

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re: § Chapter 11  
ATP OIL & GAS CORPORATION, §  
Debtor. § Case No. 12-36187  
§  
§ Hon. Marvin Isgur  
§

**OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTOR’S EMERGENCY MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363 AND 365 AND BANKRUPTCY RULES 2002, 6004 AND 6006 FOR ORDER (I) APPROVING THE SALE OR SALES OF SUBSTANTIALLY ALL OF THE DEBTOR’S SHELF AND DEEPWATER PROPERTY ASSETS FREE AND CLEAR OF CLAIMS AND LIENS AND (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES**

[Related Docket Nos. 1252, 1419, 1591]

*In light of the fact that the Debtor has filed a notice indicating that it intends to proceed with a sale hearing tomorrow, the committee respectfully submits this Objection to the Debtor’s Sale Motion. However, upon information and belief, as of the time of this filing, the Debtor and DIP Lenders have not reached an agreement with respect to the terms of the Credit Bid or funding for the estate through the closing of such transaction much less confirmation of a plan of reorganization. Accordingly, the Debtor has not yet filed any of the following critical documents: (i) an agreed upon Asset Purchase Agreement, (ii) exhibits to the Asset Purchase Agreement, or (iii) a motion seeking authority to use cash collateral beyond June 21, 2013. As recently as this afternoon, the Debtor’s representatives gave deposition testimony that in the absence of such agreements with the DIP Lenders, proceeding with the Credit Bid would not be in the best interests of the estate. Therefore, the Committee reserves all of its rights, remedies and arguments in connection with the sale hearing, including the right to supplement this Objection.*

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the above-captioned chapter 11 case of ATP Oil & Gas Corporation (the “Debtor”) hereby submits this objection (the “Objection”) to the Debtor’s emergency motion, pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, for an order (i) approving the sale or sales of substantially all of the Debtor’s shelf



and deepwater assets free and clear of claims and liens and (ii) approving the assumption and assignment of contracts and leases (Docket No. 1252, the “Sale Motion”).<sup>1</sup> In support of its Objection, the Committee respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. The DIP Lenders’ credit bid (the “Credit Bid”) cannot be approved by the Court because it contains the following deficiencies.

A. Accepting the Credit Bid does not represent a valid exercise of the Debtor’s business judgment because the Credit Bid neither reflects fair market value nor satisfies the Bidding Procedures Order.

i. There is currently no evidence that the Credit Bid reflects fair market value. Indeed, the only evidence in the record of this case with respect to the value of the hydrocarbon Assets that are proposed to be purchased under the Credit Bid indicates that the purchase price offered by the DIP Lenders is hundreds of millions of dollars lower than the valuation performed by the DIP Lenders’ own engineer. This value shortfall is exacerbated by the transfer of certain estate causes of action, intercompany claims and subsidiary equity interests, which could result in a windfall recovery to the DIP Lenders that far exceeds the total amount of their secured claims.

ii. In addition, because of the operational problems, numerous unresolved contingencies, and the overhang of the constantly looming defaults under the DIP Facility, the sale process failed to establish the fair market value of the Assets. There was no competitive

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Sale Motion or the Order (A) Approving (i) Bidding Procedures; (ii) Bid Protections; (iii) Auction Procedures; and (iv) Assumption and Assignment Procedures; (B) Approving Notice Procedures for (i) the Solicitation of Bids; and (ii) an Auction; (C) Scheduling Hearings on Approval of a Sale or Sales of Substantially all of Debtor’s Deepwater Property Assets; and (D) Granting Related Relief (Docket. No. 1419, the “Bidding Procedures Order”).

bidding and certain of the Assets were listed as Excluded Assets in the Bidding Procedures Order, making it impossible to rely on the results of the Auction as indicative of fair value. These circumstances should not be permitted to give the DIP Lenders the opportunity acquire the Debtor's assets using only a portion of their total claim without offering any evidence that the value they are providing to the estate is fair or appropriate. While the DIP Lenders have a legal right to credit bid for the Assets on which they have a lien, that right does not allow them to acquire the Assets at an unfair price, leaving the estate administratively insolvent and likely to convert to a case under chapter 7 of the Bankruptcy Code.

iii. Furthermore, the Credit Bid cannot satisfy the requirements of the Bidding Procedures Order. The Bidding Procedures Order requires that any disgorged funds received in connection with the NPI and ORRI litigation must be returned to the Debtor's estate and not provided to a purchaser of the Debtor's assets. However, the Credit Bid enables DIP Lenders to receive all disgorged funds flowing from those claims.

B. The proposed sale is nothing more than either an impermissible *sub rosa* plan for the Debtor's liquidation without the rigors of the confirmation process, or a foreclosure sale for the sole benefit of the DIP Lenders, which does not belong in a bankruptcy court. The consideration proposed by the DIP Lenders provides no value to the unsecured creditors and does not include a commitment to fund the wind-down of the estate. Instead, the DIP Lenders propose to retain a significant portion of their secured claim (which is growing larger after deducting over \$55 million in cash payments from the Credit Bid price and decreasing the Purchase Price by \$44 million on account of BOEM's financial assurances burden the estate and siphon away any additional value. This potentially provides the DIP Lenders with a windfall. Meanwhile, the Credit Bid dictates the terms of a plan by allocating \$55 million cash to pay all

senior statutory liens, without evidence or justification that such amount is appropriate. This outcome is impermissible and inequitable.

