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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. Case No. 23-10961 (BLS)
WILLIAMS INDUSTRIAL SERVICES, .
GROUP, INC., *et al.*, . (Jointly Administered)
. .
. Courtroom No. 1
. 824 Market Street
Debtors. . Wilmington, Delaware 19801
. .
. Thursday, August 17, 2023
. 10:12 a.m.

TRANSCRIPT OF HYBRID ZOOM HEARING
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

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1		<u>INDEX</u>	
2	<u>MOTIONS:</u>		<u>PAGE</u>
3	Agenda		
4	Item 6:	Debtors' First Omnibus Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts Effective as of the Rejection Date [D.I. 37; 7/24/23].	7
5			
6		Court's Ruling:	--
7	Agenda		
8	Item 7:	Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Post-petition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Authorizing Use of Cash Collateral; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief [D.I.13, 7/22/23].	14
9			
10			
11			
12			
13		Court's Ruling:	37
14	Agenda		
15	Item 8:	Motion for Entry of an Order (I) Approving Bidding Procedures for the Sale of Assets, (II) Scheduling Hearings and Objection Deadlines with Respect to the Debtors' Authority to Sell, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, (V) Approving Contract Assumption and Assignment Procedures, and (VI) Granting Related Relief [D.I. 33; 7/24/23].	42
16			
17			
18			
19			
20		Court's Ruling:	79
21	Agenda		
22	Item 9:	Motion to Lift Stay as to Bonded Contract Funds, or Alternatively, for Adequate Protection Filed by Liberty Mutual Insurance Company, Berkshire Hathaway Specialty Insurance Company and Arch Insurance Company [D.I. 104; 8/11/23].	82
23			
24			
25		Court's Ruling:	84

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

<u>MOTIONS:</u>		<u>PAGE</u>
Agenda		
Item 10: Motion of Lexon Insurance Company to Lift Stay as to Bonded Contract Funds, or Alternatively, for Adequate Protection [D.I. 114; 8/4/23].		84
Court's Ruling:		85
Agenda		
Item 11: Motion of Harco National Insurance Company for Relief from Automatic Stay and for Adequate Protection [D.I. 122; 8/7/23].		86
Court's Ruling:		86

EXHIBITS

<u>DECLARATIONS:</u>		<u>PAGE</u>
1) Declaration of Tracy D. Pagliara		42
2) Declaration of David Shim		50
Transcriptionists' Certificate		88

1 (Proceedings commenced at 10:12 a.m.)

2 THE CLERK: All rise.

3 THE COURT: Please be seated.

4 Mr. Desgrosseilliers, good morning. It's good to
5 see you.

6 MR. DESGROSSEILLIERS: Good morning, Your Honor.
7 Good to see you, as well. I'll try not to melt on the podium
8 here. I apologize.

9 Your Honor, this is obviously the hearing
10 scheduled for the Williams Industrial Services Group case --

11 THE COURT: Yeah.

12 MR. DESGROSSEILLIERS: -- and for the record, Mark
13 Desgrosseilliers at Chipman Brown Cicero & Cole, on behalf --
14 or proposed counsel for the debtors. With me at counsel
15 table, at least for the debtors is Mr. Scott Lepene and Sean
16 Gordon, both from Thompson Hine.

17 THE COURT: Welcome, gentlemen.

18 MR. GORDON: Good morning, Your Honor.

19 MR. DESGROSSEILLIERS: Your Honor, if I could
20 quickly go through the agenda. One first thing. I don't
21 know if Your Honor saw, but early this morning -- not as
22 early as I would have liked -- but we filed an amended agenda
23 and --

24 THE COURT: I have it.

25 MR. DESGROSSEILLIERS: Okay. Great. Thanks, Your

1 Honor.

2 And as you'll see from the amended agenda, I'm
3 going to kind of go through some of the stuff that's resolved
4 because that's probably best for everyone, and then the
5 difficult matters will be handled by my co-counsel. Your
6 Honor will note 1 through 5, the Court has already entered an
7 order on, so we proceed pretty quickly to Matter 6. Matter 6
8 is a lease rejection or a contract rejection order -- motion
9 that the debtors filed.

10 Your Honor, we received one response, as the
11 agenda indicated. We made certain changes, the debtors did
12 to the order at the request of the Jacksonville Electric
13 Authority. Those changes were acceptable to counsel for the
14 Jacksonville Electric Authority.

15 And I just handed some blacklines around to folks
16 in the courtroom today, Your Honor.

17 THE COURT: Okay.

18 MR. DESGROSSEILLIERS: Your Honor, I have a copy.
19 I can go through quickly --

20 THE COURT: That'd be fine.

21 MR. DESGROSSEILLIERS: -- if I might approach with
22 the blackline. Just two changes, but I'll go through those
23 in one type.

24 THE COURT: Thanks.

25 (Pause)

1 MR. DESGROSSEILLIERS: Sorry about that, Your
2 Honor.

3 THE COURT: No problem.

4 MR. DESGROSSEILLIERS: Your Honor, again, the
5 changes that were in there are for the Jacksonville Electric
6 Authority. I've just been informed, there'll be another
7 change for the sureties.

8 I think what we'll do, Your Honor, just, rather
9 than try to submit this now, is we'll submit it under cert of
10 counsel and give everyone a chance to take a look at the
11 order.

12 THE COURT: That sounds fine. We'll look for that
13 under certification. It seems to me to be, largely, a
14 business issue.

15 MR. DESGROSSEILLIERS: It is. And the changes, as
16 Your Honor will note, to paragraphs 4 and 5, again, that
17 satisfied the concerns of the Jacksonville Electric
18 Authority.

19 THE COURT: Sure.

20 MR. DESGROSSEILLIERS: So, we'll submit that under
21 certification of counsel.

22 And then I can turn the podium over, then, to
23 Mr. Lepene, who's going to address the DIP and tell Your
24 Honor where we stand on that final DIP.

25 THE COURT: Great.

1 MR. DESGROSSEILLIERS: Thank you, Your Honor.

2 THE COURT: Welcome.

3 MR. LEPENE: Your Honor, good morning.

4 Well, I can tell you that since we last saw you,
5 the parties have worked diligently in finetuning the proposed
6 final DIP order and I'm happy to report that we have reached
7 consensus amongst all the parties in interest, that being the
8 DIP lenders, the Committee, obviously, the debtors, and the
9 sureties. And what I wanted to, Your Honor, is run through
10 the redline that is currently in front of you. We placed it
11 prior to the start of our hearing, on your desk.

12 THE COURT: Right.

13 MR. LEPENE: We are comparing, obviously, the
14 proposed final DIP order to the interim. And what I'm going
15 to do is I'm going to start with the language as it pertains
16 to the sureties and then I will get into the language as it
17 pertains to the DIP lenders and the deal constructed with the
18 Committee, if that's okay, Your Honor?

19 THE COURT: That would be fine. You may proceed.

20 MR. LEPENE: Okay. Wonderful.

21 So, I want to call your attention to paragraph 37.
22 The sureties and the DIP lenders continue to massage language
23 in connection with this particular paragraph. And in
24 connection with that, have come up with the following
25 language that I'm going to read into the record at this time.

1 Nothing in the DIP financing documents, the DIP
2 financing motion, the interim order, or this final order
3 shall in any way prime, alter, limit, modify, waive, effect,
4 and/or release any rights, claims, lien rights, and/or
5 interest, if any, of the debtors' sureties, their bond
6 obligees, or any beneficiaries of bonds (such as payment bond
7 claimants and/or lienors) including, without limitation, any
8 subrogation, trust, recoupment, and/or setoff rights, if any,
9 under, or in relation to any of the sureties bonds, as that
10 term is defined "the bonds," and/or in any and all of the
11 unpaid progress payments, retainage, contract balances
12 (whenever paid), and any other proceeds of each respective
13 contracts, bonded by the debtors' sureties, it being
14 expressly acknowledged that all such rights, claims, and/or
15 interests and all defenses and objections thereto are
16 reserved and preserved, provided that no alleged prepetition
17 lien or security interest of the debtors' sureties, their
18 bond obligees, or any beneficiaries of bonds that is alleged
19 to be perfected prior to or after the petition date by filing
20 a financing statement under the Uniform Commercial Code,
21 shall be deemed to have priority over the DIP liens or
22 adequate protection liens granted to the DIP-secured parties
23 and prepetition secured parties in the DIP orders, other than
24 (to the extent valid, binding, perfected, enforceable, and
25 unavoidable), solely respect to assets in existence on the

1 petition date that are directly related to the performance by
2 the applicable debtor of obligations under the bonded
3 contracts that are being rejected by the debtors.

4 THE COURT: It just rolls right off the tongue,
5 doesn't it?

6 (Laughter)

7 MR. LEPENE: That's a mouthful, Your Honor.

8 THE COURT: Well, I mean, I'm being a little bit
9 flip and I will hear, certainly, from the bonded parties. I
10 saw the limited objection. And we talked about this at the
11 first day hearing. This is a basic feature of the nature of
12 this company's business and the interplay between secured
13 creditors and folks that are entitled to rely upon bonds for
14 their industry standards.

15 And the -- I mean, all kidding aside -- the
16 language -- and particularly, this is one place that
17 reservations really matter, so I appreciate the engagement
18 between the parties. I think I understood the language, and
19 that is not in 37. Is it going to go into 37?

20 MR. LEPENE: So, I would note that the -- we had
21 an additional tweak prior to our running off the copy. So,
22 what I've read is -- and we'll resend our proposed -- we'll
23 upload our proposed order. This language that I just recited
24 is the freshest, I would say, language that we have in
25 agreements between the sureties and the DIP lenders. So I

1 submit that what I've read into the record is accurate at
2 this time.

3 THE COURT: Okay.

4 MR. LEPENE: And I would also note that, to your
5 point, Your Honor, this is all about a reservation of rights.

6 THE COURT: Right.

7 MR. LEPENE: And as we will see a little later on
8 when we discuss the relief stay motions, we have been able to
9 agree to similar language as it pertains to, albeit a little
10 shorter, similar language as it pertains to reservation of
11 rights, as well.

12 THE COURT: Okay. So, then, what's our order
13 battle this morning? You've purported that you've reached
14 resolution with respect to DIP financing.

15 MR. LEPENE: Right. We have reached -- right.
16 And I was going to --

17 THE COURT: And what I think would be appropriate
18 is at the appropriate time, we should do a page-turn on this.
19 I received it this morning. I appreciate getting it, but,
20 obviously, it's come to some parties probably in the same
21 timeline, so I think that that would be appropriate.
22 Because -- and it is reflective of a resolution achieved with
23 the Creditors Committee?

24 MR. LEPENE: It is.

25 THE COURT: Okay.

1 MR. LEPENE: And we're thinking like Your Honor,
2 because that was a nice segue into what I was going to do in
3 terms of a page-flip, starting from back to front this time.

4 THE COURT: Okay. And then, just again, so that I
5 understand, there's been -- the amended agenda was obviously,
6 and always particularly helpful to help identify the state of
7 play. I understand, at least from the agenda, that the
8 objections from the United States Trustee remain pending and
9 extant with respect to the bidding procedures or has that
10 been resolved, as well?

11 MR. LEPENE: We've resolved almost everything, but
12 the objections, as far as my understanding, with regard to
13 bid procedures, still remain.

14 THE COURT: Okay. I understand.

15 Let's see. So I just want to make sure -- what
16 order would you like to proceed in? Do you want to deal with
17 your lift stay motions? Do you want to deal with bid
18 procedures? Do you want to -- I'm at your pleasure.

19 MR. LEPENE: Well --

20 THE COURT: I will note I have to deliver a bench
21 ruling at 11:30 --

22 MR. LEPENE: Okay.

23 THE COURT: -- so if we're not done, we'll just
24 take a short break.

25 MR. LEPENE: Okay.

1 THE COURT: That should only take about 15 minutes
2 and then we can reconvene.

3 MR. LEPENE: Sure.

4 THE COURT: But I'm happy going in any order that
5 you want.

6 MR. LEPENE: Well, I think at this time, I'd like
7 to go through the DIP.

8 THE COURT: I think that makes sense.

9 MR. LEPENE: And we run -- we do the page-flip, as
10 you've indicated, and we go that route and then we can go on
11 to the bid procedures, and then the relief stay, we can talk
12 about to close out our hearing today if that's okay with you?

