

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: COBALT INTERNATIONAL ENERGY, INC., <i>et al.</i> , ¹ Debtors.	§ § § § § § § § §	Civil Action No. 4:18-cv-10239 Bankruptcy Case No. 17-36709
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DEBTORS' DESIGNATION OF RECORD

The Debtors file this designation of additional items to be included in the record on appeal pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure with respect to appellant Whitton Petroleum Services Limited's appeal from the Order (I) Confirming the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates and (II) Approving The Sale Transaction, dated April 5, 2018 (the "Order") entered by the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").

Debtors reserve their rights to designate additional items for inclusion in the record. For items designated, the designation includes all documents referenced or filed with the particular document number including, without limitation, all statements, appendices, exhibits, attachments, declarations, and affidavits related thereto.

¹ The Debtors and the last four digits of each Debtor's federal tax identification number are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316) (collectively, the "Debtors").



DESIGNATION OF RECORD

In addition to those materials designated by Whitton Petroleum Services Limited (*see* Dkt. 839), Debtors designate each of the documents below from the above-captioned case for inclusion in the record on appeal.

I. DOCUMENTS FILED IN CASE NO. 17-36709

Pursuant to Rule 8009(a)(4), all docket entries filed in Case No. 17-36709, including, but not limited to:

Designation No.	Filing Date	Docket Number	Description
1	01/25/2018	301	Final Order (I) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, and 363, and (III) Granting Related Relief
2	03/07/2018	542	Notice of Successful Bidders and Backup Bidders (Filed by Cobalt International Energy, Inc.)
3	03/16/2018	594	Notice of Filing of Certain Successful Bid Documents (Filed by Cobalt International Energy, Inc.)
4	03/29/2018	677	Notice of Filing of Certain Successful Bid Documents (Filed by Cobalt International Energy, Inc.)
5	04/01/2018	705	Notice of Filing of Redline of Fourth Amended Joint Chapter 11 Plan (With Technical Modifications) of Cobalt International Energy, Inc. and Its Debtor Affiliates (Filed by Cobalt International Energy, Inc.)

6	04/02/2018	721	Certification of P. Joseph Morrow IV with Respect to the Tabulation of Votes on the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and its Debtor Affiliates (Filed by Cobalt International Energy, Inc.)
7	04/02/2018	724	Declaration of Gideon Tadmor in Support of the Sale of the Shenandoah Assets (Filed by Navitas Petroleum US, LLC)
8	04/02/2018	732	Declaration of David D. Powell, Chief Financial Officer of Cobalt International Energy, Inc., in Support of Confirmation of the Debtors' Joint Chapter 11 Plan (Filed by Cobalt International Energy, Inc.)
9	04/03/2018	747	Notice of Filing of Redline of Fourth Amended Joint Chapter 11 Plan (with Technical Modifications) of Cobalt International Energy, Inc. and its Debtor Affiliates (Filed by Cobalt International Energy, Inc.)
10	04/04/2018	769	Notice of Filing of Redline of Fourth Amended Joint Chapter 11 Plan (with Technical Modifications) of Cobalt International Energy, Inc. and its Debtor Affiliates (Filed by Cobalt International Energy, Inc.)

II. HEARING TRANSCRIPTS

Pursuant to Rule 8009(a)(4), the following additional transcripts, which contain opinions, findings of facts, conclusions of laws, and/or oral rulings relating to the issues on appeal:

Designation No.	Filing Date	Docket Number	Description
11	01/29/2018	319	Transcript re: Motion Hearings (Complete Hearing) Held on January 25, 2018

12	01/29/2018	320	Transcript re: Continued Motion Hearings Held on January 26, 2018
13	02/26/2018	486	Transcript re: Motion Hearing Held on February 22, 201[8]
14	03/13/2018	579	Transcript re: Hearing re Disclosure Statement Held on March 8, 2018

III. ADMITTED CONFIRMATION HEARING EXHIBITS NOT ON DOCKET

The below admitted confirmation hearing exhibits are being filed on the docket as attachments to the Debtors' Designation of Record:

Designation No.	Admitted Date	Exhibit Number	Description
15	04/04/2018	Debtors' Exhibit 87	12/6/2016 First Lien Indenture
16	04/04/2018	Debtors' Exhibit 88	12/6/2016 Second Lien Indenture
17	04/03/2018	Debtors' Exhibit 129	2/16/2018 presentation to the disinterested directors on Derivative Lawsuits ²
18	04/03/2018	Debtors' Exhibit 130	2/16/2018 presentation to the disinterested directors on Exchange Transactions
19	04/04/2018	Debtors' Exhibit 138	2/28/2018 IC spreadsheet ³
20	04/03/2018	Debtors' Exhibit 148	3/23/2018 Revised Cost Benefit Analysis ⁴
21	04/04/2018	Debtors' Exhibit 155	Group exhibit: Invoice materials from Cobalt

² Admitted for limited purpose. (Dkt. 778 at 121:8–16.)

³ Admitted for limited purpose. (Dkt. 790 at 49:8–50:8.)

⁴ Admitted for limited purpose. (Dkt. 778 at 58:21–59:8.)

22	04/04/2018	Debtors' Exhibit 175	Rule 1006 Summary of DX 155
23	04/04/2018	Debtors' Exhibit 177	Business Records Declaration of David D. Powell, Chief Financial Officer of Cobalt International Energy, Inc.

IV. ADDITIONAL MATERIALS

The below hearing exhibits are being filed on the docket as attachments to the Debtors'

Designation of Record:

Designation No.	Exhibit Number	Description
24	Dkt. 272, ⁵ Debtors' Exhibit 46	8/22/2015 Purchase and Sale Agreement
25	Dkt. 728, Debtors' Exhibit 140	3/6/2018 Bankruptcy Auction Transcript

Debtors also note that Whitton Petroleum Services Limited appears to have designated materials that were not identified or filed on the docket or admitted at confirmation or any other hearing. (*See* Dkt. 839.) Debtors reserve all rights.

⁵ Debtors' Supplemental Witness and Exhibit List for Hearing Scheduled for January 25-26, 2018, filed 1/23/18.

Houston, Texas
Dated: May 17, 2018

/s/ Jamie Aycock

James H.M. Sprayregen, P.C.

Marc Kieselstein, P.C. (admitted *pro hac vice*)

Chad J. Husnick, P.C. (admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

I certify that on May 17, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jamie Aycock

Jamie Aycock

Designation No. 11

Docket No. 319

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 IN RE: § CASE NO. 17-36709-H1-11
5 COBALT INTERNATIONAL § HOUSTON, TEXAS
6 ENERGY, INC., ET AL, § THURSDAY,
DEBTORS. § JANUARY 25, 2018
§ 2:01 P.M. TO 6:15 P.M.

7
8 MOTION HEARING

9 BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

10
11 APPEARANCES:

12 FOR THE PARTIES: SEE NEXT PAGE

13 ELECTRONIC RECORDING OFFICER: JENNIFER ILSON

14 CASE MANAGER: MARIO RIOS

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24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

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1 HOUSTON, TEXAS; THURSDAY, JANUARY 25, 2018; 2:01 P.M.

2 THE COURT: All right. Good afternoon. We're
3 here on the Cobalt International Energy case. It's
4 17-36709.

5 We'll take appearances in court followed by those
6 on the phone. Anyone that wishes to reserve an appearance
7 may do so.

8 MR. CLEMENT: Good afternoon, Your Honor.

9 THE COURT: Good afternoon, Mr. Clements.

10 MR. CLEMENT: Zack Clement for Cobalt Energy. And
11 with me from Kirkland and Ellis lead counsel for Cobalt from
12 the Kirkland Restructure Group, Chad Husnick, Brad Weiland
13 and Laura Krucks. And from the Kirkland Litigation Group,
14 Gabor Balassa, Stacy Pepper and Jamie Aycock.

15 Your Honor, once all the appearances are made,
16 Mr. Husnick will start with an overview of the meets before
17 the Court today.

18 THE COURT: Thank you. Anybody else wants to make
19 an appearance up front you may. If you just want to reserve
20 and see where we're going, that's fine.

21 MR. DUGGER: Gary Dugger for Sonangol and Sonangol
22 P&P and my associate, Matt Key, right here, (indicating).

23 THE COURT: Thank you, sir.

24 MR. RIPLEY: Good afternoon, Your Honor.

25 THE COURT: Good afternoon.

1 MR. RIPLEY: Ed Ripley with King and Spalding, on
2 behalf of Chevron.

3 THE COURT: Thank you.

4 MR. GREENDYKE: Good afternoon, Judge.

5 THE COURT: Good afternoon.

6 MR. GREENDYKE: Bill Greendyke and Bob Bruner,
7 Norton Rose Fulbright, on behalf of Anadarko Petroleum
8 Corporation and Anadarko US Offshore.

9 THE COURT: Thank you.

10 MR. HIGGINS: Good afternoon, Your Honor.
11 John Higgins and Amy Geise, on behalf of Whitton Petroleum
12 Services Limited.

13 THE COURT: Thank you.

14 MR. KINCHELOE: Good afternoon, Your Honor.

15 THE COURT: Good afternoon.

16 MR. KINCHELOE: Richard Kincheloe of the United
17 States. I should be joined by Eunice Hudson and Andrew
18 Warner, trial attorneys with the Civil Division of the
19 Department of Justice.

20 THE COURT: All right. Thank you.

21 MR. LIM: Good afternoon, Your Honor.

22 THE COURT: Good afternoon.

23 MR. LIM: Lloyd Lim, on behalf of Wells Fargo, the
24 Indentured Trustee for the Senior Unsecured Notes. With me
25 in the courtroom is my partner, Eric Schaffer, from

1 Pittsburgh.

2 THE COURT: Thank you, sir.

3 MR. FEINSTEIN: Good afternoon, Your Honor.

4 Robert Feinstein, Pachulski Stang Ziehl and Jones, proposed
5 counsel for the Creditors Committee. With me is my partner,
6 Alan Kornfeld. I believe my partner, Ira Kharasch, is on
7 the telephone.

8 THE COURT: Thank you, sir.

9 MR. BRIMMAGE: Good afternoon, Your Honor.

10 THE COURT: Good afternoon.

11 MR. BRIMMAGE: Marty Brimmage with Akin Gump
12 Strauss Hauer and Feld, here on behalf of the Ad Hoc Group
13 of Second Lien Noteholders. And I'm joined today by my
14 partner, James Savin.

15 THE COURT: Thank you.

16 MR. STATHAM: Good afternoon, Your Honor.
17 Steve Statham for the U.S. Trustee.

18 THE COURT: Good afternoon.

19 MR. PEREZ: Good afternoon, Your Honor.

20 THE COURT: Good afternoon.

21 MR. PEREZ: Alfredo Perez, on behalf of the First
22 Lien Ad Hoc Group. With me is Matt Barr and Chris Lopez.

23 THE COURT: Thank you. All right. Again parties
24 on the phone can reserve your appearance. If you have a
25 need to make an appearance up front, you may do so by

1 pressing five star.

2 (No verbal response.)

3 THE COURT: Okay. Mr. Husnick, what do we have?

4 MR. HUSNICK: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. HUSNICK: Chad Husnick from Kirkland, on
7 behalf of the Debtors. Your Honor, I'll just be very brief,
8 wanted to give a quick overview of what we're going to be
9 discussing today and also give you just a quick update.

10 The Debtors, on Tuesday, filed their Plan and
11 proposed Disclosure Statement as Your Honor has scheduled
12 a -- previously scheduled the Disclosure Statement Hearing
13 for next month. We are still working with parties. There's
14 a lot of work to be done there and we will continue to push
15 that process forward.

16 At the same time, Your Honor, the Debtors'
17 management and the Houlihan Lokey team are working closely
18 to push forward on the sale process and you're going to hear
19 more detail about that in connection with the Motions today.

20 Your Honor, there are six motions on the Agenda
21 for today, five different topics, six motions. The first
22 motion up will be the Lien Motion. That's uncontested and
23 we'll handle that, I think, relatively straightforward.

24 Then we'll turn to -- we propose to turn to the
25 bidding procedures. At this time, there are two pending

1 objections to the bidding procedures that we'll walk
2 through.

3 Then we'll turn to the Sonangol settlement. I'm
4 sure Your Honor has reviewed the papers and we'll address
5 the interesting issues going on with the Sonangol settlement
6 and how we propose to address those and deal with those
7 going forward.

8 Then we'll reach what is the main event, two sets
9 of motions. First, cash collateral. I anticipate that
10 there will, at that time, be one or two pending objections.
11 We continue to work in the hallway on language that may
12 resolve or at least narrow some of those issues so we'll
13 keep Your Honor posted as we move forward.

14 And the last one, if we can get to it today, that
15 would be fantastic. I've been told I have some youthful
16 optimism but I'm not optimistic we're going to get there
17 today, but we'll address it when it comes up and that's two
18 motions related to executive comp.

19 The thing I wanted to communicate to Your Honor
20 before we get started on the Motions is: while each of these
21 Motions is -- you know, the five separate topics, the
22 testimony you're going to hear relates across the topics.
23 You're going to hear a story that's going to start with the
24 bidding procedures Motion and it's going to carry through
25 the Sonangol Motion and ultimately we'll discuss both of

1 those Motions in connection with cash collateral and the
2 executive comp Motion and that story, Your Honor, I believe
3 is going to be very important to making decisions on the
4 latter two. And as you hear the testimony regarding the bid
5 procedures and you hear the testimony about Sonangol, I
6 think it will inform ultimately what we get to in those two
7 big Motions so I beg your indulgence as we walk through in
8 what may be a bit more of an evidentiary record on some of
9 these Motions than you would originally anticipate given the
10 issues, but we think it's necessary to give Your Honor the
11 full story.

12 THE COURT: Given the objections, I figured it was
13 going to be a fairly extensive evidentiary hearing.

14 MR. HUSNICK: But we will get there so I
15 appreciate your time, Your Honor, and with that we'll turn
16 to the Agenda.

17 THE COURT: All right. Anybody else need to make
18 any sort of similar opening?

19 (No verbal response.)

20 THE COURT: Okay. Let's go ahead then.

21 MR. WEILAND: Good afternoon, Your Honor.

22 THE COURT: Good afternoon.

23 MR. WEILAND: For the Record, Brad Weiland, of
24 Kirkland and Ellis, LLP, here on behalf of Cobalt.
25 Your Honor, just to walk through the Agenda very high level

1 to let you know how we would propose to proceed, as to the
2 two First Day Motions that are on the Agenda, that's the
3 first matter, the Lienholders' Motion as well as cash
4 collateral, we'd proposed to incorporate the Record from the
5 First Day Hearing including the First Day Declaration that
6 was admitted into evidence there and proceed without any
7 additional evidence or witness testimony on those two
8 matters in an effort to streamline it. We've discussed this
9 with Mr. Feinstein for The Committee and believe he has no
10 objection with respect to the matter he's objecting to today
11 on cash collateral.

12 THE COURT: On the cash collateral Motion -- and I
13 don't know what dispute we'll have by the time we get to it,
14 but some of the disputes ask me to tell what's a fair
15 settlement between the parties to resolve contested matters,
16 and I'm not going to do that because if the law doesn't --
17 I'll give you the easiest example. I'm not sure the law
18 lets me compel a secured lender to use their money to pay a
19 creditors committee. I'm also not sure that the law allows
20 me to limit how much a creditors committee can spend. Now,
21 the parties can do all that by agreement and I'm perfectly
22 happy if they do and I think every case I've ever had before
23 me that's occurred, but if I'm going to get presented with
24 the dispute, I'm going to rule on the dispute, not what I
25 think a fair settlement is.

1 MR. WEILAND: Yes, Your Honor.

2 THE COURT: So the parties might want to think
3 about what they really want to present to me and whether or
4 not the evidentiary record needs to be expanded. I don't
5 want anybody misled about that. I don't know if that
6 helps tell --

7 MR. WEILAND: No, that helps, Your Honor --

8 THE COURT: -- you where we're going or not --

9 MR. WEILAND: -- and I think we can take it --

10 THE COURT: -- but I'm not going to tell on what's
11 a fair settlement. I mean, I'll --

12 MR. WEILAND: Understood.

13 THE COURT: If you have a settlement --

14 MR. WEILAND: Understood.

15 THE COURT: -- I'll rule if it's fair, but I'm not
16 going to impose what I -- my version of fair. I'm going to
17 follow the Code.

18 You can also persuade me by the way that maybe a
19 creditors committee does have the right to use cash
20 collateral against the objection of the holder of those
21 liens or that maybe the Debtor has a right to put a limit on
22 how much a committee can spend. But I at least walk out
23 thinking that that's the way things are done when people are
24 trying to get along and I'm perfectly happy with that, but
25 not the way that I can order them. So I'll let the parties

1 kind of work through where they want to go on all that, but
2 I don't want to tell you, "Yeah, let's carry through that
3 Record," then we decide, and then you're suddenly taken by
4 surprise when --

5 MR. WEILAND: Oh, of course, Your Honor.

6 THE COURT: -- I tell you what my approach is.

7 MR. WEILAND: Maybe the way to handle it would be
8 to say that'll be where we start and if we need to "expand
9 the Record," as you said, we can take that as it comes.

10 THE COURT: Okay. Does anybody object to carrying
11 forward the Record from the first hearing as part of the
12 evidentiary record?

13 (No verbal response.)

14 THE COURT: All right. We'll carry forward.

15 MR. WEILAND: Okay. Thank you, Your Honor. We
16 will try to move pretty quickly, to the extent that we can,
17 Your Honor, but on the other matters, you know, starting
18 with bidding procedures going on to the Sonangol settlement
19 and then the executive compensation matter is coming after
20 cash collateral. I think what we propose is to start with a
21 fairly brief opening presentation, proceed to a live
22 evidentiary case before a short closing argument on each
23 issue.

24 THE COURT: All right. I'm not sure that I know
25 really what the Sonangol dispute's about yet just so that

1 that -- I may need a better explanation of what the fight is
2 about. I understood --

3 MR. WEILAND: Well, Your Honor, I'm hopeful that
4 there's not much --

5 THE COURT: Okay.

6 MR. WEILAND: -- disputed today.

7 THE COURT: Okay.

8 MR. WEILAND: We do want to make sure that we put
9 into the Record evidence on the reasonableness of that
10 settlement as it affects the Debtors in the exercise of the
11 Debtors' business judgment in causing their subsidiaries to
12 enter into the settlement.

13 THE COURT: Are you still having a dispute with
14 Sonangol on the form of the Order or have you all worked
15 through that?

16 MR. WEILAND: Your Honor, I think we are largely
17 resolved with Sonangol.

18 THE COURT: Okay.

19 MR. WEILAND: I think that there is a process that
20 we hope begins with approval of the settlement today to work
21 through other issues as well, but I think as Sonangol said
22 in its first filing, we believe Sonangol -- or we take
23 Sonangol at its word that it remains committed to the detail
24 and we know that we do as well.

25 THE COURT: Okay. Let's go.

1 MR. WEILAND: Okay. Thank you, Your Honor. So
2 the first matter on the Agenda again is the lienholders and
3 oil and gas payments Motion. This was approved on an
4 interim basis, granted on an interim basis on the First Day.
5 Today we're back for a final order. We do have a couple
6 changes versus the Final Order originally proposed that have
7 been negotiated with the Creditors Committee and other
8 parties regarding notices of certain payments, and I have a
9 redline here. I also have a thumb drive that has a redline
10 on it if --

11 THE COURT: Is that different than what got filed
12 at like -- you filed some orders that --

13 MR. WEILAND: No, Your Honor, that Order has not
14 changed.

15 THE COURT: Okay. I've read that one. So I just
16 wanted to understand for sure that if you give them the
17 notice -- and I can open it up, but I think it was like five
18 days' notice of certain activity, it's notice only, right?
19 And the Order I'm signing, they may want to come in for an
20 emergency hearing or do whatever they can, but once you give
21 them the notice, you all can do what you want under the
22 terms of the Order.

23 MR. WEILAND: That's correct, Your Honor.
24 Hopefully that doesn't open up any -- there's some can of
25 worms. There's not an objection procedure baked in.

1 THE COURT: I just want to be sure I was reading
2 what --

3 MR. WEILAND: It's a pure --

4 THE COURT: -- you all agreed to here.

5 MR. WEILAND: -- information requirement.

6 THE COURT: Okay. Anybody have any objection to
7 proposed form of Order that was uploaded?

8 (No verbal response.)

9 THE COURT: All right. I'll sign that Order.

10 MR. WEILAND: All right. Your Honor, would you
11 like a --

12 THE COURT: I think I'll just take --

13 MR. WEILAND: -- clean printout or the thumb
14 drive?

15 THE COURT: Just the clean one I think for now.

16 MR. WEILAND: The clean?

17 THE COURT: If nobody's objecting to it. I
18 reviewed it and I'm okay with it.

19 MR. WEILAND: Thank you, Your Honor. All right.

20 Your Honor, next on the Agenda is the bidding
21 procedures and scheduling Motion.

22 THE COURT: Okay.

23 MR. WEILAND: So, Your Honor, I'm proud to say
24 that since we filed these cases and since we filed this
25 Motion, we have achieve broad consensus on the general path

1 forward and that's reflected, I think, by the support we
2 have for the bidding procedures and schedule today. We did
3 file these cases, Your Honor, with the primary goal of
4 executing a value maximizing sale of our businesses under a
5 Chapter 11 plan and that remains the goal today.

6 Now, there are parties that had differences of
7 opinion coming into the case, the Committee among them. I
8 think through discussions and through some additions to the
9 Order and procedures, we have confirmed enough flexibility
10 in the dates and agreed on a timeline that generally works
11 for people, so I think we're happy to say that we're
12 sticking to the Plan and have the support of most of our
13 creditors today.

14 We have revised the Schedule from what we
15 originally filed and you will hear from Mr. J.B. Hansen, our
16 financial advisor, about that Schedule shortly. Suffice to
17 say for now that the dates originally proposed a disclosure
18 statement hearing in mid-February and the confirmation in --
19 or mid to late March, March 20th. The new dates carry those
20 out just by about 10 days and we have been lucky enough to
21 schedule a disclosure statement hearing on February 22nd
22 with Your Honor and we propose a confirmation hearing on
23 March 30th, which I think has also been reserved.

24 The key creditor groups in the case including the
25 Committee, I believe, support this and support entry of the

1 revised Order that we filed yesterday with a number of
2 revisions. Among other things we have made clear in the
3 Order and the bidding procedures that we have the
4 flexibility to pursue sale under 363 of the businesses or
5 some of the businesses, if need be down the road. Our
6 strong preference for a number of reasons is to pursue a
7 sale of all of the businesses through a Chapter 11 plan, but
8 we do maintain the flexibility should the circumstances
9 dictate later on.

10 We have provided consultation rights to numerous
11 parties in the revised bidding procedures and the revised
12 Order. We certainly expected to be consulting with all of
13 our key creditors regardless, but we've put it in writing in
14 the Order that we propose that Your Honor enter today.
15 We've also reserved some rights in the Order including a
16 reservation of the Committee's rights to challenge whether a
17 qualified bidder with a credit bid has a valid secured
18 claim. And again reservations of rights regarding conduct
19 at the auction and general consultation.

20 Among other things -- among those things,
21 Your Honor, we've also addressed concerns of the U.S.
22 Trustee related to the proposed bid protections. Now, we
23 don't have a stalking horse bidder today, Your Honor. We
24 are in active discussions with multiple bidders and we did
25 want the authority to grant bid protections should we

1 receive an acceptable stalking horse bid. What we've said I
2 the revised Order is that those bid protections would be
3 capped --

4 THE COURT: At 3 percent.

5 MR. WEILAND: -- at 3 percent --

6 THE COURT: Right.

7 MR. WEILAND: -- of a cash bid or at least a non-
8 credit bid. And we would, of course, consult with the
9 consultation parties in connection with any such grant. And
10 I believe that Mr. Statham has signed off on that concept
11 and the cap.

12 We've also tried to address some concerns of the
13 couple parties that have not yet consented or lent their
14 support to the bidding procedures and its namely Chevron
15 yesterday, Anadarko also filed a joinder to the Chevron
16 objection.

17 THE COURT: So I tried to find on the Docket Sheet
18 where somebody had filed the document that gave the
19 preferential rights and I couldn't find it either for
20 Chevron or for Anadarko. I'm having a difficult time
21 appreciating the gravity of the argument without looking at
22 the documents.

23 Did I just not find them or are they not there or
24 how do I figure out some of that?

25 MR. WEILAND: Your Honor, the Debtors did not file

1 those documents on the Docket. I'm not sure whether they
2 were included in exhibits to either of the contract
3 counterparties' filings.

4 THE COURT: Are they here?

5 MR. WEILAND: The contract counterparties or the
6 documents, Your Honor?

7 THE COURT: The documents so that -- I mean, one
8 side's saying they've got pref rights and the other side
9 saying they don't and it'd be nice to see the documents that
10 establish that at least to know where we are.

11 MR. WEILAND: We do have copies of the documents
12 here, Your Honor.

13 THE COURT: Okay. Should I look --

14 MR. WEILAND: We can get to that. To state the
15 Debtors' position clearly, Your Honor, we don't believe the
16 pref rights apply to the proposed sales here because we are
17 proposing to sell all of our assets or all or substantially
18 all of our assets are the words in the contract in the Gulf
19 of Mexico.

20 To the extent that they would apply, Your Honor,
21 we think that the bidding procedures and the process laid
22 out in the bidding procedures offer the proper avenue for
23 those parties to try to exercise any asserted pref right or
24 right of first refusal and by being a bidder at the auction,
25 they get the same protections that they would be afforded by

1 a right of first refusal in an out-of-court context.

2 And lastly, Your Honor, if it would come to it,
3 you know, we think that out of equity and an effort to
4 maximize value through this process, the rights ought to
5 just be held unenforceable in this context given the
6 detriment that they could have to the process -- would have
7 to the process. And you'll hear from Mr. Inganson
8 (phonetic) on that point as well.

9 THE COURT: What would give me the authority to
10 say that because it gives Chevron and Anadarko something
11 good and therefore use something bad that I can just say it
12 doesn't count?

13 MR. WEILAND: Well, Your Honor, I think that the
14 case law has -- there's a fair amount of case law that has
15 dealt with the unenforceability of preferential right of
16 purchase like the right of first refusal in a bankruptcy
17 marketing context and courts have said that --

18 THE COURT: Well, there's case law that deals with
19 whether that's a restriction on transfer that is
20 unenforceable, but those don't have to do with whether it's
21 fair or not. I mean, I -- if you all gave some right of
22 way, I'm not going to take it away from somebody else
23 because it's no longer fair. It may be unenforceable under
24 the Bankruptcy Code because it's a restriction on transfer
25 that's unenforceable but --

1 MR. WEILAND: And, Your Honor, if I was speaking
2 loosely, I apologize, but I think that's the law that which
3 we would refer, that this --

4 THE COURT: Okay.

5 MR. WEILAND: -- that a right of first refusal in
6 this context inhibits our ability to effectively transfer
7 our assets in a value-maximizing manner as laid out in the
8 procedures.

9 THE COURT: But your first two arguments --

10 MR. WEILAND: To be clear, I don't --

11 THE COURT: Your first two arguments though
12 require me to look at the document. I need to see what are
13 their preferential rights and then I need to see whether
14 they exist in a sale of substantially all the GOM assets and
15 only then would we get to whether it's enforceable under the
16 anti-restrictions on transfer provisions so.

17 MR. WEILAND: And we have the documents,
18 Your Honor, and --

19 THE COURT: Okay.

20 MR. WEILAND: -- are happy to show those to you.
21 To be clear, I think, you know we would say that there is no
22 preferential right of purchase that is enforceable. I think
23 it remains a little incumbent on the objecting parties to
24 rebut that. But we do have the documents and we're happy to
25 share those with Your Honor.

1 THE COURT: I'm not sure whose burden it is, but I
2 think we should look at the documents.

3 MR. WEILAND: Of course, Your Honor.

4 THE COURT: Okay. Can we do that?

5 MR. WEILAND: Yes, Your Honor.

6 THE COURT: Let's see them.

7 I assume we have a stipulation as to what those
8 documents are that establish the preference, right?

9 MR. WEILAND: Well, we have our documents,
10 Your Honor. I don't think --

11 THE COURT: Mr. Ripley, do you --

12 MR. WEILAND: -- we have a stipulation with either
13 of the parties.

14 THE COURT: Do you agree that -- let Mr. Ripley
15 see those -- that those are the documents that establish
16 Chevron's preference?

17 MR. RIPLEY: Judge, either Exhibit 37 or 40 has
18 the language. There's two different unit operating
19 agreements. Most of the time we talk about JOA. Just
20 technically there's a unit agreement because BOEM has
21 actually approved a unitization here.

22 THE COURT: Okay.

23 MR. RIPLEY: But the language is exactly the same
24 in either one.

25 THE COURT: Great. So can I see one of those for

1 Chevron and one for Anadarko and -- are Anadarko's and
2 Chevron's documents the same or are they different?

3 MR. GREENDYKE: I beg your pardon, Judge.
4 Bill Greendyke for Anadarko. I think they are.

5 THE COURT: The same.

6 MR. GREENDYKE: I frankly think they are. I think
7 they're standard documents.

8 THE COURT: Okay.

9 MR. GREENDYKE: We don't have ours with us. The
10 Debtor doesn't seem to dispute the terminology of the
11 documents, but what's --

12 THE COURT: Well, the Debtors put in there that
13 they don't apply. They put a quote in their Responses,
14 "These don't apply for sales of substantially all the GOM
15 assets."

16 MR. GREENDYKE: Right, right.

17 THE COURT: And I wanted to see that in a little
18 bit of context.

19 MR. GREENDYKE: Well, the problem is: we don't
20 have a bid yet, we don't have a sale proposal yet. We --
21 it's premature. So even if you accept our argument that
22 this is an inappropriate procedural place --

23 THE COURT: Right.

24 MR. GREENDYKE: -- to have the Court make a ruling
25 as opposed to a sale hearing and plan confirmation or

1 something like that or an adversary, which I think really
2 should be the application --

3 THE COURT: Is there a dispute that if they do a
4 sale of substantially all the GOM assets, that your pref
5 rights don't exist; is that a disputed question?

6 MR. GREENDYKE: I think the term provision is
7 there. I'm not sure whether my client's willing to concede
8 that at this point. But there's no dispute about what the
9 documents say. There is preferential right. Notice needs
10 to be given under the documents and there are some
11 exclusions to those preferential rights depending upon the
12 type of transaction. But we don't have a transaction yet
13 and that's the problem.

14 THE COURT: Right.

15 MR. WEILAND: And, Your Honor, I do think the
16 language in the Contract will be instructive on this point,
17 that the exclusion I think that Mr. Greendyke is talking
18 about is a -- applies to a proposed sale of all or
19 substantially all of the Gulf of Mexico assets. That's
20 exactly what we're here doing today: we are proposing to
21 sell all or substantially all of our assets.

22 THE COURT: Is there anything in the proposed
23 Order that takes away their preferential bidding rights?

24 MR. RIPLEY: Yes, it does, Judge.

25 MR. WEILAND: The Order, Your Honor, if I may,

1 includes a paragraph that says, you know, "To the extent
2 they apply, they would be deemed satisfied by the bidding
3 procedures."

4 MR. GREENDYKE: And that's the problem.

5 THE COURT: Well --

6 MR. RIPLEY: And, in fact, it doesn't really say
7 that. Judge, Ed Ripley for Chevron. I thought that they
8 had kind of made an opening. I was just going to make a
9 very brief opening. So I think you asked: what are the
10 issues? We have raised just a very limited objection.

11 THE COURT: Right.

12 MR. RIPLEY: Two have been resolved, two have not.
13 The first is Paragraph 21 of the revised Order. It used to
14 be Paragraph 19. And it is -- they slipped into the Order
15 in this procedural Motion an advisory declaratory ruling by
16 this Court that how they're proceeding deems to satisfy
17 preferential rights, which is then entirely inconsistent
18 with saying the preference right doesn't even exist. You
19 can't have it both ways. And as Mr. Greendyke had
20 indicated, we don't know yet whether an exclusion may be
21 applicable because we don't have a bid and a transaction in
22 front of us yet.

23 THE COURT: Well, I mean --

24 MR. RIPLEY: There's other issues --

25 THE COURT: I'd rather sort of cut to the chase

1 here. Let me assume that there is an exclusion --

2 MR. RIPLEY: Uh-huh.

3 THE COURT: -- that uses 27 words that say if --

4 MR. RIPLEY: Right.

5 THE COURT: -- it's substantially all the assets
6 in the Gulf of Mexico, that pref rights don't apply.

7 MR. RIPLEY: Right.

8 THE COURT: But I don't see why we couldn't
9 include in a bid Order that if the bidder bids for
10 substantially all the assets exactly the same language that
11 the pref rights wouldn't apply, and then we would come back
12 and -- and then we would also say if somebody bids for less,
13 we're going to determine whether they apply.

14 But why would we have to decide that today? We
15 could give people the comfort of saying "It isn't going to
16 apply if you meet this exclusion" and quote the exclusion?
17 I mean, I don't need to interpret the exclusion. Let
18 bidders read it. These aren't --

19 MR. RIPLEY: Well, Judge, that might be a way
20 to --

21 THE COURT: These aren't unsophisticated people --

22 MR. RIPLEY: Yeah.

23 THE COURT: -- that are going to be bidding for
24 these assets. They're going to know what to do with that.

25 MR. RIPLEY: That might be a way to do it. The

1 bigger problem they have is: there's no request for relief
2 for this Court to make any determination about preference.
3 There's nothing in their Motion that asks this Court to make
4 a declaratory ruling like they have in Paragraph 21.

5 THE COURT: Well --

6 MR. RIPLEY: That's a big problem and so that's
7 one of our objections is that they slipped into this
8 procedure -- the bidding procedures are completely silent.
9 The word "pref right" or anything like that, nowhere to be
10 found.

11 THE COURT: Right.

12 MR. RIPLEY: In the Motion there's --

13 THE COURT: Yeah, but you all filed --

14 MR. RIPLEY: -- just a passing reference.

15 THE COURT: You all filed an objection, which was
16 appropriate.

17 MR. RIPLEY: Yeah.

18 THE COURT: If you hadn't, then we wouldn't have
19 referred to "pref rights" in here, right?

20 MR. RIPLEY: We did pointing out --

21 THE COURT: So it obviously triggered the need --

22 MR. RIPLEY: -- that there's no relief requested.

23 THE COURT: -- for you to file an objection. I've
24 got to deal with your objection.

25 MR. RIPLEY: We point out that there's no relief

1 that was -- before the Court requesting what they put in
2 Paragraph 21. They filed a reply. They don't -- they
3 didn't disagree with that at all. So we have a significant
4 problem before we get there. But, Judge, I think there's a
5 couple of ways that this could have been handled, but they
6 chose not to do that. And so I think what the Court said
7 that could be a way to deal with it.

8 THE COURT: I'd like to see the document. I'd
9 really like to see the document.

10 MR. RIPLEY: Sure. If --

11 MR. WEILAND: If I can approach, Your Honor, I
12 have copies of both the --

13 THE COURT: Thank you.

14 MR. RIPLEY: Which one is it, 37 or 40?

15 THE COURT: If everybody can't agree the language
16 is the same, I'd like to see one document that has the
17 language and --

18 (Pause/counsel confer.)

19 MR. RIPLEY: It's going to be on Page 165 of what
20 they hand you, Judge.

21 THE COURT: Thank you.

22 THE COURT: Your Honor, I can approach with these
23 if you'd like.

24 THE COURT: Thank you. They're the same right, I
25 just need to look at one of them?

1 MR. WEILAND: They're substantially identical,
2 Your Honor.

3 (Pause/voices off record.)

4 THE COURT: Okay.

5 MR. RIPLEY: And, Judge, the exclusion that
6 they're referencing is on Page 169.

7 THE COURT: Right.

8 MR. RIPLEY: It's 24.2.3(c)(5).

9 THE COURT: Well, I've got -- not (c)(5). I've
10 got 24.2.3 and then it would be (d) or (c) potentially.

11 MR. WEILAND: Well, Your Honor, there are a couple
12 of exclusions that could end up applying, you know --

13 THE COURT: Right.

14 MR. WEILAND: -- but there is -- (c)(1) --

15 THE COURT: I don't have --

16 MR. WEILAND: -- on Page 169 or --

17 THE COURT: Okay. So I have a different document.
18 I have the -- let me tell you what I have because somebody
19 opened it for me to Page 116 and 17.

20 MR. WEILAND: I'm sorry, Your Honor, I was looking
21 at the Chevron document.

22 THE COURT: This is the --

23 MR. GREENDYKE: You had the Anadarko document.

24 THE COURT: I think I've got the Anadarko
25 document.

1 MR. WEILAND: Yes, I'm looking at it too. So (b)
2 or (c) is what we're talking about.

3 THE COURT: Right, (b) or (c).

4 MR. WEILAND: Right.

5 MR. GREENDYKE: And they're looking at the Chevron
6 documents.

7 THE COURT: And I've got the Chevron document.

8 MR. WEILAND: So, Your Honor --

9 THE COURT: Right.

10 MR. WEILAND: -- yes, it's sub (c) in the Anadarko
11 document --

12 THE COURT: Right. Well, we're potentially --

13 MR. WEILAND: -- that would apply.

14 THE COURT: Maybe sub (b), right, in Anadarko?
15 They say, "We're transferring --

16 MR. WEILAND: Yes. And sorry, sub (b), the first
17 bullet as well.

18 THE COURT: I mean, I don't understand what the
19 objection possibly is to including in a bid procedures order
20 or attached procedure a statement that Anadarko and Chevron
21 allege they have a preferential right to purchase. However,
22 that preferential right to purchase does not apply and then
23 quote the language without any editorial statement, and that
24 any proposed purchaser will have the right -- well, not any
25 proposed -- that the Debtor intends to argue that if

1 something doesn't meet those exceptions, that we'll take it
2 up at the Sale Hearing. But I'm not going to rule on a
3 declaratory judgment today without more notice to them.
4 That wouldn't be fair.

5 MR. GREENDYKE: Thank you. As long as we have the
6 right to -- I agree with what the Court says as long as we
7 have the right to come to the Court and to say they
8 mischaracterized the --

9 MR. RIPLEY: That could be --

10 MR. GREENDYKE: Right, right. Thank you. Well
11 said.

12 THE COURT: Yeah.

13 MR. WEILAND: But I think, Your Honor, doing that
14 is exactly the -- what we're trying to avoid for the bid
15 chilling effect of letting --

16 THE COURT: They've got --

17 MR. WEILAND: -- them reserve on this issue.

18 THE COURT: -- due process rights. I'm not taking
19 away their due process rights.

20 MR. WEILAND: Right. And, Your Honor, I don't
21 think we're asking you to. I think we're --

22 THE COURT: You're asking me to declare what their
23 agreement means without any pleading against them. For
24 example, there's no way that what you're proposing
25 substantially conforms to what their preferential rights

1 are. It may be okay under the Bankruptcy Code, that's a
2 different question. But they have a 30-day hiatus after you
3 get your highest and best offer to come in and match it.
4 That's what it says. You're taking away their 30 days.
5 That may be fine under the Bankruptcy Code, but I'm not
6 going to declare that the auction is good enough. It's only
7 good enough if it can be taken away under the Bankruptcy
8 Code and maybe it can be. I'm expressing no view on whether
9 or not this is an impermissible bar against a transfer, but
10 I'm not going to declare something as yellow when it's
11 really blue. That's not fair.

12 MR. WEILAND: Well -- and again, Your Honor, I
13 don't think we're asking you to do that. I think --

14 THE COURT: You're asking me to say --

15 MR. WEILAND: -- what we're asking --

16 THE COURT: -- that your Order -- that the auction
17 gives them the same equivalent rights they would have in a
18 preferential bid. That's not right. They get 30 days to
19 think about it. Now, if it's excluded, it's just fine and
20 we tell people, "Here's the exclusion," and you're telling
21 me what you're going to sell fits the exclusion. So I
22 actually don't see the problem unless you're concerned it
23 doesn't fit the exclusion at which point we might have to
24 deal with the question of whether these are impermissible
25 restriction on transfer, which they may be. I really don't

1 want anybody reading me wrong about this. I don't have any
2 idea on whether it's an impermissible restriction on
3 transfer sitting here right now.

4 MR. WEILAND: Well -- and, Your Honor, I think we
5 can certainly move on to the evidentiary presentation to
6 hear about what this might do to the Estate.

7 THE COURT: It's not an evidentiary question.
8 It's a question of law. Let me assume that it kills the
9 Estate and you have to liquidate. You still lose. So I
10 don't know what evidence you can give me. I'm not here to
11 help the Estate. I'm here to rule on law matters. You're
12 here to help the Estate. Not my job.

13 MR. WEILAND: Understood, Your Honor.

14 THE COURT: Not my job.

15 MR. WEILAND: Fair to say. I think the problem
16 though, Your Honor, is to reserve on this issue really
17 creates a real risk that a bidder does not want to -- does
18 not bid.

19 THE COURT: Right.

20 MR. WEILAND: And I think that the harm to the
21 Estate is what courts have looked to in saying, you know,
22 that something may not be enforceable. I mean, I don't --

23 THE COURT: I'm perfectly willing to determine
24 whether this is an unenforceable provision once you give
25 them notice of that, and we can do that when I get the right

1 pleadings on file. I mean, I don't think I got that
2 pleading on file till yesterday, right, that their pref
3 rights were unenforceable under the anti-transfer
4 provisions?

5 MR. WEILAND: Well, Your Honor, I think we were
6 trying to in the Motion, you know, avoid a remedy that would
7 be that draconian. I think realistically we would love to
8 have Chevron and Anadarko participate in our process.

9 THE COURT: Right.

10 MR. WEILAND: We're not trying to be, you know,
11 hostile. What we tried to say in the Motion is that, you
12 know, there -- to the extent that there are preferential
13 transfer rights, you know, that would apply -- and to be
14 clear and to your point, we don't believe they do to the
15 proposed sale here -- those parties ought to exercise those
16 rights now. They've had notice of the proposed sale since
17 we filed pleadings on the petition date.

18 THE COURT: Well, then, yeah, that's fine. Tell
19 them how much they have to bid and who the purchaser is.
20 That's what triggers their pref right. They're not here
21 just to go make a bid.

22 They're here to be able to match a bid within 30
23 days, right? Isn't that what their pref right is?

24 MR. WEILAND: Your Honor, I think that's generally
25 right. I think we're --

1 THE COURT: Well, if you want to give them --

2 MR. WEILAND: -- setting up an auction --

3 THE COURT: -- that right, you can trigger that
4 today. I've got no problem with that. You have to be
5 prepared to sell to that bidder. I mean, you have a real
6 problem here. You're taking away their rights without
7 notice and I'm not doing that right now. I may do it with
8 notice. I really don't want you to get me -- you guys
9 shouldn't get me wrong either. I just don't think today is
10 the day when I can take away their rights and determine that
11 this is an impermissible restriction on transfer.

12 I also don't understand frankly given the -- what
13 you're telling me you're trying to do why publishing the
14 exception doesn't satisfy your worries.

15 MR. WEILAND: I think, Your Honor, it would -- it
16 potentially telegraphed to other potential bidders that a
17 bid could just, you know, get them into a hairy situation
18 that --

19 THE COURT: If they're bidding for substantial --

20 MR. WEILAND: -- they may not think is worth it.

21 THE COURT: Aren't you selling substantially all
22 of your assets in the --

23 MR. WEILAND: We are, Your Honor, but we don't
24 know today whether that's going to be in a package deal or
25 not and whether all of the assets will ultimately be sold.

1 MR. GREENDYKE: Which is precisely why we
2 shouldn't be doing this today.

3 THE COURT: Right.

4 MR. RIPLEY: And, Judge, this language isn't a
5 mystery. It's filed of public record and it's in the
6 official form so the idea that somehow information that
7 everybody knows, they've admitted that this type of language
8 is common in the industry. Everybody knows it so it's not
9 like there's some big secret that somehow this is going to
10 create a problem. They bought the issue subject to it. The
11 existing bank liens are expressly subordinate to these Unit
12 Agreements with the pref rights. So we agree with what --
13 how you think -- how it can --

14 THE COURT: Well, I'll give you an opportunity to
15 delay a hearing on your Motion so that you can give them
16 some due process rights --

17 MR. WEILAND: Well, what I'd like to propose --

18 THE COURT: -- or else we can resolve it as a
19 matter of law. What I'm not going to --

20 MR. WEILAND: What I'd like to propose,
21 Your Honor, to move the process along is: if we could enter
22 the Order today without this offending provision, but
23 potentially set an expedited procedure between now and our
24 bid deadline to come back on this point so that bidders have
25 a little bit more certainty.

1 THE COURT: I'm perfectly happy to do that.

2 MR. WEILAND: Would that be acceptable to you too?

3 MR. GREENDYKE: Yeah.

4 MR. RIPLEY: Yeah. I'd say "Yes."

5 MR. GREENDYKE: Yeah.

6 MR. WEILAND: Okay.

7 THE COURT: Works for me.

8 MR. WEILAND: And, Your Honor --

9 MR. RIPLEY: And I think there's just one other
10 issue in the bid procedures themselves which is: they've
11 taken the position that a contract counterparty like Chevron
12 can't attend the auction even if we're not a bidder. And we
13 know of no legal basis for that, Judge.

14 THE COURT: I know of no legal basis.

15 MR. RIPLEY: Never had somebody refuse to give
16 them --

17 THE COURT: So you have a right to attend the
18 auction. It's a private auction.

19 What right do you have to walk into somebody
20 else's auction?

21 MR. RIPLEY: Judge, it's not a private auction,
22 it's an extension of this Court public proceeding. We have
23 auctions right here in a court all the time. We're just not
24 doing it for logistic reasons.

25 MR. WEILAND: Well, that's not what we're

1 proposing.

2 THE COURT: Wait, wait, wait.

3 MR. WEILAND: This is not -- there's not doing it.

4 THE COURT: I've never had an auction in open
5 court.

6 MR. RIPLEY: I'm sorry?

7 THE COURT: I have never had an auction in open
8 court. I have private auctions that I order. You've never
9 seen one before me.

10 MR. RIPLEY: Yeah, it's -- we've had them in other
11 courts. It's an extension of this proceeding.

12 THE COURT: It's not public.

13 MR. RIPLEY: And our property rights are directly
14 involved.

15 THE COURT: It is not public. No, your rights are
16 here. You have a right to learn the outcome of it in terms
17 of if there's no intervention of bankruptcy. You have a
18 right -- they can have a private auction if they weren't a
19 bankruptcy case and you couldn't attend that. You can find
20 out the results later and then you --

21 MR. RIPLEY: Well, if they want to do like a --

22 THE COURT: -- have 30 days to make it.

23 MR. RIPLEY: -- foreclosure proceeding, we've have
24 to get notice. In fact, we're secured party under our Unit
25 Agreements which they've ignored that as well so --

1 THE COURT: I'm -- no, I just can't imagine you
2 have a right to attend a private auction. Show me where you
3 have that right.

4 MR. RIPLEY: Our property rights and our security
5 interests or directly affected. We're a secured --

6 THE COURT: No.

7 MR. RIPLEY: -- party under our Agreements.

8 THE COURT: So how is this going to affect that?

9 MR. RIPLEY: So how can an auction --

10 THE COURT: You agreed --

11 MR. RIPLEY: -- take place in our property rights
12 without us having --

13 THE COURT: -- you've agreed to take a -- no,
14 you've agreed --

15 MR. RIPLEY: -- be -- continue?

16 THE COURT: -- they could sell it all.

17 Do you have a right under your Security Agreement
18 to attend any sale or auction? A private sale?

19 MR. RIPLEY: We'll go back. I'll go back and look
20 at the provisions in the Agreement but --

21 THE COURT: Okay. Go back and look.

22 MR. RIPLEY: -- just never had a secured party
23 saying you can't attend an auction where your rights are
24 directly involved.

25 THE COURT: I can understand why they don't want

1 you all there.

2 MR. RIPLEY: Actually, we can't.

3 THE COURT: I can. You're sitting here trying
4 to -- I mean, look, I don't think you're here just because
5 your clients want to spend money on lawyers. You're here --

6 MR. RIPLEY: No, they don't. We're very concerned
7 at --

8 THE COURT: You're here because you want to
9 protect your preferential rights which --

10 MR. RIPLEY: Yeah, absolutely.

11 THE COURT: -- means you may be a bidder.

12 MR. RIPLEY: And we want to have --

13 THE COURT: And for them to not want somebody that
14 is choosing not to participate in the bid process but to
15 wait till it's over not to attend when you all have an
16 incentive to push the price down not up makes all sorts of
17 sense to me. So if you have a right to be there --

18 MR. RIPLEY: If you do anything by just attending
19 the auction.

20 THE COURT: Well --

21 MR. RIPLEY: If they did, it would be disruptive
22 of the auction? That doesn't make any sense.

23 THE COURT: I don't know.

24 Why do you want to go?

25 MR. RIPLEY: Because we want to have real time

1 information about exactly --

2 THE COURT: Why?

3 MR. RIPLEY: -- what's going on.

4 THE COURT: Why?

5 MR. RIPLEY: We have a substantial investment.

6 THE COURT: Why?

7 MR. RIPLEY: Again, it's our property rights and
8 our assets are involved. We'll --

9 THE COURT: If you show me that you've protected
10 that property right, you're going to attend the auction. I
11 don't think you did, but show me where you did.

12 MR. WEILAND: Yeah --

13 THE COURT: I haven't read it and I just -- I've
14 never seen one where you protect your right to go.

15 MR. WEILAND: The property rights and the contract
16 rights and you have every right to object to the results of
17 the auction.

