. 1988); *see also In re FRG, Inc.*, 107 B.R. 461, 470 (Bankr. S.D.N.Y. 1989) (court would not consider possible basis for venue not alleged in petition); *see also In re AnthymTV Co.*, 650 B.R. 261, 275 (Bankr. D.S.C. 2023) (holding, in involuntary case, that petitioning party bore initial burden of demonstrating that venue was proper under section 1408, after which burden shifted to party seeking to challenge venue under section 1412). Any contrary rule would undermine the very purposes of section 1408 and the efficacy of the bankruptcy process by forcing parties challenging venue to prove a negative—that is, to prove that no possible basis for venue could exist under any set of facts—while enabling the debtor to delay a venue challenge by forcing creditors to rebut undisclosed and after-the-fact rationales for its venue choice. Simply put, Debtors' gamesmanship employs a

“venue by declaration” strategy, where a debtor claims venue without swearing to facts supporting it while the sworn facts contradict the venue claim.

15. Here, it is undisputed that Norwood’s petition contains nothing to support venue in this District. That petition unequivocally states that Norwood’s principal place of business and domicile are not New Jersey, and it does not identify a single asset of Norwood (whether principal or not) located in this District. Moreover, the failure to state a “[l]ocation of principal assets, if different from principal place of business,” in response to petition question 4, means that Norwood affirmatively represented under penalty of perjury that its principal assets are in Georgia. But once the U.S. Trustee and others questioned venue at the first-day hearing,<sup>1</sup> Debtors pivoted to an unsworn statement by its counsel as the sole support for venue here. That statement does not merely go beyond the facts of the petition; it contradicts them. In any event, it is the Debtors’ petitions, and not the comments of its counsel, that control here, and on the basis of the petitions alone, these cases should be dismissed or transferred.

**B. Norwood’s Bank Accounts are not Located in New Jersey for Venue Purposes**

16. Even if the Court takes the Debtors’ post-hoc and contradictory representations about Norwood’s principal assets at face value, the Debtors still fail to establish venue under section 1408(1) because that argument presumes that a deposit made into a New Jersey bank is sufficient to establish a New Jersey “place of assets” for venue purposes. Apart from the abusive loophole that this rule would create, the Debtors’ argument is incorrect as a matter of law because Norwood’s rights to funds in an account do not have a location for venue purposes that is separate and distinct from Norwood itself.

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<sup>1</sup> In advance of the first day hearing, the Cross-Holder Ad Hoc Group filed a Motion to Dismiss or, in the Alternative, Transfer the Chapter 11 Cases, which was scheduled to be heard on shortened time at the first day hearing. ECF Nos. 71 and 76.

17. “In this wired age, the location of an intangible, especially a bank account, is a metaphysical question. By and large, bank deposits exist as electronic impulses embedded in silicone [*sic*] chips. In a sense, therefore, bank funds are both everywhere and nowhere.” *Yayasan Sabah Dua Shipping SDN BHD v. Scandinavian Liquid Carriers Ltd*, 335 F. Supp. 2d 441, 448 (S.D.N.Y. 2004). Although section 1408 is silent on the location of intangible assets for venue purposes, under common law, the general rule is that such assets are presumed to follow the location of the owner, not the depository or custodian. This rule “flow[s] from the common-law concept of ‘*mobilia sequuntur personam*,’ according to which intangible personal property is found at the domicile of its owner.” *Delaware v. New York*, 507 U.S. 490, 503 (1993) (internal quotation omitted); *United States v. Webster Rec. Corp.*, 208 F. Supp. 412, 415 (S.D.N.Y. 1962) (for purposes of filing tax lien, bank account was located in domicile of taxpayer). Thus, even if Norwood’s bank accounts were its principal assets, their location is not New Jersey but Norwood’s Ohio domicile.

18. That result is also consistent with section 1408’s purpose. The rationale for bankruptcy venue based on location of principal assets is that local judges and trustees will often be able to more efficiently supervise or administer properties that are nearby. *See In re Murrin*, 461 B.R. 763, 788–89 (Bankr. D. Minn.), *rev’d and remanded on other grounds*, 477 B.R. 99 (D. Minn. 2012). That rationale is absent, however, for an intangible asset such as cash in a bank account, which can be accessed and supervised from anywhere. For this reason, courts have generally refused to consider the location of the debtor’s banks as a factor when weighing a motion to transfer venue based on convenience under 28 U.S.C. § 1412. *See, e.g., AnthymTV.*, 650 B.R. at 281 (declining to consider location of bank assets for purposes of 28 U.S.C. § 1412 where those assets could be accessed from anywhere); *In re Enron Corp.*, 284 B.R. 376, 392

(Bankr. S.D.N.Y. 2002) (noting that location of assets was not an important factor on motion to transfer venue where assets did not consist of real property).

19. But even if this Court adopts a bank-centric rule for the location of the debtor's cash, it does not follow that Norwood's cash is located in New Jersey automatically because the Debtors characterize Norwood's depository institution as a New Jersey bank. For cases (generally involving garnishment) where the physical location of a bank account has been held to be relevant, courts seldom rely on the state of incorporation of the bank alone. Rather, they consider and balance other evidence, including:

- a. the circumstances of how and where the accounts were opened, *see Power Rental Op Co, LLC v. Virgin Islands Water & Power Auth.*, No. 3:20-CV-1015, 2021 WL 9881137, at \*8–9 (M.D. Fla. July 6, 2021);
- b. where the account is serviced, administered, and regulated, *see Yayasan Sabah Dua Shipping*, 335 F. Supp. 2d at 449 (attachment under maritime law);
- c. the address listed on the account statements, *Davis v. Bank of Am., N.A.*, 348 So. 3d 663, 667 (Fla. Dist. Ct. App. 2022); and
- d. how the account is accessed. *Am. Veteran Enter. Team, LLC v. Silver Falcon, Inc.*, No. 6:21-CV-647, 2021 WL 2446261, at \*3 (M.D. Fla. Apr. 30, 2021).

20. Because the Debtors have not yet disclosed information about any of these factors, it is premature for the Court to conclude that they have established venue based on a New Jersey location for Norwood's bank accounts.

**C. If Norwood Has Assets Other than its Bank Accounts, Venue is Improper Because It Cannot Satisfy the 180-Day Test of 28 U.S.C. § 1408(1); If Norwood Has No Other Assets, Its Case Should Be Dismissed Under *LTL* and 11 U.S.C. § 1112(b), or in the Alternative, Venue Should Be Transferred in the Interest of Justice Under 28 U.S.C. § 1412**

21. Even if the Court were to treat Norwood's bank accounts as New Jersey assets for venue purposes, that finding alone would not be sufficient for venue under section 1408(1). Under that statute, the Debtors must establish that Norwood's principal place of assets was in New Jersey for the 180-day period before the petition date, or for a greater part of such period than any other place. 28 U.S.C. § 1408(1). This requirement is critical to Norwood's venue analysis because the U.S. Trustee understands that Norwood's accounts were created or funded during the run-up to the Debtors' bankruptcy cases and that Norwood has held those assets for much less than the 180-day lookback period specified in section 1408. The representations of the Debtors' counsel are unclear as to whether the bank accounts are Norwood's only assets or whether Norwood owned other assets at any point during the 180 days before bankruptcy; Norwood's petition also contains no information about its separate assets. But if Norwood has any other assets, even of minimal value, the location of those assets would take precedence over its bank accounts because they likely would have been held for a longer period, making venue in this District improper.

22. But venue is *also* improper if Norwood had no other assets, although for different reasons. If Norwood had no assets other than what was assigned to it for purposes of this bankruptcy case, it would appear that Norwood is a shell company with no operations, no business to reorganize, and no eligibility to receive a bankruptcy discharge because it will not acquire a business to conduct after confirmation of the plan. *See* 11 U.S.C. § 1141(d)(3).

23. If Norwood has no need for bankruptcy relief and would receive no benefit from plan confirmation, there is no good faith basis for its petition, and its case must be dismissed under section 1112(b) of the Bankruptcy Code. As the Third Circuit recently held, to meet its burden of showing good faith, a putative debtor must demonstrate that it sought bankruptcy for a “valid bankruptcy purpose,” which generally requires that the debtor is experiencing “financial distress.” *LTL*, 64 F.4th at 101 (“a debtor who does not suffer from financial distress cannot demonstrate its Chapter 11 petition serves a valid bankruptcy purpose supporting good faith”). Conversely, a debtor does not suffer financial distress—and its petition must be dismissed for bad faith—if the sole objective of the bankruptcy filing is to benefit an affiliate of the debtor or to obtain a tactical litigation advantage. *See In re 15375 Memorial Corp. v. Bepco, L.P.*, 589 F.3d 605, 618, 624 (3d Cir. 2009) (bankruptcy court’s analysis of good faith failed to consider that debtor’s representative “*was primarily concerned with protecting [the non-debtor parent], not the Debtors.*”).

24. Thus, if the Court finds that Norwood lacks any assets apart from its bankruptcy-related accounts, and that it in turn lacks a reorganization purpose apart from the Debtors’ desire to manipulate section 1408, it will be compelled to dismiss Norwood’s chapter 11 petition under section 1112(b) of the Bankruptcy Code and *LTL*. Doing so, however, will remove the only asserted basis for affiliate venue for the other Debtors, and consequently their cases must also be transferred or dismissed.

25. In the alternative, a finding that Norwood is a shell company without any independent need for reorganization relief would also be grounds to transfer venue in the “interest of justice” under 28 U.S.C. § 1412. That section authorizes courts to transfer venue wherever necessary to protect the “fairness and the integrity of the bankruptcy system.” *In re*

*Barrington Spring House, LLC*, 509 B.R. 587, 606 (Bankr. S.D. Ohio 2014); *In re Patriot Coal Corp.*, 482 B.R. 719, 739 (Bankr. S.D.N.Y. 2012). Those concerns are implicated whenever a debtor manipulates title 28's venue requirements to engage in forum shopping. Thus, in *Patriot Coal*, the bankruptcy court ordered a transfer of venue for the interest of justice because the anchor debtor was a newly created affiliate whose sole purpose was to manufacture venue in the debtors' chosen district. *See Patriot Coal*, 482 B.R. at 744 (holding that allowing debtors' venue choice to stand "would elevate form over substance in way that would be an affront to the purpose of the bankruptcy venue statute and the integrity of the bankruptcy system"). Although this case involves an existing but apparently non-operating affiliate, rather than a completely new affiliate as in *Patriot Coal*, the concerns raised in that decision apply equally here, and the result should be the same. Allowing these cases to proceed in New Jersey would undermine the integrity of the bankruptcy venue statutes.

**D. Should these Cases be Transferred, the U.S. Trustee Defers to the Views of Other Parties as to the Most Convenient or Appropriate District with Proper Venue**

26. Unless the Court dismisses these cases, it must transfer them to any other district in which venue is proper. 28 U.S.C. § 1406, Fed. R. Bankr. P. 1014. Based on the petitions of Norwood and other Debtors, there appear to be several districts where venue may be proper, including but not limited to the Northern District of Georgia, the Southern District of Ohio, and the District of Delaware. Although this case may not be retained in the District of New Jersey, for the reasons explained above, the U.S. Trustee defers to the views of the other parties in interest in these cases as to the most convenient or appropriate other district to which these cases should be transferred.

**E. Reservation of Rights**

27. Although venue in this District appears to be improper in any case, for the reasons explained above, the factual record relevant to the Debtors' venue theory remains incomplete and key facts—including the business and financial affairs of Norwood and the circumstances of the creation of its bank accounts—have not yet been fully disclosed. For this reason, the U.S. Trustee reserves his right to raise additional objections to venue based on facts that may later be developed.

WHEREFORE, for the foregoing reasons, the U.S. Trustee respectfully requests that the Court: (i) dismiss the chapter 11 case of Norwood under 11 U.S.C. § 1112(b) and/or (ii) dismiss or transfer venue of all above-captioned cases under 28 U.S.C. §§ 1406, 1408 and 1412; and grant such other and further relief that is deemed just and equitable.

Respectfully submitted,

ANDREW R. VARA  
UNITED STATES TRUSTEE  
REGIONS 3 & 9

Dated: February 17, 2026

By: /s/ Jeffrey M. Sponder  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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| In re:                           | : | Case No. 26-10910 (MBK)         |
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| Multi-Color Corporation, et al., | : | Chapter 11                      |
|                                  | : |                                 |
|                                  | : | The Honorable Michael B. Kaplan |
| Debtor.                          | : |                                 |
|                                  | : | Hearing Date:                   |

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**CERTIFICATION OF JEFFREY M. SPONDER, TRIAL ATTORNEY, IN  
SUPPORT OF THE MOTION OF THE UNITED STATES TRUSTEE FOR  
AN ORDER TO: (i) DISMISS CASE OF DEBTOR MCC-NORWOOD, LLC  
PURSUANT TO 11 U.S.C. § 1112(b); AND (ii) TRANSFER VENUE OR  
DISMISS CASES OF ALL DEBTORS PURSUANT TO 28 U.S.C. §§ 1406,  
1408, AND 1412 AND FED. R. BANKR. P. 1014(a)**

I, Jeffrey M. Sponder, of full age, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a Trial Attorney for the Office of the United States Trustee in Newark, New Jersey and I have full knowledge of the facts set forth herein.

2. On January 30, 2026, the Court conducted a first day hearing. During that hearing, in response to concerns about venue raised by two creditor groups and the U.S. Trustee, counsel for the Debtors stated that “MCC Norwood . . . has only one asset of any value, and that is two bank accounts that are held at ConnectOne Bank, which is a bank located in New Jersey.

And those banks are funded with cash and also are the banks that we expect to use as our adequate assurance account for the purpose of the utility motion in these cases.” *See* Jan. 30, 2026, Hearing Tr. at 28, attached hereto as Exhibit A, and previously filed as an exhibit to the *Joint Request to Certify DIP Order for Direct Appeal, of the Cross-Holder Ad Hoc Group and the Excluded First Lien Lenders*, ECF 125.

I certify under penalty of perjury that the foregoing is true and correct.

ANDREW R. VARA  
UNITED STATES TRUSTEE  
REGIONS 3 & 9

By: /s/ Jeffrey M. Sponder  
Jeffrey M. Sponder  
Trial Attorney

Dated: February 17, 2026

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

IN RE: . Case No. 26-10910-MBK  
. (Joint Administration Requested)  
.   
MULTI-COLOR CORPORATION, .  
ET AL. . 402 East State Street  
. Trenton, NJ 08608  
Debtors. .  
. January 30, 2026  
. 1:05 p.m.  
. . . . .

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

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1 (Proceedings commenced at 1:05 p.m.)

2 THE COURT: Okay. Good morning, oh good morning.

3 Good afternoon everyone. I wish it were morning. This is

4 Judge Kaplan and we'll be hearing the Multi-Color

5 Corporation, et al., matters. This isn't an entirely remote

6 hearing. I'll let parties adjust their screens as the Court

7 does itself.

8 I see a lot of familiar faces. Unfortunately, even

9 faces from yesterday. It's been a hectic week.

10 Let me start with a couple of words regarding this  
11 case in that there had been a request to reschedule the First-  
12 Day matters to Monday to afford more time for the parties. And  
13 I usually am all in favor of greater preparation and more time.

14 The reason the Court elected to continue and hear the  
15 matters on today in the afternoon, frankly, in large part is  
16 due to the uncertainty of the Government shutdown. It's very  
17 much up in the air what will happen. Our Court system does not  
18 have the benefit of the runway it's had in the past to continue  
19 operations necessarily as we normally do in a shutdown. There  
20 are limitations this year.

21 So because of that, I thought it best to move this  
22 forward and do the best we can. So I just wanted to place that  
23 on the record.

24 A few admonitions. It is, as I've indicated, a fully  
25 remote hearing. I understand we have objections. I understand

1 there's going to be witness testimony and cross examination.  
2 My goal is to move this as efficiently as possible, recognizing  
3 we are here on a Friday afternoon.

4           You all are in your offices. I'm here in the  
5 courthouse in Trenton on a Friday afternoon. For those who  
6 appreciate New Jersey, there's a rationale for getting out as  
7 soon as you can as we approach evening. So we're going to move  
8 this. I may take some liberal shortcuts in presentations or  
9 ask for abbreviated presentations as we go forward. Obviously,  
10 everybody will have their opportunity to be heard.

11           In that regard, if you wish to be heard, please use  
12 the raise-hand function. I will do my best along with my law  
13 clerks to identify who needs to be heard. And we'll start off  
14 now.

15           Given the number of participants, I'm not going to  
16 start. It'll take too long to hear appearances at the outset.  
17 As soon as you're going to speak for the first time, you can  
18 enter your appearances, both local and co-counsel, and we'll go  
19 in that pathway.

20           I do see our friend from the U.S. Trustee,  
21 Mr. Sponder. Good afternoon.

22           All right. Let me turn to debtors' counsel for first  
23 appearances.

24           MS. YUDKIN: Good afternoon, Your Honor. Felice  
25 Yudkin, Warren Usatine, proposed co-counsel to the debtors.

1           Your Honor, we're here today with our co-counsel,  
2 Kirkland & Ellis, and they are going to make the presentation  
3 before Your Honor today. Applications for pro hac vice have  
4 been submitted for all of the Kirkland attorneys that will be  
5 presenting today, and we would request the opportunity that  
6 they be heard.

7           THE COURT: Let me just address that.

8           There are dozens of applications for pro hac  
9 admission that have been filed and are pending across the  
10 board. Welcome virtually to New Jersey for today and we can  
11 continue.

12           MS. YUDKIN: Thank you very much, Your Honor. And we  
13 wanted to thank Your Honor and your chamber staff for  
14 accommodating the hearing today.

15           And with that, Your Honor, I will turn over the  
16 podium to Mr. Serajeddini, who will be kicking off the hearing  
17 today.

18           THE COURT: All right.

19           MR. SERAJEDDINI: Good afternoon, Your Honor.

20           THE COURT: Good afternoon.

21           MR. SERAJEDDINI: Steven Serajeddini of Kirkland &  
22 Ellis, proposed counsel to the debtors. I'm here today with my  
23 partners, Rachael Bentley, Pete Candell, and Ashley Surinak, who  
24 will help take Your Honor through the first day of relief, as  
25 well as my partners, Josh Greenblatt, Jeff Goldfine, Casey

1 McGushin, and Kaitlin Sheehan on the litigation side because I  
2 know we have some evidence to get through at some point today.

3 But very good to be in front of Your Honor. So I  
4 want to thank the Court and chambers for accommodating us  
5 today. We know we dumped a lot of paper on you and we very  
6 much appreciate the audience on short notice.

7 I also want to thank the Office of the United States  
8 Trustee for working with us the past several days. We believe  
9 we've resolved everything with potentially one exception for  
10 today's hearing.

11 I'd like to give Your Honor just a brief presentation  
12 on the business to give you a sense of where we are before we  
13 move into the agenda. And to do that, I'd ask the Court to  
14 give electronic control to my colleagues in the video box  
15 titled K&E Presenter.

16 THE COURT: All right. I'll look to my law clerk who  
17 will get that done.

18 MR. SERAJEDDINI: Great. Thanks, Your Honor.

19 So, Your Honor, Multi-Color is the global leader and  
20 world's largest prime label provider. The company employs over  
21 12,500 individuals with over 90 facilities in 25 countries and  
22 generated approximately 3.1 billion of revenue. Your Honor,  
23 this is a very large company.

24 We provide labels for some of the world's most iconic  
25 brands in food and beverage and blue-chip companies in the

1 automotive and pharmaceutical space. If I gave you a list,  
2 you'd know these here. You see our products almost every  
3 single day.

4 Our labels showcase and sell products and brands. We  
5 are what customers associate with those brands. And it's  
6 beyond just label-making. We have print technologies,  
7 manufacturing, and R&D that supports our operations.

8 Our business comprises six key label solutions. You  
9 can see here the different types. They go from here, largest  
10 to smallest component of our revenue with pressure-sensitive  
11 labels that form a bond with the product, cut-and-stack labels  
12 which are printed on large sheets or rolls and cut into the  
13 applicable shape, in-mold labels which you'd see on plastic  
14 containers, roll-fed labels which are applied to plastic  
15 bottles and beverage packaging, and shrink-sleeve labels that  
16 are slid over glass or plastic bottles. And last,  
17 radio-frequency identification, these adhesive tags you'll see  
18 from time to time.

19 Now, Multi-Color is the product of a company that  
20 started in 1916. Over the years, it's grown and evolved  
21 through numerous acquisitions as well as organic growth. Most  
22 recently, that includes the labels division of Constantia in  
23 2017, which kind of gave us a much larger European footprint,  
24 as well as WS Packaging to further boost and bolster our label  
25 offerings domestically.

1 Multi-Color was acquired by the current owners, CD&R,  
2 in 2021. And following that, there were further acquisitions  
3 to expand our reach into some of the product lines I just  
4 covered with the Court.

5 Starting around 2021, the business began to face some  
6 headwinds. And like so many businesses that have been in front  
7 of Your Honor over the years, the COVID-19 pandemic was a  
8 partial cause of these challenges that resulted in initially  
9 heightened demand, but then also rapid cost inflation and  
10 significant raw material and labor constraints that followed  
11 the inflationary period we've been living in put real strain on  
12 the business.

13 And the company didn't sit still. It implemented  
14 pricing increases and reduced headcount to attempt to weather  
15 the storm. But all this resulted in a further decline in  
16 revenue nonetheless. And in 2023, customers started stocking  
17 less as inventory levels went down and folks were  
18 consolidating. And, finally, through some of these  
19 acquisitions, there's been challenges, including, with respect  
20 to Fort Dearborn and some of the other business segments in  
21 terms of integration.

22 The effect of all these things have really stressed  
23 the business. But, again, Multi-Color continued to work to try  
24 to stem the tide. That included upgrading talent, making  
25 operational improvements, and really transforming the cost

1 structure.

2 Specifically, the company hired a new management team  
3 and a new team of frontline leaders, and they've been focused  
4 on operational efficiencies and increasing customer loyalty by  
5 really focusing on what matters to customers. And that's  
6 resulted in significant protection of the degradation of the  
7 business.

8 Moreover, the company's also found 200 million in net  
9 cost savings opportunities, and that's across the entire  
10 business, including procurement, manufacturing, and other  
11 expenses. And today, we have an outstanding management team  
12 that's been assembled in recent times to take us forward. That  
13 includes Hassan Rmaile, our CEO, Kathleen Phelps, our CFO, Linn  
14 Harson, our Chief Legal Officer and Corporate Secretary, and  
15 Garrett Gabel, our Chief Restructuring Officer. Mr. Gabel is  
16 also the first-day declarant and is present on the Zoom today.

17 With all the challenges, not from what I just  
18 mentioned, but most importantly, for these purposes, the  
19 capital structure, liquidity, and upcoming maturities that the  
20 company was facing, they appointed two experienced  
21 disinterested directors, Roger Meltzer and Peter Laurinaitis.  
22 These disinterested directors, importantly, as it relates to  
23 some of the objections that have recently come in in the  
24 minutes before the hearing, Your Honor, they were delegated  
25 with complete authority vis-a-vis conflict matters and that

1 includes any aspect of any transaction that deals with  
2 insiders, as well as they had broad jurisdiction and delegation  
3 to weigh in on transactions generally. We've met with them  
4 dozens of times, and they're very active in this process for  
5 Your Honor today.

6           So in terms of the nature of those economic and  
7 capital structure issues I was mentioning, Your Honor, to give  
8 it a little bit more scope, you can see here that the company  
9 has roughly six billion in debt. And as you can see on here,  
10 the earliest maturities started to occur in 2027. Those are  
11 the unsecured notes at the bottom here. And, in addition to  
12 that, as I mentioned, liquidity, which is perhaps the biggest  
13 impetus behind the timing of this filing and why we're before  
14 Your Honor right now.

15           We took it all the way down to the end, and I'll  
16 explain why, really, to try to get the best possible  
17 transaction here. But, ultimately, that is why we are in Court  
18 today, and that is why we're proceeding on an emergency basis  
19 to obtain access to our DIP financing.

20           Multi-Color really took a proactive approach here,  
21 Your Honor, and retained professional advisors with the core  
22 group in terms of governance and the special committees to lead  
23 it through this process, and that includes Kirkland & Ellis,  
24 Evercore, and Alix. And those parties in particular went out  
25 and tried to create a process to really address all these

1 capital structure and liquidity issues. That started with our  
2 largest creditor. And I emphasize that point, creditor, and  
3 equity holder, CD&R, who is represented by Latham, Debevoise,  
4 and Moss.

5 We also reached out and organized ad hoc groups among  
6 our various funded debt constituents. That includes an Ad Hoc  
7 Group of Secured Lenders who is working with Mullis, PJT, and  
8 A&M. And then an Ad Hoc Group of Cross-Over Lenders that was  
9 historically represented by Jones Day and Guggenheim. And we  
10 understand, as of yesterday, potentially with respect to  
11 certain secured holdings, by Willkie Farr as well.

12 And we began with all these various groups to solicit  
13 financing proposals to address the issues that I've mentioned  
14 already. Because of the relative positions of the parties  
15 here, Your Honor, the types of transactions that each of them  
16 could offer were different. And over time, they coalesced into  
17 really two flavors. The Cross-Over Group, as well as  
18 third-party financing sources who we went out to, to a great  
19 extent to try to develop alternatives, were all focused on  
20 transactions that would have addressed that near-term maturity,  
21 that 2027 maturity, provide incremental liquidity, and give the  
22 company runway for at least a couple years to potentially  
23 stabilize and see what would come to pass by that time.

24 Whereas, the Ad Hoc Group of Secured Lenders, given  
25 the significant nature of their holdings and the importance of

1 their votes for plan voting requirements, were focused on a  
2 transaction that they could deliver through this type of  
3 process that would address the capital structure  
4 comprehensively. We all hear a lot about LME versus  
5 restructuring, and this is one of those cases where really the  
6 two paths were put up against one another and compared very  
7 rigorously.

8 I've run many competitive processes, Your Honor.  
9 This one was about the most competitive. And the good news is  
10 the ultimate beneficiary of that was the company. Both groups  
11 made proposals, improved their proposals over time, and even  
12 documented their proposals in a very robust fashion, again,  
13 driven by the liquidity constraints that we had, where we  
14 needed a solution one way or another by roughly this time. And  
15 both groups worked very, very diligently.

16 As I mentioned, as we entered January, liquidity  
17 became very acute. We entered into our grace period on  
18 January 15th. And in the days that followed, we attempted to  
19 get close on our various options to present to the Board and  
20 the Special Committee. The company didn't take entering  
21 Chapter 11 lightly here and certainly not modifying the rights  
22 of any creditor lightly as well. And as I said, we pushed very  
23 hard to find alternatives.

24 But, ultimately, in assessing the options, the kick-  
25 the-can options here that we would have developed, or that we

1 had developed, would have left the company with far more debt,  
2 far less liquidity, greater interest costs, and far less  
3 runway. And all of that, and most apropos to the folks that  
4 are running this business day-to-day, as well as our many  
5 customers, employees, and suppliers, would have been a drag on  
6 operations and a threat to the long-term viability of the  
7 business. So, ultimately, really driven by that basis, the  
8 company entered into a restructuring support agreement with the  
9 Secured Group, as well as CD&R, on January 25, 2026.

10 We commenced solicitation on January 27th and filed  
11 these cases soon thereafter, again, to get access to the DIP  
12 financing that the company really, truly needs at this point.

13 In terms of the overall restructuring support  
14 agreement, it's a prepackaged case, as Your Honor is aware. It  
15 results in a \$3.9 billion reduction of debt, and that's through  
16 cancellation of existing first lien secured claims. And in  
17 exchange for that, those parties are receiving the right to  
18 participate in a preferred equity investment, the issuance of a  
19 set amount of preferred equity, certain cash consideration, and  
20 new warrants, and then also a \$400 million new common equity  
21 investment that's being provided by the plan sponsor here in  
22 exchange for 64 percent of the new common stock.

23 In addition to that, Your Honor, we are obtaining  
24 significant exit financing to allow us to remain strong and  
25 healthy during the case and post-emergence, and that exit

1 financing is taking the form of 1.9 billion in new debt  
2 facilities that consist of a new term loan facility and new  
3 notes.

4           We also anticipate, and we're in active discussions  
5 with our ABL holders, we have come to terms on consensual cash  
6 collateral for the duration of these cases and we're in active  
7 discussions. And ABL lenders will have the option to continue  
8 to provide, and we hope will, exit liquidity in the form of the  
9 ABL financing.

10           The RSA also includes additional DIP financing of  
11 roughly 657 million. That breaks out into a few different  
12 categories. There's 250 million of new money DIP loans.  
13 There's a one-to-one roll-up here in terms of \$250 million of  
14 secured claims that are going to be repaid with DIP claims.  
15 There's \$7.5 million backstop premium and then there's roughly  
16 150 in incremental new money loans that don't have economics  
17 and are really, for the purpose of implementation, at the back  
18 end of the case.

19           In terms of the other key terms of the plan that the  
20 company is soliciting, it does provide, as I said, 100 percent  
21 recovery to the holders of ABL claims through either cash or  
22 participation in the exit facility. It provides for the  
23 complete cancellation and no recovery on account of equity  
24 interests, and then it provides for payment in full of all  
25 trade, customer, employee, vendor, and supplier claims. That's

1 hugely important and valuable for our business.

2           Your Honor, as I mentioned, the restructuring support  
3 agreement and the plan that it embodied was the best option  
4 that was available to the company. It has the aforementioned  
5 reduction in debt in the business. It provides for almost 900  
6 million of new money capital, will provide us with over 550  
7 million of liquidity at closing, cash savings of approximately  
8 350 million in debt service obligations, and a seven-year  
9 maturity runway, which in my experience is relatively  
10 unprecedented in large Chapter 11 cases in terms of the  
11 maturity of the new debt.

12           The only objectors we're really aware of are the  
13 Cross-Over Group, Your Honor. We appreciate very much their  
14 engagement in the days leading up to this process on  
15 alternatives. The company's liquidity, as I mentioned,  
16 required us to proceed with these cases very soon after we  
17 elected on a path in terms of the RSA. And because of the  
18 competitive process, we unfortunately didn't have a ton of time  
19 to find consensus with the Cross-Over Group around this plan.  
20 But our hope is that we can find some agreement potentially in  
21 the days ahead.

22           They're very educated on the business and the  
23 realities of the case so they should be well prepared to engage  
24 with perhaps a little bit further education, some of which will  
25 occur as soon as this hearing, in terms of the overall

1 transaction. But we intend to facilitate those discussions  
2 very much so and push the various parties to come to resolution  
3 on issues to the extent it's possible.

4 And Your Honor can see our proposed timeline here.  
5 We're incredibly proud of the overall outcome, and this will  
6 best position the business for success. But for the business  
7 to maintain stability throughout this process, it's really  
8 important that we move forward judiciously. And it should send  
9 great confidence to our customers, our suppliers, and our  
10 vendors that Multi-Color is in a stronger position than it ever  
11 has been.

12 Now, the timeline on the flip side does also provide  
13 full notice and provides parties-in-interest ample time to  
14 raise objections. The Cross-Over Group represents a voting  
15 minority in both our secured and unsecured debt. And while  
16 it's not an issue for today, the plan can be confirmed over  
17 their objection. To the extent they intend to contest that  
18 plan, as I mentioned, they've obtained reams of information and  
19 the parties should be very well prepared to proceed on this  
20 timeline. But, ultimately, Your Honor, for today, the purpose  
21 of a first day is about preserving and maximizing and  
22 stabilizing the debtors' business and operations and to give  
23 comfort to the people that make it all possible.

24 So with that, Your Honor, unless Your Honor has any  
25 questions for me, I'd like to turn to the agenda.

1 THE COURT: I have just some clarification questions.

2 MR. SERAJEDDINI: Sure.

3 THE COURT: There's been a lot of labels put on the  
4 various groups, and I want to make sure that I'm consistent.  
5 Because your papers refer to a group as the Cross-Over Group,  
6 but then their papers, the Jones Day papers, refer to a  
7 Cross-Holder Group. Are we talking about the same folks?

8 MR. SERAJEDDINI: That's correct, Your Honor.

9 THE COURT: Okay.

10 And then we have an Excluded Lienholder Group.  
11 That's the Willkie Farr group.

12 MR. SERAJEDDINI: Correct, Your Honor, which I  
13 believe represents a holder within the Cross-Over Group  
14 vis-a-vis their secured interests.

15 THE COURT: Okay. Good. That helps.

16 I did want to make a statement at the outset as well.  
17 I saw on the slide and in the papers a reference to Evercore as  
18 an investment advisor. I think it's important to put on the  
19 record, my son, Jonathan Kaplan, is a senior managing director  
20 and chief counsel at Evercore. In that capacity, it's all  
21 in-house. He doesn't interact or deal with the clients, the  
22 transactional work, or on any of the projects. His tasks are  
23 focused on Evercore itself as a corporate entity.