13 THE COURT: That sounds fine.

14 MR. LEPENE: Okay. So, I mentioned the sureties.
15 Now, between the DIP lenders and the Committee, there are a
16 number of items that have been agreed upon, which essentially
17 is a settlement, in my mind, between the Committee and the
18 DIP term lenders. I would refer you to page 38 and with all
19 the parties in the courtroom here today --

20 THE COURT: Paragraph --

21 MR. LEPENE: -- to the extent that I miss
22 anything --

23 THE COURT: Paragraph 38.

24 MR. LEPENE: Paragraph 38.

25 Did I say, "page 38"?

1 THE COURT: Yeah.

2 MR. LEPENE: Paragraph 38.

3 If I miss anything, you'll clear up anything that
4 I've not appropriately documented for the Court.

5 But starting with paragraph 38, and this is a
6 commitment from the Committee, I would also indicate the
7 Committee's going to support the debtors' sale of assets.
8 But in exchange for that, the DIP term lenders have agreed to
9 carve out from sale proceeds \$500,000. And this amount is
10 going to be set aside and deposited with the debtors. It
11 cannot be utilized by the debtors until there's additional
12 direction provided by the Committee.

13 And there's an understanding between the DIP term
14 lenders and all the parties, that the DIP term lenders will
15 essentially forfeit any rights to that \$500,000. That's
16 something that they are carving out and they will not have
17 any right to it proceeding forward.

18 In addition to that \$500,000, there's a sharing
19 mechanism that could also add to the setting aside;
20 essentially, it's a tip, Your Honor. And the mechanism, the
21 mechanic for this sharing mechanism will consist of the
22 following: \$50,000 set aside if the DIP term lenders'
23 deficiency is more than \$3 million, but less than \$4 million;
24 \$100,000 set aside if the DIP term lenders' deficiency claim
25 is less than \$3 million, but more than \$2 million; \$150,000

1 set aside if the DIP term lenders' deficiency is less than \$2
2 million, but more than \$1 million; and then, finally, Your
3 Honor, \$200,000 set aside if the DIP term lenders' deficiency
4 is \$1 million or less.

5 THE COURT: Okay.

6 MR. LEPENE: Okay. I'll pause right here to see
7 if you have any questions, otherwise, I can keep rolling
8 along.

9 THE COURT: No. Why don't we roll along.

10 MR. LEPENE: Okay.

11 THE COURT: I think I understand the sharing
12 mechanism --

13 MR. LEPENE: Okay.

14 THE COURT: -- and I'll obviously hear from the
15 Committee at the appropriate time.

16 MR. LEPENE: Certainly. So, in addition to that,
17 we've got \$500,000 being carved out from the DIP term
18 lenders' sale proceeds, less any recovery that the debtors
19 have in connection with the Key Employee Retention Program,
20 Key Employee Incentive Program motion, which we filed with
21 Your Honor Tuesday this week. And that amount will also --
22 what, ultimately, that sum is, will be set aside, deposited
23 with the debtors, and similar to what I articulated earlier,
24 in this scenario, this amount will not be able to be utilized
25 by the debtors until additional direction or agreement from

1 the Committee. And in connection with these proceeds, also,
2 the DIP term lenders will not have any rights to those
3 proceeds either.

4 THE COURT: Okay.

5 MR. LEPENE: Okay. Moving forward, I would
6 highlight that in paragraph 38, the carve-out priority
7 remains consistent with what was articulated in the interim
8 order, Your Honor; in other words, the carve-out will come
9 before the DIP term lenders, but as it relates to the
10 revolving lien collateral on the prepetition side and on the
11 debtor-in-possession side, that security interest will remain
12 first and best over the carve-out.

13 Moving forward to paragraph 25 --

14 THE COURT: Hang on just a second.

15 MR. LEPENE: -- this provides for the debtors'
16 release of the prepetition lenders once this proposed final
17 order --

18 THE COURT: I'll tell you what. You didn't bury
19 the lede, so I appreciate you advising about paragraphs 37
20 and 38, with respect to the sureties and the resolution
21 achieved or negotiated with the Committee.

22 Why don't we start from the beginning of this
23 order, then.

24 MR. LEPENE: All right. Let's do it.

25 If you go --

1 THE COURT: And, obviously, skip anything that's a
2 technical, conforming change --

3 MR. LEPENE: Yeah, yeah, yeah, sure, sure, sure.

4 THE COURT: -- et cetera.

5 MR. LEPENE: So, in connection with the sureties,
6 let me refer you to Recital G. You'll note that there's a
7 definition of senior liens and in that definition, there's
8 been a tweak to that definition.

9 THE COURT: Yeah, give me a minute. I'll read the
10 *proviso* at the end of paragraph, is it (G) (3) (a)?

11 MR. LEPENE: Yes, it is.

12 THE COURT: Okay.

13 MR. LEPENE: Go ahead.

14 THE COURT: Okay. I understand the revision.

15 MR. LEPENE: Okay. So I will proceed forward to
16 paragraph 3 and I'm going to -- I'm actually going to couple
17 paragraph 3 and paragraph 19 together, because, essentially,
18 it's focusing on transparency with the Committee, Your Honor.
19 In paragraph 3, the commitment is that we will provide the
20 Committee with any proposed, approved budget that is shared
21 with the DIP lenders.

22 THE COURT: Okay.

23 MR. LEPENE: And, again, as I mentioned,
24 paragraph 19 talked about how the Committee will be entitled
25 to notice and we will share that with them, as well as data,

1 and any type of reporting that is also shared with the DIP
2 lenders.

3 THE COURT: Okay.

4 MR. LEPENE: Okay. Paragraph 8 speaks to the ABL,
5 the final ABL roll-up. The parties have approved that, so
6 there is no issue with that mechanic. It does not deviate
7 from what was articulated in the interim order.

8 THE COURT: Okay.

9 MR. LEPENE: Paragraph 15, I want to call to your
10 attention. If you recall, Your Honor, in the interim order,
11 it -- the post carve-out notice fees were set at \$300,000 and
12 it applied to debtors' professionals only. Recognizing that
13 we have the Committee involved in the case and the
14 language -- and the Committee has been included in
15 paragraph 15 and, in addition to that, the number has been
16 increased by \$50,000 to \$350,000.

17 THE COURT: Okay.

18 MR. LEPENE: Okay. In paragraph 20, Your Honor,
19 and this is the event of default section, the parties have
20 agreed that the DIP agents will consent to a hearing on
21 shortened notice, Your Honor, to address any enforcement
22 notice or any event of default that may have been triggered
23 in connection with the DIP loan documents.

24 And then scrolling to paragraph 23, the parties
25 have agreed that the Committee shall not have automatic

1 standing to bring any type of challenge within the 75-day
2 period, challenge period that was established with the entry
3 of the interim order, Your Honor.

4 Paragraph 24 speaks to the waiver of the 506(c)
5 and Section 552. This is acceptable to the Committee and we
6 have agreement there.

7 THE COURT: Okay.

8 MR. LEPENE: And then, finally, as I mentioned,
9 with 25, paragraph 25, we have the release of the prepetition
10 lenders, once the proposed final cash order -- final DIP
11 order is becoming effective --

12 THE COURT: But the release remains subject to the
13 expiry of the challenge period?

14 MR. LEPENE: That's correct.

15 So, that, essentially, is the relief that we are
16 seeking. I want to highlight just a couple of items in the
17 budget, Your Honor.

18 THE COURT: Okay.

19 MR. LEPENE: Do you have -- did we place a copy of
20 the budget on your desk?

21 THE COURT: I don't think I have the latest and
22 greatest. No, I do not.

23 MR. LEPENE: Okay. Let me hand you a copy of the
24 budget. Sorry about that, Your Honor.

25 THE COURT: Sure. No worries.

1 MR. LEPENE: May I approach?

2 Here you go.

3 THE COURT: Thank you.

4 MR. LEPENE: Yep.

5 So, I made reference to our KERP motion that we
6 filed with the Court on Tuesday. There's a deviation from
7 the previous budget, Your Honor. Originally, we had a line
8 item for \$500,000. The debtors' board approved the KERP and
9 KEIP program this week and there was an agreement to reduce
10 the number from \$500,000 to \$375,000, which, obviously, is a
11 savings of \$125,000. And I would just note that -- again,
12 this is not in front of you today, this motion, but I wanted
13 to just highlight --

14 THE COURT: No, I appreciate it.

15 MR. LEPENE: -- that line item.

16 THE COURT: I have a question, though, because
17 I -- and maybe I miss -- I don't understand or appreciate the
18 significance of it. There's a reference in paragraph 38(b),
19 as in Bravo, relating to the interplay of the KERP and the
20 \$500,000 slug relating to the Committee.

21 MR. LEPENE: Yeah.

22 THE COURT: Is there a relationship between those
23 two?

24 MR. LEPENE: There is a relation. So, that goes
25 to the sharing mechanism -- excuse me, let me take that back.

1 It does not go to the sharing mechanism.

2 It is additional monies that could be made
3 available. It's going to be deposited. So, you have the
4 \$500,000 and we have the relief that we are seeking, so let's
5 assume that Your Honor grants the KERP and we have a \$500,000
6 that is on deposit, less the 375, so \$125,000 would then be
7 deposited with the debtors and would not be able to be
8 utilized until further agreement with the Committee. That's
9 the interplay with -- between that additional \$500,000 --

10 THE COURT: So, the KERP nicks the \$500,000 slug?

11 MR. LEPENE: It takes it down a little bit, uh-
12 huh, assuming --

13 THE COURT: It's approved and paid.

14 MR. LEPENE: -- it's approved. If it's not, then,
15 obviously, that 500 is fair game.

16 THE COURT: Okay. I understand.

17 MR. LEPENE: I also would note, Your Honor, in the
18 budget that there's -- the agreement has been reached with
19 the Committee and the DIP lenders to provide an amount up to
20 \$550,000 for fees and expenses and those were the items that
21 I wanted to cover in connection with the budget. And, in
22 addition, that all administrative expenses under the budget
23 are going to be satisfied.

24 Those are the key points that we wanted to touch
25 on. I think as we talked about at the interim hearing, we

1 mentioned that these terms were fair. Given the consensus
2 that we have amongst all the parties, we ask that you grant
3 the relief that we are seeking this morning.

4 THE COURT: Okay. I understand.

5 I think I'd like to hear first, from the
6 Committee --

7 MR. LEPENE: Okay.

8 THE COURT: -- and then we'll hear from other
9 parties.

10 MR. LEPENE: All right. Let me just close up shop
11 here for a second and I'll get out of your way, Mr. Waxman.

12 THE COURT: Sure, take your time.

13 MR. WAXMAN: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. WAXMAN: May I please the Court? Jeff Waxman
16 of Morris James, on behalf of the Committee. With me today
17 in court is Mr. Khezri of Lowenstein Sandler.

18 THE COURT: Mr. Khezri, welcome. Good to see you,
19 again.

20 MR. KHEZRI: Good morning, Your Honor.

21 MR. WAXMAN: Your Honor, with respect to the DIP,
22 first, I would like to compliment the debtors, the lenders.
23 This was an extremely hard-fought negotiation, as I'm sure
24 you can imagine. This is not the easiest case for the
25 debtors or any party in interest, so there was a lot of give

1 and take on a number of issues.

2 The debtors are correct that we have reached a
3 settlement. I want to just flag one item that debtors'
4 counsel did not address, and that is on page 37 -- and excuse
5 me, I'm not sure what paragraph that is -- 10(a), and that's
6 of the blackline.