2. The DIP Lenders should not be allowed to reap the benefits of the chapter 11 process (e.g., from a roll-up of their prepetition debt) and then refuse to shoulder their burdens (e.g., funding a wind-down of the estate). The Credit Bid must, at a minimum, (i) reflect the fair market value of the assets, and (ii) include an additional cash component sufficient to fund the estate through the closing of any sale and the follow-on wind-down process.

3. Given these fundamental flaws of the Credit Bid, the Credit Bid should not be approved.

#### **RELEVANT BACKGROUND**

4. On March 5, 2013, the Debtor received a report from its petroleum engineer, Collarini Associates (“Collarini”), indicating that the value of its oil and gas assets as of January 1, 2013 was approximately \$[REDACTED].<sup>2</sup> On October 8, 2012, the DIP Lenders received a report from their own petroleum engineer, Netherland, Sewell & Associates, Inc. (“NSAI”), indicating that, as of July 1, 2012, the value of the Debtor’s oil and gas assets was approximately \$[REDACTED]. These reports are the only evidence in the record of this case with respect to the value of the Debtor’s hydrocarbon assets.

5. As this Court is aware, the marketing and sale process for the Assets has been negatively impacted by a combination of the Debtor’s (a) numerous delays and cost increases in bringing the Clipper wells on line (thus delaying the ability of potential bidders to consider the positive impact of this significant revenue stream) and (b) having agreed to the DIP

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<sup>2</sup> The reserve report values listed in this Objection are based upon the present value of estimated future oil and gas revenues for the Debtor’s proved reserves, net of estimated direct costs of production, discounted at an annual rate of 10%.

Financing with such tight operational covenants that the Debtor has almost continually been in default. In fact, according to the DIP Lenders, the Debtor is currently subject to numerous events of default under the DIP credit agreement. These circumstances have led to repeated, expensive amendments of the DIP Financing, as well as an overly aggressive sale process schedule.

6. Under these circumstances, it is not surprising that the Debtor failed to receive adequate competitive bids, first, for the Shelf Assets and, later, for the Deepwater Assets. Further, when first oil production was finally achieved from the Clipper well on March 15, 2013, it was too late in the process for potential buyers to submit bids that reflected the full value of the Assets.

7. The terms of the Credit Bid are highly problematic. The Purchase Price, which purports to be \$690.8 million in the version of the APA filed at 10:50 p.m. (Central) on June 17, 2013 (Docket No. 2029), is hundreds of millions of dollars less than the value of the purchased Assets (which exclude those related to Gomez) as determined by the reserve reports prepared by Collarini and NSAI. Even after netting out the NPI/ORRI liabilities of approximately \$[REDACTED] that are associated with the Assets, the Collarini and NSAI reserve reports value the purchased Assets at approximately \$[REDACTED] and \$[REDACTED], respectively. And the Debtor is proposing to give the DIP Lenders even more value not reflected in these reports in the form of rights to significant litigation claims that are not subject to the DIP Lenders' liens and intercompany Claims and equity interests in the Debtor's subsidiaries that are currently property of the estate. Moreover, neither the litigation rights nor the subsidiary equity interests were ever marketed to third parties, having been listed

as “Excluded Assets” under the form asset purchase agreement provided as an exhibit to the Sale Motion.

8. In addition, among others, the Credit Bid contains the following objectionable terms and conditions:

- Purchase Price. The purchase price, despite its nominal \$690.8 million value, is subject to numerous downward revisions, including, among others, the financial assurance the DIP Lenders provide to BOEM, a to be agreed-upon value for Excluded Assets, the Debtor’s estimation of the Production Taxes and Non-Income Taxes, and \$55 million for certain liens that are senior to the DIP financing claims. For example, the DIP Lenders have the unfettered right to nominate any additional assets to become Rejected Assets by providing written notice to the Debtor. The Credit Bid provides no indication of the methodology for determining the “Adjusted” Purchase Price based on expanding the scope of the Rejected Assets. See APA §§ 2.02 (authorizing rejection of assets until two business days prior to closing), 7.02(b)(i) (reducing Purchase Price in respect of Rejected Assets), 7.02(c) (reducing Purchase Price by over \$44 million in respect of amount of financial assurances provided to BOEM). There is also no allocation of the Purchase Price in the Credit Bid.
- Wind-down Payments. Other than a \$55 million cash payment to satisfy valid liens senior to those of the DIP Lenders, the Credit Bid itself does not presently provide for any additional cash infusion necessary to pay the administrative expenses and other costs associated with winding down the Debtor’s estate. See APA § 3.01 (including \$55 million lien payment, but no other cash amounts, in Purchase Price). While the Debtor and the DIP Lenders stated at the Court’s May 9, 2013 status conference on the Sale Motion that a wind-down cash component to the Credit Bid would be forthcoming, it remains unclear whether the DIP Lenders intend to provide any cash to fund the estate (i) through the closing of a sale and (ii) the consummation of a chapter 11 plan and, if so, whether such amount will be adequate.<sup>3</sup>
- Transfer of Litigation Claims. The Credit Bid provides for the sale of various of the Debtor’s litigation Claims (*i.e.*, rights to payment, whether or not fixed, liquidated or contingent) and ORRI/NPI Claims (*i.e.*, all claims, counterclaims or rights of setoff relating to overriding royalty interests or net profits interests in the Assets). See APA §§ 2.02(o) (including Claims and ORRI/NPI Claims in purchased Assets), 8.02(b) (entitling DIP Lenders to proceeds of any disgorged ORRI/NPI payments).<sup>4</sup> Moreover,

<sup>3</sup> See May 9, 2013 Hr’g Tr. at 32:18-19 MR. ZUMBRO: “[O]ne of the issues that we’re still working with the Debtor on is an appropriate wind-down budget.”; James Latimer June 17, 2013 Deposition Tr. (attached as Exhibit A) 51:23-52:4 (“Q: . . . if this concern [regarding the wind-down budget] is not resolved, would approval of the sale of the debtor’s assets be in the best interest of the estate? . . . A: No.”).