24 I don't see a conflict, but I want to at least have  
25 it out there so parties can gauge what's appropriate. I did

1 verify he's had no relationship to this case or to, I think,  
2 Mr. Banks, or any of the witnesses. So be that as it may, I  
3 just wanted it out there.

4 All right. Let's go to the agenda.

5 MR. SERAJEDDINI: Great. Thank you, Your Honor.

6 So, Your Honor, I want to address first a couple of  
7 the housekeeping matters before we turn to the DIP and our  
8 evidentiary support for the substantive first-day relief.

9 The first would be the joining --

10 MR. BENNETT: Your Honor?

11 MR. SERAJEDDINI: -- the -- excuse me?

12 THE COURT: Maybe if we could -- I think somebody  
13 wants to be heard. I can't see folks with the PowerPoint.

14 Do you still need the PowerPoint up?

15 MR. SERAJEDDINI: We don't, Your Honor.

16 THE COURT: All right.

17 There.

18 And, of course, I was going to raise, and I don't  
19 know if this is what Mr. Bennett's going to touch on. There's  
20 a motion brought on shortened time for dismissal based on the  
21 venue.

22 But let me just hear from Mr. Bennett. I believe you  
23 want to be heard.

24 MR. BENNETT: Yes, Your Honor.

25 THE COURT: There's some feedback.

1 MR. BENNETT: I've got an echo, so.

2 Okay. That should be good. No. I don't think we  
3 (Indiscernible).

4 THE COURT: I don't know if it's somebody in your  
5 room who has a -- I think it's somebody in your room who may  
6 have another speaker on.

7 MR. BENNETT: Why don't you turn the rest of them  
8 off?

9 Please turn the rest of them off.

10 If you have to turn the computers off, turn them off.

11 Okay. Your Honor, can you hear me?

12 THE COURT: I can. Thank you.

13 MR. BENNETT: Your Honor, can you hear me?

14 THE COURT: Yes. Yes, I can.

15 I guess the question is if you can hear me.

16 MR. BENNETT: I can hear you now, too. Okay.

17 THE COURT: Okay.

18 MR. BENNETT: Thank you, Your Honor.

19 I have two things I would like to raise with you at  
20 the beginning of the hearing. Your Honor is right. The first  
21 is the venue motion, and the second is I would like to make a  
22 statement briefly in response to the representations of counsel  
23 that you've just heard.

24 So first, if one of my colleagues who can put up a --  
25 take the slides for a second. Can you put up a slide?

1 And I'd like to start with Slide Number 10.

2 THE COURT: While we wait, I see a hand raised,  
3 Mr. Sandberg.

4 MR. BENNETT: That's the person seeking -- there he  
5 goes.

6 THE COURT: There we go, okay.

7 MR. BENNETT: And if you'd go to Slide 10, please.

8 Your Honor, my most important point for you is that  
9 this is not a venue motion based upon the lack of convenience  
10 in this Court or any other court. And, frankly, while I've not  
11 been before you, many of my colleagues have and think this is a  
12 great place to have a Chapter 11 case. But, in fact, in this  
13 case, there is not valid venue.

14 And you don't have to take my word for it. When we  
15 turn the page, we are going to see that the debtors' own filing  
16 demonstrate that their venue subsidiary does not have venue in  
17 New Jersey.

18 So if we can go to the next slide, please.

19 This is a copy of the relevant part of the petition.  
20 You may have it as well. And you can see that this is MCC  
21 Norwood LLC. It was the only case filed that had venue  
22 allegations, other than a request to be recognized as an  
23 affiliate. The debtors' address is stated there. Principal  
24 place of business in Atlanta, Georgia.

25 And to the right, you will see the section that says

1 location -- to the right and a little bit down -- location of  
2 principal assets if different from the principal place of  
3 business, and that field has been left blank.

4           The only other place we need to look -- let's go to  
5 the next slide, please -- is where MCC Norwood is incorporated.  
6 MCC Norwood LLC is incorporated in Ohio. So it is not  
7 incorporated in New Jersey. So we have a principal place of  
8 business in Atlanta. According to this, incorporation in Ohio.  
9 And no principal assets disclosed as being in a location  
10 different than Atlanta.

11           Now, we didn't stop there. We looked carefully  
12 through the debtors' papers and noticed that they've recently  
13 opened some bank accounts in New Jersey. But we also have  
14 information that we received in due diligence and that the  
15 debtors have graciously allowed me to use today, but under very  
16 restrictive terms, that disclose that MCC Norwood LLC, which  
17 has been around for a long time, has assets. Which means  
18 during the 180 days before, or the 175 days before a bank  
19 account was opened in New Jersey, the principal assets were not  
20 in New Jersey.

21           So when we don't have venue, I don't think this Court  
22 can do anything, without the consent of the parties, other than  
23 dismiss the case or transfer it to a case with proper venue.  
24 And I also want to point out that procedurally, right now, you  
25 have before you a petition that was signed by an officer of the

1 debtors under penalty of perjury, that was affirmed by local  
2 counsel, and if anyone is going to try to change those  
3 allegations today, we want, A, to cross examine any witnesses  
4 who purport to bring forth evidence, and then we need to make  
5 arrangements for you to view the documentation that shows that  
6 Norwood has assets other than some bank account that may have  
7 been opened to try to establish venue.

8           We know, and this is one of the reasons why we wanted  
9 the case to go forward on Monday when we would have more time  
10 and could be before you live. I know this is going to be very  
11 difficult, but the law is the law and this is important. This  
12 is one of the -- I've never seen a case before where it's been  
13 started with no valid venue, and it has to be remedied. It has  
14 to be remedied now.

15           THE COURT: All right. And did you want to make --  
16 you had another statement?

17           MR. BENNETT: Your Honor, if we're going to proceed,  
18 in addition to making clear my objection that we do anything  
19 more here today, why not talk about the case and talk about  
20 some of the things that weren't discussed by Mr. Serajeddini?

21           So if we can go back to my -- if you want to go  
22 there, I want to go back to my Slide Number 1.

23           THE COURT: If that's more of an opening on your end,  
24 I'll certainly give you the opportunity if we get to objections  
25 to the relief that are being sought. I saw there are other

1 participants. I'm going to ask if you would take down so I  
2 could see -- the PowerPoint, correct.

3 I thought I saw Mr. Sponder with a hand up.

4 MR. SPONDER: Yes, Your Honor. Good afternoon. This  
5 is Jeff Sponder from the Office of the United States Trustee.

6 Your Honor, the United States Trustee has the same  
7 concern about venue, especially in light of the fact that all  
8 the orders, the first-day orders, in the preamble, Your Honor  
9 is asked to make a finding that venue is satisfied for purposes  
10 of Sections 1408 and 1409 of 28 U.S.C. So, Your Honor, we were  
11 going to ask to reserve our rights, but we saw that a motion  
12 has been filed already.

13 But we do have grave concerns over venue, reserve our  
14 rights and rights of others as well, Your Honor.

15 Thank you.

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

17 Mr. Cohen.

18 MR. COHEN: Good afternoon, Your Honor. It's really  
19 nice to see you this afternoon. Thank you for your time.

20 Didn't realize Mr. Bennett was going to launch into  
21 his argument, so apologies for maybe being a little delayed.

22 We are co-counsel to CD&R referenced by  
23 Mr. Serajeddini in his presentation. And I just wanted to take  
24 this opportunity to introduce our colleagues at Latham &  
25 Watkins, in particular, Mr. Schrock, who will handle all

1 argument today.

2 THE COURT: All right. Thank you, Mr. Cohen. Good  
3 to see you.

4 Welcome, Mr. Schrock. Good to see you.

5 MR. COOPER: Thanks very much, Your Honor.

6 THE COURT: And anything else at this point?

7 MR. SCHROCK: Nothing further from me, Your Honor.

8 We just wanted to introduce ourselves from Latham & Watkins.

9 I've also got my colleagues with me, just very briefly.

10 Candace Arthur, Ryan Dahl will be with me here today also

11 handling argument. And we are very pleased to be before you.

12 We're looking forward to moving these cases forward. We are

13 one of the plan sponsors, and as Mr. Serajeddini mentioned, the  
14 largest creditor of these estates.

15 So, again, Your Honor, pleasure to be before you.

16 THE COURT: All right. Thank you, Mr. Schrock.

17 Counsel from Kramer, I believe.

18 MS. SADIGHI: Good afternoon, Your Honor. Sheila

19 Sadighi with my colleague, Frank Catalina, of Rolnick Kramer

20 Sadighi.

21 THE COURT: Rolnick Kramer, yes.

22 MS. SADIGHI: We are here with our co-counsel, Mark

23 Stancil, and (audio skip) of Willkie Farr & Gallagher on behalf

24 of the Excluded First Lien Lenders. That is the other group

25 that has put in an objection, Your Honor, that's filed at

1 Docket 75, their preliminary objection to the debtor's DIP  
2 motion.

3 And Mr. DiPompeo, I believe, would like to join also  
4 with respect to the argument on venue that Mr. Bennett has  
5 raised. So, with Your Honor's permission, his and  
6 Mr. Stancil's pro hoc vice motions have been filed.

7 We appreciate, Your Honor, hearing them today.

8 THE COURT: All right. And needless to say, I will  
9 be going back to debtors' counsel, obviously, as a reply and in  
10 response to these arguments. But let me hear from you.

11 Welcome, Mr. DiPompeo.

12 MR. DiPOMPEO: Thank you, Your Honor. Christopher  
13 DiPompeo of Willkie Farr & Gallagher for the Excluded First  
14 Lien Lenders.

15 And, Your Honor, we join Jones Day's motion to  
16 dismiss or transfer venue. We share the same concerns. We  
17 also think, Your Honor, it is early in this case and it's time  
18 to deal with this issue now.

19 There's no prejudice, we think, from resolving these  
20 issues now. And we also think that it's very important that as  
21 this case gets started, the court that ultimately will be  
22 dealing with these issues be the court that resolves the first-  
23 day hearing.

24 THE COURT: All right. Fair enough. Thank you.

25 All right. Mr. Serajeddini.

1 MR. SERAJEDDINI: Yes.

2 THE COURT: Apologize. You're all making my  
3 pronunciation test today.

4 MR. SERAJEDDINI: Thank you, Your Honor.

5 So, Your Honor, Mr. Bennett obviously raised his  
6 concerns minutes before the hearing. That being said, the  
7 basis for venue is valid in this case.

8 MCC Norwood, the entity that he mentioned, has only  
9 one asset of any value, and that is two bank accounts that are  
10 held at ConnectOne Bank, which is a bank located in New Jersey.  
11 And those banks are funded with cash and also are the banks  
12 that we expect to use as our adequate assurance account for the  
13 purpose of the utility motion in these cases.

14 We're happy to put on testimony to that effect from  
15 Mr. Koza, Your Honor, if it would be helpful. But on that  
16 basis alone, we believe we've met the principal assets test.  
17 And if parties want to continue due diligence the United States  
18 Trustee said, or reserve rights vis-a-vis any venue issues  
19 until a final hearing, as well, we're happy to do it as well so  
20 that these issues can be fully fleshed out to the extent there  
21 are concerns.

22 THE COURT: All right. Thank you, Counsel.

23 Mr. Bennett?

24 MR. BENNETT: Your Honor, I appreciate the effort to  
25 add representations of counsel to a record that already

1 includes sworn filed statements. That's not adequate. It's  
2 not appropriate. And I think we need to hear testimony, and I  
3 think Your Honor has to see exhibits.

4 Remember the test is not whether there is an asset of  
5 the debtor in the jurisdiction. It's whether the principal  
6 assets within the greater portion of the preceding 180 days  
7 were in this district. Mr. Serajeddini just represented that  
8 there are no assets of this company. That's not true by their  
9 own documents.

10 We have to establish a factual record here. I want  
11 to establish a factual record here. This is an issue that will  
12 absolutely be appealed.

13 THE COURT: All right. Thank you.

14 Appellate intent aside, we have a Chapter 11 that's  
15 been initiated. We're not going to stop and start it at this  
16 point based on this record. And there's a limited opportunity  
17 this afternoon to undertake critical first-day matters that go  
18 to the viability of a reorganization and the viability of an  
19 entity, the lack of which won't assist anyone.

20 Reserving all rights to pursue this down the road,  
21 there's not enough on this record today in front of me, and I  
22 understand there's a request to explore it further. But on  
23 this record today, to overcome the presumption that's  
24 recognized in our circuit, Third Circuit, in favor of the  
25 debtors' selection of venue, we're going to move forward with

1 this case, reserving rights, and the parties can undertake  
2 discovery, and we can, as part of the next hearing date,  
3 continue it.

4 I don't see timing as critical as those who have  
5 argued this afternoon that it has to be decided at this  
6 juncture. The relief, whether this Court is granting first-day  
7 relief or it's being done by a court 62 miles to the south of  
8 me, it doesn't help anyone if we're going to have a start and  
9 stop process. There's ample time to consider where this case  
10 should be heard. It's starting here. It may end here. Or it  
11 may end in another courthouse.

12 But for purposes of critical first-day matters, we're  
13 going to move forward today, reserving all rights, both  
14 Mr. Bennett, your client, and the other objecting creditors,  
15 and the U.S. Trustee, to further explore the issue. But with  
16 the limited time we have available and the critical issues that  
17 are in front of us, I intend to proceed.

18 You still have, Mr. Bennett, your hand?

19 MR. BENNETT: Your Honor, I just wanted to point out  
20 that the presumption that you noted exists with respect to  
21 cases filed in a valid venue. And the only material before you  
22 is their petition. And their petition reveals this is not a  
23 valid venue. That is your circumstance. It's unusual, I admit  
24 and agree. But under those circumstances, we will proceed if  
25 you order us to, but we object to any orders that are entered

1 here.

2 THE COURT: Objections noted.

3 Let's proceed, as I said, on the reservation of all  
4 rights. Mr. Serajeddini --

5 MR. SERAJEDDINI: Thank you.

6 THE COURT: -- I think you should, as part of direct  
7 examination, and it doesn't end today, amplify the record as  
8 appropriate.

9 MR. SERAJEDDINI: Absolutely, Your Honor. We  
10 appreciate it.

11 So turning to the agenda then, the first matter is  
12 the debtors' motion for joint administration at Docket  
13 Number 3. As Your Honor knows, we are requesting joint  
14 administration of the debtors' 56 cases under the lead Case  
15 Number 26-10910, captioned In re Multi-Color Corporations.

16 Absent any questions, we request entry of the  
17 proposed form of order.

18 THE COURT: All right.

19 Any objections? And please, we'll note a standing  
20 objection, Mr. Bennett and others, to any orders that are  
21 entered. I'm cognizant of that, based on the venue concerns.

22 But for purposes of today, are there any other  
23 objections?

24 MR. SPONDER: Your Honor, this is Jeff Sponder from  
25 the Office of the United States Trustee.

1           Your Honor, in all of these orders, as I said  
2 earlier, there is a finding that Your Honor is making that  
3 venue is proper. Based on what we've already discussed, I  
4 don't think it's appropriate to be in these interim orders and  
5 would suggest that the language just be changed to the debtors  
6 assert that venue is proper and we go from there.

7           If Your Honor decides that venue is appropriate, then  
8 I'm sure the final orders can say that. But at this time, I  
9 don't think it's appropriate for Your Honor to make such a  
10 finding with the venue issue still out there.

11           Thank you, Your Honor.

12           THE COURT: Thank you, Mr. Sponder.

13           Mr. Serajeddini.

14           MR. SERAJEDDINI: Yeah. Your Honor, if I may, that's  
15 customary language. It's included in all first-day orders.  
16 The purpose of the relief today is to provide certainty to our  
17 various stakeholders and preserve the value of this company and  
18 pay critical claims. We don't think it would be helpful to any  
19 of those stakeholders to have qualifications in the first-day  
20 order as to the jurisdiction and venue of the Court.

21           We've stated on the record, and we're happy to follow  
22 up with an order to this effect, that the parties' rights  
23 vis-a-vis venue are reserved on all fronts. But we do need  
24 parties to know that if they're receiving payment under a  
25 first-day order, that that is with finality. So I would

1 request that we include the language, but reserve parties'  
2 rights on a final basis.

3 THE COURT: Thank you.

4 I'm going to overrule the objection. Until venue is  
5 changed, venue remains here in New Jersey, in this district,  
6 subject to further consideration and argument, consistent with  
7 the reservation of rights. The findings that I'm making today  
8 are like all findings. They are, as of today. They can be  
9 subject to change at a later point in time. But the findings  
10 will be for purposes of the entry of the orders today and  
11 limited to today's orders only, which are in order.

12 MR. SPONDER: Thank you, Your Honor. This is Jeff  
13 Sponder from the office of the United States Trustee.

14 And just to try and speed things up for Your Honor,  
15 the United States Trustee objections or red lines and whatnot,  
16 all of our issues have been resolved on all of the motions,  
17 with the exception of the DIP motion and DIP order. And my  
18 colleague, Jane Leamy, who's also on the Zoom call, she'll  
19 address that when we get to that point.

20 But if Your Honor doesn't want to keep going back and  
21 forth and asking me, they've already incorporated all of our  
22 requested revisions in the orders that were submitted to the  
23 Court.

24 Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Sponder. We've learned,

1 haven't we? Much easier. All right.

2 MR. SERAJEDDINI: All right.

3 THE COURT: Thank you.

4 MR. SERAJEDDINI: Thank you, Your Honor.

5 THE COURT: So we'll work on the assumption that at  
6 least from the U.S. Trustee's perspective, their language has  
7 been taken into consideration. I will ask all other counsel  
8 who have issues to use the raise-hand function. I won't go  
9 back to anyone unless I hear. And let's ensure,  
10 Mr. Serajeddini, that the -- I'm going to get better at the  
11 name -- that we have the proper reservation of rights language  
12 in all of these orders with respect to the venue issue.

13 MR. SERAJEDDINI: Understood, Your Honor. We can  
14 address that.

15 THE COURT: All right.

16 MR. SERAJEDDINI: So with that caveat, Your Honor,  
17 the next item on the agenda is the debtors' application for  
18 designation of a complex Chapter 11 case, Your Honor, as set  
19 forth --

20 THE COURT: But just for the record -- I'm sorry, the  
21 joint administration motion is granted. And we're going to  
22 mark all of these "order to be submitted" and essentially when  
23 they're all prepared, forward them down to chambers for entry.

24 MR. SERAJEDDINI: Understood.

25 THE COURT: Thank you.

1 And I'll also ask, given that it's Friday and it's  
2 ten to 2:00, you're going to have to tell us as we go along  
3 what's critical going forward.

4 MR. SERAJEDDINI: Understood, Your Honor. We will  
5 stage the hearing in that way.

6 THE COURT: All right. Thank you.

7 MR. SERAJEDDINI: So in terms of Docket Number 4,  
8 which is the application for designation as a complex  
9 Chapter 11, Your Honor, as set forth in the application, these  
10 cases check all boxes for a complex case. And, therefore, we  
11 request entry of the order designating these cases as complex  
12 cases.

13 THE COURT: All right.

14 Any objections?

15 (No audible response)

16 THE COURT: Motion granted.

17 MR. SERAJEDDINI: Okay, Your Honor. Next, we'll turn  
18 to Agenda Number 17, which is the debtors DIP motion. This is  
19 the basis on which we're going to make the payments that we are  
20 seeking today, so it is critical. It's filed at Docket  
21 Number 26. We filed a proposed form of order at Docket  
22 Number 36, as well as a related DIP credit agreement and no  
23 purchase agreement at Docket Number 48.

24 We filed a revised form of order at Docket Number 65,  
25 along with an attached red line. There are minor changes we

1 believe, Your Honor, to address the landlord's concern  
2 regarding the scope of DIP collateral, as well as some minor  
3 cleanup.

4           As Mr. Sponder noted, we've worked with the Office of  
5 the United States Trustee and we have their form of comments in  
6 there. And the only pending objection would be the one he  
7 reserved on vis-a-vis the roll-up and that of the Ad Hoc  
8 Unsecured Group, as well as potentially the Willkie Group that  
9 were filed momentarily before this hearing.

10           So, before we turn to the evidence for the motion,  
11 and we do intend to put on testimony today, I just want to give  
12 a little bit of introductory background as to the collateral  
13 package and the capital structure. I covered it briefly in my  
14 intro, but just to clarify.

15           Here we have an ABL that is effectively secured on  
16 ABL collateral, which would be the typical ABL collateral of  
17 inventory and receivables. It has junior liens on non-ABL  
18 collateral pursuant to an intercreditor. Separately, there are  
19 cash flow loans, as well as other non-ABL obligations that are  
20 secured, and those are generally the obligations held by the  
21 secured lenders we refer to in the case, that are first on  
22 non-ABL collateral and second on ABL collateral.

23           The ABL also has, and this is a unique feature and  
24 relates to the issue of unencumbered assets, which you may hear  
25 about. Over the course of this case, a lien on the assets are

1 guaranteed from certain first-tier foreign subsidiaries, as  
2 well. So, it structurally primes vis-a-vis certain foreign  
3 subsidiaries, as well.

4           Taking a step back, Your Honor, you'll have read in  
5 the pleadings, and you'll hear today from Mr. Koza, the debtors  
6 are in urgent need of new money financing. The DIP that's  
7 before the Court is the product of extensive, hard-fought  
8 negotiations between the company, Secured Ad Hoc Group, and  
9 CD&R. And those DIP discussions were coupled with  
10 value-maximizing transactions that rely on them in order to be  
11 implemented. And the DIP is the only actionable proposal we  
12 have that provides that viable path to emergence, which is  
13 critical to our business.

14           The DIP itself provides for a little over 650  
15 million. I mentioned the components earlier, it's 250 million  
16 of new money financing, 150 million on an interim basis for  
17 today, a 250 million roll-up, which reflects a one-to-one ratio  
18 that's common and seen in many other cases, a backstop premium  
19 of 3 percent, which relates to roughly 7.5 million on account  
20 of the new money, as well as incremental DIP loans, which won't  
21 be issued now, they're issued at emergence for the purposes of  
22 implementation. They don't carry economics in the case.

23           Your Honor, the DIP is obviously critical to our  
24 business to provide a clear, strong message to our customers,  
25 vendors, employees, and contract counter parties that we have

1 the commitment and support of our lenders, as well as our new  
2 money plan sponsor, who intend to inject significant capital in  
3 the case. We need the DIP to meet our customers' needs, to  
4 compensate our employees, to pay our vendors, and otherwise  
5 manage our business.

6 And as we'll lay out in the evidence, Your Honor, we  
7 believe the DIP terms are fair and reasonable, they're  
8 customary, they'll maximize the value of the debtors, and  
9 they're a sound exercise of the debtors' business judgment.  
10 And as I said earlier, they're the best and only actionable  
11 source of financing that we have. And without the DIP  
12 financing approval today, the debtors will be immediately and  
13 irreparably harmed.

14 And in terms of the structural points of the DIP,  
15 Your Honor, the DIP is proposed to be secured by a first lien  
16 security interest on the collateral that is supporting the  
17 non-ABL secured debt, and in a priming position solely with  
18 respect to that debt. So the ABL debt is not being primed on  
19 any collateral in which it sits first in line.

20 And the DIP facility also includes customary junior  
21 liens on previously unencumbered assets, and, or sorry, assets  
22 that are collateral but have senior liens on them, and  
23 separately, customary first liens on unencumbered assets. Any  
24 liens on proceeds of avoidance actions are subject to final  
25 order as is customary.

1           There are releases of pre-petition secured parties  
2 under the DIP, but that's subject to a final order as well as  
3 the challenge period, which in terms of the timing of the  
4 challenge period, that's 75 days after entry of the interim  
5 order for the UCC and other parties-in-interest, and that  
6 incorporates the U.S. Trustee's comments.

7           We also have customary waivers marshaling inequities  
8 of the case that are subject to a final order. We also have  
9 terms contained within the DIP order on consensual use of cash  
10 collateral with our ABL lenders and non-ABL secured parties.  
11 And in connection with the DIP facility, we're seeking to  
12 provide those parties with customary adequate protection,  
13 including super-priority claims, replacement liens, and payment  
14 of professional fees.

15           With the ABL group, Your Honor, we have a 75-basis  
16 point consent fee, that's a consent fee, cash payment of  
17 default interest, and a true-up concept in the borrowing base  
18 that ensures that the ABL will be adequately protected on their  
19 collateral, as well as some other customary covenants as it  
20 relates to the ABL.

21           And last, Your Honor, the DIP is in the process of  
22 being syndicated and offered out to various potential secured  
23 parties that could be lenders and is being offered to all  
24 non-ABL secured lenders, subject to a 30 percent holdback,  
25 which is a subset of the loan that is being provided solely by

1 the parties that have effectively backstopped this DIP, which  
2 is customary and, again, was a term of the overall DIP  
3 facility.

4 And you'll hear about this in the testimony as well,  
5 but just to highlight it quickly, Evercore solicited  
6 alternative DIP proposals and we did not receive a single  
7 actionable alternative. Mr. Bennett noted in his pleadings  
8 that the Cross-Over Ad Hoc Group did provide a DIP proposal,  
9 but that DIP proposal, while it was larger in size, did not  
10 propose or even suggest or include or recommend a path to  
11 emergence that would be associated with that DIP proposal.

12 And from the company's perspective, and this was  
13 discussed by the special Committee as well, Your Honor, that  
14 DIP proposal would have led to an unclear message as to how  
15 we're getting out of bankruptcy and significant and serious  
16 degradation to the value of the business, and ultimately was  
17 not deemed to be superior in any way to the existing DIP  
18 financing.

19 So, as I mentioned, Your Honor, the DIP is supported  
20 by multiple declarations. The first is from Garrett Gabel, the  
21 company's Chief Financial Officer. The next is by Eric Koza of  
22 AlixPartners. And, finally, Brent Banks from Evercore.

23 So unless Your Honor has any further questions for  
24 me, I'll pass the virtual podium over to my partner,  
25 Mr. Goldfine, who will put on the testimony. And then we'll

1 come back and address the objections.

2 THE COURT: All right. Before we get there,  
3 Mr. Bennett?

4 MR. BENNETT: Your Honor, we'd like to invoke the  
5 rule and exclude the witnesses that aren't testifying from the  
6 testimony of each so that they don't hear each other's  
7 testimony.

8 THE COURT: I have no issue with that if we remove  
9 them until they're called upon to testify.

10 MR. BENNETT: And no one should have any  
11 communications with them about what happens in this courtroom?

12 THE COURT: I think that needs not be said, but I'm  
13 glad you said it. Thank you.

14 MR. MCGUSHIN: Good afternoon, Your Honor. Casey  
15 McGushin from Kirkland & Ellis on behalf of the debtors. Can  
16 you hear me all right?

17 THE COURT: Yes, I can.

18 MR. MCGUSHIN: And I will confess, we are not  
19 actually in the same room as our witnesses. We kept them in a  
20 separate room, but we will ensure that they do abide by the  
21 terms of the rule and none of the future witnesses are in a  
22 room that has a line to the Court.

23 THE COURT: Great. Thank you.

24 I'm sorry, can I have your last name again?

25 MR. MCGUSHIN: Sure. McGushin, M-C-G-U-S-H-I-N, Your

1 Honor.

2 THE COURT: Great. Thank you.

3 MR. MCGUSHIN: And before getting to some live  
4 testimony, we do intend to move into evidence the declarations  
5 of the three declarants. And then cognizant of Your Honor's  
6 comments, we have very, very brief supplemental directs, first  
7 from Mr. Koza and then from Mr. Banks. And with respect to  
8 Mr. Gabel, if there is any cross examination of him, although  
9 we don't intend to put him on for any supplemental direct, he  
10 will be available after Mr. Banks and Mr. Koza testify if that  
11 is acceptable to Your Honor.

12 THE COURT: That's acceptable. Thank you.

13 MR. MCGUSHIN: Okay. Then, at this point, I would  
14 move the declarations into evidence.

15 The first is the declaration of Mr. Garrett Gabel,  
16 the debtors' chief restructuring officer. That is at Docket  
17 Number 23.

18 The second is the declaration of Mr. Brent Banks from  
19 Evercore. That is at Docket Number 27.

20 And the third is the declaration of Mr. Koza from  
21 AlixPartners. And that is at Docket Number 28.

22 As I mentioned, all three, although not in the  
23 virtual courtroom at this moment, are all available today for  
24 cross examination.

25 THE COURT: All right.

1 Let's start with each of them.

2 Are there any objections to the declarations? Gabel,  
3 I'm sorry, has been marked as D-1, the declaration of Mr. Banks  
4 is D-2, and the declaration of Mr. Koza is D-3. Are there any  
5 objections to the declarations?

6 (No audible response)

7 THE COURT: All right. I see nothing and hear  
8 nothing, so we'll accept the declarations into evidence marked  
9 as I've indicated.

10 \*(Debtors' Exhibits D-1, D-2, and D-3 admitted to evidence)

11 MR. MCGUSHIN: Thank you, Your Honor.

12 And at this point, the debtors would call Mr. Eric  
13 Koza to the stand for a brief supplemental direct.

14 THE COURT: All right.

15 Mr. Koza.

16 MR. MCGUSHIN: I believe he's shifting from the room  
17 where they were listening to a room where he can testify on his  
18 own, Your Honor. So if we could just give him a brief moment  
19 to make that --

20 THE COURT: Yeah. I assume there'll be a little bit  
21 delayed if they're not part of this.

22 MR. MCGUSHIN: Yes.

23 MR. KOZA: Here we go, can you see me, Your Honor?

24 THE COURT: Let's see, now I can. Thank you.

25 MR. KOZA: It says "Debtor Witness."

Koza - Direct/McGushin

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1 THE COURT: Yeah, now I can see you. Good afternoon,  
2 Mr. Koza. Let me --

3 MR. KOZA: How are you?

4 THE COURT: Fine. Thank you.

5 Let me have you raise your right hand.

6 ERIC KOZA, DEBTORS' WITNESS, SWORN

7 THE COURT: Is there anyone in the room with you?

8 THE WITNESS: There is not.

9 THE COURT: All right. And do you have anything in  
10 front of you apart from your declaration?

11 THE WITNESS: No, just my declaration.

12 THE COURT: All right. Then, let me allow your  
13 counsel to proceed.

14 MR. MCGUSHIN: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. MCGUSHIN:

17 Q Good afternoon, Mr. Koza. Your declaration has already  
18 been admitted into evidence, so we're not going to go through  
19 any of your background.

20 But can you just remind the Court where you work and your  
21 current position, please?

22 A I'm the global co-leader of the turnaround restructuring  
23 practice at AlixPartners.

24 Q How long have you personally been working with the  
25 debtors?

Koza - Direct/McGushin

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1 A Since July of last year.

2 Q Can you tell us a little bit about sitting here today, the  
3 debtors' current liquidity position in terms of the liquidity  
4 available and the amounts that they have coming due for trade  
5 vendors and the like in the coming days?

6 A We have approximately \$70 million available in the  
7 debtors. We have been running the business the last few weeks  
8 on fumes.

9 We have, you know, significant payment needs next week and  
10 over the next four weeks. To the extent that we don't receive  
11 the funds, we've got about, you know, I think it's \$90 million  
12 worth of disbursements that are going out next week, operating  
13 disbursements. So we're at a point where, you know, obviously  
14 keeping the business in line, we have customers that are  
15 threatening not to ship, some not shipping, and creating  
16 stability right now is of the utmost importance for the  
17 business.

18 Q Just cutting to the bottom line, if the debtors do not  
19 receive interim financing, approximately how long can they  
20 continue to operate given the current cash available?

21 A We wouldn't make it next week.

22 Q Are you familiar with the DIP proposal that was provided  
23 to the debtors by what's referred to as either the Cross-Holder  
24 or the Cross-Over Group represented by Jones Day and  
25 Guggenheim?

Koza - Direct/McGushin

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1 A Yes, generally, I am.

2 Q And at a high level, how do the fees and costs available  
3 or proposed under that alternative DIP compare to the fees and  
4 costs under the DIP the debtors are here seeking approval of?

5 A The high level terms, interest rate, and other fees OID,  
6 are lower in the Jones Day, you know, DIP, vis-à-vis the DIP  
7 that we have now. However, important to note is, there is no  
8 clarity on path to exit with respect to that DIP. And as a  
9 result, you know, it could be significantly more expensive  
10 given the timing associated with a lack of a path and exit with  
11 respect to a Chapter 11.

12 MR. BENNETT: Objection to the second half of that  
13 answer which was non-responsive.

14 THE COURT: All right. I'm just -- I'm looking to  
15 see who made the objection.

16 MR. BENNETT: Mr. Bennett, Your Honor.

17 THE COURT: Oh, okay; sorry. Overruled, thank you.

18 Q Just to put a number on things, Mr. Koza, if we assume  
19 approximately a four-month case about how much would the  
20 debtors save in fees and interest under the alternative DIP as  
21 compared to the DIP in front of the Court today?