7 THE COURT: Okay.

8 MR. WAXMAN: And that's the language at the end
9 of 10(a).

10 THE COURT: So that preserves the Chapter 5 causes
11 of action?

12 MR. WAXMAN: Yes.

13 THE COURT: Okay. I understand.

14 MR. WAXMAN: So upon consummation of the sale, the
15 liens revert back so that they can be pursued by the estate.

16 THE COURT: Okay.

17 MR. WAXMAN: The other issue that I want to flag
18 for Your Honor just to address your question, there are
19 actually three pools of money that will be available for
20 unsecured creditors. The first --

21 THE COURT: No, I want to go back to this at the
22 end of -- I want to understand how this works.

23 MR. WAXMAN: Okay.

24 THE COURT: So I'm reading the added language at
25 the end of paragraph, I assume, it's 10(a) toward the bottom

1 half of page 37 of the blackline I have and it reads:

2 "Notwithstanding anything to the contrary, upon
3 consummation of the sale of substantially all of the debtors'
4 assets, the avoidance actions and commercial tort claims, to
5 the extent applicable, shall no longer be subject to the DIP
6 liens and shall no longer be considered DIP collateral."

7 At what point would those liens kick in, if
8 there's no sale?

9 MR. WAXMAN: Yes. Well, they get --

10 THE COURT: Because this is not conditioned --
11 this is not tied to the size of a deficiency claim, et
12 cetera. So, are there -- there are liens until there's some
13 sale?

14 MR. WAXMAN: They receive the liens from the DIP.
15 That is adequate protection that they receive. Upon
16 consummation of the sale, then those become unencumbered
17 again.

18 THE COURT: So, then, what is the function of the
19 lien at this point? In the event that there's not a sale --

20 MR. WAXMAN: Correct.

21 THE COURT: -- that that's part of the, kind of,
22 worst-case scenario collateral package?

23 MR. WAXMAN: Exactly, Your Honor.

24 THE COURT: Okay. I understand.

25 MR. WAXMAN: Unless Your Honor has any other

1 questions, I'll move to paragraph 38 at the end.

2 THE COURT: Okay.

3 MR. WAXMAN: I want to first address Your Honor's
4 question, and there are really three pools of assets that are
5 going to be available for distribution on secured creditors.
6 The first is the \$500,000 and then you've got what I'll call
7 the "sliding-scale sharing" that's at the end. Under 4
8 million, the 50,000; under 3, a hundred, et cetera, et
9 cetera.

10 Your Honor, at this point, we really don't know
11 what the sharing will be and what the deficiency claim will
12 be; it's too early in the process. But to the extent that in
13 the event that and to the extent that this is a successful
14 process and that their deficiency claim is reduced, the
15 Committee will receive part of the benefit.

16 The third pool of assets, Your Honor, in addition
17 to the avoidance actions and commercial tort claims -- which
18 we still have no basis for understanding what those may be;
19 it's too early in the case --

20 THE COURT: It is what it is.

21 MR. WAXMAN: Right. Whatever it is.

22 -- is the KERP. And that is page 76, and
23 that's 38(b), as in Bravo. So, I recognize the budget
24 is 375. Whatever is approved, less the 500 goes into the
25 additional bucket for unsecured creditors.

1 THE COURT: No, I don't think that's right.

2 There's 500 grand. Whatever is approved reduces
3 the 500 grand. Whatever remains -- I don't know, maybe we're
4 saying the same thing -- whatever remains after payment of
5 the KERP from that 500 grand goes into the bucket, the first
6 bucket you described; is that right?

7 MR. WAXMAN: No. The 500 -- they're
8 different 500s.

9 THE COURT: Okay. I don't understand, then. Walk
10 me through it.

11 MR. WAXMAN: Okay. This is not the first --

12 THE COURT: I understood from my -- hang on.

13 From my colloquy with Counsel, I said -- we talked
14 about 500 grand committed that is beyond the reach of the DIP
15 lender and subject to a further order of this Court. It's
16 going to sit.

17 And then Counsel reported that we've reached
18 agreement on a revised number for the KERP, which is 375, and
19 that motion has just been filed. It's not before me. But if
20 it's all approved and then paid, I thought I understood that
21 the 500 that we referred to drops down to 125. If I
22 misunderstood that, I need to understand.

23 MR. WAXMAN: That is not correct. The KERP is not
24 giving away the \$500,000 that we negotiated.

25 THE COURT: Okay.

1 MR. WAXMAN: That is an additional pool of assets.

2 THE COURT: Well, then, I need the debtor to --
3 because I think that that --

4 MR. WAXMAN: And that's why I rose to address that
5 specific issue.

6 THE COURT: We're all shooting from the hip here,
7 but I'm behind everybody, so I'm going to ask that debtors'
8 counsel report or we can take a five-minute break, because
9 that's a \$375,000 swing.

10 MR. LEPENE: My understanding is that you have --
11 as the three buckets were discussed, you have the
12 additional -- you have the additional -- you have the first
13 bucket of 500. There is a second bucket of 500. That second
14 bucket of 500 would be reduced if there is recovery under the
15 KERP.

16 THE COURT: If there are payments, not recovery,
17 but payments under --

18 MR. LEPENE: If there are payments. And then that
19 number would be reduced from 500 to --

20 THE COURT: Whatever remains.

21 MR. LEPENE: Whatever. Yeah, I mean, let's work
22 with numbers. I so dislike ambiguity in terms of this and
23 this.

24 If you have \$500,000 and you have 375, the
25 difference is 125. To me, that's what -- that pool of money

1 would be the 125 available for --

2 THE COURT: Right. But the point I'm missing is
3 you don't have \$500,000. You have two separate \$500,000
4 pools.

5 MR. LEPENE: Right.

6 THE COURT: So, the KERP is only upside argue --
7 if I'm sitting in the Committee's chair, which I'm not, but
8 if I'm sitting in their chair, the KERP is a dynamic that can
9 only -- the interplay of that second 500 and the KERP only
10 produces potential upside. The maximum upside that I could
11 get is if the judge denies the whole KERP and doesn't allow
12 any payments, then we get another 500 grand. If the judge
13 allows the 375 and it's all paid out, then the recovery is
14 limited to 125, which tops onto the 500.

15 So, to be specific in your numbers, your floor is
16 at 625 right now?

17 MR. LEPENE: That's correct. I agree with that.
18 I agree with that assessment.

19 UNIDENTIFIED SPEAKER: Your Honor, that's correct.
20 It's a million -- it's essentially a million, less the
21 KEIP/KERP.

22 MR. LEPENE: That's how I read it.

23 THE COURT: I think some of the -- and I'll
24 apologize, I think some of the confusion may be mine. I did
25 not appreciate they were talking about two separate 500-grand

1 slugs. I get it now --

2 MR. LEPENE: Okay.

3 THE COURT: -- and I appreciate the clarity.

4 MR. LEPENE: Okay. Thank you, Your Honor.

5 MR. WAXMAN: Plus, on top of that, the sliding
6 scale, Your Honor.

7 THE COURT: Right.

8 MR. WAXMAN: And the commercial torts and
9 avoidance actions. So I just wanted to be clear about that,
10 and I understand it's a little confusing because you have two
11 \$500,000 numbers, so I appreciate how there could be some
12 confusion about that.

13 THE COURT: Yes.

14 MR. WAXMAN: Also, I think it's important to note
15 paragraph (c) of paragraph 38.

16 THE COURT: Yep.

17 MR. WAXMAN: The DIP agent, the DIP term lenders
18 waive any right of recovery from the amount set forth
19 in 38(a) and (b), whether on account of their secured claim
20 or any deficiency claim.

21 I want to point out, because this is important and
22 it was negotiated, they -- although they're waiving their
23 right to distribution from those three pools, as I'm calling
24 it, the reason I keep coming back to the commercial torts and
25 avoidance actions is they are not waiving their deficiency

1 claim as to those. So if there is a claim for a commercial
2 tort, they will share in that --

3 THE COURT: From that recovery.

4 MR. WAXMAN: Exactly.

5 THE COURT: But there are protected pools and then
6 there are open pools.

7 MR. WAXMAN: That is exactly correct, Your Honor.

8 THE COURT: I get it.

9 MR. WAXMAN: So that is the basis for or the
10 result of the settlement of a number of issues. Again, I'd
11 like to thank the debtors and the lenders, again, not an easy
12 process, but we're finally here.

13 Unless Your Honor has any questions, I will cede
14 the podium.

15 THE COURT: No, I don't.

16 Mr. Khezri, did you wish to be heard or did you
17 have anything else to add, sir?

18 MR. KHEZRI: No, Your Honor. I do have one or two
19 small changes. I can speak to debtors' counsel on --

20 THE COURT: That's fine. We'll have an
21 opportunity during a break or otherwise.

22 I think it would be appropriate --

23 MR. LEPENE: Can I make one other --

24 THE COURT: Counsel?

25 MR. LEPENE: -- comment? Just one overarching

1 theme, and this goes to the immediacy that you're going to be
2 hearing today on the theme of proceeding forward in getting
3 to a sale.

4 In the budget, Your Honor, I just wanted to note,
5 you know, the weeks of 9/15 and 9/22, in terms of
6 availability for the company. We are going to be really
7 strapped if we are not able to move things forward. My
8 colleague Mr. Gordon is certainly going to raise this when it
9 comes to the bid procedures --

10 THE COURT: Uh-huh.

11 MR. LEPENE: -- but I would note that this company
12 is going to have a liquidity crisis as we get through the
13 month of September and that getting to a sale is a critical
14 aspect for this case.

15 THE COURT: Okay.

16 MR. LEPENE: I just wanted that to be noted.

17 Thank you, Your Honor.

18 THE COURT: I understand.

19 I think it might be an appropriate time to hear
20 from the surety bonds.

21 Good morning, welcome.

22 MR. LOOMIS: How you doing, Judge Shannon?

23 THE COURT: I'm good.

24 MR. LOOMIS: Gaston Loomis, Delaware counsel on
25 behalf of Harco National Insurance Company.

1 I have Scott Williams on the phone. If he may
2 address the Court? He's from Manier & Herod.

3 There's an issue that we see in asking for
4 conforming language in paragraph (g)(3) and paragraph 37,
5 which we brought to PNC's attention.

6 Scott, are you able to join us?

7 MR. WILLIAMS: Yes, I'm here, and I appreciate the
8 Court indulging me.

9 THE COURT: Sure. I'm happy to oblige, and
10 welcome.

11 MR. WILLIAMS: Thank you.

12 Basically, the revision that's in paragraph 37,
13 which refers to, you know, filing of financing statements
14 prior to or, and truly after the petition date, didn't carry
15 forward to 3 -- I think it's (g)(3)(a), at the end of
16 "Provided, however..." and so I would ask that there be a
17 conforming change to track that provision. I think that was
18 where we left it and I don't think it changes. All it is, is
19 really conforming.

20 THE COURT: We will confirm it.

21 Ms. Kelbon, good morning. It's good to see you.

22 I'm seeing a lot -- Mr. Williams, I'm seeing a lot
23 of people in the courtroom nodding, so I think this ought to
24 be manageable.

25 Ms. Kelbon?

1 MR. WILLIAMS: Exactly.

2 MS. KELBON: Yes, Your Honor. Good morning.

3 Regina Stango Kelbon on behalf of PNC, the revolving lenders
4 in this case.

5 Your Honor, the reason all these changes were made
6 in (g) and in 37 was, yesterday we became aware that there
7 were UCCs filed on the eve of bankruptcy and one even filed
8 post-petition. When you asked me, Your Honor, at the first
9 day, were we priming anyone, we said no, because we weren't
10 aware of any other UCC liens that were out there.

11 THE COURT: Uh-huh.

12 MS. KELBON: So, I want to make sure we correct
13 the record, because we are. Anybody who's junior to us is
14 staying junior to us. And that's basically what this is just
15 addressing --

16 THE COURT: Okay.

17 MS. KELBON: -- UCC liens that were filed, like,
18 really, it was like the week before the bankruptcy two were
19 filed. One was actually post-petition, which is put aside
20 the preference and put aside the avoidability, we wanted to
21 at least address them and make it clear that they never rise
22 up. That we are priming those UCC liens.