<sup>4</sup> Based on the latest draft of the APA, the Committee understands that the DIP Lenders do not contemplate purchasing the Debtor’s \$3 billion in claims against BP Exploration & Production, et al., resulting from the

while the DIP Lenders stated at the May 9, 2013 status conference that any litigation Claims would be purchased for cash, the APA contains no cash component in respect of these assets. Further, the DIP Lenders, as Purchaser under the APA, are not entitled to disgorged NPI and ORRI funds, because the Court-approved Bidding Procedures provide that “in no event shall any such [disgorged] funds be delivered to the Purchaser of the Purchased Assets.”<sup>5</sup>

- Transfer of Intercompany Claims and Equity Interests. The Credit Bid contemplates the purchase of “all intercompany notes and receivables and interests therein held by [the Debtor], including notes issued by ATP UK and ATP Israel.” APA § 2.02(n). According to the Debtor, the notes owed to it by its Israeli subsidiary could be worth \$30 to 33 million to the estate, once ATP Israel’s other creditors have been repaid.<sup>6</sup> In addition, the Credit Bid also contemplates that the DIP Lenders may purchase the Debtor’s equity in its subsidiary, ATP Oil & Gas (Netherlands) B.V. (“ATP Netherlands”), the parent of ATP Israel, if a sale of the ATP Netherlands equity is not purchased by a potential third-party acquiror. See APA §§ 2.02(m), 2.03(l), 5.15. The Debtor and DIP Lenders have not proven that any value provided for these assets reflects fair value to the estate.
- Uncertain BOEM/BSEE Closing Conditions. The filed Credit Bid does not provide for the assumption of obligations to (i) properly plug and abandon all wells and (ii) fulfill all BOEM and BSEE bonding requirements. See APA § 10.01 (failing to assume obligations to plug and abandon wells and BOEM/BSEE bonding requirements). However, BOEM approval remains a condition precedent to the consummation of the sale. See APA §§ 6.02(d) (conditioning closing on DIP Lenders’ receipt of assurances acceptable to them that BOEM/BSEE approval will be obtained). No explanation is provided as to why the Debtor believes that this is an achievable resolution of its obligations to the federal regulators. Although a settlement of such issues was announced at the June 13, 2013 hearing, no details have been provided.
- Removal of Assets. The latest version of the APA permits the DIP Lenders to reject any of the Assets they claim to purchase, even if the Sale Hearing has already concluded, simply by providing a notice to the Debtor at least two business days prior to closing. See APA 2.02. The APA requires the parties thereto to negotiate “in good faith” to agree to a reduction in the Purchase Price from any such rejection, although the DIP Lenders may simply reject the assets that were reported as purchased to the Court and interested parties even if no agreement regarding a Purchase Price reduction is reached. See id. Such an open-ended “out” for the DIP Lenders should not be approved.

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Deepwater Horizon incident in the Gulf of Mexico. However, the DIP Lenders will retain their right to access any proceeds as a result of their ever-growing deficiency claim.

<sup>5</sup> Bidding Procedures Order, Exhibit 1 § 13.

<sup>6</sup> See Sept. 27, 2012 Hr’g Tr. at 45:12-14 (MR. KELLEY: “[T]he amount of proceeds payable to the Company for its investment is approximately 30-33 million.”).

- Broad Releases. The proposed Sale Order contains broad releases that purport to bar, estop and permanently enjoin “all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Claims and Interests or other interests of any kind or nature whatsoever against or in all or any portion of the Purchased Assets” from enforcing any rights related to such assets. See Sale Order ¶ 24. As explained herein, releases of this type should not be granted outside of a chapter 11 plan.
- Lack of Buyer Indemnity. The Credit Bid fails to provide an indemnification of the Debtor by the DIP Lenders for any obligations that the DIP Lenders assume pursuant to the Credit Bid after the closing, leaving the Debtor’s estate responsible for such obligations despite the closing of the sale.
- Transfer Taxes. Further reducing the consideration available to the estate, the Credit Bid places the responsibility for all Transfer Taxes resulting from the sale on the Debtor. See APA § 12.01(c).
- Financing Efforts. The Credit Bid unnecessarily places a heavy burden of effort and expense on the Debtor to use “reasonable best efforts” to assist the DIP Lenders to obtain financing necessary to consummate the Credit Bid transactions. See APA § 5.13. Moreover, this obligation is forced upon the Debtor with no obligation of the DIP Lenders to reimburse the Debtor’s estate for the expenses these efforts will entail. See id.
- Additional Acknowledgments. The Credit Bid does not provide for the express inclusion of plugging, abandonment and other decommissioning obligations as “Assumed Obligations” under Section 10.01 of the APA.