18 THE COURT: Show --

19 MR. WEILAND: Like any other kind of a
20 counterparty.

21 THE COURT: Take a few minutes and look at your
22 document and tell me what gives you the right to attend the
23 auction. You don't simply because it's a bankruptcy ordered
24 auction especially given the rule you play. The rule --
25 your clients' incentive is to get the lowest possible result

1 out of the auction.

2 MR. RIPLEY: That's not true, Your Honor. Our
3 primary role --

4 THE COURT: You have a preferential --

5 MR. RIPLEY: -- is to find out who's going to be
6 potentially --

7 THE COURT: No, no, no, wait.

8 MR. RIPLEY: -- being a participant.

9 THE COURT: Let's talk about your economic
10 interest. If you want to protect your pref rights I'm
11 assuming it's because you might want to exercise. Your pref
12 rights are worth a whole lot more if this auction falls flat
13 on its face and produces a low bid. The higher the bid --

14 MR. RIPLEY: Theoretically possible but that's --

15 THE COURT: -- the less likely you're going to
16 exercise --

17 MR. RIPLEY: -- right, the lenders are going to --

18 THE COURT: -- your preference --

19 MR. RIPLEY: -- do credit bids so that -- not let
20 that happen.

21 THE COURT: Well, it's also why you shouldn't be
22 there, but if you have the right to be there, show me that
23 you do. I'm not ordering it if you don't have that right.
24 Go look at your documents.

25 MR. RIPLEY: Very well.

1 THE COURT: But if they are willing to take out
2 the provision and then we'll come back later, that's fine.

3 MR. RIPLEY: That's fine.

4 MR. GREENDYKE: Anadarko agrees with that.

5 THE COURT: Thank you.

6 MR. GREENDYKE: Thank you, Judge.

7 THE COURT: You want to take a few minutes to look
8 at your documents about your right to attend the auction?

9 MR. GREENDYKE: I'm sorry, say again.

10 THE COURT: Do you want to take a few minutes to
11 see if you have the right to attend the auction, Mr. Ripley?

12 MR. RIPLEY: Yeah, I'll do that.

13 THE COURT: Okay.

14 MR. GREENDYKE: I'm not part of that argument but
15 I reserve the right to negotiate the ability to attend the
16 auction with the Debtor.

17 THE COURT: I've got no problem with that.

18 (Laughter.)

19 THE COURT: They can have who they want at the
20 auction. If they want somebody there that's going to try
21 and push down the price and you'll have that at --

22 MR. WEILAND: We will not exclude anyone who
23 submits a bid from the auction, Your Honor.

24 MR. KINCHELOE: Your Honor, I apologize. I'm not
25 going to say anything interesting compared to what was just

1 said.

2 My client does want to say on the Record that the
3 Government does reserve its rights with respect to whether
4 the sale or conveyance of these lease interest are at a 363
5 or 365. The bid procedures attached to the Order referenced
6 363 at the sale hearing. The Government well argued that
7 for purposes of a cure and adequate protection, future
8 performance for --

9 THE COURT: Your rights to argue that it's
10 actually a 365 sale are preserved.

11 MR. KINCHELOE: Thank you.

12 THE COURT: Thank you.

13 MR. WEILAND: Your Honor, just to note to with our
14 other reservations, rights in favor of the Government and
15 certain agencies that we did incorporate into the Order.

16 THE COURT: All right.

17 MR. WEILAND: Your Honor, I think we went off on a
18 tangent there but where I'd like to steer everything back to
19 is our evidentiary case-in-chief for these procedures if
20 that would please Your Honor.

21 THE COURT: Sure, I don't know that we have any
22 objection though any longer, but --

23 MR. WEILAND: Well, I don't know that we do but if
24 we --

25 THE COURT: Put on your --

1 MR. WEILAND: -- if you -- and if you'll like to
2 skip the testimony, we'd be happy to do that as well.

3 THE COURT: It's up to you. I'm happy to hear it.

4 MR. WEILAND: All right. And, Your Honor, I think
5 we can forgo that if you're willing to enter the Order
6 without the offending paragraph, I won't come back on that
7 issue.

8 THE COURT: I mean, as I understand this, it's a
9 relatively straight-forward auction. It's out on notice.
10 Objections have been resolved and all of the major
11 constituents --

12 MR. WEILAND: Support the new timeline and the
13 other features --

14 THE COURT: -- that are the beneficiaries of --

15 MR. WEILAND: -- of the Order.

16 THE COURT: -- the Estate support what you're
17 doing so I'm happy to take some evidence if you want but I
18 don't have a need for it. I will sign the Order without it
19 once we can figure what that order ought to say.

20 MR. WEILAND: Okay. Thank you, Your Honor. We'll
21 go that way then since I know we do have a number --

22 THE COURT: Is the Committee --

23 MR. WEILAND: -- of other things on the Agenda.

24 THE COURT: -- okay on that or?

25 MR. WEILAND: Your Honor, I have the older version

1 of the Order on a thumb drive if you'd like it.

2 THE COURT: Well, let's wait and see. I want to
3 give Mr. Ripley a chance to figure out whether he can go to
4 the auction.

5 Mr. Feinstein?

6 MR. FEINSTEIN: Thank you.

7 (Voice off record.)

8 THE COURT: Just knock them out of the way, yeah.

9 MR. FEINSTEIN: Thank you, Your Honor. I do want
10 to confirm that the Committee's objections are resolved.
11 But I do want to state a couple of things for the Record
12 that I think are important to stake out, Your Honor.

13 One of our initial issues with the bid procedure
14 as initially proposed, was that it only permitted bidders to
15 bid pursuant to a plan and now that's been unlocked so now
16 bidders can bid either in a conventional 363 process or
17 pursuant to a plan, the bid procedure is now expressed the
18 Debtors' preference that people bid pursuant to a plan but
19 it's not the only way to bid.

20 And our concern, Your Honor, is that -- was that
21 forcing people to bid pursuant to a plan not only can show
22 bidding but we also saw the writing on the wall and this is
23 tomorrow's problem not today's but at the time that we saw
24 the initial motion, we'd also seen a draft of the Plan
25 that's now been filed and the Plan contains blanket direct

1 the third party releases of past and present directors and
2 officers. And we didn't want to be faced or have Your Honor
3 faced with a situation where Your Honor would be asked to
4 either approve a sale pursuant to a plan that had releases
5 or strip out the releases and damage or destroy the sale
6 because we will address the releases and so forth down the
7 road. But now that that -- the path has been opened up,
8 that addresses our concern.

9 But there is a set of timelines and dates in the
10 revised procedures as well as the reservation of the rights
11 for the Committee. And we took to heart Your Honor's
12 statement at the last hearing that the Debtor can file
13 whatever plan they want whenever they want. So the
14 important dates in our mind that are really set in stone are
15 the bid deadline and the auction. And to the extent that a
16 bidder wants to bid pursuant to a plan I guess they can.

17 If the Debtor wants to pursue a plan, they've set
18 some dates in. Now, they call them "milestones" but
19 nobody's imposing this on them. These are self-imposed
20 milestones. As Your Honor said, they can file what they
21 want when they want but we reserve the right to object to
22 the Disclosure Statement because if you look at the
23 timeline, Your Honor, in the revised procedures, you'll see
24 that they still contemplate having a disclosure statement
25 hearing on, I guess it's February 22nd now, not the 23rd,

1 and that precedes the auction. So we'll address when it
2 comes but it begs the question whether a disclosure
3 statement that's, you know, exist as of February 23rd before
4 the auction is going to contain adequate information because
5 we still don't know -- we won't know as of that date who the
6 successful bidder is or what the purchase price is and with
7 that, we won't know what creditor distributions are.

8 So the Creditor -- the Debtor can file whatever
9 they want. We've reserved our rights to object to the
10 disclosure statement. I just didn't want there to be any
11 lack of clarity that we are not endorsing the Plan
12 timelines. These are the Debtors own choices. They're
13 called "milestones" but there's no consequence if they're
14 missed. It's just the Debtors' game plan and trajectory so,
15 you know, with that reservation, Your Honor, we support the
16 entry of the Order.

17 THE COURT: Thank you.

18 MR. FEINSTEIN: Thank you.

19 THE COURT: Does anybody else want to express a
20 view?

21 MR. RIPLEY: Judge, one. Ed Ripley. We had a
22 question, well, about how a potential 363 motion might fit
23 into the current calendar. Just trying to get a sense of
24 how that would work. If in fact, we flipped to a different
25 process, how that would work in connection with the current

1 conflicts.

2 MR. FEINSTEIN: It may be better for the Debtor to
3 answer but what the final document says is if there is a 363
4 bid as opposed to a plan bid, a sale hearing will be
5 scheduled by the Debtor in support of that but there's no
6 specific date. I would've thought that would have ended up
7 at the end of the same date that they targeted for the
8 confirmation hearing but it's not my motion.

9 MR. RIPLEY: Okay.

10 MR. WEILAND: Your Honor, for the Debtors' part,
11 first of all, we can litigate the Plan and the disclosure
12 statement in the appropriate context at the appropriate time
13 neither of which are today. All parties, of course, reserve
14 the rights on those issues and we reserve our right to
15 pursue what we deem appropriate and are also Debtors-In-
16 Possession.

17 As for the 363 sale as a pivot, you know, I think
18 we'll take that in due course based on the bids that we get
19 and based on the circumstances at the time. To be clear, we
20 believe that the path forward here is a sale under a plan.
21 We, of course, in our role as Debtors-In-Possession in a
22 Chapter 11 case, maintain the right and the ability to
23 pursue other avenues but that is our path right now and
24 that's what we're pursuing.

25 THE COURT: All right. No need for me to repeat

1 what I said before, you get to pursue what you want to
2 pursue.

3 MR. WEILAND: Thank you, Your Honor.

4 THE COURT: So do you want to take up the Order at
5 this point, Mr. Ripley? Have you had a chance to look to
6 see if you have a --

7 MR. RIPLEY: I have, Your Honor.

8 THE COURT: And --

9 MR. RIPLEY: And I have -- I cannot point you to a
10 provision.

11 THE COURT: Okay. I'm not going to grant you
12 something you don't have under state law just because it's a
13 bankruptcy auction.

14 So do you want to hand me up the flash drive and
15 we'll get this Order going?

16 MR. WEILAND: Yes, Your Honor.

17 May I approach?

18 THE COURT: Yes, sir. Thank you. For folks on
19 the phone, I'll turn on join.me once I get this going.

20 (Pause/voices off record.)

21 THE COURT: All right. For those of you on the
22 phone, you should be able to see what we're doing on the
23 screen.

24 What's the -- what are the relevant paragraphs
25 that we need to work on?

1 MR. WEILAND: Your Honor, in the Order, it's
2 Paragraph 21.

3 THE COURT: Two one?

4 MR. WEILAND: That I think we'll be kicking out
5 for purposes of today and I don't think it needs to go into
6 the Order but I think what we would like to do if we're
7 going to take that -- well, it's not that Paragraph 21.
8 This is --

9 THE COURT: Is it in the procedures and not in the
10 Order?

11 MR. RIPLEY: It's in the bid procedures.

12 MR. WEILAND: It's in the -- oh, I'm sorry,
13 Your Honor, yes, it's in the procedures not the Order.

14 THE COURT: This, it's in here?

15 MR. WEILAND: It should be, Your Honor.

16 (Pause in the proceedings.)

17 MR. WEILAND: No, I'm sorry, Your Honor, I'm not
18 sure if you have a different version of the Order. It is
19 Paragraph 21 in the black line of the Order that we filed
20 last night, at least what I'm looking at here. I was --

21 THE COURT: So --

22 MR. WEILAND: It's 20 there, Your Honor.

23 THE COURT: Okay.

24 MR. WEILAND: I'm not sure why my printout looks
25 different. And, Your Honor, for kicking that out for

1 further proceedings, I think what we'd like to do -- I don't
2 think it needs to go in the Order but is to talk about the
3 calendar and what we could do between now and the bid
4 deadline to come back to you on this issue.

5 THE COURT: Okay. So if I take out the first
6 sentence in Paragraph 20 --

7 MR. WEILAND: I think that would be consistent
8 with what we've been talking about, Your Honor.

9 MALE SPEAKER: Probably so.

10 THE COURT: I just want to be sure that's the only
11 offending sentence.

12 MR. WEILAND: Yeah.

13 MR. GREENDYKE: It is. Frankly, the second
14 sentence doesn't seem to make sense but taking out the first
15 sentence, that first sentence is the problem to me.

16 THE COURT: Okay.

17 MALE SPEAKER: Agreed.

18 THE COURT: And then when are you going to serve
19 these?

20 MR. WEILAND: We'll serve these --

21 (Pause/Counsel confer.)

22 MR. WEILAND: Your Honor, my partner pointed out
23 that in Paragraph 20, we do want to make clear that the
24 opportunity to participate in the sale for auction is
25 subject to the bid procedures and the requirement that they

1 submit a qualified bid to get to the auction.

2 On the notice, Your Honor, to your point, I
3 believe we intend to get this -- these all served within
4 three days.

5 THE COURT: You want to put down the --

6 MALE SPEAKER: Three business days.

7 MR. WEILAND: Three business days, Your Honor,
8 given that it's Thursday.

9 THE COURT: So it'll probably be done January 31;
10 does that work?

11 MR. WEILAND: Sure. Thank you, Your Honor.

12 THE COURT: Are there any other blanks in there
13 that I need to worry about? I think there's some blanks in
14 there.

15 MR. WEILAND: Your Honor, they're -- in the
16 bidding procedures there are --

17 THE COURT: Right.

18 MR. WEILAND: -- blanks for docket numbers and
19 dates. If you --

20 THE COURT: I don't think I need to fill those in,
21 right? Do I need to fill those in now or those can wait
22 or --

23 MR. WEILAND: We -- those can wait, Your Honor.
24 We can submit those under a notice after --

25 THE COURT: All right.

1 MR. WEILAND: -- our hearing today.

2 THE COURT: And do I have any objections for this
3 form of Order?

4 (No verbal response.)

5 THE COURT: Okay. I'll print the procedures.

6 Does it have only the one attachment which is the
7 bidding procedures?

8 MR. WEILAND: that's correct, Your Honor.

9 THE COURT: Okay. I don't remember the timeline.
10 I checked it to be sure I was free but I want to say it's
11 sometime in March is the --

12 MR. WEILAND: March 30th is the confirmation
13 hearing.

14 THE COURT: Is the auction?

15 MR. WEILAND: February 22nd is the bid deadline
16 and it's also the disclosure statement hearing.

17 THE COURT: The auction is -- the auction bid
18 deadline is February 22nd or the auction is February 22nd?

19 MR. WEILAND: The bid deadline is February 22nd.
20 The auction would be the next week, just put my timeline or
21 whatever but I think it's the 27th. I'm sorry, the auction
22 is March 6th. It was the 27th.

23 THE COURT: So when do you all want to come in and
24 argue whether the results of the auction will be subject to
25 preferential bidding rights or not? I think that's the

1 right way to word the question here.

2 MR. WEILAND: Yes, Your Honor.

3 THE COURT: It may be isn't subject to it because
4 they contractually are not entitled to it. It may not be
5 subject to it because the bankruptcy code may take away that
6 right so determine that when you want to have that hearing.

7 MR. WEILAND: Your Honor, I think we'd like to
8 have it before February 22nd and if there's a date that
9 works, we can work backwards from there. Mr. Perez did
10 point out, Your Honor, as I mentioned that I thought cleaned
11 it up but on -- and what's left of Paragraph 20 in the
12 Order --

13 THE COURT: Right.

14 MR. WEILAND: -- it does, as it reads right now
15 having deleted the first sentence --

16 THE COURT: Right.

17 MR. WEILAND: -- maybe we need to make that
18 second -- what remains subject to the provisions of the
19 bidding procedures because it -- to participate in the
20 auction, you do need to submit a qualified bid and as
21 standing along right now, it could be read another way.

22 MR. PEREZ: I'm just trying to keep Mr. Ripley
23 out.

24 (Laughter.)

25 MR. RIPLEY: He's done it before. He's done it

1 before.

2 THE COURT: I can I just take that out?

3 MALE SPEAKER: Yeah.

4 MR. WEILAND: I think that it would be fine to
5 delete the whole thing too.

6 THE COURT: Okay. Mr. Greendyke and Mr. Ripley,
7 when can you all be ready for a hearing on whether you will
8 have preferential rights following an auction.

9 MR. GREENDYKE: I think this is -- Bill Greendyke
10 for Anadarko. I think it makes sense to wait till after we
11 know what's going to be sold. Frankly, I mean, we can be
12 ready by mid-February but it seems to make sense to wait and
13 see what they're going to sell, what they're going to sell
14 everything in the Gulf of Mexico or all their assets are
15 piece by piece by piece because that's how I think that
16 provision that the Court's going to cite would apply.

17 MR. RIPLEY: And they also have included in their
18 Plan, in the Bid Procedure Order was Paragraph 27. The
19 ability to do something completely different so I think we
20 have to wait for the auction, the results of the auction --

21 MALE SPEAKER: We'll be happy to.

22 MR. RIPLEY: -- then we know whether it has --
23 there's an exception or not.

24 THE COURT: Well --

25 MR. RIPLEY: I don't know how we get away from

1 that when we're saying --

2 THE COURT: Why do we have -- why don't I have two
3 different hearings then? We'll have one hearing on whether
4 the preferential bidding rights are an impermissible
5 restriction on transfer. You can brief that question and
6 that might require evidence if that's part --

7 MR. WEILAND: Yes, Your Honor.

8 THE COURT: -- of a legal factor and then --

9 MR. WEILAND: But I think that would be --

10 THE COURT: -- we'll have a second one --

11 MR. WEILAND: -- that's the one that we'd like to
12 have before --

13 THE COURT: Yeah, and then we'll have --

14 MR. WEILAND: -- the bid deadline.

15 THE COURT: -- a second hearing assuming if you
16 prevail on the first hearing, we won't need the second.

17 MR. RIPLEY: We wouldn't need the second.

18 THE COURT: If you lose on the first hearing then
19 we'll have a second hearing to determine whether there, in
20 fact, are preferential bidding rights under the Preferential
21 Bid Contract.

22 MR. WEILAND: That's fine.

23 THE COURT: Does that work?

24 MR. RIPLEY: Yes, sir.

25 MR. GREENDYKE: So from a date standpoint,

1 Judge -- again, Bill Greendyke for Anadarko -- later in
2 February is better. The more time that we have obviously
3 the better.

4 THE COURT: Okay.

5 (Pause/voices off record.)

6 THE COURT: Is there anyone here working on the
7 Castex case? We have some time reserved in Castex on the
8 afternoon of the 15th. I'm thinking of taking away that.
9 Let me take a look.

10 MR. WEILAND: Your Honor, as we discuss dates for
11 the additional scheduling, I think we'll --

12 MALE SPEAKER: That works.

13 MALE SPEAKER: That works.

14 MR. WEILAND: -- we're hoping that you have time
15 for us on February 16th for the hearing.

16 (Pause/Counsel confer off the Record.)

17 THE COURT: I have a Daubert motion that morning.
18 I'm inclined to calendar you on top of the Daubert motion,
19 maybe wait 45 minutes into it and then calendar and make you
20 wait just to be sure we get finished that day.

21 Would that work for you all? I don't think that
22 I've got time that I can give you just all on your own but.

23 MR. WEILAND: Friday morning the 16th should work.

24 THE COURT: Okay. Let's schedule it at 10:30 on
25 the 16th. And again, you may have delayed on your start and

1 I apologize in advance for that but if you want that date,
2 that's about all I can do for you.

3 MR. RIPLEY: We can handle it, Judge, no problem.
4 Thank you.

5 THE COURT: Okay. So the Debtor will file not
6 later than seven days from today. I think we all know what
7 it's going to say, a motion to determine whether the
8 preferential bidding rights are precluded by operation of
9 the Bankruptcy Code.

10 Not later than seven days thereafter, the holders
11 of the preferential rights will file a response.

12 And then we will have evidence and argument on the
13 16th starting at 10:30-ish.

14 MR. WEILAND: Very good.

15 THE COURT: Does that work for everybody?

16 MR. RIPLEY: Very good. Thank you, very much,
17 Your Honor.

18 THE COURT: Okay. Thank you.

19 MR. RIPLEY: Thank you, Your Honor.

20 THE COURT: And I've signed the Order at this
21 point.

22 MR. WEILAND: Thanks, Your Honor.

23 MR. GREENDYKE: Bill Greendyke on behalf of
24 Anadarko, Judge. Number two, the Bid Procedure Order was
25 the only thing we had on the Agenda today we were concerned

1 with.

2 May Mr. Bruner and I be excused?

3 THE COURT: Sure. Thank you for coming in.

4 MR. RIPLEY: Same, Ed Ripley on behalf of --

5 THE COURT: Thank you, Mr. Ripley, thank you, sir.

6 MR. RIPLEY: Thank you.

7 THE COURT: All right. Where do you want to go?

8 I think that takes us to Sonangol, right?

9 MR. WEILAND: Your Honor, that will take us to
10 Sonangol and I apologize that 16th does work for us but it
11 may not work for a witness. What I propose is we keep that
12 date and we will be in touch with the other parties in
13 Chambers if that needs to move.

14 THE COURT: You could just go grab them real quick
15 somebody. We've got enough lawyers here.

16 Would somebody go grab those two folks and let
17 them know that? Thank you. See if they can come back in
18 just for a second.

19 (Pause/voices off Record.)

20 THE COURT: Mr. Greendyke, Mr. Bruner, apparently
21 there's a potential witness problem on that day and if it
22 turns out that there is a problem getting their witness that
23 day, I'm going to ask the parties to contact Ms. Dolezel and
24 find an alternate date that works.

25 MALE SPEAKER: Okay.

1 THE COURT: Thank you.

2 MR. WEILAND: That's what we'll do. Thank you,
3 Your Honor.

4 THE COURT: Thank you. All right. So let's go to
5 Sonangol.

6 (Pause in the proceedings.)

7 MR. WEILAND: Thank you, Your Honor. That's
8 right. Next on the Agenda is the Motion to Approve the
9 Sonangol Settlement Agreement.

10 Your Honor, just to highlight what we'd like to
11 do, we've got a little bit of an opening argument and then
12 we do have an evidentiary presentation for the extent
13 necessary. But by way of background, Cobalt has a long
14 standing dispute with Sonangol, Sociedade Nacional de
15 Combustiveis de Angola, the state oil company of Angola.

16 This settlement successfully secures a global
17 settlement of those issues that include a disputed purchase
18 agreement related to Cobalt's Angola assets held through
19 non-Debtor's subsidiaries and arbitration ending related to
20 that purchase, as well as capital calls that were not paid
21 by Sonangol before the present arbitration.

22 Cobalt has a fully executed Settlement Agreement
23 approved in person by the full Board of Sonangol and its
24 chairmen and we believe that the proposed settlement
25 represents a complete agreement between the two parties well

1 within the range of reasonableness to the extent that the
2 settlement touches the Debtors which is only through an
3 affiliate release. And is -- it is well within the sound
4 exercise of the Debtors' business judgment to cause their
5 subsidiaries to enter into this settlement and pursue it to
6 completion.

7 The settlement does provide and this is the
8 subject of Sonangol's filings before the Court that the
9 Debtors will negotiate and execute definitive documents that
10 are necessary to transfer Cobalt's Angola assets back to
11 Sonangol. We fully intend to do that. Sitting here today,
12 we are not sure that there are definitive documents
13 necessary potentially a conveyance deed or a bill of sale
14 but that's something that we can work out between today and
15 the payment deadlines established by the Agreement that we
16 have already signed.

17 We believe that the other parties to the case
18 including the Creditors Committee who stated that they've
19 resolved their concerns about the settlement and the secured
20 noteholders groups and the unsecured noteholders groups all
21 support the settlement.

22 We've also been in touch with Witten Petroleum,
23 the holder of or the party to an overriding royalty
24 agreement relating to the Sonangol assets and subject to the
25 inclusion of some reservation of rights language for Witten

1 and all other parties in the revised Proposed Form of Order
2 that we entered or filed last night, we believe that all
3 parties support the settlement.

4 Sonangol said that in its first filing -- they
5 made another last night, that it remains fully committed to
6 the deal and we expect that they -- we expect them to follow
7 through on their obligations there under. To the extent
8 that there are remaining issues and I take it from the
9 filings and Mr. Dugger's presence here today that there may
10 be. We can work that out. We have an agreement that's
11 supported by the highest levels of Sonangol and was signed
12 by the highest levels of Sonangol. And we expect to work
13 between now and the deadlines laid out in that Agreement to
14 resolve any ancillary issues that need to be resolved.

15 THE COURT: All right.

16 MR. DUGGER: May it please the Court?

17 THE COURT: Yes, sir. Mr. Dugger?

18 MR. DUGGER: Sonangol is committed to the
19 Settlement Agreement particularly that provision about that
20 if the events are reasonably necessary, the parties will
21 negotiate them. Now, this is a half billion settlement and
22 Sonangol has determined under Angolan law that it is
23 required to enter into definitive agreements which will be
24 subject to the approval of the Angolan administer of
25 petroleum.

1 So we're not arguing that the Agreement shouldn't
2 be approved but we're reserving our right to not make
3 payment until the definitive agreements which are an
4 integral part of the Agreement are entered into. We've set
5 out some of the reasons in surrebuttal but I -- or surreply
6 but I don't think you particularly want to interpret Angolan
7 law. But so we have submitted an ordinate proposed order
8 with out --

9 THE COURT: The alternate proposed Order which I
10 may very well be prepared to consider, I'm only going to
11 consider if Sonangol consents to my jurisdiction to
12 interpret and apply and enforce the Contract. And if
13 Sonangol wants to do that --

14 MR. DUGGER: Okay.

15 THE COURT: -- I'll take up what you want done;
16 otherwise, I'm simply going to approve the Debtor's
17 performance because I don't -- I'm not going to order them
18 to do anything in particular because that require me to
19 interpret the Agreement. Now, again, I think I can do that
20 if Sonangol waives its own sovereign immunity here and wants
21 me to -- if that's what you're asking me to do, I want it
22 clear that I'm interpreting that as a waiver of your
23 sovereign immunity.

24 MR. DUGGER: No, sir.

25 (Laughter.)

1 THE COURT: Well then don't know how I can
2 interpret the Contract if I can't bind the parties to it.

3 How can I interpret it?

4 MR. DUGGER: The Settlement Agreement says
5 Cobalt --

6 THE COURT: I'll put in the Order the Settlement
7 Agreement is approved according to its terms. But if you're
8 asking me to interpret the terms then -- and I'm not trying
9 to be -- I'm trying to be upfront about this.

10 MR. DUGGER: Yeah, I --

11 THE COURT: If you're asking me to interpret the
12 terms, Sonangol can waive sovereign immunity and I will do
13 that.

14 MR. DUGGER: Yeah, I --

15 THE COURT: And I haven't looked at it to see how
16 to interpret them. But I'm not going to interpret them with
17 only one side being bound by the interpretation.

18 MR. DUGGER: No, and we think there are other
19 superfluous things in their proposed order.

20 THE COURT: That's a different story. If you
21 think they're having it interpreted, that's fine, but if --

22 MR. DUGGER: Yeah.

23 THE COURT: -- all that I think I need to do is to
24 approve it, period. I don't -- I'm happy to interpret,
25 don't get me wrong. I think that's part of my job but it's

1 only part of my job with people I've --

2 MR. DUGGER: Okay.

3 THE COURT: -- got jurisdiction over and
4 Sonangol's a long way off.

5 MR. DUGGER: Yeah.

6 THE COURT: So, what do you want me to do?

7 THE COURT: Well, Your Honor, it says the Cobalt
8 parties' obligations are subject to the approval of the
9 United States Bankruptcy Court. It doesn't say anything
10 about Sonangol's obligations.

11 THE COURT: Well, but you've asked me to say that
12 they have to do definitive documents. They're telling me
13 that's not their interpretation necessarily in the
14 Agreement. If you want me to interpret the Agreement,
15 that -- I'll do it.

16 MR. DUGGER: No, we're not.

17 THE COURT: I'll do it. Just be sure that's what
18 you want.

19 MR. DUGGER: We're not requesting that you rule on
20 whether or not definitive documents are required.

21 THE COURT: Okay. I thought your Order did
22 determine that. Let me take a look. All right. Let's see.
23 So here's your proposed Order.

24 MR. DUGGER: Yeah, on Item 7.

25 THE COURT: Is that really what you want me to do?

1 MR. DUGGER: Well --

2 THE COURT: If you want me to do that you may get
3 it but be sure that you know what you're doing.

4 MR. DUGGER: Well, I have no objections to
5 deleting that but I think the parties should know that we're
6 ready and we're going to submit proposed definitive document
7 to them -- we're shooting for January 31st so we're willing
8 to work with them on good faith efforts but we're not
9 willing to spend a half billion dollars on a two-page
10 document prepared by Cobalt.

11 THE COURT: So if you don't want me to change
12 Paragraph 7, then the question is whether the Debtors have
13 any objection to your proposed change to Paragraph 2. It's
14 my understanding that otherwise the Order is identical,
15 right?

16 MR. DUGGER: Yes, sir.

17 MR. HIGGINS: No, no, Your Honor, it's not.

18 THE COURT: The other --

19 MR. HIGGINS: The Order that was uploaded prepared
20 by the Debtors includes the language that reserves Witten's
21 rights.

22 THE COURT: Got it.

23 MR. DUGGER: This Order, Your Honor, is based on
24 the filed version --

25 THE COURT: What about this language?

1 MR. WEILAND: Your Honor, I don't -- I think
2 that's a -- if it's doing what I think it's intended to do,
3 it's a distinction without a different because the Angolan
4 subsidiaries that define term, is defined in the Motion as
5 the three parties that are actually subject to and party to
6 the Settlement Agreement. That doesn't extend to every
7 wholly owned non-Debtor subsidiaries that Cobalt has. There
8 are other subsidiaries that that formulation --

9 THE COURT: Okay.

10 MR. WEILAND: -- would capture --

11 THE COURT: Okay.

12 MR. WEILAND: -- and I think maybe inadvertent but
13 I don't think we can go that broad.

14 THE COURT: So I think we can fix that problem.
15 Let me pull up what we've got here. See if we can do
16 this --

17 MR. DUGGER: They're Cayman subsidiaries.

18 (Pause/Court preparing order.)

19 THE COURT: Does that work for everybody? I've
20 added in this.

21 MR. DUGGER: Well, all of Cobalt's subsidiaries.

22 MR. WEILAND: The Angolan subsidiaries are all
23 Cobalt's subsidiaries party to the Settlement Agreement,
24 Your Honor, but I don't have any objection to that
25 formulation.

1 THE COURT: Thank you. And then do you have any
2 objection, Mr. Dugger, to this provision that they've added
3 in with respect to Witten?

4 MR. HIGGINS: Your Honor, it's actually the --
5 it's about three or four paragraphs.

6 THE COURT: Okay.

7 MR. HIGGINS: You need to keep going.

8 MR. DUGGER: Your Honor, we don't think this has
9 anything to do with the Settlement Agreement.

10 MR. HIGGINS: Your Honor, the language doesn't
11 affect --

12 MR. DUGGER: But that belongs to Sonangol. If
13 they want to use it, they can request Sonangol to use it.

14 MR. WEILAND: Your Honor, I think Mr. Dugger is
15 talking about a paragraph -- yeah, I think it's two
16 paragraphs down, Paragraph Number 8 which does not permit us
17 to keep anything that we can't keep. I saw it in
18 Mr. Garner's Surreply there was a concern about information
19 to which we were not entitled. This doesn't say that we're
20 keeping anything that we aren't entitled to the extent that
21 we need to comply law regarding that, we certainly will.

22 MR. DUGGER: Yeah.

23 MR. WEILAND: But these are reservation rights
24 that don't affect the Settlement Agreement.

25 THE COURT: Let me take these one --

1 MR. WEILAND: That's some of the collateral
2 attacks that --

3 THE COURT: -- step at a time.

4 MR. WEILAND: -- other parties were concerned
5 about.

6 (Pause/Court preparing order.)

7 MR. WEILAND: They go -- the Republic of Angola,
8 Your Honor.

9 THE COURT: Sorry. Mr. Higgins, I'll edit one
10 paragraph at a time; does that work for you?

11 MR. HIGGINS: Yeah, that's fair. That's fine,
12 Your Honor.

13 THE COURT: Does that work for you, Mr. Dugger?

14 MR. DUGGER: We still object to anything
15 concerning other parties being included in the Order on the
16 Settlement, Your Honor.

17 MR. HIGGINS: Your Honor, this has no impact on
18 Sonangol. It's --

19 THE COURT: I'm going to --

20 MR. HIGGINS: -- an agreement between us and the
21 Debtors.

22 THE COURT: -- overrule that objection.

23 MALE SPEAKER: Well, then put it someplace else.

24 (Pause/Court preparing order.)

25 THE COURT: So again, I'm not interpreting

1 anything with respect to the rights of the Republic of
2 Angola on this.

3 MR. HIGGINS: Understood, Your Honor.

4 MR. DUGGER: Well, getting possession is another
5 reason we feel that the definitive agreements are necessary.

6 THE COURT: I think I can take out Paragraph 7,
7 right?

8 MR. HIGGINS: Well, Your Honor, we actually
9 requested 7 be included because now that we're hearing as we
10 suspected might be the case that Sonangol is going to insist
11 on some additional definitive documents, we thought it
12 should be presented to the Court to make sure it does not
13 adversely affect the interest of any other
14 parties-in-interest including Witten. That's all it's
15 intended to do.

16 MR. DUGGER: This is agreements between non-Debtor
17 parties.

18 MR. HIGGINS: No, it's an agreement with a Debtor
19 party.

20 MR. WEILAND: If there are any additional Debtors
21 -- well, any additional documents, you're right, it's
22 non-Debtor subsidiaries but given that we're here today
23 seeking court approval for something that may provide for
24 further definitive documents, the Debtors, Your Honor, could
25 live with the notion that we would notify other parties of

1 what those definitive documents may be.

2 THE COURT: If we're authorizing the Debtor to
3 perform under the Settlement Agreement and if under Angolan
4 law it requires other definitive documents, don't I modify
5 the Agreement by giving you an out from performance under
6 it? The notification wouldn't but if I allow people to come
7 in and upset the definitive documents that you've agreed to?

8 MR. WEILAND: Through an objection maybe,
9 Your Honor.

10 MR. HIGGINS: But, Your Honor, let's assume for
11 the sake of discussion, that the definitive documents
12 include a provision that states that the overriding royalty
13 of Witten is unenforceable. We should know because we would
14 have objected to the Settlement before you today had they
15 included such a provision.

16 MALE SPEAKER: I would imagine the Creditor's
17 Committee and others would like to know if --

18 (Voices off record.)

19 MR. WEILAND: Any further documents aren't to have
20 the force of a court order.

21 MR. HIGGINS: The Court may not have approved of
22 the Settlement had it included such language. We might have
23 objected.

24 (Pause/Court preparing order.)

25 THE COURT: So you'll get notice and you can have

1 a claim but they've got to be able to do their deal with the
2 Republic of Angola. It damages if they go make some
3 statement that takes away one of their rights. Now, if the
4 Republic of Angola takes away one of your rights you get to
5 deal with them. But if the Debtors try to take away one of
6 your rights then you can have damages against the Debtor.
7 It's not like they're not going to have a lot of money when
8 this comes through.

9 MR. WEILAND: Your Honor, my only concern with
10 that provision is that the Debtors may not be party to the
11 definitive documents and to the extent that the definitive
12 documents sometimes -- somehow give rise to a claim or give
13 rise to damages. A party's claim may be against the
14 non-Debtor subsidiary that's actually party to them not
15 against the Estate.

16 MR. HIGGINS: Well, the problem with that,
17 Your Honor, the Debtors are controlling the non-Debtors so.

18 THE COURT: I'm saying "Executed or approved by
19 the Debtors" so if they approve their non-Debtor
20 subsidiaries and doing it, they're going to be liable for
21 the damages.

22 MR. HIGGINS: Understood, Your Honor.

23 THE COURT: You okay?

24 MR. HIGGINS: Yeah, and so can we include the
25 notice of the documents so we still --

1 THE COURT: I did.

2 MR. HIGGINS: Could I have a minute, Your Honor?

3 THE COURT: Yes, sir. Mr. Dugger, I assume that
4 protects everything. You need to protect their right.

5 MR. DUGGER: Well, again, Your Honor, the
6 Settlement Agreement says the Court will approve the
7 Settlement Agreement.

8 THE COURT: That's all I'm doing.

9 MR. DUGGER: It doesn't talk anything about
10 submitting any definitive documents to the Court.

11 THE COURT: That's an imposition on them not on
12 you and I don't see why that adversely affects the rights of
13 your client to have them file what they do. I'm not -- it's
14 not subject to anybody's approval and that's what I'm trying
15 to take out.

16 MR. DUGGER: All right. Well --

17 THE COURT: It's simply disclosure of it.

18 MR. DUGGER: I just want to ensure it's not --

19 THE COURT: Yeah, there's no approval of it. They
20 may subject themselves to damages but that will not get them
21 out of their agreement with you.

22 MR. DUGGER: Okay.

23 THE COURT: They're going to have to make the
24 transfers to you when they get your money.

25 MR. WEILAND: Your Honor, the only -- I think we

1 can live with the concept, but I think in the objection
2 sentence, we need to keep the seven days if we could so that
3 it's not an open-ended objection right that may remain
4 hanging out there.

5 (Pause/Court preparing order.)

6 MR. WEILAND: Thank you, Your Honor.

7 THE COURT: All right. Paragraph 8?

8 MR. WEILAND: There again, Paragraph 8, I think is
9 what Mr. Dugger's Surreply expressed some concern over, but
10 reading the words on the page that nothing there says that
11 we affirmatively have the right or a power to keep something
12 that we otherwise may not. This just says that the Order on
13 its own does not change it.

14 (Pause/Court preparing order.)

15 MR. WEILAND: That seems straight forward to me,
16 Your Honor.

17 THE COURT: Mr. Dugger, I think, again, I'm trying
18 to do what you said, we're going to protect your Agreement.
19 They can have their other agreements with other parties but
20 your client doesn't get affected by that, right?

21 MR. DUGGER: Right, Your Honor.

22 THE COURT: Okay. What about Paragraph 9?

23 MR. DUGGER: We have some concerns and think this
24 has to be addressed in the definitive agreement, Your Honor.
25 The Settlement Agreement says they'll tell us where to make

1 to make the bank deposits but again, we're all subject to
2 Angolan law and subject to the bank, National Bank of
3 Angola's approval to transmit any dollars outside of Angola.

4 MALE SPEAKER: Your Honor.

5 THE COURT: Well, let me just say --

6 MR. WEILAND: We agree with his premise among
7 other things on the --

8 THE COURT: -- I can make this real easy. I'm not
9 approving the Agreement if they can't get the money out of
10 Angola. So you tell me if you want me to approve it. But
11 I'm not approving an agreement if you're telling me they
12 can't take the money out of Angola.

13 MR. DUGGER: No, I think we've got --

14 THE COURT: So that's -- take your pick.

15 MR. DUGGER: I think the bank's going to ask them
16 for -- where the money's going.

17 THE COURT: Pardon me?

18 MR. DUGGER: The National Bank of Angola is going
19 to require certain information on approving any payments
20 outside of Angola but that's something we'll address with
21 the Bank of Angola.

22 THE COURT: I'm going to make them put the money
23 into the United States when they get it.

24 MR. DUGGER: When they get it.

25 THE COURT: And if that means that you put

1 something in the definitive documents and they agree to it
2 and they can't get the money, it isn't approved. The money
3 is coming into the United States or I do not approve this
4 Agreement, period, end of sentence.

5 Any objections to this form of Order?

6 MR. DUGGER: Let's see.

7 MR. HIGGINS: Your Honor, if could go talk to my
8 client about the one change.

9 THE COURT: Go ahead.

10 MR. DUGGER: If we could go back up just a second
11 on Number 9, Your Honor. Okay, "Any portion thereof," all
12 right.

13 MR. PEREZ: Well, but it's -- I'm sorry.

14 THE COURT: You're really making me very nervous
15 as to whether to approve this. If you're telling me that
16 your client intends to hold up the money and not send it to
17 them in accordance with the Agreement then there's no point
18 in us approving this because I'm not going to --

19 MR. DUGGER: No.

20 THE COURT: -- allow that to occur. They can do
21 the deal as written but your client can't come in with
22 definitive documents and say, "Yeah, but you can't bring all
23 of the money into the United States. You can only bring
24 \$100 million to the United States or \$5 million to the
25 United States." It comes here, it's their money, they get

1 to direct where it goes, period.

2 MR. DUGGER: Yes, Your Honor, after --

3 THE COURT: Go check with your client, if they
4 don't want it approved --

5 MR. DUGGER: -- the payments are --

6 THE COURT: -- then forget the deal.

7 MR. DUGGER: -- approved by the Ministry of
8 Petroleum --

9 THE COURT: Well --

10 MR. DUGGER: -- and the National Bank authorizes
11 the transfer. Again, we're subjected to Angolan law.

12 THE COURT: Where's the Agreement, the Settlement
13 Agreement?

14 MR. WEILAND: I have a copy here if you'd like it,
15 Your Honor.

16 THE COURT: Let me see it.

17 MR. WEILAND: Your Honor, as you start to look at
18 it, I will say just two points:

19 Number one, there's no prescription on the bank
20 account or its location that we can direct Sonangol to pay
21 the money into in that Agreement. And we think that the
22 notion that there is inconsistent of one of the premises of
23 this Agreement which is Cobalt's exit from Angola. So we
24 would ask that the Order be entered as is and the Agreement
25 approved today, in part, because if there is a dispute on

1 this point, we'd like the right to enforce this Agreement in
2 this court or the appropriate forum against Sonangol so they
3 try not to live up to their payment obligation.

4 MR. DUGGER: But the Agreement says it'll be made
5 to bank accounts --

6 THE COURT: Did Cobalt notify Sonangol?

7 MR. DUGGER: -- as Cobalt will notify Sonangol.
8 But in any event that, Your Honor, that is subject to
9 Angolan law.

10 (Pause/Court preparing order.)

11 THE COURT: Any objections to the Debtors, me
12 tying your hands and saying "I don't care what they say,
13 you're not authorized"?

14 MR. WEILAND: Your Honor, that is the deal that we
15 signed and we have no intention of altering that deal.
16 Their --

17 THE COURT: So I'm not changing what the
18 Settlement Agreement says, it says what it says. And if it
19 is correct that under Angolan law, Angola can withhold the
20 funds then that may turn out to be correct but if that's
21 true, the Debtors aren't authorized to proceed. And all
22 their seeking from me is authority to proceed.

23 MALE SPEAKER: Right.

24 THE COURT: They are not authorized to proceed in
25 a way that doesn't get them \$500 million into a bank located

1 within the United States of America.

2 MR. DUGGER: Well, Your Honor, there's going to be
3 Angolan taxes that they're going to hold. There is a number
4 of obligations in Angola that they're going to be required
5 to pay before they leave the country and this is the only
6 money from which to pay those obligations.

7 MR. WEILAND: Your Honor, this may preview a
8 dispute that we -- we'll have to take up with Sonangol. We
9 do not agree with that interpretation of this Agreement
10 which provides for a full release of any and all debts and
11 obligations between Cobalt and Sonangol in the Republic of
12 Angola. I'm happy to put a witness on to talk about the
13 back story if at all necessary but otherwise, I think we can
14 take this up with Sonangol in the fullness of time.

15 THE COURT: Again, Mr. Dugger --

16 MR. WEILAND: But our deal is the \$500 million
17 now.

18 THE COURT: -- I'll leave it up to Sonangol. If
19 you want me to retain jurisdiction to enforce this Order and
20 the Settlement Agreement I will do that, otherwise, I'm
21 simply going to declare their authority not yours. If you
22 want me to retain jurisdiction or consent to it, I'll do it
23 but otherwise, all I'm doing today is telling them what they
24 can do not what you can do.

25 Do you want me to enforce the Agreement as

1 written? I'll include a provision that --

2 MR. DUGGER: As we mentioned, we're not asking you
3 to exercise any jurisdiction over Sonangol.

4 THE COURT: Okay. Mr. Higgins.

5 MR. HIGGINS: We're okay, Your Honor --

6 THE COURT: All right.

7 MR. HIGGINS: -- with your proposed language.

8 THE COURT: Any party and I will -- to the extent
9 that my rulings have overruled some objections made
10 Sonangol, they are overruled. I don't think I have. I
11 think I've resolved them or found that they are largely
12 mooted by the language we've added.

13 Other than those objections, are there any
14 objections to the entry of the Order that is up on the
15 screen?

16 MR. WEILAND: Not from the Debtor, Your Honor.

17 THE COURT: Thank you. Again, I'll leave it to
18 your discretion what level evidence you want. It sounds
19 like you've got the support of all the constituencies. I
20 mean, it -- we're sitting here and I'm hearing one reason
21 why you're doing this which is: you're concerned you're not
22 going to get the money under the Settlement Agreement
23 anyway. You know, it's an alternative that you're taking
24 but I don't have a lot of confidence you're going to get the
25 money given the reticence of Sonangol to agree to really pay

1 you but we'll see.

2 MR. WEILAND: Well, Your Honor, I think it's our
3 intention to try to get them to follow through on their
4 Agreement.

5 THE COURT: I hope so.

6 Do you want to put any further evidence on?

7 MR. WEILAND: No, Your Honor.

8 THE COURT: And the attachment is going to be this
9 Settlement Agreement right, that you have here?

10 MR. WEILAND: Yes, Your Honor.

11 THE COURT: All right. I've signed it. Thank
12 you.

13 MR. WEILAND: Thank you, Your Honor.

14 MR. DUGGER: Thank you, Your Honor.

15 MALE SPEAKER: Thank you, Your Honor.

16 THE COURT: I'm going to call a 3:00 o'clock
17 hearing that I haven't called yet. This won't take very
18 long, I don't think.

19 (Recess was taken from 3:40 p.m. to 3:42 p.m.)

20 THE COURT: Let's go back on Cobalt. I thought
21 those are the ones that were non-controversial, no.

22 (Laughter.)

23 MR. WEILAND: Your Honor, you did get through them
24 pretty quickly though.

25 Your Honor, next on the Agenda is cash collateral

1 and we did file a revised proposed form of Order last night.
2 We continued discussions with the parties and do have a few
3 further changes that some of which are being negotiated as
4 we speak, being discussed as we speak. But I don't think
5 the changes, frankly, change the thrust of what we're doing.
6 And so what I'd like to do is, again, proceed without -- for
7 at least a live witness unless the issue comes up but
8 explain the Order, some of the changes that have been made
9 since the First Day Hearing and the entry of the Interim
10 Order and our take on some of the points that I think remain
11 open as between the Debtors and the Committee, maybe other
12 parties, but I think some of the issues with other parties
13 have been resolved since the hearing started.

14 THE COURT: That's fine with me. Let's -- go
15 ahead.

16 MR. WEILAND: Okay. Thanks, Your Honor.

17 THE COURT: You ready to put that Order on the
18 screen or what would be helpful for me to do right now?

19 MR. WEILAND: Your Honor, it may make sense to put
20 a redline up on the screen.

21 THE COURT: Okay.

22 MR. WEILAND: And I can point you to a few
23 provisions as work through. I'd be happy to give you a hard
24 copy as well if that would be preferable.

25 THE COURT: So there's a redline up on the screen

1 now.

2 MR. WEILAND: Okay. So, Your Honor, again, before
3 I address the points that remain open, I'd just like to
4 provide a update regarding the discussions that we have had
5 with the pre-petition secured parties under the Order, the
6 first lien notes and the second lien notes, as well as the
7 Committee and the Ad Hoc Group of Unsecured Notes that led
8 to a lot of changes in the Order that was filed last night.

9 Over the past months since we filed the cases,
10 Your Honor, the Debtors have engaged in all of their
11 creditor, key creditor constituencies including the
12 Creditor's Committee; the first lien notes; their indenture
13 Trustees; for the first liens; the second liens; and the
14 unsecured; and Ad Hoc Groups of the first liens; second
15 liens; and unsecureds as well.

16 We have engaged Your Honor in a lot of shuttle
17 diplomacy in efforts to resolve parochial issues raised by
18 one group or another. I think we've been successful across
19 a number of points that were raised. Dialogues resolved the
20 concerns raised by the first liens which, I believe, do
21 support the Order as filed and support the Order I've
22 consented to use of cash on the terms laid out in the Order
23 has been modified during this hearing.

24 It also resolves, we believe, most of the issues
25 raised by the Ad Hoc Group of unsecureds and should go at

1 least a long way toward resolving some of the concerns
2 expressed by the Committee and its objection.

3 A few of the wins, I think, for the unsecured
4 creditors and the Estate's include the following: In
5 reporting; and budget, a notice of budgets as in Paragraph 4
6 of the revise; Committee and Committee professionals will
7 receive notice of the same reporting package, same budgets
8 as the secured creditors receive.

9 As for the default notice period and remedies
10 provisions in Paragraph 6, final order expands the notice
11 period for an event of default from three business days to
12 five, while committee professionals receive the same notice
13 that the Debtors receive and it does allow as the Interim
14 Order allowed us to come back to court to seek nonconsensual
15 use of cash should we default this Order.

16 THE COURT: I thought that the latest one I saw if
17 there was a default in the Order allowed the secured
18 creditor to exercise rights as well not --

19 MR. WEILAND: It does, Your Honor --

20 THE COURT: Okay.

21 MR. WEILAND: -- but not within that five-day
22 period and then there's no bar to our coming into to seek
23 nonconsensual use of cash on different terms during that
24 five-day period on expedited emergency basis.

25 THE COURT: I'm not worried about the

1 nonconsensual use of cash. I thought though they could
2 start taking assets at some point.

3 MR. WEILAND: I think, Your Honor, if we came in
4 and obtained a nonconsensual order that that would supersede
5 whatever rights that they would otherwise have under this if
6 we were in default.