23 THE COURT: So I want to then circle back to
24 Mr. Williams's specific concern and it sounded like it was a
25 question of essentially tracking language that appears --

1 MS. KELBON: It is.

2 THE COURT: -- elsewhere and just confirming that
3 there's no ambiguity by it being in one place and not in
4 another.

5 MS. KELBON: And we're okay with that --

6 THE COURT: Conceptually, are you okay with that?

7 MS. KELBON: No, we're okay with that, Your Honor,
8 and we're going to put it in both places.

9 THE COURT: Okay.

10 MS. KELBON: Thank you.

11 THE COURT: Mr. Williams, is that responsive to
12 your concerns?

13 MR. WILLIAMS: It is. Thank you so much.

14 THE COURT: Sure, happy to oblige.

15 Mr. Ward, good morning. Good to see you.

16 MR. WARD: Good morning, Your Honor, good to see
17 you as well. And I'm joined here with my co-counsel David
18 Audley from the Chapman and Cutler firm.

19 THE COURT: Welcome.

20 MR. WARD: Your Honor, we represent the DIP and
21 prepetition term loan agents. I just wanted to bring to your
22 attention some language with respect to this DIP order and I
23 don't disagree with anything that has been said so far, but
24 just as a matter of clarity.

25 At one point Your Honor asked -- we were talking

1 about the release and I think I heard Your Honor ask, but the
2 release is subject to the expiration of the challenge period,
3 and that certainly is true, but understand the deal is also
4 subject to the expiration of the challenge period too.

5 THE COURT: Sure.

6 MR. WARD: The lead-in language to 38 -- we talked
7 a lot about these three buckets, the lead-in language to
8 paragraph 38 says, if there's a challenge, you know, the deal
9 is off. It also says that the committee won't object to a
10 sale, a sale order that says, upon the closing of the sale
11 order, proceeds go to the lender. So this was really part
12 and parcel of a more global resolution, which is don't assert
13 a challenge, don't object to us keeping the sale proceeds
14 and, in return, these are the buckets and that's the deal.

15 So I just --

16 THE COURT: Right.

17 MR. WARD: -- wanted to articulate that.

18 THE COURT: No, I understand that clarity. And, I
19 mean, a number of these pieces are -- you know, it's always
20 subject to a sale transaction vindicating people's
21 expectations and, again, we talked about this with respect to
22 the Chapter V causes of action that exist and then disappear
23 at a closing. But I think I understand the deal that has
24 been negotiated and, again, I have a little more clarity on
25 the buckets, but your point is that the buckets don't exist

1 if everybody goes to war.

2 MR. WARD: Correct.

3 THE COURT: I got it.

4 MR. WARD: Thanks, Your Honor.

5 THE COURT: Thank you, though.

6 All right, Ms. Kelbon?

7 MS. KELBON: I should have said this, Your Honor,
8 when I stood up on the surety, but my only other comment with
9 the settlement was that the funds that are being set aside
10 are being set aside from the term lender's collateral and
11 proceeds.

12 THE COURT: Uh-huh.

13 MS. KELBON: Thank you, Your Honor.

14 THE COURT: I think that's clear in the papers,
15 but I appreciate the clarification.

16 MS. KELBON: And including the KERP money --

17 THE COURT: Yes.

18 MS. KELBON: -- so I just wanted to make sure it's
19 all clear.

20 THE COURT: All right. Does anyone else wish to
21 be heard?

22 (No verbal response)

23 THE COURT: Okay. I'm going to approve and
24 authorize the proposed DIP financing. In so ruling, I rely
25 obviously, and heavily upon the record developed here and

1 what is a demonstrated hard-fought negotiation between a
2 variety of stakeholders, chiefly the unsecured creditors
3 committee and others, in negotiating the terms of a proposed
4 use of cash collateral and post-petition financing on a
5 secured basis.

6 As I noted, I think, in the context of the first
7 day hearing and the request for interim relief, it's a
8 complicated business with features to how this debtor
9 operates that by necessity complicate a request for
10 authorization of post-petition financing. And first and
11 foremost, obviously, that comes with the pending surety
12 bonds, which, again, are a basic feature of the nature of
13 this company's business and operations. And I appreciate the
14 limited objections and what has been obviously a deep and
15 constant engagement between the debtors, the lenders, and
16 particularly the surety bond creditors in order to
17 memorialize language that preserves those rights and provides
18 appropriate protections that, again, operates to vindicate
19 the fair and reasonable expectations of both sides.

20 I would note further that the Court previously
21 approved interim financing based upon the record developed at
22 the first day hearing, and approved and authorized that
23 financing under Bankruptcy Rule 4001. We are now at a final
24 hearing and I'm not going to burden the record with extensive
25 findings, particularly given the resolution between the

1 debtor, the lender, and the committee and other stakeholders.
2 I'm prepared to find that the debtors have carried their
3 burden under Bankruptcy Code Section 361, 363, and 364, as
4 well as Bankruptcy Rule 4001, for purposes of obtaining
5 secured post-petition financing and use of cash collateral.

6 It is a complex structure, there is a resolution
7 looking forward that has been negotiated by the creditors
8 committee that is largely embodied in here that also
9 anticipates actions that may occur in the future, and I
10 believe that parties have appropriately thought through this
11 exercise.

12 And, again, we will deal with further developments
13 in the case as they occur, but for purposes of today, I'm
14 satisfied that the relief requested is appropriate and
15 warranted. I think I understand there's some tinkering with
16 the language that's going to have to occur and parties that
17 are perhaps not in the courtroom will need an opportunity to
18 review that, but I would expect to see the order promptly
19 under certification of counsel, and I would be prepared to
20 enter it promptly as well.

21 If there are issues with that order -- and this is
22 a customary admonishment from me -- today is a Thursday, I
23 don't know when payroll is, et cetera, but that's something
24 that I'm always concerned about. If somehow this starts to
25 go off the rails and we have issues with respect to checks

1 being honored, et cetera, I want you to get me on the phone,
2 but otherwise I'll expect that the parties can wordsmith and
3 memorialize the points that have been raised today that are
4 still in flux. Most of them relate to, again, appropriate
5 and well-founded concerns about reservations of rights and
6 the relative positions of parties.

7 So I'll look for that order under certification.
8 Okay?

9 Mr. Desgrosseilliers?

10 MR. DESGROSSEILLIERS: One moment, Your Honor.

11 THE COURT: Sure, take your time.

12 (Pause)

13 MR. DESGROSSEILLIERS: Your Honor, just I think
14 for good order -- I'm sorry, I'll let Mr. Ward --

15 THE COURT: Sure.

16 MR. DESGROSSEILLIERS: -- give me his helpful
17 tips.

18 (Pause)

19 MR. DESGROSSEILLIERS: Sorry, we had the same
20 thought. Trained by the same person, I think that's why.

21 (Laughter)

22 MR. DESGROSSEILLIERS: For good order, I think it
23 may make sense -- and I know Your Honor has already ruled,
24 but the declarations that were offered on the first day,
25 including the declaration of Mr. Pagliara -- Mr. Pagliara is

1 not in the courtroom, but he's on Zoom -- certainly, if
2 someone wanted to cross, they could, it seems like no one
3 will, but --

4 THE COURT: No, I --

5 MR. DESGROSSEILLIERS: -- there were two
6 declarations, I just wanted to move them in.

7 THE COURT: -- no, I appreciate you raising that
8 point.

9 MR. DESGROSSEILLIERS: Yes, Your Honor.

10 THE COURT: And also I think it is appropriate
11 because I try to be pretty careful about noting that a first
12 day declaration is admitted exclusively and only --

13 MR. DESGROSSEILLIERS: That's right.

14 THE COURT: -- for purposes of the first day
15 hearing, and I assume that you're offering those declarations
16 as part of the debtors' case in chief for purposes of the
17 relief sought today; am I correct?

18 MR. DESGROSSEILLIERS: That is correct, Your
19 Honor.

20 THE COURT: Very well. Are there any objections
21 to the admission of those declarations, the Court having
22 already granted the relief?

23 (No verbal response)

24 THE COURT: Very well. Those declarations --

25 MR. DESGROSSEILLIERS: And I apologize for --

1 THE COURT: -- are admitted.

2 (Pagliara Declarations received into evidence)

3 MR. DESGROSSEILLIERS: -- doing that out of order,
4 Your Honor. Just, again, so the record is clear, that's
5 Docket Number 2.

6 THE COURT: So now I've got a record. Okay.

7 (Laughter)

8 MR. DESGROSSEILLIERS: Just in case anyone
9 reconsiders, the same person trained us on that as well.
10 Docket Number 2 and Docket Number 14, for the record.

11 THE COURT: So noted.

12 MR. DESGROSSEILLIERS: And then, Your Honor, that
13 brings us to -- and I won't steal Mr. Gordon's fire, but that
14 brings us to matter number 8, which is the bidding
15 procedures.

16 THE COURT: Very good.

17 MR. DESGROSSEILLIERS: I will cede the podium.

18 MR. GORDON: Good morning, Your Honor.

19 THE COURT: Good morning. Good to see you.

20 MR. GORDON: May it please the Court, I'm Sean
21 Gordon from the law firm of Thompson Hine, also here for the
22 debtors on the debtors' sale procedures motion.

23 Judge, what I intended to do was just run through
24 a quick background and summary for the Court regarding the
25 proposed sale process, procedures, deadlines, talk a little

1 bit about the objections that were filed and how those, most
2 of -- not all of them, but most of them were resolved, and
3 then make our record through submission of declarations and
4 proffers, as necessary.

5 But before I get into that, I just want to preface
6 this with -- you know, my colleague Mr. Lepene alluded to
7 this -- this case is a melting ice cube. We're running --
8 the debtor is going to quickly run out of liquidity, as
9 reflected in the budget that was passed up to the bench.
10 Post-September 15th, the debtors simply may not have enough
11 cash on hand to close any kind of sale beyond --
12 significantly beyond that period.

13 And that ties into what we're asking for today in
14 connection with, you know, reasonable, but relatively quicker
15 deadlines. But before I get into what those proposed
16 deadlines are, I'll just walk the Court through, we're
17 running through -- this is Docket Number 33, the sale
18 procedures motion that was filed July 24th, we supplemented
19 it on July 27th, pointing out some key provisions with regard
20 to the APA. Leading up to that point, as the Court is aware,
21 the debtors faced declining financial performance leading up
22 to the filing of this case. In January of '23, they engaged
23 Greenhill & Company as investment banker to evaluate various
24 strategic options, including a sale of the debtors' business.
25 And, during that process, the debtors' liquidity started to

1 decrease and it became very clear to all involved that they
2 could not pursue a refinancing or an infusion of capital to
3 restructure the company and that the only viable path forward
4 was a sale of the debtors' business.

5 So, in February of 2023, Greenhill embarked on an
6 intensive marketing process, very robust. They reached out
7 to 140 parties, 50 of those parties executed NDAs and, of
8 those 50, six entities ended up submitting letters of
9 interest. And after intensive due diligence,

10 EnergySolutions, Inc., who is the current proposed stalking
11 horse bidder that's identified in the motion, provided the
12 highest and best offer to acquire the company of that group.

13 And Energy Solutions had proposed two alternative
14 structures, one was an out-of-court transaction for acquiring
15 all the equity and involving a short-form merger for net
16 \$53 million, and the second proposal was an asset purchased
17 through Section 363 of the Bankruptcy Code for \$60 million
18 for all or substantially all of the assets of certain
19 debtors, including Williams Plant Services, Williams
20 Specialty Services, WISG Electrical, and select assets of
21 Williams Industrial Services Group, Inc., Williams Industrial
22 Services Group, and Williams Industrial Services, LLC.

23 These pretty much represent all of the debtors'
24 assets with the exception of the Florida and Texas water
25 projects, which there are contracts that are before Your

1 Honor today for rejection for those particular contracts that
2 the debtors deemed in their business judgment to not be
3 profitable.

4 So the debtors ended up accepting Energy Solutions
5 proposal, subject to the sale process that's been proposed
6 and this Court's approval, as outlined in the motion. In
7 terms of proposed bid protections, originally, there was a
8 four-percent break-up fee that was proposed, that equals
9 \$2.4 million of the consideration. That has since been
10 negotiated down and reduced to three percent, as proposed.