### **OBJECTION**

#### **I. Credit Bid Must Not Be Approved Because Debtor’s Acceptance Thereof Does Not Constitute Sound Business Judgment**

9. Section 363(b) of the Bankruptcy Code permits the debtor in possession to sell the estate’s assets outside of the ordinary course of business as long as such sale constitutes proper exercise of the debtor’s sound business judgment. See In re Continental Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession . . . to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”). Section 363(k) of the Bankruptcy Code provides that, at a sale under section 363(b), a secured



creditor may “credit bid” for an estate asset “that is subject to a lien that secures an allowed claim” (i.e., set off its secured claim against the value of its collateral) “unless the court for cause orders otherwise.” 11 U.S.C. § 363(k). Because a sale pursuant to a credit bid under section 363(k) must be first approved under section 363(b), the debtor must demonstrate that its acceptance of the credit bid comports with the exercise of sound business judgment.

10. It is the Debtor’s burden to establish that a sound business reason exists for accepting the Credit Bid. See In re Gulf Coast Oil Corp., 404 B.R. 407, 422 (Bankr. S.D. Tex. 2009) (“The movant must establish a business justification for the transaction and the bankruptcy court must conclude, from the evidence, that the movant satisfied its fiduciary obligations and established a valid business justification.”). Significantly, as the Court has emphasized, sales of substantially all of a debtor’s assets, or the debtor’s “crown jewel” assets, are subject to heightened scrutiny. Id.

11. To ascertain whether a sale proponent has established a sound business judgment, the Fifth Circuit has adopted the Second Circuit’s standards in Lionel, which guides the bankruptcy court to:

consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike. He might, for example, look to such relevant factors as [1] the proportionate value of the asset to the estate as a whole, [2] the amount of elapsed time since the filing, [3] the likelihood that a plan of reorganization will be proposed and confirmed in the near future, [4] the effect of the proposed disposition on future plans of reorganization, [5] the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, [6] which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, [7] whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

In re Continental Air Lines, Inc., 780 F.2d at 1226 (quoting In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983)). Where a transaction under section 363(b) is proposed that would “terminate Debtor's existence[,] . . . , the likelihood of reorganization would dissipate as there would remain no assets from which a plan could be proposed[, and] the proceeds from the proposed sale would, at most, benefit one creditor only,” the Court should not approve the transaction as a product of the Debtor’s business judgment. In re Fremont Battery Co., 73 B.R. 277, 279 (Bankr. N.D. Ohio 1987).

12. There is no evidence that indicates that the Debtor’s acceptance of the Credit Bid is a proper exercise of its sound business judgment under the relevant Continental and Lionel factors. In fact, the Debtor’s own chief restructuring officer has provided testimony that the Credit Bid is not currently in the best interest of the estate.<sup>7</sup> First and foremost, even the headline amount of the Credit Bid, which is as little as \$591.5 million when accounting for the known Purchase Price Reductions, is far below all known valuations of the Assets.<sup>8</sup> Based on the Collarini valuation reports, the hydrocarbon Assets are worth at least \$[REDACTED], and the DIP Lenders’ own engineer has valued them at least at \$[REDACTED] (after deducting NPI/ORRI liabilities and assets associated with Gomez). Collarini Report at 2; NSAI Report at 3. In fact, given that the Clipper wells are generating revenues greater than predicted,<sup>9</sup> the value of the hydrocarbon Assets must exceed estimates.

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<sup>7</sup> Exhibit A at 51:23-52:4 (“Q: . . . if this concern [regarding the wind-down budget] is not resolved, would approval of the sale of the debtor’s assets be in the best interest of the estate? . . . A: No.”).

<sup>8</sup> Moreover, the DIP Lenders have charged the estate over \$[REDACTED] in interest, fees and other costs in connection with the DIP financing. More than \$22 million of these charges arise from the original issue discount (i.e. principal amounts charged to the Debtor on account of funds that were never actually provided) associated with the DIP financing and its associated amendments.

<sup>9</sup> See April 18, 2013 Hr’g Tr. at 21:9-12 (“The company’s preliminary internal calculations appear to confirm that the reservoir is at least as prolific as estimated by Collarini in its reserve report and may be significantly greater.”).

13. Further, the Credit Bid impermissibly proposes to transfer to the DIP Lenders assets of the Debtor, including litigation claims related to the Debtor's transfer of NPIs and ORRIs on which the DIP Lenders do not have liens. Section 363(k) of the Bankruptcy Code provides that a secured creditor may credit bid to receive "*property that is subject to a lien that secures [the creditor's] allowed claim.*" 11 U.S.C. § 363(k) (emphasis added). This means that if the secured creditor does not have a lien on a particular asset, such creditor has no right to use its secured claim as consideration for the purchase of such asset. See Beal Bank, S.S.B. v. Waters Edge Ltd. P'ship, 248 B.R. 668, 679-680 (D. Mass. 2000) (holding that secured lender with lien on debtor's real property and rents had no right to credit bid on sale of debtor's equity, on which it did not have a lien). Because the final order approving the Debtor's entry into the DIP Credit Agreement expressly excluded avoidance actions (other than those under section 549 of the Bankruptcy Code), the DIP Lenders may not credit bid for these assets, including the prepetition avoidance actions that are part of the NPI/ORRI litigation.<sup>10</sup> Any potential transfer of avoidance actions as part of the Credit Bid is particularly problematic since the proceeds of these actions represent one of the few unencumbered assets of the estate that should be made available for the benefit of unsecured creditors.