7 THE COURT: Let me see that language that we're
8 looking at.

9 MR. WEILAND: I think, Your Honor, it's in
10 Paragraph 6. It starts on Page 28 of the redline,
11 Your Honor.

12 (Pause in the proceedings.)

13 MR. WEILAND: And then at the top there, Your
14 Honor, you'll see in Clause B, "Debtors or any other party-
15 in-interest can be permitted to seek relief including
16 nonconsensual use of cash collateral from the Court on an
17 emergency basis." And then the rights of the pre-petition
18 secured parties are qualified by the lead-in. It says,
19 "Absent further order of the Court to the contrary entered
20 during that five-day notice period."

21 THE COURT: Well, no, look at this. This is the
22 language that's concerning. 362 is modified, they can act
23 and the defense can't be "Well, we can now spend cash
24 collateral or otherwise," the defense has to be that there
25 wasn't any default.

1 MR. WEILAND: I think on a hearing on the exercise
2 of those rights and remedies, Your Honor, but that isn't the
3 only matter that may be raised. We may also raise a motion
4 to seek use of cash on an nonconsensual basis.

5 THE COURT: I got that. I think it does say that,
6 but why you're using the cash on a nonconsensual basis, they
7 can come and foreclose on assets is what I think it says.

8 MR. WEILAND: But I think in the sentence above,
9 Your Honor, we've taken care of that or certain tried to by
10 saying that a further order of the Court to the contrary
11 entered during the notice period can't take away their
12 rights to run-in and foreclose.

13 THE COURT: Maybe I'm not understanding what the
14 termination date is. I thought termination date occurs even
15 if you get the right to use additional cash collateral. And
16 if that's right -- I mean, if this -- I shouldn't worry too
17 much about what the language says. If you're deal with your
18 secured creditor is that if there is the authorization to
19 use cash collateral that's granted by the Court or if
20 there's an alternative source of funding that the Debtors
21 can spend in order to remain in business, that the lender
22 then cannot as a consequence of your being able to use cash
23 collateral cannot take its collateral. That's a much
24 different story than what I've read and what I thought the
25 objection was and so let's not worry too much about the

1 language.

2 Is your deal with your lender that if during that
3 five-day period the Debtors are authorized to continue to
4 use cash collateral that that precludes seizure,
5 foreclosure, receivership, or any other 362 rights by the
6 secured creditor; is that your deal?

7 MR. WEILAND: During the notice period, that's
8 right, Your Honor.

9 THE COURT: Well, not during the notice period.

10 MR. WEILAND: And I think during -- well --

11 THE COURT: No, after the notice period. So we're
12 at the end of the notice period -- on the last day of the
13 notice period, I say to you, "You can keep using cash
14 collateral, I'm authorizing it. They're so over secured
15 it's unbelievable. You're giving them adequate protection,
16 you can spend cash collateral."

17 MR. WEILAND: Yes, Your Honor. And I think --

18 THE COURT: No, can they come take assets then?

19 MR. WEILAND: Well, Your Honor, I think in the
20 notice period if we were to come to court asking for use of
21 cash on the nonconsensual basis on an emergency schedule --

22 THE COURT: Right.

23 MR. WEILAND: -- we'd also be asking for a further
24 order of the Court to the contrary preventing them --

25 THE COURT: Where does it say --

1 MR. WEILAND: -- from doing some of this.

2 THE COURT: -- but you can't get that if -- but
3 the way I'm reading this is you can't get that further order
4 because you're only defense is you didn't have a default.

5 MR. WEILAND: On a hearing regarding the exercise
6 of rights or remedies. I think there would be a parallel
7 hearing on a motion for nonconsensual use of cash.

8 THE COURT: I'm not -- I'm doing a very bad job
9 communicating my concern, I apologize. There are two
10 different issues that I've got here: one is a nonconsensual
11 use of cash and I don't have an issue with your solution on
12 that;

13 The other is: can they come and start taking your
14 assets?

15 MR. WEILAND: I would say no, Your Honor, because
16 in the --

17 THE COURT: I -- okay, if that's their position if
18 they can't, we'll fix the language to say that because right
19 now I think the language says they can. I don't that much
20 about the wording of the language because it's something
21 repairable. But if the business deal is that if you can use
22 cash collateral, they can't take your assets then I'll hear
23 what the Committee says but it solves an awful lot of my
24 concerns.

25 MR. WEILAND: Yeah, I think the --

1 THE COURT: Let's hear from the secured creditor.

2 MR. WEILAND: Yeah, I think, Your Honor, I think
3 to stop them from doing that would require an order from
4 Your Honor --

5 THE COURT: That says what?

6 MR. WEILAND: -- that if we get --

7 THE COURT: That says what?

8 MR. WEILAND: -- that says they, yeah, that says
9 the commencing on the next day after the notice period, the
10 pre-petition secured parties may not exercise these rights.

11 THE COURT: But I don't think --

12 MR. WEILAND: I think that's what that lead-in --

13 THE COURT: -- this gives me the authority to do
14 that. But if you're telling me that the deal is that you
15 can seek an order that says that you can spend cash
16 collateral under traditional standards of when cash
17 collateral can be spent and that if you meet those
18 standards, they can't take your assets. If that's the
19 business deal then it's going to eliminate a lot of the
20 Committee's concerns. I think --

21 MR. WEILAND: That --

22 THE COURT: -- and I hate to speak too much for
23 the Committee but I'm right about what your worry is, right?

24 MR. FEINSTEIN: I think so, Your Honor, and I
25 don't think we're the only ones who raised the concern but I

1 think what Your Honor is saying is that the automatic stay
2 needs to be re-imposed.

3 THE COURT: I'm not -- yeah, that's different. It
4 shouldn't --

5 MR. FEINSTEIN: No, the language in the Order says
6 that the automatic stay is vacated and while the Debtor may
7 be using cash collateral without a stay protecting its other
8 assets, secured lenders can take everything.

9 THE COURT: Right and that --

10 MR. FEINSTEIN: That's the problem.

11 THE COURT: -- is this: I just need to know what
12 the -- where's the secured creditor? Who's got -- who's the
13 secured creditor? And what's the deal?

14 MR. WEILAND: Your Honor, I --

15 THE COURT: What's the deal, I mean, let's hear
16 what the business deal is.

17 MR. WEILAND: -- I'll let Mr. Perez weigh in.

18 THE COURT: Is the business deal being come take
19 stuff? If the business deal is you can come take stuff then
20 it's a different story than what the Debtor's telling me.

21 MR. PEREZ: Yeah, Your Honor, there's -- in
22 essence there's a stay during the five-day period.

23 THE COURT: Right.

24 MR. PEREZ: To the extent that the Court enters an
25 order, another order nonconsensual where we're adequately

1 protected then we can't foreclose on the assets.

2 THE COURT: Okay. I don't think it says that but
3 if -- I think we can write it to say that and I think that
4 would solve a lot of people's problems but --

5 MR. WEILAND: I think, Your Honor, that maybe the
6 -- if I could just make a suggestion. I think if we take
7 the "absent further order of the Court to the contrary
8 entered during the notice period lead-in" from the prior
9 sentence, and impose it on that next sentence too.

10 MR. PEREZ: Yeah, that's what I was going to
11 suggest.

12 MR. WEILAND: I think that would do it.

13 MR. PEREZ: Yeah, that's what I was going to
14 suggest.

15 MR. WEILAND: I think that -- then that was the
16 intent behind this whole edition.

17 MR. PEREZ: Yeah.

18 THE COURT: Well, let me hear from the Committee
19 whether that or -- and anyone else that objected on this
20 basis whether this is -- if this leaves that in an
21 objectionable form that -- then I need to hear that but if
22 that solves the objection, forgetting the particular
23 language if --

24 MR. FEINSTEIN: It works for the Committee,
25 Your Honor.

1 (Pause/voices off record.)

2 MR. BARR: Your Honor, Matt Barr at Weil Gotshal.

3 Sorry for the back and forth. If you prefer Mr. Perez, I --

4 THE COURT: No, no.

5 MR. BARR: -- can have him stand up. I think the
6 further order has to be in connection with -- if we object
7 to the use of cash collateral for the nonconsensual use of
8 cash collateral that Your Honor actually approves over our
9 objection that they can use our cash.

10 THE COURT: Right.

11 MR. BARR: It just can't be any further order with
12 respect to the automatic stay. So I think we could draft it
13 or I'm sure Your Honor will start the draft.

14 THE COURT: I got that on cash collateral.

15 What about on asset seizures?

16 MR. BARR: If Your Honor enters an order that they
17 are allowed to continue to use our cash collateral over our
18 objection, we assume that that Order will also provide that
19 we can exercise remedies.

20 THE COURT: Okay. If -- then I -- let me see if I
21 can just write that because I think -- yeah, go ahead.

22 Yes, sir?

23 MR. UZZI: Your Honor, Gerard Uzzi from Milbank on
24 behalf of the Ad Hoc Committee of Unsecured Noteholders. We
25 made the similar, Your Honor, so long as the language

1 reflects the business dealt that the secured lenders said
2 they had then we're okay with it, too.

3 THE COURT: Okay. Let me try this. Hold on,
4 that's the problem.

5 (Pause/Court preparing order.)

6 THE COURT: Have I captured what you all told me
7 the business deal was now? And I'm not trying to change
8 what you all announced it was.

9 MR. WEILAND: I think Mr. Barr's point,
10 Your Honor, is in the "Absent further order of the Court"
11 lead-in --

12 THE COURT: Right.

13 MR. WEILAND: -- that it ought to be "Absent
14 further order of the Court granting nonconsensual cash
15 collateral use."

16 (Voices off record.)

17 MR. WEILAND: And obviously, the two -- the
18 remedies and nonconsensual use would part in parcel. I
19 think we would certainly be bringing both of them before
20 Your Honor but I think that's --

21 (Pause/Court preparing order.)

22 THE COURT: Let me hear.

23 MR. PEREZ: Your Honor, yeah, because (iii) is --
24 it really has to do with our remedies which is -- at that
25 point, that's really -- not really the -- that sentence just

1 doesn't make sense once you take out the other part of it.

2 THE COURT: Fair enough.

3 MR. PEREZ: I think you just say, "The pre-
4 petition lenders reserve all their rights to oppose any such
5 relief."

6 THE COURT: You just don't want that in a
7 Romanette at all, just a stand-alone?

8 MR. PEREZ: No, no, no. Yeah, I think the pre-
9 petition lenders reserve their rights to preserve all their
10 rights.

11 (Pause/Court preparing order.)

12 THE COURT: Is that what you want?

13 MALE SPEAKER: Yeah.

14 MR. PEREZ: No. Your Honor, there isn't going to
15 be a hearing on us exercising rights. There's only going to
16 be a hearing on their nonconsensual use of cash collateral,
17 right? So at any such hearing, we reserve all our rights to
18 oppose the relief on any grounds.

19 THE COURT: Like that?

20 MR. PEREZ: Okay. Perfect, there we go.

21 THE COURT: Mr. Barr?

22 MR. BARR: Sorry, Your Honor.

23 THE COURT: No, I'm --

24 MR. BARR: The issue at hand at that hearing will
25 be whether or not there's a termination event with respect

1 to our consensual use of cash collateral and that's what was
2 in there that you struck.

3 THE COURT: I struck it because it said if there's
4 a termination event, you can go take stuff.

5 MR. BARR: Correct.

6 THE COURT: Right. But their argument was and I
7 thought what you all told me was that if you were an over
8 secured -- let's assume there's been a termination event,
9 but you're an over secured creditor and they can convince me
10 that you're adequately protected and that they should be
11 able to use cash collateral even though a termination event
12 has occurred that you wouldn't come take your stuff. And if
13 I've got that wrong, that's the way I read it before was
14 that you could take your stuff.

15 So which way is it, can you take your stuff or not
16 take your stuff? It's --

17 MR. BARR: No, it wasn't that we can take our
18 stuff or not. It was whether or not there was actually a
19 termination event, but I understand what you're saying.

20 THE COURT: But I just --

21 MR. BARR: It's much broader.

22 THE COURT: They told me the bid -- the deal was
23 one thing and I asked you if that was it --

24 MR. BARR: No, fair enough.

25 THE COURT: -- and I thought you said, "Yes," but

1 now I think you're saying, "No," and which is fair enough.
2 I need to know what the deal is so that I can understand
3 what the objections are.

4 MR. BARR: Sure. Let us look at the language. I
5 understand how you drafted it. We need to look at what we
6 originally had, think about what you now have drafted and
7 move to the next point and I think we can come back
8 before --

9 THE COURT: But actually --

10 MR. BARR: Yeah.

11 THE COURT: -- what I do want to tell you is: I
12 wasn't intending to draft something that I wanted. I was
13 intending to draft what I thought you all told me the deal
14 was, so there's a big difference between those two.

15 MR. BARR: Fair enough. I appreciate that.

16 THE COURT: And so all I was intending to do was
17 to draft what the parties told me their business deal was.

18 MR. BARR: Okay.

19 THE COURT: And if that is -- if this is not the
20 business deal, I'm not dictating it. We'll have a hearing
21 on what to do about it.

22 MR. BARR: Fair enough.

23 THE COURT: Okay. What do we have next?

24 MR. WEILAND: Your Honor, just a couple other
25 changes that we've made I think are for the benefit of the

1 parties that submitted objections. In Paragraph 11, we made
2 expressly clear that any secured party's right to credit bid
3 is only to the extent that a credit bid would be allowed
4 under Section 363(k).

5 THE COURT: Right.

6 MR. WEILAND: And the new language there is at the
7 end of the third line that says, "To the extent provided for
8 in Section 363(k) of the Bankruptcy Code."

9 THE COURT: I don't know what Section 725 of the
10 Bankruptcy Code says so just wanted to educate myself about
11 what I'm signing. Got it. Go ahead.

12 MR. WEILAND: Beyond that, Your Honor, the --
13 regarding the Committee's investigation, the proposed Final
14 Order in Paragraph 7 and Paragraph 9 does take, I think, big
15 steps toward trying to resolve what the Committee's raised
16 and we negotiated these as extensively as we could with the
17 first liens.

18 The Final Order compared to what the Interim Order
19 provided expands the Committee's investigation period by a
20 month, 30 days, taking it out to March 21st. The Committee
21 has asked for 120 days rather than the 90 offered here, but
22 we think that 90 is consistent with past practice and is
23 what we've agreed to with the Lenders here.

24 It also expands the Committee's investigation
25 budget to 150,000 from the 50,000 in the Interim Order. The

1 Committee also seeks access to unencumbered assets that
2 would be subject to potentially adequate protection liens
3 and claims under this Order to pay investigation fees, which
4 was we thought a bridge too far.

5 But we think that those changes in Paragraph 7 and
6 Paragraph 9 go a long way toward addressing some of the
7 concerns raised by the Committee and hopefully, you know,
8 solve some of the issues although I know that there are
9 other issues remaining.

10 I think, Your Honor, that takes us to the
11 objections that remain unresolved, if we can proceed to
12 those.

13 THE COURT: I think --

14 MR. FEINSTEIN: If I might be helpful, Your Honor,
15 eliminate one issue which was the challenge period. We're
16 okay with 90 days. The issue is whether -- but on what
17 basis that period could be extended. Right now it says it
18 can only be extended with the consent of the Debtor who's
19 waived all their rights to make these challenges, and the
20 secured lenders who are the benefit of the challenge period.

21 What we would find acceptable, Your Honor, is
22 90 days subject to extension by agreement with the Lenders,
23 the targets, were for cause and the burden will be on the
24 Committee to show cause. And my concern is that if we have
25 a finite period of time, we ask for information relevant to

1 the challenge and we don't get it, suddenly we're getting
2 jammed into the end of a hard deadline.

3 We'd like in that circumstance to be able to come
4 back to the Court and say, "Here's cause. We haven't
5 received cooperation. We'll need more time on that basis."
6 So maybe that's one less issue.

7 THE COURT: Your example is cause precipitated by
8 their conduct.

9 MR. FEINSTEIN: Yes.

10 THE COURT: Are you limiting your cause to cause
11 precipitated by their conduct or could it also be your own
12 hardships?

13 MR. FEINSTEIN: I don't want to limit it to simply
14 their failure or refusal to cooperate. I mean, I can't
15 imagine other scenarios, but I don't want to limit myself.
16 It won't be because we're slow. It'll be because of some
17 external factor that's obstructed us from concluding our
18 investigation and formulating a challenge. So, I mean, we
19 done -- I've done sort of many cases that it says, "Cause."
20 I've never parsed through it but if it's our own dilatory
21 conduct, I imagine that the Debtor will oppose it and
22 Your Honor will find that's not cause.

23 MR. WEILAND: Your Honor, the way we've changed
24 the provision and the way it's drafted now allows us to have
25 some certainty of finality to whatever this investigation

1 brings and I think, you know, leaving it potentially open-
2 ended based on a -- more of this concept of cause just
3 doesn't work for the cases and I understand why it wouldn't
4 work for the secured parties.

5 THE COURT: So I'm going to give everybody two
6 choices: We'll just take evidence to try and figure out how
7 long it's going to take to do it; or it can be for any good
8 cause for a 30-day extension and beyond a 30-day extension,
9 the cause has to be something precipitated by the secured
10 creditor.

11 MR. FEINSTEIN: We're fine with that,
12 Your Honor.

13 THE COURT: Secured creditor's okay with that? Or
14 we'll take evidence. I mean, I'm -- I don't have any idea
15 how long it's going to take.

16 (Pause/Court preparing order.)

17 THE COURT: Are they defined as "secured parties"?

18 MALE SPEAKER: I think pre-petition secured
19 parties.

20 (Pause/Court preparing order.)

21 THE COURT: I don't know if that works but, I
22 mean, it's --

23 MR. FEINSTEIN: My only comment to that,
24 Your Honor -- I'm fine with it -- is just in (i), written
25 consent, I'm not sure why we would need the Debtors'

1 consent. This is really a transaction between the secured
2 lenders --

3 MR. WEILAND: No, Your Honor, we --

4 MR. FEINSTEIN: -- and the Committee.

5 THE COURT: There's a reason. The Debtors want to
6 move ahead with their case quickly and it's --

7 MR. WEILAND: Yeah, we shouldn't be cut out of
8 this process.

9 THE COURT: Yeah, I agree.

10 MR. WEILAND: We're the Debtors-In-Possession.

11 THE COURT: I agree.

12 MR. FEINSTEIN: Although the Debtors have already
13 waived all of their rights to weigh in on any challenge.

14 MR. WEILAND: That's not --

15 MR. FEINSTEIN: Let's not forget that.

16 MR. WEILAND: That's not true.

17 THE COURT: But they --

18 MR. FEINSTEIN: Unfortunate.

19 THE COURT: But they want to move with the case
20 quickly. I think they get to --

21 MR. FEINSTEIN: It's fine, Your Honor.

22 THE COURT: They get to --

23 MR. FEINSTEIN: We have a backstop of coming to
24 the Court so it's fine.

25 THE COURT: Yeah. I don't know -- can everybody

1 else live with this?

2 (Pause/voices off record.)

3 THE COURT: If you don't want to live with that,
4 it's fine. I'll take evidence on how long they think it's
5 going to take to do a reasonable review and we'll put on
6 some witnesses.

7 MR. FEINSTEIN: We're prepared to do that if need
8 be, Your Honor.

9 THE COURT: Ms. Lifland, yes, did you wish to say
10 something?

11 MS. LIFLAND: (No verbal response).

12 THE COURT: Ms. Lifland?

13 MR. GOLDMAN: Yes, Your Honor. It's Andy Goldman
14 with the Wilmer Hale and we represent Wilmington Trust who
15 is the First Lien Indentured Trustee.

16 Was the import of Your Honor's suggestion, just so
17 we understand, that the first 30-day extension granted to
18 the Committee would essentially be an automatic extension
19 without any showing?

20 THE COURT: No, it's -- actually I've written the
21 language that you should be able to see on your screen.
22 They would have to show cause -- what is that now?

23 MR. GOLDMAN: (No verbal response).

24 THE COURT: I'm sorry, I missed what you said?

25 MALE SPEAKER: Your Honor, we've got to deal with

1 that issue for a second.

2 THE COURT: Of?

3 MR. GOLDMAN: No, Your Honor, I was looking at
4 the --

5 THE COURT: I'm sorry, are you able to see on our
6 screen what I've written?

7 MR. GOLDMAN: Yes, I'm looking now, Your Honor.
8 Thank you.

9 THE COURT: Okay. Thank you. Yeah -- no, it was
10 not intended to be without any showing, but the showing
11 could be the associate working on it had a baby, I don't
12 know, whatever the good cause is, but beyond that first
13 30 days, whatever the cause is has to be attributable to the
14 Lenders or the Debtor. And I don't know if that works or
15 not. I'm perfectly happy to just take evidence on how long
16 this takes. I just -- it doesn't seem to me we'll want to
17 spend an awful lot of time on this issue but.

18 MR. BARR: Well, I think, Your Honor -- again it's
19 Matt Barr for the Record. I think the reason why there's
20 all this caucus is because it actually has an implication on
21 other issues that you need to hear: the fee cap, admin
22 expense standing. And those issues may have, you know, some
23 impact of what we would be agreeing -- willing to agree to
24 on this so --

25 THE COURT: Why don't we just leave this and we'll

1 come back to it then, if you want?

2 MR. BARR: That's fine, as long as it's understood
3 we haven't agreed to that particular language.

4 THE COURT: We haven't agreed to it, yeah. Okay.

5 MR. WEILAND: Yeah, we can --

6 (Voices off record.)

7 THE COURT: I mean, let's talk about the fee cap.
8 I don't think you can -- tell me why I'm wrong. I don't
9 think you can force them to give you money out of their
10 collateral. I think the law says you can't. So if you
11 don't want their money, then I won't cap you. But if you
12 want their money, you're going to have to agree to their
13 cap, right? I don't know what else we do on that.

14 MR. PEREZ: We agree with that.

15 (Laughter.)

16 THE COURT: I'm shocked. The case may fail as a
17 result of your fees, right? But the Debtors' required to
18 pay your fees, they're not.

19 MR. FEINSTEIN: The Debtor filed Chapter 11. They
20 invoked the jurisdiction of the Court. The statute --

21 THE COURT: And the Debtor is --

22 MR. FEINSTEIN: The statutes --

23 THE COURT: The Debtor must pay your fees.

24 MR. FEINSTEIN: Well, statute says that the U.S.
25 Trustee shall appoint a creditors' committee.

1 THE COURT: Right.

2 (Voices off record.)

3 MR. FEINSTEIN: Debtor has an obligation to run an
4 administratively-solvent case.

5 THE COURT: Right.

6 MR. FEINSTEIN: So with the appointment of a
7 creditors' committee, which serves an important function as
8 a check and balance, that committee is authorized by statute
9 to engage professionals. Those professionals are authorized
10 by statute to seek compensation. If compensation's going to
11 be denied, then you should convert the case because they're
12 running an administratively-insolvent case and also starving
13 out a statutory creature, which is the Creditors' Committee
14 who's there as a check and balance.

15 THE COURT: Wait, wait, wait. I'm not expressing
16 my view. Let's assume that you come in and you apply for
17 and are approved for a \$300,000 fee, well above the cap --

18 MR. FEINSTEIN: Uh-huh.

19 THE COURT: -- that they proposed.

20 MR. FEINSTEIN: Right.

21 THE COURT: And I approve it and order them to pay
22 you. If they don't pay you, I close down the case. But I
23 can't make the secured creditor give you money under
24 existing law, I don't think. It's just your absolutely
25 entitled to be paid whatever you're awarded and at that

1 point, everybody may have a whole bunch of hard choices to
2 make, but I don't think that today I can force them to give
3 you money and that's all that I'm saying. But I -- if you
4 want their money, they're imposing a cap. If you don't want
5 their money, then no cap.

6 MR. FEINSTEIN: Your Honor, I have no problem with
7 the cap. Again we can talk about what the appropriate
8 budget number is.

9 THE COURT: Right.

10 MR. FEINSTEIN: The problem I have is the very
11 last sentence of -- I believe it's Paragraph 9, which I
12 don't believe, Your Honor, has ever been approved by any
13 court. And this grows out of a dicta in the charter case in
14 Delaware where somebody tried to slip that in. And I forget
15 what judge it was who had charter who said, "I'm not doing
16 it in this case. Maybe another case you can try it." I've
17 been involved in -- this is my third case --

18 THE COURT: Right.

19 MR. FEINSTEIN: -- with same debtors' counsel and
20 actually some of the Lenders' counsel where this last
21 sentence in Paragraph 9 has been asserted and --

22 THE COURT: No problem. I'll --

23 MR. FEINSTEIN: -- we've objected and --

24 THE COURT: I will take --

25 MR. FEINSTEIN: -- I don't know that any court's

1 ever approved this.

2 THE COURT: I'll take it out.

3 MR. FEINSTEIN: Okay.

4 THE COURT: But that doesn't mean that you have a
5 budget that the Lenders approved.

6 MR. FEINSTEIN: Well -- but, Your Honor, let's
7 come back to the basic premise of what's going on here. The
8 Lenders are seeking -- the Debtors are seeking for the
9 Lenders something special for them that no other creditor
10 gets, which is a challenge period. Every other creditor in
11 the case -- Baker Hughes, they have a claim in the case.
12 They don't get the benefit of a scream-or-die after 60 days.
13 These lenders are seeking some special relief.

14 So if they want that, if they want the
15 stipulations, then there has to be -- and the Debtor
16 simultaneously is saying, "We're signing off on these
17 stipulations, we're -- even though we have a fiduciary duty
18 to maximize value, to minimize claims --

19 THE COURT: Let me just say we --

20 MR. FEINSTEIN: -- this is what we're presenting
21 to the Court."

22 THE COURT: And we --

23 MR. FEINSTEIN: So the counterbalance is going to
24 be that --

25 THE COURT: No.

1 MR. FEINSTEIN: -- a committee can function here.

2 THE COURT: That simply means that we'll go back
3 to first principles. These things are done consensually.

4 MR. FEINSTEIN: Uh-huh.

5 THE COURT: If you all can't do them consensually,
6 I can't pick and choose which parts of the Bankruptcy Code
7 I'm going to enforce. I'll go back to Point Number 1 and
8 we'll enforce everything because it isn't consensual.

9 MR. FEINSTEIN: Uh-huh.

10 THE COURT: And there's nothing wrong with that,
11 but there's all these interlinkages in these kinds of
12 agreements.

13 MR. FEINSTEIN: Yes.

14 THE COURT: I mean, one is: they agree they're
15 going to give you a carve-out, they're going to give you a
16 budget, you've got to agree to some caps. I mean, you don't
17 have to take all that. But if there isn't a deal, the fact
18 that tradition has been deals doesn't mean I'm now going to
19 order a nonconsensual deal. It means we'll go back to first
20 principles.

21 MR. FEINSTEIN: Correct, Your Honor.

22 THE COURT: And if that's what you want to do --

23 MR. FEINSTEIN: But it is within your purview --

24 THE COURT: -- we'll go back to first principles.

25 MR. FEINSTEIN: -- Your Honor, to deny the

1 Debtors' Motion for consensual use of cash collateral
2 consensual with the Lenders if it's skews the case and
3 denudes the Committee of the ability to function.

4 THE COURT: Absolutely, if that's what you want me
5 to do.

6 MR. FEINSTEIN: What we'd like is an operating
7 case with a properly-functioning committee so --

8 THE COURT: I know. And so you can either do a
9 deal or we're going to go back to first principles.

10 MR. FEINSTEIN: Uh-huh.

11 THE COURT: You can't -- I just can't do half of a
12 deal and then I'll impose the rest and so --

13 MR. FEINSTEIN: Right. I understand that,
14 Your Honor. We don't want to play chicken with the Estate,
15 but the Committee's had a critically important function in
16 this case --

17 THE COURT: They do. Uh-huh.

18 MR. FEINSTEIN: -- particularly since the Debtor
19 has abandoned it. Excuse me. The Debtor comes in and says,
20 "We are giving all the Lenders releases. We're validating
21 their claims." Now we know, Your Honor, that there are four
22 exchange offers pre-petition that warrant examination as
23 potential fraudulent transfers. We know there are --
24 there's a \$30 million Mako claim for the First Lien Lenders
25 that the Debtors have -- and through their stipulations

1 acknowledge there is a Mako claim for the Seconds. There's
2 default interest.

3 THE COURT: I'm not going to stop you --

4 MR. FEINSTEIN: All these things need --

5 THE COURT: -- from investigating.

6 MR. FEINSTEIN: -- to be examined to challenge.

7 THE COURT: This isn't about whether you get to
8 investigate. It's about whether the payment arrangements
9 will be those established under Chapter 11 of the Bankruptcy
10 Code or --

11 MR. FEINSTEIN: Uh-huh.

12 THE COURT: -- whether they will be consensual.
13 That's what this is about.

14 MR. FEINSTEIN: Right. I understand.

15 THE COURT: You don't need to persuade me the
16 importance of your committee to do their job.

17 So I think what I'm going to do -- we've been here
18 all afternoon -- let's take about a 15-minute break now that
19 I -- I don't think anybody expect me to say I wasn't going
20 to impose a deal. I'm not imposing a deal.

21 MR. FEINSTEIN: No --

22 THE COURT: We're either following the Code or
23 not. Let me see if you all want to do a deal.

24 MR. FEINSTEIN: Your Honor, I think we could
25 actually reach a deal on everything but one point --

1 THE COURT: Which is?

2 MR. FEINSTEIN: -- and that's committee standing,
3 which I'm happy to argue to the Court and I offer to my
4 colleagues around the courtroom. We could resolve
5 everything but that one issue and let's just ask Your Honor.

6 Given Your Honor's comment at the First Day
7 Hearing, whether the Committee is going to be forced to file
8 a motion for standing and have to jump through that hurdle
9 or whether Your Honor will grant standing so that we can
10 pursue this in the original course without having to go to
11 court and do this twice?

12 THE COURT: I'm not approving a deal where you
13 don't have standing.

14 MR. FEINSTEIN: Thank you.

15 (Recess taken from 4:22 p.m. to 4:44 p.m.)

16 THE COURT: All right. Mr. Husnick?

17 MR. HUSNICK: Good afternoon, Your Honor.
18 Chad Husnick from Kirkland, on behalf of the Debtors. So
19 thank you for the break.

20 The Debtors met with the secured lenders both the
21 First Liens and the Second Liens and we also met with the
22 Creditors' Committee.

23 What I'm about to report that the Debtors get with
24 their -- with the First Liens and the Second Liens is -- and
25 I'm responding directly to Your Honor's concerns and

1 comments about standing. And the -- where I'm able to get
2 with them is -- we understand the concerns that were
3 discussed at the First Day Hearing, but what the Lenders are
4 willing to do to avoid what we think, you know, is a very
5 bad outcome is to put the stipulations -- you know,
6 basically make the Debtors just like the Creditors'
7 Committee in terms of the stipulations. They will not
8 become effective -- the -- there is no release. That was
9 always not going to become effective until the termination
10 date, which is the date -- you know, the end of the
11 challenge period.

12 The termination date would be set as a hard date
13 of the March date that we've already got in the Order.
14 However, if Your Honor entered -- or if they file -- the
15 Committee files a standing motion, that's indefinitely
16 tolled until Your Honor has ruled on the standing motion.
17 So it's not meant -- the solution -- and I can represent
18 this is not agreed to by the Creditors' Committee.

19 THE COURT: Let me tell you why I think there's
20 standing and why that may very well solve the problem which
21 you've proposed because I --

22 MR. HUSNICK: I'm happy to do that and I'd --

23 THE COURT: Uh-huh.

24 MR. HUSNICK: -- like an opportunity to -- I want
25 to listen to your concern and then respond, if I may?

1 THE COURT: No, but I -- what you've proposed
2 resolves my standing issue, I think. And I'll let the
3 Committee respond as well. The Committee is charged with
4 huge fiduciary responsibilities and when early on a case
5 before the Committee can conduct its own investigation a
6 debtor chooses to waive its rights essentially under
7 Section 544 of the Bankruptcy Code -- this goes back to what
8 I was saying before is: we take a lot of shortcuts in this
9 cases -- the Committee should have a right to challenge the
10 Debtors' business judgment in waiving its 544 rights, but it
11 can't get organized to do that by this kind of hearing
12 because it can't conduct its own investigation to figure out
13 what's going on. And so essentially the shortcut that we
14 have all kind of lived with -- and it's always been
15 consensual, this is the first time I've ever had to deal
16 with this fight -- is, okay, the Debtor can give up those
17 rights if it wants to and the Committee in exchange gets
18 standing to step into the Debtor's shoes.

19 But that world changes if what happens is is that
20 the Committee is challenging the Debtor's business judgment
21 rather than the validity of the liens itself, then the
22 Committee's investigation is on the Debtor's business
23 judgment --

24 MR. HUSNICK: Uh-huh.

25 THE COURT: -- to waive its rights under 544.

1 Then I don't think the Committee steps into the right
2 automatically. It may at some point under the traditional
3 standing cases get some rights at some point, but its role
4 is no longer to challenge the validity of the liens, its
5 role is the traditional one of challenging the Debtor's
6 judgment to waive a challenge to the liens.

7 So to me, that solves -- the reason why I think
8 they have standing: it's got standing right now, right, to
9 challenge what you're doing. And so when you then do it,
10 I've got to give that standing to somebody if they haven't
11 had a chance to investigate.

12 MR. HUSNICK: Well --

13 THE COURT: But the world changes a lot if you're
14 not going to waive today.

15 MR. HUSNICK: I agree and I'm really hesitating to
16 have an academic debate with you because --

17 THE COURT: No, go right ahead.

18 (Laughter.)

19 THE COURT: Because you understand who will win
20 the debate, right, so?

21 MR. HUSNICK: You know, I learned one thing from
22 the last CEO I worked with -- or CFO which is: don't
23 oversell the clothes. I think if the standing issue is
24 going away, I'm not going to oversell the clothes and take
25 what Your Honor is offering. The standing issue is --

1 THE COURT: Well, I'm going to certainly give the
2 Committee a chance to tell me I'm wrong --

3 MR. HUSNICK: Okay.

4 THE COURT: -- just like I would have given --

5 MR. HUSNICK: Yeah. Let me give you --

6 THE COURT: -- you that chance to tell me I'm
7 wrong.

8 MR. HUSNICK: -- a couple seconds.

9 THE COURT: But I do think that this really
10 changes the world back to a way that is different than where
11 you start.

12 MR. HUSNICK: I completely agree. Look,
13 Your Honor, the biggest argument --

14 THE COURT: Then you probably should sit down.
15 (Laughter.)

16 MR. HUSNICK: I'll take the hint, Your Honor.

17 THE COURT: No, go ahead. Go ahead, Mr. Husnick.

18 MR. HUSNICK: No. I just would make one comment.
19 The biggest concern that we have as fiduciaries is -- and I
20 don't believe that the stipulations I'll get to in a second
21 alter the playing field, per se. The biggest concern as a
22 fiduciary is ensuring that the causes of action that may be
23 available are not -- that they're adequately explored and
24 that to the extent there's a colorable claim that a party
25 can bring forward and seek to bring that cause of action on

1 behalf of somebody.

2 But if you fast-forward or take the shortcut of
3 granting standing immediately, it imposes a burden -- a
4 potential -- I'm not saying it's always a burden, but I can
5 see the problem that can arise if standing is granted out of
6 the box simply because the Debtor agreed to a stipulation.
7 It doesn't address the two standard -- the two-factor test
8 that the Fifth Circuit requires.

9 THE COURT: I agree, I agree. But nor does the
10 Fifth Circuit say that you get to waive your 544 rights
11 without the Committee having a reasonable opportunity to
12 investigate that and that's why I'm saying that's just kind
13 of the shortcut that I've taken but --

14 MR. HUSNICK: But I think that's the issue,
15 Your Honor -- and apologize, I cut --

16 THE COURT: No. But here they'll get the
17 opportunity to do that.

18 MR. HUSNICK: Yeah.

19 THE COURT: I need him to tell me why that's not
20 good enough.

21 MR. HUSNICK: I agree. And, look, what I'm
22 struggling with is: if they have an opportunity to bring the
23 cause of action to seek standing, the cause of action's not
24 waived. It's not waived out of the box.

25 THE COURT: Right.

1 MR. HUSNICK: That's what the challenge period is
2 for.

3 THE COURT: Right. Agreed.

4 MR. HUSNICK: But they still have to carry their
5 burden before they get standing. That's my -- that's where
6 I'm -- I have the disconnect. But we're going to solve this
7 issue with the First Liens by just making the Debtor have
8 the same rights as the Committee to explore these causes of
9 action during the termination period.

10 THE COURT: No, but I just wanted -- the academic
11 discussion is worth something because it's the basis on the
12 way that we ought to be deciding things.

13 MR. HUSNICK: Uh-huh.

14 THE COURT: And I would not believe that it's
15 appropriate to vest a committee with standing without the
16 showings required by the Fifth Circuit if normal processes
17 are followed, the normal processes being: you want to
18 investigate claims, you want to determine they're not worth
19 pursuing and they get to challenge that. They don't get
20 some sort of automatic standing. It's the fact that -- it's
21 the shortcut that we traditionally take and --

22 MR. HUSNICK: Uh-huh.

23 THE COURT: -- I don't have a problem with a
24 shortcut that I think means they have to have standing, but
25 what you've proposed eliminates the need for the shortcut

1 because it isn't the shortcut, it --

2 MR. HUSNICK: But doesn't that flip the burden
3 that the Fifth Circuit has said lies on the Committee to
4 show? It's their burden to show.

5 THE COURT: Well, it -- what it would mean is: the
6 Committee today does have standing to challenge your waiver
7 and I'm going to protect their due process rights and give
8 them the same period of time to protect the waiver. I was
9 trying to get you to a cash collateral order.

10 MR. HUSNICK: Yeah, understood.

11 THE COURT: You've done the alternative, which is
12 instead of getting the need to have -- to deal with that
13 issue today, we've put it off which protects their due
14 process rights --

15 MR. HUSNICK: Yes, agreed.

16 THE COURT: -- assuming it's enough time and
17 that --

18 MR. HUSNICK: Yeah, I believe -- look, Your Honor,
19 I think I'm with you on this and we'll make --

20 THE COURT: Okay.

21 MR. HUSNICK: -- the modification to the Order
22 with Your Honor's help.

23 THE COURT: Well, let me hear from --

24 MR. HUSNICK: But let's hear from the Committee.
25 Thank you.

1 THE COURT: -- Mr. Feinstein to whether -- why he
2 thinks he should get standing when you're still pursuing the
3 claims or at least what his challenge is as to whether
4 you've properly exercised your fiduciary responsibility.

5 MR. FEINSTEIN: Thank you, Your Honor. This might
6 take a bit because there's history here in terms of the
7 evolution of how committees gets treated in these large
8 Chapter 11 cases because it used to be that standing was
9 really not controversial.

10 And starting, I would say, five or 10 years ago
11 this notion of requiring the Committee to file a motion for
12 authority to sue, which would toll the challenge period,
13 came into vogue and I worked on a case in New York called
14 "Neff" where Debtor's counsel here was the same and
15 committee counsel was the same and --

16 THE COURT: I didn't think Mr. Husnick --

17 MR. FEINSTEIN: -- the way it got teed up --

18 THE COURT: I didn't think Mr. Husnick was born.

19 MR. FEINSTEIN: Well, his firm. It was his firm.
20 He was --

21 (Laughter.)

22 MR. FEINSTEIN: True. We were all young. So the
23 Committee got boxed in, Your Honor, because the standing
24 motion was scheduled to be heard at the same time as
25 confirmation and Judge Chapman was given the unfortunate

1 Hobson's choice, which is to confirm a plan that contains
2 blanket releases for the Lenders as well as directors and so
3 forth --

4 THE COURT: Uh-huh.

5 MR. FEINSTEIN: -- or give the Committee standing,
6 which was inconsistent with the Plan, and the Plan wouldn't
7 have been confirmed because the Plan was premised on the
8 release of the Lenders. So it's a leverage, it's leverage
9 not such on the Committee but on the Court to put Your Honor
10 in a position of having to choose between confirming a plan,
11 which I've got to think every bankruptcy judge would like to
12 do --

13 THE COURT: Did you hear what I said --

14 MR. FEINSTEIN: -- but with releases.

15 THE COURT: Did you hear what I said at the
16 beginning of the hearing? No, towards --

17 MR. FEINSTEIN: You're here to call balls and
18 strikes, I understand.

19 THE COURT: No, to Anadarko. That's not my job to
20 get plans confirmed. It's my job to confirm plans that meet
21 the requirements of 1129.

22 MR. FEINSTEIN: So let me continue on from that.
23 So in that three days until the Confirmation Trial, it's
24 settled so we never had to deal with this issue. But after
25 that with any number of cases where we were committee

1 counsel where it became kind of the norm that committees
2 wouldn't be given standing. They'd be forced to file a
3 motion for authority to sue and the Debtor would -- and
4 others would get to oppose it and they would argue not
5 simply that they weren't colorable claims.

6 But even if there were colorable claims, on a cost
7 benefit basis, the claims shouldn't be pursued. And
8 typically it's the Debtor arguing the reason why it's not
9 cost beneficial is: we have this great plan and we want to
10 get it confirmed and suing people that are getting released
11 under the Plan is inconsistent with that.

12 So -- but we lived under that regime until
13 *Payless*. *Payless* was in front of Judge Surratt-States in
14 St. Louis, same law firm representing the Debtor, same law
15 firm representing the Committee. There were very, very
16 substantial claims against insiders and -- against insiders,
17 against the shareholders. And we representing the Committee
18 and we came forward with a motion for authority to sue with
19 a -- it was like a 100-page complaint that was, in our view,
20 quite meritorious and the response of the Debtor was, "Hey,
21 we got a plan on file."

22 They filed a motion asking the Court to adjourn
23 our standing motion until after confirmation and we felt
24 like Charlie Brown with a football, that here we have been
25 living under this regime of filing standing motions because

1 we thought we could get them heard timely before the Plan
2 came forward releasing the very claims that we were trying
3 to bring.

4 So to us having that -- a motion filed to adjourn
5 our standing motion until after confirmation was really, I
6 would say, devastating and made us no longer comfortable
7 with the motion for authority to sue process because we felt
8 that that was abusive.

9 Now fortunately, that case settled and the case --
10 and it's a matter of public record. Unsecured creditors
11 were covered. It went from \$1 million to 25 -- \$28 million,
12 22 percent recovery because those very claims that the --
13 that was the subject of our Motion for authority to sue were
14 settled. But had the Debtor and their counsel had their
15 way, our Motion would have been kicked down the road and
16 they would -- and we'd be facing the same issue at
17 confirmation: they'd be releasing the claims before we ever
18 got a fair hearing.

19 And it's going to come up in this case too,
20 Your Honor, because the Plan releases -- I know we're
21 talking about lenders today, but this is a preview of coming
22 attractions. The Plan provides blanket direct and third-
23 party releases for Ds and Os who are party to litigation
24 that's pending that survive the Motion to Dismiss.

25 And in the Disclosure Statement, there's one

1 paragraph that we found very interesting that says the
2 Debtors investigating this claims, their Board is, including
3 disinterested directors, but they have interested directors
4 who are investigating claims against themselves and their
5 fellow colleagues. So is a setup that is fraught with
6 danger for the Committee to seek claims that are valid that
7 may be frankly the only source of recovery for unsecured
8 creditors in this case to be buried this way.

9 So each time now we're told, "Hey, make your
10 motion for authority to sue," we're concerned that we're
11 going to get a procedural maneuver, which is the Debtor's
12 going to move to adjourn our -- the hearing on our Motion as
13 an effort to try to marginalize the Committee and to bury
14 these claims.

15 THE COURT: I should tell you -- and you haven't
16 been here, I don't think, before me. I don't know if you've
17 been before Judge Jones or not. With all due respect to the
18 Debtors, they don't control my agenda. They can ask that we
19 delay considering something, but you get to self-calendar
20 something the same say they get to self-calendar something.

21 MR. FEINSTEIN: Uh-huh.

22 THE COURT: It's not automatic that there's a
23 continuance. And no more weight should be given to their
24 desire for a continuance than to yours.

25 MR. FEINSTEIN: Uh-huh.

1 THE COURT: So we'll just have to see what happens
2 with that.

3 But right now, I don't need to do anything about
4 standing if I'm not approving the waiver of their -- what
5 I'm calling broadly their "544 rights," I don't think. I
6 mean, it's not even here, it's not before me.

7 MR. FEINSTEIN: Right. And I guess I'd like to
8 understand, Your Honor, what the Order will look like
9 because right now it says, "The Debtor acknowledges,
10 stipulates and agrees to the following," and then there's
11 the next 30 pages.

12 THE COURT: What it's going to say is: however
13 that won't be effective until after the challenge period.
14 And your right at the end of the challenge period is going
15 to be to challenge not whether there are valid liens, but
16 whether the Debtors are properly exercising their fiduciary
17 judgment in deciding not to pursue it.

18 MR. FEINSTEIN: Well, I guess I disagree with that
19 in part, Your Honor --

20 THE COURT: Okay.

21 MR. FEINSTEIN: -- which is when it comes to
22 bringing a state cause of action, I understand that
23 committees have -- are supposed to seek authority to sue.
24 When it comes to claims objections, I think that's really
25 debatable because 502 doesn't say that only the Debtor or

1 Debtor-in-Possession can object to a claim. So now the
2 secured lenders have a Mako claim.

3 THE COURT: Yeah, but let's -- well --

4 MR. FEINSTEIN: There doesn't seem to be a reason
5 why the Committee wouldn't object to that --

6 THE COURT: There's a difference --

7 MR. FEINSTEIN: -- although I'm sure the Debtor
8 will agree.

9 THE COURT: There's a difference between "claims"
10 and "liens."

11 MR. FEINSTEIN: Yes.

12 THE COURT: Most of what they're talking about is
13 an objection to liens, right? They're going to investigate
14 their security, I think.

15 MR. FEINSTEIN: That's part of it, but it's not
16 the only part.

17 THE COURT: And I think that is vested pretty
18 exclusively in debtors. I agree 502 gives anyone the right
19 to object to a claim but --

20 MR. FEINSTEIN: Uh-huh.

21 THE COURT: -- but as I understand the applicable
22 law -- and now you'll have plenty of time to brief why I'm
23 wrong about this because we're going to go out till -- I
24 think it's March at this stage -- the Debtor can compromise
25 claims. And if the Debtor, under 9019, promotes a

1 compromise which says, "It isn't worth objecting to these
2 claims because we want the use of cash collateral in the
3 long run" --

4 MR. FEINSTEIN: Uh-huh.

5 THE COURT: -- you can object to that. But if I
6 determine that their claim is allowed in a certain amount as
7 a result of a compromise, that does pre-terminate somebody
8 else's ability to object. You can object tomorrow.

9 MR. FEINSTEIN: Uh-huh. So I just want to make a
10 couple of more points on this, Your Honor. To the extent
11 that this is basically a sale case, it's hard to conceive of
12 how the Debtor could conclude if there were valid challenges
13 to the secured lenders' Mako claims or they have a
14 fraudulent transfer claim against them, how it would be
15 detrimental to a sale process for those claims to be bought.
16 It really is hard to imagine.

17 THE COURT: Well, you're telling me you're going
18 to win --

19 MR. FEINSTEIN: Well -- and --

20 THE COURT: -- and that's fair enough.

21 MR. FEINSTEIN: But also the Debtor has staked out
22 a position already. Let's not forget that. They've already
23 come to court with a consensual order that says, "We waive
24 all this stuff." So they're going to be very credible
25 plaintiffs down the road.

1 THE COURT: Well, no, look, I -- in fairness, I
2 mean, first of all, all these are arguments that would be
3 preserved --

4 MR. FEINSTEIN: Uh-huh.

5 THE COURT: -- but I don't know what the Debtors
6 investigated in order to come to that conclusion. I suspect
7 we spent a lot of money to come to that conclusion, if you
8 look at their pre-petition bills, which I haven't seen, but
9 let's assume that they investigated this for three months
10 with eight lawyers and concluded that there was no gain to
11 be had by making the challenge. Perfectly prudent on their
12 part, if that's --

13 MR. FEINSTEIN: Uh-huh.

14 THE COURT: -- what they've done and they
15 thoroughly investigated it. They don't need to do all that
16 after the petition date. You get to challenge whether what
17 they've done is reasonable --

18 MR. FEINSTEIN: Uh-huh.

19 THE COURT: -- and that is what will happen. I'm
20 missing why you would need me to grant standing today if
21 they aren't releasing today.

22 MR. FEINSTEIN: No, I understand. If the --

23 THE COURT: Okay.

24 MR. FEINSTEIN: -- stipulations are out, the
25 premise for immediate standing --

1 THE COURT: Okay.

2 MR. FEINSTEIN: -- is different. I guess what I'm
3 struggling with, Your Honor, is that -- well, I don't want
4 to repeat what was said to me in the hallway. I assume the
5 Debtors have done work on this too and we'd like to see
6 their work product to understand the basis of their decision
7 and I think that's a fair request under the circumstances
8 notwithstanding any claim of privilege.

9 THE COURT: Okay.

10 MR. FEINSTEIN: And again, I'll ask him for the
11 documents. If they object on privilege grounds, I'll come
12 back to Your Honor. But the problem is, Your Honor, there's
13 just this -- in every case, it's a series of impediments --

14 THE COURT: I understand that, but look --

15 MR. FEINSTEIN: -- and I want to eliminate them
16 and get a fair shot at these claims if they exist.

17 THE COURT: They get to assert attorney-client
18 privilege. They aren't waiving that. On the other hand,
19 they have a burden of proof to prove they did their job.