22 A I think it's somewhere around ten to 10-15 million  
23 dollars. But I think really important to note is our  
24 expectation is every month that these cases just simply we're  
25 probably going to be burning between 15 and 20 million dollars

Koza - Direct/McGushin

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1 in professional fees. So, that gets eaten up very quickly with  
2 extension of time.

3 Q And what is your --

4 MR. BENNETT: Objection to the second half of that  
5 answer which was also unresponsive.

6 THE COURT: Overruled. Thank you.

7 Q What is your expectation about what the overall costs of  
8 this -- these cases would be taking into account fees both for  
9 the DIP and professional fees under the DIP that the debtors  
10 are proposing versus the alternative DIP proposed by the Jones  
11 Day Group?

12 A It all depends on timing, right; our assumption in the DIP  
13 is we, we were expecting to be in and out very quickly, you  
14 know, in terms of these cases and that's -- that's how we  
15 developed the key assumptions here.

16 We sized it for four months. To the extent that it's  
17 extended beyond that time frame, it would be significantly more  
18 expensive. Let's just pick a number; you know, we've run some  
19 math and in incremental six months, you know, would be hundreds  
20 of millions dollars more.

21 Q And putting aside the direct costs of the case in terms of  
22 fees and interest, what is your expectation about the -- what  
23 the impact would be on the performance of the business if the  
24 alternative DIP were taken by the debtors?

25 A Yeah. The business plan was developed with the

Koza - Direct/McGushin

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1 understanding that there would a be a quick consensual  
2 resolution of the capital structure so, you know, we would be  
3 able to get out with very positive messaging to our customers,  
4 to our employees, to our vendors, you know, and in a way that  
5 was, you know, positive around not only the capital structure  
6 resolution but also, you know, some of the fragility that we  
7 see in the business today in terms of pressure from customers  
8 and vendors.

9       So, you know, I think, you know, as we think about the  
10 business and getting to your question, you know, all of our  
11 customers, you know -- well, many of our customers -- I can't  
12 say all. Many of our customers have alternative means of  
13 supply, so -- and many of them particularly the large ones have  
14 second and third sourcing so they don't have to do business  
15 with us and many don't have minimum commitment.

16       So, there are alternatives where they can go and do  
17 business. In addition, our vendors, they're not obligated to  
18 provide product to us and raw materials to us. These are  
19 things that, you know, they're doing, you know, as a result of  
20 our business relationship.

21       And I think, you know, from our perspective, AlixPartners'  
22 perspective, my perspective, you know, to the extent that we  
23 don't have a clear path of exit and there is extended time  
24 frame here, the business plan would look materially different  
25 to the negative and not to the positive.

Koza - Cross/Bennett

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1 Q Thank you.

2 MR. MCGUSHIN: That's all I had at this time, Your  
3 Honor.

4 THE COURT: All right, thank you.

5 Mr. Bennett?

6 MR. MCGUSHIN: And so, I apologize, Your Honor, but  
7 I'm going to remain standing just in the case of objections  
8 because where I was sitting there's not a camera. So, I  
9 apologize for that.

10 THE COURT: Yeah, that's fine. That's fine.

11 MR. BENNETT: No objection here either, Your Honor.

12 THE COURT: And, Mr. Bennett, you don't need to stand  
13 so, we're set.

14 MR. BENNETT: Thank you, Your Honor. Actually, I  
15 have a podium here if we needed to.

16 CROSS-EXAMINATION

17 BY MR. BENNETT:

18 Q Okay. Mr. Koza, first of all, did you participate in the  
19 process of soliciting bids for DIP financing?

20 A I was not involved in that process. I can tell you that  
21 my team supported some of the work product that was used as  
22 part of those discussions and in some of the diligence related  
23 to the process.

24 Q Okay. And -- but you did testify that you did some work  
25 to calculate the cost of both the DIP provided by the secured

Koza - Cross/Bennett

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1 creditors and the DIP offered by the Cross-Holder Group,  
2 correct?

3 A I did.

4 Q And when you did that work, did you make any calculation  
5 of the value to the roll-up recipients of the roll-up?

6 A The work I did was in terms of understanding the value to  
7 the incremental funding need related to the difference between  
8 the two DIP proposals.

9 Q So, you --

10 A That was the work I did.

11 Q -- okay. So, I want -- I'm going to have to zero in on  
12 this.

13 A Sure.

14 Q Did you do any work to calculate the value of the roll-up  
15 to the recipients of the roll-up, yes or no?

16 A I did not.

17 Q Okay. Did you do any work to ascertain the value of the  
18 roll-up -- excuse me, the cost of the roll-up to unsecured  
19 creditors?

20 A I did not.

21 Q You mentioned studying the DIP terms. Is it not the case  
22 that the plan of reorganization provides for the payment in  
23 full of the DIP loan in cash on the effective date of the plan?

24 A Can you repeat the question? Sorry.

25 Q Well, let me start with a more basic question. Do you

Koza - Cross/Bennett

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1 know how the DIP loan is to be repaid under the plan of  
2 reorganization that has been filed in this case?

3 A Yes.

4 Q How is the DIP loan to be repaid?

5 A It's going to -- the DIP loan will be part of the --  
6 rolled into an exit.

7 Q Well, actually, why don't we take a look at the actual  
8 provision?

9 MR. BENNETT: Just give us a second, Your Honor. We  
10 have -- it's a little tough to get completely organized, but  
11 we'll put on the screen the relevant portion of the plan of  
12 reorganization maybe --

13 A Sure.

14 Q -- together. Okay.

15 MR. BENNETT: Could you put it on the screen,  
16 please?

17 Q Okay. I am looking, if everyone can see, under the DIP  
18 claims label, there's one paragraph that's pretty short, then  
19 there's another paragraph that's longer, and I'm going to go  
20 down, you know, basically three lines.

21 And why don't I let you read it to yourself? I'm really  
22 looking at the phrase in one little I there. And my question  
23 to you is going to be, does this refresh your recollection as  
24 to exactly how the DIP loan is to be repaid?

25 A No, it does not.

Koza - Cross/Bennett

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1 Q So, you did not know that the DIP loan would be paid in  
2 full, in cash, to the extent of the new money position?

3 A No, I know the DIP loan is being paid off. That's a  
4 requirement of exit.

5 Q Okay. And it's paid in cash, correct?

6 A Correct. That's what I see here.

7 Q Okay. Now, if the DIP loan is to be advanced in cash and  
8 paid in cash, how is it that the selection of this DIP loan as  
9 opposed to another -- the DIP loan proposed by the debtors, as  
10 opposed to another DIP loan, would affect the plan?

11 A I'm not sure what your question is. I apologize.

12 Q Let me repeat it one more time.

13 A Sure.

14 Q And if you're sure you can't answer it, that's fine with  
15 me. If the DIP loan is going to be advanced in cash, and if  
16 the DIP loan would be repaid in cash, how is it that the choice  
17 of a DIP loan would affect a plan?

18 A My focus has been on what the funding need of the business  
19 is. What I referred to in terms of comparison of the two DIPs  
20 was focused on that funding need as well as the cost of that,  
21 cost of the DIP.

22 MR. BENNETT: I have no further questions.

23 THE COURT: Thank you, Mr. Bennett.

24 Any redirect?

25 MR. MCGUSHIN: Briefly, Your Honor.

Koza - Redirect/McGushin

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1 REDIRECT EXAMINATION

2 BY MR. MCGUSHIN:

3 Q Mr. Koza, you were asked a question on cross about whether  
4 you had done any work to assess the impact on unsecured  
5 creditors of the roll-up. Do you remember that?

6 A Yes.

7 Q Have you and your -- I just want to clarify.

8 A Of the roll-up or -- yeah.

9 Q Of the roll-up. Have you and your team done any work?

10 A Yes. Sorry. Go ahead.

11 Q Okay. No problem. Have you and your team done any work  
12 analyzing the unencumbered assets of the debtors and how that  
13 might be impacted by the DIP or the roll-up?

14 MR. BENNETT: Objection, beyond the scope of cross.

15 THE COURT: I'll sustain if you want to refine the  
16 question.

17 MR. MCGUSHIN: If that's beyond the scope of cross,  
18 I'm quite fine to cease the redirect, Your Honor. Thank you.  
19 I don't have any further questions.

20 THE COURT: All right. Thank you, Mr. Koza, for your  
21 testimony. You're excused, at least as of the moment.

22 MR. KOZA: Thank you.

23 (Witness Excused)

24 MR. GREENBLATT: Good afternoon, Your Honor. Josh  
25 Greenblatt, Kirkland & Ellis for the debtors. Can you hear me?

1 THE COURT: Yes, I can. Good afternoon.

2 MR. GREENBLATT: Thank you, Your Honor.

3 At this point, we would call Mr. Banks for a short  
4 supplemental direct, again, mindful of Your Honor's preference  
5 for us to be brief.

6 THE COURT: All right. Thank you.

7 And we'll wait for Mr. Banks to appear. There you  
8 are.

9 MR. BANKS: Good afternoon.

10 THE COURT: Good afternoon, Mr. Banks. How are you?

11 MR. BANKS: Good, thank you.

12 THE COURT: All right.

13 MR. BANKS: Good to see you, Your Honor.

14 THE COURT: Let me have you please raise your right  
15 hand. Do you swear or affirm to tell the truth, the whole  
16 truth and nothing but the truth under penalty of perjury?

17 MR. BANKS: I do.

18 THE COURT: All right. Is there anyone sitting in  
19 the room with you?

20 THE WITNESS: No, there's not.

21 THE COURT: And do you have anything in front of you  
22 apart from possibly your declaration filed in this case?

23 THE WITNESS: Just my declaration.

24 THE COURT: All right, that declaration has come in  
25 as D2.

Banks - Direct/Greenblatt

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1 Mr. Greenblatt, you may examine.

2 MR. GREENBLATT: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. GREENBLATT:

5 Q Good afternoon, Mr. Banks. Your declaration is in  
6 evidence. So, could you just please remind us of your job  
7 title and where you work?

8 A Right; good afternoon. My name is Brent Banks. I'm a  
9 senior managing director at Evercore, where I work in the  
10 restructuring group.

11 Q And what is Evercore's role in these Chapter 11 cases, Mr.  
12 Banks?

13 A We are the proposed investment banker for Multi-Color.

14 Q When was Evercore first engaged by Multi-Color, the  
15 debtors?

16 A We were engaged by the company in October of 2025.

17 Q And very broadly, what was Evercore's focus at the outset  
18 of its engagement by the debtors?

19 A We were looking to explore capital structure alternatives  
20 for the company to, amongst other things, address the company's  
21 upcoming maturities, deal with potential liquidity shortfall in  
22 early 2026, and attempt to de-lever the balance sheet. We also  
23 were charged with leading negotiations with the various  
24 creditor groups.

25 Q Thank you. On that first topic, how many parties did

Banks - Direct/Greenblatt

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1 Evercore originally reach out to to explore capital structure  
2 solutions or financing options?

3 A Sure. So, we in total probably reached out to nine  
4 different groups. On the one hand, we had a group of ABL  
5 banks. We reached out to the Secured Group, represented by  
6 Milbank.

7 We reached out to the Cross-Holder Group, represented by  
8 Jones Day. We also reached out to six sophisticated  
9 third-party investors.

10 Q Of all the parties you named, were there any particular  
11 constituencies who ultimately submitted proposals that the  
12 debtors deemed worthy of pursuing?

13 A Yes.

14 Q And who were those two constituencies?

15 A Ultimately, the Secured Group put forward a, you know,  
16 what I would consider a traditional restructuring proposal that  
17 we're talking about today.

18 The Cross-Holder Group, represented by Jones Day, put  
19 forward an out-of-court financing transaction that, you know, I  
20 think were, you know, the two actionable proposals we led with.  
21 The third-party proposals also -- third-party parties put  
22 forward proposals as well.

23 Q With respect -- thank you. With respect to the Cross-  
24 Holder Group, the Jones Day group, how would you describe  
25 Evercore's engagement with advisors to the Cross-Holder Group?

Banks - Direct/Greenblatt

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1 A Really commenced in October --

2 UNIDENTIFIED SPEAKER: (Indiscernible).

3 THE COURT: Why don't we just take a second.

4 Continue, please.

5 A Sure. So, the engagement with the Cross-Holder Group, you  
6 know, commenced with organization of the Cross-Holder Group in  
7 October, into November. You know, we did intensive diligence  
8 with both Guggenheim and Jones Day.

9 You know, coming into the Thanksgiving holiday, we began  
10 exchanging proposals on a, you know, non-guarantor restricted  
11 subsidiary financing that, you know, proceeded throughout, you  
12 know, December and January with very active negotiations  
13 through those, you know, subsequent months.

14 Q And with respect to the Cross-Holder Group and the Secured  
15 Group, did the debtors ultimately select to pursue a path with  
16 one of those groups over another?

17 A Yes. I mean, we were on a very similar timeline with the  
18 Secured Group, you know, proceeding with diligence, proceeding  
19 with negotiations throughout the course of December into  
20 January, same sort of negotiation. Ultimately, the Special  
21 Committee selected the proposal put forward by the Secured  
22 Group.

23 Q And that is the, is that the transaction that's reflected  
24 in the RSA?

25 A That is correct.

Banks - Direct/Greenblatt

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1 Q Okay. And before we turn to that and we'll be brief, can  
2 you very briefly describe why the company did not select the  
3 Cross-Holder Group proposal?

4 A Look, I think the company proceeded with both proposals up  
5 till the very end. You know, I think we were very close but  
6 not final on the Cross-Holder Group proposal. But as the  
7 company evaluated, you know, the Secured proposal versus the  
8 Unsecured proposal, ultimately, the Special Committee  
9 determined that the Secured proposal was superior, you know,  
10 given the level of de-levering, you know, of over \$3.9 billion  
11 of de-levering, the seven years of maturity runway, you know,  
12 the effect of having 550 million of liquidity at emergence.

13 You know, contrast that with the, you know, Cross-Holder  
14 Group proposal that, while, again, being very close to being  
15 actionable, provided, you know, less de-levering, approximately  
16 450 million, runway through the end of 2028 and not necessarily  
17 a comprehensive solution.

18 Q Coming back to the negotiations with the secured lenders,  
19 how were they -- can you describe the negotiations with the  
20 secured lenders leading up to the RSA?

21 A Yeah. So, look, they were -- you know, long. I think we  
22 commenced in October with their advisor group. It was a very  
23 intensive diligence process, I think, throughout the course of  
24 December and January on a very similar path as the Cross-Holder  
25 Group; you know, we were negotiating on a nearly daily basis,

Banks - Direct/Greenblatt

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1 you know, hard-fought to arrive at the terms that we have  
2 today.

3 Q And is there a DIP facility that's connected to the RSA?

4 A There is.

5 Q At a very high level, can you just please remind the Court  
6 of the terms of the DIP facility?

7 A Sure. There's a \$250 million new money component of the  
8 DIP. It's backstopped by the plan sponsors and the, you know,  
9 Ad Hoc Group of Secured Creditors. You know, the facility will  
10 have a one-to-one roll-up. The facility itself is available,  
11 you know, to -- 70 percent of it's available to all lenders.

12 There is a 30 percent hold-back. The interest rate, Mr.  
13 Serajeddini went through, but SOFR plus 675, three points of  
14 backstop fees, two points of fees -- two points of OID, excuse  
15 me. There's no exit fee, and there's a ten-month maturity date  
16 or ten-month duration to the DIP.

17 Q And based on Evercore's work here, do you believe that  
18 each of these terms are consistent with market ranges?

19 A I do.

20 Q Did Evercore compare these terms to other comparable DIPs  
21 in the market in other cases?

22 A We did.

23 Q Very broadly, can you describe the types of DIPs that you  
24 used for this comparison?

25 A We looked at funded term-loan DIPs over the past several

Banks - Direct/Greenblatt

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1 years of similar size.

2 Q And again, what was your conclusion from these  
3 comparisons?

4 A That the terms of the DIP facility were within the market.

5 Q Okay. Did you and Evercore ultimately recommend to the  
6 debtors that they pursue the DIP contained in the RSA?

7 A We did.

8 Q And what were your reasons for recommending this?

9 A We believe that this, you know, provides the best path, a  
10 swift path for the company to emerge from this bankruptcy  
11 proceeding. So, therefore, you know, the DIP, the RSA,  
12 provided great certainty for the company in an uncertain period  
13 for itself.

14 Q And why do you believe this DIP provides a clear exit  
15 path?

16 A Because it's supported by the Secure Creditors -- well,  
17 over 72 percent of the Secure Creditors.

18 Q And now, briefly, on the Cross-Holder DIP proposal, have  
19 you reviewed the terms of the Cross-Holder proposal from  
20 Sunday, January 25th?

21 A I have.

22 Q In a vacuum, how do these terms compare to the terms in  
23 the secured lenders DIP that you just described?

24 A In a vacuum, you know, there's a larger amount, 350 to  
25 500. The interest rate is lower, and the fees are lower.

Banks - Direct/Greenblatt

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1 Q Why did you nonetheless, or Evercore nonetheless, advise  
2 the debtors to proceed with the secured lenders DIP facility?

3 A Just given the uncertainty, there was not a clear path to  
4 exit with the unsecured DIP facility. It lacked the support of  
5 the secure creditors, and therefore, you know, we viewed it as  
6 inactionable.

7 Q When you reviewed the Cross-Holder lenders DIP, what did  
8 Evercore do with it -- strike that. Did you take the Cross-  
9 Holder lender's DIP proposal to the secured lenders?

10 A We did.

11 Q And what did you do with it?

12 A Well, specifically, we spoke with the secured lender  
13 advisors and discussed, you know, the terms of the DIP, the  
14 existence of the competing DIP proposal. We requested that  
15 they improve upon their terms of the financing.

16 We asked to solicit to see if they would support the  
17 alternative DIP financing. They were unwilling to support the  
18 alternative DIP, and they were unwilling to improve upon the  
19 terms.

20 Q All right. A few final questions, Mr. Banks. Did  
21 Evercore engage in a marketing process with respect to the  
22 secured lenders DIP?

23 A We did.

24 Q Can you describe that marketing process briefly?

25 A Yeah. So I, you know, starting of Friday of last week, so

Banks - Direct/Greenblatt

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1 January 23rd, we began to make outbound calls to the same six  
2 sophisticated third-party investors who had been, you know,  
3 working with the company over the past several months on the  
4 NGRS financing, alerting them to the fact that we may be  
5 requesting a DIP financing in the coming days.

6 We were, you know, a little bit nervous, given we had not  
7 yet signed an RSA, that this would get out into the marketplace  
8 and cause harm to the business, and therefore, you know, did  
9 not send DIP marketing materials until Saturday, you know, had  
10 discussions with the third-party lenders about the collateral  
11 package, which was smaller but the same, you know, as was  
12 otherwise proposed in the NGRS financing months ago.

13 And then, you know, over the course of Sunday and Monday,  
14 received responses from the prospective lenders that they were  
15 unwilling to provide a competing DIP proposal.

16 Q So, just to be clear, did you receive any alternative DIPs  
17 from the third parties that you reached out to during this  
18 marketing process?

19 A We did not.

20 Q And do you believe there was a sufficient amount of time  
21 for Evercore to conduct the marketing process that you  
22 described?

23 A Given the extensive diligence that these parties did in  
24 November and December, I believe that there was sufficient  
25 time.

Banks - Cross/Bennett

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1 Q Last question, Mr. Banks. Do you believe it is in the  
2 debtor's best interest to proceed with the secure lenders' DIP  
3 facility in these cases?

4 A I do.

5 MR. GREENBLATT: No more questions. Thank you.

6 THE COURT: Thank you, Mr. Banks.

7 Let's hear from Mr. Bennett.

8 MR. BENNETT: Thank you, Your Honor. This will be  
9 somewhat longer.

10 CROSS-EXAMINATION

11 BY MR. BENNETT:

12 Q Mr. Banks, I want to start briefly just taking a quick  
13 look at your declaration you have in front of you, do you not?

14 A I do.

15 Q All right. Could you go all the way back to page 15,  
16 paragraph 32?

17 A I'm here.

18 Q And I just want to confirm that it's accurate that some of  
19 your reasons are based upon professional opinion. Do you see  
20 that in the first line?

21 A I do.

22 Q Okay. Is that correct?

23 A I believe it is.

24 Q Okay. Second, just before we move on, you testified  
25 several times about extensive due diligence information that

Banks - Cross/Bennett

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1 was provided to the parties, did you not?

2 A I did.

3 Q And some of that extensive due diligence information was  
4 provided to the Cross-Holder Group?

5 A It was.

6 Q All right. And you understand that when I use the word  
7 crossover work, you're referring to -- I'm referring to the  
8 Canyon and others in that group, correct?

9 A I understand. Correct.

10 Q Okay. All right. And so, all the due diligence  
11 information that you gave to people, was it reliable?

12

13 A To the best of my understanding, yes.

14 Q Look, did you find any inaccuracies in any of the due  
15 diligence material you reviewed?

16 A Sitting here today, to my recollection, not that I can  
17 think of.

18 Q Okay. And the trial balance for all of the entities at  
19 multiple dates, that was one of the important due diligence  
20 disclosures, wasn't it, Sir?

21 A I believe a trial balance was disclosed, yes. So, to say  
22 it was provided in diligence, I think that's fair.

23 Q Okay. And were there any inaccuracies in that document at  
24 all, to the best of your knowledge?

25 A I have not reviewed that specific document in detail, so

1 hard for me to say.

2 Q Did any person on your staff transmit to you any  
3 indication that anything in the trial balance documents were  
4 inaccurate in any way?

5 A I don't know.

6 Q Well, so I'm going to ask the question again.

7 A Yeah.

8 Q Can you remember any occasion where any person on your  
9 team, any of the people at Evercore, communicated to you that  
10 anything in the trial balance reports was inaccurate in any  
11 way?

12 A I do not recall receiving that information or that  
13 notification.

14 Q So, when you collected information from the company, did  
15 you ask for the company to make sure that the information that  
16 you gave you was accurate and complete in all respects?

17 A I mean, I would describe it, we worked closely with the  
18 Alix team and with the company to provide diligence information  
19 that we believe to be accurate.

20 Q Okay. So did anyone at the company at any time  
21 communicate to you that there were any inaccuracies in any of  
22 the trial balance reports?

23 A I do not recall ever being told there was inaccuracies.

24 Q And same question with respect to Alix, Sir?

25 A I do not recall.

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1 Q Okay. Okay. In your declaration there is information  
2 about Evercore's experience, but I want to spend a few minutes  
3 talking about yours.

4 A Sure.

5 Q Will you agree with me that during your entire career  
6 you've been analyzing and understanding financial statements?

7 A That's correct, yes.

8 Q And you've been analyzing and understanding other kinds of  
9 financial reports?

10 A Sure. That's correct.

11 Q And you've been analyzing and understanding spreadsheets?

12 A Sure. Yeah, correct.

13 Q And even that you've been spending a lot of time in the  
14 insolvency and reorganization space, will you agree with me  
15 that we can consider you an expert at calculating recoveries on  
16 claims?

17 A It's up to the Court to decide, but yes, I'm familiar with  
18 recoveries and the calculations generally.

19 Q Okay. Are you comfortable reviewing credit documentation?

20 A Often I work with attorneys on credit documents, but I'm,  
21 you know, I have a good general awareness.

22 Q Did you review any credit documentation since you became  
23 involved with Multi-Color?

24 A In some capacity, yes.

25 Q Okay. And these were related to Multi-Color, not to other

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1 people, correct?

2 A Correct.

3 Q And you signed your declaration, correct?

4 A I did.

5 Q Okay. Did you write it?

6 A I worked with the assistance of counsel to prepare it.

7 Q Did you prepare the initial draft?

8 A I did not.

9 Q Okay. Did you make any changes to the draft that was  
10 given to you?

11 A Yes.

12 Q What changes did you make?

13 A I do not recall sitting here today, but a variety of  
14 changes, you know, related to the process, et cetera.

15 Q Changes related to the process; do you remember any  
16 changes related to the process that you made?

17 A Well, just to provide more detail on what we've done,  
18 provide more detail on my professional experience, provide more  
19 detail as to how, you know, the last 12 months unfolded.

20 Q Okay. Are you aware that a disclosure statement was sent  
21 to creditors of Multi-Color on Tuesday, January 28, 2026?

22 A I am aware, yes.

23 Q And did you review the disclosure statement before it was  
24 transmitted to creditors?

25 A I did, yes.

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1 Q And was Evercore the source of the information that deals  
2 with anticipated recoveries to creditors in the disclosure  
3 statement?

4 A We worked with, you know, the AlixPartners team and the  
5 company to help pull together that information.

6 Q Okay. When you reviewed the disclosure statement, did you  
7 see any inaccuracies in it?

8 A Sitting here today, not that I'm aware of.

9 Q Okay. And you testified extensively that you were  
10 involved in the process for obtaining a DIP loan for Multi-  
11 Color, correct?

12 A That's correct.

13 Q Okay. And did I hear you testify that that process  
14 started with solicitations on January 23rd?

15 A That is correct.

16 Q Okay. And from now on, if I use just January 23rd, you  
17 know I'm referring to 2026, correct?

18 A Yes, last Friday, yup.

19 Q Just to make it a little quicker. When was the first term  
20 sheet relating to a DIP loan for Multi-Color prepared?

21 A I don't recall, but I believe it was in January, earlier  
22 in the month.

23 Q Earlier in the month, meaning the first week in January,  
24 the second week in January, or the third week in January?

25 A I don't recall the exact date or the exact week.

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1 Q Okay. Do you recall when the first time you saw a paper  
2 showing any terms for a DIP loan for Multi-Color?

3 A Well, we began discussing the DIP at some point early in  
4 January.

5 Q All right.

6 A Yeah, go ahead.

7 Q Did the company or a creditor representative prepare the  
8 first term sheet you saw relating to a DIP loan for Multi-  
9 Color?

10 A You know, it was left unaddressed for some period of time.  
11 I believe the first proposal was made by the Secured Group of  
12 creditors in our back and forth.

13 Q And when did that proposal arrive on your doorstep?

14 A I don't recall. Sometime in January.

15 Q Was it before January 23rd?

16 A It was.

17 Q Was it a week before January 23rd?

18 A I don't recall exactly when the DIP terms were negotiated  
19 and when we first saw a DIP proposal as part of the broader  
20 transaction term sheet.

21 Q Okay. Isn't it true that the Cross-Holder Ad Hoc Group  
22 sent Evercore a note asking to be included in a debtor's DIP  
23 marketing process?

24 A That is correct.

25 Q Do you know when the Cross-Holder Ad Hoc Group indicated

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1 its interest in providing a DIP loan to Multi-Color?

2 A I believe that was last Friday, the 23rd.

3 Q Okay. Why don't we put up, I think it's Hayes Exhibit 1,  
4 the declaration that was filed near the beginning of the  
5 hearing. And I want to ask you, let's go to the next page,  
6 please. And if you want to see that the emails that are, I  
7 guess, below this, that predate it, I'm sure we can show them  
8 to you. I don't want to confuse you at all.

9 Okay. But is this the, in the second paragraph, is this  
10 the request to participate in a DIP financing process that came  
11 from the Cross-Holder Group, and in particular Stephen Preefer,  
12 on Friday, January 23rd at 3 o'clock p.m. Eastern?

13 A That's correct.

14 Q Okay. Now, your name didn't show up on this email. Just  
15 for purposes of our examination going forward, are you included  
16 in Project Monarch Rx, which is up there on the top, next to  
17 Mr. Cartis (phonetic) and Mr. Moss's name?

18 A That is correct.

19 Q So, anything that was sent to Project Monarch Rx was also  
20 sent to you, is that correct?

21 A That should be the case, yes.

22 Q All right. I guess at the time this email was received by  
23 Evercore, the debtor's DIP loan marketing process was already  
24 underway, am I correct?

25 A I don't recall exactly, but it's quite possible it was.

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1 We were making outbound calls that afternoon to third-party  
2 investors; the six I mentioned before.

3 Q Okay. So, all right. Did you participate in formulating  
4 a response to Mr. Preefer's email?

5 A Can I just see the response?

6 Q Well, why don't I find out what you remember first, and  
7 then we'll get there.

8 MR. BENNETT: You can take down Exhibit 1 so I can  
9 see the witness's -- you can take down Exhibit 1. Thank you.

10 Q I want to understand what you remember, and then perhaps  
11 we'll go to the document. Did you participate in formulating a  
12 response to Mr. Preefer's email?

13 A I don't recall. I think it might have been one of my  
14 associates that responded to Mr. Preefer.

15 Q And that associate would be someone who reports to you,  
16 correct?

17 A That's correct.

18 Q You were in charge, correct?

19 A That's correct.

20 Q Okay. Do you know how Evercore responded?

21 A I don't recall.

22 Q You don't recall. Do you know when Evercore responded?

23 A Either the same day or the next day, I believe.

24 Q Okay. Why don't we take a look at Hayes Declaration,  
25 Exhibit 2? Now, same offer. If you want to see anything else

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1 that's on the screen, we're absolutely willing to spend the  
2 time and let you see it. But this is an email from John Cartis  
3 to Mr. Preefer and Matt Moss, who's another representative of  
4 Guggenheim, and it includes Project Monarch Rx, which means it  
5 includes you, correct?

6 A Correct.

7 Q Okay. Why don't I read this out loud?

8 "Thanks, Steve. In connection with any DIP marketing  
9 process, the company intends to solicit DIP proposals from all  
10 key stakeholders, including your clients. We will share any  
11 DIP marketing materials with you for distribution to your  
12 clients." Do you see that?

13 A I do.

14 Q Okay. This is Saturday, January 24, 2026, and your DIP  
15 process has already started, correct?

16 A We've had conversations with third parties. We haven't  
17 yet distributed materials until some point, I think, Saturday  
18 afternoon to the third parties.

19 Q But you didn't invite any conversations with anyone at  
20 Guggenheim, did you?

21 A Not until Sunday; not until the following day did we have  
22 a conversation about the DIP solicitation.

23 Q Okay.

24 MR. BENNETT: We can take that down now.

25 Q So, to the -- if this email suggested that the DIP process

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1 hadn't started yet, it's not accurate, correct?

2 A Can you pull up the email again, please?

3 Q Sure.

4 A I interpreted this to say, in connection with our DIP  
5 marketing process, we intend to solicit all participants, which  
6 included your group. We had not done so yet, but at this time,  
7 we had conversations with third parties at a high level, and on  
8 Saturday afternoon, you know, we had distributed DIP materials  
9 to third parties.

10 Q So, why were the words, any DIP marketing process, as  
11 opposed to the DIP marketing process, or the ongoing DIP  
12 marketing process? What was intended there?

13 A Tough for me to speak to the intent. I don't recall  
14 exactly.

15 Q But this document doesn't say, we started a DIP marketing  
16 process yesterday, does it?

17 A No.

18 Q It doesn't say, we started a DIP marketing process  
19 yesterday and would be thrilled if you could join it, does it?

20 A It does not, no.

21 Q It suggests that something might happen in the future,  
22 doesn't it?

23 A It does.

24 Q But it was already going on beginning the day before,  
25 correct?

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1 A Correct. We're having discussions.

2 Q Okay.

3 MR. BENNETT: Could you take that down, please?

4 Q Do you know when the debtors advised, or the debtors or  
5 Evercore, or through Evercore, advised the Ad Hoc Group that a  
6 marketing process had started?

7 A We did not speak with Guggenheim, the advisors to the  
8 Cross-Holder Group, until Sunday with respect to the DIP  
9 marketing process.

10 Q And what do you remember about that message?

11 A We were not yet signed up to the RSA. You know, from our  
12 perspective, we wanted to be sure that the company had a  
13 solution to the liquidity need at the end of the month, and  
14 therefore, we continued with our competitive process, but felt  
15 like we needed to share with the Guggenheim team what the DIP  
16 marketing materials were.

17 Q Okay. Why don't we put up Hayes Declaration Exhibit 3,  
18 please? Is this the transmission of DIP materials to  
19 Guggenheim by your office?

20 A It is.

21 Q And you received this email, correct?

22 A I did.

23 Q Okay. And this is sent on Sunday, January 25th at 1:59  
24 p.m. Eastern Time, correct?

25 A I can't tell. That number looks blotched out, but I'll

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1 take your word for it unless it's relevant for something.

2 Q It is a bad copy for some reason. Mine is clear, and I  
3 think the one filed with the declaration is clear. Accept my  
4 representation it's 1.59 p.m.

5 A Okay.

6 Q 48 hours after Guggenheim first asked, correct?

7 A That's correct.

8 Q And 48 hours after you'd actually started your DIP  
9 process, correct?

10 A That's correct.

11 Q And how long was your DIP process going to last?

12 A I think when we started making calls Friday, we were both  
13 unsure as to when the company was planning on filing and  
14 whether or not we would get to a deal with the secured lenders.