11 And, Your Honor, before the hearing started, we
12 walked up to chambers a blackline of the order. I also have,
13 Judge, just for housekeeping, a demonstrative exhibit that
14 just identifies all the changes --

15 THE COURT: That would be great.

16 MR. GORDON: -- in the blackline. May I approach?

17 THE COURT: Sure.

18 MR. GORDON: And if there are any other parties
19 that want a copy of this, I have about ten of them.

20 THE COURT: Thanks. Can you give one to my law
21 clerk, please?

22 (Pause)

23 MR. GORDON: And does anybody need a copy of the
24 actual blackline order? They were circulated to all the
25 relevant parties early afternoon yesterday. Yeah, I've got

1 extras.

2 (Pause)

3 MR. GORDON: So to pick up where I left off,
4 Judge, through negotiation with all the parties and the
5 stalking horse bidder, a \$600,000 difference. It's cut down
6 to three percent.

7 The expense reimbursement that was proposed
8 remains the same, \$1 million under the proposed bid
9 procedures.

10 Now, in terms of timing and key events, if you
11 look at page 22 of the proposed bid procedures in the markup,
12 you can see -- this is after paragraph 8, there's a big
13 paragraph that says reservation of rights, and then under it,
14 it says summary of important dates. The page looks like
15 this, Judge. That's got a little chart that shows what the
16 dates were as proposed in the original motion and original
17 proposed order versus what has been now negotiated amongst
18 all of the parties and agreed to by all of the parties, with
19 the exception of the United States Trustee, whose objection
20 is still pending as to the timeline.

21 One of the reasons, Judge, we moved a couple of
22 things back, it wasn't really to speed up the process, it was
23 just because the way these dates were originally scheduled
24 they fell right in the Labor Day holiday weekend. So we had
25 an auction scheduled on the Saturday during Labor Day

1 weekend. So we moved that back, the proposed auction is
2 August 31st, and, correspondingly, the deadline to submit
3 bids had to be moved back to August 29th.

4 We moved back the deadline to file successful bids
5 and back-up bids, identify successful bidders and back-up
6 bidders to September 1 from the original proposed date of
7 September 3rd. The cure deadline, the deadline to file cure
8 notice, we moved that back or revised that to two days from
9 three days. And the deadline to file objections, we actually
10 moved that date forward to September 5th.

11 And then the sale hearing now, we have suggested
12 September 7th at 10:00 a.m., and that's obviously going to be
13 subject to the Court's docket and availability.

14 So we received three objections to these
15 procedures and all have been completely resolved, with the
16 exception of certain remaining objections of the United
17 States Trustee, and I'll walk through those very quickly.

18 Cigna objected regarding additional notice
19 requirements for disposition of employee benefits associated
20 with the sale; that was resolved in paragraph 32 of the
21 proposed order, as reflected in the blackline that's been
22 circulated.

23 Lexon Insurance Company, at Docket 146, on
24 August 10th filed a limited objection. I think that
25 objection covered both the DIP and the proposed sale motion.

1 Their objection related to assignment of surety agreements.
2 We believe we've resolved that completely through changes to
3 the DIP order that were entered today and some relief that
4 will be coming up on the stay relief motion. Also, we
5 believe their objection is -- that limited objection is
6 somewhat premature because that's really objection at the
7 sale and I don't think it's really relevant for today, or it
8 would be an objection to the proposed assignment of a
9 particular executory contract and we haven't sent out any
10 cure notices or anything like that.

11 Now, the United States Trustee filed an objection.
12 It's at Docket 149.

13 THE COURT: I have it.

14 MR. GORDON: The UST raised a list of objections
15 and I don't think it's a good use of the Court's time to go
16 through all of them because we resolved all of them except
17 for two concepts. One is the U.S. Trustee still objects to
18 the stalking horse bidder remaining -- not agreeing to be a
19 backup bidder in this process.

20 THE COURT: Okay.

21 MR. GORDON: The second is the timing of the bid
22 procedures and the sale.

23 THE COURT: Has the U.S. Trustee's concerns with
24 respect to the structure and payment mechanism for the break-
25 up fee been resolved?

1 MR. GORDON: Yes, Judge, I believe so. I don't
2 know if Mr. Cudia is in the courtroom.

3 THE COURT: Mr. Cudia, good morning. It's good to
4 see you.

5 MR. CUDIA: Yes, good morning, Your Honor. Joseph
6 Cudia for the United States Trustee.

7 Yes, those concerns have been resolved.

8 THE COURT: Okay.

9 MR. GORDON: So, I'll take each of these in turn
10 and let you know what our position is. So, with regard to
11 the U.S. Trustee's objection, you know, this stalking horse
12 bidder does not want to be a backup bidder for whatever
13 reasons, business reasons that they have. It's something
14 that was requested. It's something that's been rejected.

15 To address the United States Trustee's concerns,
16 we made appropriate revisions to the proposed bid procedures
17 and orders so, as to provide that the expense reimbursement
18 and the break-up fee are payable only upon closing of a
19 competing transaction. So, if there's no alternative sale
20 that's closed, the stalking horse bidder will not take any
21 money from the estate. So, we believe that should resolve
22 any risk to the estate.

23 The timing of the bid procedure deadlines and
24 sale, the UST believes that this process is just too
25 truncated. Again, Judge, the time is driven by liquidity.

1 We're prepared to proffer the testimony of the debtors' CRO,
2 Mr. Gavin, in support of this position.

3 As I mentioned earlier, the company stands to
4 completely run out of cash following September 15th, which
5 dictates this timing. If the UST's proposal for an extended
6 timeline is required, the sale closing would be put in
7 jeopardy and all the efforts of Greenhill, the stalking horse
8 bidder, the employees, the professionals to get to this
9 point, to get to us here today would be in vein.

10 In terms of the record in support of our motion,
11 we filed with the motion, the declaration of David Shim.
12 Mr. Shim is a VP of Greenhill. This is at Docket 35. His
13 declaration speaks to the sale process, the appropriateness
14 of the break fee and expense reimbursement and Greenhill, in
15 his opinion, on the sale process that was employed, yielding
16 the highest and best price for the debtors' assets.

17 At this time, I'd like to submit into evidence the
18 declaration of Mr. Shim in support of the motion.

19 THE COURT: Any objection to the admission of
20 Mr. Shim's declaration as part of the debtors' case in chief?

21 MR. CUDIA: No, Your Honor. Joseph Cudia for the
22 United States Trustee.

23 THE COURT: Very well. The declaration is
24 admitted.

25 (Shim Declaration received in evidence)

1 THE COURT: Mr. Cudia or any other party, would
2 you like to cross-examine Mr. Shim regarding the contents of
3 the declaration?

4 MR. CUDIA: No, Your Honor.

5 THE COURT: Very good. Okay.

6 It's admitted.

7 MR. GORDON: Judge, I would also wish to proffer
8 the testimony of Mr. Ted Gavin in support of the motion.
9 Mr. Gavin is managing director of Gavin/Solmonese. He's
10 serving, and Gavin/Solmonese is serving as chief
11 restructuring officer of the debtors in this case.

12 If called, Mr. Gavin would testify that he's an
13 experienced financial professional with a professional firm
14 of many years in the corporate restructuring world. That
15 he's acted as CRO for numerous clients and facilitated
16 successful reorganizations. That Gavin/Solmonese typically
17 manages day-to-day activities, controls finances, assesses
18 companies, and manages them through the bankruptcy process.
19 That he has reviewed the company's pertinent financial
20 records, the sale motion, the proposed order on the sale
21 procedures motion, and the proposed bid procedures.

22 He would testify that the company is in a
23 liquidity crisis, as I've mentioned. We'll quickly run out
24 of cash, as set forth in the proposed budget, following mid-
25 September, based on current projections, and that based on

1 his knowledge, he would testify that if the deadlines set
2 forth in the bidding procedures are not put in place and the
3 sale closing is postponed, the proposed sale with
4 EnergySolutions is at a high-risk -- or any other alternative
5 purchaser -- of not being consummated for lack of funding at
6 the company, and could fail. Mr. Gavin is in the courtroom
7 today and available to make this testimony to the extent the
8 proffer is not accepted.

9 THE COURT: All right. Any objection to the
10 proffer of Mr. Gavin?

11 (No verbal response)

12 THE COURT: With none heard, Mr. Gavin's proffer
13 is accepted.

14 Is there any party that wishes to cross-examine
15 Mr. Gavin regarding the contents of the proffer?

16 (No verbal response)

17 THE COURT: Very well. Hearing no response,
18 Mr. Gavin's testimony is admitted without contradiction.

19 MR. GORDON: Your Honor, I would submit -- I would
20 also submit, which was submitted into evidence earlier in
21 connection with the DIP, the declaration of Mr. Pagliara,
22 which is at Docket 2, just for purposes of the background
23 facts, as mentioned in the first day hearing.

24 THE COURT: I think we just admitted that
25 previously, so I think it's admitted for purposes of today.

1 I appreciate that, though.

2 MR. GORDON: Thank you, Your Honor.

3 So, we are seeking the entry of two orders:
4 first, the bidding procedures order and then following a sale
5 hearing, as set forth in the bidding procedures order, entry
6 of a sale order that would authorize a sale of the assets to
7 the highest-and-best bidder, to the extent there is an
8 auction, or to the stalking horse bidder.

9 Judge, I can go into the law of business judgment
10 and the O'Brien factors and everything that is required. I'm
11 sure the Court is well aware of that law and case law.

12 At this point, Judge, I think we've made our
13 record. We've identified to the Court that this needs to be
14 granted today in order to get this process underway. That
15 there is justification for the timeline that has been
16 proposed, based on the liquidity situation of the debtor, and
17 we would ask that the motion be granted.

18 THE COURT: Before I hear from the U.S. Trustee, I
19 understand the argument with respect to timing. Obviously,
20 the debtor acknowledges that this is exceedingly truncated
21 and fast for purposes of a sale. So, I understand that
22 argument and I'll be happy to hear from the U.S. Trustee and
23 any other party.

24 But it seems to me the other remaining issue with
25 resolution of the break-up fee piece is this question of

1 agreeing to serve as a backup bidder. As a general practice,
2 I believe courts have typically approved and authorized
3 bidding protections for the benefit of the stalking horse
4 predicated upon a series of things, one of which is that
5 it's -- those bidding protections are necessary and, second,
6 part of that transaction contemplates that, in fact, the
7 party entitled to those protections commits to serve as the
8 backup bidder.

9 And I don't necessarily mean to take issue with
10 you, but your point that changing the break-up fee to provide
11 that it is only payable from a closed superior transaction
12 really isn't much of a give. That's really the law.

13 The idea that a break-up fee is payable -- I've
14 seen it many, many times asked for -- I don't think I've ever
15 approved it, that it would be payable under any other
16 circumstance. There is an attenuated circumstance that I
17 have seen on occasion where a debtor simply decides to move
18 forward with a different transaction after the stalking horse
19 has done everything they were supposed to do. Go with a
20 recap. Do something else. Take it off of the market.

21 And in that situation, courts have either found
22 that the bidding protections provided for or authorized
23 payment, even in the absence of that transaction, because the
24 debtor is making that decision eyes open, but otherwise,
25 obviously, a break-up fee and the expense reimbursement are

1 payable exclusively from a closed, superior transaction,
2 because in the absence of that, the debtor can't demonstrate
3 that there's, frankly, a benefit. The math turns upside
4 down.

5 And, likewise, part of the typical condition is
6 that somebody that's interested enough to serve as a stalking
7 horse, to go through that exercise, to propose a transaction
8 that will be tested by the market, is typically expected to
9 agree to serve for some period -- not necessarily forever --
10 but for some period, as a backup bidder. And, again, your
11 observation -- and I don't mean to be getting personal,
12 Mr. Gordon -- but, you know, your observation that there's no
13 harm to the estate because the break-up fee doesn't get paid
14 doesn't really answer that question.

15 The backup bidder is not a break-up fee question.
16 The backup bidder is an estate issue to ensure that in the
17 event that somebody that shows up at an auction and makes a
18 bid that they can't commit or close doesn't leave the estate
19 hanging. And so, that's, to me, a pretty foundational
20 consideration and I don't know that I've had this issue
21 before, so I'd like your thoughts on the trustee's concern,
22 because he's getting some traction.