20 MR. FEINSTEIN: Uh-huh.

21 THE COURT: They may turn out to waive it, but
22 today they're not waiving it. We'll see how they meet their
23 burden of proof. If they think they can meet their burden
24 of proof by not showing underlying work product or rather by
25 showing hours billed --

1 MR. FEINSTEIN: Uh-huh.

2 THE COURT: -- maybe. Maybe there's some
3 underlying work product that they are willing to share
4 because they've, in fact, shared it --

5 MR. FEINSTEIN: Uh-huh.

6 THE COURT: -- or they're willing to waive some
7 privilege, I don't know. But I'll deal with that when I get
8 a discovery fight in front of me. I'm not going to declare
9 today that --

10 MR. FEINSTEIN: Sure. Yes, Your Honor.

11 THE COURT: -- they don't get to assert a
12 privilege.

13 MR. FEINSTEIN: So I --

14 THE COURT: They do get to assert privileges.
15 They can't use their privilege -- what's the term -- as a --

16 MR. FEINSTEIN: Sword by shield.

17 THE COURT: -- sword rather than a shield so.

18 MR. FEINSTEIN: There's a very interesting
19 decision in the *Haggen* case from Judge Gross holding that a
20 committee does have the right to the Debtor's attorney-
21 client privilege information when the Debtor's insolvent and
22 the Committee does have derivative standing.

23 THE COURT: Well --

24 MR. FEINSTEIN: But I guess the last question I
25 have, Your Honor, is whether with this new concept of the

1 Debtors not stipulating today, there's nothing binding on
2 the Estate or the Debtor today, whether we're doing a
3 consensual cash collateral order and we should finish
4 talking about negotiating the remaining points or whether
5 this is being done some other way?

6 THE COURT: No, you -- it -- you --

7 MR. FEINSTEIN: I'm frankly a little confused.

8 THE COURT: All of your rights to object are
9 preserved. I mean, let's move to sort of what we were on,
10 which is: you said that everything else would go away if
11 standing went away. I think standing goes away with what
12 they're doing now.

13 MR. FEINSTEIN: Right.

14 THE COURT: But that doesn't -- I mean, I'm not
15 holding you to that.

16 I just -- do we have a fight over whether you want
17 to have the unlimited right to claim -- make administrative
18 claims, which the Debtor will have a duty to pay, or do you
19 want to carve out from the secured creditors or perhaps
20 both? But, I mean, that's --

21 MR. FEINSTEIN: Well, look, if we're going to --

22 THE COURT: -- a negotiation you all can have.

23 MR. FEINSTEIN: Look, again I don't want to get
24 into privileged conversations. I think the Committee's
25 going to have to do a full-blown investigation of its own of

1 the exchange offers and it would be appropriate for us to
2 have a budget to do that and that's customary in these
3 Orders.

4 If you're -- if the parties and the Court are
5 telling us that we get to file a standing motion and the
6 Debtors' not stipulating but we have no budget to do this,
7 once again we're disarmed. It's a different problem, but
8 we're disarmed.

9 THE COURT: No, no. This goes back to where we
10 started, which is: the Bankruptcy Code gives you the right
11 to payment of your administrative claims in full --

12 MR. FEINSTEIN: Uh-huh.

13 THE COURT: -- to get a confirmed plan. If they
14 aren't paying your claims, I'm not going to leave them in a
15 Chapter 11 case.

16 MR. FEINSTEIN: Right.

17 THE COURT: I don't think -- and you can try and
18 persuade me I'm wrong on this -- that I can require a
19 secured creditor to let you use their cash collateral to pay
20 your attorney's fees. They may end up --

21 MR. FEINSTEIN: In Chapter 7.

22 THE COURT: -- in order to keep the case alive,
23 that may happen.

24 MR. FEINSTEIN: Right.

25 THE COURT: But I can't force them to do that, I

1 don't think.

2 MR. FEINSTEIN: I understand.

3 THE COURT: And so in this Order, they're saying,
4 "You can have \$150,000 of our cash collateral," but then
5 you've got to agree that that's the limit of your budget. I
6 can't make them give you the 150. I can't make you take
7 that it's the limit of your budget.

8 MR. FEINSTEIN: Uh-huh.

9 THE COURT: So I can strike them both and you can
10 just go to your investigation or you all can reach an
11 agreement but.

12 MR. FEINSTEIN: Right. Well, I guess I wanted to
13 understand the parameters of the agreement that at the very
14 least Your Honor's contemplating -- I don't know if the
15 parties are agreeing to it -- that we would have a budget
16 and that that's -- we can spend out of cash collateral to do
17 our investigation and make a standing motion and that's it.

18 The problem I have again is with the very last
19 sentence in Paragraph 9 where they propose to say that if
20 you exceed the budget, that's not an administrative claim
21 anymore. There's no statutory basis for that. There's no
22 statutory basis for preventing the Committee --

23 THE COURT: I agree.

24 MR. FEINSTEIN: -- counsel from being paid from
25 unencumbered assets.

1 THE COURT: And I'll take that out all day long.

2 MR. FEINSTEIN: Okay.

3 THE COURT: But they're then going to take out --
4 potentially take out their consent to your spending 150,000
5 of cash collateral.

6 MR. FEINSTEIN: Well -- and that's really what it
7 comes down to. So if they're prepared to do that, so are
8 we. If they want to fight about this, we'll continue to
9 fight cash collateral because --

10 THE COURT: I'm sorry, if they're prepared to --

11 MR. FEINSTEIN: -- we need the ability to do this.

12 THE COURT: If they're prepared to do what?

13 MR. FEINSTEIN: To provide a budget and, you know,
14 150's fine, okay? We'll work with the 150. We want the
15 challenge period extended for cause, which I think we've
16 dealt with.

17 MALE SPEAKER: No, we haven't.

18 MR. FEINSTEIN: And I'm hearing we haven't so
19 maybe we need to go in the hallway and talk to each other, I
20 don't know. I don't know what the other parties want to do
21 here.

22 THE COURT: I don't think you all even have a deal
23 on the budget from what I'm hearing.

24 MR. FEINSTEIN: Right.

25 THE COURT: Because they've imposed a condition on

1 the budget. So you all don't have a deal. I just think
2 let's -- I think we have a contested cash collateral
3 hearing.

4 MR. FEINSTEIN: Uh-huh.

5 THE COURT: Why don't we take out the parts where
6 people are trying to reach a deal and let's figure out what
7 we have as a contested order?

8 MR. FEINSTEIN: That may be where we're left.

9 THE COURT: And what's easy for me to say is, at
10 least from what I've heard so far, is that we should take
11 out the Committee's budget and we should take out any cap on
12 how much the Committee can spend and we're just going to
13 have a regular old-fashioned contested cash collateral
14 hearing.

15 MR. FEINSTEIN: Right, because if you take out the
16 budget, the language that remains is that no money shall be
17 used to investigate our liens.

18 MALE SPEAKER: No cash collateral.

19 MR. FEINSTEIN: Yeah, right. And that's
20 inappropriate and on that basis, we would object to that
21 Cash Collateral Order as denuding the Committee of its
22 statutory -- the ability to perform its statutory function.

23 THE COURT: Why can't you be paid out of non-cash
24 collateral?

25 MR. FEINSTEIN: Well, first of all, in this case,

1 it's not clear that there is anything other than the
2 litigation claims we're talking about. And the Order has --
3 and this is one of our other issues that we didn't get to
4 today: the Order is granting the Secured Lenders liens on
5 avoidance actions and unencumbered commercial tort claims,
6 which are claims against them.

7 THE COURT: Yeah. Is there any law from this
8 Circuit that authorizes me to allow you to spend cash
9 collateral on committee fees? I thought I couldn't do that
10 without the --

11 MR. FEINSTEIN: Yeah. No, I don't think so. But
12 if the Debtor wants to run a case, it needs to find a means
13 to pay for the Committee to do its job whether --

14 THE COURT: Absolutely, but it does need --

15 MR. FEINSTEIN: -- it's a consensual deal --

16 THE COURT: It does need to do that but it --

17 MR. FEINSTEIN: -- or nonconsensual with the
18 Lenders --

19 THE COURT: But that's not part of the --

20 MR. FEINSTEIN: -- or it can't run the case.

21 THE COURT: -- Cash Collateral Order then. It
22 just -- you're right, the Debtor needs to have enough money
23 to pay you and --

24 MR. FEINSTEIN: Right.

25 THE COURT: -- the case may convert pretty quickly

1 if they can't pay you.

2 MR. FEINSTEIN: Right, so it's --

3 THE COURT: But that's not part of the cash
4 collateral process.

5 MR. FEINSTEIN: No. Again, you can't force the --
6 it's America, you can't force the Lenders to let me use
7 their money to sue them.

8 THE COURT: Okay.

9 MR. FEINSTEIN: I get that. But the case has to
10 run so the Debtor and the Lenders will have to make a choice
11 about how they want to approach the case in a way that
12 allows the Committee to do its statutory function, otherwise
13 the case should not be in Chapter 11 this week.

14 THE COURT: I agree with those statements. I just
15 don't think that's part of the Cash Collateral Order so.

16 MR. FEINSTEIN: Yeah, if it's going to be
17 consensual amongst everybody but the Committee, we're going
18 to oppose it. If it's nonconsensual and they -- the Debtor
19 wants to just get nonconsensual cash collateral use, then
20 there's no need to talk about a deal. But it sounds like --

21 THE COURT: I think it's a deal with everybody but
22 you, but that doesn't mean you don't get to fully challenge
23 it.

24 MR. FEINSTEIN: Right.

25 THE COURT: So that's fine.

1 MR. FEINSTEIN: Okay.

2 THE COURT: Am I understanding where we are from
3 everybody's point of view?

4 MR. FEINSTEIN: I think I understand. I don't
5 know about the other parties --

6 THE COURT: No, the --

7 MR. FEINSTEIN: -- but I think you've been clear.

8 THE COURT: Mr. Husnick, is that right?

9 MR. HUSNICK: Yeah, I think it is. I mean, I
10 would offer this, Judge: just to make sure he's saying,
11 "No," to this, I think what the Lenders have been willing to
12 offer is \$150,000 budget. The challenge period is out to
13 the March date. It's automatically tolled if the standing
14 motion is filed and this sentence is deleted.

15 THE COURT: The Lenders are offering to delete
16 that sentence?

17 MR. HUSNICK: Yes.

18 THE COURT: I was not aware they had offered to
19 delete that sentence so --

20 MR. HUSNICK: Yes.

21 THE COURT: -- that may solve Mr. Feinstein's
22 problem, I don't know.

23 MR. HUSNICK: If that solves your issue, then --

24 MR. FEINSTEIN: Well, if they're still offering a
25 budget.

1 THE COURT: Yeah, he said they're --

2 MALE SPEAKER: Hundred and fifty.

3 MR. HUSNICK: Hundred and fifty.

4 THE COURT: They're still offering the 150 budget
5 and they'll take out that sentence.

6 MR. BARR: Not agreeing that your -- you can
7 extend the investigation period. It can be tolled when you
8 file a motion, but there's no for cause. You can't -- you
9 have to file your Motion.

10 MALE SPEAKER: It's --

11 MR. FEINSTEIN: That's problematic because again
12 we get jerked around on discovery so the hard date comes up
13 and I have cause. I can't extend it and I can't formulate a
14 challenge.

15 MR. HUSNICK: Here --

16 MR. FEINSTEIN: And I will tell, Your Honor,
17 there's --

18 MR. HUSNICK: Right.

19 MR. FEINSTEIN: -- I'm happy to go into it, but
20 there is a history in this case of us getting documents late
21 or not at all and it predates the formation of the Committee
22 so I do have real concern here.

23 THE COURT: I'll tell you --

24 MR. HUSNICK: If I may respond?

25 THE COURT: The only thing that --

1 MR. HUSNICK: I think Your Honor has --

2 THE COURT: Let me tell you what I will do --

3 MR. HUSNICK: Go ahead.

4 THE COURT: -- to try and solve that problem.

5 Doesn't need to -- because we can have -- I haven't had a
6 contested cash collateral hearing in so long and I'm sort of
7 itching for one.

8 (Laughter.)

9 THE COURT: But what I'll do is: If you file an
10 emergency motion regarding getting stiffed on discovery,
11 you'll get a hearing within seven days, period, and I'll
12 include that in here. If that solves the problem, then I'm
13 happy to do that because that's something I can do. I can't
14 force other people to do that.

15 MR. FEINSTEIN: That's very helpful, Your Honor.
16 I do know that some judges take the view that the final DIP
17 or Cash Collateral Order is subject to the Court's revision
18 at any time and that even though it doesn't say the
19 Committee can ask for a change or extension for cause, the
20 Court could entertain it anyway. But if the cause concept
21 is coming out, it's very problematic, it's very problematic.

22 MR. HUSNICK: All I was going to say, Your Honor,
23 is: you have -- and I have no doubt that if I am dilatory in
24 my behavior in producing documents, that you will rain the
25 pain on Kirkland and Ellis and the Debtors. So we will

1 comply, we will get the documents. I'm not even going to
2 justify the statement about docs with a response.

3 THE COURT: I don't think you all have a deal. If
4 you all want to take a few minutes and see if you all can
5 get to a deal with these concessions, that's fine. But if
6 not, then I think we need to proceed where, as I understand
7 it, there's a consensual deal with all of the different
8 constituencies other than one of the most important ones
9 being the Unsecured Creditors' Committee and I'm going to
10 allow them to make whatever objections they want to and I'll
11 hold you to your burden of proof.

12 But if you all want a few minutes to talk about
13 it, if you all want overnight to talk about it, we'll come
14 back in the morning, but we're going to resolve this pretty
15 quickly but --

16 MR. HUSNICK: No, we're ready to go. In fact,
17 Your Honor, the evidentiary portion of that is all imbedded
18 in the First Day Declaration that we filed, our support for
19 why we need to have the consent of the First and Second Lien
20 Creditors, the diminishing cash balance, it's all there.
21 We're ready to go in our view.

22 THE COURT: And do you want to try and do that now
23 over their objection or do you want to take overnight to try
24 and do a deal? It's up to you.

25 MR. HUSNICK: I just -- unfortunately, with this

1 committee counsel, I'm not optimistic we'll reach a deal and
2 I think I'll be here tomorrow morning so I think we should
3 get started.

4 THE COURT: Yes, sir?

5 MR. BARR: Can I? Your Honor, just for some
6 clarification because we do have issues as it relates a
7 little bit indirectly to the -- how the challenges work and
8 I would just like to get a clarification with respect to
9 what is actually being pushed out with respect to the
10 Debtors' stipulations.

11 Is it something that where they're just not
12 stipulating and they're going to come back to the Court to
13 stipulate at which point we'll all have the ability to
14 challenge their business judgment as you were suggesting or
15 is it a springing -- a fact of stipulation where they're
16 essentially stipulating today for the effect to take --

17 THE COURT: Let me try and write what at least
18 I've heard the deal is.

19 MR. BARR: Okay.

20 THE COURT: And if I -- I'm not trying to change
21 what the deal is, but let me try and write and I think
22 that'll make everybody's life easier. And if I put words
23 into the Debtors' and the Lenders' mouth, I'm not intending
24 to. I just want to write it down so that everybody can see
25 it so.

1 MR. BARR: Very good. Thank you, Your Honor.

2 THE COURT: Yeah. Those stips are where. Are the
3 challenge period --

4 MR. FEINSTEIN: It's I believe 7-D.

5 THE COURT: Pardon me?

6 MR. FEINSTEIN: D.

7 MALE SPEAKER: Seven-D.

8 MR. FEINSTEIN: Seven, it's on Page 7 -- 8 of
9 the -- we'll back up.

10 THE COURT: It's not here.

11 MR. FEINSTEIN: Page 7.

12 MALE SPEAKER: Page 7, Your Honor.

13 MR. FEINSTEIN: D, okay. Yeah, this one right
14 here, (indicating). No, no, keep going the other way.
15 Yeah, up.

16 THE COURT: Lower page numbers or higher page
17 numbers?

18 MR. FEINSTEIN: Yeah. That's -- it's D-1 and 2.
19 Two is the validity perfection on the liens.

20 THE COURT: Okay.

21 MR. PEREZ: Those are -- that's a description of
22 them, Your Honor, D-1-A and B and then D-2 is the validity
23 perfection.

24 (Pause/Court preparing order.)

25 THE COURT: Is it March -- what day is that

1 hearing in March?

2 MR. PEREZ: The Disclosure Statement Hearing --
3 or, I'm sorry, the end of the investigation here is March
4 21st.

5 MR. HUSNICK: The Disclosure Hearing is the 22nd,
6 right?

7 MR. PEREZ: February, yeah, February.

8 MR. BARR: February 22nd.

9 (Pause/Court preparing order.)

10 THE COURT: That's what I think I've heard. And
11 then whatever it takes to get a compromise approved is what
12 the Debtors will have to prove, which is largely a business
13 judgment set of proof taking into account in this Circuit
14 the reasonable views of the constituencies of the case.

15 MR. FEINSTEIN: Your Honor, this is I guess a
16 drafting of which is I think where you put this -- the
17 stipulations start on Page 7. It's Section (d).

18 THE COURT: I'm sorry.

19 MR. FEINSTEIN: Paragraph 7 is the challenge
20 provision so (d) says these are all binding unless somebody
21 successfully challenges them in Paragraph 7.

22 THE COURT: Thank you.

23 (Pause/Court preparing order.)

24 THE COURT: Mr. Husnick, is that what you agreed
25 to with the Lenders?

1 MR. HUSNICK: Not quite.

2 THE COURT: Okay.

3 MR. HUSNICK: The issue I have with the way this
4 is worded is: it's a burden-shifting issue. The burden --
5 unless I'm settling these causes of action and actually
6 agreeing that they are no more is one the Committee to
7 actually get standing to bring the causes of action so I'm
8 not sure that it's the Debtors' burden to show a compromise.

9 THE COURT: I'm not even talking about ever
10 necessarily giving them standing. You are compromising and
11 they have the -- they -- you need to demonstrate diligence
12 and business judgment and they get to challenge that I think
13 is the normal way this works. We can write it a different
14 way, but frankly I think --

15 MR. HUSNICK: I'm just reading it again.

16 THE COURT: -- I'm a little surprised you would
17 want me to change it to be that way.

18 MR. HUSNICK: Look, I can live with it. I'm
19 not -- I'm just thinking about my counterparties here.

20 THE COURT: Well --

21 MR. HUSNICK: I believe the Debtor will be fine.

22 THE COURT: Mr. Perez, has never been shy.

23 MR. FEINSTEIN: Just a drafting comment while the
24 parties are conferring, the paragraph that you drafted, Your
25 Honor, I think is -- kind of comes in the middle of (d) as

1 opposed to -- I mean, I think it probably goes back two more
2 pages to the beginning of Section (b) on Page 7, if you'd
3 just look for the --

4 THE COURT: So what should it say?

5 MR. FEINSTEIN: Exactly as it reads, but I think
6 it kind of -- it's just in an odd place.

7 MALE SPEAKER: Right.

8 MR. FEINSTEIN: It's in the middle of the
9 stipulations as opposed to the beginning of them.

10 MALE SPEAKER: Yeah.

11 MR. FEINSTEIN: Because you're at the end of
12 Stipulation Number 2 and the beginning of Stipulation
13 Number 3?

14 THE COURT: Got it.

15 MR. FEINSTEIN: Yeah. Thank you.

16 MR. PEREZ: Your Honor, I think --

17 THE COURT: Well, let me just do this real quick.

18 MR. PEREZ: Okay.

19 (Pause/Court preparing order.)

20 THE COURT: Okay. I think I just got messed up.

21 This is the word anomaly that you run into, right?

22 MR. FEINSTEIN: Yes. And, you know, the lead-in
23 still says the Debtors admit, acknowledge, et cetera. I
24 think the outcomes, Your Honor, are suggesting that they're
25 not doing any of that until the end of the challenge period.

1 (Pause/Court preparing order.)

2 THE COURT: Okay. So let me hear from Mr. Perez.

3 MR. PEREZ: Your Honor, I need to consult, but I
4 think that probably would work with us. I mean, they would
5 have to show that in their business judgment, this was the
6 appropriate thing to do so it's just strictly a business
7 judgment standard.

8 THE COURT: Yeah, I think -- just so that
9 everybody knows at least my thoughts walking into the
10 hearing, that's right although under -- I believe it's --
11 don't remember the name. There's a Fifth Circuit case that
12 says -- *Foster Mortgage*. In addition to business judgment,
13 I'm also supposed to take into account the reasonable views
14 of the different constituencies in the case, language to
15 that effect. So it's not totally business judgment, but we
16 have enough split of constituencies it may be enough.

17 MR. HUSNICK: The Debtors have -- are perfectly
18 fine with that language. And, Your Honor, there are other
19 objections. We -- I believe the First Liens and the Debtors
20 are ready to go forward. We'll take this Order as what
21 we're living with. We believe we'd addressed the standing
22 issue and we're prepared to argue on the remaining issues.

23 THE COURT: What about the budget and that last
24 sentence?

25 MR. HUSNICK: Budget can stay at 150. And we'll

1 also give them the extension on the termination. If you go
2 to that paragraph? Oh, you're -- we're going to delete --

3 THE COURT: You're agreeing to take this out as
4 part of your proposed Cash Collateral Order --

5 MR. HUSNICK: That's correct, Your Honor.

6 THE COURT: -- without a consent by --

7 MALE SPEAKER: Right.

8 THE COURT: Okay. And then we had up here,
9 (indicating) -- I'll have to find it -- the cause paragraph
10 that you've not agreed to.

11 (Pause/voices off record.)

12 THE COURT: Do you know where that was?

13 MR. HUSNICK: Your Honor, it's the paragraph
14 that's cross-referenced, Paragraph 6.

15 THE COURT: Paragraph 6?

16 MR. HUSNICK: Yeah.

17 MALE SPEAKER: Paragraph 7.

18 MR. HUSNICK: Seven, I'm sorry.

19 (Pause in the proceedings.)

20 MR. HUSNICK: So what I would do here is: it's
21 subject to extension is fine, but I would leave the hard
22 date and then I would say that it's tolled if a standing
23 motion is filed by the Official Committee.

24 THE COURT: Is that language in here?

25 MR. HUSNICK: No. No, it is not. It would be by

1 March 21st, 2018 provided such date shall be tolled if the
2 Creditors' Committee -- oh, you got it.

3 (Pause/Court preparing order.)

4 MR. FEINSTEIN: Is this February or March we're
5 talking about? March.

6 MR. HUSNICK: March.

7 MR. FEINSTEIN: Because that's the Confirmation
8 Hearing, right?

9 MR. HUSNICK: That's your deadline but you can
10 file it earlier.

11 MR. FEINSTEIN: Yeah, elsewhere in the order I
12 thought there was something that said that there shall be a
13 hearing scheduled on a standing motion if one's filed on
14 March 22nd, which was the Confirmation Hearing. This is
15 exactly the problem I was trying to avoid of having
16 Your Honor have to choose between getting a standing --

17 MALE SPEAKER: March 30 for --

18 MR. HUSNICK: It's 30. You'll have a ruling
19 before.

20 MR. FEINSTEIN: But we're on the eve of
21 confirmation where the votes are in and it's the same
22 momentum that the Debtor will have gained heading towards
23 confirmation that the Committee was destroy it, but if it
24 bring a motion. It's -- we're -- got our backs to the wall
25 again.

1 MR. HUSNICK: Your Honor, if the Creditors'
2 Committee believes that it is in a better position than the
3 creditor democracy and we have literally 99 percent of the
4 stakeholders voting in favor of the Plan -- I don't know
5 that we will -- and the Committee is standing here saying
6 that these causes of action despite what all of the
7 creditors are saying should be pursued, I believe that's
8 going to be consistent with business judgment but that's our
9 burden. We're going to put that on -- that case on.

10 THE COURT: Right.

11 MR. FEINSTEIN: Your Honor, I encourage you to go
12 look at their Disclosure Statement. It is a picture of non-
13 substance on this issue. There are pending lawsuits, claims
14 that have survived a motion to dismiss that they're going to
15 release and they don't say why, they don't say what the
16 consideration is. This is the same setup with different
17 packaging.

18 MR. HUSNICK: I don't want to argue
19 confirmation --

20 THE COURT: I'm --

21 MR. HUSNICK: -- but that's just wrong.

22 MR. FEINSTEIN: No, but the notion that creditors
23 could vote to release these claims when there's no
24 discussion about them and the Debtor doesn't plan to make
25 any discussion unless we object to the Disclosure Statement.

1 THE COURT: This -- I --

2 MR. FEINSTEIN: It's more of the same. They're
3 trying to bury this.

4 THE COURT: Wait, wait, wait. We are really
5 mixing apples and oranges here. I thought that what we were
6 going to do is: the Debtor's going to compromise its claims
7 with the Lender and you can challenge it.

8 MR. FEINSTEIN: No. What I heard was that the
9 Debtor was going to investigate claims --

10 MR. HUSNICK: Right.

11 MR. FEINSTEIN: -- and make a decision by the end
12 of the challenge period.

13 THE COURT: No, they've investigated. They've
14 already -- they claim to have already investigated, I should
15 put it that way.

16 MALE SPEAKER: Right.

17 THE COURT: And they are prepared to reach this
18 deal with the Committee. You get to challenge whether
19 they're going to do that. If you lose that challenge, then
20 you're not going to get standing because it would have
21 already resolved it. We're focused on that hearing. This
22 is an irrelevant hearing frankly but --

23 MR. FEINSTEIN: I understand, Your Honor. I guess
24 I was responding to the notion that creditors could vote
25 these claims away because that's really not how this is set

1 up.

2 THE COURT: What I'm worried about is: getting to
3 this hearing where the compromise gets determined after you
4 can investigate the Debtors' business judgment. That's the
5 way these things ought to occur.

6 MR. FEINSTEIN: Well, what I'm thinking forward,
7 Your Honor, is -- the compromise they're going to come
8 forward is, "We don't think there are any claims so we're
9 validating all their liens." It's really not a compromise
10 at all, it's just a concession.

11 THE COURT: No. They are already proposing the
12 compromise. The compromise is: we're getting cash
13 collateral and we're waiving our ability to look at your
14 liens any further, we've done enough, but we're getting the
15 consensual use of cash collateral. That's their compromise.
16 You have to decide -- I'm holding them to proposing that
17 compromise. That is now part of this Order. You get to
18 challenge whether that's a good compromise later.

19 MR. FEINSTEIN: Well, but day we get to challenge
20 the use of cash collateral.

21 THE COURT: You do.

22 MR. FEINSTEIN: And today the Debtor's saying,
23 "We've done the investigation and there are no claims."
24 They're telegraphing that down the road they are just going
25 to give these claims away.

1 THE COURT: You get to challenge that. That's
2 what I don't understand.

3 MR. FEINSTEIN: But I'm not -- it's not clear to
4 me in what context, Your Honor, because if it's a motion for
5 authority to sue, they're going to say, "You're just
6 disrupting the process. The cost benefit, this doesn't make
7 sense to us."

8 THE COURT: We are really talking past each other.
9 I don't mean to be --

10 MR. FEINSTEIN: I just don't understand, I
11 apologize, Your Honor.

12 THE COURT: Okay. Here's what I'm trying to get
13 organized is: we're leaving the way that people normally do
14 deals because we don't have a deal. The Debtor has a deal
15 with the Lender and that is: they're not going to challenge
16 their liens and claims. In exchange, they're going to get
17 consensual use of cash collateral.

18 MR. FEINSTEIN: Uh-huh.

19 THE COURT: I'm going to let you challenge whether
20 that is a good compromise after you can investigate whether
21 the Debtor is doing the right thing. You can fully
22 challenge it. That full challenge is later. They're going
23 to get the benefit of the upside right now because they can
24 use cash collateral. The Lender isn't getting the benefit
25 of the waiver. What they're getting is: the benefit of the

1 Debtor being required to prosecute in good faith its 9019
2 position today.

3 And I don't understand why you would ever then,
4 unless you defeat the 9010, want standing. If you lose on
5 the 9019, there aren't claims and liens to challenge,
6 they're done.

7 MR. FEINSTEIN: But the quid pro quo, the
8 compromise is happening today, not in March, right, because
9 they're getting use of cash collateral today.

10 THE COURT: The quid pro quo of the Debtor
11 proceeding with its agreement to defend its conduct is in
12 March.

13 MR. FEINSTEIN: But won't the argument then be --
14 and it's really something being decided today -- we made our
15 deal with the Lenders. We wanted use of cash collateral so
16 we agreed that we were never going to sue them.

17 THE COURT: Sure.

18 MR. FEINSTEIN: So in March, they're going to say,
19 "Well, this is all behind us. We've had the use of cash
20 collateral for three months. We got the benefit of our
21 bargain --

22 THE COURT: And if that was a --

23 MR. FEINSTEIN: -- so we don't want to sue
24 people."

25 THE COURT: No. If you demonstrate to me that

1 that was not a good exercise of business judgment, then
2 we're done.

3 MR. FEINSTEIN: I guess what I -- the caveat I
4 would make, Your Honor, is that may be all fine and well so
5 long as the passage of time and the use of cash collateral
6 over the next three months isn't going to be thrown back at
7 the Committee, that we have the benefit of that. So why are
8 you -- we're not going to sue people because we already
9 received that benefit. If this --

10 THE COURT: It's not the -- no, I agree with you.
11 It isn't that they already received it, it's that the
12 agreement that they reached today was a good agreement
13 forward-looking today.

14 MR. FEINSTEIN: But it's one that can be freshly
15 challenged down the road notwithstanding that they will have
16 had three months' use of cash collateral.

17 THE COURT: Yes.

18 MR. FEINSTEIN: Okay. Then I understand.

19 THE COURT: Okay.

20 MR. FEINSTEIN: So I think there's only one other
21 issue, Your Honor --

22 THE COURT: Okay.

23 MR. FEINSTEIN: -- and that's liens on avoidance
24 actions, which I am told that as a matter of a deal, the
25 folks around the courtroom will not agree to. And again

1 those avoidance actions are against the Lenders so they want
2 liens on the claims against them. That's problematic to the
3 Committee.

4 THE COURT: Okay. And where is that?

5 MR. FEINSTEIN: I think Paragraph 4(a). Yeah.
6 And it may come up elsewhere but that's the ordering
7 paragraph that grants them a lien on avoidance actions, I
8 believe.

9 THE COURT: So I'm reading it differently than
10 you're reading it, which is they only get the proceeds of
11 those avoidance actions, not the avoidance actions
12 themselves so --

13 MR. FEINSTEIN: Functional equivalent.

14 THE COURT: Well, no, it's not the functional
15 equivalent because -- and maybe I don't understand, but
16 let's assume that there is a billion-dollar claim against
17 the Lenders. If they own the claim -- if they can, what is
18 it, foreclose on the claim, that billion dollars never gets
19 prosecuted. Conversely, if they can't foreclose on the
20 claim, which they can't under this, it's a billion-dollar
21 claim. You can go win it and then then only get it as
22 adequate protection. They don't -- but you can collect the
23 balance that isn't adequate protection. I think they're a
24 lot different -- there may be something wrong with this, but
25 I was very concerned when you said that we were giving them

1 a lien on the claims. I don't think we are.

2 I think we're giving them a lien on proceeds to
3 the extent of adequate protection, right? But it's only on
4 proceeds.

5 MR. FEINSTEIN: Let me just take a look at the
6 language. I'm not sure that that's true.

7 THE COURT: Okay. They do have choses in action
8 here and maybe that's should --

9 MR. FEINSTEIN: Yes, it's a --

10 MR. PEREZ: Well, choses in action would be other
11 claims, not necessarily avoidance actions.

12 THE COURT: I think we should put in here
13 parenthetically "exclusive of avoidance actions," right?

14 MR. FEINSTEIN: Right. But, Your Honor, again
15 granting them a lien on the proceeds is the functional
16 equivalent.

17 THE COURT: Right.

18 MR. FEINSTEIN: We sue them for money and then
19 they say, "Great, you can go collect it and now we're
20 asserting a lien on your recovery." It's circular.

21 THE COURT: Okay. But take my hypothetical
22 example and let's assume that they have had an adequate
23 protection failure of \$50 million and you have a billion-
24 dollar claim against them, okay?

25 MR. FEINSTEIN: Uh-huh.

1 THE COURT: Then it's not the functional
2 equivalent because you get to collect \$950 million and in
3 the other instance, you get to collect zero.

4 MR. FEINSTEIN: Right, but --

5 THE COURT: So I don't -- they are not the
6 functional equivalent.

7 MR. FEINSTEIN: But even the portion that their
8 lien attaches to -- again, I mean, we've cited -- well, in
9 our objection it says that avoidance actions are for the
10 unique benefit of unsecured creditors. They get lienied up
11 only in rare cases where secured lenders are, you know,
12 extremis. This should not be the garden variety case where
13 liens and avoidance actions are granted or the proceeds
14 because again it's the functional equivalent.

15 THE COURT: You keep saying it's the functional
16 equivalent. Tell me how it's the functional equivalent.

17 MR. FEINSTEIN: Because if we were recover \$100
18 from the Lenders, they're going to say, "Great, bring that
19 into the Estate, but it's our money because our lien
20 attaches to the proceeds of that cause of action."

21 THE COURT: Only to the --

22 MR. FEINSTEIN: It's the same money we got from
23 them.

24 THE COURT: Only to the extent of a failure of
25 adequate protection.

1 MR. FEINSTEIN: Yes.

2 THE COURT: So if you collect more than that, it's
3 not the functional equivalent.

4 MR. FEINSTEIN: Right. But if I collect less than
5 that, I have accomplished nothing other than taking money
6 from them and then they take it back. And these are
7 avoidance actions that are really not meant for secured
8 lenders.

9 THE COURT: Okay. So we don't have an agreed cash
10 collateral motion. Let's proceed with a contested hearing.
11 Back to where I was. We don't have an agreement.

12 But this is now the Order that we're fighting
13 about, right?

14 (No verbal response.)

15 THE COURT: This is the Order we're fighting over.
16 Does anybody want to put --

17 MR. FEINSTEIN: I think fight for this issue which
18 shouldn't be that hard again, but here we are.

19 THE COURT: Anybody want to put on any evidence at
20 all besides the Declaration? Yes, sir?

21 MR. BARR: Your Honor, just I think there's one
22 more issue that is resolved that we just didn't get to and I
23 just before --

24 THE COURT: Okay.

25 MR. WEILAND: I think there are actually -- before

1 we get to that, Your Honor, I think there are actually two
2 points that we have agreed to among the parties. One is
3 reservation of rights laid out in Paragraph 24. Another is
4 one more proposed change to the language we talked about at
5 the beginning of --

6 THE COURT: Let's go to 24.

7 MR. WEILAND: -- the hearing on this matter on
8 exercise of remedies but --

9 THE COURT: Twenty-four?

10 MR. WEILAND: Yes, Your Honor.

11 THE COURT: What do you want to do there?

12 MR. WEILAND: So I actually have a redline that I
13 believe has been agreed to by all of the parties that I can
14 pass up. This is something that we've been working on
15 during the hearing.

16 THE COURT: And do you want --

17 MR. WEILAND: I can walk you through.

18 THE COURT: If it's on a disc, you can hand up the
19 disc. Otherwise, you should just dictate it to me.

20 MR. WEILAND: Okay. I will do it live,
21 Your Honor.

22 THE COURT: Okay.

23 MR. WEILAND: The changes are to delete in the
24 paragraph title the words "reservation of rights regarding"
25 and just title the paragraph "Chapter 11 Plan."

1 And then we think we should have this read -- and
2 I'll point out the changes, but "notwithstanding anything to
3 the contrary in the Interim Order or this Final Order,
4 nothing contained in such Order shall preclude, limit,
5 determine or otherwise modify the right of any party-in-
6 interest including the Debtors from" -- insert sub (a) --
7 "proposing, pursuing" -- that's all the -- I'm sorry,
8 Your Honor, that's all there -- "proposing, pursuing, delete
9 or comma after" and add "or obtaining confirmation of" --
10 this is their -- "any Chapter 11 plan." And then after
11 "plan," we're inserting the words "that provides the pre-
12 petition secured parties with treatment consistent with
13 Section 1124 or any subsection thereof."

14 And then we'll take the "or" that's already there
15 after that, Your Honor, and insert sub (b) and we'll delete
16 "any party-in-interest from." That's redundant. We'll keep
17 "opposing such" and we'll delete "Chapter 11 plan." We'll
18 replace that with "the following treatment" and then in
19 parenthesis "other than on the basis that any provision in
20 the Interim Order or this Final Order precludes the
21 proposal, pursuit, solicitation, or confirmation of a
22 Chapter 11 plan consistent with Section 1124" and close the
23 parenthesis and I think that's that paragraph.

24 THE COURT: Thank you.

25 MR. BARR: And just for the Record, Your Honor,

1 that resolves our objection. Thank you.

2 THE COURT: Thank you, sir.

3 MR. FEINSTEIN: We've seen this language as well,
4 Your Honor, and it resolves a different objection we made,
5 which is about one of the milestones which currently says
6 that it's a default if the Debtor doesn't file a plan that's
7 reasonably acceptable to the Lenders. We said that's
8 objectionable. It should be any kind of plan that satisfies
9 their claim in accordance with 1129.

10 With the addition of -- or the impairment language
11 in 24, we're resolvable. We can agree to leave the
12 milestone as is with this language added to the Order.

13 THE COURT: Thank you.

14 MR. PEREZ: But I just want to make sure that it's
15 clear that to the extent that they file a plan that is not
16 reasonably acceptable to us, then we're back here with
17 respect to the nonconsensual use of cash collateral. What
18 this says is that we won't use this Order to say that
19 somebody can't confirm a plan. We keep all of our
20 underlying arguments, every single one of them. It's just I
21 can't say, "Oh, well, Judge, look at Paragraph 6 of this
22 Order." It says you can't do it.

23 THE COURT: Got it. Thank you.

24 MR. WEILAND: All parties do. Okay. Your Honor,
25 and then back in Paragraph 6 with the exercise of remedies

1 language that we talked about earlier, we did talk about one
2 change.

3 (Voices off record.)

4 MR. WEILAND: We're fine without it?

5 MR. PEREZ: Yeah, let's go back with it.

6 (Pause/voices off record.)

7 MR. WEILAND: I apologize, Your Honor. I think
8 we've moved past comments to that and I think we're okay
9 with that after all.

10 THE COURT: Six doesn't need any changes?

11 MR. WEILAND: Six does not need any further
12 changes.

13 THE COURT: Okay. So at the risk of throwing
14 something out that may harm rather than help, I'm either
15 going to proceed now with argument on whether the loans on
16 avoidance actions are appropriate --

17 MR. WEILAND: Proceeds of.

18 THE COURT: What's that?

19 MR. WEILAND: Proceeds of.

20 THE COURT: On the proceeds are appropriate or
21 suggest that you take a lien -- that the Lenders take a lien
22 on exactly what they have proposed after recovery of
23 \$200,000. That 200,000 would be an addition to the budget
24 if it's recovered.

25 Do you want to do that? Might just solve the

1 problem. Might solve the problem for the Committee. It's
2 not a very big deal.

3 MR. WEILAND: That's 200,000. I'm sorry,
4 Your Honor. That's -- just to understand the proposal,
5 Your Honor, that's the first \$200,000 of proceeds from
6 avoidance actions --

7 THE COURT: Would be available to pay --

8 MR. WEILAND: -- would go to the Committee's
9 budget?

10 THE COURT: Would be available to pay committee
11 fees generally and everything after that would not be. But
12 if that doesn't work for the Committee, that's fine. I'm
13 just --

14 MR. FEINSTEIN: Yeah, it's really -- doesn't --
15 it's not a pressing and concern today with this --

16 THE COURT: No problem. Then forget it. I was
17 just trying to get you all to a consent.

18 (Voices off record.)

19 MR. FEINSTEIN: Yeah, if it's gets done, we're
20 willing to do it.

21 THE COURT: Yeah, but no problem, it doesn't get
22 it done. That's fine. Let's hear the argument.

23 So who wants to make the argument as to why the
24 Debtor should be able to grant liens on the proceeds and
25 avoidance actions and then we'll hear why the Debtor

1 shouldn't be allowed to do that.

2 MR. WEILAND: Sure, I'd be happy to, Your Honor.
3 Let me find the right notes. Your Honor, as I understand
4 the Committee's objection here, adequate protection liens
5 and claims shouldn't extend to unencumbered assets including
6 the avoidance action proceeds and commercial tort claims,
7 et cetera. I think, you know, unencumbered assets and
8 avoidance actions under the Code are preserved for the
9 benefit of the entire Estate and using them as part of
10 adequate protection packages is entirely appropriate and
11 consistent with the Code. If you look at Section 550, that
12 preserves recoveries on avoidance actions for the benefit of
13 the Estate, not any particular constituency or stakeholder
14 in the Estate.

15 If the first lien notes here are over secured and
16 the second lien notes are over secured, this does not hurt
17 the Committee in any way. But because all of our assets
18 today are already encumbered or substantially all of our
19 assets are already encumbered, it's appropriate to look to
20 unencumbered assets including proceeds of avoidance actions
21 to protect against diminution in value during the Chapter 11
22 cases.

23 The adequate protection package here was heavily
24 negotiated, contentiously negotiated at times, but we think
25 in light of the facts here and the holistic solution that

1 the Cash Collateral Order offers, it's entirely appropriate
2 to give these liens in exchange for the overall benefit of
3 the consensual use of cash collateral under this Final
4 Order.

5 THE COURT: I'm trying to understand largely
6 what's the fight about and let me try and ask the question.
7 I'm not understanding the economics of the fight.

8 As I understand it, if there is no failure of
9 adequate protection, this lien has nothing that it pays,
10 right?

11 MR. WEILAND: When you say, "Failure of adequate
12 protection," you mean --

13 THE COURT: Diminution of value.

14 MR. WEILAND: -- diminution of value that isn't
15 otherwise covered.

16 THE COURT: Correct.

17 MR. WEILAND: I think that's absolutely right.

18 THE COURT: So let's assume for a minute that
19 there is a diminution that isn't otherwise covered. Under
20 507(b), the creditor that has the diminution would get a
21 priority claim that is senior to every other claim in the
22 case.

23 MR. WEILAND: That's correct, Your Honor.

24 THE COURT: So what's the economics that we're
25 fighting about? The lien is also senior to other priority

1 claims and unsecured claims and I got that but I'm --

2 MR. WEILAND: That's right, Your Honor, and --

3 THE COURT: -- trying to think if there's any --

4 MR. WEILAND: -- if you look at --

5 THE COURT: Is there any shift of money that
6 occurs by granting the lien other than -- that it would be
7 different from granting the lien versus the 507(b)
8 protections. This sort of cuts both ways but --

9 MR. WEILAND: Really I don't think there is --

10 THE COURT: -- I want to see to it that I
11 understand what's going on.

12 MR. WEILAND: -- Your Honor, unless we're in a
13 position where potentially -- we're not paying superpriority
14 administrative claims, but I think they do -- they
15 compliment each other and that's why the Order, if you look
16 at --

17 THE COURT: But would this ever --

18 MR. WEILAND: -- the liens claim --

19 THE COURT: Would this ever result in a different
20 distribution of funds if the case remains in a Chapter 11
21 case than if we didn't do it?

22 MR. WEILAND: I don't believe so, Your Honor. I
23 think they go --

24 THE COURT: I'm having trouble following that.

25 MR. WEILAND: They go together.

1 THE COURT: I'm having a little trouble following
2 the fight so maybe I should hear from the Committee.

3 What's the economics of the fight?

4 MR. FEINSTEIN: So you're correct, Your Honor,
5 that there is -- that 507(b) is in the statute and I can't
6 ask you to take it out, that if they -- if there's a failure
7 of adequate protection, they're going to have a
8 superpriority claim. And I haven't asked or -- that the
9 Order be denied because it grants a superpriority --

10 THE COURT: I mean, I'm trying to figure out --

11 MR. FEINSTEIN: -- claim to these lenders.

12 THE COURT: -- what's the economic -- why we're --
13 what is the economic fight we're having by either party --

14 MR. FEINSTEIN: Right.

15 THE COURT: -- if it stays in Chapter 11.

16 MR. FEINSTEIN: Right.

17 THE COURT: If it goes to Chapter 7, I haven't
18 thought about it.

19 MR. FEINSTEIN: Well, this -- by operation of the
20 statute, they have the right to assert their superpriority
21 claim. Giving them a lien on the proceeds of the avoidance
22 action goes beyond what the statute gives them as extra
23 adequate protection and --

24 THE COURT: But that doesn't answer my question.
25 My question is: What's the economics of the fight?

1 MR. FEINSTEIN: So if those assets remain
2 unencumbered and we get to a point where there's a default
3 declared and we're rushing in to use nonconsensual use of
4 cash collateral, we now have more unencumbered assets that
5 we could go to a different lender with. If they're liened
6 up, these lenders have trumped any ability to bring in
7 outside financing so there is an impact.

8 But I guess the rest of the argument I was going
9 to make, Your Honor, is: the Debtor say in their own Motion
10 what constitutes sufficient adequate protection is decided
11 on a case-by-case basis. The First Lien lenders -- and
12 these are the only parties who've been -- who really have
13 the right to negotiate because there's an intercreditor
14 agreement that silences the Seconds. The First Liens are
15 vastly over secured, vastly. Now, I don't think anybody in
16 the courtroom disputes that.

17 So why give them a whole package of extra goodies?
18 Now, there are -- we also said in our objection there are
19 other unencumbered assets and we really haven't really
20 spoken about those. There's commercial tort claims that are
21 unencumbered because there are pending lawsuits against
22 estate claims against the Ds and Os and I don't believe
23 because I haven't seen the documents yet that the Lenders
24 have perfected a lien on those circumstantial tort claims
25 because you need to specific those claims in a UCC.

1 Otherwise it's an unperfected lien. So while their debt --
2 their Security Agreement may say that they lien on
3 commercial tort claims, it's not perfected so it's not like
4 they're left with no recourse. There are other unencumbered
5 assets we would like to protect.

6 But right now, the Order is giving them a lien on
7 not just avoidance action proceeds, but those commercial
8 tort claims and also the one-third unencumbered interest in
9 the Sonangol subsidiary.

10 THE COURT: Are --

11 MR. FEINSTEIN: So how much extra adequate
12 protection do we need to give to vastly over secured
13 lenders --

14 THE COURT: Well, the only one you're objecting
15 to --

16 MR. FEINSTEIN: -- and they're touching on
17 avoidance actions --

18 THE COURT: The only one you're objecting to are
19 the --

20 MR. FEINSTEIN: -- which really are unique assets?

21 THE COURT: But as I understand, all you're
22 objecting to are the 550 recoveries, right? You're not
23 objecting to the other liens, only the liens on the proceeds
24 under 550.

25 MR. FEINSTEIN: We objected to both. But from a

1 variety of -- for a variety of reasons including the optics
2 of serving up vendors who might be subject to preference
3 claims, for those monies to go the secured lenders who are
4 running the case is problematic. It's problematic from a
5 presidential standpoint. But the claim is: it's
6 unnecessary, they need that and yet they're grasping at that
7 because they're the targets of those avoidance actions.

8 THE COURT: Okay. Let me -- I'm going to let
9 everybody finish their arguments. I wanted to understand
10 the economic fight before I went much further.

11 MR. WEILAND: Your Honor, I mean, I think what
12 Mr. Feinstein is missing or ignoring is that there aren't
13 that many unencumbered assets here. He did point out that
14 there may be some others, but we're talking about a company
15 with -- you know, this is an offshore oil and gas company
16 with a finite number of leases, all of which are mortgaged
17 and we're talking about a company without a lot of cash
18 generation from operations. So we're looking at a budget
19 that really does burn cash and the potential -- we certainly
20 want to avoid it, but the potential for diminution of value
21 over the course of the case. And so to look to the full
22 slate of unencumbered assets to guard against that
23 diminution of value -- and it's only to guard against the
24 diminution of value -- is entirely appropriate in this
25 context.

1 THE COURT: Thank you.

2 MR. PEREZ: So, Your Honor, there is -- there's
3 really three -- at least three differences and why we think
4 that, as part of the negotiation, it was appropriate for us
5 to get a lien. First, Your Honor, in a Chapter 7 obviously
6 it makes a difference that we have a lien versus just a
7 superpriority claim under 507.

8 Second, Your Honor, we can carve out from a lien.
9 We can't carve out from a superpriority administrative
10 expense so to the extent that, you know, there's a further
11 negotiation and there's a carve-out, there could be a carve-
12 out on that.

13 And then third, Your Honor, to the extent -- and
14 it's not necessarily something that we're thinking of doing,
15 but to the extent that there is a 363 bid, we could also bid
16 whatever claim there would be for diminution in value. That
17 would be part of a lien and the claim that we could bid
18 under 363(k).

19 And, Your Honor, the Code says that -- it doesn't
20 differentiate between where the money came from and what
21 we're talking here, money is fungible. So to the extent
22 that there is a diminution in the value when -- and a
23 failure of adequate protection because in essence this
24 company has very little of any revenue and they're spending
25 a lot of money on their prospects. So to the extent that

1 there is a diminution in value and a failure of adequate
2 protection because we're not paid in full then, Your Honor,
3 I think we have the right to call on all the assets of the
4 company including the proceeds of avoidance actions.

5 And you're right, we don't get to control them, we
6 don't get to prosecute them, but we do to the extent that
7 there's a failure of adequate protection get a right to the
8 proceeds.

9 THE COURT: Thank you.

10 MR. BRIMMAGE: Your Honor, Mark Brimmage here, on
11 behalf of the Ad Hoc Group of Second Lien Noteholders. I
12 think what Mr. Perez -- I think he stole a lot of my
13 thunder. I think he did a great job so I'll be short.
14 Well, done. A couple of things. I've heard the Committee
15 say a couple of times that these kinds of liens on avoidance
16 actions are the unique province of unsecured creditors and
17 that's just simply not true and I think this Court knows
18 that.