15 So, in the first instance, I think we may have set a  
16 deadline at Sunday evening, so not long after this email was  
17 sent. And then, went out to all the parties and extended it by  
18 a day as it looked like the filing was unlikely to happen on  
19 Monday, and therefore, you know, we proceeded to give parties  
20 more time as we learned about the status of everything.

21 MR. BENNETT: Okay. You can take this email down.

22 Q Did anything else important happen on Sunday, January  
23 25th, in this case?

24 A At some point during the day, and I can't recall exactly  
25 when, I think the company did enter into the RSA.

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1 Q It did enter into the RSA?

2 A Yeah, correct.

3 Q Didn't the RSA require the debtors to accept the DIP  
4 proposal that was made by CDR and the other senior lenders?

5 A The DIP proposal was an integral part of the RSA.

6 Q Let me ask the question again. Did the RSA that was  
7 signed on January 25, 2026, on the very same day you started a  
8 DIP process with the Cross-Holder Group, include a provision  
9 requiring that the debtors adopt the DIP proposal from CDR and  
10 the DIP lenders?

11 MR. GREENBLATT: Your Honor, I'm going to object only  
12 insofar as Mr. Banks is not a lawyer, so if he's being asked to  
13 provide a legal interpretation of the document, it's  
14 objectionable. Otherwise, obviously, he can talk about his  
15 business understanding of what the RSA contains.

16 MR. BENNETT: Just seeking his very sophisticated  
17 business understanding.

18 THE COURT: Overruled, to that extent.

19 A Yeah, the RSA was entered into on Sunday. It was an  
20 integral part. I suppose entering into the DIP connection with  
21 the RSA, you know, would not surprise me.

22 Q Okay. Well, why don't we take a look, just as you aren't  
23 surprised in the future?

24 A Okay.

25 Q We're going to look at page 19 of the RSA, which appeared

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1 in -- on page 223 of 326 of one of, I guess it was the  
2 disclosure statement filing.

3 And once again, my offer to go up or down or sideways to  
4 give you an ability to see more stands. And I want you to look  
5 at the top, which is commitments with 5.02, commitments with  
6 respect to Chapter 11 cases, and then item G and item H. Let  
7 me know when you're done.

8 A Okay, I'm done.

9 Q Now, does this either refresh your recollection or confirm  
10 your recollection that the RSA precluded the debtors from  
11 accepting any DIP proposal other than the DIP proposal by CDR  
12 and the secured lenders, and also required them to support  
13 approval of that same DIP?

14 A Looking at this, just this section in isolation, it  
15 appears to say that they will both support the DIP and not  
16 object.

17 Q And the DIP being referred to here is the DIP facility by  
18 CDR and other secured creditors, correct?

19 A That's correct.

20 Q And just to make sure, I think it's clear to everybody,  
21 CDR is the 100 percent equity owner of the company, correct?

22 A I don't know if they're 100 percent, but like the  
23 overwhelming majority of the equity, that's correct.

24 Q More than 95?

25 A Most likely. I can't speak to the exact amount, but for

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1 this purpose, yeah.

2 Q Okay. Did you tell anyone that you'd already accepted a  
3 DIP proposal when you signed the RSA?

4 MR. BENNETT: You can take that away.

5 A What we communicated to third parties was that we were  
6 close to signing an RSA. We had not done it yet. I don't  
7 recall going back to, as an example, the third-party lenders  
8 and telling them that the RSA was signed.

9 Q What did you tell them?

10 A The third-party investors?

11 Q Yeah.

12 A That, you know, obviously we've been speaking with these  
13 folks for the last several months, that we were soliciting a  
14 DIP facility. We requested, you know, their willingness to  
15 fund on a priming basis, on a junior basis, as well as junior  
16 to the, you know, non-U.S. ABL collateral and, you know,  
17 certain unencumbered properties, and that, you know, we were  
18 close to an RSA, but not finalized. So, it was that speech.

19 Q It wasn't exactly accurate, was it?

20 A Well, we didn't communicate this until -- this was  
21 communicated Friday, it was communicated Saturday, et cetera.  
22 And then, we waited to see what, you know, kind of responses we  
23 got, and we chased throughout the day, Sunday and Monday.

24 Q Okay. And what did you tell the Cross-Holder Group?

25 A I believe we told them we were interested in, you know, a

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1 similar proposal that we told the other third-party lenders.

2 Q Do you recall how the Cross-Holder Group responded to the  
3 invitation to participate that they received on that Sunday?

4 A I believe in eight hours, the same day, the Cross-Holder  
5 Group provided the company with a junior DIP against that, you  
6 know, same ABL collateral that we were just discussing a moment  
7 ago.

8 Q A junior DIP, correct?

9 A Correct.

10 Q Okay, no priming, correct?

11 A I believe that's correct. I mean, they were taking  
12 currently unencumbered collateral, but yeah, generally  
13 speaking, it was a junior DIP on the U.S. and non-U.S.  
14 guarantor entities.

15 Q Did the Cross-Holder Ad Hoc Group provide all of the  
16 information that the debtors in Evercore requested in its  
17 request for a proposal?

18 A With respect to the RFP we put out there, I believe that  
19 to be the case. They provided the key economic terms, et  
20 cetera, information about the financial covenant, et cetera.  
21 So, yes.

22 Q And were you given a copy of the response?

23 A Yes, I believe I received the response directly.

24 Q Okay. Why don't we put up Hayes Exhibit 4, please, and go  
25 to the first page. And same offer; if you want to go down

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1 more, we're perfectly okay. But I want to just talk about the  
2 email that was on top.

3 So, you already testified that the DIP proposal was  
4 complete, and look at what the Cross-Holder Group had to say.  
5 Let me know when you're done.

6 A I'm finished.

7 Q Okay. So, after you got this, did you reach out to anyone  
8 at Guggenheim and say, guys, sorry you did all this work; we're  
9 already committed; we signed an RSA? This, of course, being a  
10 10:37 p.m. email, so after you had signed the RSA?

11 A No, not on Sunday.

12 Q Not on Sunday. Why not?

13 A Well, we took the proposal and spoke with the Secured  
14 Group, meaning PJT, representing the secured group of lenders.

15 Q Okay. All right. So, this is we're now January 25th,  
16 Sunday, late at night. After this, did there come a time when  
17 the debtor responded to this proposal by asking about the  
18 maximum amount that the Cross-Holder Ad Hoc Group was willing  
19 to advance under its DIP loan proposal?

20 A Yes. At one point, I believe we asked if, are you looking  
21 to fund 350, 500, and what is the path to exit here. So, we're  
22 looking for further clarity on the amount.

23 Q And were you involved in making that request?

24 A I was.

25 Q Okay. And when you made that request, did you tell them,

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1 we're already committed, but we're still curious?

2 A I do not recall saying that, no.

3 Q Okay. Why don't we take a look at what you did say?

4 A Okay.

5 Q Hayes Exhibit 7, please. This time you sent it?

6 A Correct.

7 Q Monday at 11:10 p.m.?

8 A 11:10 p.m.

9 Q All right.

10 A Looks right to me. Yeah.

11 Q Yup, pretty late in the day.

12 A Yeah.

13 Q Another whole day gone. Okay. You'd signed the RSA  
14 sometime the day before. Okay. "Thanks, Brendan. As  
15 discussed in our call earlier today, we're evaluating your  
16 client's DIP proposal. However, as you're aware, the quantum  
17 of the proposed filing is uncertain in light of the range  
18 included in your proposal." The proposal range was what?

19 A I believe it was 350 to 500 of new money.

20 Q Yeah. And how much new money is committed under the DIP  
21 that you're sponsoring?

22 A The Secured Group and the plan sponsor, you know, are  
23 providing 250 million of new capital.

24 Q Okay. And that was acceptable to you?

25 A Correct.

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1 Q Okay. But you still wanted to know what was already an  
2 amount greater than that would come from the Cross-Holder  
3 Group?

4 A Correct, we were curious as to what the path to immersion  
5 was. And therefore, what's the plan behind it.

6 Q That comes later.

7 A Okay.

8 Q I should ask a question. Is the words path for immersion  
9 anywhere in this email, Sir?

10 A It is not.

11 Q Okay. So, when you sent this email, you already knew the  
12 range was between 250 and 500. You already knew that was  
13 bigger than the other one that you had, but you asked anyway.  
14 Why?

15 A I did. I did not know what the plan sponsor proposal  
16 attached with it would be. So, I was curious if there was an  
17 assumption there that was driving that range.

18 Q There's no -- where's the words that ask about the plan  
19 sponsor connection?

20 A There's a reference in the previous email on Sunday that a  
21 plan sponsor proposal was forthcoming. And part of my  
22 confusion as to the range, given they didn't respond to the 250  
23 and the RFP, was there must have been some linkage to the plan  
24 sponsor proposal that the Guggenheim team had been  
25 contemplating.

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1 Q Okay. But you don't say here, we've already signed an  
2 RSA?

3 A I do not. No.

4 Q But you're still pestering them for more information,  
5 correct?

6 A Yes, we were pestering them.

7 Q You're trying to suggest that your process is still  
8 ongoing, aren't you?

9 A I didn't -- I don't think we're trying to suggest  
10 anything. I think we were genuinely interested in what their  
11 proposal was and wanted to educate the Special Committee on  
12 what this plan sponsor proposal was.

13 Q But you were already committed?

14 A We had signed the RSA on Sunday, correct.

15 Q Why don't we just take a look at Exhibit 8 very quickly  
16 for completeness. Is this the response you received to your  
17 inquiry?

18 A It is. Sorry, I'm just reading it.

19 Q That's okay.

20 A Right.

21 Q And that was pretty prompt, right? You sent your response  
22 at 11-something p.m. the prior night, and Brendan Hayes gets  
23 back to you at 9:13 the next morning, right?

24 A It was the next morning, sure. So prompt, that works.

25 Q Okay. Now, the disclosure statement mentions many

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1 pre-petition events, doesn't it?

2 A It does.

3 Q And -- but the disclosure statement, well, let me ask you  
4 this way. Does the disclosure statement mention that the  
5 Cross-Holder Ad Hoc Group offered an alternative DIP loan?

6 A I don't recall. My declaration does. I don't recall if  
7 the disclosure statement includes that.

8 Q Okay. Now, we're going to shift gears a little bit. Do  
9 you know that the debtor's plan that was sent to all creditors  
10 on Tuesday, January 27th, provides, has provisions concerning  
11 how the DIP loan will be paid under the plan?

12 A That sounds right to me.

13 Q How is it paid under the plan?

14 A The \$257-million portion of the DIP will be, you know,  
15 repaid in cash. The DIP roll-up, the \$250 million DIP roll-up  
16 will be converted into take-back debt on the company  
17 post-emergence.

18 Q Okay. And you understand that the roll-up portion is not  
19 a new money loan to the debtors, correct?

20 A Correct.

21 Q Okay. So, now we're going to confine ourselves to the new  
22 money loan part of the DIP and the fees connected with it. The  
23 debtor's proposal, which has other elements, is basically that  
24 it will borrow cash that the debtor needs for its operations  
25 during the Chapter 11 case, and it will pay back those loans

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1 with interest and fees in cash when the case ends, correct?

2 A That is correct.

3 Q Okay. Do you agree that it makes absolutely no difference  
4 to the debtors as a financial matter who loans the cash and who  
5 the debtors pay back?

6 A Well, I think it matters only insofar as the key advantage  
7 of the DIP that we had from the Secured Group was the clear  
8 path to emergence, and therefore, you know, what we believe is  
9 the best path for the company to emerge from bankruptcy in a  
10 short period.

11 Q Okay. I heard your testimony about clear path to  
12 emergence. I'm asking an additional question.

13 A Sure.

14 Q As a pure economic matter concerning the DIP, do you agree  
15 that it makes absolutely no difference to the debtors as a  
16 financial matter who loans the cash and who the debtors pay  
17 back when we're dealing with a loan that requires an advance of  
18 cash and requires the repayment of cash?

19 A Looking in isolation at only who provides the loan, I  
20 don't think it matters now.

21 Q Do you have any basis to doubt the creditworthiness or  
22 ability to perform of any member of the Cross-Holder Ad Hoc  
23 Group that have delivered commitments to make a financing to  
24 the debtors?

25 A I have no reason to doubt their ability to fund.

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1 Q Has Evercore provided that advice to the company?

2 A We had a discussion with the Special Committee where we  
3 talked about the benefits of the secured proposal versus, you  
4 know, the Cross-Holder Group proposal, and I don't think at any  
5 point did anyone doubt the ability of your client's ability to  
6 fund here.

7 Q Okay, now I want to turn to the disclosure statement a  
8 little bit to cover some structure points.

9 A Okay.

10 Q We're going to start on Page 31. And so I understand that  
11 there's an ABL and we're not talking about that. I understand  
12 that there's a cash flow loan and that it's similar to the  
13 secured notes, but I don't want to bother talking about that  
14 separately if I don't have to. If you want me to, I will.

15 And then there's what the Debtor calls secured notes and  
16 unsecured notes in Paragraph 3 and 4 here. Are you familiar  
17 with these paragraphs?

18 A Generally speaking, yes.

19 Q Okay. And do you know if they contain any inaccuracies as  
20 far as you're concerned?

21 A Would you mind if I read them quickly?

22 Q No, I don't. And frankly, I only am interested in the  
23 sentences and secured notes that start kind of near the bottom,  
24 "The secured notes are guaranteed" and everything that follows  
25 it. And with respect to the unsecured notes, I'm only

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1 interested in the similar sentence, the carryover sentence that  
2 ends on the next page, 33.

3 A Okay. So beginning with the "The secured notes are  
4 secured by liens unsubstantially?"

5 Q Yes.

6 A And then, sorry, on the unsecured notes, is there a  
7 similar place I should be looking? I'm --

8 Q Yeah, actually, before you leave the secured notes --

9 A Yeah.

10 Q -- I misspoke, go to the sentence just before it, "The  
11 secured notes are guaranteed by Holdings and each wholly-owned  
12 U.S. restricted subsidiary of the parent subject to certain  
13 exceptions." That line right there.

14 A Okay.

15 Q Okay. And then when you get to unsecured notes, can we go  
16 up to the next page, do you see, I think it clicked over, but  
17 the sentence that starts there, "The unsecured notes are  
18 guaranteed." What I want you to just to confirm to me is that,  
19 for the first question, are the guarantees for the unsecured  
20 notes and the secured notes exactly the same?

21 A Apologies. Would you mind just going up again to the  
22 previous?

23 Q Not at all.

24 (Pause)

25 A That would appear to be the case, or at least it's the --

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1 I'm obviously not a lawyer, but that seems to be what this  
2 says.

3 Q Well, this isn't written -- supposed to not be written for  
4 lawyers. But --

5 A Yeah, understood.

6 Q But thank you. They look the same to me.

7 A Yeah, me too.

8 Q Let's go back to the question where it says, "The secured  
9 notes are secured by liens on substantially all the assets and  
10 property of such guarantors." Do you see that?

11 A I do.

12 Q Do you think that's true?

13 A Again, I'm not a lawyer, but if it's in this document, I  
14 believe it to be true. Yes.

15 Q Did you do any work to determine whether it was true or  
16 not true?

17 A Personally, I did not do work to determine the validity of  
18 this.

19 Q Is the entire disclosure statement prepared based up on  
20 this assumption being true?

21 A I don't know the answer to that.

22 Q Is every calculation performed by Evercore that appears in  
23 this disclosure statement grounded on this particular  
24 assumption?

25 A The calculations performed by Evercore were done in

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1 connection with speaking with Kirkland and the AlixPartners  
2 team and specifically, as we think about the secured claim,  
3 considered, you know, the collateral that we understood to be,  
4 you know, collateral securing the secured term loan and notes.

5 Q Okay. So now we're talking about what collateral you  
6 considered to secure the secured notes. The disclosure  
7 statement which is in the same document as your work --

8 A Uh-huh.

9 Q "The secured notes are secured by liens on substantially  
10 all the assets and property of such guarantors." What I'm  
11 asking you is when you prepared your calculations that are  
12 included in this document that includes this statement --

13 A Uh-huh.

14 Q -- did you assume that the secured notes were secured by  
15 liens on substantially all the assets and property of such  
16 guarantors? Yes or no?

17 A I believe that to be the case, yes.

18 Q Did you read any relevant credit documents to determine  
19 whether or not the secured notes were secured by liens on  
20 substantially all the assets and property of such guarantors?

21 A I did not, no.

22 Q And your understanding is totally based upon advice from  
23 Kirkland and no other source?

24 A Well, that's correct. We worked with Kirkland and with  
25 Alix to figure out the necessary inputs into the disclosure

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1 statement.

2 Q Okay. What did Alix tell you about this issue, if you can  
3 remember?

4 A So my recollection was that the security in the company,  
5 you know, the guarantors, the U.S. guarantors, included things  
6 like intercompany receivables as an example as part of the  
7 intangibles and, therefore, was picked up in collateral for  
8 purposes of this calculation. And intercompany notes.

9 Q Did you read any collateral descriptions in any loan  
10 documents?

11 A I did not, no.

12 Q Do you know whether or not it's true that only two-thirds  
13 of the shares of the foreign subsidiaries are pledged to secure  
14 the secured debt?

15 A I have a general understanding that, yes, that to be the  
16 case.

17 Q Okay. Is it true that the Debtors own real property?

18 A It is true, yes.

19 Q Isn't it true that none of the Debtors' own real property  
20 is pledged to secure the secured debt?

21 A That is my understanding, yes.

22 Q Okay. Do the Debtors lease real property in the United  
23 States?

24 A I believe they do, yes.

25 Q And they have something like 35 separate facilities,

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1 correct?

2 A I'll take your word on it. That sounds directionally  
3 correct. I don't know, to be honest with you.

4 Q Is it more than 20?

5 A I believe that's the case, yes.

6 Q Okay. And so all of the Debtors' U.S. facilities sit on  
7 owned or leased real property, correct?

8 A Would you mind repeating the question? I'm sorry.

9 Q Is it the case that all of the Debtors' U.S. facilities  
10 sit on owned or leased real property?

11 A I believe that is the case, yes.

12 Q Do you know if any Debtor has executed any leasehold  
13 mortgages for any U.S. property?

14 A I do not know.

15 Q Did anyone ever show you a leasehold mortgage applying to  
16 any of the Debtors' U.S. properties?

17 A I do not recall that ever being shown to me.

18 Q Did anyone ever refer to any leasehold mortgage being  
19 executed with respect to any of the U.S. properties?

20 A I don't recall.

21 Q Do you know what a fixture is?

22 A An improvement to a building and the like.

23 Q It's something attached to the building.

24 A Yeah.

25 Q Of all the machinery used by the Debtors in their

1 business, do you know what proportion are fixtures and what  
2 proportion is equipment?

3 A I do not.

4 Q Did you ever have a discussion with anyone about the  
5 proportion of the machinery used by the Debtors in their  
6 business is between fixtures and what proportion is equipment?

7 A Look, we discussed this generally with Kirkland and Alix  
8 related to the security package. I don't recall myself  
9 specifically talking to anyone about an allocation or specifics  
10 sort of that you're describing.

11 Q Can you tell me everything you remember about your  
12 conversations with Alix on this subject?

13 A I don't know standing here today I can recall everything I  
14 told to Alix, but --

15 Q What did they tell you, sir?

16 A So for purposes of the disclosure statement and  
17 establishing the claims, that intercompany notes exist and are  
18 part of collateral and intangible assets in the U.S. And  
19 therefore, you know, the effect of a waterfall is such that,  
20 you know, value is brought back to the U.S. and then supports  
21 the conclusions of the analysis that we put into the disclosure  
22 statement.

23 Q But no one ever talked to you about -- you don't remember  
24 any advice at all from Alix about what proportion of the  
25 Debtors' machinery is fixtures and what proportion of the

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1 Debtors' machinery is equipment, did you?

2 A I don't recall discussing that, no.

3 Q And you know that there are several financings of  
4 leasehold improvements and, I guess for lack of a better word,  
5 machinery that's also on the Debtors' balance sheet, correct?

6 A I don't know that to be true, but I'll take your word for  
7 it. There's been a lot of leasing activity over the past 12  
8 months.

9 Q I don't want to take your word for everything, and I need  
10 to build a record. So why don't we go back --

11 A Sure.

12 Q -- to the disclosure statement.

13 A Okay.

14 Q And I think I want to go pretty close to where we were  
15 before.

16 A Okay.

17 Q Why don't we take a look at Page 33 of the disclosure  
18 statement, the very next page. Finance leases and other funded  
19 debt. Respecting the Court's interest in trying to expedite  
20 things --

21 A Yeah.

22 Q -- I want to note that it's equipment leases -- if you can  
23 stay with me.

24 MR. BENNETT: And, Your Honor, if you want me to slow  
25 down, please tell me.

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1 THE COURT: No, I'm with you.

2 BY MR. BENNETT:

3 Q With respect to equipment leases, at first line of the  
4 first paragraph, last line, approximately 56 million on  
5 account.

6 A I see it, yep. Makes sense.

7 Q Hear this before?

8 A I don't recall specifically this amount but, yes, it's --  
9 it's likely accurate in here.

10 Q And this -- there's no lien of the secured creditors on  
11 this property, is there?

12 A I don't know. But if it's leased, that seems like a  
13 reasonable assumption.

14 Q Building finance leases, last line -- next paragraph,  
15 sorry, building finance leases, 66 million at the bottom.  
16 Again, I don't want to discourage you from reading anything you  
17 need to read. Hear about these before?

18 A Yes. Finance leases on the buildings, yes.

19 Q None of these are part of the collateral package for the  
20 senior notes, are they?

21 A I, again, not a lawyer, but it would be -- it would  
22 surprise me if they were.

23 Q Other funded debt, next paragraph, 32 million at the  
24 bottom. Again, not discouraging you from reading anything you  
25 want to read, hear about these before?

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1 A Not specifically, no.

2 Q Okay. And you note that this too is a sale and master  
3 lease agreement, correct?

4 A Correct.

5 Q Any part of this a senior notes collateral package?

6 A I don't know for certain, but I would be surprised if it  
7 was.

8 Q Okay. Last paragraph, second master lease agreement,  
9 three lines from the bottom -- actually, I'm sorry, at the very  
10 bottom, 72 million. Did you ever hear of this one?

11 A Not specifically, but same answer.

12 Q And the secured notes don't have a lien on this property,  
13 do they?

14 A I don't know for certain, but I'd be surprised if they had  
15 a lien on this.

16 Q Okay. Are you aware that the loan -- or strike that.

17 Did anyone make you aware that the loan documents for the  
18 secured debt also exclude other property that would otherwise  
19 be covered by a broader grant of collateral?

20 A My understanding is real property in the U.S. may be  
21 excluded. That's the one thing that comes to mind.

22 Q Are there other exclusions?

23 A I'm sorry, in the collateral package of the secured notes  
24 is the question?

25 Q Yes.

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1 A You know, my understanding is that there's a 65 percent  
2 equity pudge of the foreign subsidiaries and you know,  
3 therefore, the 35 percent would be excluded.

4 Q Did anyone make you aware of any other exclusions in  
5 connection with your making the calculations you made that  
6 appear in the disclosure statement?

7 A Not that I can think of at the moment.

8 Q Okay.

9 MR. BENNETT: Your Honor, I could use a bathroom  
10 break. I do have unfortunately about 15 to 20 minutes more,  
11 but I can keep going or we can take a break.

12 THE COURT: Let's see if -- well, if you need a  
13 bathroom break, I don't want to stop you. So why don't we  
14 stop. Let's see, the time is 3:17. Let's reconvene at 3:30.

15 MR. BENNETT: And can we instruct the witness not to  
16 discuss his testimony or his cross-examination with anyone  
17 during the break?

18 THE WITNESS: Understood.

19 THE COURT: You heard the admonition of Mr. Bennett.  
20 It works as well --

21 THE WITNESS: I'll sit here quietly.

22 THE COURT: All right.

23 MR. BENNETT: Thank you, Your Honor.

24 THE COURT: Thank you, folks. We'll be back at 3:30.

25 THE WITNESS: Thank you.

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1 (Recess at 3:18 p.m./Reconvened at 3:31 p.m.)

2 THE COURT: All right, we are back, folks. Wait,  
3 let's get everybody back on their screens. We haven't lost  
4 anybody.

5 MR. BENNETT: Okay, thank you very much, Your Honor,  
6 for the break.

7 THE COURT: You're welcome.

8 BY MR. BENNETT:

9 Q So we're going to move on to talk about the roll-up. And  
10 you testified that the numbers in the disclosure statement were  
11 partly, at least partly and I think almost exclusively the  
12 result of your efforts, correct?

13 A The numbers in the disclosure statement, it was a  
14 collection of efforts from the company, the Alix team and the  
15 Kirkland team.

16 Q Did you prepare the recovery estimates?

17 A Under my supervision, my team worked with Kirkland and  
18 Alix.

19 Q Okay. Did you review the final results?

20 A I did.

21 Q Did you sign off on the final results?

22 A I believe I did, yes.

23 Q And you stand by your company's work?

24 A I do.

25 Q Okay. So -- and I'm going to go through some numbers and

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1 we can go look at the document if we need to for --

2 A Okay.

3 Q -- any particular one. But again, I'm trying to abide by  
4 the Judge's wishes that we wrap up.

5 A Okay.

6 Q But, unfortunately, I've got a lot to do. You're aware  
7 that the disclosure statement and plan sizes the secured claim  
8 of the secured debt at roughly 1.952 billion. Is that true?

9 A I believe that's true.

10 Q And again --

11 A That sounds right to me.

12 Q -- if you have any doubt, we can look at the document.

13 A Okay.

14 Q Okay. Was that amount calculated assuming that the  
15 secured debt was collateralized by substantially all of the  
16 assets of the Debtors?

17 A No.

18 Q Okay. What was the assumption made in -- what were the  
19 assumptions made -- well, let me start from the beginning.

20 A Sure.

21 Q How did you calculate the number?

22 A We started with the midpoint of the Evercore valuation  
23 range, 3.15 billion. We reduced, you know, the amount by the  
24 company's drawn ABL, by the DIP facility and the roll-up, as  
25 well as the capital leases, I believe.

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1 Q Okay. So when you determined the 3.15 billion number,  
2 that was a total business value, wasn't it?

3 A The 3.15 was the midpoint of the valuation range.

4 Q For the -- was --

5 A For the enterprise value of the company.

6 Q For the enterprise value of the company?

7 A Yes.

8 Q Doesn't that necessarily conclude all of its productive  
9 assets?

10 A It does.

11 Q And doesn't that include its necessary cash balances in  
12 order to operate its business?

13 A It does.

14 Q It includes everything it needs to run its business,  
15 whether it's collateral or not, correct?

16 A That is correct.

17 Q Okay. So if it turns out that the secured debt is not  
18 secured by substantially all of the assets of the Debtors, this  
19 number is not correct?

20 A I don't think that's necessarily the case.

21 Q Is it -- well, is it necessarily still correct?

22 A In the arrival of that claim, you know, the methodology  
23 that we used was to reduce value from the DIP as an example,  
24 which you know includes unencumbered collateral.

25 Q Okay. But it was the -- I was talking about the 3.15

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1 billion --

2 A That's true.

3 Q -- the first number.

4 A Okay.

5 Q And you testified that the first number includes every  
6 single business asset of the company and the cash needed to run  
7 the business. Is that correct?

8 A Yeah. It's the enterprise value of the business.  
9 Correct.

10 Q Is there anything else I'm missing? Is that everything  
11 that's in enterprise value?

12 A That should be it.

13 Q Okay. So you didn't exclude any property, any  
14 unencumbered property from that calculation whatsoever?

15 A Look, working with the other advisors, we did not exclude  
16 any other property. No. We started with the enterprise value  
17 of the company.

18 Q Okay. And you started with something about other  
19 advisors? What is it about other advisors that I need to know?

20 A We worked with the Kirkland team and the Alix team to put  
21 this analysis together.

22 Q And they agreed with your methodology? Or did you not  
23 tell them about your methodology?

24 A No. We discussed the methodology.

25 Q Okay. Okay. So next, you had to calculate -- well, you

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1 didn't directly calculate, but it was the result of your  
2 calculations. And, again, we will look, if you want to look,  
3 that the unsecured deficiency claim of the secured creditors is  
4 \$1.992 billion. Correct or incorrect?

5 A That sounds correct to me.

6 Q Okay. And the disclosure statement calculates the range  
7 of recoveries for secured creditors at between, and I'm  
8 rounding, 41 percent to 50 percent. Is those correct?

9 A I don't think that's correct.

10 Q Okay.

11 A I'm sorry. You're looking at Class 4 or Class 5? Sorry.

12 Q I'm talking about the class of secured debt, the impaired  
13 -- the amount of the secured claim -- the net recovery for  
14 secured creditors after applying your calculation of 1.952 and  
15 then you have a range of recovery on account of that 1.952 and  
16 the range nets to a total recovery for the secured creditors  
17 based upon their secured portion of between 41 percent to 50  
18 percent.

19 A Sorry. I'm getting tripped up because I think in the  
20 class it was like 83 to 97 percent in the disclosure statement,  
21 and then you're applying this to both the claim on the  
22 encumbered as well as the claim on the unencumbered?

23 Q Exactly.

24 A Yeah. I don't have the exact calculation at my  
25 fingertips. Directionally that sounds right, but I can't

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1 confirm that at the moment.

2 Q Okay. Do we have those for -- well, we'll get to them.

3 You know something, we'll have a chart with it later.

4 A Okay.

5 Q But you agree that that's in the right ballpark, correct?

6 A That should be in the right ballpark.

7 Q Okay. And the DIP proposal includes a one-to-one roll-up

8 of 250 million of prepetition debt held by secured creditors.

9 Is that correct?

10 A That's correct.

11 Q Okay. And the debt being rolled up is a portion of the  
12 secured debt that includes both the secured and the unsecured  
13 portion, correct?

14 A The debt being rolled up both in the methodology that we  
15 used in purposes of preparing this disclosure statement to  
16 reduce the value of the company and also reduce the claim. So  
17 for purposes of calculating that Class 4 claim, it comes off  
18 the top and the bottom, if that makes sense.

19 Q Okay. So let me just make sure I understand that with  
20 some numbers.

21 A Yeah.

22 Q Okay. If the disclosure statement estimated a recovery of  
23 41 percent, which was the lower end of the range, for any  
24 roll-up, and the roll-up would be paid in full, meaning 100  
25 percent --

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1 A Yeah.

2 Q -- would you agree with me that the difference is 59  
3 percent of the claim?

4 A Yeah, assuming that math is right, I agree.

5 Q Okay. And at the higher end of the range, if we're  
6 starting with a recovery of 50 percent before the roll-up, and  
7 the roll-up will then be paid in full in cash, as we learned,  
8 will you agree with me that the difference is 50 percent of the  
9 claim?

10 A Yeah, assuming that number is correct again, yes, I agree.

11 Q Okay. So I wish I could give you a calculator, but you're  
12 probably pretty good with numbers. The low end of your range  
13 for secured creditors involves a 59 percent uplift on the claim  
14 as a result of the roll-up. That's \$147.5 million, isn't it?

15 A Say that one more time, please.

16 Q If we start out with an estimated recovery on secured  
17 claims, both the secured and unsecured portion, of 41 percent,  
18 roll it up so that it's going to get paid 100 cents. The  
19 uplift is 59 percent, and 59 percent of 250 is 147.5.

20 A That sounds correct, yes.

21 Q Okay.

22 A Assuming that 41 percent number is correct.

23 Q Right. And that comes, and your math showed, 100 percent  
24 out of the height of unsecured creditors.

25 A Again, I don't know that that's coming out of the

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1 unsecured creditors specifically. I'm not sure I follow the  
2 question.

3 Q Well, you said you subtracted the DIP from your enterprise  
4 value in netting down to the secured and unsecured groupings.  
5 So isn't the effect of that taking it out of the height of the  
6 unsecured creditors?

7 A The effect of the DIP was, you know, in this allocation  
8 was to reduce the value of the enterprise. It was applied  
9 against unencumbered collateral, whatever number that is, to  
10 get to this, yes.

11 Q So, again, at the lower end of your valuation range, in  
12 addition to all the other costs you mentioned, there's an  
13 additional \$147.5 million benefit of the roll-up going to the  
14 lucky participants in the DIP roll-up.

15 A Yes, that is going to the secured lenders and to the  
16 backstop parties, the roll-up feature.

17 Q And that includes CDR.

18 A That does include the plan sponsor.

19 Q Okay. And if it turns out your disclosure statement at  
20 the high end of the range of 50 percent before any roll-up,  
21 okay, then the uplift is only 50 percent and the cost is only  
22 an additional \$125 million, correct? That math's easy.