14. Moreover, even if the NPI and ORRI-related litigation claims could be included in the Credit Bid, the consideration paid for such assets must represent fair value for the estate. The Collarini and NSAI reports do not indicate the value of the Debtor's litigation claims or recoverable ORRI and NPI payments transferred under the Credit Bid. These transferred

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<sup>10</sup> See Final Order Pursuant to 11 U.S.C. §§ 105, 107, 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, (5) Modifying Automatic Stay and (6) Authorizing Debtor to File the Fee Letter Under Seal ¶ 6 (Docket No. 440) (the "Final DIP Order") (providing that only avoidance actions under section 549 of the Bankruptcy Code serve as collateral under DIP Credit Agreement).

claims, if prosecuted or otherwise resolved successfully, could provide the DIP Lenders with a windfall recovery far exceeding the amount of their claim, which in the case of NPI or ORRI disgorgement is expressly precluded by prior order of the Court. Similarly, the Credit Bid proposes to transfer to the DIP Lenders equity interests in the Debtor's subsidiaries and intercompany claims owed to the Debtor from such subsidiaries. Again, no evidence of value has been provided in connection with the transfer of these assets, other than certain statements of Debtor's counsel that the claims and interests in ATP Israel could have provided approximately \$30 million in proceeds to the estate.<sup>11</sup> If the Debtor and the DIP Lenders wish to consummate a transaction that hands the Assets to the DIP Lenders for far less than all previous indications of their value, and still transfers additional assets whose value has not been indicated, then the Debtor must satisfy its burden of demonstrating that the consideration being provided to the estate in exchange for such Assets is appropriate.<sup>12</sup>

15. In addition, the failure of the Debtor to obtain financing free from constant amendments and waivers, and the resulting harm to the Debtor's operations, including its key development projects, has negatively influenced potentially interested parties and led to a failed sale process that did not establish the true market value of the Assets.<sup>13</sup> Among other things, the following factors cast a pall over the value of the Assets:

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<sup>11</sup> See Sept. 27, 2012 Hr'g Tr. at 45:12-14 (“[T]he amount of proceeds payable to the Company for its investment is approximately 30-33 million.”)

<sup>12</sup> See E-mail from R. Toland to A. Kyle and A. Gallo (May 7, 2013, 16:36 CST) (attached as Exhibit B) (attachment noting Debtor's evidentiary concerns regarding intangible assets that were not marketed).

<sup>13</sup> See, e.g., In re Champion Enters., Inc., 2012 WL 3778872, at \*35 (Bankr. D. Del. 2012) (approving sale following market test that was thorough, conducted at arm's length, and took place over many months pre- and postpetition); In re Prosser, 2010 WL 4412093, at \*7 (Bankr. D.V.I. 2010) (approving sale following multi-bid sales process and auction); see also Bank of America Nat'l Trust and Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 457 (1999) (“[T]he best way to determine value is exposure to a market. . . . This is a point of some significance, since it was, after all, one of the Code's innovations to narrow the occasions for courts to make valuation judgments. . . .”).

- the roll-up of the DIP Lenders' prepetition claims,
- the ever-increasing claims asserted by the United States Department of the Interior for plugging and abandonment liability,
- the litigation commenced by numerous holders of net profits interests and overriding royalty interests,
- the repeated failure to bring the Clipper well online and the associated skyrocketing construction and financing costs,
- the initiation of environmental liability proceedings against the Debtor by the United States, and
- the burdens on revenue and declining production from the Debtor's Gomez Properties, and their ultimate shut-in.

16. The outcome of the sale process and Auction must also be set aside because, by supporting the Credit Bid, the Debtor is disregarding the Court's Bidding Procedures, which require that any disgorged funds paid on account of an NPI or ORRI "shall be delivered to the Debtor and its estate and in no event shall any such funds be delivered to the Purchaser of the Purchased Assets." Bidding Procedures Order, Exhibit 1 § 13. Because the Credit Bid requires the DIP Lenders to receive any disgorged payments from holders of NPIs and ORRIs, the Credit Bid is in conflict with the Bidding Procedures.<sup>14</sup> In addition, the Debtor's rights to both ORRI and NPI-related litigation and the aforementioned equity interests in and intercompany receivables from the Debtor's foreign subsidiaries were never marketed in a meaningful fashion. In fact, the Debtor's litigation covered by insurance policies maintained by the Debtor (e.g., claims against its officers and directors), other claims related to the purchased Assets, and all ORRI/NPI Claims were expressly designated as "Excluded Assets" under the form asset purchase agreement provided as an exhibit to the Sale Motion. Although the Debtor

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<sup>14</sup> Indeed, it is not surprising that the DIP Lenders desire to purchase the Debtor's ORRI/NPI Claims given that certain of the DIP Lenders are parties to those litigations.

disclosed in a footnote that such Excluded Assets could be purchased by an interested party, their exclusion from the Sale Motion placed the burden on parties to guess as to whether these claims were available for sale. This is yet another example of the DIP Lenders' attempt to acquire assets whose value has never been established.

17. In summary, the constant barrage of negative news regarding the Debtor's operations, the Debtor's near-constant state of default under the DIP Facility and the need for repeated amendments, waivers and additional borrowing, have negatively impacted the market's perception of the Assets. On top of those facts, certain assets included in the proposed Credit Bid are either not permitted to be part of the sale or were never substantially marketed. Thus, the true value of such assets has not been ascertained and the Auction results cannot be accepted as true indication of value under the circumstances of this case. The Debtor must provide evidence supporting its conclusion that the DIP Lenders can purchase the Assets at the proposed Credit Bid purchase price.