19 Courts in the Southern District and all over the
20 country approve these types of liens for what you're calling
21 "the failure of adequate protection" all the time. In
22 avoidance actions and commercial tort litigation, they do it
23 all the time and for the obvious reason. And again, it's
24 only to the extent that the adequate protection fails so
25 it's not like the Lenders are going to get the billion

1 dollars that is recovered, if it is recovered. They're
2 going to get their proportionate share that protects them
3 from the adequate protection failure.

4 And I just wanted to emphasize, Your Honor, I
5 think 361 subparagraph (2) hits on this very directly and
6 this is what Courts use all the time to do this. A couple
7 of quick citations, Your Honor, but the Fifth Circuit has
8 approved this in *In Re Timbers of Inwood Forest*
9 *Associations*, that's from 1987. It's happened in other
10 courts both in the Southern District and across. You did it
11 yourself on what you call "commercial tort cases" here
12 recently. I mean, it's done all the time so this isn't the
13 unique problems of unsecured creditors only. It happens all
14 the time.

15 I think what we've seen here is that the Lenders
16 have given a lot to try to get this done, 150,000 extended
17 stay if they file a motion, all that kind of stuff. We're
18 just trying to get this push over the finish line and I
19 think the Court should feel comfortable that given the liens
20 to prevent or protect from the failure of adequate
21 protection is something that's done all the time. It's
22 legally appropriate and it's supported by the Code.

23 And we respectfully request that the Court enter
24 the Order as I think you've now massaged it and revised it.
25 And if the Court doesn't have any questions, I'll sit down.

1 THE COURT: Thank you, Mr. Brimmage.

2 MR. BRIMMAGE: Thank you.

3 THE COURT: Mr. Feinstein?

4 MR. FEINSTEIN: Very briefly, Your Honor. There's
5 no indication that in any of those cases that Mr. Brimmage
6 just cited whether this was contested so the fact that he
7 could find an order with that provision in it really isn't
8 very telling at all.

9 I agree that -- actually I thought Mr. Perez did a
10 great job. He proved my point by saying that, well, it's a
11 big difference if we have a lien versus a superpriority
12 claim because if we have a lien, we can credit bid. So now
13 down the road we discover meritorious claims against the
14 Lenders. He asserts a diminution claim and goes to
15 foreclose them -- on them and as the Creditors' Committee,
16 we have no money, we can't bid against him so now he's going
17 to take those claims out of the Estate. We have no way to
18 stop that if he has a lien. So he actually -- I think he
19 actually proved the point that there's actually a very
20 important substantive difference between granting a lien on
21 the proceeds and simply giving them a superpriority claim,
22 which is what the statute gives them.

23 The last thing I'd note is -- you know, there was
24 some self-congratulation there that the Lenders have given
25 and given. We all know what happened today, Your Honor,

1 they gave -- after Your Honor told them that we were going
2 to get standing and suddenly the world changed. This is the
3 last point and I think that the Lenders would be well-
4 advised to rely on their adequate protection superpriority
5 claim, pass on the lien and we can be done, but we're not
6 going to give on this, Your Honor, we're just not.

7 THE COURT: Thank you. All right. I've got
8 before me a contested motion to use cash collateral. The
9 facts are all stipulated effectively within the Declarations
10 where no other evidence has been introduced.

11 The issue is: whether I should approve or not
12 approve a contested cash collateral order. I'm going to
13 approve it. There is nothing impermissible about granting a
14 lien on the proceeds of avoidance actions. I agree with the
15 arguments that have been made that the avoidance actions are
16 property of the Estate, they are not property of the
17 unsecured creditors. And although one would hope that they
18 would eventually find their way down is up to the Estate to
19 administer it.

20 It's also up to the fiduciaries of the Estate to
21 maximize the value of the Estate. It is their job to do
22 that. If in order to get consensual use of cash collateral,
23 they have decided to make this trade. I have just no reason
24 to upset that business judgment on their part. It's
25 permissible, it's not illegal.

1 I was worried about them granting a lien as I
2 first heard on the avoidance actions themselves because I
3 thought that might have gone a step further than would have
4 been prudent given what we explained before. But as long as
5 it's only on the proceeds, there's no economic difference
6 that I can think of. There's a little bit of providing
7 maybe some bidding rights although I think that's pretty
8 questionable. There's a little bit in a Chapter 7. But
9 there's no real upside to the unsecured creditors is the
10 important part in terms of what they might get if I do or
11 don't grant this because the 507(b) rights prime all of
12 their rights anyway.

13 I'm going to sign the Order. Let me accept all
14 these changes.

15 MR. PEREZ: Your Honor, would it be possible for
16 us just to read the Order once you accept all the changes
17 before you enter it while you take the other things -- the
18 other --

19 THE COURT: Would it be easier frankly to read it
20 with the changes in it so that you can see the redline?

21 MR. PEREZ: Yes, that would be even better.

22 THE COURT: Because otherwise I think you're never
23 going to find them all.

24 MR. PEREZ: Yeah, that would be better. Thank
25 you.

1 MR. FEINSTEIN: We appreciate this, Your Honor. I
2 understand your ruling. I'm glad we got to a cash
3 collateral order today. Not a big fight so --

4 THE COURT: I've got no problem with the Committee
5 being aggressive and making arguments. I've just got to
6 rule at some point.

7 MR. FEINSTEIN: Understood. Thank you.

8 THE COURT: That's all we did.

9 Do you need more time?

10 MR. PEREZ: I'm sorry, I thought you were going to
11 print it out. I'm looking at --

12 (Laughter.)

13 MR. PEREZ: Okay. Go ahead.

14 THE COURT: Where did you think it was going to
15 appear rather than a computer screen? That's the first
16 change.

17 MR. PEREZ: Okay. That's fine.

18 (Pause/Court preparing order.)

19 MR. PEREZ: Okay.

20 (Pause/Court preparing order.)

21 MR. PEREZ: Okay. So the key is that the
22 March 21st -- they have to file the Motion before the
23 March 21st date, right?

24 (Court preparing order.)

25 MR. PEREZ: And then we'll have the hearing -- the

1 18th.

2 MALE SPEAKER: The 18th.

3 MR. PEREZ: And then we'll have the hearing on the
4 22nd, okay.

5 MR. BARR: Your Honor, just on that provision,
6 we -- while I don't anticipate it, it would be us, the Ad
7 Hoc Committee, that would bring it. We do have rights under
8 this paragraph as well as it relates to a challenge so I
9 would just like to be added to --

10 MALE SPEAKER: Any party.

11 MR. PEREZ: No, not any party.

12 (Voices off record.)

13 MR. PEREZ: Your Honor, I kind of disagree with
14 that. They're not an estate fiduciary. They can rely on
15 the general March 21st and come in and get standing. This
16 is not -- this is -- we're dealing with this issue with an
17 estate fiduciary, not with everybody else.

18 MR. BARR: Your Honor, we're not everybody else.
19 We hold over half of the unsecured claims that are out
20 there. I don't think it's extraordinary to name us in this
21 as well.

22 THE COURT: I disagree. I think it should go to
23 estate fiduciaries. Your clients could -- should be fully
24 represented the Committee. If you all want to act on your
25 own to protect your own interest, that's fine.

1 MR. BARR: Well, we've already had to do that
2 already, Your Honor, in this case once so --

3 THE COURT: I understand. But again really in
4 this case because we're not following the normal course of a
5 challenge period, the question is: whether the Debtors are
6 properly exercising their fiduciary duty under the
7 compromise, the business judgment and the compromise? I
8 don't think this matters a whole lot either.

9 MR. BARR: Well, fair enough, Your Honor, fair
10 enough.

11 THE COURT: Yeah. I'm going to overrule the
12 objection.

13 MR. BARR: All right. Thank you, Your Honor.

14 (Pause/Court preparing order.)

15 THE COURT: That's the language you all dictated.

16 MALE SPEAKER: Yeah.

17 THE COURT: That's it?

18 MR. PEREZ: Your Honor, going back up, I think
19 including the Debtors, I think that's superfluous because
20 any -- it should be just any party-in-interest. What I
21 don't want -- I want to make sure that if they -- I mean,
22 they can file it, but then they don't have consensual use of
23 cash collateral so -- if it's not approved by us. So I
24 think any party-in-interest covers them if they want to --

25 (Voices off record.)

1 THE COURT: If you look, the any party-in-interest
2 including the Debtors modifies (a) and (b). I don't even
3 think you all are having a fight.

4 (Voices off record.)

5 THE COURT: If that's helpful, there it is without
6 the redlining.

7 (Voices off record.)

8 MR. PEREZ: Okay. But, Your Honor, there was
9 another provision where you took -- put the remedies. I
10 didn't see where those changes were.

11 THE COURT: The remedies for what?

12 MR. PEREZ: That we changed --

13 MALE SPEAKER: Paragraph 6.

14 MR. PEREZ: Paragraph 6. I didn't see those
15 changes. No, I think it's -- no, it's back down. Okay.

16 THE COURT: You're right. I typed those in
17 without redlining. Thank you.

18 (Pause in the proceedings.)

19 MR. PEREZ: And there should be just an "and" up
20 there.

21 MALE SPEAKER: We were talking about it but we
22 weren't going to raise it.

23 (Laughter.)

24 MR. PEREZ: Actually it should be an "or."
25 Actually it should be an "or" -- "and/or."

1 THE COURT: All right. Everything else okay in
2 the Order?

3 MR. PEREZ: Yeah. Can I just go back to the one
4 before, the last one we saw?

5 THE COURT: Down at the end, Paragraph 24?

6 MR. PEREZ: Yeah.

7 (Pause in the proceedings.)

8 MR. PEREZ: Okay. I'm fine with that.

9 THE COURT: Are there any attachments to this
10 Order? Is there a budget or anything that gets attached?

11 MR. WEILAND: No, it just includes a cross-
12 reference to that, Your Honor.

13 THE COURT: Thank you. All right. While I'm
14 printing that, I've got us scheduled to resume in the
15 morning at 9:30.

16 Is that going to still work for everybody?

17 MR. HUSNICK: That works for the Debtors,
18 Your Honor.

19 THE COURT: And all that we have left now are the
20 employment type motions, the compensation?

21 MR. HUSNICK: The two employee motions, that's
22 correct.

23 THE COURT: Okay. How many -- are we going to
24 have live witnesses on that?

25 MR. HUSNICK: Yes. Well, unless there's a

1 resolution, yes, we would plan to have three. And the U.S.
2 Trustee did ask us to put our proof on regardless of --

3 THE COURT: Going to have to --

4 MR. HUSNICK: The U.S. Trustee did ask us to put
5 our proof on so we will plan to present those witnesses.

6 THE COURT: You're going to put on three
7 witnesses.

8 MR. HUSNICK: Correct.

9 THE COURT: Are other -- who are they going to be
10 at this point?

11 MR. HUSNICK: It will be Mr. J.P. Hansen, who's
12 the Debtors' financial advisor. Mr. Jim Wolf, who is the
13 Debtors' compensation expert. And lastly will be Mr. Jim --
14 or John Marshall, sorry, who is the chairman of the Debtors'
15 Compensation Committee.

16 THE COURT: And are there any other witnesses that
17 any other party is going to introduce at tomorrow morning's
18 hearing?

19 MR. HUSNICK: I'll let the Committee talk about
20 theirs.

21 MR. FEINSTEIN: The Committee is not going to
22 introduce any testimony.

23 THE COURT: Okay.

24 MR. FEINSTEIN: We also hope to resolve it
25 overnight.

1 MR. HUSNICK: Okay.

2 MR. FEINSTEIN: I don't know if we're going to be
3 able to do that.

4 MR. HUSNICK: If the Committee is not calling
5 their witness, we would reserve the right to call their
6 expert, their supposed expert, but --

7 MALE SPEAKER: He'll be in Delaware, Your Honor.
8 He's not being called but he wasn't on their witness list
9 and he's not subpoenaed.

10 THE COURT: Sort of does you in for that, I think.

11 MR. HUSNICK: Well --

12 THE COURT: Any other party planning to introduce
13 any witnesses tomorrow morning?

14 MR. HUSNICK: Yeah, we listed anyone that was
15 listed on anyone else's list on our Notice so.

16 (Voice off record.)

17 THE COURT: I don't know what you want to do about
18 the problem but --

19 MR. HUSNICK: We can use deposition designations
20 if that's acceptable to Counsel.

21 THE COURT: I'll let you all try and work through
22 that overnight and --

23 MR. HUSNICK: Okay.

24 THE COURT: -- we'll deal with that in the morning
25 if we have a dispute.

1 MR. HUSNICK: Okay.

2 THE COURT: Is the U.S. Trustee going to have any
3 witnesses?

4 MALE SPEAKER: No, Your Honor.

5 THE COURT: Thank you. Any other party?

6 (No verbal response.)

7 THE COURT: Are there any other matters other than
8 the two comp retention, severance, whatever we want to call
9 the Motions, that any other party intends to bring in the
10 morning?

11 MR. HUSNICK: No, Your Honor, that's it for the
12 Debtors.

13 THE COURT: Any other party?

14 (No verbal response.)

15 THE COURT: Okay. I've got tomorrow morning a
16 small Chapter 11 case that's at 9:00. I don't anticipate
17 that lasting even the full 30 minutes, but I can't guarantee
18 it so we'll schedule you all to start at 9:30. If I keep
19 you all waiting and I keep you waiting, I can't do much
20 about it. I'm not going to try and rush through that case,
21 but I do think you'll be okay and then we can work through
22 the morning. I'll see you all -- yes, sir?

23 MR. FEINSTEIN: I was just going to suggest,
24 Your Honor, that given that that maybe we should start at
25 10:00 and have the parties meet at 9:00 because I think that

1 if we -- if the Committee were resolved, I think the U.S.
2 Trustee might be resolved. It's one motion. Hopefully
3 reasonable minds will prevail.

4 THE COURT: Well, first of all, you probably don't
5 know Mr. Statham but I'm happy to wait until 10:00 if you
6 want.

7 MR. HUSNICK: Yeah, I mean, Your Honor, we're --
8 that's -- we're amenable.

9 THE COURT: Why don't we do this: I'm going to
10 call it at 9:30, but you all can be meeting in my conference
11 room and if you all want more time, I promise I'll give you
12 till 10:00 because that way we won't be wasting the morning
13 in the event that you all either already got it resolved and
14 you want to get on an airplane or it's hopeless so -- but I
15 promise if you all need another 30 minutes, I'll give it to
16 you in the morning.

17 MR. HUSNICK: Thank you.

18 THE COURT: Okay. We'll see you all at 9:30.
19 Thank you.

20 (These proceedings concluded at 6:13 p.m.)

21 * * * * *

22 I certify that the foregoing is a correct
23 transcript to the best of my ability produced from the
24 electronic sound recording of the proceedings in the above-
entitled matter.

24 /S/ MARY D. HENRY

25 CERTIFIED BY THE AMERICAN ASSOCIATION OF
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DATE FILED: JANUARY 29, 2018

Designation No. 12

Docket No. 320

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§ CASE NO. 17-36709-H1-11
	§ HOUSTON, TEXAS
COBALT INTERNATIONAL ENERGY,	§ FRIDAY,
INC., ET AL.,	§ JANUARY 26, 2018
DEBTORS.	§ 9:31 A.M. TO 11:08 A.M.

CONTINUED MOTION HEARINGS

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR THE PARTIES:	SEE NEXT PAGE
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1 HOUSTON, TEXAS; FRIDAY, JANUARY 26, 2018; 9:31 A.M.

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: All right. Please be seated. Good
4 morning. We're here for a continuation of Cobalt's hearings.
5 It's 17-36709.

6 MR. HUSNICK: Good morning, Your Honor. Chad
7 Husnick with Kirkland & Ellis appearing on behalf of the
8 Debtors.

9 THE COURT: Good morning.

10 MR. HUSNICK: I know Committee counsel is here,
11 they're out in the hall. Based on a conversation I just had
12 with Mr. Kornfeld, I actually think that we may be very close
13 on a resolution. So if you -- Your Honor would indulge us
14 probably for 15 minutes, we could alert chambers. I don't
15 think they will take away from some of the dog and pony show
16 because I do believe we need to put a little bit of that on to
17 build the record for the US Trustee, but it will streamline
18 the issues considerably.

19 THE COURT: Thank you. Mr. Statham, if there's an
20 agreement with the Committee are you asking them to put on
21 their proof or are you saying no matter what they put on,
22 you're going to object? I'm trying to sort of understand
23 where we are in terms of the day.

24 MR. STATHAM: What I -- as I understand the facts on
25 the ground, the issues regarding the severance portion are

1 going to be resolved. And so we're not going to need any
2 proof other than the acknowledgment of the deal. As to the
3 SIP we're going to need them to put on some proof into
4 evidence to meet their burden.

5 THE COURT: And if --

6 MR. STATHAM: We will not object in that sense.

7 THE COURT: -- if they meet an initial burden are
8 you then planning to proceed to --

9 MR. STATHAM: I don't --

10 THE COURT: -- object or once -- if they do meet an
11 initial burden you're going to be okay.

12 MR. STATHAM: I'm going to be okay once they meet
13 their burden.

14 THE COURT: Okay. Okay. That's all. I just wanted
15 to know where we are.

16 MR. HUSNICK: That will streamline it, Your Honor.

17 THE COURT: So what I'll do is I'll keep my word,
18 you all got till ten o'clock. On the other hand, if you're
19 finished earlier than 10:00 and you're ready for me to come
20 out, just let Mr. Rios know and I'll come out earlier.

21 MR. HUSNICK: Okay. We appreciate --

22 THE COURT: If I don't --

23 MR. HUSNICK: -- your patience --

24 THE COURT: -- if I don't hear from you, I'll be
25 back at 10:00 so that we can proceed with the hearing.

1 MR. HUSNICK: As will we. Thank you, Your Honor.

2 THE COURT: Okay. Thank you.

3 COURT SECURITY OFFICER: All rise.

4 (Recess from 9:33 a.m. to 9:47 a.m.)

5 THE COURT: -- so far I think we've only had a
6 couple of people speak up this morning. All right. Mr.
7 Husnick.

8 MR. HUSNICK: Good morning, Your Honor. Thank you
9 for the Court's indulgence for that short break. I'm happy to
10 report as a result of the break we have reached resolution on
11 the severance objection with the Official Committee and the US
12 Trustee. We are prepared to present an order -- we are
13 churning the order right now and we'll be ready to hand it up
14 on a thumb drive. But it probably makes sense in the meantime
15 for us to get started on -- well, let me stop before I go
16 there. Unless Your Honor has any questions about the
17 severance program, it will be fully consensual at this time.

18 THE COURT: I mean I'm going to want to know what it
19 is, but I --

20 MR. HUSNICK: Yeah, happy to lay that out.

21 THE COURT: -- can wait and look at the order.

22 MR. HUSNICK: Yeah. What the settlement is, Your
23 Honor, is that we will establish a hard cap of 1.5 million for
24 any individual insider. And that's after discussions with the
25 Committee. And we will put that into the order so that it's

1 reflected, and we're good to go after that. We're also fixing
2 a typo in the order because we keep referring to the wrong
3 statute, so --

4 THE COURT: Okay.

5 MR. HUSNICK: -- we'll fix that.

6 THE COURT: Thank you.

7 MR. FEINSTEIN: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. FEINSTEIN: For the record, Robert Feinstein,
10 Pachulski Stang Zeihl & Jones, proposed counsel to the
11 Committee. So, Your Honor, I do want to confirm that we've
12 reached a resolution, but I do want to make some statements
13 for the record. The severance and the SIP programs are very
14 expensive programs, and the Committee took its obligations
15 very seriously because the SIP program was reopened -- was
16 revised and under the settlement the severance is going to be
17 capped. But there's still millions of dollars going out to
18 people who we know received upwards of \$16 million of
19 retention payments pre-bankruptcy, which was one of our
20 concerns.

21 Another one of our concerns was that there is no
22 need for purposes of the statute of severance payments for
23 purposes of calculating the cap. So in order to avoid the
24 prospect of litigation or uncertainty down the road, we
25 thought it was very beneficial to lock in that cap. It means

1 for purposes of severance to the CEO, he was slated to get as
2 much as \$4 million, now it's capped at a million five. So
3 that's a significant benefit to the estate to lock that in.

4 But the resolution comes with a statement from the
5 Committee, Your Honor, and that's this, and it's going to
6 affect what we do in the future. We just want to make it
7 clear that the debtor-in-possession owes a fiduciary duty to
8 the creditors, not a duty to Ds and Os. To get them releases,
9 to get them payments. And the Debtor also has a duty of
10 candor to the Court, as do the parties. And the way this
11 process started was a first-day wage motion, a garden variety
12 wage motion that made no mention of significant payments
13 contemplated for senior insiders of the company, nor payments
14 that were made pre-bankruptcy.

15 At the US Trustee's request the severance to the
16 senior-most people was taken out of that first-day motion and
17 put into a severance motion. The severance motion was filed,
18 and while there was a glancing reference in the SIP motion to
19 a pre-bankruptcy retention program. There was no disclosure
20 in either motion that five months before the bankruptcy \$16
21 million of payments, retention payments were made to
22 incentivize or -- incentivize people to stay for a year,
23 through August of '18, by which time the sale process in this
24 case should be over, so we made reference to the fact that
25 there was those payments and now severance payments, we

1 reached the resolution that we did.

2 But I do want to be clear that, you know, we
3 expect -- we could all do better. There needs to be more
4 transparency and more candor about these kind of payments.
5 And hopefully going forward we're going to see everybody do
6 better. Thank you.

7 THE COURT: Thank you.

8 MR. HUSNICK: If you have friends like those, who
9 needs enemies. I don't know where to begin. The statement
10 was a bit outrageous, it's incorrect. The number were
11 disclosed in an 8K, in a 10K. This is a public reporting
12 company. The motion in the second paragraph referred to the
13 retention plans. We didn't put the number in there; I'll own
14 that, but it was out there. The minute we were asked for
15 historical compensation it was provided. It was completely
16 irrelevant to the discussion. We take our duty of candor both
17 with the Court and with the US Trustee and with the Creditors
18 Committee and all of our stakeholders very, very seriously, as
19 I think Your Honor knows from prior cases. And we will
20 continue to do so here.

21 THE COURT: Thank you.

22 MR. HUSNICK: So with that we'll still move forward
23 with the settlement.

24 THE COURT: All right.

25 MR. HUSNICK: We will submit an order once I can get

1 the thumb drive --

2 THE COURT: Well, why don't we proceed with the
3 evidence on the balance of the matters --

4 MR. HUSNICK: Okay.

5 THE COURT: -- today and then we'll come back and
6 we'll pick up --

7 MR. HUSNICK: Okay, Your Honor.

8 THE COURT: -- the correct words --

9 MR. HUSNICK: And if it's okay with Your Honor,
10 I'll, to streamline, waive any kind of opening and I'll just
11 sum it up at the end. Thank you.

12 THE COURT: Thank you. So who's going to be your
13 witness, your first witness?

14 MR. HUSNICK: I'm going to cede the podium to my
15 partner, Ms. Pepper.

16 MS. PEPPER: Good morning, Your Honor.

17 THE COURT: Good morning, Ms. Pepper.

18 MS. PEPPER: Stacy Pepper from Kirkland & Ellis on
19 behalf of the Debtors. I would like to call Mr. John Paul
20 Hansen.

21 THE COURT: All right. Mr. Hansen, come forward,
22 please.

23 (Pause in proceedings.)

24 THE COURT: Mr. Hansen, would you raise your hand,
25 please, sir?

1 (Witness is sworn.)

2 THE COURT: Thank you, sir. Have a seat, please.

3 DIRECT EXAMINATION OF JOHN PAUL HANSEN

4 BY MS. PEPPER:

5 Q Good morning, Mr. Hansen.

6 A Good morning.

7 THE COURT: Let me interrupt you just for a second.

8 If you're here on the Cobalt hearing, sir, that's
9 fine. If you're here on another hearing, you may be in the
10 wrong room. Are you here on Cobalt?

11 UNIDENTIFIED SPEAKER: I've got a -- for --

12 THE COURT: Come on forward. Let me just get this
13 gentleman to the right place.

14 (Pause in proceedings.)

15 THE COURT: Yes, sir, that hearing in the -- much
16 earlier the hearing started at nine o'clock, so that hearing
17 is over. We did continue it to another day and you'll get a
18 notice of the new day.

19 UNIDENTIFIED SPEAKER: Oh, okay.

20 THE COURT: Okay. Thank you.

21 UNIDENTIFIED SPEAKER: Thank you.

22 THE COURT: All right. Let's move ahead, Ms.
23 Pepper. Sorry to interrupt.

24 BY MS. PEPPER:

25 Q Mr. Hansen, are you a managing director at Houlihan

1 Lokey?

2 A Yes, I am.

3 Q And what's your specialty?

4 A I'm head of the oil and gas E&P group.

5 Q How long have you been in that role?

6 A Since the beginning of 2011.

7 Q Could you tell the Court a little bit about the scope of
8 your responsibilities?

9 A So in that role as head of the E&P group I manage a team
10 of 41 professionals, banking and technical folks, globally
11 across multiple offices focused on providing investment
12 banking advisory services, M&A, A&D, capital markets valuation
13 and financial restructuring.

14 Q Do your responsibilities also include advising on
15 transactions?

16 A Absolutely.

17 Q Do those transactions include asset sales?

18 A Yes, they do.

19 Q Do they also include asset sales in the context of
20 Chapter 11 cases?

21 A Yes, when we're hired for a financial restructuring, yes.

22 Q Can you also tell the Court a little bit about your
23 educational background?

24 A I received a dual undergrad degree from Brigham Young
25 University in international finance and Italian, and an MBA

1 with a concentration of finance from the University of
2 Maryland.

3 Q And prior to joining Houlihan what was your work history?

4 A I started my career as an oil and gas investor, bond
5 investor, then spent a couple of years in structured finance
6 and was the energy analyst for an equity fund and then joined
7 Houlihan Lokey approximately 17 years ago.

8 Q So turning to the present day what's your relationship to
9 the Debtors?

10 A We were engaged as the company's investment banker and
11 financial advisor in September 2017.

12 Q In what capacity are you advising Cobalt?

13 A With respect to the sale of the company, the entities
14 and/or the assets.

15 Q And when you say the sale of the company or the entities
16 what assets is Cobalt proposing to sell?

17 A All or substantially all of its assets, or the company.

18 Q And can you just briefly describe the nature of those
19 assets?

20 A They are deep water, Gulf of Mexico and offshore, Angola,
21 highly technical in nature, other than one asset where the
22 company owns 9.375 percent working interest, which is
23 producing the Heidelberg Field. The other assets are still
24 pre-development in nature, been largely appraised and found
25 significant highly valuable discoveries, but they are still

1 pre-development, pre-production.

2 Q So based on your role as a banking advisor to the
3 company, I'd like to ask you a few questions about the sales
4 incentive plan.

5 A Okay.

6 Q Are you aware that the company has proposed a sales
7 incentive plan?

8 A Yes.

9 Q And were you aware of the terms of that sales incentive
10 plan as it was filed originally in the Debtor's motion?

11 A Yes.

12 Q Are you aware that the terms of that sales incentive plan
13 have changed since that motion?

14 A Yes.

15 Q And are you aware of why those terms were changed?

16 A Through a negotiation with the creditors.

17 Q Do you understand that the terms under the revised sales
18 incentive plan involve payouts tied to the outcome of the
19 sales process on which you are advising?

20 A Yes.

21 Q Do you know what those payouts are tied to?

22 A The ultimately total distributable proceeds, or as the
23 company has defined it in the sale incentive plan, the total
24 enterprise value or outcome of the sales.

25 Q Do you know -- and how have the -- how is -- how have the

1 Debtors defined enterprise value?

2 A The way that enterprise value is defined is somewhat
3 similar but also different from a traditional definition in
4 that it includes cash and cash on the balance sheet, which is
5 why I used the term total distributable proceeds. They're
6 interchangeable in this instance.

7 Q Is it true that the revised sales incentive plan also
8 pays out in accordance with the definition of enterprise value
9 that you just offered?

10 A Yes.

11 MS. PEPPER: Your Honor, may I approach the witness?

12 THE COURT: Yes, ma'am. Ms. Pepper, is -- that's
13 available on a laptop here in the courtroom, or not?

14 MS. PEPPER: Sir?

15 THE COURT: Is that available on a laptop here in
16 the courtroom?

17 MS. PEPPER: It is, and it's labeled Kirkland. Oh,
18 you want it on a lap -- I think it's loaded for publishing.

19 THE COURT: Right. On a laptop or on a flashdrive?
20 How do you --

21 MS. PEPPER: I think it's on a laptop.

22 MR. SMITH: I'm logged into your system. It's
23 Kirkland. I'm logged into your system already --

24 THE COURT: Got it. Let me go --

25 MR. SMITH: -- we just need to publish it.

1 THE COURT: -- ahead and get that invoked so that I
2 can see if people on the phone can see it.

3 MS. PEPPER: Oh, okay.

4 THE COURT: Give me just a minute, because I'm not
5 on Nexus today. So if anybody wants to see the handout,
6 they'll need to go to join.me. You can do that either in the
7 courtroom or you can do that if you are online and we will
8 broadcast it. So give me -- just give me a second --

9 MS. PEPPER: No problem.

10 THE COURT: -- see if I can get it invoked.

11 MS. PEPPER: Your Honor, would you like a slide and
12 hard copy as well?

13 THE COURT: Sure.

14 (Pause in proceedings.)

15 THE COURT: I've got a Kirkland Kirkland, so we
16 think that's it?

17 MR. SMITH: That's it.

18 THE COURT: Thank you.

19 (Pause in proceedings.)

20 THE COURT: All right. I think you're broadcasting
21 now.

22 MS. PEPPER: Okay.

23 BY MS. PEPPER:

24 Q Mr. Hansen, I've handed you a slide. Does the slide
25 reflect the Debtor's revised sales incentive plan as you

1 understand it?

2 A Yes, it's consistent with my understanding.

3 Q So looking at this slide, what happens if the enterprise
4 value is less than \$1.5 billion?

5 A If it's less than 1.5 billion, there is no contribution
6 to the sales incentive plan.

7 Q What happens if the enterprise value is equal to 1.5
8 billion or less than \$2 billion?

9 A It's a calculation based on the sum of -- a base amount
10 of 1.5 million and 1.5 percent of every dollar in excess of
11 1.5 billion.

12 Q And what happens if the enterprise value is equal to two
13 billion and/or less than \$3 billion?

14 A The base line amount steps up so it's equal to a similar
15 calculation with a base line instead of 1.5 million of 10
16 million, and then 2.5 percent of every dollar in excess of two
17 billion up to three billion.

18 Q What happens if the enterprise value equals \$3 billion or
19 exceeds \$3 billion?

20 A Similarly similar calculation, the three -- the 10
21 million steps up to 35 million and then there is a 3 percent
22 amount that's calculated for every dollar in excess of three
23 billion.

24 MS. PEPPER: Your Honor, I'd like to mark this as
25 Debtor's Demonstrative 1.

1 THE COURT: Any objection to the admission of Debtor
2 1?

3 MR. KORNFELD: No, Your Honor.

4 THE COURT: Debtor Demonstrative 1 is admitted.

5 (Debtor Demonstrative Exhibit 1 marked and received into
6 evidence.)

7 BY MS. PEPPER:

8 Q Mr. Hansen, do you know who is participating in the
9 revised sales incentive plan?

10 A Yes, there are four executives participating.

11 Q Who are the four executives?

12 A Tim Cutt, the Chief Executive Officer; David Powell, the
13 Chief Financial Officer; Jeff Starzec, the Executive Vice
14 President and General Counsel; and Rich Smith, Senior Vice
15 President of Business Development and Strategy.

16 Q Did you or anyone else at Houlihan to your knowledge
17 provide information to Cobalt as the Board considered whether
18 or not to adopt the original sales incentive plan?

19 A Yes, we provided limited information. I'm not a
20 compensation expert, but --

21 Q Where did you get the information you provided?

22 A Publicly available information of similarly situated E&P
23 companies as well as a broad range of other non-E&P industry
24 distressed companies, pulled the information together based on
25 SEC filings and other public documents.

1 Q And that information was provided to the Board?

2 A Yes.

3 Q I'd like to talk now about the role of management in the
4 sales process that you're advising on.

5 A Okay.

6 Q Does management have one?

7 A Yes, very much so.

8 Q And is their involvement necessary?

9 A It's absolutely critical.

10 Q Why?

11 A These are, as mentioned earlier, these are largely, other
12 than the Heidelberg Field, these are pre-development, pre-
13 production assets. They are highly, highly technical in
14 nature. They require expert interpretation of everything from
15 the appraisal data that has been collected, core samples, well
16 logs, reserve modeling, seismic mapping, all of which is
17 intelligence and experience that's resonant in this management
18 team and is able to be conveyed to buyers or prospective
19 buyers much better than even myself or my 10-person technical
20 team of geologists and reserve engineers could ever convey,
21 you know, without an expansive amount of time getting up to
22 speed.

23 Q In your role as investment banking advisor to Cobalt on
24 the sales process have you worked with each of the four
25 management individuals participating in the sales incentive

1 plan/

2 A On a daily basis.

3 Q To the extent you know what contributions is management
4 making to the process?

5 A They are integral in dialoguing directly with prospective
6 buyers and conveying the information and knowledge, the
7 attributes of the assets and helping to underpin the value
8 that exists in these reserves, as well as then explaining the
9 underlying contracts and the rationale for the contracts that
10 are associated with the development plans, the joint operating
11 agreements, the contractor supply agreements, et cetera.

12 Q Let's break that down a little bit. I heard you say that
13 they've been interacting with the buyers.

14 A Yes.

15 Q Have there been management presentations made to buyers?

16 A Yes, many, many.

17 Q Is there a data room available to the buyers?

18 A Both virtual data room as well as physical data room as
19 the highly technical nature and seismic mapping requires
20 typical in-person interpretation.

21 Q And management is involved in those data rooms.

22 A Yes, actually leading the conversation around the
23 technicals of these assets.

24 Q And have there been any diligence inquiries from buyers?

25 A Yes.

1 Q Does management have a role in those?

2 A Yes, they have been responding to those inquiries.

3 Q So to sum up on this area of questioning, could you stand
4 in for management in the sales process?

5 A Not -- as mentioned, not without an expansive amount of
6 time which would extend beyond the lease expirations of
7 certain of the companies assets to be able to do it in
8 anywhere near a productive enough way to sell the assets and
9 maximize value.

10 Q So turning back to the company's decision to adopt a
11 sales incentive plan, do you know at the time that the
12 original sales incentive plan was adopted had the Sonangol
13 settlement been negotiated?

14 A It had not.

15 Q From an investment banking perspective now that there is
16 a settlement agreement, what is the likelihood that Cobalt
17 will hit the original \$1.25 billion threshold that was in the
18 original sales incentive plan?

19 A Well, as I think we heard yesterday, there's not 100
20 percent certainty of the Sonangol performance. There's some
21 unfortunate risk around that. Even if it were 100 percent
22 certain, achieving the threshold for contributions in the
23 sales incentive plan is all dependent on the bids that are
24 received. And so in my view as banker, it is not a lay up,
25 it's not a foregone conclusion that these thresholds will, in

1 fact, be achieved and therefore I view them as incentivizing.

2 Q I just -- so I just want to be clear. Was that your view
3 even when the threshold was \$1.25 billion?

4 A Yes.

5 Q And under the revised sales incentive plan is the
6 threshold at which payouts would start to happen higher or
7 lower than \$1.25 billion?

8 A It's higher.

9 MS. PEPPER: Your Honor, I don't have any further
10 questions.

11 THE COURT: Thank you. Any additional questions? I
12 have a concern just about, if I'm doing the math in my head
13 right, that there's a kink in the formula --

14 THE WITNESS: Okay.

15 THE COURT: -- that would create a disincentive at
16 a number that approached \$2 billion. Not a disincentive, it
17 would create a perverse incentive so that if the estate
18 received an offer for \$1.99 billion, that pushing it up would
19 create less money for the estate because it moves from nine
20 million to ten million with a one dollar swing. Am I reading
21 that right, and can we get rid of that kink? I'm not trying
22 to upset the business deal, but it makes no sense to have an
23 extra million dollars paid in incentives for bringing in an
24 extra one dollar into the estate. Am I correct that's what
25 that does?

1 THE WITNESS: And you're focused on what is the --

2 THE COURT: Right at the \$2 billion threshold.

3 THE WITNESS: -- the impact of the step up in the
4 baseline amount.

5 THE COURT: If you move from one dollar less than \$2
6 billion to \$2 billion, then this incentive program makes the
7 estate lose \$99,999 I think. Am I reading it right? Yeah,
8 can we get rid of the kink? I mean I hate approving something
9 that would create an incentive to get a bonus that hurts the
10 estate, and at that level it does. Am I -- that's the math.
11 Right?

12 THE WITNESS: I don't have a calculator but I see
13 what you're focused on in the schedule that's been produced.

14 THE COURT: If you have a calculator, which you're
15 about to get, tell me what you would type in to figure this
16 out.

17 (Laughter.)

18 THE WITNESS: Oh, I knew you were going to do this
19 to me.

20 THE COURT: I mean wouldn't we put in \$2 billion --

21 THE WITNESS: You would put in two billion and then
22 the 1.999 that you're focused on and the 1.5 million baseline
23 plus the 150 basis points.

24 THE COURT: So at two billion we know the number is
25 10 million. I think. So the question is, what is it at one

1 million -- at two million less a dollar. And the formula
2 there would be what, you would get a base of --

3 THE WITNESS: You'd get a base of 1.5 million. And
4 then it would be 150 basis points, or 1.5 percent of the
5 difference between 1.5 billion and 1.9999 billion. So 499.9.

6 THE COURT: Did I do that right?

7 THE WITNESS: You did. I think it's rounded on this
8 schedule.

9 THE COURT: Right. And so the net to the estate of
10 the \$2 billion offer would be a a million nine ninety, and the
11 net to the estate of a million nine ninety-nine offer would be
12 a million dollars more. So management would get paid a bonus
13 to get less for the estate. I just -- I understand
14 everybody's duties, but I don't want to create something that
15 does that. Can we get -- can you find a way to get rid of
16 that?

17 MS. PEPPER: What I'd like to do, Your Honor, is
18 consult with the client. And we understand your concerns
19 and --

20 THE COURT: Yeah, let's just -- fine. I think if
21 you got the concern, you got the concern. As long as I've got
22 the math right, and that's why I wanted to confirm it.

23 THE WITNESS: And you have the math right. As
24 mentioned earlier, this was the outcome of the negotiation,
25 this was the proposal as presented by the creditors. So we'll

1 just need to circle up with the client and --

2 THE COURT: I got it. I think there's a way --

3 THE WITNESS: -- make sure the creditors are okay.

4 THE COURT: -- for everybody to get together and
5 solve this problem. I mean it can be a smooth transaction at
6 that, just like it is normally in the Tax Code for example --

7 MS. PEPPER: Yes.

8 THE COURT: -- or something so.

9 MS. PEPPER: Well, Your Honor, there was a reason I
10 went to law school, so before I agree to numbers I need to --
11 I have to go talk to my client.

12 THE COURT: Well, that's why I got your expert to
13 agree to the numbers.

14 MS. PEPPER: Yeah.

15 (Laughter.)

16 THE WITNESS: Like I said, I knew you were going to
17 do that, Your Honor.

18 THE COURT: All right. Okay. Any other questions
19 for him?

20 (No audible response.)

21 THE COURT: Thank you. Are you going to call any
22 other witnesses today?

23 MS. PEPPER: We are.

24 THE COURT: Okay. Who's going to be your next
25 witness?

1 MS. PEPPER: Mr. John Marshall.

2 THE COURT: Thank you. Thank you, sir.

3 THE WITNESS: Thank you, Your Honor.

4 (Witness steps down.)

5 MR. AYCOCK: Good morning, Your Honor. Jamie

6 Aycock --

7 THE COURT: Good morning, Mr. Aycock.

8 MR. AYCOCK: -- for the Debtor. We'd like to call
9 Mr. John Marshall to the stand.

10 THE COURT: Thank you. Good morning, Mr. Marshall.
11 Would you raise your hand, please, sir?

12 (Witness is sworn.)

13 THE COURT: Thank you. If you'd have a seat,
14 please.

15 MR. AYCOCK: And, Your Honor, if I may, we have some
16 binders of exhibits I'd like to hand up.

17 THE COURT: Thank you.

18 MR. AYCOCK: I think that this presentation's been
19 truncated, so we don't expect to use all of them, but we'll go
20 through some them.

21 THE COURT: All right.

22 MR. AYCOCK: Thank you.

23 DIRECT EXAMINATION OF JOHN MARSHALL

24 BY MR. AYCOCK:

25 Q Good morning, Mr. Marshall. Could you introduce yourself

1 to the Court, please?

2 A I'm John Marshall.

3 Q And can you tell us about your connection to the Debtors?

4 A I'm a director of Cobalt.

5 Q And how long have you been on the Board of Directors?

6 A I've been on the Board since 2010, some date in 2010, I
7 don't remember precisely.

8 Q And while you've been on the Board of Directors have you
9 been on any committees of the Board of Directors?

10 A Yes, I've been on the Audit Committee as well as the
11 Compensation Committee.

12 Q And what has been your function on the Compensation
13 Committee?

14 A Initially it was as a member of the Compensation
15 Committee, and then subsequently as chairman of the
16 Compensation Committee.

17 Q And how long have you been on the -- been the chairman of
18 the Compensation Committee?

19 A I had to check this, it was since February of 2013.

20 Q Now I'd like to talk about your background. Can you
21 start by telling us about your educational background?

22 A Well, notwithstanding the very considerable education
23 I'll receive this week in continuing education I presume Mr.
24 Kornfeld will avail me to in a minute, I have a degree in
25 engineering from the United States Military Academy at West

1 Point.

2 Q And can you give a summary of your professional
3 experience?

4 A In addition to serving in the Army, I started out in the
5 oilfield as a roustabout, an entry level rig position, and I
6 worked my way up through the different rig positions into
7 management. Eventually became the CEO of that company in
8 2003. At that time it was -- it was Global Marine when I
9 joined the company, the successor organization was Global
10 Sante Fe, after having merged with Sante Fe, and in November
11 of 2007 we merged with Transocean and I retired in May of '08.

12 Q And what's been your involvement with public companies
13 since your retirement?

14 A Since the retirement I've been on three different public
15 boards, three New York Stock Exchange listed boards, Noble
16 Corporation, the symbol for the NE; Southwestern Energy, the
17 symbol for that is SWN; and of course Cobalt, CIE.

18 Q And have you also served on committees on those Boards of
19 Directors?

20 A Yes, I have.

21 Q And what committees have you served on?

22 A I've served on Audit Committees, Compensation Committees,
23 I'm currently the Compensation chair at Noble, and I've also
24 served as chair of the HSE&E, Health, Safety, Environment &
25 Engineering Committee at Noble.

1 Q Okay. I'd like to turn to talking about different parts
2 of the compensation for Cobalt's executives. First let's
3 start with severance. Does Cobalt have a severance program?

4 A Yes, we do.

5 Q And can you describe that severance program?

6 A There are three different tranches to the severance
7 program. We have a program for our rank and file employees,
8 we have a program for our management executives and then we
9 have a specific agreement with Mr. Cutt, the CEO.

10 Q And why does Cobalt offer severance benefits to its
11 employees?

12 A Severance is typically offered, particularly in a
13 cyclical business because you want to give comfort to your
14 people that should you have to have a reduction in force that
15 they will be equitably treated. There are a number of other
16 reasons related to severance. It's not just equitable
17 treatment of the people that are leaving. The people -- you
18 want the people that are staying to recognize that in the
19 event they lost their job, they would be treated equitably.
20 So it's very important as to how you structure severance
21 within an organization.

22 There's some other reasons that relate specifically
23 to executives. With respect to your senior executives you
24 want to make them indifferent to a business combination in
25 which they would lose their job. You don't want them arguing

1 against something that is for the benefit of the company.

2 And lastly, at least in our plan, we have a number
3 of features in our severance program. We have releases that
4 represent value to the company. In order to receive severance
5 you have to sign a release so that there will be no future
6 claims against the company. And for our executives in
7 addition to that there are restrictions on solicitation. They
8 can't solicit anyone from the company for a period of one
9 year, which we think is valuable to the company. And of
10 course there are non-disparage agreements we think represent
11 value to the company.

12 So for a host of reasons and for the fact that it's
13 part of a compensation package that we look at. When we look
14 at compensation, we look at what is comparable across the
15 industry, and it is commonly provided across the oil and gas
16 industry and so it's a constituent element of comparable
17 compensation.

18 Q And at a high level can you describe how severance
19 payments are made to the executives at Cobalt?

20 A It's a function of -- at the executive level it's a
21 function of their salary and the instance -- or the qualifying
22 event with respect to their termination, whether it's within a
23 change in control period or without a change in control
24 period.

25 Q And when you adopted the executive severance plan did you

1 seek any outside advice about the reasonableness of the terms?

2 A Yes, absolutely. We always consult with our compensation
3 consultant on matters like this, and we also consult with
4 outside counsel on this.

5 Q When the current CEO came to the company was there a
6 severance plan for executives in place?

7 A No, there was not.

8 Q And --

9 A Let's be clear on the dates here because we signed a
10 severance agreement with Mr. Cutt in May. He was precluded
11 from coming to the company until early July by virtue of a
12 prior employment agreement.

13 Q And what year are you talking about?

14 A 2016. And -- but in discussions with Mr. Cutt prior to
15 his officially coming on board he advised us that he thought
16 it was important that we have a severance program that
17 included everyone in the company and he was particularly
18 concerned about the management team, or the executives because
19 he needed that feature in their compensation plan to be able
20 to recruit the right people.

21 This was not a company that -- it was a company that
22 was clear had some financial challenges, even at that point.
23 And so he needed the tools, the compensation tools to get the
24 right people on his team. And so we put that plan into place.
25 I think it was effective in July, but we did include it in the

1 second quarter queue that we effected the end of June 30,
2 2016. So I'm trying -- I just want to make sure we're clear
3 that I'm not making -- we're clear on the dates and the
4 timing.

5 Q Okay. So that's the severance policy. Let's talk about
6 the retention benefits program that Cobalt has. At some point
7 did Cobalt adopt a retention benefits program?

8 A Yes, we did.

9 Q And is that a program that the Compensation Committee
10 approved?

11 A Yes.

12 Q And at a high level what was the purpose of the retention
13 benefits program?

14 A The first retention benefits program that we put into
15 place was, and correct me if I'm wrong, the spring of 2017,
16 and it was a group of geotechnical people and operating people
17 that we felt were essential to a sales process. And we felt
18 that if we did not have these people, the value of these
19 assets would be diminished. And so -- and we had lost -- we
20 were starting to really lose people. We had lost our chief
21 explorationist, we had lost James Painter, one of the founders
22 of the company, a geologist and a president of our
23 operations -- or he was president of exploration and
24 appraisal. We had lost Mark Steral (phonetic) our comptroller
25 and one of the people that reported to him. So we as a Board

1 are seeing this exodus of key players.

2 And we're trying to protect the value of these
3 assets and so we looked at a retention program for just those
4 key geotechnical people and operating people that we felt were
5 essential to the process of selling these assets. They had
6 that intellectual knowledge, that historical knowledge needed
7 to be there in order to preserve the value of the assets.

8 Q And at the time can you explain what was just your
9 understanding of why you were losing people?

10 A There are always a host of reasons why you lose people,
11 lots of themes. But the company was hugely financially
12 challenged. It was also clear that this company had been
13 built on an exploration program and we didn't have enough
14 funds to fund the development of the discoveries we had made,
15 much less continue significant exploration opportunities. And
16 a lot of the people that we were losing were looking at that
17 with the overlay of financial distress and says, This is not
18 where I want to be.

19 Q And did the financial distress affect those individuals'
20 compensation in any way?

21 A (No response.)

22 Q Did the distress that the company was experiencing did
23 that have any impact on the compensation they were receiving
24 from the company?

25 A What they were receiving at the time, no, but it might

1 have a very significant impact on their future employment.
2 And they were very -- there were a lot of people that were
3 concerned about having a job. And for the most part, these
4 are people that can't afford to miss a paycheck. And so
5 they're very concerned about the stability of their income.

6 Q And how did the company respond to these concerns?

7 A Respond -- excuse me?

8 Q Respond to these concerns about attrition.

9 A Well, we put the retention plan in place in I think it
10 was April of 2017, and then we subsequently put one in place
11 for the management team.

12 Q And were the initial retention payments were they focused
13 on a particular subset of your employees?

14 A The initial retention plan was, yes, it was a subset of
15 just those geotechnical and operating people that we felt were
16 essential to the sales process.

17 Q And what was the process for identifying those specific
18 individuals?

19 A We consulted with management on that, we asked them to
20 give us the minimum set of people that were absolutely
21 essential to that process. We didn't want a broad scope, we
22 didn't want everyone in the program, we wanted the -- we
23 clearly wanted a refined set of people that were essential to
24 the process.

25 Q And why wasn't the fact that those employees were

1 entitled to severance enough to keep them at Cobalt?

2 A Well, in light of the overall market conditions and in
3 light of the financial condition of the company it was clear
4 to all of us that severance in and of itself would be
5 insufficient to retain these people.

6 Q And you mentioned that the retention program was expanded
7 at some point. How was it expanded?

8 A We expanded it to include the management team.

9 Q And how did you determine how much to pay individuals as
10 part of the retention payments?

11 A There's no real science to this, and we did it in
12 conjunction with talking with our compensation consultant.
13 This was not something that any of us had a defined spectrum
14 that we knew that we had to hit. So we consulted with our
15 compensation consultant and we deliberated over it as a board
16 considerably.