23 A Correct.

24 Q Now, your declaration doesn't attribute a value to the  
25 roll-up feature, does it?

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1 A It does not, no.

2 Q Did you calculate it before you prepared your declaration?

3 A You know, we considered the cost of the roll-up generally,  
4 that there would be a cash cost to the company and that we  
5 would be rolling up claims of impaired secured creditors, yeah.

6 Q That wasn't my question. In colloquial terms, did you run  
7 the numbers?

8 A We did run the numbers on the recovery of the secured  
9 creditors in a somewhat different way because we gave them  
10 credit for the roll-up, you know, but we did, you know, yes,  
11 consider that.

12 Q When we get the board package before the final hearing, is  
13 it going to include a calculation of the value of the roll-up?

14 A It will not, no.

15 Q And it won't calculate the value of the roll-up that  
16 benefits CDR, does it?

17 A It will not, no.

18 Q Don't you think the board should know those kinds of  
19 numbers?

20 A Look, I think from the company perspective, it was an  
21 attractive DIP facility and, again, provided a path to  
22 emergence. And the DIP is a feature that we see relatively  
23 frequently in this market. The DIP roll-up, excuse me, I said  
24 just the DIP.

25 Q And can you name a single one of the cases that you

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1 thought about as your comparables that involved a roll-up of a  
2 facility that was under-collateralized by between 50 to 59  
3 percent?

4 A Not -- Like At Home would be one to consider, but, you  
5 know, we did consider some of the other cases with DIP roll-ups  
6 and the circumstances there.

7 Q But of all the other ones, you can't name another one that  
8 involved a roll-up that involved an uplift of 50 to 59 percent?

9 A That specific number, no.

10 Q Just to cut at this another way, is \$147.5 million a  
11 material number to you?

12 A It's material to the extent, you know, the calculation is  
13 accurate, and that is, in fact, unencumbered collateral.

14 Q And \$125 million is also material, even though it's  
15 somewhat smaller?

16 A Yeah. Again, I think it depends on if this is  
17 unencumbered collateral. The reality is the secured lenders,  
18 as an example, are sharing in this roll-up equally. They're  
19 being given the opportunity to roll up for 70 percent. So, you  
20 know, it depends on what is coming out of the unencumbered pool  
21 of that recovery.

22 Q But this increase in recovery to the secured creditors of  
23 147 million -- excuse me, this uplift for the roll-up creditors  
24 of \$147.5 is material to them, isn't it?

25 A It is. It's shared with, you know, 70 percent of the

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1 secured -- you know, of the DIP can be shared across all the  
2 secured creditors. But --

3 Q This is Willkie's issue, and I'm sure they'll talk about  
4 it.

5 A Yeah.

6 Q But that's one of the reasons why 30 percent is reserved,  
7 is it's a really good deal for secured creditors, isn't it?

8 A Look, it was an important feature of the RSA, and the  
9 roll-up was an important feature of the negotiation.

10 Q How often have your clients been offered a roll-up with an  
11 opportunity to increase the value of their claims by 100  
12 percent or more than 100 percent?

13 A Look, it's not their claims in its entirety. It's a  
14 portion of their claims, right, that is getting some economic  
15 benefit for providing this new money for doing the months of  
16 work that's leading up to it.

17 So if your question is in other situations, you know,  
18 we've seen roll-ups where, you know, the value is such that the  
19 collateral or the value of the company leaves the first-in  
20 creditors impaired.

21 Q Oh, by the way, in those cases, did the secured creditors  
22 have all-encompassing security interests?

23 A I don't know specifically sitting here today. It depends.

24 Q You don't know in any of those cases whether there was any  
25 damage to unsecured creditors, do you?

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1 A I don't know specifically sitting here today.

2 Q But here there is?

3 A I suppose that depends on what the unencumbered collateral  
4 is and what is left.

5 Q There is some damage to unsecured creditors. You just  
6 don't know how much.

7 A The DIP being provided by the secured lenders or by your  
8 group both encumber currently unencumbered collateral. So I  
9 don't know the calculation would be different across either.

10 Q Oh, really? I'm going to give you one chance to  
11 reconsider that answer.

12 A Okay.

13 Q Is there a roll-up in the proposal by the unsecured  
14 creditors?

15 A There is not, no.

16 Q The numbers that we just calculated are 40 percent small  
17 if we're just focusing on the effect of the interim roll-up,  
18 correct?

19 A That should be correct, yes.

20 Q So the interim roll-up is still more than \$100 million  
21 under the low case, correct?

22 A Again, depending on what the unencumbered collateral is.

23 Q We're talking about \$100 million today, aren't we? I'm  
24 talking about to the roll-up benefit today, January 30th.

25 A Yeah, I think it depends on what the unencumbered

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1 collateral is.

2 Q I didn't ask that part. I asked is there a benefit to the  
3 roll-up creditors of more than \$100 million on your low case  
4 for value today?

5 A Again, it depends on what is unencumbered and what is  
6 benefitting the roll-up.

7 Q Okay. Is the roll-up getting an uplift of more than \$100  
8 million if the interim order is entered today?

9 A It depends on what the unencumbered collateral is and what  
10 the uplift is accordingly.

11 Q I'm just looking at the roll-up piece. You calculated the  
12 recovery based upon substantially all assets at 41 to 50. The  
13 difference was 147.5 for the full 250. All I'm asking is, is  
14 what's 60 percent of that?

15 A Yeah.

16 Q You're good enough to do that.

17 A Yeah, but again, I think if you're saying we're taking  
18 away from the unsecured, the theoretical uplift could --  
19 amongst secured creditors, yes. Amongst secured creditors, one  
20 could look at the 30 percent and say that's the uplift.

21 Q So it's almost \$100 million on your low case.

22 A Well, again, from a secured lender perspective, 70 percent  
23 is shared, obviously. There would be uplift for the 30 percent  
24 that is not shared.

25 Q Okay, but if you look at all of them together -- I'm sorry

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1 we're going to go over this over and over again, but looking at  
2 all of it together, just as a result of the interim order, the  
3 debt, the \$250 million is being rolled up, \$150 million of it  
4 as of the interim order. The total benefit for 250 we've both  
5 agreed is 147.5.

6 How much is going of that 147.5 is going to hit the  
7 roll-up lenders if the interim order is entered just today?

8 A So assuming the calculation is right and based on my  
9 previous points, right, that this is obviously shared across  
10 the secured lenders, there is the 125 to 147 million of uplift.  
11 And 30 percent of that is enjoyed by the backstop parties. And  
12 then sitting here today, I don't know what the unencumbered  
13 value is. It's not how this analysis was put together.

14 Q I just want to get to a different number completely.  
15 We're at the interim stage, not the final stage.

16 A Okay.

17 Q We're not talking about 147.5. We are actually talking  
18 about a little bit smaller number.

19 A Okay.

20 Q We're talking about 60 percent of 147.5 because the  
21 interim roll-up is \$150 million, which is 60 percent of \$250  
22 million.

23 A That is the portion, you know, again, of whatever the  
24 uplift is for the parties providing it.

25 Q The roll-up -- the fund managers that are going to be in

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1 the roll-up, they're going to write a memo to their boss that  
2 they're entitled to a big bonus, aren't they?

3 MR. GREENBLATT: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. BENNETT:

6 Q Okay. Let's go to the other case, the 50 percent case.

7 A Okay.

8 Q That's only, only \$125 million uplift for the entire 250.

9 If only 150 is approved today, how much of the 125 is going to  
10 hit the roll-up creditors, whether they're the 30 or the 70?

11 It's 60 percent of 125, isn't it?

12 A I believe that to be the case.

13 Q Okay. I'm not going to ask you to do the number -- get to  
14 the numbers.

15 Okay. And none of these numbers were shared with the  
16 board of directors, were they?

17 A The uplift calculations, no.

18 Q Did you share the results of the uplift calculations with  
19 anyone at Kirkland? Yes or no question. I don't want to know  
20 exactly what you said.

21 A No.

22 Q Did you share the results of this calculation with anyone  
23 else in this case?

24 A Honestly, like, we're just doing this live, so no. We're  
25 --

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1 Q So you didn't say to the roll-up lenders something to the  
2 effect of, are you kidding me? Your roll-up demand is going to  
3 benefit you to the extent of \$147.5 million. That didn't  
4 happen?

5 A No. We had conversations around the term specifically and  
6 its existence in other similar cases.

7 Q And you never had a conversation on the other side, the  
8 \$125 million, to the effect of you guys are getting at least  
9 \$125 million of uplift with respect to the rolled-up portion,  
10 whether it's the 30 percent or the 70 percent, and that's a lot  
11 you ought to take less. No conversation like that?

12 A No.

13 Q So there was no real conversation or negotiation about the  
14 roll-up at all. They asked, and you said okay.

15 A It was an integral part of this deal. They requested a  
16 roll-up. At points in time, we talked about a larger roll-up,  
17 and we held firm at one-to-one.

18 Q I want to show you an exhibit. It's one of our  
19 demonstratives. It's Exhibit 10 to the Hays Declaration.

20 A Okay.

21 Q And I need to go to Page 5 this report. And I'm going to  
22 ask you, sir, to the best of your ability, whether this  
23 accurately depicts, with this time not rounded, with the actual  
24 decimal places, the testimony that you've been giving for the  
25 past 15, 20 minutes.

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1 (Pause)

2 A This is consistent with what we've been discussing.

3 Q Do you see any mistakes?

4 A No.

5 Q Okay.

6 A Other than the fact that we're relying on the 41 percent  
7 and the 50 percent, obviously.

8 Q Right. I understood that.

9 A Yeah, okay.

10 Q And that's right there. I called it 41, I guess. My  
11 rounding was an error and --

12 A Sure.

13 Q And 50.2, but --

14 A Yeah.

15 Q Okay? That's it, just the rounding, right?

16 A Yeah. Okay. But it's assuming that I haven't validated  
17 the 42 or the 50.2, but this is consistent with what we  
18 discussed.

19 Q Okay. Those are taken -- A, B, and C all came from the  
20 disclosure statement. Would you like me to point them out to  
21 you, or are you satisfied that they're pretty close to right?

22 A Again, the 41.7 and the 50.2 I have not validated, but --

23 Q All right. We'll move on.

24 A Okay.

25 Q All right. I want to change subjects, and this part will

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1 be very short. Does the DIP term sheet include any releases of  
2 claims Multi-Color may have against any of its lenders?

3 A Does the DIP term sheet in the RSA?

4 Q Uh-huh. I'm sorry, I'm talking to the RSA DIP term sheet  
5 now.

6 A Okay.

7 Q You're right.

8 A I don't know.

9 Q Okay. So did anyone ask you to value any potential claims  
10 that were released as a consequence of the release provisions  
11 of the DIP term sheet?

12 A No.

13 Q You attended a board meeting at which the DIP loan was  
14 described. You testified about that, correct?

15 A I did.

16 Q And the DIP that the Debtor sponsored has released --  
17 well, you don't know. Do you remember anyone discussing the  
18 fact that the DIP loan term sheet or the DIP loan terms include  
19 releases of claims against Multi-Color's lenders?

20 MR. GREENBLATT: Objection, Your Honor. To the  
21 extent this is getting into a privileged discussion of board  
22 meetings?

23 MR. BENNETT: Just a topic question, perfectly  
24 acceptable.

25 THE COURT: Repeat the question.

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1 BY MR. BENNETT:

2 Q During your board meetings at which the DIP loan was  
3 presented, the company's DIP loan proposal was presented to the  
4 directors. Do you remember any discussion at all, yes or no  
5 question, of releases that are included in the DIP term sheet?

6 THE COURT: You can go ahead and answer.

7 THE WITNESS: Yes, I guess it was not a board  
8 meeting. It was a special committee meeting, and I don't  
9 recall releases being discussed one way or another. I just  
10 don't recall the conversation.

11 BY MR. BENNETT:

12 Q Okay. Does the DIP term sheet, or do you know if the DIP  
13 term sheet includes any waivers of rights Multi-Color may have  
14 against creditors concerning the conduct of the case going  
15 forward?

16 A I do not know.

17 Q During the board meeting you attended, do you remember --  
18 excuse me, during the special committee you attended, do you  
19 recall any discussion whatsoever concerning waivers of rights  
20 Multi-Color may have to recover from secured creditors certain  
21 expenses during the bankruptcy case?

22 MR. GREENBLATT: Objection, Your Honor, on the same  
23 basis.

24 THE COURT: You can go ahead and answer. Objection  
25 noted.

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1 THE WITNESS: I don't recall that being discussed one  
2 way or another.

3 MR. BENNETT: Pass the witness, Your Honor.

4 THE COURT: All right, thank you. Counsel on  
5 redirect?

6 MR. GREENBLATT: Yes, Your Honor. Just a few short  
7 questions.

8 THE COURT: All right.

9 MR. GREENBLATT: Again, Josh Greenblatt, Kirkland &  
10 Ellis.

11 REDIRECT EXAMINATION

12 BY MR. GREENBLATT:

13 Q Mr. Banks, Mr. Bennett asked you just now a series of very  
14 protracted, detailed valuation questions on the fly here. Do  
15 you recall those?

16 A I do.

17 Q Okay.

18 MR. BENNETT: Objection. Leading.

19 THE COURT: Overruled.

20 BY MR. GREENBLATT:

21 Q Mr. Banks, did you and Evercore value the whole company in  
22 this case?

23 MR. BENNETT: Objection. Asked and answered.

24 THE COURT: Overruled.

25 THE WITNESS: We did value the whole company.

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1 BY MR. GREENBLATT:

2 Q And did you provide this valuation to the team and  
3 AlixPartners?

4 A We did.

5 Q And did AlixPartners use this valuation to create a  
6 recovery waterfall?

7 A They did.

8 Q And did they allocate the recoveries?

9 MR. BENNETT: Objection. Beyond the scope of cross.

10 THE COURT: Overruled.

11 THE WITNESS: Again, we worked together with the Alix  
12 team. So they helped with the waterfall, they helped with the  
13 claims, and then my team helped them with establishing the  
14 recoveries or the different forms of consideration for the  
15 secured creditors.

16 MR. GREENBLATT: No more questions, Your Honor.  
17 Thank you.

18 THE COURT: Mr. Bennett?

19 MR. BENNETT: No -- no more questions.

20 THE COURT: All right. Thank you, Mr. Banks. I  
21 appreciate your time today, this afternoon.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 (Witness excused)

25 MR. BENNETT: Your Honor, they said they had a third

1 witness, but according to the witness list, there was no other  
2 witness listed for the DIP.

3 THE COURT: I would assume they were speaking about  
4 Mr. Gabel?

5 MR. BENNETT: They were, but their witness list says  
6 -- the witness list for the DIP only was the two witnesses  
7 we've already heard from. Look, I'm okay, but there will be  
8 another long cross-examination if we're going to change the  
9 rule.

10

11 MR. GOLDFINE: No, no. I'm going to make things  
12 easier. Mr. Gabel's declaration has already been admitted into  
13 evidence. We don't intend to do any short direct. We're going  
14 to rest on his declaration. So I don't think there's any need  
15 for cross unless, of course, Mr. Bennett wants to take up some  
16 more time.

17 MR. BENNETT: Can I have five minutes to decide? I  
18 may well decide I don't need to talk to him.

19 THE COURT: Absolutely.

20 MR. BENNETT: Okay.

21 THE COURT: Well, let me ask, before we take five  
22 minutes -- well, you can think about it. With respect to the  
23 DIP, is the Debtor putting in any other evidence, apart from  
24 argument?

25 MR. GOLDFINE: I think Mr. Bennett's suggestion

1 for five minutes is a good one. We might have some rebuttal  
2 evidence we put forward. It would not come from Mr. Gabel, but  
3 that's something we need to talk about.

4 THE COURT: Then everybody, we'll see you all in five  
5 minutes.

6 MR. GOLDFINE: Great. Thank you.

7 THE COURT: You're welcome.

8 (Recess at 4:02 p.m./Reconvened at 4:10 p.m.)

9 THE COURT: Okay, we are back again. I'll return to  
10 Mr. Bennett.

11

12 MR. GOLDFINE: If there's no further testimony, we'll  
13 pass cross-examination. If there is further testimony, there  
14 will be lots of cross-examination.

15 THE COURT: The gauntlet's been thrown down, yes.

16 MR. GOLDFINE: Yeah, in my haste to move this along,  
17 I neglected to introduce myself, Jeff Goldfine, Kirkland &  
18 Ellis, for the Debtors. Good to be before you again, Your  
19 Honor.

20 Mr. Gabel will not be testifying live, and we have  
21 conferred and have no further rebuttal testimony. So if okay  
22 with Your Honor, I will pass the mic to one of my colleagues,  
23 or I guess to Mr. Serajeddini, who will be doing closing  
24 argument.

25 THE COURT: All right. I have some questions, but

1 I'd prefer to hear an oral argument first.

2 MR. BENNETT: Okay.

3 THE COURT: Okay, Mr. -- there you are, Serajeddini.

4 MR. SERAJEDDINI: Good afternoon again, Your Honor.

5 THE COURT: Good afternoon again.

6 MR. SERAJEDDINI: For the record, Steven Serajeddini  
7 of Kirkland & Ellis on behalf of the Debtors.

8 So, Your Honor, I'm going to try to quickly tick  
9 through the objections that were raised in the papers and the  
10 evidence that's before Your Honor on these various issues for  
11 the purpose of today's hearing.

12  
13 So the first objection, Your Honor, was an objection  
14 contained in the Cross-Holders Group's papers regarding whether  
15 the Debtors are obligated to accept any DIP that is a  
16 non-priming DIP. And I think, Your Honor, that's a  
17 misstatement of legal standards. The question that 364 asks,  
18 first of all, is whether credit can be obtained. The term  
19 credit implies the terms on which that credit is being offered,  
20 and the purpose of that credit. The credit must be fit for  
21 purpose, put differently.

22 Here, the Debtors are seeking a DIP financing to  
23 implement a restructuring and consider all the terms and other  
24 factors associated with that piece of credit. Moreover, the  
25 credit here, Your Honor, is being -- the priming, rather, is

1 being consented to. The documents here allow these lenders to  
2 prime. So we're not seeking per se to prime or use the  
3 Bankruptcy Code's powers to prime. We are priming based on  
4 what the documents allow. And so I think, Your Honor, that  
5 objection can be easily dismissed.

6           There is a separate objection that the DIP should be  
7 rejected because it's an insider DIP and somehow should be held  
8 to a standard of entire fairness. Your Honor, first of all, as  
9 a general matter, the standard by which the Court approves a  
10 DIP is not the standard for Delaware corporate governance.  
11 Obviously, the Debtors here did apply correct corporate  
12 governance and, even under the most strict regime, the DIP here  
13 was delegated to, because it involved insider transactions and  
14 was a conflict matter, and approved and analyzed by the Special  
15 Committee of the Debtors' disinterested directors, all of whom  
16 have no economic interest at all or other interests, and no  
17 conflict of interest has been asserted as to their approval.  
18 So that would meet the Delaware standard for application of the  
19 business judgment rule.

20           Moreover, Your Honor, the fact that it's an insider  
21 DIP, again, doesn't change the fact that the DIP here, first of  
22 all, was negotiated at arm's length with a host of non-insider  
23 parties, specifically the secured Ad Hoc Group. And it was a  
24 process, it was the result of a rigorous process, which you  
25 heard about not only as it relates to the DIP itself, but in

1 terms of the overall restructuring that preceded the DIP, as  
2 well as, as it relates to the DIP, solicitation of various  
3 alternatives.

4           There was a lot of back and forth with the witnesses  
5 about responses in and around a couple -- time period of a  
6 couple days. Your Honor, we -- there was no issue with the  
7 Cross-Holder Group providing a DIP proposal. They provided a  
8 proposal. We got it, we got it in time to analyze it, and we  
9 gave them feedback on it before we got to this point. So,  
10 there's no here nor there.

11           Obviously, at and around the time that this DIP  
12 process started, the company determined to start the process  
13 before it had a solicited or agreed-upon RSA. So, it was a  
14 very sensitive time in and around those days, and the parties  
15 were obviously all running in a million different directions to  
16 evaluate and negotiate and continue to exchange documents  
17 around various potential transactions.

18           And the passage of simple hours over the course of a  
19 day or a day in terms of delivering documents doesn't change  
20 the fact that this was a competitive process, and the company  
21 solicited proposals, including from the Cross-Holder Group, and  
22 ultimately concluded for very valid reasons that we've talked  
23 about, that that proposal was not suitable for the Debtors  
24 because it would not have provided any path to emergence and  
25 did not come with any kind of either restructuring or even a

1 notion of what that path might be.

2           Next, Your Honor, the roll-up, there's a lot of talk  
3 about the roll-up. Let me just say a few things about that. A  
4 roll-up is a customary term. A one-to-one roll-up is  
5 customary. A roll-up where a secured lender is the fulcrum  
6 creditor is also customary. You heard that from Mr. Banks. To  
7 the extent the roll-up recovers from unencumbered assets, there  
8 was no attempt to establish that is in fact the case.

9           The Debtors' view is that the DIP itself is  
10 obviously, consistent with case law offered by the Cross-Holder  
11 Group, first goes to unencumbered assets or is able to take a  
12 lien on unencumbered assets. And the notion and the extent to  
13 which the roll-up itself is benefitting on unencumbered assets  
14 was not established at all here today.

15           At confirmation, we'll discuss the extent, exact  
16 value, and amount of the unencumbered assets. AlixPartners is  
17 the party that analyzed those. And it's a party, as you heard  
18 on redirect, is the party that constructed that waterfall. So  
19 there's going to be a lot of discussion on that in the future.  
20 But there was no evidence today that there was any uplift  
21 vis-à-vis those unencumbered assets from the roll-up.

22           What Mr. Bennett put on that slide, I want to be very  
23 clear about it, it's misleading in the sense that much of that,  
24 quote/unquote, uplift is vis-à-vis the DIP lenders themselves.  
25 For example, if there is zero in unencumbered assets, those DIP

1 lenders who could be, let's assume all lenders participate in  
2 the DIP, 70 percent of that is going to be applied pro rata  
3 against the term loan. And the remaining 30 percent vis-à-vis  
4 the holdback, yes, that would go to the parties that backstop  
5 the DIP. But the economics of that would be much -- a tiny  
6 fraction of that number that he put up.

7           And given the fact that he didn't establish how much  
8 of the roll-up went against unencumbered, I don't think there's  
9 anything you can take away in terms of the cost of the roll-up  
10 vis-à-vis specifically unsecured creditors. And so, again,  
11 Your Honor, this is the way DIPs work. They take liens against  
12 unencumbered.

13           And the fact that this DIP includes a one-to-one  
14 roll-up, in our mind, is completely unremarkable. And the fact  
15 that Mr. Bennett didn't establish in any way today that how  
16 unsecured creditors specifically were harmed by that roll-up, I  
17 don't think there's anything we can take away from that other  
18 than the fact that there will be a dispute potentially about  
19 unencumbered assets in the future in this case, and evidence  
20 will be put forward, and both parties will make whatever  
21 arguments they want to make.

22           The roll-up here, to be clear, is subject to the same  
23 challenge rights as the rest of the first-lien loan. And so if  
24 the first lien is found not to have valid claims, that roll-up  
25 is also invalid. So, again, Your Honor, I think the roll-up

1 here and how it relates to unencumbered, again, is  
2 unremarkable. If we want to talk about the roll-up, and this  
3 was an argument raised in the Wilkie objection, and how it  
4 relates vis-à-vis other term loan lenders, our view, Your  
5 Honor, is the roll-up is in exchange for those term loans, and  
6 the term loan documents permit that exchange to occur.

7           Moreover, the inter-creditor agreement that the  
8 Willkie Group refers to, the party under that inter-creditor  
9 agreement that has the rights to raise these types of arguments  
10 is Barclay, who is the controlling collateral agent. And  
11 Barclay has not objected. So individual creditors don't have a  
12 basis to object under that inter-creditor agreement. And  
13 Barclay's here is consenting to the roll-up in effect being an  
14 exchange of a subordination of liens under the inter-creditor  
15 agreement.

16           There was an objection raised in the papers about the  
17 backstop premium. I didn't hear a whole lot come out in the  
18 testimony relative to that. The backstop premium here is  
19 modest and simply \$7.5 million, and that was reflected in the  
20 Banks Declaration.

21           Next, Your Honor, there's an argument that the DIP is  
22 a sub-rosa plan. The DIP is not a sub-rosa plan. The Debtors  
23 have entered into an RSA and are soliciting a plan. That RSA  
24 includes a full fiduciary out for the Debtors to terminate that  
25 RSA should something come up that is higher or better than what

1 the RSA proposes.

2           So to the extent the Cross-Holder Group, and they're  
3 free to continue to do this, can come up and truly believe, for  
4 example, Your Honor, in the significant value of the  
5 unencumbered assets here, they would have to put forward a  
6 proposal that can take out the secured lenders insofar as their  
7 claims are secured.

8           And by the way, the roll-up doesn't change that math.  
9 Insofar as they're secured, they will have to make a proposal  
10 to take out the secured lenders and submit their own proposal  
11 that provides us a path to exit. We as Debtors will be free to  
12 evaluate that. Now, obviously, we'll have to evaluate that in  
13 light of the process and the fact that it would require  
14 resolicitation and all of that, but certainly the opportunity  
15 is going to be there to provide that plan.

16           And we basically invited the unsecured creditors  
17 numerous times before the filing date and are inviting them  
18 again here today that if they believe that to be the case, they  
19 should put their money where their mouth is and put forward a  
20 plan that addresses secured claims and provides a path to exit  
21 that is backstopped by their unencumbered assets.

22           They haven't done that. They provided a DIP to  
23 nowhere, and that's all we have from them to this point. And I  
24 think, Your Honor, we're perfectly valid in exercising our  
25 business judgment to conclude that the DIP that we have that

1 provides a consensual prepack vis-à-vis a voting majority of  
2 all our classes is the appropriate path here.

3           There was a throwaway comment in the objection about  
4 the DIP not being provided in good faith. You heard from the  
5 various parties in the declarations that this DIP was solicited  
6 in good faith. There's been no evidence suggested that it was  
7 anything other than good faith and Debtors easily meet that  
8 burden.

9           And last, Your Honor, there was an objection --  
10 again, it wasn't really raised in the testimony -- about fees  
11 being paid to certain secured creditors. I know Your Honor has  
12 heard argument on this in the not-too-distant past, and fees  
13 and payments to secured creditors are a standard form of  
14 adequate protection.

15           And to the extent Mr. Bennett is trying to, once  
16 again, preserve some kind of re-characterization argument under  
17 506, he's free to assert at confirmation that any of those  
18 adequate protection payments should reduce the amount of the  
19 secured claims on account of the fact that they're  
20 undersecured. He's free to do that.

21           So with that, Your Honor, we think we've met our  
22 burden in terms of the DIP being absolutely necessary to the  
23 operation and success of this business. We've met our burden  
24 that it's the best available financing, it's the only financing  
25 that provides us the ability to preserve value here and has a

1 path to emerging from Chapter 11. And we request that the  
2 objections be overruled and that the DIP be approved.

3 THE COURT: Thank you, Counsel.

4 We'll start with Mr. Bennett.

5 MR. BENNETT: Thank you, Your Honor. I think you  
6 should be able to see me because I started talking, but I'm not  
7 sure. My video is on. There we go.

8 THE COURT: There you are.

9 MR. BENNETT: All right. So I want to just -- I'm  
10 going to take a lot of time because I had some comments that I  
11 wanted to start with but didn't get to. We have some slides.  
12 Before I get to the slides, it is interesting that in  
13 responding to the sub-rosa plan argument, Mr. Serajeddini  
14 decided to say that the DIP wasn't intricately intertwined with  
15 the plan, that it was somehow separate and therefore it was not  
16 a sub-rosa plan.

17 But then, as you will see in their papers and in some  
18 of the quotes I'm going to show you, they say the DIP has to be  
19 considered in the context of the plan and it's part of the plan  
20 and it's inseparable from the plan. It can't be both. That's  
21 Number 1.

22 Number 2, big point. There was a little bit of  
23 testifying going on with Mr. Serajeddini, and the Court is  
24 definitely skilled enough to understand the difference between  
25 facts coming from the mouth of a witness and facts coming from

1 the mouth of counsel in argument.

2           During the testimony, if there was one thing that was  
3 crystal clear, Mr. Banks testified that there was at least some  
4 portion of the roll-up that was being financed by effectively  
5 cutting the recoveries of unsecured creditors, coming out of  
6 the recovery by the secured creditors. At the beginning, he  
7 even admitted that it was all, and then later he cut it back to  
8 say, well, he wasn't sure how much. But, the harm to general  
9 unsecured creditors was clearly established by the testimony,  
10 and by the way, it's all.

11           And the idea that -- I just want to, you know, start  
12 with this. I'm probably going to end with this. And I'm going  
13 to say it five times or so during the argument. The idea that  
14 today, as a consequence of this hearing on the first day, that  
15 we are going to hand somewhere between \$80 million to \$100  
16 million of value to the -- to the roll-up creditors, from  
17 wherever it came from, although some of it, I think all of it,  
18 but at least some of it, is coming out of the unsecured  
19 creditors and where a major participant of that loan is the --  
20 is the owner, CDR, is just outrageous. There is no other way  
21 to describe it. It should not happen. By the way,  
22 particularly in a case that's venued in the wrong spot.

23           So, let me turn on to Page 3, which is where my text  
24 starts. Everything in this presentation is supported by the  
25 testimony of the witness. These are my assessment of the most

1 important features of this Chapter 11 case.

2           These debtors have significant unencumbered assets,  
3 and no secured creditor has liens on substantially all assets.  
4 They're kind of cut up among secured creditors, and then  
5 there's unsecured assets, unencumbered assets, all over the  
6 place. That means no secured creditor can claim a lien on the  
7 business and the RSA creditors know this.

8           That the only valuation the debtors have done is  
9 based upon the idea that there's a unified security interest  
10 covering all the assets of the debtors is crazy. It does not  
11 comport with the facts that exist in this case as testified by  
12 the witness and is shown by the documents.

13           The RSA creditors in their plan admit the existence  
14 of value for unsecured creditors, but they mightily try to  
15 minimize the extent of the unencumbered assets. And they know  
16 they got a problem, that's why through the DIP motion the RSA  
17 creditors try to seek to expand their liens on an expedited  
18 basis by seeking to roll-up significantly undercollateralized  
19 debt.

20           And remember the testimony with respect to  
21 comparables. There was one name, and I can't check the name  
22 now, but I can between now and a continued hearing on Monday or  
23 another time. One name, where they thought there was a roll-up  
24 of this much unsecured deficiency claim in the constructs of a  
25 roll-up. There's -- there's no case that I've ever heard of

1 that involves this. And I don't think Your Honor's ever seen  
2 it either.

3 Page 4. The Cross-Over (sic) Group has submitted  
4 it's filed a committed, non-priming DIP facility, we call it  
5 the alternative DIP facility, in an amount that exceeds the new  
6 money provided by the debtors' recommended facility. The one  
7 that includes CDR, the debtors' private equity sponsor. That's  
8 not a priming DIP. It's a non-priming DIP. It has zero, zero  
9 roll-up. We have already made arrangements with the debtors'  
10 fronting bank, Jefferies, so that we are in a position to fund  
11 when it needs to be funded.

12 Now, by the way, we haven't even -- their order came  
13 around today. We haven't been through it yet. And so there's  
14 going to have to be negotiations of orders in any event. So,  
15 no one is funding tomorrow. And it's a weekend anyway. But,  
16 we're there. There's no question. So, there is a substitute.  
17 They don't like it, but it's there.

18 And a substantial legal impediment to approving the  
19 priming DIP where an alternative DIP which doesn't include  
20 priming is actionable and available is the law. I've read  
21 Section 364. You've read Section 364. There are no  
22 exceptions. It does not say that you can -- that a consensual  
23 priming, which they said isn't consensual. They're using the  
24 -- a voting power, and they're going to ask for an order of the  
25 court saying there is a priming. There is no provision in 364

1 that says it's okay if some of the lenders consent. It's just  
2 not there.

3 We're going to be more detailed about this. It's an  
4 insider DIP facility. And CDR is absolutely interested. And  
5 by the way, we'll get there in a few minutes with a special  
6 slide, everyone on the board of CDR, whether or not designated  
7 independent for some purposes, are not independent about CDR's  
8 effort to keep the company. Those directors want to keep their  
9 jobs.

10 There is absolutely interest here that cannot --  
11 there is no one that's truly independent at this point in time  
12 on the debtors' side. And besides, one of the times when you  
13 defer to a determination by the debtors' board and directors is  
14 when they're fully informed. If anything was clear from the  
15 testimony from Mr. Banks, this board and its special committee  
16 was not fully informed. I've actually never seen a case where  
17 that kind of testimony came up quite that clearly.