23 MR. GORDON: Well, Judge, the main reason, from my
24 understanding, why EnergySolutions is not willing to serve as
25 a backup bidder ties right back into the liquidity issues.

1 That they are concerned that to the extent an alternative
2 purchaser is successful at an auction, that time would go by
3 and they would be required to pay a purchase price for
4 something that may not be worth what they had originally
5 contracted for.

6 THE COURT: Okay. That's hardly a novel
7 proposition, you'd agree?

8 MR. GORDON: Yes, Judge, of course this could
9 occur in many, many cases. But we cannot force the proposed
10 stalking horse bidder to accept the term. This was -- of
11 course, this was requested in negotiations. It was not
12 provided. And this is still the highest-and-best offer that
13 has come in for this company.

14 Without this stalking horse bidder, if they didn't
15 get what they were asking for and walked, we would be faced
16 with immediate liquidation of this company. So the --

17 THE COURT: Again, hardly a novel proposition.
18 That just means today is Thursday.

19 MR. GORDON: I understand, Judge. I understand
20 that many companies face similar situations, but the
21 debtor -- again, the debtor can't force --

22 THE COURT: Oh, I understand.

23 MR. GORDON: -- a prospective purchaser to agree
24 to terms. All we can do is present to the Court the highest-
25 and-best offer that we could possibly get.

1 And the question I think before the Court today --
2 and, you know, Mr. Shim is here to testify if we need
3 additional testimony on the efforts and lengths and how hard-
4 fought this APA was, to bolster that, if it's needed.

5 THE COURT: Let's do this. I'd like to at least
6 share some observations with you and then we would take a
7 short break. As I said, I need to deliver a bench ruling, so
8 I will ask the parties to clear the courtroom. It should
9 only take about 10 minutes at 11:30 this morning.

10 But I'd like the parties to confer. I understand
11 the issue with respect to timing and we'll have that
12 discussion. I don't take issue, and the trustee has not
13 challenged the testimony offered by the debtor regarding the
14 circumstances that require it to move forward on the timeline
15 that it does. We'll talk about that.

16 And, again, Mr. Gordon, I think you've been
17 nothing but candid in owning, you know, that we take the
18 cases as they arrive and this debtor has a liquidity issue,
19 so I get that.

20 The issue with the backup bidder, (indiscernible)
21 not necessarily directly addressed. I do have concerns with
22 respect to this because, actually, all of the points that you
23 just raised heighten the need for a backup bidder, frankly.
24 You're talking about a company that is without liquidity.
25 Part of the argument for not being a backup bidder is that if

1 it doesn't close timely, then we're doomed, and, again,
2 that's argument and I'll take it. So I have some issues with
3 that.

4 I am sensitive to the concern that an extended
5 period that might lapse between the approval of a sale
6 hearing and then people don't close, all of a sudden, whether
7 it's a melting ice cube or a pig in a poke or a smoking,
8 radiating ruin, I get it.

9 (Laughter)

10 THE COURT: But I also believe that there may be
11 ways to address that issue, and I think, again, those
12 considerations, as a practical matter, cut both ways. They
13 certainly make it rational for a stalking horse to say, I'm
14 not sure I want to stay onboard for this over that extended
15 period of time, perhaps. But it also speaks to the issue
16 that in order to get the benefits associated with being the
17 stalking horse, there are trade-offs that go with that. I
18 understand that the debtor only has limited ability to
19 negotiate provisions and I respect that. It's a process and
20 the Committee has engaged, as well, and the U.S. Trustee has
21 raised concerns.

22 My point would be the U.S. Trustee is getting some
23 traction. It may be possible to structure this in a way that
24 provides for either a period of time that people could live
25 with that would make sense. I'm not really arguing with the

1 purchaser regarding the practical concerns that they have. I
2 mean, this has been the chapter and verse from the first day
3 hearing a few weeks ago, so I get it.

4 But I would also be deeply reluctant to approve
5 those provisions and to overrule a U.S. Trustee objection on
6 what is a pretty baseline requirement because -- and, again,
7 I was giving you a bit of a hard time -- but the concern is
8 that every single case that comes in would present precisely
9 this dynamic and, you know, what is it (indiscernible) why is
10 this case different from all others?

11 (Laughter)

12 THE COURT: With that, why don't we take a short
13 break. I appreciate everyone's patience.

14 Again, I expect that my ruling will take probably
15 about 15 minutes to deliver, then we'll reconvene. I'll have
16 the court reporter give everybody a heads-up.

17 But if you'll just stay close, then we'll look to
18 reconvene before noon. I appreciate your patience.

19 Stand in recess. Thank you.

20 MR. GORDON: Thank you.

21 (Recess taken at 11:17 a.m.)

22 (Proceedings resumed at 12:15 p.m.)

23 THE COURT: Please be seated.

24 My apologies. That break was a little longer than
25 intended.

1 MR. GORDON: No problem, Your Honor.

2 THE COURT: Mr. Gordon, are you ready?

3 MR. GORDON: Are we back on?

4 THE COURT: We are back on.

5 MR. GORDON: So the break actually did give us
6 some time to speak to Mr. Egan, who's in the courtroom,
7 counselor for the stalking horse bidder.

8 The stalking horse bidder, from what I understand
9 from Mr. Egan, is still not willing to serve as a backup
10 bidder but is willing to make all efforts to close the sale
11 by September 8th.

12 I would point out, Judge, that there are a couple
13 of sections of the APA that permit the stalking horse bidder
14 to terminate the APA in the event that they are forced or
15 required to be a backup bidder, and those are in
16 Sections 6.13, which is specifically entitled "No Backup
17 Bidder Obligation," and also in 11.01(j), which states that
18 the agreement may be terminated by the buyer if the bidding
19 procedures order, including the bidding procedures, breakup
20 fee, or buyer expense reimbursement or the sale order is
21 modified in any material respect without their consent.

22 So, as a practical matter, Judge, if the stalking
23 horse bidder terminates the agreement and walks, we would end
24 up with a naked auction, which Energy Solutions may or may
25 not show up at, and --

1 THE COURT: When is the sale hearing?

2 MR. GORDON: The proposed sale hearing was for
3 September 7th.

4 THE COURT: I'm -- this is an odd colloquy and it
5 will be easier to have with you because the stalking horse
6 can claim to not be part of this colloquy at this point. But
7 here's -- I'm not inclined and not in the habit of
8 negotiating. But I do believe there are some requirements
9 that are necessary.

10 I'm not disputing anything that you're
11 identifying. Every transaction has a stalking horse
12 agreement to walk. All right? As a practical matter, if the
13 bidding protections as provided in the motion aren't approved
14 in their -- in whole cloth by the Court, the stalking horse
15 has a walk right. I get that.

16 There have been, obviously, a host of
17 modifications that have materially resolved or improved a bid
18 protection package and now, frankly, bidding procedures that
19 were wholly unacceptable. Now, again, I don't fault anybody
20 for filing a motion that I'm not going to approve. I rely
21 upon the committee, the U.S. Trustee, other stakeholders, and
22 frankly, the Court to address some of these issues. So I am
23 sensitive to your concern.

24 But it would seem to me that, if -- I guess I
25 would ask: What's my limiting principle here.

1 MR. GORDON: Well, Judge --

2 THE COURT: All right? Because I've done a couple
3 of sales.

4 MR. GORDON: Yes.

5 THE COURT: And there is one --

6 MR. GORDON: I'm sorry. I didn't mean to
7 interrupt.

8 THE COURT: There's -- in all American law
9 schools, there is one course on bankruptcy sales, and I teach
10 it. And we've had this discussion. And again, you're the
11 one standing up there taking the beating and you're being a
12 good sport about it.

13 But my point is this. And we -- I had another
14 sale hearing that I've covered for Judge Silverstein that
15 raised this constellation of issues. And I start with a
16 couple of propositions:

17 We -- excuse me. We have done many, many sales.
18 Every sale, every sale case, every 363 case is determined and
19 driven by its own particular facts and circumstances. But
20 the fact of the matter is that the Court or I am highly
21 cognizant of the dynamic that is in front of me. I am
22 entirely cognizant. And I speak only hypothetically, I'm not
23 casting aspersions on anybody here. But every single aspect
24 of a sale case can be and typically is carefully engineered
25 by stakeholders -- lenders, debtors, buyers, other folks --

1 to create precisely the distress and drama that require
2 approval on the terms stated.

3 This is Lake Wobegon. All of my debtors are
4 special and above average. And so I ask you -- and I'm not
5 even asking for an answer -- if this debtor doesn't need to
6 be a backup bidder -- which is, again, a standard requirement
7 traditionally -- why would the next stalking horse agree to
8 do it?

9 MR. GORDON: Judge, I think every -- as we're
10 taught in law school, every case is unique and has its own
11 factors and own time line, and that's why cases can be
12 distinguished one from another. Your Honor hears many, many
13 cases all day long, and I'm presuming that sometimes they
14 blend into one big bankruptcy case, but --

15 THE COURT: Oh, they're all special to me.

16 (Laughter)

17 MR. GORDON: But the fact of the matter here is
18 that we have 800 jobs at issue, we have the value of the
19 company at issue --

20 THE COURT: Mr. Gordon --

21 MR. GORDON: -- we --

22 THE COURT: -- respectfully, every single fact
23 that you've identified just means today is Thursday.

24 MR. GORDON: I understand.

25 THE COURT: So here's what we're going to do.

1 We're going to take a short break. I am not prepared to
2 approve the breakup fee, expense reimbursement, and other
3 protections that would be there without a commitment to
4 provide and serve as a backup bidder.

5 I didn't say what the time line would be. And I
6 appreciate, frankly, Mr. Keane and the purchaser's offer to
7 serve as a backup -- or to close immediately, and I accept at
8 face value their intention to do so. I would assume that, if
9 somebody doesn't close on the time line that they have, that
10 they would be prepared to close -- I'm not talking about
11 leaving it open for 30 days. I'm talking about whether or
12 not the debtor has demonstrated a need to close and the
13 stalking horse is committed to use all commercially
14 reasonable efforts to close within 24 hours of a sale. We've
15 seen that before. In practice, outside of this very
16 courtroom, I've closed sales, generally to foreclose appeals,
17 but I've closed sales, you know, with a handshake in the
18 hallway. I know it's harder than that.

19 But I need a backup bidder, and this case actually
20 demonstrates why I need a backup bidder. You are
21 completely -- I'm choosing the word -- stuck if this can't
22 close. You don't have funding. I get it. You didn't create
23 this. But no, this case needs a backup bidder.

24 If somebody wants a breakup fee and an expense
25 reimbursement and the structure that goes with a sale

1 process, they need to be a backup bidder. It can be on a
2 time line that the debtor can toggle and decide, if the
3 winning bidder hasn't closed by the time these guys would
4 have agreed to close, we're going to switch to them or we
5 lose them. One day is probably not enough, but it wouldn't
6 have to be much. But I think that this estate needs one.

7 And I'm kind of doing this with you because,
8 again, I understand that every case has its own particular
9 circumstances. I understand that every transaction
10 participant has their own peculiar constellation of issues
11 that are responsive. But there is -- there are 20 people, 25
12 people in this courtroom. Not 1 of you can tell you -- can
13 tell me something right now that I don't know about this case
14 or that would make a difference.

15 You got employees? No one is more solicitous of
16 the concerns of employees. You have creditors? I have a
17 creditors' committee with fiduciary obligations, I understand
18 that. Nobody wants to tank this sale.

19 But my colleagues have observed over the past
20 couple of weeks and as recently as 20 minutes ago in Judge
21 Silverstein's courtroom, where Judge Goldblatt was using it,
22 that sales are moving in a direction and structures are
23 moving in a direction that is not welcome. I'm not accusing
24 anybody of being nefarious. But the fact of the matter is,
25 again, we go into this with eyes open. Every bit of this

1 structure requires that the Court focus on a single thing.

2 And again, in the course that I teach, I always ask this
3 question of law students:

4 A few days ago, you know, students, I approved a
5 sale for \$35 million. And I ask what is -- what's my cut,
6 what's my percentage. And I get these answers that are like
7 3 percent, do you get 10 percent. I'm like, if I got that, I
8 wouldn't be talking to you.