17 I mean what is the right -- first of all, we
18 deliberate on the necessity of the program and we discuss
19 that, and it took some time for us to agree as a group that it
20 was appropriate. Then we look at the constituent elements of
21 that plan and say what are the essential elements for this
22 plan to be effective, and discuss that and we arrive at what
23 those elements are.

24 And then we get to what's appropriate to pay people.
25 We don't want to pay any more than we have to, but we don't

1 want to pay too little. And you're always trying to find that
2 balance in any compensation program. And so we used our
3 compensation consultant from Meridian, Jim Wolf, to help us
4 with those, arriving at numbers.

5 Q And what were the factors that went into determining what
6 the payment would be?

7 A Well, we looked at the ongoing -- that anticipated life
8 cycle of the company. What were we facing, we were in acute
9 financial distress. We saw some events that might occur that
10 would preclude us from having to file a chapter, but we felt
11 that the most likely scenario is that we would file a chapter,
12 and we looked at that and we said, If we're going to preserve
13 the value of these assets, we need to preserve these key
14 executives in addition to this core group of geotechnical
15 types so that we can optimize the value of the assets in any
16 potential sale.

17 Q And can you explain why did it make sense to include
18 management within the retention program specifically?

19 A Management had, one, a broad understanding of the market
20 and also the potential buyers in the marketplace. Plus
21 they're the people that can help convince a potential buyer of
22 the ultimate value of these assets. And it's a function of
23 their total expertise and their total experience that we had.

24 Q Okay. Can you turn in your binder to Exhibit 12.

25 (Debtor Exhibit 12 identified.)

1 BY MR. AYCOCK:

2 Q And do you recognize this document?

3 A Yes.

4 Q And what is this document?

5 A This is Tim Cutt's retention agreement.

6 MR. AYCOCK: And, Your Honor, we would offer this
7 into evidence.

8 THE COURT: Any objection to 12?

9 (No audible response.)

10 THE COURT: Twelve's admitted.

11 (Debtor Exhibit 12 received into evidence.)

12 BY MR. AYCOCK:

13 Q Okay. Did Mr. Cutt's retention agreement did that differ
14 from the retention agreements that you had entered into with
15 the other executives in any material way?

16 A Not with the other executives.

17 Q And were there differences between Mr. Cutt's agreement
18 and the other executives as compared with the rank and file
19 employees?

20 A Yes, there were differences there.

21 Q And what were those differences?

22 A The first thing you can see under -- I don't know if it's
23 Paragraph 1, Article 1, that Mr. Cutt had to forfeit all of
24 his grants, his LTIP grants that were made in February of 2017
25 in order to participate in this agreement.

1 Q And what are LTIP grants?

2 A The long-term incentive plan grants where restricted
3 stock is granted. There are two different components,
4 restricted stock and then there's some performance units based
5 on specific performance criteria.

6 Q And were there other differences between Mr. Cutt and the
7 other executives' retention agreements and those of the rank
8 and file employees?

9 A There is another difference and it relates to the
10 severance benefit.

11 Q And do you know where in the agreement we can find that?

12 A Yes, it's at the bottom of Page 2 of the agreement and
13 continues on to the top of Page 3.

14 Q And what is the substance of that difference?

15 A The substance of this is that in the event we were to --
16 or the executive were to leave prior to a change in control
17 event or prior to the filing there would be an offset of what
18 he received here versus his severance.

19 Q And when you say change in control and filing, could you
20 describe what you mean by those terms?

21 A Change in control is defined in the agreement, and I
22 could read the exact terms, a filing would be a Chapter 11
23 filing. And this was occasioned by, and part of our
24 deliberations, one of the directors asked -- and we were
25 asking ourselves, you know, is this is the right thing to do,

1 and is it the right thing to do for the shareholders, should
2 severance be in and of itself sufficient to keep these people.
3 And we arrived at the business judgment that it just was not.

4 And one of the directors asked a question, if we
5 were to have -- if we made the payment today and tomorrow we
6 received a valid offer to buy the company, would it be an
7 appropriate use of the company's funds to have paid these
8 people this retention and the severance. And we felt in that
9 narrow instance it was not. Now this is early August when we
10 put -- when we were deliberating on this. I think we -- I'd
11 have to go back and look at the exact dates. We were looking
12 at a potential chapter filing as early as the end of the
13 October, as late as mid-December.

14 So we structured this to -- such that in that period
15 between the time we made the agreement and a potential filing,
16 if during that period the executive left by virtue -- whatever
17 reason, there would be an offset in the retention plan against
18 severance. After that we felt the agreements operated very
19 disparately. We felt that a retention -- we needed these
20 executives to stay if we're in an extended -- or in any
21 Chapter 11 process, and we felt that that stood on its own and
22 that we felt as a consequence of comparable compensation and
23 equity to our executives that severance was an appropriate
24 payment in conjunction with this.

25 Q And did you do anything to check with any outside

1 individuals about the reasonableness of the terms of these
2 retention payments?

3 A Yes, we consulted with our compensation consultant on
4 this, as we do on any agreement that we make with management.

5 Q And what advice did you receive ultimately?

6 A That this was consistent and appropriate for a company in
7 the situation in which we were in.

8 Q Okay. I'd like to turn to talking about the sale
9 incentive plan. Can you turn to Exhibit 9 in your binder?

10 (Debtor Exhibit 9 identified.)

11 BY MR. AYCOCK:

12 Q Do you recognize this document?

13 A Yes.

14 Q And what is this?

15 A This is the Compensation Committee meeting agenda for 31
16 October 2017.

17 MR. AYCOCK: And, Your Honor, we offer this into
18 evidence.

19 THE COURT: Any objection to the admission of nine?

20 (No audible response.)

21 THE COURT: Nine is admitted.

22 (Debtor Exhibit 9 received into evidence.)

23 BY MR. AYCOCK:

24 Q Okay. Can you turn to what's referred on the first page
25 as the sales incentive plan, and that starts on Page 15 of 39.

1 A Okay.

2 Q And what's the title of that slide?

3 A Sales Incentive Program Details, Supporting Materials
4 dated October 24, 2017.

5 Q Okay. And who created these slides?

6 A Management created this whole deck, this slide as well as
7 this entire deck.

8 Q And what did this slide deck represent then to you?

9 A To me it was a management proposal, that's what it
10 represented to me.

11 Q And can you turn then to Page 20 of 39. And can you
12 explain what is represented on this slide?

13 A Well, this was management's proposal with respect to the
14 compensation sums based on how they divided up the employee
15 population, whether or not they would participate in the plan.

16 Q And do you know what's referred to here, what Group 1
17 insiders is referring to?

18 A It refers to a specific group of 10 people. I didn't
19 take the insider definition, there's an SEC definition of
20 insiders, there's another definition, more expansive
21 definition that we use internally that's tied more to what
22 insider trading might -- insider might be. And we didn't
23 ascribe any specific definition to this. This was a group of
24 10 people that had, from our view, material knowledge that was
25 non-public with respect to the company.

1 Q And what was the recommendation for that group's
2 eligibility for severance?

3 A Management's recommendation was that if they participated
4 in the plan, that they would not be eligible for severance.

5 Q And did the committee approve the sale incentive plan at
6 this meeting?

7 A No.

8 Q Did the committee ultimately approve a sales incentive
9 plan though?

10 A We did not approve this, management's proposal. We did
11 approve a sale incentive plan. This was new to all of us.
12 There were a couple of directors that had seen something
13 similar to this previously, and I'm talking about the whole
14 Board as opposed to the Comp Committee, none of us on the Comp
15 Committee were familiar with this type program. And so it
16 took us a while to get, again, comfortable with is this the
17 right thing to do, is this appropriate.

18 And if it is appropriate, what are the key metrics
19 that we need to focus on, and if it is appropriate and we have
20 the key metrics, what's the appropriate amount of
21 compensation. The purpose of this plan was to align
22 management's interest with that of the creditors such that we
23 were incentivizing management to optimize the return --
24 optimize the value of the assets. And that was what we
25 attempted to do in the sales incentive plan.

1 Q And were there differences between the sales incentive
2 plan that was ultimately adopted and what was proposed?

3 A Yes.

4 Q And what were those differences, or the key differences?

5 A One key difference was that we, the Compensation
6 Committee, reduce the 10 what I would call key employees to
7 four. We felt there were four people that could really
8 influence the value of the asset sale and we felt they were
9 the only people that we needed to incentive, the only people
10 we needed to expose potential monies to.

11 But with respect to severance we didn't agree with
12 management. We felt that it was important to keep in place
13 severance but we felt that it was not necessary to have
14 severance and the sales incentive plan. So the way that we
15 structured the sales incentive plan was that in the event they
16 received a bonus under this plan, they had to forego
17 severance. But if they did not receive a bonus under the
18 sales incentive plan, then they would receive severance. And
19 that was the -- that was our intent in the way we structured
20 the relationship of the plan to severance.

21 Q And what were the reasons that you felt that the four
22 individuals who were identified to participate in the sales
23 incentive plan could influence the enterprise value?

24 A They were -- the four people that we felt had the most
25 instructional knowledge, we felt the people -- they were the

1 people that would best represent the company to a potential
2 buyer, they were the people that were formulating a strategic
3 sales plan in conjunction with our outside advisors. These
4 were the key players to try to sell these assets and try to
5 optimize the value that we could receive for our creditors.

6 Q Okay. Can you turn now to Exhibit 63 in your binder.

7 (Debtor Exhibit 63 identified.)

8 BY MR. AYCOCK:

9 Q And do you recognize this document?

10 A Yes.

11 Q And what is this?

12 A This is the sales incentive plan that we approved.

13 MR. AYCOCK: Okay. Your Honor, we offer this into
14 evidence.

15 THE COURT: Any objection to the admission of 63?

16 (No audible response.)

17 THE COURT: Sixty-three is admitted.

18 (Debtor Exhibit 63 received into evidence.)

19 BY MR. AYCOCK:

20 Q Okay. Can you turn to Page 9 of the document and take a
21 look at Paragraph 5 titled, Conditions.

22 A This says Page 9 of 10 -- okay, these are all the same.

23 Q Page 9 of 10 --

24 A Yeah.

25 Q -- at the bottom --

1 A Okay.

2 Q -- of the page, yeah, sorry.

3 A All right.

4 Q What does the -- and I'm sorry, if you look at Page 8 can
5 you describe what begins on Page 8 of this document?

6 A Oh, this is Mr. Cutt's individual sales incentive plan
7 participation agreement.

8 Q And what is the participation agreement?

9 A I beg your pardon?

10 Q What is the participation agreement, how does it relate
11 to the sale incentive plan?

12 A Well, this is the agreement that specifies what an
13 individual would potentially earn with respect to the bonus
14 pool, a potential bonus pool.

15 Q Okay. And now can you turn to the next page, Page 9,
16 Paragraph 5. What does the participation agreement say here
17 in Paragraph 5 about severance?

18 A Do you -- should I read this?

19 Q In substance.

20 A Essentially that if they receive a benefit under this
21 plan, then they waive their rights to any benefits under
22 severance.

23 Q So they can't get both.

24 A They cannot get both.

25 Q And did the sales incentive plan have any effect on the

1 retention payments?

2 A No.

3 Q And why not?

4 A They're two very distinct and different issues. The
5 retention plan was designed to keep the key people on board
6 focused on optimizing the -- or focused on the company. The
7 sales incentive plan is a much smaller group who we felt it
8 was appropriate to align the creditors' interest with their
9 interest and hopefully incentivize them to optimize the value
10 of the assets.

11 Q Okay. Can you turn now to Exhibit 44 in your binder.

12 (Debtor Exhibit 44 identified.)

13 BY MR. AYCOCK:

14 Q And do you recognize this document?

15 A Yes, if it's the same one that I saw two days ago.

16 Q And what is this document?

17 A My understanding that this was the Creditors Committee
18 proposal for the thresholds and payment levels for the sale
19 incentive plan.

20 Q And was this amended sales incentive plan proposal
21 approved by the Board at Cobalt?

22 A No, it was not. Nor by the Compensation Committee. The
23 Board did delegate to Mr. Cutt and myself the authority to
24 negotiate with the Creditors Committee on behalf of the
25 company for this plan.

1 Q And did you and Mr. Cutt approve this amendment?

2 A We have -- he and I have agreed that subject to the
3 Committee accepting the severance provisions that we presented
4 in the sale incentive plan that we would agree to this.

5 MR. AYCOCK: Okay. Your Honor, we move this Exhibit
6 44 into evidence.

7 THE COURT: Any objection?

8 (No audible response.)

9 THE COURT: Forty-four is admitted.

10 (Debtor Exhibit 44 received into evidence.)

11 BY MR. AYCOCK:

12 Q Okay. And are you familiar with how payments are
13 calculated, the bonus payments are calculated under this plan?

14 A Yes, they're laid out here on this form.

15 MR. AYCOCK: And I'd like to put up on the screen
16 the Debtor's Demonstrative Number 2, which is at the back of
17 the binder if you want to see it. I have a hard copy, Your
18 Honor.

19 (Debtor Demonstrative Exhibit 2 identified.)

20 BY MR. AYCOCK:

21 Q Did you assist me in preparing this demonstrative for
22 today?

23 A Yes.

24 Q And can you describe what's depicted in Demonstrative
25 Number 2?

1 A The Demonstrative Number 2, which I believe I have on my
2 screen here, is -- it shows what management received -- would
3 receive under the sale incentive plan in the green bar at a
4 \$1.4 billion enterprise value. And what management would
5 receive if -- and I've got to bifurcate some of this -- what
6 management would receive if they work the entire year and
7 receive severance, that's in the blue bar. Mr. Cutt's blue
8 bar is the presumption of working an entire year and having a
9 severance equivalent to an estimated statutory limit of \$1-1/2
10 million.

11 Q And now I'd like to turn to Demonstrative -- or the next
12 slide. And what is depicted in this demonstrative?

13 A On this demonstrative, again, we have the same people
14 with the same metrics but what would occur -- and the
15 severance is the same in the blue bar, the severance and base
16 pay for a year. In the green bar, which would show what they
17 would receive under the sales incentive plan, it's the amount
18 that they would receive at the \$1.75 billion enterprise value.

19 Q And then now if we could turn to the last slide. Can you
20 describe what's depicted in this slide?

21 A Again, the same metrics as the prior two slides, except
22 that this is what management would receive in the green bars
23 with respect to a \$2 billion enterprise value.

24 Q So in these slides we're showing -- these slides show
25 potentially significant payments to each of these four

1 individuals. Can you explain to the Court why you believed
2 these four executives would be entitled to significant
3 payments -- or should be entitled to significant payments
4 under the sale incentive plan?

5 A This is something we spent as a committee and also as a
6 board, considerable time on trying to get -- to make sure that
7 what we were doing was really aligning management's interest
8 with the interest of our stakeholders. And we did feel that
9 having this form of incentive plan that would incentivize them
10 to maximize the value of the return to our stakeholders was
11 appropriate. I agree these individual sums are large sums of
12 money. These are not easy thresholds to meet --

13 Q And why is that?

14 A -- but they can be met. They can be met. We don't know
15 as we sit here what offers we're going to receive out of the
16 marketplace. Thus far we have not received any viable offers.
17 So these are challenging metrics and we looked -- when we
18 looked at this we said, where should the threshold be. We
19 didn't know, and so looked at it and we said, this has to be
20 at the initial threshold, this has to be a challenge. This
21 can't be like trying to shoot the ground, this has -- it can't
22 be a lay up, it has to be something that's challenging.

23 And so that's where we said -- and there's no --
24 certainly no magic to where we set it at 1.25 billion. It was
25 just a number we came to with respect to our deliberations as

1 to a challenging threshold to meet. And then we looked at
2 the -- what would be appropriate on up the scale all the way
3 to what was -- or the \$30 billion level and -- a \$30 billion
4 incentive payment which would have delivered \$3 billion to the
5 estate which would have paid all our creditors and given some
6 value to our equity holders. And we said in light of that
7 circumstance, if we achieve that, the \$30 million I believe we
8 proposed, and I think the Creditors Committee has proposed 35,
9 even more, that that would -- again, a big number but it's a
10 number that represented value to the estate.

11 Q And you understand that the US Trustee is saying that
12 Cobalt is seeking to pay its executive too much. Do you have
13 any response to that?

14 A It's always a struggle to determine what is appropriate
15 to pay an executive. There's no exact science to it. But
16 with respect to the Trustee's position I think it's perhaps
17 miserly, a bit penurious, if not trying to punish the
18 management. This management team -- you have to understand
19 the context of the struggle and the challenge that this
20 management team has faced.

21 Here we have a company in acute distress, acute
22 financial distress. They still have to run a company, they're
23 still -- while they trying to optimize the return to the
24 stakeholders, to in this case the creditors, they still have
25 the responsibility of running a public company. They have to

1 make payroll, they have to pay vendors, they have to do all
2 the public filings that a public company has to do, they have
3 keep this organization functioning.

4 We were drilling a deep water well in 2017, even
5 under these circumstances. We have to deal with the different
6 US regulatory agencies with respect to the offshore, the
7 Bureau of Offshore Energy Management, we have to do our
8 filings with them. We have to do our filings with -- and they
9 have to be correct, we have to do our filings with the Bureau
10 of Safety and Environmental Enforcement. This is -- these are
11 all new --

12 Q BSEE.

13 A BSEE. And we have to perform our offshore operations
14 with all the diligence of any other company. So while we're
15 doing it, while we're in this acute financial distress we've
16 got a data room set up, we're trying to sell -- we're trying
17 to -- we've got people dedicated to this data room, they're
18 there not only for geotechnical assistance to the potential
19 buyers, they're also there trying to sell these assets.
20 They're there trying to optimize the value of these assets.

21 Tim Cutt, our CEO, he's trying to keep the wheels on
22 this organization. He's trying to keep this organization
23 together. And I can say, notwithstanding the fact that we
24 were losing money, I can tell you that he was -- his
25 leadership was essential to preserving the value of these

1 assets. And so this is what's going on at this time.

2 We as the Board are asking ourselves the same sorts
3 of questions, what is appropriate in terms of compensation.
4 And we deliberated on those issues. And I think we have
5 arrived at an appropriate equilibrium between what is value to
6 the stakeholder and value to management and aligning those
7 incentives.

8 Q Thank you.

9 MR. AYCOCK: Nothing further.

10 THE COURT: Thank you. Any questions for Mr.
11 Marshall?

12 MR. KORNFELD: No, Your Honor.

13 THE COURT: Mr. Marshall, first of all, I'm really
14 happy that you were called as a witness today. I was very
15 uncomfortable about what we were doing and you've added a lot
16 of comfort given your testimony. At the very beginning of
17 your testimony you sort of made a joke. Unfortunately I'm
18 going to ask you about the joke.

19 THE WITNESS: Okay.

20 (Laughter.)

21 THE COURT: And this is because I have some
22 confidence in your testimony. If you meant when you said
23 you'd learned a lot in the last couple of days that what
24 you've learned were some problems in the way that the
25 Bankruptcy Court is operating or making decisions, I'm

1 inviting that criticism. Because I don't know what the joke
2 meant, but it may have just been a joke. But if it was
3 intended to say that you got some things you need to say, I
4 want to give you the opportunity to do that. And believe me,
5 I'm very thick-skinned, but --

6 THE WITNESS: No, sir, it --

7 THE COURT: -- if in your observations there's some
8 problems, I want to hear them.

9 THE WITNESS: No, sir, it had nothing to do with the
10 Bankruptcy Court. It was really an observation of the cost of
11 going broke. I was sitting in a -- with Mr. Kornfeld and his
12 team, I think there were eight or nine attorneys in there, and
13 it was an even bigger group of people when Mr. Cutt was in
14 there, and I'm thinking to myself, This is money that's coming
15 out of the estate, this is money that's coming from this
16 company whose value we're trying to optimize. And in my mind
17 I thought, I wonder what the run rate is here, I wonder what
18 the hourly rate is for us to have these discussions. And so
19 the education --

20 THE COURT: Look around the room right now.

21 THE WITNESS: And everybody in here's being paid but
22 me, as best I can tell.

23 (Laughter.)

24 THE WITNESS: But it was stunning to me, and I'd
25 been through a Chapter -- at a much lower level I'd been

1 through a Chapter 11 and I've had some private dealings with
2 people in bankruptcy, but I hadn't seen the magnitude of this
3 issue, and didn't appreciate of how incredibly expensive it is
4 to preserve the estate.

5 THE COURT: Do you think that some of that time and
6 money is being wasted in that there's some things we should do
7 to make it, if so, less wasteful, or do you think that, in
8 fact, it's just a necessary part of the process that you're
9 observing?

10 THE WITNESS: As a businessman, if I said this
11 process at all the rates up here, this process cost X, how
12 much money are we arguing over, potentially how much money are
13 we arguing over. And I think that some balance between what
14 we perceive to be the aggregate cost of this process and the
15 dollars over which we're arguing perhaps could be given a
16 better balance.

17 THE COURT: How do you suggest we do that?

18 THE WITNESS: I really -- to me it's in your -- it's
19 the responsibility of the Court to find a way to bring that
20 balance. I don't -- I'm not legally trained so I don't know,
21 I don't understand all the nuances here. But it does seem
22 that if we're trying preserve the overall value of the estate,
23 there should be a judgment somewhere about the efficacy of
24 pursuing something like this at this expense versus this gang.

25 THE COURT: So the only thing I want to mention

1 about that back to you would be that everyone that's getting
2 paid by the Debtor, the estate, has to submit an application
3 for fees to the Court. Your Board is charged with the right,
4 if not the responsibility if it thinks that someone was
5 wasteful in the allocation of resources to object to those
6 fees.

7 THE WITNESS: I was not aware of that.

8 THE COURT: And so it's almost impossible sitting
9 here to say that Mr. Husnick put six people in court today but
10 he only should have put four. And the reason why that's
11 impossible is I don't know what fights he was fearing today
12 and he may have needed six people in case things went badly
13 for him. Probably we're over-staffed today, but you can't
14 staff for everything going right. You're in a position to
15 know, which I'm not, why we have so many people here, or why
16 the Committee needs so many people. You know, were they
17 really in a position to do that. So the Board can play a role
18 here --

19 THE WITNESS: Okay.

20 THE COURT: -- if it chooses to. I'm not imposing
21 anything on you that isn't already there. But I really don't
22 have the ability to control it without knowing the underlying
23 facts, and so that's why we have the ability anyway to have an
24 adversarial process on fees. I'll balance that by telling you
25 that for the exact same reasons as you're saying why are we

1 spending, I don't know what it is, \$30,000 an hour to fight
2 over an extra million dollars, if you have a million objection
3 to a fee, I promise that will turn into a war as well.

4 (Laughter.)

5 THE COURT: So I mean it's difficult to know where
6 to draw this balance. And I -- but I did want to find out
7 what you were talking about. This is really the respect that
8 I hold your testimony in. Is there anything else you want to
9 say?

10 THE WITNESS: That was a good catch on the sale
11 incentive plan.

12 THE COURT: I do math and it frustrates people.
13 (Laughter.)

14 THE WITNESS: If this gig doesn't work out, we've
15 got a place on the Comp Committee for you.

16 THE COURT: All right. Okay. Thank you, sir.

17 THE WITNESS: Thank you.

18 THE COURT: You can step down.

19 (Witness steps down.)

20 THE COURT: All right. Who's going to be your next
21 witness?

22 MR. HUSNICK: Your Honor, that concludes the
23 Debtor's evidentiary presentation.

24 THE COURT: All right.

25 MR. HUSNICK: And unless anyone else has any

1 witnesses, I'd just sum it up for you very quickly.

2 THE COURT: Does anyone else have any evidence they
3 want to introduce on the comp matter?

4 MR. KORNFELD: The live settlement, no, Your Honor.

5 THE COURT: Does anyone have any -- before he makes
6 his closing argument I want to know if we have any objections
7 that still pertain, and I'm particularly looking at Mr.
8 Statham. I know he wanted to hear the testimony to determine
9 whether the US Trustee was going to persist in its objection,
10 but I don't know whether this resolves it or whether you want
11 to persist.

12 MR. STATHAM: I believe it does resolve it, Your
13 Honor. Thank you.

14 THE COURT: Thank you. All right.

15 MR. HUSNICK: Thank you, Your Honor. I'll be
16 incredibly brief. I want to just respond one tier, the
17 concern you raised about the calculation, I believe we've
18 discussed with the various constituencies a potential change,
19 but I know --

20 MR. FEINSTEIN: I think we're okay.

21 MR. HUSNICK: You're okay? Okay. So what happened
22 is in the -- I don't know if we have that exhibit handy.

23 UNIDENTIFIED SPEAKER: Exhibit 44.

24 MR. HUSNICK: Exhibit --

25 UNIDENTIFIED SPEAKER: Forty-four.

1 MR. HUSNICK: -- 44.

2 UNIDENTIFIED SPEAKER: Demonstrative or the
3 exhibit --

4 MS. PEPPER: Do you want --

5 THE COURT: It's Debtor's Demonstrative 1 is what it
6 is.

7 MR. HUSNICK: Okay.

8 (Pause in proceedings.)

9 MR. HUSNICK: Thank you, Your Honor. I am not a
10 math person, but my understanding is the solution is very
11 simple, which is in the second -- or third row of this chart
12 we would change the sum of 10 million to the sum of nine
13 million, and then in the third column it would be nine million
14 to 34.9 million, which fixed the glitch I believe.

15 THE COURT: It does fix that problem if that's the
16 business deal. I just wanted to know what the business
17 deal --

18 MR. HUSNICK: Okay. Thank you, Your Honor. That is
19 the fix.

20 THE COURT: Thank you. All right.

21 MR. HUSNICK: So, Your Honor, I think the evidence
22 is clear Mr. Marshall and Mr. Hansen's testimony demonstrate
23 that the Debtors have satisfied Section 503(c)(3) as it
24 relates to this program being consistent with the business
25 judgment and fair and reasonable under the circumstances of

1 this case. I will not tick through the Dana (phonetic)
2 factors, I believe Your Honor has read our written
3 submissions. And unless you have any questions, I would
4 respectfully requests that the Court approve the SIP.

5 THE COURT: It's approved.

6 MR. HUSNICK: Thank you.

7 THE COURT: Thank you.

8 MR. HUSNICK: Your Honor, I do have orders on thumb
9 drives.

10 THE COURT: Thank you. I'm sorry, Mr. Brimmage, did
11 you have something about that, I didn't -- I thought there
12 were no objections, Mr. Brimmage, I did not mean to --

13 MR. BRIMMAGE: We're supportive of --

14 THE COURT: -- cut you off.

15 MR. BRIMMAGE: -- the plan.

16 (Laughter.)

17 THE COURT: Okay.

18 MR. BRIMMAGE: We're good. Your Honor, I just
19 wanted to quickly say -- Marty Brimmage on behalf of the Ad
20 Hoc Group of Second Lienholders -- we filed a statement in
21 support and just wanted the Court to know we support it, we
22 think it's appropriate. I appreciate the testimony too, but
23 we -- the Court -- we will respectfully request that the Court
24 grant the motion.

25 THE COURT: Thank you. I'd read your statement.

1 Thank you.

2 Yeah, I'll take the flash drive if we could. Thank
3 you.

4 (Pause in proceedings.)

5 THE COURT: So it's going to be this order and this
6 order?

7 MR. HUSNICK: That's correct, Your Honor.

8 (Pause in proceedings.)

9 THE COURT: Any objection to the form of the
10 severance order?

11 MR. KORNFELD: No, Your Honor.

12 THE COURT: Thank you.

13 (Pause in proceedings.)

14 MR. HUSNICK: I think, Your Honor, we probably do
15 need to make a change in the exhibit on this one because --

16 THE COURT: Is this the exhibit?

17 MR. HUSNICK: I think so.

18 (Pause in proceedings.)

19 THE COURT: Well, go back.

20 MR. HUSNICK: There's actually two exhibits, but the
21 second exhibit is the one that probably needs to change.

22 (Pause in proceedings.)

23 MR. HUSNICK: Yeah, this was the
24 settlement proposal.

25 THE COURT: So if I change this to nine, do I get

1 there?

2 MR. HUSNICK: I believe so. That's correct. Yes,
3 if you change that to nine, that will --

4 (Pause in proceedings.)

5 MR. HUSNICK: And there's one clarification that we
6 may need to make in the order whether we make it on this sheet
7 or not, but --

8 THE COURT: Let me just print -- let me find Exhibit
9 1 here --

10 MR. HUSNICK: Sure.

11 THE COURT: -- then we'll go back to the order.

12 MR. HUSNICK: Okay.

13 THE COURT: So Exhibit 1 is the general plan.

14 MR. HUSNICK: Correct.

15 THE COURT: It'll be modified by Exhibit 2, which is
16 now changed to \$9 million.

17 MR. HUSNICK: Correct.

18 THE COURT: And then we'll open the order. So what
19 do we need to do with this?

20 MR. HUSNICK: The chart in Exhibit 2 uses the term
21 total distributable proceeds, or TDP, and that's actually --
22 that's not defined anywhere, but it should be total enterprise
23 value.

24 MS. PEPPER: Enterprise --

25 MR. HUSNICK: Just enterprise value which is the

1 term that was used in the motion.

2 THE COURT: So what do you want me to do?

3 MR. HUSNICK: I think we can add a line to the end
4 of the second paragraph and my litigation team will catch me
5 if I get this wrong, but we can say, TDP --

6 THE COURT: Pardon me?

7 MR. HUSNICK: TDP.

8 THE COURT: DP?

9 MR. HUSNICK: P as in Paul as used on Exhibit 2.

10 MS. PEPPER: I will have the definition --

11 THE COURT: Pardon me?

12 MR. HUSNICK: She's better at this.

13 (Laughter.)

14 MS. PEPPER: TDP as used on Exhibit 2 shall have the
15 same definition as that of enterprise value as set forth in
16 Exhibit -- I'm Docket 126-1.

17 THE COURT: Does that work? Any objections?

18 (No audible response.)

19 THE COURT: So I signed the severance order, I'll
20 give that to Mr. Rios. It has no attachments to it.

21 MR. HUSNICK: Correct, Your Honor.

22 THE COURT: And now I'm signing and I will give to
23 Mr. Rios the order authorizing and approving the Debtor's
24 sales incentive plan which has two exhibits to it.

25 (Pause in proceedings.)

1 THE COURT: Mr. Husnick.

2 MR. HUSNICK: That's all we have for today, Your
3 Honor, unless you have anything further from your end.

4 THE COURT: No. Does any other party have any
5 matters that you need to raise to the Court?

6 (No audible response.)

7 THE COURT: All right. I appreciate all the hard
8 work everybody put in overnight. Thank you. We're in
9 adjournment.

10 MR. HUSNICK: Thank you very much.

11 COURT SECURITY OFFICER: All rise.

12 (Proceedings adjourned at 11:07 a.m.)

13 * * * * *

14 *I certify that the foregoing is a correct transcript*
15 *to the best of my ability produced from the electronic sound*
16 *recording of the proceedings in the above-entitled matter.*

17 /S./ MARY D. HENRY

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22 DATE FILED: JANUARY 29, 2018
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25

Designation No. 13

Docket No. 486

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 IN RE: § CASE NO. 17-36709-H1-11
§
5 COBALT INTERNATIONAL § HOUSTON, TEXAS
ENERGY, INC. AND §
6 COBALT INTERNATIONAL § THURSDAY,
ENERGY GP, LLC, § FEBRUARY 22, 2018
7 DEBTORS. § 9:08 A.M. TO 9:51 A.M.

8 MOTION HEARING

9 BEFORE THE HONORABLE MARVIN ISGUR
10 UNITED STATES BANKRUPTCY JUDGE

11
12 APPEARANCES: SEE NEXT PAGE
13 CASE MANAGER: MARIO RIOS
14 COURT RECORDER: JENNIFER OLSON
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1 HOUSTON, TEXAS; THURSDAY, FEBRUARY 22, 2018; 9:08 A.M.

2 THE COURT: We're now going to move to the
3 Cobalt case. It's Cobalt International Energy, Inc. It's
4 17-36709.

5 MR. CLEMENT: Good morning, Your Honor.

6 THE COURT: Good morning, Mr. Clement.

7 MR. CLEMENT: Your Honor, it's Zack Clement,
8 Brad Weiland, Laura Krucks and Jamie Aycok, on behalf
9 Cobalt Energy.

10 THE COURT: Good morning. If anybody else wishes
11 to appear, you may or you can just preserve your appearance.

12 MR. STATHAM: Good morning, Your Honor.
13 Steve Statham for the U.S. Trustee.

14 THE COURT: Good morning, Mr. Statham.

15 MR. ENTWISTLE: Good morning, Your Honor. Nice to
16 see you again.

17 THE COURT: Nice to see you.

18 MR. ENTWISTLE: Andrew Entwistle, on behalf of the
19 Securities Class Action Claims.

20 THE COURT: Good morning.

21 MR. ENTWISTLE: Good morning.

22 MR. WARNER: Good morning, Your Honor.
23 Andrew Warner from the Department of Justice, on behalf
24 of the United States. I'm here with my colleague,
25 Rick Kincheloe, from the U.S. Attorney's Office.

1 THE COURT: Thank you, Mr. Warner.

2 MR. GREENDYKE: Good morning, Judge.

3 THE COURT: Good morning.

4 MR. GREENDYKE: Bill Greendyke, Norton Rose
5 Fulbright, on behalf of Anadarko Petroleum Corporation and
6 Anadarko US Offshore.

7 THE COURT: Good morning.

8 MR. GREENDYKE: Thank you.

9 MR. LIM: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. LIM: Lloyd Lim with Wells Fargo for the
12 Senior Unsecured Notes.

13 THE COURT: Thank you.

14 MR. RIPLEY: Judge, good morning.

15 THE COURT: Good morning.

16 MR. RIPLEY: Ed Ripley with King and Spalding, on
17 behalf of Chevron.

18 MR. ETKINS: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. ETKINS: Michael Etkin, Lowenstein Sandler,
21 also on behalf of the Securities Plaintiffs.

22 MS. GEISE: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MS. GEISE: Amy Geise, on behalf of
25 Whitton Petroleum Services, Limited. On the phone is

1 Mr. John Higgins, also on behalf of Whitton.

2 THE COURT: Thank you. Good morning.

3 MR. LOPEZ: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. LOPEZ: Chris Lopez, Weil Gotshal and Manges,
6 on behalf of the First Lien Ad Hoc Group.

7 MR. BRIMMAGE: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. BRIMMAGE: Marty Brimmage and James Savin with
10 Akin Gump Strauss Hauer and Feld, here on behalf of the
11 Ad Hoc Group of Second Lien Noteholders.

12 THE COURT: Good morning.

13 MR. FEINSTEIN: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. FEINSTEIN: Robert Feinstein, Pachulski Stang
16 Ziehl and Jones, counsel for the Official Creditors'
17 Committee.

18 THE COURT: If anybody on the phone wishes to
19 appear, you may press five star or you can simply reserve.

20 (No verbal response.)

21 THE COURT: All right. Mr. Clement, Mr. Weiland,
22 whoever.

23 MR. WEILAND: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. WEILAND: For the Record, Brad Weiland of

1 Kirkland and Ellis, LLP, here for the Cobalt Debtors.

2 Your Honor, we have a few things on the agenda for
3 today and with the Court's leave, I'll take them a little
4 bit out of order. We were going to be here today, Your
5 Honor, on approval of the Debtors' Disclosure Statement for
6 our proposed Chapter 11 Plan and apologies for the emergency
7 motion, but as described in the Motion for Continuance and
8 short the notice and as discussed with key parties to the
9 case, we would like instead to use this hearing as
10 essentially a scheduling hearing.

11 Before we get to that item, Your Honor, I'd like
12 to just cover a few points to set the stage. We filed our
13 Plan originally on January 23rd. The Plan is consistent
14 with our intent made clear from day one of the case to sell
15 the company's assets and use those proceeds to provide for
16 creditor recoveries. It is largely a pure waterfall plan.
17 There are issues with the Plan that creditors have concerns
18 over and right now, we do not have full support of anybody
19 although we continue to try to build a consensus.

20 Under the Plan, we do reserve the right to seek to
21 reinstate our secured debt and redeem those Notes to avoid
22 paying post-petition interest two ways under Section 506(c)
23 and as a component of the make whole premiums under the
24 first and second lien indentures. The Plan doesn't require
25 reinstatement. If the Court determines the Notes can't be

1 reinstated or if we settle, and we would prefer to settle,
2 hence taking the additional time that we requested.

3 The Plan also provides for releases that parties
4 including the Creditors' Committee have taken issue with.
5 We'd like to see if we can resolve those issues too and we
6 have had constructive discussions with everyone in the
7 capital structure over the last week or so.

8 One more point, Your Honor, before I get to the
9 actual matter on the agenda, as a purely disclosure issue
10 but an important update, I think, for the case and it
11 managed to make it into the Amended Disclosure Statement
12 that we filed after hours last night -- apologies again for
13 the late filing, but since it is just a short disclosure and
14 it's an important one, I wanted to say it on the Record.

15 Yesterday, Sonangol did make its initial
16 installment payment of \$150 million under the Settlement
17 approved by Your Honor last month. The money is sitting in
18 the U.S. account of non-debtor subsidiary, Cobalt
19 International Energy Angola, Limited and we're happy to
20 report that we are -- that we have received that money first
21 of all and that we're in discussions with Sonangol about the
22 ultimate transition of those assets consistent with the
23 Settlement Agreement.

24 So, Your Honor, with that I'd proceed to the
25 Motion for Continuance.

1 THE COURT: So the reason that I didn't grant it
2 at first review isn't that I don't want you to have a
3 continuance, it's that you also requested that we shorten
4 deadlines and I thought that although I could give you a
5 continuance *ex parte* that shortening deadlines required more
6 and so I wanted to take it up live today to see what other
7 people thought about that. But I'm not going to make you
8 proceed with a disclosure statement hearing that you're not
9 ready to proceed with. However, if one is tied to the other
10 and it was in a motion, I wanted to see what other people
11 have to say about it.

12 MR. WEILAND: And, Your Honor, I think that was
13 our understanding with the scheduling as well. I am happy
14 to say that we have support of most of the Debtors' key
15 stakeholders. There's no opposition to the Motion to
16 Continue or the shortened notice from the First Lien
17 Indenture Trustee, the First Lien Ad Hoc Group, the Second
18 Lien Ad Hoc Group, the Creditors' Committee or the Ad Hoc
19 Committee of Unsecured Notes.

20 We've also discussed the revised schedule with
21 parties that objected to the Disclosure Statement at --
22 which objections would have been heard today were we to go
23 forward. Most of those parties, Your Honor, have likewise
24 expressed either their support or stated that they have no
25 objection.

1 THE COURT: Towards the end of the schedule that
2 you proposed --

3 MR. WEILAND: Your Honor, what we would propose is
4 to keep the end of the schedule as approved or preapproved
5 in connection with the Bidding Procedures and Scheduling
6 Hearing which would set confirmation and hold confirmation
7 at March 30th.

8 THE COURT: Right. So you extended the date for
9 sending out the Disclosure Statement and then you still left
10 yourself a lot of time to deal with voting and objections.

11 MR. WEILAND: We've tried to give ourselves a
12 little bit of time, not --

13 THE COURT: I wonder if I don't need to give you a
14 little less time and give people a little more opportunity
15 to vote and make you work a little harder.

16 MR. WEILAND: Your Honor, we are -- we can discuss
17 those sorts of changes to the schedule. Right now what
18 we've said is, with a hearing scheduled for March 30th, we
19 would have objections filed March 26th and have our reply
20 due on March 28th.

21 THE COURT: I'm actually not as worried about
22 objections as I am about voting and I'm not as worried about
23 you ever even filing a response to objections, so if you can
24 talk to the various constituents -- and I'll here from
25 others whether the object -- to make a slightly longer

1 voting deadline and a couple days matters when you're asking
2 me to shorten this.

3 MR. WEILAND: Understood, Your Honor.

4 THE COURT: And maybe even lengthen the objection
5 deadline, but then I won't require you to file any reply. I
6 mean, I'll -- I'm going to hear your reply anyway and so
7 save you the money of writing a reply and just make you stay
8 up later thinking about it, but I'm going to let you think
9 about that.

10 MR. WEILAND: I'm sure we'll be up late anyway,
11 Your Honor.

12 (Laughter.)

13 MR. WEILAND: Your Honor, we can certainly discuss
14 a modification to our proposal with the parties.

15 THE COURT: I'm only talking a couple days at the
16 end. I'm not looking to move your final --

17 MR. WEILAND: And I'm sure the parties can reach
18 agreement on that and accommodate it.

19 THE COURT: Okay. Let me hear from other people
20 about whether this is a good idea to wait and let the
21 Disclosure Statement cook a little bit more before we
22 commence the hearing on that.

23 MR. UZZI: Your Honor, Gerard Uzzi of Milbank
24 Tweed, on behalf the Ad Hoc Committee of Unsecured
25 Noteholders and we filed a supplemental 2019 that shows

1 that, you know, we represent over half of the unsecured
2 noteholders that are out there.

3 Your Honor, we support this. We think it makes
4 sense. The genesis of this is, to some extent, what we said
5 in our limited objection which is: on the one hand, we're
6 very supportive of the Debtors' process and the timing and
7 we understand that there's a balance between giving us
8 enough time as the Code says and making the marketing
9 process as successful as possible, and we're trying to
10 create some time between when the bids are due, when the
11 auction actually occurs and when we think is a reasonable
12 amount of time for us to react to it, as well though is
13 balancing when buyers will tolerate being -- hanging out
14 there.

15 We have a practical problem though with that is:
16 right now, while -- Mr. Weiland said the Plan is pretty
17 simple, it's a straight waterfall and there's some issues
18 around the make whole and there's some issues around the
19 releases, but it's a pretty simple plan. We just don't help
20 the inputs into the waterfall yet and from a practical
21 standpoint, until the auction is over, we won't know.

22 We discussed supplemental disclosures by the
23 Debtors and, you know, in those discussions, I think we all
24 just came to the conclusion of why are we doing it that way
25 when at the end of the day until those supplemental

1 disclosures are ready, nobody's going to be able to vote
2 anyway.

3 THE COURT: Well, I think somebody raised the
4 question -- I forget which objection -- that said what in
5 the world are we going to do about ballots that do get cast
6 before the real information comes out? And that was a good
7 point is: what do we do with those? And --

8 MR. UZZI: Yeah, I mean, I think practically at
9 least none of my clients are casting a ballot before that
10 comes out and I don't see anybody else casting a ballot
11 until that information comes out.

12 So from a practical standpoint, if we looked at
13 from simply, you know, doing a provisional or some type of
14 approval of the Disclosure Statement with a supplemental
15 disclosure today or just pushing it and just saying the
16 supplemental disclosure is the disclosure and shortening the
17 time, we're in the same place and it just seems to make more
18 sense to do it this way. So we're very supportive of the
19 process and the timing that the Debtors put forward. Of
20 course, any more time that we can squeeze in to give
21 creditors a chance to respond and reflect would be helpful,
22 but we're supportive certainly of this concept, Your Honor.

23 THE COURT: Thank you. Anyone else want to
24 comment about it?

25 MR. FEINSTEIN: Good morning, Your Honor.

1 Robert Feinstein for the Record. Your Honor, we do support
2 the Motion and our -- one of our principle concerns as
3 committee counsel is to make sure that the larger population
4 of creditors has a good record to vote on and there's no
5 confusion or chaos, which is why we're supportive of the
6 Motion, because going out with a disclosure statement with
7 blanks and then a supplement was going to create more
8 problems than it solved in our view. And unlike the Ad Hoc
9 Groups, the Firsts or the Seconds and the Ad Hoc Unsecured
10 Noteholders each of whom comprise 10 or less sophisticated
11 institutions, we represent the great unwashed we were afraid
12 that if you sent out the --

13 THE COURT: Let's not refer to our --

14 MR. FEINSTEIN: -- Disclosure Statement as is --

15 THE COURT: -- own clients that way.

16 MR. FEINSTEIN: Well, the larger body of general
17 unsecured creditors --

18 THE COURT: Thank you.

19 MR. FEINSTEIN: -- vendors, moms and pops, so
20 forth. And there would have been real confusion. So we're
21 supportive of this.

22 In terms of the time for voting, we welcome more
23 time for the votes to be cast. I mean candidly, Your Honor,
24 what was presented to us was: we can file the Emergency
25 Motion, but we'll hold the confirmation date leaving about

1 14 days or so to vote. We would have preferred more time
2 and perhaps a later confirmation hearing, but as presented
3 to us, this was the Motion the Debtors were prepared to make
4 and we support it on that basis.

5 THE COURT: So if we squeeze a couple more days of
6 voting out, is that --

7 MR. FEINSTEIN: More time is always good.

8 THE COURT: That's worth it even if you don't see
9 maybe some objections till --

10 MR. FEINSTEIN: I think people will know what the
11 objections are going to say, if these aren't resolved, so --

12 THE COURT: Okay.

13 MR. FEINSTEIN: -- more time for voting I think
14 would be optimal, Your Honor, yes.

15 THE COURT: Have you worked out anything with the
16 Debtor yet about your proposed inclusive letter?

17 MR. FEINSTEIN: Well, we sent them the letter and
18 you saw their response which is they were -- they don't --
19 they take the view that they're not obligated to put it in.

20 THE COURT: I don't think they are, but I am
21 worried if we -- and I'm telling this to both you and to the
22 Debtor: if we're going to extend time and then collapse
23 things, I want to -- I don't think they have to send the
24 letter. I think they've got to pay for you to send the
25 letter though. And I don't want there to be voting without

1 enough time for people to review your letter and that may
2 mean that the Debtor, in order to get all this done, puts
3 your letter in their package and saves the money.

4 MR. FEINSTEIN: Well, we're --

5 THE COURT: But I can't make them do that, but I
6 am worried about the time and I think your letter is an --
7 I haven't read your letter. Your letter may be totally
8 inappropriate. The inclusion of a letter is an
9 appropriate -- the sending of a letter is an appropriate
10 thing.

11 MR. FEINSTEIN: Yes, I'm --

12 THE COURT: I don't know what your letter says.
13 So maybe parties, as they're working on these dates, can
14 figure out how your letter's going to get out. If it's
15 separately, then there needs to be enough time for you to
16 get it out.

17 MR. FEINSTEIN: We'll talk to the Debtor. I mean,
18 certainly the letter should go out no later than when the
19 Disclosure Statement goes out. If it needs to be put in a
20 separate envelope with separate postage, it seems --

21 THE COURT: I don't think it can go out before the
22 Disclosure Statement goes out.

23 MR. FEINSTEIN: No, no, no, of course not.

24 THE COURT: So it can go out in it or it can go
25 out later.

1 MR. FEINSTEIN: Right.

2 THE COURT: I don't think I can tell them to do
3 it, but I need that timing worked out as part of this. It
4 may be simpler to put it in there so.

5 MR. FEINSTEIN: It's one of a number of issues
6 that we'll discuss with the Debtor, Your Honor.

7 THE COURT: We do need to get that worked out.

8 MR. FEINSTEIN: Yeah.

9 THE COURT: Okay. Let me hear from anybody else.

10 MR. ENTWISTLE: Good morning, Your Honor.
11 Andrew Entwistle, Entwistle and Cappucci, for the Securities
12 Plaintiffs. I can't say our discussions around the release
13 issue, which we believe renders the Plan unconfirmable in
14 its current form, have been productive to this point, but
15 Mr. Weiland told us this morning that he felt if he had more
16 time that he could get us over the hump on those issues
17 since we think it is an impediment to confirmation in its
18 current form. Based on those representations, we will
19 support the Motion before Your Honor this morning.

20 As to more time for voting, we're hoping that does
21 not become necessary and that the carve-out for the claims
22 at issue in our case will ultimately make their way into the
23 third-party releases, if they survive at all, and that that
24 won't be an issue for us. But obviously, there will be
25 extreme notice issues related to the securities class action

1 if the release stays in its current form. But anything that
2 advances the ball in terms of getting that resolved I think
3 is a good thing at this point.

4 THE COURT: Well, when you say there are extreme
5 notice issues, you're not suggesting this timeline won't
6 work for the notice, right? It's just that you plan to
7 communicate to your class, right?

8 MR. ENTWISTLE: Well -- and that's really the rub,
9 right? You know, if the current -- we've kind of gotten
10 backwards, right? The Reply that was put in by the Debtors
11 in this circumstance has insisted that there have to be
12 individual opt-outs. Whether that's right or not or whether
13 we can cure that with a Rule 23-type motion before
14 Your Honor, 7023 motion, you know remains to be seen but
15 we're hoping that we can deal with it as it should be dealt
16 with with the releases themselves so that notice won't be
17 necessary. To get any kind of --

18 THE COURT: Right. I got that, but let's assume
19 that things blow up and Mr. Weiland won't do a thing for you
20 and he was misleading you just to get this continuance this
21 morning.

22 MR. ENTWISTLE: Well, I would never assume that.
23 Mr. Weiland's a gentleman.

24 THE COURT: I know that, but let's assume that's
25 the outcome. I just want to be sure that you have enough

1 time to communicate -- and let me even assume you lose your
2 Motion, your Rule 23 Motion. What I want to be sure of is
3 that the time that we're setting out is enough time to get
4 it done.

5 MR. ENTWISTLE: It would not be, Your Honor. To
6 get Rule 23 notice out to the entire class and anything even
7 remotely approaching an effective notice, even were we just
8 looking at traditional Rule 23 notice for the settlement of
9 a class action would be impossible in the very short time
10 frame that's being allotted here. I'm hoping we never have
11 to reach that issue.