18 And this will be -- I'm sure Willkie will talk more  
19 of this than me, but it affects the unsecured creditors just as  
20 much as secured creditors. The debtors' proposed plan includes  
21 property and rights that are not severed to a market test. Are  
22 not distributed based on classes of creditors. But are instead  
23 reserved before and distributed to specific favored parties,  
24 including CDR.

25 I'm going to skip the slide 5 and let's go directly

1 to slide 6. This is a reminder to Your Honor of this testimony  
2 that all of the meaningful debt, for purposes of this case  
3 today, the cash flow facilities which are really small, the  
4 secured notes which are really big, and the unsecured notes  
5 which are really big, are all guaranteed by the same universe  
6 of entities. And so the only difference is about the secured  
7 status.

8           And when we turn the page to 7, the difference in  
9 recoveries for the two classes of debt depends on what liens  
10 really exist. And this is what the disclosure statement and  
11 the first day declarations say. And this is the basis on which  
12 the disclosure statement was prepared. You heard that. It  
13 says, the cash flow facilities are secured by liens on  
14 substantially all the assets and property of the borrowers and  
15 guarantors.

16           Nothing can be further than the truth. It says, the  
17 secured notes are secured by liens on substantially all assets  
18 and property of such guarantors. This statement is also  
19 inaccurate.

20           Let's go to the next page. Here's a summary. And I  
21 apologize. There's a typo in the box on the right. That word,  
22 and, on the first line shouldn't be there. We were in a rush.  
23 This is a summary, okay? This is what could be included in the  
24 RSA creditor lien package. And I keep -- this is the debtors'  
25 burden when they want to assert that there are secured liens.

1 Actually, it's the secured creditor's burden.

2 Nobody attempted to meet the burden of defining the  
3 security interest in this case. And we'll be putting it to  
4 them. The next step in this case, wherever we wind up, there's  
5 going to be an adversary proceeding to determine secured  
6 status, which is the way these things are determined.

7 So, in any event, what is their collateral? Well,  
8 some machines, okay? And it seems not very many. Two thirds  
9 of the stock of certain direct foreign subsidiaries. There's  
10 exceptions. Junior liens on current assets. And some U.S.  
11 intellectual property.

12 What's not included, okay? Well, one third of  
13 foreign subsidiary equity. All owned, leased real property and  
14 fixtures. Every single business premises cannot, none of them,  
15 can be seized by secured creditors and sold in their  
16 foreclosure sale. None.

17 To exercise their remedies against the machines, they  
18 got to line up the machines in front of an auctioneer and sell  
19 them. That's their remedy. They do not have the ability to  
20 move the business. They don't have liens on any vehicles.  
21 Sometimes a trivial category. But, one of my colleagues looked  
22 at the website and looked at the insides of factories, and it  
23 looks like there's lots of trucks lying around. Not a single  
24 one is collateral.

25 And then we saw that they've separately financed

1 several batches of equipment in huge deals. None of them can  
2 be lined up by the secured creditors and sold.

3           So, the secured package, it's piecemeal collateral.  
4 It's old fashioned UCC security interest on particular assets.  
5 They do not have an all encompassing security interest. They  
6 do not cover the entire business. You heard the testimony.  
7 They've treated that case -- this case differently as if there  
8 was an all encompassing security interest benefitting the  
9 secured creditors from the get-go, including throughout their  
10 disclosure statement. We'll talk about the disclosure  
11 statement process later on today or tonight, I guess.

12           I don't want to use the word dishonest yet. I  
13 definitely want to use the word inaccurate.

14           Page 9. I said before, I'm sorry to repeat, first  
15 point, determining what collateral actually does secure the  
16 secured debt requires an adversary proceeding. This is not  
17 controversial. The scope of liens that secure the secured debt  
18 is not determined by a creditor vote. There's a case we've  
19 cited here. There are many more.

20           For this reason, we'll come back -- we object to  
21 other parts of the different things that are going to come. I  
22 didn't mean to include that here. I'm going to skip over the  
23 venue points that I made earlier today. They've been made.

24           And I want to now turn to Page 14, which we now are  
25 turning directly to the financing motion. And in case Your

1 Honor didn't know where I was going, the financing motion  
2 should not be approved. It can't be approved. The debtors  
3 have alternatives.

4           The Cross-Holder Ad Hoc Group has made a proposal.  
5 It's been transmitted to the debtors and filed. The commitment  
6 letters are there. The alternative DIP facility is non-  
7 priming. Less fee exposure. No roll-up component. As the  
8 Court will see, the proposal has been made notwithstanding that  
9 the debtors' process was anything but robust.

10           Indeed, the debtors seemingly worked hard to  
11 discourage any competition at all. And, in fact, had made a  
12 deal and continued to lead the Ad Hoc Group, the Cross-Over Ad  
13 Hoc Group, along. We will get into it in more detail.

14           But, Mr. Serajeddini said that we had introduced  
15 absolutely no events of bad faith. To the contrary, the only  
16 evidence before the Court is actually bad faith in the context  
17 of this proceeding. Lying to people during competition is bad  
18 faith. Committing yourself to do a deal before the commission  
19 even -- the competition even got started is bad faith. Lying  
20 about when the process started is bad faith.

21           There is bad faith all over here. And it might  
22 additionally include bad faith in not calculating the cost of  
23 their deal. Not even looking at the cost of the roll-up,  
24 whoever is paying the cost. But, the unsecured creditors are  
25 paying a significant chunk of the cost.

1           Where is this Court -- is this Court stuck? No, this  
2 Court isn't stuck. As the Court in the Office Properties  
3 Income Trust case dealt with a problem a few days ago, didn't  
4 like the DIP, it said, I'll approve a DIP that's modified  
5 thusly. And then, obviously, very expectedly, the DIP lenders  
6 agreed to every change the judge wanted and funded the DIP.

7           That's one of the things the Court can do. The Court  
8 can say it'll approve our DIP on an expedited basis, and we  
9 will be there with the money. And the Court may be compelled  
10 to say no, that sometimes it's too much. That sometimes it's  
11 just piggish. And sometimes it's not fair. And sometimes the  
12 law doesn't support what's being asked for. But, the company  
13 isn't going to suffer.

14           And I'll make another point. They talk about -- and  
15 I'll make it again later. They talk about their concerns about  
16 publicity. They have, I hope, very well qualified PR people  
17 who presumably can make an awfully good case that the company's  
18 future is pretty well assured when it was offered two enormous  
19 DIP packages, each one from very well funded backers.

20           Next page, 15. These are the people behind the  
21 Cross-Holder DIP. Your Honor has heard of all of them or at  
22 least most of them. These are sophisticated and agile fund  
23 managers with substantial amounts under management who are  
24 committed to providing an alternative DIP immediately.

25           Your Honor heard the testimony. No one, not even the

1 debtors' investment banker, doubts the ability of these  
2 entities to perform.

3           Next chart. We're going to have several charts.  
4 But, this one is kind of where we're going to start. Which is  
5 kind of an all-in comparison. Not just the roll-up numbers  
6 which Your Honor will see, you know, on the company terms.  
7 Kind of, you know, these are -- this is the fee spread. You  
8 can line them up directly. And by the way, if Your Honor is  
9 going to consider this under submission, we will send you the  
10 charts so that you have them and can go through them.

11           But, you can see the additional recovery on DIP roll-  
12 up between \$125 and \$146 million. Obviously, the latter  
13 number's a little bit different because of my rounding. I  
14 apologize. I just thought it would be a little easier. But,  
15 the witness has confirmed that these numbers are right. And  
16 we've here included all of the other fees.

17           There's another point that we didn't -- that I didn't  
18 make with the witness, but it's clear from the documents and  
19 the term sheets, so it's covered by the evidence. Which is in  
20 addition to the cost of the roll-up itself, because the roll-up  
21 bears interest, take a look at the line roll-up interest that's  
22 kind of, you know, kind of to the right of total cost on the  
23 left hand side.

24           And you'll see that the roll-up interest goes from \$9  
25 to \$22 million, depending upon, you know, different things that

1 happen. So, there's this additional cost, interest on roll-up,  
2 that I wasn't accounting for in the \$125 to \$146. It's  
3 directly additive. So, the numbers are even higher.

4 I'll make one more point too. If you think that the  
5 recovery numbers for the secured debt that were specified by  
6 Evercore and included in a disclosure statement are too high  
7 because of their assumptions with respect to what the  
8 collateral package included, then their recovery on a secured  
9 claim is lower, and their additional recovery on the roll-up,  
10 their uplift, is even higher.

11 So, that's another way of saying, the \$125 to \$146  
12 numbers are higher when interest included, and they're even  
13 higher if you think the debtors' numbers are too optimistic  
14 because they overstate the collateral package for the secured  
15 facility.

16 Next chart. This is my point about deference. As  
17 we've indicated, everyone in this case on the shareholder's  
18 side -- excuse me, or on the company's side, is interested  
19 because they're trying to perpetuate control of the company.  
20 Absolutely everyone. Moreover, and it would be enough if this  
21 were the only fact, CDR is one of the DIP lenders.

22 I am really good at remembering proceedings that I  
23 lost. In re LA Dodgers, I lost the DIP hearing. And the  
24 competing DIP was approved. Precisely because a total fairness  
25 test was applied and the Court said that Major League

1 Baseball's DIP, which was a little bit cheaper and had about  
2 similar terms, was better for the debtors and we had to take  
3 it.

4           It wasn't the end of the world. We took the DIP.  
5 They funded the DIP. We performed the DIP. And as everybody,  
6 I think knows, the LA Dodgers case was an enormously successful  
7 reorganization. Set the record for prices for baseball teams  
8 that lasted for many, many years. And I'm not even counting  
9 the fact that they have two consecutive world championships  
10 where we sit today.

11           It can work. A competitive DIP can work and it can  
12 facilitate a successful reorganization.

13           Page 18. We've said this already. 364(d)(1)(a), a  
14 Court can approve a priming lien only if the debtor was unable  
15 to obtain such credit otherwise. I don't see the word non-  
16 consensual. And I'm absolutely certain that the proposed order  
17 that they have submitted to the Court has the Court  
18 effectuating a priming, whether or not they also have consent.  
19 This alone is a clear, legal reason why this DIP cannot be  
20 approved on an interim or final basis.

21           Next page. At some point, and this is in the first  
22 day declaration, and it was later, another bad faith point I  
23 will point out. They all of a sudden, after they understood  
24 that the DIP that was being proposed by the secured lenders was  
25 a DIP that was bigger than theirs and cheaper than theirs, they

1 then started talking about.

2           It did not have the support of the Secured Ad Hoc  
3 Group and was not coupled to a viable Chapter 11 plan. That  
4 only came later when they knew they were in trouble on an  
5 apples to apples comparison. And then they said, this will  
6 send a negative signal to customers, suppliers, and the  
7 debtors' over 9,000 vendors regarding the go-forward viability  
8 of the business.

9           On the next page, we start responding to this.  
10 First, under the proposed plan, as the witness testified, as  
11 the plan itself provides, the new money component of the  
12 insider DIP facility will be paid in full, in cash on the  
13 effective date. Thus, someone's going to put money in and  
14 somebody's going to get money out. Those are the terms of the  
15 debtors' DIP. Those are the terms of our DIP. Any potential  
16 leakage between the plan -- the DIP and the plan for emergence  
17 is irrelevant. Not a dollar of DIP funding will continue post-  
18 emergence.

19           By the way, there's an option exercisable by lenders  
20 to take their payment in a different way or to apply the  
21 payment to other obligations they have. But, the obligation of  
22 the company is paid in full, in cash, okay?

23           Second, Section 364 says nothing about requiring a  
24 debtor to condition entry into a DIP facility on such  
25 facility's connection to a proposed plan of reorganization.

1 And, in fact, if you make too tight a connection, you have a  
2 sub rosa plan, and it would be rejected for that purpose too.

3           There's no exception in Section 364 permitting a  
4 debtor to ignore an actionable alternative DIP proposal that's  
5 not supported by existing secured lenders. Look at the bottom  
6 of the page, these paragraphs are out of order. The company's  
7 claim that any DIP is unactionable without the support of the  
8 Secured Creditor Group is tantamount to a claim that the only  
9 viable DIP provider is the Secured Ad Hoc Group itself.

10           Such assertion shines a light on the conflicted  
11 nature of the DIP facility and reenforces the importance of  
12 entire fairness without deference analysis of the competing  
13 proposals. Their position is absurd. Why would he even bother  
14 having a competition if no one was going to make it but them?

15           Finally, how could the fact -- and I think this is  
16 incredibly important, Your Honor, how could the fact that the  
17 debtors are considering two viable and enormous DIP facilities  
18 be considered a signal to the vendor, customers, and suppliers  
19 that the debtors will be stranded in bankruptcy? That is  
20 absurd.

21           This is, you know, back when I started practicing, we  
22 talked about trophy DIPs. Part of the purpose of DIPs was to  
23 give people confidence. Two DIPs. Two large DIPs are a  
24 greater symbol of confidence than one. And a decent PR plan  
25 can deal with that and exploit it.

1           Page 22. As I said before, the proposed roll-up is  
2 an improper device designed to expand the security interest  
3 that cover pre-petition debt.

4           And the next paragraph is important. There is no  
5 issue with securing new money with liens on unencumbered  
6 assets. That's okay. But, in this case, there is no reason to  
7 secure pre-petition debt with liens on unencumbered property  
8 post-filing, okay? Our DIP facility has no roll-up. Theirs  
9 does. Another reason it should be rejected.

10           And by the way, as I talked about before, is  
11 especially true when existing collateral is not a lien on a  
12 business, but just on a portion of the property used in a  
13 larger business. Because they're not really priming  
14 themselves. They're priming the -- priming's the wrong word.  
15 They're not -- they're encumbering unencumbered assets to  
16 improve their distributions.

17           And that doesn't make a difference if it's a true all  
18 encompassing security interest where the secured creditors have  
19 everything anyway. That's why some roll-ups go by without too  
20 much commentary. This case is truly, genuinely different.

21           I think the testimony was crystal clear about the  
22 math that leads to the conclusion of exactly how \$140 --  
23 between \$126 and \$149 million, plus interest, is the cost of  
24 the roll-up and the benefit of the roll-up to the lucky parties  
25 who get to participate in it, including the sponsor.

1           Okay. The next pages are the buildup, step by step,  
2 followed what happened in the testimony. So, I'm going to flip  
3 through the pages very quickly. As is indicated here and why  
4 this may be useful to the Court when making its decision, we  
5 have put on the bottom of every page the source of every single  
6 number.

7           They come from the disclosure statement or it's math  
8 from the disclosure statement that Mr. Banks and I did  
9 together. As I said before, I am guilty of rounding. But, I  
10 thought it would make it a little bit easier. These numbers  
11 are without the rounding. So, Page 23 was part of our  
12 discussion.

13           Page 24 was part of our discussion. There's where  
14 you can see, he didn't quite remember it, but his recovery  
15 bracket for secured creditors is 81.6 to 98.4. There it is.  
16 The first lien deficiency claim numbers are kind of irrelevant  
17 to this. We were really focusing on the secured part and the  
18 blending between the two.

19           The blending between the two gets to the 42, 41.7, or  
20 I think it was 41 in my imperfect rounding, and 50 to the  
21 right. That's what that page does. And, again, cited below,  
22 so that if the Court needs to build it up or wants to build it  
23 up itself, these are the steps.

24           Page 25. This is where you see the uplift. If you  
25 take a look at the total first lien claims line in the middle

1 of the page, 3994 is the full secured debt, secured and  
2 unsecured portion. The recovery, when you do the  
3 multiplication against just the secured portion, and then apply  
4 it to the entire claim, you get the 42 or 41.7 and 50.2. And  
5 that gets uplifted from 41.7 to 100 on the low side, from 50.2  
6 to 100 on the high side.

7           And you see underneath that, we talked about the fact  
8 that it gets improved by somewhere between 50, which is the  
9 49.8, and 59 percent, which my defective rounding on, you know,  
10 58.3. And then in the lower right hand corner, that's the  
11 percent uplift. And then we calculated on the right hand side,  
12 highlighted in yellow -- well, it's on mine it's highlighted  
13 yellow, it's in a red box on yours, Your Honor, is the 146 and  
14 125 numbers.

15           These are not just my numbers. As Your Honor saw,  
16 the debtors' financial advisor calculated these numbers with  
17 us. These are now the debtor's numbers. There was zero --  
18 there was zero redirect on any of the calculation.

19           So, remember I talked about the fact that on an  
20 interim basis, the 146 and 125 aren't the right numbers. It's  
21 more like 190, something like that. It's 60 percent of each of  
22 those two numbers, you know, plus the interest number, plus the  
23 potential, you know, upside from there.

24           And that's what's happening today. Today we're  
25 talking about almost \$100 million just today. None of this

1 cost, whoever it's attributable to, was included in any of the  
2 debtors' calculations. I was astonished that the declarations  
3 did not include any effort to show this cost.

4 I am flabbergasted that they didn't show the numbers  
5 to the directors. I am flabbergasted that they didn't  
6 calculate the numbers for purposes of negotiating with the  
7 creditors who are asking for this much. It seems they never  
8 really figured it out. But, it would probably take more  
9 discovery to figure that out.

10 Next page, 26. And this is just the backup for the  
11 other -- shows the adding of the incremental interest by reason  
12 of the larger DIP loan, by reason of the roll-up. Just a  
13 separate, you know, calculation so that you have it handy.

14 Next page, 27. The DIP marketing process was  
15 anything but robust. In fact, every step of the way it is  
16 evidence of bad faith. The debtors in their -- one of their  
17 declaration that went in said, they were talking with the  
18 Cross-Holder Ad Hoc Group daily concerning the out-of-court  
19 transaction.

20 The debtors determined to market the DIP only to the  
21 lenders under the insider DIP facility, including the debtors'  
22 controlling insider, and they didn't bother telling us. Or  
23 maybe anyone else. The debtors only engaged with the Cross-  
24 Holder Ad Hoc Group when the group proactively reached out to  
25 the debtors. And then they lied, which we'll get to in a

1 second.

2 After limited discussions over a handful of the days,  
3 the debtors ceased discussions with the Cross-Holder Ad Hoc  
4 Group, notwithstanding the group's continued outreach and their  
5 superior proposal.

6 So, I'm going to review the evidence. On January  
7 23rd, 2026, the first time the Cross-Over Group understood the  
8 debtors were evaluating filing for Chapter 11. Guggenheim  
9 contacted Evercore to express the Cross-Holder Group's interest  
10 in providing a DIP facility and requested the materials.

11 Guggenheim's DIP solicitation materials -- excuse me,  
12 Evercore didn't send them until January 25th, 2026, okay? And  
13 as we're going to go through the e-mails, we're going to see  
14 that even between the 23rd and the 25th, they were less than  
15 completely truthful. We'll go through it.

16 On the 25th, the same day, the first time Evercore  
17 got around to sending DIP solicitation materials to the Cross-  
18 Over Group, the debtors entered into the RSA. That's even  
19 before they got an answer. They didn't tell anyone. And the  
20 RSA, of course, we demonstrated includes the requirement that  
21 the debtors accept the secured creditors in CD&R's proposed DIP  
22 facility.

23 We talked about this e-mail. Page 29. This is the  
24 request. On the 23rd, on the date that Mr. Banks testified,  
25 their DIP process had started and they were already talking to

1 other people. They get this request from us. They respond not  
2 until the next day, on the weekend.

3 And this, this e-mail, Mr. Banks tried to  
4 reinterpret. Steve, In connection with any DIP marketing  
5 process. What do you mean any DIP marketing process? On the  
6 24th, there was a DIP marketing process. Any DIP marketing  
7 process suggests there wasn't one yet. The company intends to  
8 solicit DIP proposals from all key stakeholders.

9 That statement isn't even true. They have solicited  
10 DIP proposals from key stakeholders. But, not including our  
11 clients yet. Okay? We will share any DIP marketing materials  
12 with you for distribution with your clients. That was true,  
13 but it wasn't exactly going to be very timely.

14 About a day later, they actually send us the  
15 materials. But, they don't say that we've already signed the  
16 RSA. This is not exactly good faith. This is bad faith. The  
17 same day they receive a proposal from us. We don't have the  
18 proposal on these pages, but it was one of the attachments,  
19 okay? And the testimony was, was that the proposal covered  
20 every single field. Every single point that they wanted  
21 information on, we hit it.

22 That same day, the RSA was signed. We say that. And  
23 then -- then they don't tell us. They assume we're working  
24 away. And about a day later they say, we're following up on  
25 the DIP proposal, okay? Or we say -- I'm sorry, we say, we're

1 following up on the DIP proposal. We're willing to do our  
2 thing.

3 We got your DIP proposal 24 hours ago. This is us,  
4 again, trying to get more response from Evercore that same  
5 night. Finally, there's a response. Again, after they've  
6 already signed. It's the following Monday after they sign the  
7 RSA. Could you please confirm the amount of DIP financing that  
8 your clients are willing to fund? And please share your  
9 proposed -- plan sponsored proposal as soon as you are able.

10 They knew and they're worried. They knew our amount  
11 was greater than the amount that they were getting from CDR and  
12 the secured creditors. They're now scrounging for something  
13 else. And they want to say we have to have a plan proposal  
14 too.

15 Here's the response on Page 36. We say \$500 million.  
16 They knew it was \$500 million. Theirs, by the way, two fifty  
17 plus the additional one fifty. That's only four hundred. This  
18 is still bigger.

19 And we addressed their plan's sponsorship proposal.  
20 We say they -- they're going to run a marketing process to  
21 verify that the insider transaction is at the right price. And  
22 so we said, you got some materials? Help us. By the way,  
23 we're in a process of doing exactly this. But, that's not the  
24 only kind of alternative plan that has to be considered here.

25 We have proved that their disclosure statement

1 numbers are all inaccurate. That unsecured creditors have been  
2 under -- under treated, and that the division between secured  
3 and unencumbered property is just dead wrong. A different  
4 plan, even if it's with the same equity sponsor, has to right  
5 that. A DIP can facilitate too. We're supposed to be trying  
6 to do some justice here and get the priorities right.

7           By the way, still no suggestion that they've already  
8 signed someone up and they're just playing with us. More bad  
9 faith. Six hours later, still more conversation. This is from  
10 them. They want to understand their path for emergence.  
11 They're worried about funding the company through a proposed  
12 exit. But, the DIP doesn't fund the company through a proposed  
13 exit. Theirs doesn't. Ours doesn't. It's paid in full on the  
14 effective date of the plan.

15           What is he talking about? This is gibberish. What's  
16 not here? No statement that they're already committed. You  
17 guys are wasting your time. More bad faith.

18           Then Kirkland joins the party. They know our DIP  
19 proposal's better. By the way, they sat through a board  
20 meeting where no one actually quantified the roll-up. I don't  
21 understand that either. But, that seems to be the testimony.  
22 We encourage your client not only to deliver a junior DIP  
23 proposal, but a complete restructuring proposal, or otherwise  
24 provide support the company will emerge from Chapter 11  
25 (indiscernible) DIP financing.

1           Again, I have read 364 two additional times in the  
2 last 48 hours. I already knew what it said. And I have a hard  
3 time finding anything about a complete restructuring plan being  
4 part of a DIP, particularly with a DIP that's being funded in  
5 cash, paid in full in cash, and where there's absolutely no  
6 commitment from anyone, either under the CD&R and their secured  
7 creditor partner's DIP or our DIP to do anything for post-  
8 emergence financing.

9           39 is -- I think I've covered already. So, I'm  
10 almost done. There's a lot more wrong with this case, Your  
11 Honor. There's certain things that are distributed to classes  
12 under the plan. But, frankly, there are more categories of  
13 value, rights, and property that are being distributed to other  
14 people outside of the class system. And it has the effect of  
15 creating distinctive treatment to people in the same class.

16           And there's been a recent case out of the Dallas  
17 District Court that covers this issue. I keep forgetting the  
18 name. But, this to me is one of the most important principles  
19 in the entire Bankruptcy Code. That people within a class,  
20 everyone in the class, gets treated the same. You can't have  
21 it any other way.

22           It's any other way, you're not going to have just  
23 committees. We're going to have every single person that's got  
24 to show up in a case to protect themselves because they can't  
25 count on any virtual representation in any part of the process.

1 And maybe we're already there. But, it's not good. This is a  
2 fundamental principle and this plan violates it in countless  
3 ways. I will leave to Willkie a further discussion of this.  
4 It's as much their issue as mine.

5 And Page 41 is about what's going to come next in the  
6 case. Not really relevant to what we're talking about today.

7 In summary, on Page 42, the Court should not approve  
8 the insider DIP facility. There's no good course for the roll-  
9 up regardless of whether other financing is available, but  
10 other financing is available. It's better. It's much less  
11 expensive. It can be implemented immediately or at the same  
12 pace because there's the whole problem with getting an order  
13 done.

14 There's no cause, another point at the very end of  
15 the testimony, the board doesn't seem to have considered,  
16 there's no cause for any waiver of the debtors' ability to  
17 charge secured creditor collateral for the cost of  
18 preservation. After all, we are dealing with piecemeal  
19 collateral in the usual UCC sense. And, frankly, it sounds  
20 like this case is doing a lot to preserve the collateral for  
21 the secured creditor, again, at the expense of unsecureds.

22 And also, we pointed out there are waivers of claims  
23 against the secured claims. I understand that they can be  
24 traditional. But, the idea was, was that the other was someone  
25 independent. They talk about the independent committee and

1 Quinn Emanuel is, I'm sure, excellent work.

2 But, for some reason, the special committee never  
3 heard about this as an issue. Again, unbelievable. Further  
4 evidence of bad faith somewhere. Your Honor, if you have any  
5 questions, I'm available.

6 THE COURT: Thank you. I assume the case you  
7 referenced was ConvergeOne, out of the Southern District or --

8 MR. BENNETT: Thank you. Thank you, Your Honor.

9 THE COURT: I'm familiar with it. Let me turn to the  
10 other raised hands. I do ask that all PowerPoints that have  
11 been used, both in openings and as part of examinations, be  
12 forwarded to my chambers directly. Mr. Stancil?

13 MR. STANCIL: Thank you, Your Honor. Mark Stancil,  
14 Willkie Farr & Gallagher, and as our colleagues have  
15 referenced, we represent the Excluded First Lien Lenders Group.  
16 So, we are -- those funds currently (indiscernible) is funds,  
17 affiliates of Canyon, that are only first lien holders, but are  
18 not RSA parties.

19 And so you've heard a series of references today to  
20 your 30 percent set aside for this and that. I want to very  
21 briefly, Your Honor, identify a fundamental problem with this  
22 proposed first day relief even as to -- among the first lien  
23 lenders.

24 So, Mr. Bennett and I would not agree on a lot of  
25 things. But, I think that his presentation underscores what

1 I'm about to tell you, which is the deep and profound greed and  
2 unfair treatment, even among first lien creditors that's  
3 embodied in this plan.

4 And we filed our objection. I will keep it super  
5 short, Your Honor. I will not repeat. Every lawyer promises  
6 that. Few deliver. But, I'm going to try to surprise you on a  
7 Friday. I'm just going to focus on --

8 THE COURT: It's still Friday?

9 MR. STANCIL: -- two main --

10 THE COURT: Go ahead.

11 MR. STANCIL: -- on our two main points. First, Your  
12 Honor, this pro rata treatment requirement. There's no  
13 dispute, and I heard no dispute from counsel, that the other  
14 first lien lenders are, by the terms of their intercreditor  
15 agreement, entitled to pro rata treatment upon repayment of  
16 their loans.

17 There's the passing reference to this not being  
18 implicated because it's an exchange. That's not what it is.  
19 And I refer Your Honor respectfully to, not only the recent  
20 action in American -- I keep wanting to call it American. But,  
21 it's American Tire Distributors before Judge Goldblatt down in  
22 Delaware where he said quite explicitly on analogous  
23 circumstances that he wasn't going to approve a DIP with a  
24 roll-up unless it had a carve-out for exactly the violation --  
25 the ability to pursue relief for the violation we're talking

1 about here.

2           It is taking one subset of secured claims that are  
3 entitled to pro rata treatment and giving them, paying them off  
4 with new consideration. And I think he said it better than I  
5 did. He just said, in describing the roll-up, he said, it  
6 seems to me what the roll-up is, is a draw on the DIP to pay  
7 down the pre-petition credit agreement. It's no fancier than  
8 that. We take -- we take DIP money. We pay off and get rid of  
9 a first lien debt. And now you've got, you know, that's how it  
10 works in my wallet at least.

11           Moreover, if there's any reference, I'm going to try  
12 to make their argument for them, and maybe they're thinking  
13 when they said exchange, that this has something to do with  
14 11.6(g) of the credit agreement. That applies only to open  
15 market or other private negotiated purchases. This is not a  
16 purchase. This is definitely not an open market. The simple  
17 fact is it's a pay down of debt and they have to do it pro  
18 rata.

19           So, Your Honor should follow that example from  
20 American Tire, or Your Honor probably doesn't read ahead in his  
21 adversary docket. But, earlier this week in your Del Monte  
22 case, there's an adversary proceeding raising exactly this  
23 claim. This is a valid claim. Even granting the interim  
24 relief today without the carve-outs that we've mentioned would  
25 be deeply prejudicial. They have no response to those

1 arguments.

2 And I do want to just briefly explain why it's so  
3 deeply non-pro rata. So, there's a reference to a 30 percent  
4 hold back of -- of this for the RSA parties. But, the RSA  
5 parties also get to participate in the 70 percent that is  
6 distributed to everybody. So, I don't think it would be  
7 appropriate to do any roll-up.

8 But, you certainly shouldn't -- you can't double dip  
9 on the roll-up, set aside 30 percent for yourself, and go to  
10 the trough and share the 70 percent with everybody and call  
11 that pro rata. It's just not how the math works.

12 I'm going to briefly, very briefly, talk on a second  
13 line of, what I would just bluntly characterize as greed. And  
14 just describe -- we walked through two different sort of, I  
15 think baked-in egregious fees that divert value away from non-  
16 participating first lien lenders to the RSA parties.

17 But, I'm going to focus only on the second because it  
18 doesn't take me very long and I can explain it. I do not have  
19 the math skills that Mr. Bennett does. But, even I can get  
20 this one right.

21 There is a \$1.565 billion new term loan baked into  
22 the proposed plan. And the RSA parties say, they're going to  
23 get a premium of 8 percent against that \$1.565 billion new term  
24 loan that'll be there at exit. In exchange for backstopping  
25 the cash-out option.

1           So, you can either, under their world, you can either  
2 take back -- as a first lien creditor you can either take back  
3 their new paper, or if you want to, you can take cash at 80  
4 cents on the dollar. And so they pay themselves 80 percent --  
5 pardon me, 8 percent of the \$1.565 billion for being ready to  
6 stand in and pay the cash-out.

7           Now, 8 percent of \$1.5 billion, it's a lot of money.  
8 But, that's -- it's way worse than that. The -- first of all,  
9 the most cash in even in a theoretical world, whatever we paid  
10 out under the cash-out option, would be just 80 percent of the  
11 term loan. So, it's really not 1.5, it's 1.25.

12           But, that's not the real offensive part. The really  
13 offensive part is, every RSA party is required to take term  
14 loan and not cash. And so, here's the math I was able to do  
15 myself. When you say \$1.56 billion, and only 80 percent of  
16 that could be cash, that's 1.2. But, 72 percent of first lien  
17 lenders are required to take the term loan option.

18           So, what are we really talking about as the cash  
19 backstop here? If every single non-RSA first lien lender says,  
20 I want the cash, not the term loan, they'd have to backstop  
21 \$350 million of cash. Okay? And for that, they're going to  
22 pay themselves \$125 million of new term loan. That is  
23 outrageous.

24           And that is one way, and I think I'll just leave it  
25 there, Your Honor. I think that's enough to tell you what's

1 going on in this plan, and it's not remotely fair. Even  
2 leaving aside everything else you heard today, it's not  
3 remotely fair within the 1L class. And unless the Court has  
4 questions, I will hand the podium over.

5 THE COURT: All right. Thank you, counsel. Keeping  
6 going down my list. Mr. Dahl?

7 MR. DAHL: Good afternoon, Your Honor. Ryan Preston  
8 Dahl of Latham & Watkins on behalf of the CD&R entities. I am  
9 an advocate for the DIP, so I'm happy to --

10 THE COURT: All right.

11 MR. DAHL: -- until the objectors have said their --

12 THE COURT: Yes.

13 MR. DAHL: -- piece. But, appreciate the opportunity  
14 to speak at that time.

15 THE COURT: I appreciate that. Yes, I'm looking for  
16 those on the objecting side. Let me -- but I'm not going to  
17 guess. Let me just go down my screen. Ms. Leamy?