9 (Laughter)

10 THE COURT: The answer is I don't -- the
11 consideration is of limited significance, I care only and
12 almost exclusively about the process. And Mr. Cudia, I
13 think, has the same institutional responsibility.

14 And the buyer here wants a good faith finding and
15 a free and clear order. That's predicated, not necessarily
16 on whether you need it or whether you're over a barrel, but
17 whether or not there is a process here that is sufficient for
18 me to give you those protections.

19 And so we're going to take a five-minute break and
20 we're going to see whether or not we can square this circle.
21 And again, I'm un -- I'm dealing directly with you because I
22 don't really feel like negotiating with people at the podium.

23 MR. GORDON: Understood, Your Honor.

24 THE COURT: Yeah. Counsel, did you wish to be
25 heard?

1 MR. KHEZRI: Your Honor, can the committee speak
2 for a minute or two before we adjourn?

3 THE COURT: Sure.

4 MR. KHEZRI: Thank you.

5 Good afternoon, Your Honor. Phil Khezri,
6 Lowenstein Sandler, on behalf of the Official Committee of
7 Unsecured Creditors.

8 THE COURT: Welcome.

9 MR. KHEZRI: It's a pleasure to finally appear
10 before you.

11 Speaking about your course on bankruptcy sales,
12 it's been about a decade since I was in that class.

13 (Laughter)

14 MR. KHEZRI: So it may be appropriate for me to
15 address ...

16 (Laughter)

17 THE COURT: That's what got me thinking about it,
18 Mr. Khezri.

19 MR. KHEZRI: Yes. Some of the points.

20 So bankruptcy theory and bankruptcy practice, as
21 I've learned, is a little different.

22 I understand where Your Honor is coming from.
23 What has the stalking horse here given up to maybe have this
24 sort of special treatment? The consideration has flown from
25 keeping the DIP lenders happy here. That consideration has

1 flow to the committee and general unsecured creditors in
2 terms of the concessions that were given as part of the DIP
3 lending.

4 The committee is seeing here for its constituents,
5 at the end of the day, almost a million dollars, up to a
6 million dollars plus any sort of sharing mechanism. That is
7 a significant benefit here for general unsecured creditors.
8 While it didn't flow directly from the stalking horse, it has
9 gone through the DIP lenders to the general unsecured
10 creditors because the stalking horse is keeping the DIP
11 lenders happy here with a floor.

12 We did ask initially that they be a backup bidder.
13 Your Honor, you shouldn't be surprised, it's a game of
14 chicken, give and take, here and there on what the committee
15 can get. But at the end of the day, we do not want to lose
16 this bid.

17 THE COURT: I understand.

18 MR. KHEZRI: We understand that they have a lot of
19 leverage now. But this may become a moot point if there are
20 no other bidders. We have a financial advisor who's been
21 speaking with the debtors' financial advisor. There's been a
22 long marketing history here. We don't know if there's going
23 to be another bid. So this is all hypothetical at the end of
24 the day.

25 But if it -- if there is an auction and there is

1 competitive bidding, the leverage shifts and the stalking
2 horse loses their leverage at that point. And the committee
3 can be involved and require that any sort of topping bid,
4 they have to be a backup at that point because we'll have
5 more leverage at the end of the day. But at this point, I
6 think everybody is happy and aligned with having the stalking
7 horse -- be it approved and focusing on a sale process that
8 benefits everybody and being aligned.

9 If we have some sort of naked auction and it's
10 unsuccessful, this case will turn into unmitigated
11 litigation, most likely, over the sale proceeds, over claims
12 and causes of action, and the committee is going to lose that
13 million-dollar settlement at the end of the day.

14 Another point is the stalking horse has
15 represented -- and we've built in a structure here -- that
16 they are going to be assuming substantially all of the
17 business agreements. So, in terms of keeping constituents
18 happy here and limiting the general unsecured claims pool, it
19 keeps a lot of third parties here, a lot of creditors happy.
20 We'll most likely keep a lot of the current employees
21 employed at the end of the day. So, I mean, all these
22 factors, I think, factor into the committee's decision not to
23 upset the cart.

24 I understand that this may not be unique to you,
25 but there are benefits that have flown from this stalking

1 horse bid --

2 THE COURT: I --

3 MR. KHEZRI: -- and we just want the Court to be
4 cognizant of that.

5 THE COURT: Mr. Khezri, I very much appreciate
6 your comments. And again, as I said, I place significant
7 weight on the position of the Official Committee of Unsecured
8 Creditors and I appreciate your and Mr. Cudia's and the
9 others' engagement.

10 And my concerns are not simply sterile about, you
11 know, applying standards, et cetera, but it -- that is part
12 of it. I understand and respect the specific concerns that
13 the committee has and I don't dispute that there is a
14 significant improvement, but -- I'm not going to ask to
15 debate with you. But you would agree that the benefits that
16 you've described flowing from this transaction could equally
17 support the importance and essential opportunity to keep a
18 backup bidder.

19 There may not be -- this may be moot. We have a
20 lot of moot arguments.

21 MR. KHEZRI: Understood, Your Honor.

22 THE COURT: No, I -- look, I get it. I
23 understand --

24 MR. KHEZRI: But --

25 THE COURT: -- and --

1 MR. KHEZRI: -- the committee is in place
2 throughout the auction process. So, if we do select a higher
3 and better bid, one of the factors that the committee and all
4 parties here will be looking at is the ability to close
5 and --

6 THE COURT: The -- I'm going to go back to the
7 comment that I had, which is that I see nothing unique --

8 MR. KHEZRI: Okay.

9 THE COURT: -- about the circumstances that are
10 presented to me today. And I have every confidence that,
11 were I to walk from this proposition -- which I think is not
12 a controversial or unusual proposition that a stalking horse
13 entitled to these protections commit to being a backup bidder
14 for whatever time line is appropriate under the
15 circumstances.

16 This debtor may choose to be able to -- may find a
17 higher bidder and say, but my friend, you have X hours to
18 close or a day or two. I make no comment. You people know
19 the transaction better than I do. But I don't necessarily
20 want to put, frankly, that burden -- and I appreciate that
21 you're prepared to accept it and I understand the dynamic
22 you're talking about in the context of an auction, that
23 things can happen and that's good. But I don't necessarily
24 want to put that burden on a committee or other stakeholders
25 in the context of an auction that I can't really predict what

1 the process or the dynamic would be.

2 It's -- it is not an unusual, it is not a rare, it
3 is not a substantial ask, it is standard and I think it
4 should be standard. And if it's not, if it would be
5 appropriate to abandon that standard requirement, then I defy
6 you to find a case that I'm going to have in front of me in
7 the next three months that doesn't fit squarely these
8 circumstances.

9 And so I think that there is a lot of candle power
10 in this room that will be able to address this issue. I make
11 no comment about the time line. Time lines are what they
12 are, I mean, in terms of, you know, how long. But you need a
13 backup -- you need a backup bidder.

14 We're going to take a five-minute break. We'll
15 stand in recess.

16 (Recess taken at 12:31 p.m.)

17 (Proceedings resume at 2:03 p.m.)

18 THE COURT: Please be seated.

19 Mr. Gordon --

20 MR. GORDON: Yes, Your Honor.

21 THE COURT: -- how are we?

22 MR. GORDON: I, again, appreciate the Court's
23 patience. There are obviously many parties in the room.

24 The discussions remain ongoing. And I believe
25 we've come up with a simple workaround, at least until

1 Monday, if Your Honor would entertain it. And we understand
2 the Court's concerns raised with respect to the stalking
3 horse bidder not serving as a backup bidder.

4 At this time, we would simply ask the Court to
5 enter a scheduling order with respect to the sale and, if the
6 Court's docket and schedule allow, to continue the relief
7 requested and the remaining portion, which would involve the
8 bid protections that have been requested to be heard on
9 Monday, September 21st.

10 And the reason why I'm picking that date --

11 THE COURT: August 21st.

12 UNIDENTIFIED: August 21st.

13 MR. GORDON: Oh, I'm sorry.

14 The reason why I'm picking August 21st is because,
15 under Section 11.01(i) of the asset purchase agreement, that
16 gives the debtor until 30 days after the petition date to get
17 a sale procedures order entered. So that's the outside date
18 under the APA as it exists.

19 And we would be willing to come back here at any
20 time. Given the expense to the estate, we would ask that, if
21 the Court would entertain and allow folks to appear remotely,
22 if need be.

23 THE COURT: A couple of things:

24 First, I don't know where Mr. Cudia stands on the
25 trustee's objection to the overall time line to begin with,

1 so I certainly don't want to get ahead of ourselves.

2 I would also note that, on Monday and all of next
3 week, I will be out of the country. And so, if need be and
4 if it were appropriate and if the other pieces fall in, then
5 I would look to find you a duty judge available to serve.

6 I guess I'm trying to figure out, though, what
7 happens on Monday because this is the same discussion --

8 MR. GORDON: Well --

9 THE COURT: -- unless something happens over the
10 next three or four days.

11 MR. GORDON: There have been discussions amongst
12 the parties, including the lenders, for potential workarounds
13 that I'm not at liberty to announce right now. But the hope
14 is, is that we can pivot and have an -- you know, an
15 alternative potential to propose that may work.

16 Lenders counsel wants to be heard on that, if
17 that's okay.

18 THE COURT: Mr. Ward.

19 MR. WARD: Thanks, Your Honor.

20 We haven't spoken with our clients, so we're
21 not -- we really can't put anything on the record.

22 THE COURT: Okay.

23 MR. WARD: What I can tell Your Honor is that the
24 buyer has not changed from its position, that's number one,
25 and that's how I would have started after this recess. So

1 we're in the same predicament that we were in. That should
2 be made clear to Your Honor.

3 So we have to come up with an alternate structure
4 here. And I think there may be something that would work
5 out. I think all of the parties in the room would be much
6 obliged if you happen to have a few minutes in a chambers
7 conference, not on the record, we could disclose what at
8 least the parties are thinking and if Your Honor would
9 suggest that that make sense because I also don't want to put
10 Your Honor in a predicament where we come back next week,
11 when Your Honor is out of the country and present our
12 proposed solution to a duty judge who hasn't run that
13 approach by you. And I know this is an issue is of the
14 utmost importance to you, that was made clear. So that's
15 what I would suggest, respectfully, Your Honor.

16 THE COURT: Counsel?

17 MR. AUDLEY: Yeah. Your Honor, well, in terms of
18 timing with your schedule, would tomorrow potentially be an
19 option to come back and see you and see whether we can try
20 and get this resolved?

21 THE COURT: Tomorrow morning via Zoom.

22 MR. WARD: Could we still do the chambers
23 conference to kind of run the thought by you, Your Honor?

24 THE COURT: If you want. But I think I'd like to
25 hear from Mr. Cudia.

1 MR. WARD: Very good. Thanks, Your Honor.

2 THE COURT: Good afternoon, sir.

3 MR. CUDIA: Good afternoon, Your Honor. Joseph
4 Cudia for the United States Trustee.

5 I mean, frankly, at this point, I don't understand
6 why we're still here. It's been -- we've been here now over
7 four hours. You've given the debtors and all the parties-in-
8 interest an opportunity to go back three times.

9 THE COURT: I am a famously --

10 MR. CUDIA: Yes.

11 THE COURT: -- patient man.

12 MR. CUDIA: That is true. But I don't see where
13 the added delay, at this point, is going to change the
14 position of the buyer. I mean, I think it's been made clear
15 that the buyer does not want to be the backup bidder.

16 And my concern with any further delays is it
17 impinges even further on the time line that we're talking
18 about. You know, our -- the UST's problem with the time line
19 as it currently stands is the compression up front.

20 THE COURT: Uh-huh.

21 MR. CUDIA: It's the fact that, for another bidder
22 to have to come in here once they get the -- once they get
23 the bid procedures, have to become a call -- you know, a
24 potential bidder, have to formulate a bid, have to seek out
25 financing, it just -- it makes it so that anybody that's not

1 already involved is just not going to have time.

2 So that really was -- that really was the
3 substance of my argument with the bid procedures as they've
4 been amended, which I will grant have been improved and have
5 been improved on the back end. But again, that comes at the
6 expense of compressing the front end, which is now our major
7 concern with that.