18. In addition, there cannot be a business justification for the proposed sale of substantially all of the Debtor's assets when the sale does not, at a minimum, provide a sufficient amount of cash to administer the liquidation of the estate, thus eviscerating the "likelihood that a plan of reorganization will be proposed and confirmed in the near future," or, at the very least, impermissibly dictating the terms of any such future plan. In re Continental Airlines, 780 F.2d at 1226.

## **II. Credit Bid Does Not Serve Purposes of Chapter 11 and Should be Rejected**

19. Under precedent in the Fifth Circuit, a court cannot approve a sale of a debtor's assets if "the transaction would effectively evade the 'carefully crafted scheme' of chapter 11 and avert the chapter 11 plan confirmation process, such as by denying §§ 1125, 1126, 1129(a)(7), and 1129(b)(2) rights." Gulf Coast Oil Corp., 404 B.R. at 422; see also In re

Braniff Airways, 700 F.2d 935, 940 (5th Cir. 1983) (“The debtor and the Bankruptcy Court should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets.”).

20. Sales of all or substantially all assets are subject to heightened scrutiny in light of *sub rosa* plan considerations. Gulf Coast Oil Corp., 404 B.R. at 422; In re CGE Shattuck, 254 B.R. 5, 12 (Bankr. D.N.H. 2000) (“The degree of Court scrutiny of proposed transactions under § 363 must be elastic—becoming more strict and searching the nearer the transaction gets to the heart of the reorganization plan process.”). This heightened scrutiny in the context of credit bidding is justified by the substantial benefits chapter 11 confers on secured creditors, such as the ability to “roll up” prepetition claims into secured, superpriority postpetition financings. In light of these benefits, the protections against *sub rosa* plans in connection with sales under section 363(k) ensure that chapter 11 does not allow the party with the most bargaining leverage to undermine the bankruptcy process.

21. In Gulf Coast Oil, the Court refused to approve a sale of substantially all of the debtor’s assets pursuant to a credit bid, concluding that the sale, among other things, amounted to “a foreclosure supplemented materially by a release, by assignment of executory contracts (but only the contracts chosen by the secured lender), by a federal court order eliminating any successor liability, and by preservation of the going concern.” 404 B.R. at 428. The Court was particularly troubled that the sale did not provide for the payment of all administrative expenses in accordance with section 1129(a)(9) and emphasized that it would leave only two post-sale possibilities: “dismissal of the bankruptcy case or converting the case to chapter 7 as a no-asset case.” Id. at 414. The Court in Gulf Coast also noted that, under

applicable Fifth Circuit precedent, transactions that propose to eliminate successor liability or grant broad releases are not permissible outside of a chapter 11 plan. Id. at 422 (“[t]ransactions that explicitly release all (or virtually all) claims against the estate . . . are not authorized under § 363(b)”), 428 (holding that transaction proposing a release, assignment of certain contracts and elimination of successor liability must be accomplished under section 1129). The Court stated that the proper procedure for carrying out such a transaction was through the full chapter 11 process, including the disclosure, voting and other requirements of section 1129. Id. at 414. Similarly, the Fifth Circuit reversed the Bankruptcy Court’s approval of the proposed sale under section 363(b) of the Bankruptcy Code in Braniff because such sale, among other things, dictated the terms of any future plan for the debtor.

22. The bankruptcy court in In re Fremont Battery Co. rejected a proposed sale of the debtor’s assets when the sale did not “benefit other creditors or that would provide funds from which a reorganization plan could be proposed.” 73 B.R. at 279. After finding that the proposed sale “would terminate the Debtor’s existence,” the bankruptcy court refused to approve the proposed sale because it essentially dictated the terms of a plan of reorganization through the sale of a major asset. Id. at 279. The circumstances in Fremont resonate loudly with the facts of this case.

23. Here, the proposed sale is also, in effect, a *sub rosa* plan that should not be approved by this Court. As in Gulf Coast, Braniff and Fremont, the Credit Bid strips the estate of any optionality. The proposed transaction dictates the exact treatment of the DIP Lenders’ claims, provides for the assumption of certain contracts and not others, and assures that no other creditors will receive any recovery. In addition, the Credit Bid provides just \$55 million to pay senior statutory liens without regard to the sufficiency of that amount. In that sense, the Credit



Bid impermissibly allocates funds to a creditor class, which is expressly forbidden under Braniff. See Braniff, 780 F.2d at 939-940 (denying proposed sale where sale agreement allocated consideration available in debtor's reorganization plan).

24. Importantly, the Credit Bid also fails to provide for the payment of administrative expenses and other chapter 11 costs, thus making an orderly wind-down of the Debtor's estate impossible. Indeed, the Debtor's own management has recognized that without adequate funding for such costs and the orderly wind-down of the estate, serious *sub rosa* issues remain outstanding, such that proceeding to sale.<sup>15</sup> Although Counsel to the DIP Agent promised a wind-down budget, such budget has not been proposed. Without the provision of adequate cash to fund estate obligations and administrative expenses, the DIP Lenders would be able to realize all of the benefits of the chapter 11 process without shouldering the burdens. Finally, the proposed Sale Order purports to grant broad releases by third parties and eliminate successor liability, which cannot be accomplished through a sale under section 363 of the Bankruptcy Code alone. Gulf Coast, 404 B.R. at 428.