12 THE COURT: Well, how would you communicate to
13 those people?

14 MR. ENTWISTLE: As a practical matter, Your Honor,
15 we'd have to go through a -- you know, we'd have to get a
16 claims administrator, which we don't currently have. We'd
17 have to do both publish notice and we'd have to go through
18 all the brokerage houses, which is the typical way notice
19 gets given in a securities case, and then go down from
20 there. We'd also have to get the Debtors' transfer agent
21 list to the claims administrator to get notice out. I mean,
22 that's how it's typically done in a --

23 THE COURT: All right. But my understand is is
24 that under the currently proposed Plan and Disclosure
25 Statement, your clients will get a notice from the Debtor

1 that gives them some opt-out rights for the releases, right?

2 MR. ENTWISTLE: Here's the problem, Your Honor:
3 that class has yet to be -- it's not like the creditors
4 where they know exactly who the creditors are. In the case
5 of the security class action holders, we don't have -- there
6 is no extent list of all of the securities class. It just
7 exist at this point.

8 THE COURT: Well, let me ask Mr. Weiland how he's
9 going to do the releases for them without giving them
10 notice.

11 MR. WEILAND: Your Honor, one thing that we had
12 proposed to Mr. Entwistle was to grant them, as certified
13 class counsel obviously subject to the appeal of class
14 certification in the securities litigation, the power to act
15 for the class for purposes of confirmation and the opt-out.
16 That's one thing that I think we could explore --

17 THE COURT: Right.

18 MR. WEILAND: -- could continue to discuss.

19 THE COURT: Right. So if he can elect the opt-
20 out, we don't really need to give notice to --

21 MR. WEILAND: Exactly right, Your Honor.

22 THE COURT: But if he can't, how are you going to
23 give them notice?

24 MR. WEILAND: If he can't, if that's not something
25 he'd accept, you know, we would do our best to get notice

1 out to all known and potential creditors including through
2 publication. I agree with Mr. Entwistle that the typical
3 class action notice process -- I don't think it's
4 accomplishable in the 14 days we're proposing today or 15 or
5 16. I don't think it's accomplishable in a 30 or 60-day
6 process either. I just don't think it gels with the typical
7 bankruptcy process, which is one thing that we would
8 continue discussions with Mr. Entwistle and his team between
9 now and a disclosure --

10 THE COURT: Okay. I just think we have to --

11 MR. WEILAND: -- statement hearing in March.

12 THE COURT: We have to -- I think if you and
13 Mr. Entwistle can reach an agreement where he can act for
14 his class, that probably resolves the notice issue. If you
15 all can't reach that agreement, I think you've got a tension
16 between giving people notice and getting an effective
17 release obviously.

18 MR. WEILAND: Well -- and that may be, Your Honor.

19 THE COURT: But whatever method you use to give
20 them notice it seems to me could include either a statement
21 or something from Mr. Entwistle as to how he thinks people
22 ought to in response to that so that if you've given them
23 effective notice, it would simultaneously give notice from
24 Mr. Entwistle of their position. But we need to figure out
25 a way, if you're going to do this, and try and be effective

1 about it.

2 MR. WEILAND: I 100 percent agree, Your Honor, and
3 I think again what -- we were and are prepared to go forward
4 with the Disclosure Statement today, but I can -- we're
5 willing to and have agreed with other parties in the case to
6 take a little more time --

7 THE COURT: Right.

8 MR. WEILAND: -- to try to avoid fights or
9 arguments over points --

10 THE COURT: Okay.

11 MR. WEILAND: -- like these that could be solvable
12 with a little more time, not just with Mr. Entwistle but
13 whole case issues with some of the creditor kind of parties,
14 Your Honor.

15 THE COURT: I got it. I was just -- he wanted to
16 speak about that and I am concerned that -- the notice issue
17 becomes less important if he can file a class opt-out.

18 And I think that's your position in your papers,
19 right?

20 MR. ENTWISTLE: That's one of the -- that's part
21 of our position, Your Honor. The other is, of course, that
22 the release itself is -- you know, is inappropriate. But I
23 think what --

24 THE COURT: But if you opt out, I don't know that
25 you have standing to say it's inappropriate because you're

1 not affected by it.

2 MR. ENTWISTLE: Well -- and if we can do that on a
3 class basis, our -- you know, we've got a secondary concern
4 that folks who are part of that third-party release will
5 attack it collaterally as we go forward and that -- in the
6 District Court or otherwise and, you know --

7 THE COURT: What time you want?

8 MR. ENTWISTLE: We can -- our part --

9 THE COURT: I don't know what you mean by that.

10 MR. ENTWISTLE: No, in other words, if for
11 example, the -- you know, the Fifth Circuit were, however
12 unlikely we believe it to be, to modify the class ruling or
13 to send it back to Judge Atlas for further findings or the
14 like, but we don't think that will happen, if something like
15 that happens, I could foresee the possibility of some type
16 of a collateral attack by folks who are released by the
17 third-party releases without any consideration in this
18 court.

19 And so leaving aside whether that release is
20 effective or not as to those claims or other issues the
21 efficient, easy way to do this is to carve out for all
22 purposes the securities class action and --

23 THE COURT: Well --

24 MR. ENTWISTLE: -- we've proposed that to the
25 Debtor. It's proposed obviously in the papers. It's not an

1 issue for today since we're all agreeing to push this to
2 March the 8th. And Mr. Weiland has confirmed to us that
3 they're intending to continue discussions with us to try and
4 get that resolved and get the Board of the company to agree
5 to do that. So we're hopeful that solves all of these
6 issues and that's the easy way to do it.

7 THE COURT: Okay. Well, I --

8 MR. ENTWISTLE: But you're right that --

9 THE COURT: Okay.

10 MR. ENTWISTLE: -- as far as notice goes, the
11 notice issue would be solved if we had agreement that class
12 counsel could opt out on behalf of the class. The Reply,
13 which was filed today obviously, went in the opposite
14 direction but that can be remedied.

15 THE COURT: Okay. I just -- I continue to --
16 whatever you all can work out on this is obviously going
17 to -- what you all are describing both make sense. I'm not
18 going to make the Debtor propose something in a plan they
19 don't want to propose in a plan.

20 MR. ENTWISTLE: Understood.

21 THE COURT: I still don't understand why if you
22 get to vote for the class, you would have standing to object
23 to the release because you either do or don't represent the
24 class. And if you do, it's effective. And if you don't,
25 you don't have standing to complain. I need you to worry

1 about your standing issue for when you come back because I'm
2 going to raise it again when you come back. I just --

3 MR. ENTWISTLE: Well, I understand, Your Honor.

4 THE COURT: I'm trying to be fair --

5 MR. ENTWISTLE: Hopefully we won't need to come --

6 THE COURT: -- with you about --

7 MR. ENTWISTLE: -- back on that issue and we'll
8 get this resolved efficiently and cleanly so that it's --

9 THE COURT: I appreciate that.

10 MR. ENTWISTLE: -- not an issue for confirmation.

11 THE COURT: Thank you.

12 MR. ENTWISTLE: Thank you.

13 THE COURT: Does anyone object then to what is
14 being proposed in terms of the continuance?

15 (No verbal response.)

16 THE COURT: So, Mr. Weiland, I want to make one
17 global comment about the release provisions in the Plan --

18 MR. WEILAND: Yes, Your Honor.

19 THE COURT: -- so that you can take this into
20 account as you work on revisions to the Disclosure
21 Statement. Again as I just said, I think you can propose
22 whatever you want with respect to releases and exculpations
23 and I think that whether they are appropriate or not is a
24 matter for confirmation. I'm not going to not approve a
25 disclosure statement because it includes releases and

1 exculpations so my comment is a very limited one.

2 Right now when I read the Plan and Disclosure
3 Statement, I'm not seeing information in the Disclosure
4 Statement as to why those releases and exculpations are a
5 good deal for the Estate. There's a general statement, but
6 it's done in the context of a 9019 compromise and in doing
7 that, I need to understand -- I'll use the word
8 "consideration," but consideration may be too broad. I need
9 to understand what are the mutual benefits, what's the
10 mutual consideration, what are the released parties giving
11 back to the Estate, each one of them? Like one person says,
12 "Why does it make sense to release somebody that used to be
13 an officer of the corporation for future cooperation?" I
14 don't understand that.

15 So all I'm asking you to do is: when you come
16 back, I want to know the rationale for it. The rationale
17 may be very simple. It may be there's no economic benefit.
18 We just think clearing the decks is better for a reorganized
19 debtor. I got that and if that's the sole reason, people
20 can argue at confirmation that's not good enough, but I
21 think the reasons need to be better explained than they are
22 now. So I want you --

23 MR. WEILAND: Understood, Your Honor. And just if
24 I could take one moment to respond to that?

25 THE COURT: Yeah, go ahead.

1 MR. WEILAND: We made a decision in the Disclosure
2 Statement including in the amended version that we filed
3 last night to leave some detail out because we did think it
4 was a matter best taken up at confirmation and parties that
5 opposed the releases obviously would have the right to seek
6 discovery leading up to the Confirmation Hearing. We intend
7 to put on our case.

8 We have detail that we could put in the Disclosure
9 Statement and based on your guidance today, I think we'll
10 all have discussion about that if it's necessary. But what
11 we were trying to do in the Disclosure Statement was not
12 front run something that may not be necessary especially if
13 we do use the time constructively between now and March 8th
14 to see if we can't solve the case and avoid --

15 THE COURT: Yeah.

16 MR. WEILAND: -- unnecessary tit for tat sort of
17 mudslinging.

18 THE COURT: I will just say that between now and
19 March the 8th, if you all reach a deal, my antenna will get
20 lowered quite a bit. But right now when I'm having the
21 fight, I wanted you to know that I think that the extent of
22 the description isn't as much as I think would be required
23 to allow somebody to vote or to opt out.

24 I mean, there's another statement by the way that
25 I find confusing in there which is that if you opt out, you

1 won't get the benefit of the 8C releases so if you're a
2 general unsecured creditor and you opt out, I didn't
3 understand what benefit you were giving up and so I need a
4 better explanation of what you're giving up by not voting
5 for -- or by not -- or by opting out.

6 MR. WEILAND: We could -- we can certainly expand
7 on that, Your Honor.

8 THE COURT: Yeah. I just think people need more
9 information and that's -- it's totally an informational
10 question. The information again does not need to be
11 anything more than your real reason so I -- it doesn't need
12 to be a chart of saying "This side has \$10 million and this
13 side has \$8 million and we think" -- I don't need that. I
14 need to know your real reason. And whatever those are, I
15 think that it's a little -- and I got it that you were
16 trying not to rankle things. So I don't think you're going
17 to have a choice but to rankle if we have a contested
18 hearing.

19 MR. WEILAND: Understood, Your Honor. And if feel
20 forced to rankle, we will rankle.

21 THE COURT: I appreciate that. Thank you.

22 MR. WEILAND: So, Your Honor, we can certainly
23 discuss the timeline with the other parties here. I did
24 just get confirmation from our voting agent that the voting
25 deadline to formally tabulate the votes and file a voting

1 declaration in time for a March 30th hearing, the voting
2 deadline could be pushed two days but not beyond that.

3 THE COURT: I think two days is a lot though here
4 and so let me let -- I don't want to just dictate it right
5 now while you're still working with people on the logistics
6 of this. I know that it can be confusing. It seems that I
7 can grant this in general, let you and especially the
8 Committee work through what that last couple of days is but
9 also preserve the dates that you want, and then you all can
10 just upload an order that does that.

11 MR. WEILAND: And we will do that, Your Honor.

12 THE COURT: Does that work for the Committee to
13 work those last couple of --

14 MR. FEINSTEIN: Yes.

15 THE COURT: -- deadlines and just get that? Tell
16 me the dates though that you've asked for. And I haven't
17 looked at the Calendar to see if they work in terms of when
18 you need courtroom time, unless you already coordinated that
19 with Ms. Dolezal.

20 MR. WEILAND: I think we may have in the context
21 of getting the bid procedures approved, Your Honor --

22 THE COURT: Okay.

23 MR. WEILAND: -- the dates are largely the same,
24 but I don't think we've done it with respect to the new
25 Disclosure Statement Hearing.

1 THE COURT: Right, that's what I need to know.

2 So when do you need that?

3 MR. WEILAND: So we would propose March 8th,
4 Your Honor. That's a Thursday, two weeks from today.

5 THE COURT: I can do that at -- what I would --
6 you're going to have a couple of interruptions during the
7 day if this takes many, many hours but if we start at 9:00,
8 I'll give you an hour and a half of uninterrupted time. And
9 then if we need to come back, I have more time in the
10 afternoon that I could bring you back on. So I can give you
11 9:00 o'clock hearing, if you'll put that into the proposed
12 Order.

13 MR. WEILAND: We can do that. We appreciate that,
14 Your Honor.

15 THE COURT: On the 8th, right?

16 MR. WEILAND: Yes, March 8th.

17 THE COURT: Okay. So we'll reserve 9:00 o'clock
18 to 10:30 for right now for that hearing. And again, if you
19 need more time, I'm not going to cut you short of time,
20 you'll just have some interruptions.

21 MR. WEILAND: Okay. Thank you, Your Honor. And I
22 do think we had already on the Calendar March 30th at 9:30
23 for confirmation.

24 THE COURT: We do.

25 MR. WEILAND: So we'll hold that date. We'll

1 discuss the -- some of the interim dates and deadlines with
2 the parties and plan to upload an order.

3 THE COURT: Thank you, sir.

4 MR. WEILAND: Thank you, Your Honor. Your Honor,
5 there are two matters -- this obviously puts off the
6 Disclosure Statement Motion. There are two other matters on
7 the agenda: our bar date Motion, and our removal extension
8 Motion. I'll cede the podium to Ms. Krucks to address
9 those.

10 THE COURT: All right. Thank you.

11 Ms. Krucks?

12 MS. KRUCKS: Good morning, Your Honor.

13 Laura Krucks, on behalf of the Debtors.

14 THE COURT: Good morning.

15 MS. KRUCKS: The first item on the agenda is the
16 removal Motion filed at Docket Number 324. Pursuant to this
17 Motion, the Debtors are seeking an extension of the removal
18 period by 120 days to July 12th, 2018. The Motion's
19 uncontested, no objections were filed, we didn't receive any
20 comments from any parties-in-interest so we would propose
21 entering the Order as originally filed with the Motion
22 unless the Court has any questions.

23 THE COURT: Let me hear from any party-in-interest
24 that has any objections or concerns about the Motion to
25 extend the removal deadline.

1 (No verbal response.)

2 THE COURT: All right. Did you bring a copy of
3 that Order with you? Do you want me to print it?

4 MS. KRUCKS: I don't have a copy with me in my
5 hands right now so if you could print it, that would be
6 great.

7 THE COURT: I can print it.

8 MS. KRUCKS: I do have a flash drive though, if
9 that's helpful.

10 THE COURT: I've got it. All right. Let's move
11 to the next motion.

12 MS. KRUCKS: The next motion is the bar date
13 Motion filed at Docket Number 325. Pursuant to this Motion,
14 we're seeking to establish a bar date of March 19th for the
15 general bar date and then June 12th for the governmental bar
16 date. Again we received no objections and received no
17 comments from any parties-in-interest. Unless the Court has
18 any questions, we would propose entering the Order as
19 originally filed with the Motion.

20 THE COURT: Let me hear if there are any
21 objections to the bar date Motion.

22 (No verbal response.)

23 THE COURT: So take me through just -- the only
24 concern I've got at all is the March 19th. So if we were to
25 enter this Order today --

1 MS. KRUCKS: Uh-huh.

2 THE COURT: -- when would you then serve --

3 MS. KRUCKS: Today.

4 THE COURT: -- the Notice? Would literally be
5 served out.

6 MS. KRUCKS: Well, I'm sorry, within the next
7 three days so it'd be done --

8 THE COURT: Right.

9 MS. KRUCKS: -- within 21 days of the proposed bar
10 date so it's 24 days from today, so we're -- we included
11 three days for mailing.

12 THE COURT: So you would mail it by three days
13 including the weekend or three business days.

14 When are you going to mail it by? Tell me the
15 date.

16 MS. KRUCKS: Three days from today.

17 THE COURT: Three days from today is Sunday, the
18 25th, is that what you mean or do you mean Monday, the 26th?

19 MS. KRUCKS: When it's --

20 (Pause/counsel confer.)

21 MS. KRUCKS: Okay, right. The mailing will go --
22 I'm sorry. The mailing will go out today and we included
23 three business days for people to receive the mailing to --

24 THE COURT: Okay.

25 MS. KRUCKS: -- so we get 21 days' notice.

1 THE COURT: Okay. Would literally go out today?

2 MS. KRUCKS: Yes, it would.

3 THE COURT: Got it. I just --

4 MS. KRUCKS: Apologies.

5 THE COURT: No, I just wanted to be sure. Then
6 I'm okay with it.

7 MS. KRUCKS: Okay. Thank you.

8 THE COURT: No one else has any objection, right?
9 (No verbal response.)

10 THE COURT: I think that the proposed Order gives
11 you three days from today to send it out so I'll just cross
12 that out of the Order and --

13 MS. KRUCKS: Okay.

14 THE COURT: -- put down that you'll do it today.

15 Again, do you have a copy of that with you or do
16 you want me to print that, or do you have that on a flash
17 drive? That would make some sense.

18 MS. KRUCKS: Yes, I have it on a flash drive.

19 If I may approach? Thank you.

20 THE COURT: And my memory may be wrong, but I
21 think you gave yourself three days to mail it.

22 MS. KRUCKS: I think what we intended was the
23 three days for parties to receive it so they would have
24 sufficient notice, the 21 days' notice.

25 (Pause in the proceedings.)

1 THE COURT: So I hope to be back in my courtroom
2 Monday. It's much nicer technology than what we had before,
3 for those who use it, and it's dramatically nicer than what
4 we have in here and it's pretty amazing stuff so hopefully
5 we'll be back there soon.

6 (Pause in the proceedings.)

7 THE COURT: Right, this is the language that --

8 (Pause/Court preparing order.)

9 THE COURT: And you filed your Schedules, right?

10 MS. KRUCKS: Yes, we filed them on January 29th.

11 THE COURT: Right. So this is --

12 MS. KRUCKS: No longer needed.

13 THE COURT: And just for the purpose of clarity,
14 as I was reading through the Order, I believe that it said
15 that you couldn't do anything electronically and that you
16 had to always mail in or hand deliver notices. However, at
17 the end of the Order, it says you can go to the KCC website
18 and file it electronically with their own electronic
19 procedures. To the extent there's any conflict within the
20 Order -- and there may not be --

21 MS. KRUCKS: Uh-huh.

22 THE COURT: -- the first part was more of an
23 impression -- there's nothing in here that bars people or
24 that says that a claim will not be properly filed if it is
25 filed electronically utilizing the KCC website, right?

1 MS. KRUCKS: Right.

2 THE COURT: Okay. Any --

3 MS. KRUCKS: And again, KCC will have an
4 electronic portal for people to submit claims.

5 THE COURT: Right. Any objection to this form of
6 order with the slight revision that we had?

7 (No verbal response.)

8 THE COURT: Okay. I'll sign the Order.

9 MS. KRUCKS: Thank you very much, Your Honor.

10 THE COURT: Thank you. Wait, I've got somebody on
11 the phone. Let me see who we have.

12 Yes, from the 310 area code, who do we have?

13 MR. MORROW: Your Honor, this is Joe Morrow from
14 Kurtzman Carson.

15 THE COURT: All right.

16 MR. MORROW: I'm wondering if I could have a
17 minute with Laura to talk about the mailing point?

18 THE COURT: Sure. Do you want to talk to her
19 privately or do you want to talk to her where we can all
20 listen?

21 (Laughter.)

22 MR. MORROW: I sent her an email so.

23 MS. KRUCKS: I don't know if I --

24 THE COURT: He sent you an email.

25 MR. MORROW: Sorry.

1 THE COURT: Do you have the ability to go read it?

2 We'll take a second, let her read your email.

3 MR. MORROW: It's good but there are approximately
4 15,000 equity holders with claims and other, and that --

5 MS. KRUCKS: Well, KCC --

6 MR. MORROW: -- cannot be completed today.

7 MS. KRUCKS: Yeah, they need at least a day to
8 make sure that mailing goes out.

9 THE COURT: Okay.

10 (Pause/Court preparing Order.)

11 THE COURT: Does that work? Are you looking at
12 our screen from KCC?

13 MR. MORROW: No, sorry I'm not.

14 THE COURT: So if it says, "Prior to 11:59 p.m. on
15 February 23rd, 2018 the Debtor shall cause a written notice
16 of the bar dates to be mailed," is that consistent with what
17 you can actually implement?

18 MR. MORROW: Yes.

19 THE COURT: Great. Thank you.

20 MR. MORROW: Thank you.

21 THE COURT: That works for you all?

22 MS. KRUCKS: If it works for KCC, it works for us.

23 (Pause/Court preparing order.)

24 THE COURT: While we have you on the phone from
25 KCC -- and I apologize, can you tell me your name again?

1 MR. MORROW: Yeah, this is Joe Morrow.

2 THE COURT: Thank you, Mr. Morrow.

3 MR. MORROW: I would --

4 THE COURT: Yesterday in the hearing that
5 Judge Jones had, Prime Clerk agreed to post on their website
6 a way that people could do an electronic request for notice
7 of events in the case off of your website without them being
8 subscribers to Pacer. You might want to look at what Prime
9 Clerk agreed to do yesterday because it was pretty nice for
10 future cases.

11 MR. MORROW: Okay. I'll look. There's -- we have
12 an email docket signup that will -- they can get daily
13 requests or anytime something's filed as well --

14 THE COURT: Okay.

15 MR. MORROW: -- on our public website.

16 THE COURT: This may be something that you are
17 already doing or already can do, but Judge Jones showed --

18 MR. MORROW: Uh-huh.

19 THE COURT: -- it to me last night and I wasn't
20 aware that anybody was using it and I figured, well, if he
21 can do it, I can do it maybe better.

22 (Laughter.)

23 MR. MORROW: Sounds good. Yeah, I'll take a look.

24 THE COURT: Thank you.

25 MR. MORROW: What case was that?

1 THE COURT: I don't remember what case it was.
2 I'd assume I know what case that was yesterday that
3 Judge Jones did.

4 MR. CLEMENT: I think it was the Fieldwood case,
5 Your Honor.

6 THE COURT: Fieldwood, I think it was Fieldwood,
7 right.

8 MR. MORROW: Fieldwood? Okay. Thank you.

9 THE COURT: Thank you. I signed your Order.

10 MS. KRUCKS: Thank you very much, Your Honor.

11 THE COURT: Thank you. What else can we
12 accomplish today?

13 (No verbal response.)

14 THE COURT: All right. We are in adjournment then
15 till this afternoon. Thank you.

16 MR. SPEAKER: Thank you, Your Honor.

17 (These proceedings concluded at 9:51 a.m.)

18 * * * * *

19 *I certify that the foregoing is a correct*
20 *transcript to the best of my ability produced from the*
21 *electronic sound recording of the proceedings in the above-*
22 *entitled matter.*

23 /S/ MARY D. HENRY

24 CERTIFIED BY THE AMERICAN ASSOCIATION OF
25 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337
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JTT TRANSCRIPT #58243

DATE FILED: FEBRUARY 26, 2018

Designation No. 14

Docket No. 579

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:)	CASE NO: 17-36709
)	CHAPTER 11
)	
COBALT INTERNATIONAL ENERGY, INC,)	Houston, Texas
)	
)	Thursday, March 8, 2018
Debtor.)	(9:03 a.m. to 9:46 a.m.)
)	(3:02 p.m. to 3:41 p.m.)

HEARING RE: DISCLOSURE STATEMENT

BEFORE THE HONORABLE MARVIN ISGUR,
UNITED STATES BANKRUPTCY JUDGE

Appearances: CONTINUED ON PAGE 2

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Houston, Texas; Thursday, March 8, 2018; 9:03 a.m.

(Call to order)

THE COURT: We're here on the Cobalt International case. It's 17-36709. I'll take appearances in court and then any on the telephone. Parties may all reserve appearances if you wish to do so.

MR. CLEMENT: Good morning, Your Honor.

THE COURT: Good morning, Mr. Clement.

MR. CLEMENT: Zack Clement, Chad Husnick, Ben Winger, and Jamie Aycock for Cobalt Energy.

THE COURT: Thank you.

MR. WARNER: Good morning, Your Honor.

THE COURT: Good morning.

MR. WARNER: Michael Warner, Cole Schotz, and I'm with Gerry Uzzi from the Milbank firm. Mr. Uzzi is over here.

MR. UZZI: Good morning, Your Honor.

THE COURT: Good morning.

MR. WARNER: On behalf of the Ad Hoc Committee of Unsecured Noteholders.

THE COURT: Good morning.

MR. BRIMMAGE: Good morning, Your Honor.

THE COURT: Good morning.

MR. BRIMMAGE: Marty Brimmage and James Savin from Akin, Gump, Strauss, Hauer and Feld on behalf of the Ad Hoc Group of Second Lien Noteholders.

1 **THE COURT:** Good morning.

2 **MR. FEINSTEIN:** Good morning, Your Honor.

3 **THE COURT:** Good morning.

4 **MR. FEINSTEIN:** Robert Feinstein from Pachulski Stang
5 Ziehl and Jones, counsel for Official Creditors Committee.

6 **MR. PEREZ:** Your Honor, Alfredo Perez and Chris Lopez
7 for the first -- Ad Hoc Group of First Lien Holders. In
8 addition, my partner Matt Barr, I believe, is on the phone.

9 **THE COURT:** Thank you.

10 **MR. RIPLEY:** Good morning, Your Honor.

11 **THE COURT:** Good morning.

12 **MR. RIPLEY:** Ed Ripley with King and Spalding on
13 behalf of Chevron.

14 **THE COURT:** Good morning.

15 **MR. ETKIN:** Good morning, Your Honor. Michael Etkin
16 on behalf of the Securities Plaintiffs and with me are Jon
17 Uslaner and Josh Porter.

18 **THE COURT:** Good morning.

19 **MR. HAMMERMAN:** Good morning, Your Honor.

20 **THE COURT:** Good morning.

21 **MR. HAMMERMAN:** David Hammerman of Latham and
22 Watkins, on behalf of Total E&P USA. I believe my colleague
23 Christopher Harris is on the phone as well.

24 **THE COURT:** Thank you. Good morning.

25 **MR. HIGGINS:** Good morning, Your Honor, John Higgins

1 and Sam Spiers, Porter Hedges, on behalf of Whitton Petroleum
2 Services, Limited.

3 **THE COURT:** Good morning.

4 **MR. LIM:** Good morning, Your Honor.

5 **THE COURT:** Good morning.

6 **MR. LIM:** Lloyd Lim with Reed Smith, also with Rachel
7 Thompson, on behalf of Wells Fargo, the indentured trustee for
8 the senior unsecured debts.

9 **THE COURT:** Good morning.

10 **MR. RYAN:** Good morning, Your Honor. Steve Ryan for
11 Statoil Gulf of Mexico, LLC and my colleagues, Jonathan Guy and
12 Laura Metzger on the phone. We're moving for pro hac vice
13 admission.

14 **THE COURT:** Thank you. You can fully participate in
15 today's hearing. Thank you, sir.

16 **MR. KINCHELOE:** Good morning, Your Honor.

17 **THE COURT:** Good morning.

18 **MR. KINCHELOE:** David Kincheloe for the United
19 States. Andrew Warner and Eunice Hudson are also on the
20 telephone.

21 **THE COURT:** Thank you. Good morning.

22 **MR. EISENBERG:** Good morning, Your Honor.

23 **THE COURT:** Good morning.

24 **MR. EISENBERG:** Philip Eisenberg and Omer F. Kuebel,
25 III, on the phone for ConocoPhillips company and WT Offshore,

1 Inc.

2 **THE COURT:** Thank you. Good morning. This may not
3 be my day for technology. I look like I'm having a little
4 phone problem too but let me see if I can get that done.

5 All right. If there's anybody on the phone that
6 wishes to participate, you can press five-star or you may
7 reserve your appearances.

8 From 305-938-3000, who do we have?

9 **MR. GOLDMAN:** Your Honor, Andrew Goldman from Wilmer
10 Cutler on behalf of the first lien indentured trustee,
11 Wilmington Trust.

12 **THE COURT:** Thank you. All right.

13 **MR. WEILAND:** Good morning, Your Honor.

14 **THE COURT:** Good morning.

15 **MR. WEILAND:** For the record, Brad Weiland of
16 Kirkland and Ellis, LLP, here on behalf of the Cobalt
17 International Energy debtors.

18 Your Honor, we have two things on the agenda today.
19 The first is approval of our disclosure statement and
20 solicitation procedures for our Chapter 11 plan. The second is
21 a motion filed yesterday by the Ad Hoc Group of Unsecured
22 Noteholders requesting a few different pieces of relief
23 including expedited discovery.

24 I would propose that we take our disclosure statement
25 first and then can proceed to Mr. Uzzi's motion after.

1 **THE COURT:** Well, if we approve the disclosure
2 statement, you're going to give them discovery. As to whether
3 you have the right to object to various discovery is a
4 different question. I don't think it's very controversial to
5 say that if we approve of the disclosure statement, there can
6 be discovery afterward. We can take them in any order.

7 **MR. WEILAND:** Your Honor, I think that's right and we
8 can address it after the disclosure statement in more detail if
9 you'd like.

10 I think from our perspective, we want to stick to our
11 timeline. We think that's important.

12 **THE COURT:** Right. Which means expediting the
13 discovery is appropriate.

14 **MR. WEILAND:** Exactly. Which means that we will do
15 everything in our power to respond to discovery as quickly as
16 possible. I think the motion requested a hard stop and
17 deadline for production of a week from today and requested over
18 a year's worth of documents. I think we will --

19 **THE COURT:** The particulars of the timeline we can
20 deal with that if they don't get discovery in a reasonable
21 period of time in advance of the confirmation hearing, then we
22 won't be able to proceed with the confirmation hearing.

23 **MR. WEILAND:** Absolutely, Your Honor.

24 **THE COURT:** So, we'll worry about the details in a
25 minute.

1 **MR. WEILAND:** Very well.

2 **THE COURT:** So, let's go to the disclosure statement.

3 **MR. WEILAND:** Thank you, Your Honor.

4 **MR. FEINSTEIN:** Your Honor, may I be heard?

5 **THE COURT:** No. It's his turn. Go ahead,
6 Mr. Weiland.

7 **MR. WEILAND:** Your Honor, today we're here seeking
8 approval of the disclosure statement that was filed earlier
9 this morning and approval and authorization to conduct
10 solicitation according to the procedures laid out in a revised
11 form of order also filed earlier this morning. Since we were
12 here last two weeks ago, Your Honor, there have been a number
13 of developments in the case.

14 We did conduct an auction on Tuesday that lasted the
15 better part of a day. Out of that auction and several rounds
16 of bidding, we did name four successful bidders for five
17 different asset packages. The aggregate value of the
18 successful bids is approximately \$580 million. We believe,
19 Your Honor, that these sales are an integral component of the
20 plan and will be moving to have those sales approved in
21 connection with confirmation and consummate the sales under and
22 pursuant to the plan.

23 We have built details into the disclosure statement
24 about the auction and the marketing process and the facts that
25 have developed since we were here last, which was, as Your

1 Honor will recall, a point of contention in objections filed
2 before our originally scheduled disclosure statement hearing
3 last month. We've incorporated details and results of the
4 auction. We've incorporated the collateral effects of that,
5 which are the anticipated recoveries and ranges in a chart
6 showing the treatment of holders of claims of interest in the
7 plan classes.

8 We've provided additional detail about the debtor and
9 third-party releases, Your Honor, in part in response to
10 objections filed and requests of parties in interest and in
11 part in response to the guidance you gave at the last hearing
12 that the disclosure statement should include more detail about
13 the releases, the facts of the claims, and why the debtors
14 believe that the releases are fully appropriate and should be
15 approved in connection with confirmation. We've also
16 addressed, or tried to address, objections filed by parties
17 including the first lien notes, ad hoc group, the unsecured
18 notes ad hoc group, and others in the redline of the disclosure
19 statement or the amended disclosure statement, which changes
20 were reflected in the redline filed with the latest draft.

21 We have been working with objecting parties before
22 and after filing that to resolve other objections. So far, we
23 believe we have resolved objections of several parties,
24 including the Department of Justice, Anadarko, the United
25 States trustee, Chevron, the Securities Plaintiffs, and just

1 before the hearing commenced, Your Honor, the First Lien Ad Hoc
2 Group. The First Lien Ad Hoc Group has objected to the notion
3 that the plan would propose to reinstate and then redeem their
4 debt. The resolution that we have reached with them that will
5 be incorporated into the plan and proposed to be approved in
6 connection with confirmation would be a reduction of the claim
7 amount of the first lien notes, the all-in claim amount
8 including the make-whole premium by three and a half million
9 dollars. We will supplement the disclosure statement and the
10 plan to reflect that. It was reached with Mr. Perez just
11 moments before Your Honor walked in.

12 **THE COURT:** Obviously, I was not aware of that. I'm
13 going to be -- that's a very material change to the disclosure
14 statement I think. I also don't think it will take you very
15 long to write it.

16 **MR. WEILAND:** I don't think -- I don't think it will
17 either, Your Honor. The plan that we had proposed in the plan
18 that is currently on file proposed to reinstate the first lien
19 debt. It did say that --

20 **THE COURT:** I read it.

21 **MR. WEILAND:** -- if we settled or if Your Honor found
22 at confirmation that we could not reinstate the debt that it
23 provided for other treatment of the first lien notes. I think
24 what this does is remove --

25 **THE COURT:** But can't you make those minor amendments

1 -- there significant in terms of case progress.

2 **MR. WEILAND:** Yes, Your Honor.

3 **THE COURT:** But they are minor in terms of the time
4 it's going to take to get them into a disclosure statement.
5 And I have time later today to look at those. Can't we deal
6 with this later today and get it --

7 **MR. WEILAND:** Absolutely, Your Honor.

8 **THE COURT:** -- if we resolve other objections.

9 **MR. WEILAND:** If you'd like --

10 **THE COURT:** I don't want to approve this disclosure
11 statement knowing that there's such a material event change
12 where -- and I need to hear other objections to it -- but even
13 if we approve today, I would want to come back like I say this
14 afternoon, it seems to me we could, and just get it done.

15 **MR. WEILAND:** Absolutely, Your Honor. And if you'd
16 like to break now we can revise the documents, we're happy to
17 do that. Or we can go through some of our case and then break.

18 **THE COURT:** Well, I want to hear sort of the major
19 remaining objections. I know Mr. Feinstein is dying to talk.
20 So, we're going to let him talk.

21 **MR. WEILAND:** We've been talking quite a bit with
22 Mr. Feinstein, Your Honor. And I know he does have a lot to
23 say. So, very well Your Honor. Then what I think I would
24 propose, if it pleases the Court, would be to go through our
25 presentation, hear from some of the objecting parties whose

1 objections haven't yet been resolved, talk about what we've
2 tried to do to address those and why we think that the
3 objections should be considered resolved or overruled. And
4 then to the extent we break to revise the documents, get them
5 on file, and come back this afternoon. If there's a time
6 convenient for Your Honor, we're happy to do that.

7 **THE COURT:** Thank you. Mr. Perez, am I correct that
8 this is a pretty easy redraft of the disclosure that we could
9 incorporate --

10 **MR. PEREZ:** Absolutely, Your Honor. And just to be
11 clear, this is what I call the full loaded claim amount --

12 **THE COURT:** Right.

13 **MR. PEREZ:** -- that would include the ***9:15:44
14 premium as of the effective date, prepetition interest that was
15 due, default rate interest, interest on interest, and then at
16 the end of the day, you deduct three and a half million dollars
17 from that full boat number.

18 **THE COURT:** I got that as being the deal, so I was
19 going to look at you anyway on your objection and say I don't
20 know why it's a patently unconfirmable plan because you-all
21 could reach an agreement, so.

22 **MR. PEREZ:** But if we had, and if I had been
23 unreasonable, Your Honor.

24 **THE COURT:** That's right. Okay.

25 **MR. PEREZ:** Thank you.

1 **THE COURT:** Let me hear then from some objecting
2 parties if I could.

3 **MR. FEINSTEIN:** Good morning, Your Honor.

4 **THE COURT:** Good morning.

5 **MR. FEINSTEIN:** Your Honor, I guess the first request
6 is that the hearing not go forward today based on lack of
7 notice. We all know what hit the docket at 7 a.m. this
8 morning, which is a brand-new disclosure statement.

9 **THE COURT:** It wasn't that brand-new. It didn't take
10 that long to read the redlines.

11 **MR. FEINSTEIN:** Well, Your Honor, I can't honestly
12 say that I have given it a fair read. I haven't had a chance
13 to read a revised confirmation order, but I did find one thing
14 in the disclosure statement that is very troubling.

15 **THE COURT:** Okay.

16 **MR. FEINSTEIN:** And that's to do with the
17 intercompany claims.

18 **THE COURT:** Right. There's a long description of
19 that.

20 **MR. FEINSTEIN:** So, if you look at page 40 of the
21 redline of the disclosure statement --

22 **THE COURT:** Let me open that up.

23 **MR. FEINSTEIN:** -- there appears to be a change to
24 the plan.

25 **THE COURT:** Hold on. Let me go ahead and turn on the

1 join.me feature so that others can watch as well.

2 (Pause)

3 THE COURT: All right, we're showing the redline
4 disclosure statement up on the join.me website. If anybody
5 wants to look at it.

6 MR. FEINSTEIN: Just bear with me because I lost my
7 page here.

8 THE COURT: Here's page 40.

9 MR. FEINSTEIN: I'm sorry. I apologize, Your Honor.
10 It's not the right page.

11 THE COURT: Okay.

12 MR. FEINSTEIN: Let me just find the right one for
13 you.

14 THE COURT: You just want me to find the
15 intercompany --

16 MR. FEINSTEIN: Here we go. It's page 33.

17 THE COURT: Okay. This one?

18 MR. FEINSTEIN: Right. It's the first block of
19 blackline that begins "The plan provides that intercompany
20 claims" --

21 THE COURT: Right.

22 MR. FEINSTEIN: Okay. So, Your Honor, the plan was
23 not amended. The plan says that intercompany claims are either
24 going to be reinstated or impaired and deemed to reject but it
25 says that they're not going to get any distributions and that's

1 important. Because there are, at least on the books of the
2 debtor, purported intercompany claims including a \$6 billion
3 claim from the ultimate parent bound to the operating company.
4 And there are substantial unencumbered assets as we know -- as
5 the parties know -- in the operating company. So, whether that
6 intercompany claim participates in distribution is very
7 meaningful. It would be massively dilutive of trade creditors
8 and other creditors in that entity.

9 So, we proceeded on the basis that the intercompany
10 claims no recovery. The language that was added in the
11 disclosure statement, but not the plan -- that I just pointed
12 Your Honor to -- I think changes the plan and doesn't explain
13 how or why intercompany claims in the discretion of the plan
14 administrator down the road may be allowed for purposes of
15 giving people who have liens on intercompany claims the
16 recovery of intercompany claims when the plan says intercompany
17 claims shall get no recovery. So, this cropped up at 7 a.m. I
18 don't know what the meaning of it is, but I know that it's not
19 good for the unsecured creditors. It needs some explanation.

20 So, the debtor filed -- they had two weeks to fix the
21 problems in the disclosure statement. As Your Honor may have
22 seen, we filed a pleading yesterday that said we hadn't seen
23 the information that we need. We did have an in-person meeting
24 where we were walked through the debtor's waterfall analysis.
25 I think the debtor is still working on a liquidation analysis.

1 It wasn't filed with the disclosure statement, which is fairly
2 standard to have attached to the disclosure statement. And
3 what is the rush, Your Honor? The asset purchase agreements
4 with Total and Statoil have an outside closing date of April
5 20th. So, we're rushing headlong with the disclosure statement
6 that the parties have not had an appropriate opportunity to
7 review and comment on. Bankruptcy Rule 3017 says you're
8 supposed to have 28 days. We got about 28 minutes.

9 **THE COURT:** No, wait, wait, wait. When was the last
10 time you ever had a disclosure statement hearing where there
11 weren't changes made at the last minute? The rules don't
12 contemplate that you can't respond to issues that arise in a
13 case. I just -- for example, a few minutes ago -- said we're
14 going to come back this afternoon with the change that was just
15 announced. There's been plenty of notice. As to whether
16 there's been enough notice of the change to protect due process
17 rights is a different question --

18 **MR. FEINSTEIN:** That's my concern.

19 **THE COURT:** -- from whether the rules have been
20 complied with.

21 **MR. FEINSTEIN:** That's my concern.

22 **THE COURT:** The rules have been complied with.

23 **MR. FEINSTEIN:** Effectively, we have not been
24 provided the information that you ordinarily get 28 days'
25 notice of, which is the contents of the disclosure statement.

1 The initial disclosure statement had blanks everywhere. The
2 debtor was proposing to mail it out before the results of the
3 auction were known. There are a host of changes that were made
4 that could have been made over the last two weeks, that we were
5 presented with two hours before the hearing. So, I object to
6 it going forward. I asked the debtors to adjourn. They said
7 no. So, I'm asking Your Honor. If Your Honor says no, then
8 we'll proceed, but I did want to note my objection for the
9 record that we're seeing, again, this is one material instance
10 on the intercompany claims of substantive changes in the
11 disclosure statement that have a material impact on plan
12 recoveries without really any amount of time to adequately
13 review it, discuss it with the debtor, diligence it or anything
14 else, it's just not fair.

15 **THE COURT:** All right. Thank you. Anyone else wish
16 to address objections to the disclosure statement?

17 **MR. UZZI:** Good morning, Your Honor. Gerard Uzzi of
18 Milbank Tweed on behalf of the Ad Hoc Committee of Unsecured
19 Noteholders.

20 Your Honor, we filed an objection and comment and
21 motion yesterday, all in one pleading. The gist of it was Your
22 Honor, on one hand, to put the Court on notice that we are
23 disappointed, obviously, with the results of the auction. We
24 are not going to get a distribution and therefore we will be
25 objecting to the plan. I am not here to argue any of those

1 issues today, just to let the Court know where we think things
2 are going. The other thing that we wanted to make sure -- and
3 we were doing it prophylactically and I think we have a
4 resolution already, is to make sure we get a fair shake with
5 respect to being able to present our objection.

6 Your Honor, we have been from the beginning very
7 supportive of the debtor's efforts to market these assets. And
8 the last time we were here, we were supportive of the timeline
9 that we're on now, which is a shortened timeline from approval
10 of the disclosure statement to getting to confirmation and
11 we're not going to go back on our word on that. But we wanted
12 to make sure that we weren't going to get caught up in some
13 sort of technicality now with respect to what the rules provide
14 for discovery and the timeline that we're on.

15 We don't need an order from Your Honor with respect
16 to specific discovery schedule. It was just the best way to
17 put the issue before the Court today.

18 **THE COURT:** So, is the statement I made actually
19 adequate to protect what you need?

20 **MR. UZZI:** Yes. What I would suggest -- and we've
21 already begun to do it -- is that we meet and confer with the
22 parties. We try to develop a schedule with them consensually.
23 If we can't get there, we understand Your Honor is very
24 available to resolve discovery disputes and we'll just contact
25 Your Honor to do it as we see fit. I am hopeful and optimistic

1 that we, you know, will be able to work through that with the
2 parties. And so, in light of that, I think that your
3 statements resolve our motion and we don't really have an
4 objection to solicitation at this point as long as we're going
5 to get a fair shake. And if we don't, we will be back before
6 Your Honor seeking appropriate relief at that time.

7 **THE COURT:** All right. So, I'm going to take ECF
8 544, which was your request, abating it. It can be brought
9 back to life with the motion filed so that it's been pending.
10 You don't need to file any motion --

11 **MR. UZZI:** All right. Thank you, Your Honor.

12 **THE COURT:** -- so, if the discovery can't be worked
13 out. Typically, I'll try to do that on the phone and not
14 require everybody to show up. But I am sticking with what I
15 said, which is if they want expedited confirmation, they have
16 to do expedited discovery and hopefully you-all can all work on
17 a consensual schedule.

18 **MR. UZZI:** That's perfect, Your Honor. Thank you
19 very much.

20 **THE COURT:** Thank you. Any other party want to voice
21 objections?

22 **MR. HIGGINS:** Your Honor, John Higgins for the record
23 on behalf of Whitton. We also filed a limited objection and
24 Mr. Feinstein has raised an issue that we were negotiating with
25 the debtor about. We are concerned about the definition of the

1 intercompany claims and the treatment under the plan. So, I
2 will wait to see how that plays out to see how it's resolved.
3 Also, Your Honor, just to note, and I haven't had a chance to
4 talk to Mr. Weiland about this, but under the treatment of
5 Class VI in the summary of expected recoveries --

6 **THE COURT:** Do you know what -- do you know what page
7 that's on?

8 **MR. HIGGINS:** It looks like page 8 of the redline,
9 Your Honor. I think it may be a typo but, Class VI, Cobalt
10 General Unsecured Claims.

11 **THE COURT:** Right.

12 **MR. HIGGINS:** If you roll down to the last clause, it
13 says up to the payment in full of such holders, allowed
14 subsidiary to a nonsecured claim -- I think that's probably a
15 dupe of Class V. I think it should be allowed Cobalt General
16 Unsecured Claims.

17 **MR. WEILAND:** That's correct. And we will make that
18 fix.

19 **THE COURT:** Thank you.

20 **MR. HIGGINS:** And obviously, Your Honor, the
21 treatment of the intercompany claims, we'd reserve all rights
22 obviously to argue about the allowance of that claim and/or
23 recharacterization.

24 **THE COURT:** Let me hear from Mr. Weiland on how the
25 statement in the disclosure statement is consistent with the

1 provision in the plan -- I'm sorry. Wait a minute,
2 Mr. Weiland, I thought we were done with the objections. I
3 didn't realize we had another one. I'm not trying to ignore
4 Chevron here today.

5 **MR. RIPLEY:** Judge, it's not an objection, it's just
6 we need to work on a point of clarification. Our original
7 disclosure statement objection, one of them was having an opt-
8 out for impaired creditors or parties that weren't voting in
9 lieu of being forced to file a formal confirmation objection.
10 We had that agreement. We just need to make sure that we get
11 that clarified either in the proposed notice they the attach --

12 **THE COURT:** Or in the order.

13 **MR. RIPLEY:** -- today in the order or even in a
14 separate notice in connection with assumed contracts. And we
15 will work that out.

16 **THE COURT:** Thank you.

17 **THE COURT:** Mr. Eisenberg.

18 **MR. EISENBERG:** Your Honor, Philip Eisenberg on
19 behalf of ConocoPhillips company. We filed a limited objection
20 as well. They've made additional disclosure about Shenandoah,
21 when they intend to assume the contracts. What we have really
22 are transactional mechanics that we need to deal with. We need
23 to see the sales order. We need to understand how the process
24 flows. We need to do due diligence on the acquirers and things
25 of that nature, but those will all be pushed towards

1 confirmation, Your Honor, and we'll work diligently with the
2 debtors to make that work.

3 **THE COURT:** Thank you for the announcement.

4 **MR. EISENBERG:** Thank you, Your Honor.

5 **THE COURT:** Mr. Etkin -- oh, I'm sorry. He's tried a
6 couple of times to get up here first. He's been polite.

7 **MR. ETKIN:** That's okay. I'm in the cheap seats,
8 Your Honor. Michael Etkin, for the record, for the Securities
9 Plaintiffs. Mr. Weiland is correct. We have worked back and
10 forth with language regarding the class-wide opt-out, which is
11 not reflected in paragraph 21 of the blackline of the
12 disclosure statement order.

13 **THE COURT:** Right.

14 **MR. ETKIN:** We did have some discussions prior to
15 Your Honor taking the bench about a slight tweak to that
16 language, which can be accomplished in the context of whatever
17 additional tweaks the debtor is going to be making to the
18 documents, including the reference to the appropriate paragraph
19 in the plan. Our disclosure statement objection, Your Honor,
20 raised to other issues which we have agreed will be taken up at
21 confirmation if we can't resolve them between now and then.
22 And the last item that we discussed with the debtor in the
23 hallway was the issue of notice that Your Honor spent some time
24 on and given the provision in the disclosure statement that the
25 Securities Plaintiffs would be able to opt out on a class-wide

1 basis, we've indicated to Mr. Weiland that we have no problem
2 with notice to us being the notice to the class given,
3 especially given the certification in the District Court and
4 more importantly, the new provision in the disclosure statement
5 order.

6 **THE COURT:** Thank you, sir. Mr. Savin.

7 **MR. SAVIN:** Good morning, again James Savin, Akin,
8 Gump, Strauss, Hauer and Feld on behalf of the Ad Hoc Second
9 Lien Group. We are still discussing with the debtors a few
10 additional tweaks to make sure the relative priorities and
11 appropriate waterfall are crystal clear in the document. I
12 think those are going to be easily resolvable between now and
13 whenever Your Honor proves the final document with the tweaks,
14 but there are a few more tweaks coming that I think we are in
15 agreement on and we're moving forward that can be easily
16 documented.

17 **MR. WEILAND:** I can confirm that, Your Honor.

18 **THE COURT:** Thank you, sir. Anybody else want to
19 raise any objections? All right. All the parties that haven't
20 spoken up, your objections to confirmation are all preserved
21 and no one needs to state that on the record.

22 Let me hear from the debtor what the response is to
23 the allegation by the committee that the intercompany provision
24 in the disclosure statement is inconsistent with the
25 intercompany provision in the plan.

1 **MR. WEILAND:** Sure, Your Honor, thank you. On the
2 intercompany claims point, Your Honor, what we have tried to do
3 in the disclosure statement is clarify the plan provision in
4 response to objections raised by Mr. Feinstein and Mr. Higgins.
5 This language was discussed with Mr. Higgins yesterday before
6 we put it in and finalized it. We were doing it in an effort
7 to clarify what the plan says. I don't think that it's at all
8 inconsistent.

9 **THE COURT:** So, here's the plan that got filed.