18 MS. LEAMY: Yes. Good afternoon or good evening.

19 THE COURT: Good evening.

20 MS. LEAMY: Jane Leamy for the United States Trustee.  
21 I'm going to be brief because I know the parties have gone on  
22 at length, and I'm covering one of the items that the other  
23 parties have spoken about. But, essentially, we're concerned  
24 with the roll-up loan and the expansion of the collateral  
25 package.

1           A 1-1 roll-up may not be unusual for a DIP loan or a  
2 roll-up loan. But, what is not typical here is the request to  
3 expand the collateral package. The roll-up loan here seeks  
4 liens today on previously unencumbered assets. In reviewing  
5 the DIP order, the term "excluded assets" was used multiple  
6 times. We reached out to counsel, said, you know, what are the  
7 excluded assets?

8           And based on that response, it's the U.S. Trustee's  
9 understanding that the unencumbered assets include, among other  
10 items, owned real property, foreign -- certain foreign  
11 property, foreign intellectual property. And this is  
12 objectionable on the first day.

13           So, if Your Honor is inclined to approve the roll-up  
14 loan and request to expand the collateral package for the roll-  
15 up loan to the previously unencumbered assets, we would request  
16 be deferred until a final hearing, and not approved today.  
17 Thank you.

18           THE COURT: All right. Thank you. Mr. Fleck?

19           MR. FLECK: Good afternoon, Your Honor. Evan Fleck  
20 of Milbank on behalf of the Secured Ad Hoc Group. We are here  
21 in support of the motion. I'm not sure -- I think Mr. Moss is  
22 as well.

23           THE COURT: Right.

24           MR. FLECK: I'd encourage him to be. But, that's his  
25 call. So --

1 MR. MOSS: Yeah. I'll have a few things to add, Your  
2 Honor and Evan, when we get there.

3 THE COURT: All right. Well, let me get to that side  
4 of the table in a couple of moments.

5 Mr. Walsh, too, what side are you coming down on.

6 MR. WALSH: We're co-counsel with the Secured Ad Hoc  
7 Group, Your Honor. So, I just wanted to introduce Mr. Fleck  
8 and his colleagues from the Milbank firm.

9 You know, and based upon Your Honor's comments at the  
10 outset of the case welcoming all the attorneys to New Jersey,  
11 when it's his turn to speak, I will just let Mr. Fleck handle  
12 it. Thank you, Your Honor.

13 THE COURT: All right. Thank you. Well then, it  
14 looks like we're ready for the flip side. So, let me go back  
15 where I started. Mr. Dahl?

16 MR. DAHL: Thank you, Your Honor. And for the  
17 record, Ryan Preston Dahl of Latham & Watkins on behalf of the  
18 CD&R entities. And also with me is Mr. Schrock. There are a  
19 number of things to respond to directed towards my clients.  
20 I'm certainly not going to restate all the points raised by Mr.  
21 Serajeddini.

22 I want to say at the outset, there is probably no  
23 bigger fan of Bruce Bennett in this courtroom than myself.  
24 He's a tremendous lawyer. He's a tremendous advocate for his  
25 client. And he is a tremendous story teller, as any good

1 advocate should be.

2 But, there are certain instances where the stories we  
3 would like to tell are not consistent with the facts. And  
4 they're certainly entertaining, but they are not the facts.  
5 And I think in many substantive respects, that is the case  
6 here.

7 Because stepping back, the question for the Court is  
8 fundamentally, whether the debtors have exercised their  
9 business judgment in pursuing the DIP that is presented for  
10 approval, as opposed to the alternative that Mr. Bennett is  
11 advocating for.

12 And here, I'm going to pick up Mr. Bennett's  
13 endorsement of LA Dodgers, where, and I quote, "Debtors  
14 correctly posit that courts will almost always defer to the  
15 business judgment of a debtor in the selection of a lender,"  
16 end quote. And I'll come back to Mr. Bennett's point about why  
17 apparently the business judgment rule shouldn't apply here.

18 But, to that point, what we've heard a lot about are  
19 frankly in the light most favorable to the competing proposal.  
20 Big relative differences between the two proposals. Whether  
21 one proposal is a hundred basis points better than that  
22 proposal. Whether the debtors are within their rights to pick  
23 a proposal that provides a path to an exit than another  
24 proposal.

25 These are quintessential business judgments. And I

1 don't think there was any dispute there. But, what I think we  
2 do take issue with first is this notion that unencumbered  
3 property is somehow protected or unavailable to secure post-  
4 petition financing or adequate protection. And it's almost  
5 taken for granted that unencumbered assets are unavailable.  
6 And that frankly turns the Bankruptcy Code on its head, Your  
7 Honor.

8           364(c)(2) is -- I know the Court knows, in fact,  
9 requires that, that unencumbered assets be used precisely for  
10 this purpose. And that's exactly what's happening here. I  
11 know Mr. Bennett made a great deal about a OPI. An OPI is an  
12 example of a DIP, and a DIP process should be followed.

13           In fact, that's exactly what occurred. An OPI.  
14 Including with the interim order, as my colleague, Mr. Schrock,  
15 who leads that case, can advise.

16           Speaking of OPI, I know Mr. Bennett has also made a  
17 great deal about how a DIP can be denied and the parties can  
18 simply go in the hallway and settle it. And therefore there's  
19 no risk to be taken associated with that. And again, I would  
20 note, the choice to avoid that risk is again a fundamental  
21 business choice that the bankruptcy court affords to the  
22 debtor.

23           But, even in OPI, that did not happen in the context  
24 of an emergency hearing at the first day of a Chapter 11 case.  
25 Again, as Mr. Schrock could advise, that happened at a final

1 hearing where the cases had had the opportunity to stabilize,  
2 to get on their own two feet, to allow the process negotiation  
3 that Mr. Serajeddini identified at the outset of this hearing  
4 to occur. But, the context that Mr. Bennett I think is  
5 somewhat glibly referring to, that this can all just get sorted  
6 out, simply isn't the facts that ground at OPI.

7           And this then, I think gets to the point that Mr.  
8 Bennett raised about entire fairness. Because I think  
9 fundamentally, the objections to the DIP, at least that I have  
10 heard, really boil down to this notion that entire fairness  
11 should be applied, and not the business judgment rule.  
12 Because, again, the Bankruptcy Code requires unencumbered  
13 assets to be used, as are being proposed to be used here.

14           So, the question then is, does this objection just  
15 fall apart if we are not in a world where entire fairness  
16 applies? And it does. Because, again, then we are talking  
17 about, important to us, but fundamentally relative distinctions  
18 between financing proposals. The discretion to choose which  
19 one to the debtor.

20           So then the question is, did entire fairness make any  
21 sense here? And here, Mr. Bennett says LA Dodgers, LA Dodgers,  
22 LA Dodgers. And, again, accepting as true that LA Dodgers  
23 should apply, I think it's very important to remember the  
24 actual facts of that case. Because there is no evidence that  
25 Mr. Bennett identified suggesting that the debtors' board

1 process was conflicted.

2 My clients, CD&R, have been out of the boardroom for  
3 an extended period of time. The un rebutted testimony in the  
4 first day declaration, I'd refer to you Paragraph 62, is the  
5 debtors had fully delegated decision making authority to their  
6 independent special committee. And the process or on the  
7 selection of a DIP, and who the DIP provider would be, and the  
8 terms of that DIP, (indiscernible) the special committee.

9 And CD&R was not involved in that process. We  
10 haven't been involved in that process. Yes, we are a DIP  
11 provider. But, we didn't control the DIP. And I think that's  
12 a fairly fundamental point given that the entirety of Mr.  
13 Bennett's argument around entire fairness comes down to this  
14 notion that this is LA Dodgers.

15 But, when you look at the facts of that case, and  
16 what the Court actually said in that case, is important.  
17 Because in LA Dodgers, there was no delegation of authority.  
18 As I'm sure Mr. Bennett would recall, the decision making  
19 process when LA Dodgers filed for bankruptcy was controlled by  
20 its controlling shareholder. A gentleman by the name of Mr.  
21 Frank McCourt.

22 Mr. McCourt didn't delegate authority. Mr. McCourt  
23 controlled the DIP process. And here, Mr. McCourt not only  
24 controlled the DIP process as a controlling shareholder, the  
25 evidence showed that he had a personal liability due if he

1 didn't select the DIP that was presented to the Court, but  
2 ultimately denied under an entire fairness standard.

3           And here, I quote, "The evidence shows that a debtor  
4 as controlled by Mr. Court (sic) did not seek court approval  
5 for the Highbridge loan, Mr. Court would personally owe \$5.25  
6 million to Highbridge. Such personal potential liability  
7 clearly compromised debtor's, Mr. McCourt's, independent  
8 judgment. Therefore, debtor's decision is not entitled to  
9 review using the business judgment standard." Period. And  
10 that's at 313 of that case, Your Honor.

11           Clearly, we're in a very different world from LA  
12 Dodgers. Again, the unrebutted testimony is that this decision  
13 making process was handled by an independent special committee  
14 delegated with authority for a considerable period of time. My  
15 client had nothing to do with that process. We're not in the  
16 boardroom in that process. We are not Frank McCourt.

17           So, accepting as true then Mr. Bennett's proposition  
18 that LA Dodgers controls, we are back as we should be where I  
19 started, which is that courts must always defer to the business  
20 judgment of the debtor in the selection of the lender.

21           We do think we have the best proposal, Judge. I want  
22 to be clear about that. We do think it was the best proposal  
23 for the estate. But, fundamentally, that's the debtors'  
24 choice. They made it through an independent arms-length  
25 process.

1 And we've heard a lot of rhetoric from Mr. Bennett  
2 about how apparently everybody in this process is a bad person  
3 or dishonest or misleading the Court. Or I think the phrase  
4 Mr. Bennett used is, I'm not going to say the word dishonest,  
5 but I am going to say misleading.

6 But, I think it's certainly fair to say that the  
7 characterization that we heard earlier of LA Dodgers is  
8 fundamentally misleading about the process, the fundamental  
9 point, the decision before the Court.

10 Judge, I'm happy to answer any other questions that  
11 the Court may have. But, otherwise, I would cede the virtual  
12 podium.

13 THE COURT: Thank you for your input. Mr. Moss?

14 MR. MOSS: Good afternoon, Your Honor. Great to be  
15 before you again.

16 THE COURT: Thank you.

17 MR. MOSS: Joel Moss representing Barclays Bank PLC,  
18 as Administrative and Collateral Agent under the ABL Credit  
19 Agreement, as well as the Cash Flow Credit Agreement.

20 Let me start with the easy part first. There were  
21 extensive hard fought negotiations with the debtors on an  
22 adequate protection package for the ABL secured lenders.  
23 Most important to us (indiscernible) have to be expended first,  
24 and basically we get a 7.5 percent cushion in terms of a top  
25 up, basically if excess availability falls below that level,

1 the Debtors have to top that up.

2 And amounts included in -- for purposes of  
3 determining the borrow base for that purpose include DIP cash  
4 which is subject to our lien, as well as various termination  
5 events and whatnot, as well as the payment of default interest.  
6 These were essential core items for our lenders and fortunately  
7 I can say that the ABL lenders and the agent support what was a  
8 very hard-fought negotiated adequate protection package on the  
9 ABL credit agreement.

10 I also want to make very clear as far as the ABL, I  
11 heard Mr. Serajeddini's presentation at the beginning, my  
12 understanding is the ABL lenders are being asked to potential  
13 provide a new facility, the current facility is terminated.  
14 But if they don't provide it, they're going to be paid in full  
15 in cash.

16 There is no requirement that the ABL lenders roll  
17 into a new facility, though the hope is there can be a  
18 negotiation around that as a part of the path to exit. But  
19 that's obviously up to every lender and there's no requirement  
20 of it. This is not a cram up case, this is not a reinstatement  
21 case with respect to the ABL.

22 I'll pause there, but I just wanted to make those  
23 points on the ABL side which I think is the easiest part of  
24 this.

25 THE COURT: All right.

1 MR. MOSS: On the cash flow side Mr. Serajeddini said  
2 that Barclays is the only party that can "consent" to a DIP.  
3 Barclays very much supports the Debtors' reorganization efforts  
4 and obviously understands and supports the idea that the  
5 Debtors need a path out for -- of bankruptcy. Barclays,  
6 however, is in -- in the capacity as agent had no role in  
7 negotiating this DIP facility.

8 We are effectively taking direction from the term  
9 loan lenders who represent the required lenders. Barclays is  
10 not consenting to the DIP of its own agency, it had no role in  
11 that process. So I just want to make that very clear.

12 The other point that I want to make very clear that  
13 Mr. Stancil seems to misapprehend, is the intercreditor  
14 agreement with respect to a DIP. The intercreditor agreement,  
15 and I -- you know, we can talk about the rollup in a second,  
16 there intercreditor agreement sets forth the various  
17 requirements under which each secured party basically is  
18 required to consent to a DIP and can't object. It does not say  
19 that if you do not meet those requirements, Your Honor cannot  
20 approve the DIP.

21 I leave it to Your Honor as to whether to approve the  
22 DIP, but I want to make that very important distinction because  
23 the intercreditor is not a check on can you approve the DIP or  
24 not. We have been directed to consent to the DIP, we leave it  
25 to Your Honor's good auspices to determine whether the Debtors'

1 exercised their business judgment with respect to the DIP and  
2 whether it otherwise complies with the requirements of the  
3 intercreditor agreement, though we would take the position that  
4 the intercreditor agreement itself isn't a block, it's just a  
5 block on who can object and when.

6 I would also take the (skip in audio) and Barclays in  
7 its (skip in audio) lender along with all of the other  
8 revolving lenders and all of the other non-ad hoc group lenders  
9 to the extent that Mr. Stancil on behalf of Canyon and his  
10 clients get better treatment with respect to the rollup and get  
11 to participate without the hold back and get to participate on  
12 better terms, I would want and expect the revolving lenders,  
13 who have very discreet and specific pro rata protections for  
14 their own benefit in the credit agreement, as well as other  
15 lenders to be able to get to participate on the same terms.

16 In other words, Canyon can't waive the treatment on a  
17 pro rata basis, cut a sweetheart deal for itself and then  
18 expect us and other lenders not to get the same treatment, that  
19 would not be fair.

20 So those are the points that I had. I'm open to any  
21 questions, but, Your Honor, I kept it brief and I know it's  
22 getting late, so thank you.

23 THE COURT: All right. Thank you, counsel.

24 I see no, luckily no more raised hands. So --

25 MR. FLECK: Your Honor -- Your Honor, if I may, I

1 apologize, I had been called on earlier so my hand came down.  
2 Evan Fleck of Milbank.

3 THE COURT: Oh, I'm sorry, Mr. Fleck.

4 MR. FLECK: Is that okay?

5 THE COURT: Yeah, that's fine.

6 MR. FLECK: Thank you, Your Honor. I appreciate the  
7 time.

8 As I said, for the record Evan Fleck on behalf of the  
9 secured ad hoc group. It won't surprise Your Honor to hear  
10 that I would -- if I were going to go into the full argument, I  
11 would echo a lot of the comments that Mr. Serajeddini, as well  
12 as Mr. Dahl made. I won't -- I won't go over that territory  
13 again.

14 I do think though a few minutes hopefully will be  
15 helpful to the Court. Now we as practitioners are oftentimes  
16 reminded by judges that it's really difficult in your position  
17 to understand what's really happening behind the scenes. And  
18 so I think maybe a bit a perspective from our group will be  
19 useful to the Court. I hope it will be.

20 This case is marked -- and I'll say what's not  
21 extraordinary about it, a lot of it is not -- what was  
22 extraordinary is the extent of the negotiations that took place  
23 with the parties, that includes Mr. Bennett's client, including  
24 Mr. Stancil's new client, but I guess it's the same client or  
25 some of the same clients, that went on for months in extreme

1 detail, in person, over Zoom, one-off calls.

2 This process, which by the way it has to be -- as we  
3 all know, in order to have an effective pre-pack negotiations  
4 need to take place over the course of time. And --

5 THE COURT: Hold on one second.

6 Mr. Bennett?

7 MR. BENNETT: This is testimony. If he wants to make  
8 legal argument, he should make legal argument. He's testifying.  
9 I object.

10 THE COURT: All right. Overruled. Well, let me have  
11 the argument at this point. Thank you.

12 MR. FLECK: Thank you, Your Honor.

13 Over the course of weeks and months those  
14 negotiations took place. Everybody who argued today was given  
15 the right to participate and actively participated. These were  
16 hard-fought negotiations. Nobody could seriously contend that  
17 it was anything other than that. Everyone had an opportunity  
18 to put their best foot forward, and that's what -- that's what  
19 bankruptcy, at least in the context of a pre-pack should seek  
20 to promote.

21 Everybody negotiated, there was no thumb on the  
22 scale, finger on the scale or otherwise. The Debtor did their  
23 job, much to our frustration. Mr. Bennett was frustrated, we  
24 were frustrated as well. And I've never seen a process  
25 before -- he's been doing this longer than me, but I've been

1 doing it a while as well at this point, I've never seen a  
2 process marked by so much investment of time and energy by  
3 sophisticated investors who came before the Debtor and did  
4 their very best to effectively sponsor the deal that they were  
5 advocating for.

6           Their deal was an out-of-court transaction. To the  
7 extent that they were successful, maybe there would be  
8 litigation in a different court. They weren't. Our  
9 transaction with the Debtor was the one that prevailed. It  
10 went right down to the wire. Unfortunately we are now at the  
11 end of that process, the company is in extremis from a cash  
12 flow perspective, and we have come forward to provide a  
13 solution.

14           Mr. Dahl is 100 percent correct, as Your Honor knows.  
15 There is one motion before this Court that provides a solution  
16 to the company's liquidity needs. That is the motion that  
17 should get an up or down decision from the Court, and it is  
18 supported by the Debtors' reasonable business judgment.

19           There is no credible suggestion, certainly no  
20 evidence to suggest that anything other than that took place.  
21 There was a responsible and adult process that took place by  
22 the Debtors through a special committee. Nobody has even tried  
23 to suggest the special committee didn't do its job. It was  
24 well-advised by professional advisors, and by individuals who  
25 have done this before with great success. The process is

1 clean, Your Honor, and the result of that process is a DIP  
2 financing that our clients are leading.

3           So I want to talk about -- you know, there's a lot of  
4 hyperbole, a lot of big language that Mr. Bennett used. But  
5 again, those are not the facts. This is not a remarkable case  
6 for the terms that are coming before Your Honor. And that was  
7 intentional on our part because we were competing, we wanted to  
8 win the transaction.

9           So there was a natural discipline that was imposed on  
10 us. We couldn't seek terms that were aggressive. This is a  
11 down the fairway DIP financing, it's nothing aggressive, I  
12 think everybody who does this knows, and Your Honor hopefully  
13 recognizes as well. And it was -- and it was stated on the  
14 record.

15           We did push at times for other terms and it was very  
16 clear to us that we had to discipline ourselves, and the  
17 Debtors did it to us as well. So, yes, there was discussion of  
18 a rollup that was -- that was greater than 1-to-1. And we  
19 ended at a place, again, that is very much customary. Even the  
20 US Trustee argues that that -- that a 1-to-1 rollup is not  
21 unusual at all.

22           So what are the things that the objectors are taking  
23 issue with with respect to the DIP? The first, at least -- and  
24 there's lots of arguments they made but I'm obviously going to  
25 distill it to those that I think need to be responded to

1 independently -- the first is that it's an insider DIP. It's  
2 not, Your Honor. Let's just -- let's just actually cut through  
3 the -- what is being used for advocacy and what are the facts.

4 CD&R is participating in our DIP. Their role in the  
5 DIP is less than 15 percent. Okay. That wasn't said before  
6 obviously by Mr. Bennett because it doesn't help his argument.  
7 Less than 15 percent of the dollars being put forward in the  
8 DIP are being provided by the existing sponsor. The rest of  
9 the money, more than 85 percent, and it was led by our group,  
10 independent financial institutions who are entitled a debtor's  
11 reasonable business judgment, and that's what it's supported  
12 by. So I think that first argument is debunked.

13 Secondly, they argue that, well, we didn't -- we're  
14 not -- we didn't put enough money forward. They're offering  
15 more money to the Debtor. I know Mr. Bennett repeatedly said  
16 it's fully committed, good to go, they're ready to sign, they  
17 even talked to our fronting bank. But the reality is, the only  
18 reason why their DIP needed more money was because it was  
19 funding a path to nowhere. It's funding a case that has no  
20 exit.

21 And I guess Mr. Bennett finds that to be an  
22 unconvincing argument, but judges repeatedly find as an  
23 attribute to a DIP financing when it comes along with a  
24 confirmable plan. And that's what we delivered along with our  
25 DIP, our DIP financing. That's not something that should be

1 counted against us. It actually is a sign of a responsible  
2 debtor that understood that taking on the burden of a  
3 significant DIP financing has to come along with a path of how  
4 to get out of the Chapter 11 case, or at least it should.

5           So, no, we didn't need to provide more money to the  
6 Debtor in order to loan them more money to be a more attractive  
7 option. The fact that they may actually have been willing to  
8 do that, we don't know, there's really no commitment on their  
9 part. But the fact they may have been willing to do that is of  
10 no moment. The Debtor didn't need more money. If they needed  
11 more money, they would have come to us, we would have provided  
12 it.

13           And the last, Your Honor, much ink has been spilled  
14 over the question of a rollup. I'll just endorse the comments  
15 from counsel to the agent, Mr. Moss, this rollup is permitted  
16 by the documents. We know that -- we know that the objectors  
17 would prefer not to be in this court and they found a case that  
18 they think help -- is helpful in Delaware, that happens to not  
19 be where we are.

20           But in any event, we believe that the intercreditor  
21 agreement is clear the rollup is not a payment. We think it's  
22 permitted and it is, as I said earlier, a customary form of  
23 consideration as part of a DIP financing which we think is  
24 supported by the market. Importantly, Your Honor, on the  
25 concept -- on the topic of the DIP, it is being syndicated, the

1 DIP is being syndicated and the rollup is available to all 1st  
2 lien lenders who want to participate.

3           So, you know, Mr. Stancil's here on behalf of, you  
4 know, the other half of Canyon, or maybe some of the same  
5 Canyon parties, they're welcome to participate, they're  
6 encouraged to participate, they will get the same benefit of  
7 any other non-steerco (phonetic) member of the 1st lien group  
8 and get the rollup.

9           And so why is there a difference? You know, I was  
10 deliberate in saying non-steerco member because there is a  
11 steering committee of lenders and initial RSA parties who have  
12 been working tirelessly, literally tirelessly through the  
13 holidays over months to try to construct a viable transaction.  
14 And as we all know, there is compensation generally provided to  
15 those parties. So, yes, there's a difference with respect to  
16 the treatment that is received on account of the backstop, but  
17 again, the DIP is being broadly syndicated to all 1st lien  
18 lenders and everybody does get the right to participate in the  
19 rollup.

20           So, Your Honor, obviously our group supports the DIP,  
21 we believe it was the product of a fair process, one that  
22 actually, you know, produced -- you know, a lot of people say  
23 when both parties are unhappy, that's a sign of a good process.  
24 We're not happy either, Your Honor. There was a suggestion  
25 that the we -- there's some windfall effect here or that the

1 recoveries are so generous to our group. There's significant  
2 impairment all around here.

3           So we're satisfied with the process that produced a  
4 responsible DIP financing for a company that clearly needs  
5 financing, and a path to an exit. We want to see this company  
6 be successful. It clearly needs the financing, that's  
7 uncontroverted by the evidence. And therefore, Your Honor, we  
8 respectfully request that the Court approve the Debtors'  
9 motion. I'm happy to take any questions with respect to any  
10 aspect of our presentation, or the DIP itself.

11           THE COURT: No, thank you, Mr. Fleck.

12           All right. I see --

13           MR. MOSS: Your Honor --

14           THE COURT: -- I'm going to go back to Mr. Moss and  
15 then Mr. Bennett for very brief comments.

16           MR. MOSS: Yes, Your Honor. Hi, it's Joel Moss  
17 again. I just wanted to correct something that Mr. Fleck said.  
18 Barclays and myself didn't say that the rollup was permitted.  
19 We were just outlining how the intercreditor agreement and the  
20 credit agreement work. I'm not taking a position as to whether  
21 the rollup is or isn't permitted.

22           I will certainly acknowledge that a rollup is a very  
23 commonplace feature in many DIPs these days, and this was  
24 something that obviously the ad hoc group bargained for and we  
25 weren't in the room for it, but it's a 1-for-1 rollup. But not

1 taking a position on that point. And obviously to the extent  
2 that Mr. Stancil's clients get any economics, we want them for  
3 the benefit of our revolving lenders as well.

4 THE COURT: Disclaimer noted.

5 All right. Mr. Bennett?

6 MR. BENNETT: Your Honor, I will be very brief,  
7 because I think in our slides we've covered, you know, kind of  
8 all the territory, and I do hope and I do expect you're going  
9 to focus on the evidence. But there's one part of the evidence  
10 that didn't make it into my slides because I was actually  
11 surprised, and that's the evidence that the special committee  
12 actually isn't entitled to the business judgment rule because  
13 it didn't inform itself about the rollup, about the waivers,  
14 about the releases.

15 That was undisputed testimony from a person who was  
16 in the room. There was no rebuttal, there was no recross.  
17 That's the facts of this case. The requirements of the  
18 business judgment rule were never met. So even if, and I'm --  
19 look, I think that, what, a 97 percent or 90 -- I don't know,  
20 more than 95 percent controlling shareholder who can replace  
21 all the directors. Even though they hand it to people who are  
22 supposedly independent, but not in a case where there are at  
23 stake based upon the outcome of the case.

24 That's enough to put you into the total fairness  
25 realm. But you also don't get to assert the business judgment

1 rule when you don't inform yourself about what's going on. And  
2 the undisputed testimony was they had no idea, no one told them  
3 that they were talking about a rollup that was going to cost  
4 the company more than, depending upon the valuation assumption,  
5 146 million or \$125 million, whatever it was costing.

6 And by the way, no -- in addition to not telling the  
7 board, none of the declarations, the application for the -- for  
8 approval of the loan, none of those papers say a word about the  
9 cost of the rollup. I don't -- that would be enough. It has  
10 to be denied. Thank you, Your Honor.

11 THE COURT: All right. Thank you.

12 Thank you all, counsel. Tremendous arguments, and I  
13 respect the professionalism you've shown the Court and each  
14 other.

15 Mr. -- I'm sorry I keep butchering it --  
16 Serajeddini -- it's just so late -- give me a sense of what the  
17 Debtor was looking for as far as second day. In other words, I  
18 understand there's 2 fundings, 150 and 100. I want to get a  
19 sense of what's needed to get to the second day, to get to the  
20 final, I want to get --

21 MR. SERAJEDDINI: Yes, Your --

22 THE COURT: -- it done in the time frame. And I'm  
23 going to --

24 MR. SERAJEDDINI: Yes, understood, Your Honor.

25 THE COURT: -- and I'm going to be very clear, I

1 want to approve only what's necessary to get there. I think  
2 that's our task as judges. I also want to be clear in that I  
3 haven't heard that an order has to be entered today. We have  
4 other matters to -- that we have to complete and address, the  
5 scheduling for the disclosure statement and the combined  
6 hearing, et cetera.

7           In fairness to the Court and in fairness to the  
8 parties, all the parties, I want the opportunity to digest and  
9 consider everything you all have thrown at me in the last 5  
10 hours. And I would look to have a continued hearing on Monday  
11 at 11:30. That gives me a weekend to digest.

12           I haven't heard, and I'm going to look to you to tell  
13 me, that that doesn't jeopardize or prejudice continued  
14 operations, you know, what we usually hear, you know, a payroll  
15 has to be made. It's already 5:45 on a Friday evening, so I'm  
16 hard-pressed to understand that the Court can't be given the  
17 latitude of being able to digest this, and look into all this  
18 over the weekend.

19           I'm going to ask you all, either now or at some point  
20 before we pick up again, to advise the Court what's truly  
21 necessary to get to a final hearing should I approve the DIP  
22 and the scheduling. My thinking is to have -- I understand  
23 there's a March 17 hearing date for a combined hearing, I'm  
24 looking to have a second day hearing, I think it would make  
25 sense. It also serves as an opportunity to visit -- to revisit

1 where we are all at around March 9. That's roughly 4 to 5  
2 weeks. Does that make sense?

3 So what is -- what I'm going to tell all the parties  
4 now is that I'm going to continue on the DIP. I'll give a  
5 ruling on Monday at 11:30. What I'm going to suggest to all  
6 counsel is you all work as hard as I will this weekend, and  
7 your clients respectfully, and continue discussions on seeing  
8 if there's a pathway where there can be more of a global  
9 resolution.

10 They say that -- you know, we hear the phrase used  
11 disparagingly that law firms have playbooks. Well, Courts have  
12 playbooks too. Mine has always been to try to get the parties  
13 to reach a resolution through mediation. I used it somewhat  
14 recently in *USS*, United Service Port-a-Potty case where retired  
15 Judge Drain helped reach the parties into -- on an emergent  
16 basis reach an accord.

17 So on Monday I'd like to hear if the parties think  
18 that that would be a viable pathway. If you can't do it on  
19 your own, to seek some outside assistance in trying to get to  
20 what everybody needs are. It doesn't mean you're going to.  
21 And as I said, I'm prepared to rule on Monday, unless you all  
22 say, Hold up. We'll finish up today with what we need to do,  
23 but I'm going to look to you to give me a time frame.

24 MR. SERAJEDDINI: Yeah, so, Your Honor, the challenge  
25 with respect to the DIP funding, you're absolutely correct that

1 we cannot fund and close today. We're after -- we're after  
2 business hours as you know.

3 In order to be able to fund and close on Monday, and  
4 we absolutely have payments and I could, with a recess, get  
5 Your Honor even more specificity on this, in order to get  
6 payments out, critical payments out on Monday, my understanding  
7 is we need the fronting agent to be aware today that the loan  
8 has been approved so that they can get to work and hit the  
9 ground running first thing Monday morning, and 11:30 Monday  
10 would be too late in order for them to be able to do that.

11 So that's kind of my current understanding based on  
12 what I know. But we can also confer if it would be helpful on  
13 this issue to give you a little bit more specificity.

14 MR. BENNETT: Your Honor, the papers said the Debtors  
15 have \$67 million worth of cash in the bank and --

16 MR. SERAJEDDINI: Excuse me, Mr. Bennett --

17 THE COURT: What --

18 MR. SERAJEDDINI: -- you've made a bunch of absurd  
19 comments today and we've let it go. Can you please stop  
20 interjecting --

21 THE COURT: Let's have colloquy, only direct -- let's  
22 have discussions directed to the Court. I appreciate it. I'm  
23 going to take a few minutes right now. We're closed on oral  
24 argument as of now on the DIP. We'll pick up with everything  
25 else. It's -- and I need to give staff a break -- it's 5:45,

1 I'm going to come back at 6:00 o'clock.

2 My goal here is to be done for today by 7:00, giving  
3 you a sense -- let you have a -- get a sense of what you can do  
4 as far as Monday, and let's be realistic about it. So I'll  
5 leave it at that. All right, folks, see you at 6:00.

6 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 UNIDENTIFIED ATTORNEY: Thank you, Judge.

9 (Recess at 5:47 p.m./Reconvened at 6:04 p.m.)

10 THE COURT: Okay. Folks, we're back. Let me turn back to  
11 counsel. Mr. Serajeddini, what --

12 MR. SERAJEDDINI: Yes, Your Honor. Go ahead.

13 THE COURT: What do you have for me?

14 MR. SERAJEDDINI: So here's what I've been able to  
15 learn in 15 minutes, Your Honor. So we have roughly 90 million  
16 in payments going out in the first part of next week. Among  
17 other things there's about \$1 million for Australia, New  
18 Zealand and Mexico payroll that's payable on Monday, or getting  
19 funded on Monday, and as well as rent for a variety of  
20 locations that are due on the 1st of the month.

21 And then in addition to that a lot of our vendor  
22 relationships are spot relationships and there's 30 million in  
23 spot vendor risk that we're hearing from procurement. If we  
24 don't have the hearing until 11:30 Monday, because of the steps  
25 required to close the risk is significant that we will not be

1 able to close the DIP on Monday, and that will push us into  
2 Tuesday, and as I said, that would delay payroll and some of  
3 these other payments.

4 And so -- and it's -- we'll adjust -- obviously the  
5 DIP order doesn't cover just the DIP financing, it also covers  
6 cash collateral use, and those would be the 2 sources -- well,  
7 in the first instance, as Mr. Moss laid out, the DIP funds must  
8 be used as part of our arrangement, but it would prohibit the  
9 use of either.

10 THE COURT: So is there a way of approving limited  
11 use of cash or a limited portion of the DIP to get us to 11:30?