25. Because of these facts, the sale of the Assets pursuant to the Credit Bid is in conflict with the goals and policies of chapter 11. See In re Encore Healthcare Assocs., 312 B.R. 52, 57-58 (Bankr. E.D. Pa. 2004) (denying motion to sell assets where "proposed sale . . . generates funds solely for the secured creditor, which could realize the value of its collateral by foreclosing and selling the assets . . . [and] more significantly advances no purpose of a Chapter 11 proceeding."). The Debtor and the DIP Lenders should not be allowed to circumvent the chapter 11 process for the DIP Lenders' sole benefit. In re Gulf Coast Oil Corp., 404 B.R. at 426

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<sup>15</sup> James Latimer June 17, 2013 Deposition Tr. 44:11-18 ("Q. (BY MR. WELLS) But if you can't resolve the budget and the funding issues, then the sub rosa plan argument would still be a concern of the debtors? . . . A. I think the two items I referred to are necessary to proceed. If we don't proceed, this argument -- whatever might be involved in this argument is -- we'd never get to that point.").

“If only one party (or a few parties selected by the ‘loudest creditor’) will benefit from the sale, the movant should be prepared to explain why the sale should take place in a bankruptcy case and why the bankruptcy court should provide the benefits for which Congress imposed substantial requirements.”).

**III. Credit Bid Should Be Rejected Because It May Impermissibly Result in DIP Lenders Collecting More Than Full Amount of Their Claims**

26. The DIP Lenders should not be allowed to take the Debtor’s most valuable assets acquired at a significant discount while (i) leaving behind large unfunded liabilities and (ii) asserting a large deficiency claim that eliminates any reasonable prospect for recovery for other stakeholders. At the very least, under these circumstances, the DIP Lenders must credit bid their whole claim, rather than only a portion thereof, plus provide appropriate additional consideration reflecting fair market value.

27. Furthermore, the DIP Lenders assert that the value of the Assets is inherently speculative and therefore justifies the discounted price at which they are being purchased. This reasoning, however, proves the opposite: the speculative nature of the Assets, including the estate’s litigation claims against the DIP Lenders and other NPI and ORRI interest holders (in their capacities as holders of such interests) and other parties, may, in fact, result in the DIP Lenders receiving more than a full recovery on their claims (which the reserve reports, in fact, suggest is highly probable). This result is particularly untenable in light of the fact that junior stakeholders will receive no recovery and will be left to deal with substantial estate liabilities.

28. In addition, unsecured creditors should have an unqualified right to receive proceeds of any litigation. See McFarland v. Leyh (In re Tex. Gen. Petroleum Corp.), 52 F.3d 1330, 1335-36 (5th Cir. 1995) (“[T]he proceeds recovered in an avoidance action satisfy

the claims of priority and general unsecured creditors before the debtor benefits.’ . . . The proceeds recovered in avoidance actions should not benefit the reorganized debtor; rather, the proceeds should benefit the unsecured creditors.”) (quoting In re Sweetwater, 55 B.R. 724, 731 (D. Utah 1985) (“The avoiding powers are not ‘property’ but a statutorily created power to recover property.”), aff’d in part, rev’d in part on other grounds, 884 F.2d 1323, 1327 (10th Cir. 1989)); In re Cybergeneics Corp., 226 F.3d 237, 244-45 (3d Cir. 2000) (avoidance actions are not property of the estate, but are essentially rights held by the estate for the benefit of creditors). Indeed, the Final DIP Order left most avoidance actions out of the DIP Lenders’ collateral package for precisely this reason. If the DIP Lenders acquire avoidance action rights or retain a large deficiency claim, the DIP Lenders will once again claim one of the few assets available to provide recoveries to unsecured creditors.

#### **IV. Lack of Due Process and Fairness Requires Denial of Credit Bid**

29. After over a month of adjournments and related delays to the Sale Hearing while the Debtor and the DIP Lenders negotiated the APA, the Debtor’s filing of a significantly revised APA two days prior to the Sale Hearing does not provide a reasonable amount of time to allow the Committee or other parties in interest to properly evaluate the final Credit Bid (which even now is not final). Moreover, as of one day prior to the Sale Hearing, the Debtor has not provided filed schedules or exhibits to the APA. This compressed schedule raises fundamental fairness and due process concerns for all parties in interest (for the vast majority of whom the Objection Deadline has long since expired).

30. The Court should refrain from approving the Credit Bid at this time and adjourn the Sale Hearing until all parties in interest have had an appropriate amount of time to properly evaluate all of the terms and conditions in a final Credit Bid and are provided with an adequate explanation regarding how the remaining estate will be wound down.

**CONCLUSION**

WHEREFORE, the Committee respectfully requests that the Court enter an order (i) denying the Credit Bid unless the DIP Lenders fully address the concerns raised in this Objection, and (ii) granting such other and further relief as the Court deems just and proper.