10 **MR. WEILAND:** Yes, Your Honor. And if you're looking
11 at well, I had the redline of page 21. So, it may be a page
12 earlier, but it's the treatment of Class VII, Intercompany
13 Claims. Your Honor, what this says is that intercompany claims
14 may be either reinstated or canceled provided that no
15 distribution will be made and reinstatement will be solely to
16 determine the rider entitlement of other claimants to
17 recoveries. So, what we're trying to say there is we are not
18 going to take cash from one Cobalt entity and move it either to
19 be ultimately distributed or to be parked in some other Cobalt
20 entity. What we are doing -- because according to our books
21 and records and our schedules and statements -- there are
22 intercompany liabilities, intercompany claims, we will account
23 for those in determining any other creditor's right to an
24 ultimate distribution.

25 **THE COURT:** So, let me deal with a hypothetical

1 numeric situation. Let's assume that I have a subsidiary
2 entity and that subsidiary entity has \$1 million of assets,
3 cash, as its only asset. And it has \$10 million of claims of
4 which 9 million are intercompany claims. What happens to the
5 remaining million of general unsecured claims against that
6 subsidiary?

7 **MR. WEILAND:** Your Honor, presuming that all of the
8 claims are of the same priority and we think that the
9 intercompany claims are of the same priorities as general
10 unsecured claims, the 9 million of intercompany and the 1
11 million of third-party claims would share pari passu in the \$1
12 million of assets.

13 **THE COURT:** So, this says no distribution will be
14 made on account of the intercompany claims. And then you just
15 said they would get 900,000. So, tell me how that -- what you
16 just said is consistent with --

17 **MR. WEILAND:** Your Honor, to take your hypothetical
18 one step further than to map it onto what we are saying here.
19 If the \$9 million of intercompany unsecured claims were held by
20 a parent or sister entity and there were third-party claims
21 against that entity of --

22 **THE COURT:** Let's take the first example which is
23 assume the parent owns it.

24 **MR. WEILAND:** If the parent owns the claims, Your
25 Honor, and against that parent there lie other claims.

1 **THE COURT:** Right.

2 **MR. WEILAND:** Then we would -- and those claims
3 aren't otherwise being satisfied -- we would take the \$9
4 million of intercompany claims into account when determining
5 those claims against the parent's entitlement to a
6 distribution. So --

7 **THE COURT:** So, take my example of you have \$10
8 million in claims of which 9 million are owed by the parent.
9 Everything is unsecured, and there's \$1 million in cash.

10 **THE COURT:** So, does the parent get nine --

11 **MR. WEILAND:** And the \$10 million of claims against
12 the parent, Your Honor --

13 **THE COURT:** So, does the -- well, does the parent in
14 that example get \$900,000?

15 **MR. WEILAND:** The parent in that example -- the
16 parent wouldn't get anything. The creditor of the parent would
17 get \$900,000.

18 **THE COURT:** Okay. This needs to be -- this needs to
19 say that. I got what you're telling me. I don't think it -- I
20 don't think that I would have understood that without this
21 explanation. So, we need to redo that.

22 **MR. WEILAND:** I appreciate that, Your Honor. We can
23 try to clarify the plan language. We did try to explain that
24 in the disclosure statement with these extra, these extra
25 sentences.

1 **THE COURT:** Well, let's look back at the disclosure
2 statement and see.

3 **MR. WEILAND:** So, Your Honor, on the redline, it's
4 page 33.

5 **THE COURT:** Right.

6 **(Pause)**

7 **THE COURT:** So, you're telling me an intercompany
8 claim, which is unsecured, would diminish the amount that the
9 unsecured creditors could get under the subsidiary and
10 distribute money to the first or second lien holders in
11 addition to what's already in the plan.

12 **MR. WEILAND:** That's correct, Your Honor. If the
13 intercompany claims -- and in our case they are -- are of the
14 same priority, consistent with other unsecured claims and
15 again, as they are in this case, the intercompany claims form a
16 part of the secured creditors collateral package. The sharing
17 -- again, only in the notional sense, because we would pass
18 money from --

19 **THE COURT:** Tell me when you wouldn't make the
20 distribution on them? Because it sounds to me like you're
21 always going to give them their pro rata distribution.

22 **MR. WEILAND:** I think the --

23 **THE COURT:** Because you're not paying your seconds in
24 full, right? And they're secured. So, in every instance that
25 I can think of, you're going to be making a distribution pro

1 rata out of the intercompany. That's not objectionable on its
2 face, but let's just say that.

3 **MR. WEILAND:** I think what we were trying to say,
4 Your Honor, is that we may not, in fact, would not take cash
5 from the subsidiary in the hypothetical we've been talking
6 about and put it into a new bank account in the parent as an
7 interim step. If there are claims against that parent, we'll
8 account for those for the intercompany claims in determining
9 the distribution to the parent creditors. But there won't be
10 any actual distribution. There would be an accounting for it.

11 **THE COURT:** What's the -- what's the difference
12 between an actual pass-through distribution and a distribution
13 that goes around it? The effect on the intercompany claimant
14 is the same, which is they're being prorated out. That is not
15 objectionable on its face, I just don't think you can read that
16 from this.

17 **MR. WEILAND:** I think that's fair, Your Honor. And I
18 think the only difference is that from the debtor's
19 perspective, we're not taking two steps; we are taking one
20 step.

21 **THE COURT:** And what does the debtor care whether
22 it's taking two steps or one step?

23 **MR. WEILAND:** There are some -- there are some debtor
24 entities that don't hold cash, can't hold cash, don't have a
25 bank account. All we're trying to say here is that nothing in

1 the plan, even though the plan obligates us to --

2 **THE COURT:** Well, just include a provision that says
3 intercompany claims to the extent that they are allowed claims
4 will share in the distribution scheme. And then say in lieu of
5 a cash distribution to the company, there may be a direct
6 payment to creditors of that company. And that tells people
7 that there's a full sharing so that they may not get the full
8 intercompany. Then you have something on the intercompany side
9 that gives an estimate of how much the intercompanies are going
10 to be distributed. Does it change that part of your table to
11 give this full pro rata or is that part of the table accurate?

12 **MR. WEILAND:** That part of the table is accurate,
13 Your Honor. We've accounted for that.

14 **THE COURT:** Okay. I want the plan and the disclosure
15 statement both to sort of -- I want language in there so that I
16 can read it with that language and without you standing in
17 front of me to answer questions.

18 **MR. WEILAND:** Yes, Your Honor. Happy, happy to make
19 those changes and come back this afternoon.

20 **THE COURT:** Thank you. I'm going to preserve the
21 committee's due process objection until this afternoon. It may
22 still persist after you have not your 28 minutes but six hours.
23 And it may not still persist and I may overrule it. I don't
24 know, but I want you to have the full opportunity. It's not
25 that much to read. It may be difficult to absorb. And we'll

1 see whether or not you still have a due process objection this
2 afternoon. I would suggest -- not require -- that you allocate
3 a senior person like you or him to spend as much time with the
4 committee as the committee wants to understand things and to
5 answer their questions between now and this afternoon. And
6 that the other senior person can work on the redrafting. I'm
7 not requiring that, but I think that would be helpful so that
8 the committee gets the attention that an official committee
9 observes. So, let's meet with them today.

10 **MR. WEILAND:** Of course, Your Honor. If I may just
11 make one point, Your Honor. I hear Mr. Feinstein and I think
12 everyone in the room recognizes that we are on a very tight
13 timetable here and things happen on tight turnarounds. We sat
14 for hours yesterday with Mr. Feinstein and the committee's
15 financial advisors at our offices walking through a lot of the
16 new information that is in the disclosure statement. We have
17 certainly tried -- and I'm sorry that Mr. Feinstein is
18 disappointed where he is today and that our efforts haven't
19 satisfied him. But we really have tried to give out rates to
20 the committee.

21 **THE COURT:** I'm not taking sides on whether you tried
22 or not. I think you heard me say that I think it's a due
23 process question, not a rules question. It didn't get filed
24 until today.

25 **MR. WEILAND:** Understand. Your Honor.

1 **THE COURT:** Although it isn't that long, some of it
2 requires pretty deep understanding. I didn't figure out this
3 intercompany thing. So, I'm just asking for -- I'm not even
4 mandating it. I'm just telling you, your life is going to be
5 easier this afternoon if you take my suggestion.

6 **MR. WEILAND:** We will spend some time with
7 Mr. Feinstein and his team, Your Honor.

8 **THE COURT:** What time do you-all think you can be
9 reasonably ready and come back? It's really, I think between
10 you and Mr. Perez as where that major change will be and then
11 we're going to have the intercompany change that will occur.
12 You-all tell me. Three o'clock, four o'clock what do you want?

13 **MR. WEILAND:** I think we can be back at two o'clock,
14 Your Honor.

15 **THE COURT:** Okay. I have a hearing at 2:00, so
16 that's going to take me a little while. Can we do it at three?
17 Does anybody need to catch a plane where three doesn't work?

18 **MR. WEILAND:** I'm sorry, Your Honor, I think we can
19 make that work as well but one point that my partner just made
20 to me is that to the extent that there are disclosure
21 objections or substantive requests for additions to the
22 disclosure statement, I think we've been through all parties'
23 objections now. But to the extent --

24 **THE COURT:** Except for the committee. The committee
25 may learn more things during the course of the day and I'm

1 leaving them open to raise more objections.

2 **MR. WEILAND:** Yes, and we will -- we may have an
3 argument on that if we need to, Your Honor. But I would just
4 say on the record that to the extent that there are issues that
5 haven't been raised in court that could be addressed with
6 language, if those parties would speak now and come back to our
7 office with us to try to work out language, that would be
8 helpful.

9 **THE COURT:** Thank you. Okay. Any reason why we
10 can't adjourn until three o'clock today?

11 **MR. FEINSTEIN:** No, Your Honor, but I did want to
12 just want to say one thing that I neglected to do. It is a
13 solicitation issue because it sounds like this is kind of a
14 barred gate, raise your issues now, or they're going to be
15 deemed resolved. We did have one further issue --

16 **THE COURT:** I actually said that you could raise new
17 issues.

18 **MR. FEINSTEIN:** Yes. I just wanted to put it on the
19 record.

20 **THE COURT:** Go ahead.

21 **MR. FEINSTEIN:** Hopefully, we'll fix it during the
22 break. On the opt-out provision, they made most of our
23 changes. The one that remains unaddressed, which we think
24 should be addressed, is that they're going to deem a creditor
25 who votes to reject the plan, who doesn't check the box to opt

1 out, as being bound by the release.

2 **THE COURT:** Right.

3 **MR. FEINSTEIN:** And it seems to us if you simply
4 reject the plan, that should be sufficient to opt out on the
5 release that it's a trap for the unaware that they haven't
6 checked the box after rejecting the plan to reject the opt-out
7 release. That doesn't seem appropriate to us.

8 **THE COURT:** I'm not going to take sides in that until
9 confirmation.

10 **MR. FEINSTEIN:** Okay.

11 **THE COURT:** I don't think it's facially wrong to do
12 an opt-out for rejecting or accepting. There may be something
13 in particular about the case, but I'm not going to take sides
14 in that. You-all -- if you can work it out, that's fine. It
15 if you can't, we'll deal with it a confirmation.

16 **MR. FEINSTEIN:** Thank you.

17 **THE COURT:** All right.

18 **MR. WEILAND:** Your Honor, if I could take just a
19 minute to talk timing with Mr. Perez.

20 **THE COURT:** All right.

21 **(Pause)**

22 **MR. WEILAND:** So, Your Honor, I think we will do 3:00
23 if that's good.

24 **THE COURT:** Okay. I'll make one finding now.

25 **MR. WEILAND:** Yes, Your Honor.

1 **THE COURT:** Which is that I require that there be
2 substantial additional disclosure satisfactory for my sua
3 sponte concerns concerning the exculpation release provisions.
4 I find that the provisions in the revised disclosure statement
5 satisfy the sua sponte issues that I raised. That's without
6 prejudice as to whether they generate a different and separate
7 objection in terms of my sua sponte objections. I frankly
8 think that you did everything that I asked you to do. You went
9 through the details of what occurred. You gave me the reasons
10 why various decisions were made. I think all of that is now
11 out there for parties to review. It is out there for discovery
12 to occur as to whether it was all appropriate. But I think the
13 discovery in terms of the sua sponte issue is satisfactory and
14 I want that on the record that if I'm wrong, you know, somebody
15 can reverse me on it. But I didn't ignore it. So, I raised
16 the issue. I think you satisfied it.

17 **MR. WEILAND:** Thank you, Your Honor. I appreciate
18 that.

19 **THE COURT:** I'm putting that part to bed. So, we
20 won't be dealing with that again this afternoon. We're in
21 adjournment on this hearing until three o'clock. The Court is
22 in adjournment until 10 o'clock.

23 **MR. WEILAND:** Thank you.

24 **COURT OFFICER:** All rise.

25 //

1 **(Recess from 9:46 to 3:02 p.m.)**

2 **COURT OFFICER:** All rise.

3 **THE COURT:** All right, please be seated.

4 Mr. Weiland, did you-all use that time productively?

5 **MR. WEILAND:** I think so, Your Honor.

6 **THE COURT:** All right. Tell me what we have.

7 **MR. WEILAND:** For the record. Sir?

8 **THE COURT:** I said tell me what we have.

9 **MR. WEILAND:** For the record, Brad Weiland for the
10 Cobalt debtors. Your Honor, I do think we used the time
11 successfully and productively. We used almost all of the time,
12 so I don't have a printed copy of the new documents and we
13 weren't able to get them on file before we came over here to
14 restart the hearing.

15 **THE COURT:** Do you have them on a laptop or
16 something?

17 **MR. WEILAND:** I do have a drive for you if I could
18 hand this up.

19 **THE COURT:** Yup. We can also take it by email if you
20 prefer.

21 **MR. WEILAND:** This should have everything on it, Your
22 Honor.

23 **THE COURT:** For those of you that haven't been here
24 since we improved our technology system, we can now take --
25 during a hearing only -- email copies of proposed orders. So,

1 you don't have to bring flash drives. And there will be a
2 special email address but it will only be open during hearings.
3 So, if you send it in advance of the hearing, it'll get
4 destroyed.

5 **MR. PEREZ:** On purpose.

6 **THE COURT:** Very much on purpose.

7 **MR. WEILAND:** Avoids clutter.

8 **THE COURT:** Avoid ex parte contact. That's the idea,
9 so. But what will happen is we can give you -- we'll authorize
10 it on the record for you to send the email and then we'll give
11 you an information sheet that gives you an email address you
12 can send it to for the future.

13 **MR. WEILAND:** Thank you, Your Honor.

14 **THE COURT:** I'm going to turn back on the join.me
15 drive and make this so the other parties can see what we got.

16 **MR. WEILAND:** Your Honor, you'll see a clean, revised
17 copy and redlines against the versions filed earlier this
18 morning.

19 **THE COURT:** Okay.

20 **MR. WEILAND:** Of the plan, the disclosure statement,
21 and the disclosure statement order.

22 **THE COURT:** What do you think would be most helpful
23 to start with?

24 **MR. WEILAND:** I think the disclosure statement is
25 what we spent the most time on this morning, Your Honor. I

1 think it may make sense to start there.

2 **THE COURT:** Okay.

3 **MR. WEILAND:** Your Honor, the first changes that we
4 made were to address the settlement that we reached with the
5 First Lien Ad Hoc Group before this morning's hearing. We
6 changed their treatment first and foremost to remove any
7 reference to the potential reinstatement and instead provide
8 for payment in full in cash of their reduced claim amount at
9 the settlement level, the full amount less 3.5. And so, that's
10 reflected in the claims recovery table -- which I don't even
11 have a printed copy myself -- but I believe it's on page 8.

12 **THE COURT:** So, are these changes that I'm seeing
13 carries over from the second amended? Or are these only third
14 to fourth?

15 **MR. WEILAND:** These are new changes from the third
16 amended that was filed this morning.

17 **THE COURT:** Okay, so you only --

18 **MR. WEILAND:** I believe that this is actually the
19 fourth amended.

20 **THE COURT:** Right. These changes then are changes
21 that people need a chance to look at, right?

22 **MR. WEILAND:** Yes. These are new changes. I believe
23 most, if not everyone in the room, Your Honor, has had a chance
24 to look at them but we were making changes down to the wire.

25 **THE COURT:** Also, this will give people on the phone

1 a chance to look at them as well.

2 **MR. WEILAND:** Yes, Your Honor.

3 **(Pause)**

4 **MR. WEILAND:** You'll see on the screen now, Your
5 Honor, one change pops up a few different places, the one
6 changed to address the intercompany claim issues as we
7 discussed earlier as well.

8 **THE COURT:** I appreciate you doing that. I just
9 think that's much easier for me to understand than what we had
10 before.

11 **(Pause)**

12 **MR. WEILAND:** You'll see, Your Honor, the actual
13 voting and impairment chart doesn't change. The more detailed
14 chart does change the first lien note claims treatment. What
15 did change here is the Class IV treatment of the second lien
16 notes. We did remove the reinstatement toggle there based on
17 the value available for distributions.

18 **THE COURT:** Okay.

19 **MR. WEILAND:** And discussions with Mr. Savin.

20 **(Pause)**

21 **THE COURT:** So, with respect to the first lien claim
22 amount, if as of the date of the hearing, the actual interest
23 accrual is -- I'm using that as just one of an infinite number
24 of examples -- if the actual interest rate accrual varies from
25 this estimate by a million dollars, then the 552.6 will be

1 adjusted by precisely that amount of the variance that went
2 into the 552.6 claim?

3 **MR. PEREZ:** Look at page 47, Your Honor.

4 **MR. WEILAND:** There's a more detailed buildup --

5 **MR. PEREZ:** There's a chart that has the benefits.

6 **THE COURT:** Thank you.

7 **MR. WEILAND:** You are right, Your Honor. This claim
8 -- for illustrative purposes only was using April 30th as the
9 effective date.

10 **THE COURT:** Right.

11 **MR. WEILAND:** That's where the 552.6 comes in but
12 there is an actual interest component that would make that
13 variable.

14 **(Pause)**

15 **THE COURT:** Okay.

16 **MR. HIGGINS:** Your Honor, can you go back just a
17 second -- I saw a reference to Whitton.

18 **THE COURT:** The one that said your client will not be
19 paid anything?

20 **MR. HIGGINS:** Yeah, that one Your Honor. Right
21 there. Hold on. Okay, thank you, Your Honor.

22 **THE COURT:** Are there more changes as we can continue
23 to comb through this?

24 **MR. WEILAND:** There -- there are Your Honor.
25 Largely, the changes, or many of them, are captured in the

1 summary charts.

2 **THE COURT:** Right.

3 **MR. WEILAND:** And what you'll see in many instances
4 is just more detail provided in the narrative. But one of the
5 details that we did add was a buildup of the first lien note
6 settlement claim amount and we did also change the narrative
7 around intercompany claims and Creditors Committee had a few
8 additions as well.

9 **(Pause)**

10 **MR. WEILAND:** This Section D, Your Honor, as well as
11 the following section came out with the removal of the
12 reinstatement toggles.

13 **(Pause)**

14 **THE COURT:** I'm assuming that anybody on the phone
15 that sees anything they want to jump on will press five-star.

16 **(Pause)**

17 **MR. WEILAND:** This is the chart that we mentioned
18 earlier. It was a long journey to get to it.

19 **THE COURT:** Thank you.

20 **MR. WEILAND:** And additional to describing the
21 settlement in the narrative, we provided a chart that shows the
22 buildup of all the various components of the first lien claims
23 and then backs out interest that's been paid during the case
24 and the settlement amount, the \$3.5 million.

25 **THE COURT:** Is that the same number that was up in

1 the earlier chart?

2 **MR. WEILAND:** The 552.6 million, the middle number
3 is, Your Honor.

4 **THE COURT:** Okay.

5 **MR. WEILAND:** And that's just because that waterfall
6 uses April 30th for everything.

7 **THE COURT:** Does that conclude all the changes or are
8 there more that are going to still be --

9 **MR. WEILAND:** There may be --

10 **THE COURT:** I saw a footnote --

11 **MR. WEILAND:** There may be some changes in the risk
12 factors which start in a page or two.

13 **MR. HIGGINS:** Pages 40 -- I'm sorry, page 53.

14 **THE COURT:** I don't see anything on 52. There we go.

15 **MR. HIGGINS:** 53 and 54.

16 **MR. WEILAND:** Here, Your Honor, we did take out risk
17 factors that no longer applied and replaced it with one related
18 to the new settlement.

19 **THE COURT:** Okay.

20 **MR. WEILAND:** That risk factor there, Your Honor,
21 added at the request of the committee, is the last change in
22 the document.

23 **THE COURT:** Thank you. All right.

24 Before I allow other parties to object to this
25 disclosure statement, I assume the change to the plan is simply

1 conforming on the intercompany claims and on the settlement
2 agreement.

3 **MR. WEILAND:** That's correct, Your Honor.

4 **THE COURT:** And then there was a third document.

5 **MR. WEILAND:** I think there were two changes from
6 Mr. Savin and his client group about the priority and where
7 unencumbered value was to be deployed.

8 **THE COURT:** Okay.

9 **MR. WEILAND:** But that was --

10 **THE COURT:** And do we need to look at the disclosure
11 statement approval order for changes?

12 **MR. WEILAND:** Your Honor, the only changes there were
13 changes -- I think they fall into two baskets. One was what
14 Mr. Etkin mentioned this morning, slight tweaks to the language
15 that we added last night to address the Securities Plaintiffs'
16 objections.

17 **THE COURT:** Right.

18 **MR. WEILAND:** And attached to this in the exhibits is
19 a new opt-out form that will go to contract counterparties
20 separate from what the parties may get as voting or not voting
21 creditors.

22 **THE COURT:** Okay. Let me hear from others then about
23 the disclosure statement and whether the disclosure statement
24 should now be approved and what level of evidence anyone wishes
25 to introduce, either in support of or in opposition to the

1 disclosure statement.

2 **MR. PEREZ:** Your Honor, Alfredo Perez on behalf of
3 the first lien group.

4 Obviously, Your Honor, we would support entry of the
5 disclosure statement and I think we took a lot of time to make
6 sure that way, you know, specifically set forth what it was
7 calculated as of various dates.

8 **THE COURT:** I think you did, yeah. Is the committee
9 now okay or does the committee and still have an issue that
10 you're going to raise? I allowed you to preserve all your
11 objections until this afternoon.

12 **MR. FEINSTEIN:** Your Honor. For the record, Robert
13 Feinstein.

14 So, I think we worked out the language. We have
15 three concerns that remain that I just want to state for the
16 record, one just to confirm that the committee's letter will be
17 sent out. The debtors don't want to include it in their
18 package, but at the last hearing, Your Honor said they would
19 have to pay for it. So, the letter is attached to our full-
20 blown disclosure statement objection, so that we can provide
21 that as a separate document, but we'd like that mailed on the
22 same date and to the same list obviously as the disclosure
23 statement when it gets mailed out. That was one concern. I
24 think the debtors have confirmed that they will pay for the
25 mailing and arrange for the mailing through the claims agent.

1 So that was concern number one.

2 **MR. WEILAND:** Your Honor, we'd rather not, but yes,
3 we have agreed to send the letter out.

4 **THE COURT:** Well I didn't make the issue of claims
5 agent. I would let you pay for them to retype all the
6 addresses if you prefer.

7 **MR. FEINSTEIN:** So that was one issue. Another issue
8 is the scheduling issue, Your Honor. The confirmation hearing
9 is on March 30th. That's Good Friday and also that night is
10 the first night of Passover and that Sunday is Easter Sunday.
11 That is a -- for those that are religious, a suboptimal date
12 for the hearing. If it's at all possible for Your Honor to
13 hear us early the following week, I mean Monday is probably
14 just as bad given the holiday, but Tuesday, Wednesday,
15 Thursday, any of those days would relieve a lot of us who have
16 families who would be very upset if we were here instead of
17 there on the 30th.

18 **THE COURT:** Can we do it on the third? I would
19 really -- I did not realize I had set it on Good Friday and I
20 would really rather not set it on Good Friday for those very
21 reasons.

22 **MR. WEILAND:** Your Honor, we are sympathetic to the
23 holiday. We really are. I think I recognize and agree with
24 Mr. Feinstein that's not optimal. I think there is real value
25 in our minds to getting the plan confirmed before the end of

1 that week so that the holiday, notwithstanding, we may work to
2 get to a closing early the next week.

3 **THE COURT:** Before the end of which week?

4 **MR. WEILAND:** Before the week that ends on Good
5 Friday.

6 **THE COURT:** If we hold a hearing on the 3rd couldn't
7 you still close during the week of the second?

8 **MR. WEILAND:** I would think that if we could get
9 through in one day we probably could Your Honor. I think that
10 the risk is such that we'd rather keep the date, as hard as it
11 may be for people, myself included, so that we would mitigate
12 that risk.

13 **THE COURT:** I'm going to move the date to the third
14 and we're going to add to our calendar that my staff needs to
15 be prepared to stay until 10 o'clock at night. So, we'll go
16 from 9 a.m. to 10 p.m. to accommodate your need to be sure that
17 we finish on that day. Obviously, that doesn't guarantee it,
18 but I think it means it will happen. So, I'm not going to
19 leave you at five or six or seven or eight. And we'll just try
20 and get it done. So, we'll need to make that, but I don't want
21 to do this on a religious holiday. I don't think that's
22 appropriate.

23 **MR. WEILAND:** Understood Your Honor.

24 **THE COURT:** I think you don't either and I appreciate
25 your -- what you're telling me is your real need is to close by

1 the end of the week. So, I think I can accommodate that just
2 by making me and everybody else work harder.

3 **MR. WEILAND:** Thank you, Your Honor.

4 **THE COURT:** Probably especially you because you'll be
5 up all night, but that's okay.

6 **MR. WEILAND:** We'll try to keep you and your staff
7 not here until 10 o'clock.

8 **THE COURT:** Well -- I'll commit to stay until 10. At
9 some point, I know that my own ability to absorb stuff goes
10 away. If I get to that -- sometimes if I stay later than 10, I
11 have to quit because I don't think I'm doing a good job. And I
12 guess in theory, I'm getting older. What happens at 9:30, you
13 know, but we'll stay till 10.

14 **MR. WEILAND:** Thank you.

15 **MR. FEINSTEIN:** Thank you very much, Your Honor.

16 So, let me raise the last point. It doesn't bear on
17 the disclosure statement so much as process. We had a
18 committee meeting in the interim to address the fact that the
19 debtor is mailing out a disclosure statement with blanket
20 releases of the derivative claims. And it's obviously a
21 controversial thing. There's a lot of heat and light around
22 that. We tried to resolve it. We may still, but it's not
23 resolved today. So, the debtor is going out to solicit a plan
24 with blanket releases and they're going to be the subject of a
25 challenge at confirmation.

1 So, I want to go back to where we were at the
2 beginning of the case. Your Honor made an observation that
3 debtor can file any plan they want. They have exclusivity.
4 That's their right to file a plan and it can say what they want
5 to say. So, their plan says that there's blanket releases.
6 It's the vehicle for distributing \$1 billion of cash to various
7 tranches of debt around the room. And they're heading towards
8 confirmation with an integrated plan. They said that the
9 releases are an integral part of the plan. So, our concern is
10 what's going to happen if we get to confirmation of the plan
11 that they drafted with integral releases and the releases are
12 not sustainable? Now we have confirmation denied. And we've
13 got the money trapped in the estate.

14 So, there's two remedies for this. One would be an
15 acknowledgment by the debtors today -- which they've
16 respectfully declined to do -- which is to say look, we'll have
17 a fair fight with our releases at confirmation and if they
18 don't pass muster, we'll sever them, stripe them out, and
19 confirm the rest of the plan so we can give the creditors their
20 money. The other would be for the filing of a motion to
21 terminate exclusivity for the committee to file a competing
22 claim that doesn't have the controversial releases. We would
23 prefer not to do that, but if the debtor is going to stick to
24 their guns that this is the plan we drafted, this is the plan
25 we're going to seek to confirm, and if confirmation is denied,

1 then what will be will be. Then, you know, I'm just kind of
2 telegraphing to Your Honor that if we can't get clarity from
3 the debtor that they will strip the releases out if they lose
4 the confirmation, we think it's appropriate to file another
5 plan in the case that doesn't have those releases so that when
6 the money comes in we can distribute it and not start a
7 planning process over again.

8 **THE COURT:** I won't change what I said before, which
9 is they can file and try to prosecute what they want to file
10 and try to prosecute. I sort of understand. What you've
11 described to me though, even if they thought they would be
12 willing to do that, they can't say they're willing to do it
13 because it destroys their rationale for doing it.

14 **MR. FEINSTEIN:** Yes, but --

15 **THE COURT:** I sort of understand the conundrum that
16 we're in and we'll just have to wait and see what happens at
17 that hearing. I'm not going to authorize you to file a motion
18 to terminate exclusivity, but just like they have a right to
19 file a claim, you have a right to file a motion. So, we'll see
20 what happens.

21 **MR. FEINSTEIN:** Your Honor, it's grafted on just
22 advising Your Honor that there's a good likelihood that we will
23 file unless they're willing to provide some comfort to all the
24 creditors at this point.

25 **THE COURT:** I understand that and I appreciate the

1 heads up. And I think there's nothing appropriate for me to do
2 about that right now.

3 **MR. FEINSTEIN:** Understood. Just making record.
4 Thank you.

5 **THE COURT:** Thank you. So, do I need to do anything
6 with -- let me -- let me just be clear then. You're
7 withdrawing objections to the disclosure statement itself,
8 right?

9 **MR. FEINSTEIN:** They're resolved, yes.

10 **THE COURT:** Thank you. Is there anyone that has any
11 unresolved -- that's a better term -- any unresolved objections
12 to the disclosure statement?

13 Mr. Weiland, is there any evidence that you want to
14 introduce in support of approval of the disclosure statement?

15 **MR. WEILAND:** Your Honor, the one piece of evidence
16 that I would offer is the declaration that we filed last -- or
17 this morning by David Powell our chief financial officer who
18 filed if Docket 555.

19 **THE COURT:** Is there any objection to the admission
20 of ECF-555 as substantive evidence today?

21 **MR. PEREZ:** No, Your Honor.

22 **THE COURT:** With no objection, 555 is admitted today.

23 **(ECF-555 admitted into evidence)**

24 **MR. WEILAND:** Your Honor, the declaration does make
25 clear that Mr. Powell, who designed the disclosure statement,

1 has carefully read and reviewed the plan and disclosure
2 statement filed this morning and that the disclosure statement
3 includes true and complete information and is accurate in terms
4 of its description to the best of his knowledge, information,
5 and belief. That was filed with respect to the documents filed
6 this morning, but I think the sentiment holds for what we would
7 submit in court today. I think that's the only information we
8 would be offering in support of approval of this disclosure
9 statement.

10 **THE COURT:** All right. I'm going to approve the
11 disclosure statement and I find that it contains adequate
12 information to allow solicitation of the plan. And I find that
13 there are no provisions of the plan that are so facially
14 unconfirmable that there is no set of circumstances under which
15 they can be approved under the right factual scenario. So, I'm
16 overruling any unresolved objections and approving the
17 disclosure statement. Where to now?

18 **MR. WEILAND:** Thank you, Your Honor.

19 **THE COURT:** Are you going to go to the order?

20 **MR. WEILAND:** Yes, we can go to the order, Your
21 Honor.

22 **THE COURT:** Can I ask you a practical question
23 without trying to -- I'm really am not trying to force you to
24 do something, but I want to understand something.

25 **MR. FEINSTEIN:** Yes, Your Honor.

1 **THE COURT:** You don't want to include the committee's
2 letter and I've already said I'm not going to make you include
3 the committee's letter and I'm not going to go back on that.
4 Why not? I mean --

5 **MR. WEILAND:** Your Honor --

6 **THE COURT:** It just seems to me it almost gets lost
7 in your big package and now we're going to send it in a
8 separate package where it doesn't get lost and I would want to
9 include it my package. And I'm just trying to understand why
10 you don't want that lost, so.

11 **MR. WEILAND:** Your Honor, I think this was discussed
12 on the record a little bit at the last hearing. One thing that
13 we haven't done since we talked to Mr. Feinstein this afternoon
14 is talk through the practical steps of actually getting that
15 letter out with our noticed agent. I think based on cost
16 considerations, it is likely that that is a combined mailing.
17 We still would rather not include it as an official piece or
18 piece of or exhibit to the disclosure statement. The people
19 may be getting those in the same envelope.

20 **THE COURT:** Oh, I don't think his request was that it
21 became part of the disclosure. His only request was that you
22 mail it with it. And that's what made the most sense to me. I
23 just don't think I have the authority to order it and I just
24 wanted to understand logically. But if you're telling me
25 that's probably what's to happen, then --

1 **MR. WEILAND:** We haven't worked out the details, Your
2 Honor. We will certainly mail --

3 **THE COURT:** I was asking that to just sort of educate
4 myself because it didn't make sense why you wouldn't -- why you
5 would want to do it that way.

6 **MR. WEILAND:** You know again, cost consideration as
7 much as anything, Your Honor, I think it may be included in the
8 same envelope.

9 **THE COURT:** And I'm correct. You're not saying it
10 should be part of the disclosure statement, you just want it in
11 the same envelope, right?

12 **MR. PEREZ:** That's right.

13 **THE COURT:** Yeah.

14 **MR. PEREZ:** Although suggestion was made that maybe
15 we use bright pink paper so people can see it.

16 **THE COURT:** You know, I actually had that dispute
17 once. The judge that I took that dispute to was not very happy
18 that I did.

19 **MR. PEREZ:** That's why we are happy with 8-1/2 by 11
20 white in the same envelope.

21 **THE COURT:** All right. So, in the order, do we need
22 to change -- since I'm actually going to now sign this order,
23 it seems to me I probably need to change the date of the
24 confirmation hearing. Is that going to change any other dates
25 in there?

1 **MR. WEILAND:** I don't think it should, Your Honor.
2 I'm just consulting with some of the parties, I think we'll
3 hold the voting deadline, the objection deadline for the week
4 before and work through those leading up to the hearing.

5 **THE COURT:** So, do we need to look at the redlines of
6 this order or are we better off just pulling up the blackline
7 of the order and then going through to where I can fix it as we
8 go?

9 **MR. WEILAND:** I think the blackline is fine, Your
10 Honor. Again, the only changes here are some language
11 addressed as to various Plaintiffs -- yeah, I think you can
12 pull up the live Word version, Your Honor, relying on the black
13 instead of the red.

14 **THE COURT:** Right. Okay.

15 **MR. WEILAND:** Your Honor, the one complication here,
16 you'll see this footnote number three, the dates, the new dates
17 that this order would establish don't include the dates that
18 were established by the scheduling order two weeks ago.

19 **THE COURT:** Right.

20 **MR. WEILAND:** So, I think we may need to add a new
21 row to say confirmation hearing rescheduled notwithstanding
22 that prior order.

23 **THE COURT:** Does that work just like that?

24 **MR. WEILAND:** I believe so, Your Honor. You said
25 that you were willing to start at nine a.m.

1 **THE COURT:** Do want to start earlier? Nine a.m. East
2 Coast, I mean 9 a.m. Central is when you about when you-all
3 work on the East Coast, so.

4 **MR. WEILAND:** Why don't we say 8:30, Your Honor.

5 **THE COURT:** Right.

6 **MR. WEILAND:** I don't believe any further changes to
7 the order are necessary for the schedule, Your Honor, or for
8 anything else that we discussed.

9 **THE COURT:** I think if I just -- let me just run
10 through it really quickly and see if anything pops out just in
11 case we have a -- so the attachments, you're going to conform
12 to this change date, right?

13 **MR. WEILAND:** Your Honor, I would have to check. I
14 know there was a notice that went out when we had the
15 scheduling order entered that had the old hearing date. So, I
16 think if it's not repeated here, we would have to add it or
17 file a new notice with the Court and serve out notice just of
18 the confirmation hearing date.

19 **THE COURT:** That's not going to get served with the
20 disclosure statement?

21 **MR. WEILAND:** No, it would. I think it was served
22 once already and obviously, with the date change, we'll have to
23 serve something new. I just don't remember and I don't have a
24 printed copy so I don't know if it was included in the notices
25 here.

1 **THE COURT:** But can't this order constitute that
2 notice?

3 **MR. WEILAND:** Yes, I think it can, Your Honor.

4 **THE COURT:** Okay.

5 **MR. WEILAND:** I just don't know in the attached form
6 of notice --

7 **THE COURT:** So, attached to this order --

8 **MR. WEILAND:** -- if it's the old date --

9 **THE COURT:** But the attached form of notice -- oh, I
10 see.

11 **MR. WEILAND:** -- pops up again.

12 **(Pause)**

13 **MR. WEILAND:** There you go.

14 **THE COURT:** There's a lot of them, aren't there?

15 **MR. WEILAND:** There are a number of exhibits, Your
16 Honor. You're down to the last two.

17 **THE COURT:** Looks like that's it.

18 **MR. WEILAND:** I think that does it.

19 **THE COURT:** So, are the attachments to the order here
20 in printed copy single-sided, or do you want me to print
21 everything from scratch?

22 **MR. WEILAND:** I'm not sure I follow, Your Honor.

23 **THE COURT:** I need to print a confirmation order and
24 sign it?

25 **MR. WEILAND:** Yes, Your Honor.

1 **THE COURT:** It has quite a few pages worth of
2 attachments.

3 **MR. WEILAND:** Exhibits, sure.

4 **THE COURT:** If all the exhibits are here and already
5 printed, then I won't reprint them, I'll take yours. But if
6 they're not --

7 **MR. WEILAND:** I don't think we have the version with
8 the changed date, unfortunately, Your Honor.

9 **THE COURT:** Oh, good point. Okay.

10 **MR. WEILAND:** Your Honor, the other -- what Mr. Perez
11 just pointed out too, as an exhibit to this would be the
12 disclosure statement and the plan, which were obviously filed
13 separately.

14 **THE COURT:** Those I think we'll just electronically
15 attach those.

16 **MR. WEILAND:** I think that would be fine, Your Honor.

17 **THE COURT:** Yeah.

18 **MR. WEILAND:** No signature.

19 **THE COURT:** So, what we're going to attach, in
20 addition to what I'm printing, is 553?

21 **MR. WEILAND:** Judge, I think it would be the new
22 versions on your drive.

23 **THE COURT:** The new ones on the flash drive? Okay.

24 **MR. WEILAND:** And we're happy to go file those after
25 if that's easier, that they've not been filed yet.

1 **THE COURT:** We'll attach them off the drive. Okay.
2 They do still need -- you are going to still file them though,
3 right?

4 **MR. WEILAND:** Yes, we will -- we will file the final
5 solicitation version of the documents while we're here.

6 **THE COURT:** Okay. What else do we need to accomplish
7 today?

8 **MR. WEILAND:** I think that's it for today, Your
9 Honor. Thank you very much for your time.

10 **THE COURT:** Does anybody else have any motions that we
11 have not called or any matters that we were intending to carry
12 until this afternoon?

13 All right. I'll sign this order and then we're in
14 adjournment. Thank you.

15 **MR. WEILAND:** Thank you, Your Honor.

16 **MR. PEREZ:** Thank you, Your Honor.

17 **(Proceeding concluded at 3:41 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written over a horizontal line.

Signed

March 13, 2018

Dated

TONI HUDSON, TRANSCRIBER

Designation No. 15

DX 87

FILED UNDER SEAL

Designation No. 16

DX 88

FILED UNDER SEAL

Designation No. 17

DX 129

FILED UNDER SEAL

Designation No. 18

DX 130

FILED UNDER SEAL

Designation No. 19

DX 138

FILED UNDER SEAL

Designation No. 20

DX 148

FILED UNDER SEAL

Designation No. 21

DX 155

FILED UNDER SEAL

Designation No. 22

DX 175

FILED UNDER SEAL

Designation No. 23

DX 177

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

COBALT INTERNATIONAL ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 17-36709 (MI)
)
) (Jointly Administered)
)

**BUSINESS RECORDS DECLARATION OF DAVID D. POWELL,
CHIEF FINANCIAL OFFICER OF COBALT INTERNATIONAL ENERGY, INC.**

I, David D. Powell, hereby declare as follows under penalty of perjury:

1. I am the Chief Financial Officer of Cobalt International Energy, Inc., one of the above-captioned debtors and debtors in possession (“Cobalt” or the “Debtors”). I have served as the Cobalt Chief Financial Officer since 2016. As part of my position at Cobalt, I am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.

2. Listed in the table below are records produced by the Debtors in this matter and disclosed on the Debtors’ exhibit list filed March 30, 2018 (Dkt. No. 693). It is the regular practice of the Debtors to make these types of records at or near the time of each act, event, condition, opinion, or diagnosis set forth. It is the regular practice of the Debtors for these types of records to be made by, or from information transmitted by, persons with knowledge of the matters set forth. It is the regular practice of the Debtors to keep these types of records in the course of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Debtors’ service address is: 920 Memorial City Way, Suite 100, Houston, Texas 77024.

regularly conducted business activity and it is the regular practice of the business activity to make these records.

Exhibit Number	Descriptions
1	9/25/2007 Minutes of Meeting of Board of Directors (COBALT_DEBTORS_0000031406)
4	8/11/2009 Minutes of Meeting of Board of Directors (Cobalt_000135702)
5	11/12/2009 Minutes of Meeting of Board of Directors (Cobalt_000135143)
6	12/9/2009 Compliance Certification for Nazaki (Cobalt_000281488)
8	12/18/2009 Amended & Restated Certificate of Incorporation (COBALT_DEBTORS_0000021753)
9	1/28/2010 Minutes of Meeting of Board of Directors (Cobalt_000135148)
10	2/11/2010 Control Risks Interim Report (Cobalt_000194855)
11	2/12/2010 V&E/OMM Memo (Cobalt_000211053)
12	2/22/2010 Minutes of Telephonic Meeting of Board of Directors (Cobalt_000135154)
13	2/22/2010 Tri-Lateral Certification (Cobalt_000281492)
14	4/6/2010 Proxy Statement (COBALT_DEBTORS_0000032698)
15	6/8/2010 Control Risks Report (Cobalt_000207852)
16	10/12/2010 Control Risks Draft Addendum Report (Cobalt_000207844)
17	11/17/2010 V&E/OMM Memo (Cobalt_000246387)
20	3/1/2011 Form 10-K (Cobalt_000294560)
21	3/11/2011 Form 8-K (Cobalt_000279877)
22	5/6/2011 V&E/OMM Chronology (Cobalt_000173214)
23	12/20/2011 Block 20 PSC (COBALT_DEBTORS_0000004488)
24	2/24/2012 West Africa Presentation (Cobalt_000185143)
25	2/24/2012 Prospectus Supplement (COBALT_DEBTORS_0000045134)

Exhibit Number	Descriptions
26	3/22/2012 Proxy Statement (COBALT_DEBTORS_0000045187)
28	10/22/2012 Email from J. Starzec to V. Whitfield & J. Wilkirson re Additional Board Materials attaching 10/25/2012 West Africa Presentation (Cobalt_000153972)
30	12/6/2012 Board Materials (Cobalt_000185566)
31	1/17/2013 Prospectus Supplement (COBALT_DEBTORS_0000045236)
32	2/21/2013 Resolution regarding Lontra #1 AFE (Cobalt_000149950)
34	2/26/2013 10-K (COBALT_DEBTORS_0000031465)
35	3/21/2013 Proxy Statement (COBALT_DEBTORS_0000031615)
36	5/7/2013 Prospectus Supplement (LPCH 000001)
37	7/25/2013 Board Materials (COBALT_DEBTORS_0000005647)
40	10/00/2013 Wellsite Geological Operations End of Well Summary (Cobalt_000144367)
42	10/25/2013 West Africa Presentation (COBALT_DEBTORS_0000006030)
43	10/29/2013 8-K (Cobalt_000231952)
45	12/1/2013 Press Release "Cobalt International Energy, Inc., Confirms Significant Pre-salt Discovery at its Lontra #1 Well, Offshore Angola" (COBALT_DEBTORS_0000019585)
46	12/12/2013 West Africa Presentation (COBALT_DEBTORS_0000006290)
47	12/17/2013 Board Materials (COBALT_DEBTORS_0000044795)
48	2/20/2014 Board Materials (COBALT_DEBTORS_0000007148)
49	3/14/2014 Proxy Statement (COBALT_DEBTORS_0000044857)
51	4/00/2014 April Industry Update (COBALT_DEBTORS_0000005462)
52	4/29/2014 Resolution regarding Loengo #1 AFE (COBALT_DEBTORS_0000011949)

Exhibit Number	Descriptions
53	4/29/2014 Board Materials (COBALT_DEBTORS_0000007623)
54	6/9/2014 Lontra Blue Book (Cobalt_000137444)
56	10/30/2014 Cobalt GOM #1 LLC Written Consent of Managing Member (COBALT_DEBTORS_0000028673)
57	11/4/2014 Press Release "Cobalt International Energy, Inc. Announces Third Quarter 2014 Results and Provides Operational Update" (COBALT_DEBTORS_0000019635)
58	11/4/2014 8-K, Ex. 99-1 (COBALT_DEBTORS_0000031699)
59	1/22/2015 SEC Letter to Goldberg (Cobalt_000173345)
60	2/17/2015 Fleming Letter to Zamora (COBALT_DEBTORS_0000021798)
61	2/19/2015 Board Materials (COBALT_DEBTORS_0000009206)
62	3/20/2015 Proxy Statement (COBALT_DEBTORS_0000031809)
63	3/23/2015 Topol Letter to Zamora (COBALT_DEBTORS_0000021803)
64	7/16/2015 Dandelles Letter to Dotson (COBALT_DEBTORS_0000021808)
65	9/2/2015 Board Materials (COBALT_DEBTORS_0000009642)
66	9/2/2015 Resolutions Regarding Formation and Powers of Special Committee (COBALT_DEBTORS_0000019693)
68	3/30/2016 Trevino Letter to AIG (McDonough Demand) (COBALT_DEBTORS_0000029751)
71	6/30/2016 "Investigation of Shareholder Allegations Report of the Special Litigation Committee to the Board of Directors of Cobalt International Energy, Inc." (COBALT_DEBTRORS_0000018688)
72	7/7/2016 Starzec Letter to Grant (COBALT_DEBTORS_0000032173)
73	7/7/2016 Starzec Letter to Weiser (COBALT_DEBTORS_0000032175)

Exhibit Number	Descriptions
74	7/28/2016 board materials including 7/25/2016 Cutt letter (COBALT_DEBTORS_0000001024)
75	8/31/2016 board materials (COBALT_DEBTORS_0000001142)
78	10/27/2016 board minutes (COBALT_DEBTORS_0000011219)
81	11/4/2016 board minutes (COBALT_DEBTORS_0000011229)
82	11/18/2016 board resolutions (COBALT_DEBTORS_0000012362)
83	11/18/2016 Omnibus Written Resolutions (COBALT_DEBTORS_0000014944)
85	12/2/2016 board minutes (COBALT_DEBTORS_0000012500)
89	12/15/2016 CIE GP, LLC Written Consent of Managing Member (COBALT_DEBTORS_0000028722)
90	12/15/2016 Cobalt GOM LLC Written Consent of Managing Member (COBALT_DEBTORS_0000028776)
91	2/9/2017 Press Release "Cobalt Announces Closing of DOJ Investigation" (COBALT_DEBTORS_0000032216)
92	2/12/2018 Minutes of Meeting of Disinterested Directors of Cobalt International Energy, Inc. (COBALT_DEBTORS_0000036300)
93	2/16/2018 Minutes of Meeting of Disinterested Directors of Cobalt International Energy, Inc. (COBALT_DEBTORS_0000036305)
96	3/14/2017 Form 10-K (COBALT_DEBTORS_0000002890)
99	4/2/2017 CIE, LP Written Consent of the General Partner (COBALT_DEBTORS_0000031408)
100	4/17/2017 Cobalt GOM #1 LLC Written Consent of the Company (COBALT_DEBTORS_0000028787)
101	4/17/2017 Cobalt GOM #2 LLC Written Consent of the Company (COBALT_DEBTORS_0000028809)

Exhibit Number	Descriptions
102	5/2/2017 Second Amended & Restated Certificate of Incorporation (COBALT_DEBTORS_0000021372)
105	Secondary Materials for August 4, 2017 Board of Directors Meeting (CBLT_DEBTORS_0000000761)
107	12/1/2017 & 12/21/2017 Minutes of Telephonic Meeting of Disinterested Directors of Cobalt International Energy, Inc. (COBALT_DEBTORS_0000036303)
110	12/12/2017 Omnibus Unanimous Written Consent in Lieu of Meeting (approving bk filing)
111	2/14/2018 Minutes of Telephonic Meeting of Disinterested Directors of Cobalt International Energy, Inc. (COBALT_DEBTORS_0000036301)
112	12/14/2017 Board Materials (COBALT_DEBTORS_0000002167)
113	2/16/2018 Minutes of Telephonic Meeting of Disinterested Directors of Cobalt International Energy, Inc. (COBALT_DEBTORS_0000036302)
155	Group exhibit: Invoice materials from Cobalt (COBALT_DEBTORS_0000039081 - 42819)
155	Group exhibit: Invoice materials from Cobalt (COBALT_DEBTORS_0000039081 - 42819)
160	10/30/2009 Amendment No. 2 to Form S-1 Excerpt
162	4/29/11 France Form S-3
163	5/9/11 Lebovitz Form S-3
164	6/17/10 Lancaster Form S-3
168	2/22/2018 C. Reilly letter to Starzec

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: April 2, 2018

/s/ David D. Powell

David D. Powell
Chief Financial Officer,
Cobalt International Energy, Inc.

Designation No. 24

Docket No. 272, DX 46

FILED UNDER SEAL

Designation No. 25

Docket No. 728, DX 140

FILED UNDER SEAL