12 MR. SERAJEDDINI: To get us to 11:30 Monday?

13 THE COURT: Yes.

14 MR. SERAJEDDINI: Yeah --

15 THE COURT: All right.

16 MR. SERAJEDDINI: -- I see no issue with that, Your  
17 Honor, if we had the authority --

18 THE COURT: So what kind of numbers are we -- we  
19 needing?

20 MR. SERAJEDDINI: I don't have an exact number for  
21 you. As I said, it's 90 million in the first part of the week.  
22 I can get an exact number for you in terms of what we could  
23 close Monday to get it out.

24 THE COURT: I'm prepared to give you some more time.  
25 As I said, I don't -- I'm not in a position to render a ruling

1 on the entire request.

2 MR. SERAJEDDINI: Understood.

3 THE COURT: I think it's inconceivable that this  
4 Court is going to leave the Debtor adrift and not be in a  
5 position to honor its obligations. That doesn't help anybody.  
6 But I want to approve just what's necessary. Is it worth it if  
7 I give you some more time to come up with a number that's  
8 approved?

9 MR. SERAJEDDINI: I actually just got a text with a  
10 number, Your Honor, so --

11 THE COURT: Oh.

12 MR. SERAJEDDINI: -- 35 million for Monday.

13 THE COURT: All right. Mr. Bennett, would you write  
14 a check?

15 MR. BENNETT: On our DIP absolutely, Your Honor. And  
16 by the way, their declaration, and I don't appreciate Mr.  
17 Serajeddini's prior comments, I know he's a little upset, but I  
18 -- their declaration says they have \$67 million in the bank  
19 today. So they've got to cover -- they can cover the 35.

20 THE COURT: All right.

21 MR. BENNETT: It's their declaration. I'm not making  
22 up the number. It's in the first day declaration.

23 THE COURT: Thank you, Mr. Bennett, and obviously I  
24 was speaking tongue-in-cheek to a degree.

25 MR. BENNETT: But we're ready, and we would do it

1 with no roll up.

2 THE COURT: Well, I understand. That's not what I'm  
3 asking though. I appreciate -- I'm prepared to approve on an  
4 interim basis until Monday, and I'll give you some slack if  
5 you're -- you're telling me it's 35 million, we'll go to 45  
6 million to approve cash and to approve a pro rata portion of  
7 the DIP under the current motion to get us to 11:30 on Monday.

8 MR. BENNETT: No roll up, Your Honor?

9 THE COURT: I would say a pro rata portion of it. So  
10 it's getting -- it's smaller and smaller, but, yes, to the  
11 extent there's a roll up, I'll approve it on 45 million until  
12 we get to --

13 MR. BENNETT: We've had no opportunity to see their  
14 -- their order was filed today.

15 THE COURT: Well, that's what the weekend will be  
16 for.

17 MR. BENNETT: We're not ready for the order at all.

18 THE COURT: I'm not entering an order today. I'm  
19 entering a bench order that -- if I can give comfort to those  
20 who need it, that I'll authorize use of cash and DIP finance up  
21 to \$45 million. I'll prepare to enter an order if you all can  
22 agree to language on the weekend, and I'll have it entered on  
23 -- before 11:30 to approve it.

24 Mr. Stancil?

25 MR. STANCIL: Yes, Your Honor. Yeah, I mean my

1 carve-out request stands. If there's any roll up, that would  
2 be baked in there, and if I heard the argument correctly, they  
3 don't think there's anything to worry about. If what I am  
4 saying is not permitted under the debt documents, if I'm wrong,  
5 carving it out doesn't do any harm to them. So I would like --  
6 if there is any roll up that incrementally, even on this  
7 interim basis, we would like a carve-out for a cause of action  
8 to pursue our pre-petition agreement rights.

9 THE COURT: All right. I'm going to deny that  
10 request for now. I'll consider the carve-out on the bigger  
11 picture, so to speak, when we get to that point.

12 So, let me hear from debtors' counsel. What do you  
13 need from the Court, and what do you need for the rest of this  
14 evening?

15 MR. SERAJEDDINI: Yeah, Your Honor, I think from  
16 there what we'd propose is let us go back with Your Honor's  
17 limited ruling and just figure out because, again, this is --  
18 there's massive complexity of even closing this DIP with  
19 respect to fronting and the third party -- and the various  
20 parties that we need to fund.

21 So let us -- if we could just pause and then return  
22 on the DIP with any updates in terms of any implementation  
23 issues based on what Your Honor has said. We would very much  
24 appreciate the accommodation vis-a-vis Monday, and we'll work  
25 on that in the interim.

1 In the meantime, I'll turn the podium over to Ms.  
2 Bentley to continue as I -- while I go work on that to continue  
3 to take us through the key first day relief that we need here  
4 and vendors and other parties have been clamoring for.

5 MR. MOSS: Your Honor, Joel Moss again. Obviously we  
6 support the limited use of cash subject to our cash collateral  
7 protections that we fully negotiated. We're not going to  
8 approve or consent to a blank check use of cash, we just can't.

9 THE COURT: All right. You're not opposed to the use  
10 of cash.

11 MR. MOSS: On the terms we've negotiated, including  
12 our very carefully negotiated adequate protection, which I  
13 don't think anybody is really taking issue with.

14 THE COURT: All right. I think that's workable under  
15 what I'm proposing, which is just --

16 MR. MOSS: Yeah.

17 THE COURT: -- a percentage of the overall request  
18 and --

19 MR. MOSS: Sure.

20 THE COURT: -- a percentage of the overall rights  
21 under that.

22 MR. MOSS: Sure. It's just whatever order is entered  
23 would need to incorporate our protections.

24 THE COURT: That's fine.

25 MR. MOSS: Thank you, Your Honor.

1 THE COURT: All right. Then let's proceed. So,  
2 parties -- Becca, we could -- they could the same link for --

3 COURT CLERK: Yeah, absolutely.

4 THE COURT: We'll have the same link available.  
5 We'll schedule this at 11 -- the continuation of the DIP motion  
6 and anything else that we have -- we don't complete today we  
7 will address at 11:30 on Monday, 11:30 a.m., use the same link.  
8 Now, I have no issue with -- let's move forward and see what we  
9 can knock off.

10 MR. SERAJEDDINI: Your Honor, is 11:30 all remote or  
11 is 11:30 in your courtroom?

12 THE COURT: Oh no, all remote. I wouldn't do that to  
13 anybody. It's worked out so well so far.

14 Debtors' counsel? Ms. Bentley?

15 MS. BENTLEY: Good evening, Your Honor. Can you hear  
16 me?

17 THE COURT: I can. Good evening. And --

18 MS. BENTLEY: Rachael --

19 THE COURT: I'm sorry. Go ahead.

20 MS. BENTLEY: Oh no. Rachael Bentley of Kirkland &  
21 Ellis, proposed counsel for the debtors.

22 THE COURT: All right. Ms. Bentley, with respect to  
23 what I would assume to be mostly unobjectionable first day  
24 matters, I'm going to ask your indulgence and just let's just  
25 go over them on a very short shrift basis, knowing that the

1 U.S. Trustee has essentially signed off on language on I think  
2 all of it.

3 Obviously, I'll hear from any party that does want to  
4 be heard on any specific motion, but I don't need the what I  
5 would ordinarily hear on a first day matter when we having been  
6 here seven hours already the expanded version of each motion.

7 MS. BENTLEY: Of course, Your Honor.

8 THE COURT: Thank you.

9 MS. BENTLEY: I'll get right to it. So, I'm now at  
10 Docket Number 15, which is Agenda Item 13. This is the all  
11 trade motion. In the interim period the debtors are seeking to  
12 receive 140 million of availability with respect to vendors,  
13 503(b)(9) and lien claimants. We bucketed those in the motion,  
14 and I think there is sufficient and adequate evidence to  
15 support payment of these in the first day declaration of  
16 Garrett Gabel.

17 Your Honor, just quickly, the biggest thing here is  
18 this really is critical. We've got 9,000 vendors, 5800 of  
19 which are foreign vendors. We did file an auto stay motion,  
20 but of course we need to make sure that we continue to receive  
21 (indiscernible) goods and services from these vendors.

22 Last think I'll note just to be brief, but we have a  
23 lot of sole source suppliers. Our materials and services are  
24 subject to strict scrutiny with our customers and to how these  
25 products must be made. The loss of any of these suppliers

1 would be critical and have a devastating impact on the  
2 business.

3 THE COURT: All --

4 MS. BENTLEY: Your Honor, I'll pause to see if you  
5 have any questions, but it's pretty clear in the motion.

6 THE COURT: I have no questions. Are there any  
7 objections?

8 (No audible response)

9 THE COURT: Then we'll mark this granted, order to be  
10 submitted.

11 MS. BENTLEY: Thank you, Your Honor. Your Honor, in  
12 the interest of time, I'm going to turn the podium over to Ms.  
13 Surinak to flip through the other motions with respect to the  
14 relief that we're seeking here, and I will come back to do DS  
15 scheduling at the end.

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

17 MS. SURINAK: Good evening, Your Honor.

18 THE COURT: Good evening.

19 MS. SURINAK: For the record, Ashley Surinak of  
20 Kirkland & Ellis, proposed counsel for the debtors. To Ms.  
21 Bentley's point, I'll do rapid fire first days for Your Honor.

22 THE COURT: Thank you.

23 MS. SURINAK: The first is the cash management  
24 motion. That's Docket Number 13, Agenda Item Number 11. The  
25 debtors' cash management system is pretty expensive, but

1 customary for an international business. We're seeking to  
2 continue to utilize corporate credit cards, use our bank  
3 accounts and, you know, continue to engage in our intercompany  
4 transactions. The order filed with the motion at Docket Number  
5 13 is the current order, and unless any questions, we'd request  
6 entry of that order.

7 THE COURT: All right. Mr. Sponder, if you're still  
8 with us, I'm still working under the assumption if I don't hear  
9 from you, the UST has worked out its language.

10 MR. SPONDER: Jeff Sponder from the Office of the  
11 United States Trustee. I'm still here, Your Honor, and what I  
12 said in the beginning of the hearing still applies. All of our  
13 revisions have been incorporated in these orders. Thank you,  
14 Your Honor.

15 THE COURT: Great. Thank you. All right. Motion is  
16 granted, mark OTBS, order to be submitted.

17 MS. SURINAK: Thanks so much, Your Honor. Next is  
18 the wages motion. This is Docket Number 12, Agenda Item Number  
19 10. As the motion states, the debtors seek authority to  
20 continue their compensation and benefits programs.

21 It's worth reiterating, just taking a pause, that the  
22 9500 employees that the debtors have are one of the most  
23 important resources. It's 54 or -- excuse me, yeah, 54.4  
24 million due as of the petition date, 41.7 which is due during  
25 the interim period, which we did size for about 30 days. So

1 just wanted to put the numbers out there.

2 No outstanding comments on the order that we're  
3 aware. So we would request that the Court enter the order  
4 filed at Docket Number 12.

5 THE COURT: All right. No objections. Motion is  
6 granted, order to be submitted.

7 MS. SURINAK: Thank you, Your Honor. Next is the  
8 debtors' automatic stay motion. That's Docket Number 11,  
9 Agenda Item 9. As Ms. Bentley noted, the debtors does have an  
10 extensive foreign vendor base. We're seeking merely entry of  
11 an order to reinforce the automatic stay. We would request  
12 that the Court enter the order filed at Docket Number 11.

13 THE COURT: All right. Again, I see no objection. I  
14 always enjoy entering worldwide -- orders that have worldwide  
15 impact. Granted, OTBS.

16 MS. SURINAK: Thank you so much, Your Honor. Next is  
17 the debtors' taxes motion. This is Docket Number 5, Agenda  
18 Item Number 3. \$30.1 million of taxes due and outstanding as  
19 of the petition date. These are ongoing obligations entitled  
20 to full payment. Unless Your Honor has any questions, we would  
21 ask that you enter the order filed with the motion at Docket  
22 Number 5.

23 THE COURT: Our government needs these funds. Motion  
24 granted.

25 MS. SURINAK: Thank you so much, Your Honor. Next is

1 the debtors' NOL motion. This is Docket Number 14, Agenda Item  
2 Number 12. This merely seeks to establish procedures with  
3 regard to equity holders that debtor Labels Buyer, LLC. Unless  
4 any questions, Your Honor, we request that you enter the order  
5 filed at Docket Number 14 with the motion.

6 THE COURT: And this was what number on the agenda?

7 MS. SURINAK: This was Agenda Item Number 12.

8 THE COURT: Twelve. All right. I see no objections.  
9 Motion granted.

10 MS. SURINAK: Thank you, Your Honor. Next is the  
11 insurance motion. This is at Docket Number 6, Agenda Item  
12 Number 4. The debtors pay \$11.5 million in annual premiums,  
13 obviously not all due and outstanding at this time, seeking to  
14 continue our insurance program in the ordinary course. We  
15 would request that Your Honor enter the order filed with the  
16 motion at Docket Number 6.

17 THE COURT: Motion granted. Thank you.

18 MS. SURINAK: Thank you. Next is the debtors'  
19 customer programs motion. This is Docket Number 8, Agenda Item  
20 Number 6. There is \$9.5 million outstanding tied to discount  
21 programs that the debtors employ in the ordinary course of  
22 business. We would request that Your Honor enter the order  
23 filed at Docket Number 8 with the motion.

24 THE COURT: Again, no objections. Motion granted.  
25 Thank you.

1 MS. SURINAK: Thank you, Your Honor. Next is the  
2 utilities motion. This is Docket Number 7, Agenda Item Number  
3 5. By this motion seek to continue paying utility providers.  
4 We put or will put \$1.2 million within the adequate assurance  
5 account within 20 calendar day of entry of the order. Unless  
6 Your Honor has any questions, we would request that you enter  
7 the order filed at Docket Number 7.

8 THE COURT: All right. Now, with this, and I don't  
9 know if we missed it on others, this is an interim order. Do  
10 we have a date for a final hearing which we're going to need to  
11 include in these orders?

12 MS. SURINAK: We had proposed February 27th, Your  
13 Honor, which is approximately 30 days after the petition date,  
14 which is -- it also lines up to our DIP budget and DIP sizing.  
15 It's a Friday.

16 THE COURT: Bear with me. Yes, I am out of the state  
17 on the 27th. I do not return -- I fly back to -- the first day  
18 I'm back is March 3rd.

19 MS. SURINAK: Okay. I think that should be fine,  
20 Your Honor.

21 THE COURT: Mr. Sponder?

22 MR. SPONDER: Thank you, Your Honor. Jeff Sponder  
23 from the Office of the United States Trustee. I just want to  
24 clarify one comment that was just made. I believe that it's 20  
25 days from the petition date, not 20 days from the date of entry

1 of the order. I think that was a change that we requested  
2 that's included in the utilities motion, pursuant to 366.  
3 Thank you.

4 MS. SURINAK: I might have misspoke. I agree that  
5 what the order says is what we're prepared to do. I think the  
6 funds might already be in the account quite honestly.

7 MR. SPONDER: That's fine. Thank you, Your Honor.  
8 Again, Jeff Sponder from the Office of the United States  
9 Trustee.

10 So that Your Honor is aware, a committee solicitation  
11 just went out because I know we're talking about a second day  
12 hearing, and questionnaires, if anyone is interested, are due  
13 back in our office on February 6th. So if we were to go out to  
14 March 3rd, there's certainly more than enough time to get a  
15 committee selected if that's the way -- if there's interest.  
16 Thank you, Your Honor.

17 THE COURT: All right. Thank you. Yes, just looking  
18 at my calendar, I think that's the workable date March 3rd. So  
19 we'll use that as a second day hearing date. We'll put it on  
20 for 10 a.m.

21 MS. SURINAK: That works, Your Honor.

22 Two more matters, the debtors' creditor matrix  
23 motion. This is Docket Number 10, Agenda Item number 8. By  
24 this motion we seek to file the consolidated top 30 list,  
25 redact certain personally identifiable information, natural

1 persons and customers and serve the -- or creditor matrix,  
2 which is 125,000 parties over e-mail. Unless Your Honor has  
3 any questions, we request that you enter the order filed with  
4 the motion at Docket Number 10.

5 THE COURT: All right. I have no questions. Motion  
6 granted, OTBS. Thank you.

7 MS. SURINAK: Thank you, Your Honor. Last for me  
8 before I cede the podium back to my partner Ms. Bentley is the  
9 claims and noticing agent application at Docket Number 9,  
10 Agenda Item Number 7. Attached to that application as Exhibit  
11 B is the declaration of Evan Gershbein, executive vice  
12 president at Verita in support of that application. Mr.  
13 Gershbein is present today on the Zoom, and we'd like to admit  
14 that declaration into evidence for purposes of this  
15 application.

16 THE COURT: All right. Declaration is admitted  
17 absent any objection, which I see none. No objections to the  
18 retention. Welcome aboard claims agent. Motion grant.  
19 Application granted.

20 MS. SURINAK: Great. Thank you so much. My goal was  
21 seven minutes, and I think we beat that, so thank you, Your  
22 Honor. I'll cede the podium back to Ms. Bentley.

23 THE COURT: If all the others were as efficient as  
24 you. Thank you.

25 MS. BENTLEY: Your Honor, Rachael Bentley of Kirkland

1 & Ellis --

2 THE COURT: Yes.

3 MS. BENTLEY: -- back at the podium. The last item  
4 on the agenda, Your Honor, is the DS scheduling motion. That  
5 is at Docket Number 16, Agenda Number 14.

6 MR. BENNETT: Your Honor, this one we do object to,  
7 and, frankly, I don't think there's any urgency for it, and  
8 perhaps this could be better taken up on Monday.

9 THE COURT: Let me hear your objection.

10 MR. BENNETT: Well, first of all, we think they  
11 should be preparing schedules of statement of affairs. One of  
12 the principal issues that will come up in this case is exactly  
13 what is secure -- what is collateral and what is not  
14 collateral, and a decent place to start would be honestly  
15 prepared schedules that describe that.

16 THE COURT: I'm just at a loss because what we're  
17 discussing is the scheduling of the disclosure statement,  
18 correct?

19 MR. BENNETT: But they've asked for it to be -- they  
20 basically want to be relieved from --

21 THE COURT: Right.

22 MR. BENNETT: -- an (indiscernible).

23 THE COURT: Oh, I see. Yes, relieved of the 341 and  
24 the --

25 MR. BENNETT: Yes, Your Honor.

1 THE COURT: -- and the other obligations.

2 MR. BENNETT: Yes, Your Honor.

3 THE COURT: Although I'd doubt what would -- any  
4 resolution of lien disputes is going to rest on the debtors'  
5 schedules.

6 MR. BENNETT: It's not going to rest on it, but it's  
7 a starting place. Experts are going to need the information to  
8 figure out what's there, and so I think they're essential.

9 I would also point out that we don't think you should  
10 be conditionally approving the disclosure statement. You heard  
11 today testimony that it's grossly -- excuse me -- inaccurate,  
12 and it is inaccurate.

13 And so I do think that this requires a little bit  
14 more careful attention when we're all more wide awake, and I  
15 don't think there's any particular urgency to do it tonight.

16 THE COURT: All right. Fair enough. Does counsel  
17 wish to respond?

18 MS. BENTLEY: Thank you, Your Honor. Grossly  
19 inaccurate. We will meet our burden to support the plan at  
20 confirmation, but I do just want to clarify the standard for  
21 approval with respect to the disclosure statement, particularly  
22 on a conditional basis, has to do with whether or not the plan  
23 is patently unconfirmable.

24 1129 issues are confirmation issues. 1129 also picks  
25 up 1122 and 23, which is the points that Mr. Bennett is making.

1 There is precedent to suggest that confirmation-related  
2 arguments alone should not dictate whether or not a disclosure  
3 statement is approved. We still bear the burden to demonstrate  
4 confirmation of the plan at the confirmation hearing.

5 We've started solicitation pre-petition. We should  
6 be permitted to continue on that path. This is a DS scheduling  
7 motion. I have a timeline I can show you. There is nothing  
8 that came up in today's hearing that should suggest that we  
9 need to slow down this process.

10 MR. BENNETT: Your Honor, I will prepare briefing  
11 over the weekend that -- and if we can get a transcript, figure  
12 out how to do it, we'll go through the testimony, and I -- and  
13 we want to be heard on a reasonable time on the adequacy of the  
14 disclosure statement. I'm not talking about confirmation  
15 issues. I'm talking about disclosure statement adequacy  
16 issues. There is no basis for conditional approval, especially  
17 after the record developed today, none.

18 THE COURT: All right.

19 MS. BENTLEY: May I respond, Your Honor?

20 THE COURT: Yes, you may.

21 MS. BENTLEY: With respect to adequacy of the  
22 disclosure statement, I can reference, I'm not going to because  
23 I think you're well aware, Your Honor, 1125 is met. The  
24 inaccuracies that Mr. Bennett is speaking about do not dictate  
25 whether or not we have satisfied our burden with respect to

1 delivering an adequate disclosure statement. Every factor the  
2 courts often consider are contained in our disclosure  
3 statement.

4 THE COURT: All right. Mr. -- well, I see another  
5 hand. Mr. Dahl?

6 MR. DAHL: Yeah, Your Honor, I just had a question  
7 for Mr. Bennett. If he was proposing he needed additional time  
8 for briefing, I assume he also meant that he would include  
9 proposed language to resolve his concerns about the adequacy of  
10 disclosure, but before I make that assumption I think that  
11 would be helpful.

12 MR. BENNETT: If we have the information to offer, we  
13 absolutely will, and if we don't, we'll ask the questions and  
14 someone else will have the answer or not.

15 MR. DAHL: So that's a no though in terms of the  
16 briefing that you (indiscernible).

17 MR. BENNETT: No, a combination of the two, Mr. Dahl.  
18 In some instances we'll be able to do it, in some instance we  
19 may not, and we'll explain each one.

20 MR. DAHL: Thank you for the clarification.

21 THE COURT: All right. Counsel may not agree with  
22 the Court, often that's the case these days. I've never been  
23 and I've said this before sanguine about the relevance of a  
24 disclosure statement. I've always -- and I'll repeat it, I  
25 always believe creditors want to know how much they're going to

1 get paid, when they're going to get paid and how they're going  
2 to get paid, and usually in the 400 pages of disclosure  
3 statements that gets lost.

4           There's ample information already contained in this  
5 disclosure statement. What I would be approving is on a  
6 conditional basis the adequacy of the disclosure statement.

7           It's the plan proponents who run the risk that at the  
8 confirmation hearing I find that the disclosure statement was  
9 inadequate, in which case I do send all the parties back, if  
10 the plan proponents are comfortable with that risk. At this  
11 point I think those that are on this call probably have the  
12 information or access to the information that they're going to  
13 need. They're not going to be relying on the disclosure  
14 statement. I tend to believe that that's the case more often  
15 than not.

16           So I'm prepared to approve the disclosure statement.  
17 That doesn't mean if you can agree on some additional language  
18 before it gets -- well, I'm not even sure that that would be  
19 even relevant at this point. I'm going to agree to grant the  
20 motion on the timeline that's been requested. We're far from  
21 that point. There's ample opportunities to raise the  
22 appropriate objections at confirmation, and the Court has that  
23 opportunity to revisit the content of the disclosure statement,  
24 again, at the potential prejudice to the plan proponents when  
25 we get there.

1 Mr. Rosenblum?

2 MR. ROSENBLUM: Good evening, Your Honor. Benjamin  
3 Rosenblum from Jones Day. I just wanted to call out in our  
4 filing we had a handful of other issues with this motion beyond  
5 disclosure. As the Court referenced, the waiver of the  
6 schedules, statements, we have requested some information  
7 rights that the statutory committee would get or the U.S.  
8 Trustee would get, and we had a question. We just don't  
9 understand frankly how the tabulation works.

10 So part of our request -- we can work with the  
11 debtors over the weekend, but part of our request is driven on  
12 not only by straight disclosure issues, but sort of discrete  
13 issues in terms of the waivers and just mechanically how the  
14 debtor is proposing the tabulation to work.

15 THE COURT: Counsel?

16 MS. BENTLEY: Your Honor, I just will say I'm sure  
17 where you were going, the entrance of the DS scheduling motion  
18 does not prohibit us to be requested to provide documents to  
19 Mr. Rosenblum. I feel like we are sufficiently prepared to go  
20 forward. We agree with you, we are in a position to take on  
21 the burden to demonstrate at confirmation. We are not  
22 prohibiting them from submitting further information requests.

23 And with respect to the waivers, they are  
24 conditional. We have timelines by which we need to obtain  
25 confirmation of the plan. To the extent we do not, the

1 reporting obligations come back.

2 THE COURT: Has the U.S. Trustee's Office agreed with  
3 the timeline?

4 MS. BENTLEY: We -- I'm sorry. I'm sorry, Mr.  
5 Sponder.

6 MR. SPONDER: Thank you, Your Honor. Jeff Sponder  
7 from the Office of the United States Trustee. Your Honor, the  
8 timeline is a lot better than it was and what we just did in  
9 United Site Services.

10 THE COURT: That's what I thought.

11 MR. SPONDER: And we did discuss the waiver, and I  
12 know Your Honor approved it just recently in the United Site  
13 Services case. We just did get some more clarifying language  
14 that it's actually has to be -- the plan has to be confirmed  
15 and go effective within a certain amount of time, I think it's  
16 75 days from the petition date, or then schedules have to be  
17 filed and the 341 to be set. So we -- a little bit different  
18 than United Site Services, but we -- based on that, we are in  
19 agreement with the timeline, Your Honor. Thank you.

20 THE COURT: All right. I thought the timeline was a  
21 little bit broadened. All right. Thank you, counsel. I am  
22 granting the motion. We'll mark it order to be submitted.  
23 Thank you. In that regard, I'm overruling the objections.

24 MS. BENTLEY: Thank you, Your Honor. We very much  
25 appreciate the time. I know it's been a very long evening for

1 everyone, but thank you.

2 THE COURT: You're welcome.

3 MS. BENTLEY: Greatly appreciated.

4 MR. SERAJEDDINI: And, Your Honor, if I may briefly  
5 on the DIP.

6 THE COURT: Yes.

7 MR. SERAJEDDINI: So, Your Honor, what our plan is is  
8 because we're dealing with real major financial institutions  
9 they do need an order in order to fund. And so what we would  
10 propose is taking our interim order, adjusting the amount based  
11 on Your Honor's ruling on the record today and submitting it to  
12 chambers, subject to any other comments we get from creditors  
13 say, you know, in the next 24 hours, and we're happy to  
14 circulate it, but -- and by that I mean the parties that are  
15 actually executing the transaction vis-a-vis the DIP and submit  
16 it to chambers. If it can be entered over the weekend so that  
17 it's entered by the time we get to open up business overseas is  
18 key.

19 THE COURT: So you're saying that it has to be  
20 entered before Monday morning.

21 MR. SERAJEDDINI: Correct.

22 THE COURT: Let me look over at staff.

23 COURT CLERK: I mean (indiscernible) tell them how do  
24 it, but we can find someone to enter (indiscernible).

25 THE COURT: All right. We'll find somebody who can

1 enter it on Sunday.

2 COURT CLERK: And we might not be getting paid  
3 (indiscernible).

4 MR. SERAJEDDINI: Okay. We very much appreciate  
5 that.

6 THE COURT: As they've just noted, even though they  
7 may not be getting paid, but we'll have them do that. What I'm  
8 going to ask though is that you circulate it to the objectors  
9 and to those who raise concerns, and let's get the cleanest,  
10 simplest order that's necessary to keep this going forward.

11 MR. SERAJEDDINI: Understood, Your Honor. We will do  
12 so.

13 THE COURT: Mr. Moss?

14 MR. MOSS: Your Honor, we have no objection to that  
15 as long as it has all of our protections in it for use of cash  
16 collateral. I mean and honestly we support simplicity, but  
17 these orders tend to be longer for the sake of being specific,  
18 et cetera and spelling out the --

19 THE COURT: It's understood. I'm just --

20 MR. MOSS: -- priorities and what not.

21 THE COURT: It's not the --

22 MR. MOSS: I think Mr. Serajeddini's --

23 THE COURT: It's not the simplicity --

24 MR. MOSS: Go ahead.

25 THE COURT: -- I'm concerned about. It's the lack of

1 controversial provisions that --

2 MR. MOSS: Yeah, the --

3 THE COURT: Let's just us to the 11:30 hearing and do  
4 what's necessary to fund what's needed.

5 MR. MOSS: Sure. Well, as long as our protections  
6 are in there we're good.

7 THE COURT: Good.

8 MR. MOSS: So we'll figure them out.

9 THE COURT: Thank you, Mr. Moss.

10 So, Becca, where should they e-mail this to make --

11 COURT CLERK: Directly to me.

12 THE COURT: All right. I'm going to ask counsel when  
13 the order is ready to e-mail it directly to my career law clerk  
14 Becca Earl who's going over and above, as she usually does.  
15 Ms. Yudkin has her contact information. She can share it, and  
16 we'll make sure that we ruin their weekends. All right.

17 MR. SERAJEDDINI: We apologize, Your Honor, on behalf  
18 of all the parties and very, very much appreciate the  
19 accommodation.

20 THE COURT: Absolutely. All right. Anything else I  
21 need or you wish to address? Also, on Monday let's also circle  
22 back to the venue issue and see what's required as far as  
23 discovery or further hearings. All right.

24 MR. SERAJEDDINI: Understood. Thank you, Your Honor.

25 THE COURT: All right.

1 COURT CLERK: Wait.

2 THE COURT: Wait.

3 COURT CLERK: Are there any orders that must be  
4 entered tonight?

5 THE COURT: The question has been asked are there any  
6 orders that must be entered tonight?

7 MR. SERAJEDDINI: I presume, Your Honor, the  
8 alternative would be to have them entered over the course of  
9 the next couple of days as with the DIP.

10 COURT CLERK: But like joint administration we can do  
11 that Monday morning.

12 THE COURT: Well, that's what -- most of those I  
13 would think could be done on Monday morning, joint  
14 administration. In other words, get to us for Sunday entry  
15 those orders that really can't wait until Monday morning.

16 MR. SERAJEDDINI: Understood.

17 THE COURT: All right.

18 MR. SERAJEDDINI: Will do so, Your Honor.

19 THE COURT: All right, folks.

20 MR. SERAJEDDINI: Okay. Thank you.

21 THE COURT: Keep on talking, please. Please feel  
22 free to reach out for the Court if I can assist in any way.  
23 Otherwise, I look forward to seeing you all again at 11:30 on  
24 Monday.

25 MR. SERAJEDDINI: Thank you very much.

1 UNIDENTIFIED ATTORNEY: Thank you, Judge.

2 THE COURT: We are adjourned. Thank you.

3 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

4 UNIDENTIFIED ATTORNEY: Have a good night.

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

We, KAREN WATSON, TRACY VERGOLLO, DIPTI PATEL, KIM WEBER, TERRI STARKEY and COLETTE MEHESKI, court approved transcribers, 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 our ability.

/s/ Karen Watson

KAREN WATSON

/s/ Tracy Vergollo

TRACY VERGOLLO

/s/ Dipti Patel

DIPTI PATEL

/s/ Kim Weber

KIM WEBER

/s/ Terri Starkey

TERRI STARKEY

/s/ Colette Meheski

COLETTE MEHESKI

J&J COURT TRANSCRIBERS, INC.      DATE:      February 1, 2026

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
Caption in Compliance with D.N.J. LBR 9004-1(b)

UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE UNITED STATES TRUSTEE  
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UNITED STATES TRUSTEE, REGIONS 3 AND 9  
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In Re:

Multi-Color Corporation, et al.,

Debtors.

Chapter 11

Case No. 26-10910 (MBK)

Hearing Date:

Honorable Judge Michael B. Kaplan

**ORDER (I) DISMISSING MCC-NORWOOD, LLC CASE, AND (I)  
TRANSFERRING VENUE OR DISMISSING CASES OF ALL DEBTORS**

The relief set forth on the following page, numbered two (2), is hereby **ORDERED**.

Multi-Color Corporation, et al.

Chapter 11 Case No.: 26-10910 (MBK)

**Order (i) Dismissing MCC-Norwood, LLC Case, and (ii) Transferring Venue or Dismissing Cases of All Debtors**

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Upon consideration of the Motion of the United States Trustee by and through counsel, for an Order (i) dismissing the chapter 11 petition of debtor MCC-Norwood, LLC (“Norwood”) pursuant to 11 U.S.C. §1112(b) and/or (ii) transferring the venue of, or in the alternative dismissing, all above-captioned chapter 11 cases pursuant to 28 U.S.C. §§ 1406, 1408, and 1412 and Fed. R. Bankr. P. 1014(a), and notice of the Motion having been given to the Debtors, Debtors’ counsel and parties who filed a Notice of Appearance, and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (c) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

It is hereby ORDERED that:

1. The Motion is GRANTED to the extent set forth herein.
2. The Chapter 11 Cases of all Debtors are hereby DISMISSED.
3. Pursuant to Fed. R. Bankr. P. 2002(f), the Clerk shall notify all parties in interest of the entry of this Order.