8 And the concern from the UST's perspective right
9 now is any further delay in this just compresses that time
10 period to make it a fait accompli that we're not going to
11 have anybody bidding but people that are already involved.

12 THE COURT: I understand.

13 Mr. Gordon.

14 MR. GORDON: Yeah, Judge, I think one aspect that
15 Mr. Cudia's argument is missing here is that this process has
16 been going on for months and months and months. And if the
17 Court is willing to hear from Mr. Shim on the likelihood of
18 other bidders and how many effort -- how many efforts and how
19 much interest has been -- has come in from the beginning to
20 the end to today, I think that -- you know, yes, these dates
21 are close together, certainly. But that's not taking into
22 account all of the work and all of the marketing and the
23 robust process that has gone on through this date. So I
24 think it's sort of an illusory argument.

25 And what we're asking for here is just a little

1 bit of time, you know, at least through tomorrow morning, to
2 see if we can save this case.

3 THE COURT: Mr. Ward asked for a chambers
4 conference. I would be happy to oblige. I'll step out. My
5 assistant will bring the parties appropriate to a chambers
6 conference around to the library. We'll meet momentarily.

7 I would ask that the Zoom room remain open.
8 Obviously, the chambers conference will be off -- will not be
9 on Zoom. But that way, we don't have to have people come in
10 and out.

11 And to the extent that parties that are
12 participating virtually have had to jump off and then come
13 back in, I do apologize for any inconvenience associated with
14 that, but we are where we are.

15 We're going to take a very short recess. My -- as
16 noted, my -- people will bring you around and we'll have a
17 chambers conference. Stand in recess.

18 (Recess taken at 2:11 p.m.)

19 (Proceedings resume at 2:31 p.m.)

20 THE COURT: Please be seated. Groundhog Day.

21 (Laughter)

22 THE COURT: Mr. Gordon, what's the status?

23 MR. GORDON: So, Your Honor, again, we're simply
24 asking that today's hearing be continued until tomorrow with
25 options to join by Zoom.

1 If Your Honor wanted to knock out the -- I know
2 it's been a long day. But if you wanted to knock out the
3 stay relief stuff, that's probably just a couple of minutes.

4 THE COURT: I think we should probably do that.

5 I'd like to -- the record reflects that there was
6 a chambers conference with notional proposals that don't
7 necessarily have full client support, et cetera, at this
8 point, with creative approaches to try to thread the issue
9 that the Court has, which is that the Court is not prepared
10 to enter a bid procedures order without service as a backup
11 bidder, given that the bid protections provide estate
12 obligations for the benefit of the lender -- I'm sorry -- for
13 the benefit of the stalking horse. That's a dialogue that
14 we've now had for a few hours on and off the record and there
15 are proposals that are being kicked around right now that
16 need time to get fleshed out and either to get approval or
17 not.

18 As I said, I am traveling next week, so -- and I
19 would rather not leave this to the good offices of probably
20 Judge Silverstein on Monday. And Mr. Gordon, I think you
21 fairly anticipated that this would be a difficult thing to --
22 following the hearing that we've had, to put on to a duty
23 judge, so I would like to try to close this loop tomorrow.

24 I would suggest and direct that we adjourn the bid
25 procedures hearing tomorrow morning at 9:30 a.m. That

1 hearing will be conducted via Zoom. There are no evidentiary
2 disputes in front of me today, the declarations have been
3 admitted. And as a practical matter, we're not necessarily
4 talking about evidentiary disputes. We understand the issues
5 that are raised in the objection by the United States Trustee
6 and the Court has expressed its own concerns and
7 observations. So I think that a Zoom hearing would be
8 appropriate to try to close the loop on this, and so 9:30
9 tomorrow morning would work.

10 I would ask that the debtor promptly file an
11 agenda reflecting that. I don't need a new binder or
12 anything else, but just so that the docket is clear and the
13 Zoom information, et cetera, is available to stakeholders.
14 But otherwise, I don't think it benefits anybody to have
15 everybody stay here. If you can stay here and resolve it,
16 god bless you; if you can't, then, you know, you should work
17 the phones tonight.

18 With respect to the balance of the agenda, given
19 that I've only got limited time tomorrow morning, I think it
20 would make sense, if it's okay with you, Mr. Gordon, that we
21 move to those last two items, which are lift-stays, subject
22 to, I think, limited objections by the debtor. And I got the
23 sense from the papers that there was a likely or plausible
24 resolution in the offing, if there's something I need to do
25 with them. But it seems to me to make sense that we bang

1 those out. Does that work for you?

2 MR. GORDON: Yes, Judge. Yes.

3 THE COURT: All right. Well, before we turn to
4 those motions, I would ask if there are any questions or
5 anybody wished to be heard with respect to the bid
6 procedures, which we'll carry over.

7 I know that there are many or a number of
8 additional objections or reservations that were filed in
9 connection with that. Parties will have an opportunity to be
10 heard on them. But I think the debtors' representations and
11 the record before me seems to be that the issues have all
12 been resolved, other than those that are raised by the Office
13 of the United States Trustee.

14 MR. GORDON: That's accurate, Judge.

15 THE COURT: Okay.

16 MR. GORDON: And I would also thank the Court
17 for -- again, for its patience and time today in working
18 through these various issues with many different parties.

19 THE COURT: Great.

20 MR. GORDON: Thank you, Your Honor.

21 And Mr. Lepene is going to handle --

22 THE COURT: Sure.

23 MR. GORDON: -- the lift-stay relief.

24 THE COURT: Mr. Lepene.

25 MR. LEPENE: Yes. Your Honor, as you're aware,

1 there were several omnibus motions filed in connection with
2 the relief stay [sic]. The debtors did not object to the
3 relief being sought, all we were trying to accomplish was a
4 reservation of rights.

5 THE COURT: Uh-huh.

6 MR. LEPENE: And it's my understanding, based on
7 the consensus that we've reached amongst the parties, that
8 the language in the various proposed orders in each of the
9 stay relief motions have -- contain language that satisfies
10 everyone's concerns. And again, it's just simply a
11 reservation of rights.

12 THE COURT: Can we take the two in order? And
13 just to make sure that we've got our record covered.

14 MR. LEPENE: Sure.

15 THE COURT: The first item was the motion -- I
16 think it appears at Docket Number 9 -- or Agenda --

17 MR. LEPENE: 104.

18 THE COURT: -- Item Number 9. And this is the
19 Liberty Mutual motion --

20 MR. LEPENE: Uh-huh.

21 THE COURT: -- unless I'm mistaken. I think we
22 have counsel here.

23 MR. LEPENE: Yep.

24 MS. VULPIO: Yes, I'm here. Good afternoon, Your
25 Honor.

1 THE COURT: Good afternoon. Welcome.

2 MS. VULPIO: Amy Vulpio of White and Williams for
3 the three sureties, the co-sureties: Liberty Mutual, Arch
4 Insurance Company, and Berkshire Hathaway Insurance Company.
5 And my colleague Michael Ingrassia is here with me, as well.

6 THE COURT: Great.

7 MS. VULPIO: Yes, we were very pleased that we
8 were able to come to an agreement on a proposed stay relief
9 order.

10 THE COURT: You know, you should have suggested
11 that we deal with your motions out of order.

12 (Laughter)

13 MS. VULPIO: I -- that has dawned on me once or
14 twice.

15 THE COURT: It could --

16 (Laughter)

17 THE COURT: Well, you know, I don't know how
18 apparent it was that it dawned on me before and then
19 Mr. Lepene just said let's roll into the DIP. So you have
20 been very patient.

21 MS. VULPIO: Thank you. Sorry.

22 (Laughter)

23 MS. VULPIO: So, with respect to our proposed
24 order, our proposed order had been slightly different and we
25 were asked if we would conform our order to the stay relief

1 order that had been negotiated with the other sureties, which
2 we agreed to do.

3 So what we would propose is to submit under
4 certification of counsel the agreed order that I think
5 everyone has been on board with. I circulated it last night.
6 I think there was one final tweak that was discussed today,
7 but I think we are all in agreement.

8 THE COURT: Okay. Mr. Khezri, does the committee
9 have any position with respect to the lift-stay applications?

10 MR. KHEZRI: No, Your Honor. We'd just like to
11 see the final order before it's submitted.

12 THE COURT: Of course.

13 MS. VULPIO: Sure.

14 THE COURT: Okay. Does anyone else wish to be
15 heard with respect to the Liberty Mutual matter?

16 (No verbal response)

17 THE COURT: All right. I would be prepared to
18 enter that order and grant the relief requested on the agreed
19 form of order described by counsel. I'll look for that under
20 certification. It sounds like you're finalizing that order
21 now.

22 MS. VULPIO: Yes. Thank you, Your Honor.

23 THE COURT: Thank you again for your patience.

24 The next motion, I think, is the motion of Lexon.
25 Good afternoon.

1 MR. PRIMACK: Good afternoon, Your Honor. David
2 Primack, McElroy, Deutsch, Mulvaney & Carpenter, on behalf of
3 Lexon Insurance Company.

4 THE COURT: Welcome. It's good to see you.

5 MR. PRIMACK: Thank you, Your Honor. And
6 likewise, again, with the ...

7 (Laughter)

8 MR. PRIMACK: The sureties all worked together
9 with all of the various parties to come up with an agreed-
10 upon form, and so the differences between our forms are just
11 related to how the motions had been --

12 THE COURT: The specifics of your -- right. But
13 you're satisfied with the form of order and the language that
14 the debtor has requested added to your relief, right?

15 MR. PRIMACK: Correct.

16 THE COURT: Okay.

17 MR. PRIMACK: Correct.

18 THE COURT: The committee has advised they have no
19 other issues.

20 I'd ask if anyone else wishes to be heard with
21 respect to the Lexon application?

22 (No verbal response)

23 THE COURT: Very well.

24 I'm going to grant that motion consistent with the
25 Court's feeling on the Liberty Mutual motion and I will look

1 for that order under certification and we'll enter that
2 promptly. Okay?

3 MR. PRIMACK: Thank you, Your Honor.

4 THE COURT: And we have -- is it Harco National?

5 MR. LOOMIS: Yes.

6 THE COURT: Oh --

7 MR. LOOMIS: Yes, Your Honor. Gaston Loomis from
8 McElroy Deutsch on behalf of Harco National Insurance
9 Company.

10 Again, we have received comments from various
11 parties. And I did have a clean form of order to bring to
12 the Court today, but I actually got several comments while we
13 were sitting here, so I will submit that under certification
14 of counsel later.

15 THE COURT: All right. We'll look for all three
16 of them under certification of counsel and we'll go ahead and
17 get them entered.

18 I would ask, just to close the loop: Does anyone
19 else wish to be heard with respect to the Harco matter?

20 (No verbal response)

21 THE COURT: All right. I'm going to go ahead and
22 grant that motion, as well, for the reasons stated, and I
23 will look for the agreed form of order under certification.
24 Okay?

25 MR. LOOMIS: Thank you, Your Honor.

1 THE COURT: Any other matters that we have this
2 afternoon? Mr. Desgrosseilliers?

3 MR. DESGROSSEILLIERS: No, Your Honor. I was
4 going to say, thankfully, that concludes the matters --

5 THE COURT: Sure.

6 MR. DESGROSSEILLIERS: -- for this afternoon.

7 THE COURT: Okay. We'll reconvene at 9:30
8 tomorrow morning. Again, I don't see this being an
9 evidentiary proceeding. And it would be exclusively via Zoom
10 for tomorrow.

11 Safe travels, all.

12 MR. GORDON: Thank you, Your Honor.

13 THE COURT: And I'll look forward to seeing you in
14 the morning. Thank you for your patience.

15 COUNSEL: Thank you. Thank you, Your Honor.

16 THE COURT: We stand --

17 (Proceedings adjourned to 8/18/23 at 9:30 a.m.)

18 (Concluded at 2:40 p.m.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling August 17, 2023
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams August 17, 2023
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Coleen Rand August 17, 2023
Coleen Rand, CET-341
Certified Court Transcriptionist
For Reliable