Dated: Houston, Texas  
June 19, 2013

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**Exhibit A**

**James Latimer June 17, 2013 Deposition Transcript**

**JAMES R. LATIMER, III - June 17, 2013**

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<p>1 IN THE UNITED STATES DISTRICT COURT. 2 FOR THE SOUTHERN DISTRICT OF TEXAS 3 BANKRUPTCY DIVISION</p> <p>3 IN RE: ) 4 ) CASE NO. 12-36187 5 ATP OIL &amp; GAS CORPORATION ) CHAPTER 11 6 ) 7 DEBTOR. ) JUDGE MARVIN ISGUR</p> <p>8 ***** 9 ORAL DEPOSITION OF 10 JAMES R. LATIMER, III 11 JUNE 17, 2013 12 ***** 13 ORAL DEPOSITION OF JAMES R. LATIMER, III, produced 14 as a witness at the instance of the Committee, and duly 15 sworn, was taken in the above-styled and numbered cause 16 on JUNE 17, 2013, from 12:43 p.m. to 6:14 p.m., before 17 Kathy Miller, CSR in and for the State of Texas, 18 reported by machine shorthand, at the offices of Mayer 19 Brown, LLP 700 Louisiana, Suite 3400, Houston, Texas 20 pursuant to the Federal Rules of Civil Procedure and 21 the provisions stated on the record or attached hereto. 22 23 24 25</p>	<p>1 APPEARANCES: (CONTINUED) 2 3 FOR CERTAIN DIP LENDERS: 4 MR. SEAN B. DAVIS 5 WINSTEAD, LLP 6 1100 JPMORGAN CHASE TOWER 7 600 TRAVIS STREET 8 HOUSTON, TEXAS 77002 9 TEL: 713.650.2742 10 FAX: 713.650.2400 11 EMAIL: sdavis@winstead.com 12 FOR BP AND TOTAL: 13 MS. BROOKE B. CHADEAYNE 14 LOCKE LORD, LLP 15 600 TRAVIS, SUITE 2800 16 HOUSTON, TEXAS 77002 17 TEL: 713.226.1340 18 FAX: 713.223.3717 19 EMAIL: bchadeayne@lockelord.com 20 FOR NGP CAPITAL RESOURCES CORPORATION: 21 MR. TYE C. HANCOCK 22 THOMPSON &amp; KNIGHT, LLP 23 333 CLAY STREET, SUITE 3300 24 HOUSTON, TEXAS 77002 25 TEL: 713.653.8638 FAX: 713.654.1871 E-MAIL: tye.hancock@tklaw.com</p> <p>18 19 ALSO PRESENT: 20 MR. RYAN S. BOULEY 21 DUFF &amp; PHELPS</p> <p>22 MS. BHOOMICA REDDY 23 MR. ALEX ROHAN 24 JEFFERIES 25 (TELECONFERENCED)</p>
Page 2	Page 4
<p>1 APPEARANCES 2 FOR THE DEBTOR: 3 MR. CHARLES E. HARRIS, II 4 MR. JOSHUA M. GRENARD 5 MAYER BROWN 6 71 SOUTH WACKER DRIVE 7 CHICAGO, ILLINOIS 60606 8 TEL: 312.701.8934 9 FAX: 713.706.8359 10 E-MAIL: charris@mayerbrown.com 11 jgrenard@mayerbrown.com 12 FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF 13 ATP OIL &amp; GAS CORPORATION: 14 15 MR. DAVID S. COHEN 16 MR. JEREMY WELLS 17 MILBANK TWEED HADLEY &amp; MCCLOY, LLP 18 1850 K STREET, NW, SUITE 1100 19 WASHINGTON, D.C. 20006 20 TEL: 202.835.7517 21 FAX: 202.263.7517 22 E-MAIL: dcohen2@milbank.com 23 jwells@milbank.com 24 25 FOR THE BANK OF NEW YORK: MR. ROBERT L. PADDOCK THOMPSON &amp; KNIGHT 333 CLAY STREET, SUITE 3300 HOUSTON, TEXAS 77002 TEL: 713.951.5878 FAX: 713.654.1871 EMAIL: robert.paddock@tklaw.com FOR CREDIT SUISSE AG: MR. CHARLES A. BECKHAM, JR. MS. KELLI M. STEPHENSON HAYNES AND BOONE, LLP 1221 MCKINNEY, SUITE 2100 HOUSTON, TEXAS 77010 TEL: 713.547.2259 FAX: 713.547.5499 E-MAIL: charles.beckham@haynesboone.com kelli.stephenson@haynesboone.com</p>	<p>1 INDEX 2 3 PAGE 4 5 Appearances..... 2 6 JAMES R. LATIMER, III 7 Examination by Mr. Wells..... 5 8 Examination by Mr. Harris..... 130 9 Signature and Changes..... 135 10 Reporter's Certificate..... 137 11 12 EXHIBITS 13 NO. DESCRIPTION PAGE 14 1 May 7, 2013 email to Amy Kyle and 15 Others from Rue Toland, with 16 Attached Evidentiary Concerns for a 17 Sale Hearing..... 5 18 19 2 ATP Oil &amp; Gas 2013 Plan - Daily Cash 20 Flow, Week Beginning 6/10/2013..... 5 21 3 Email thread with attached Wind-Down 22 Budget for ATP Oil &amp; Gas Corp., 23 Summary..... 5 24 25</p>

**JAMES R. LATIMER, III - June 17, 2013**

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<p>1 JAMES R. LATIMER, III,                  2 having been first duly sworn, testified as follows:                  3 (Exhibits 1, 2 and 3 marked.)                  4 EXAMINATION                  5 BY MR. WELLS:                  6 Q. Good morning, Mr. Latimer. My name is Jeremy                  7 Wells. I'm here from Milbank, Tweed, Hadley &amp; McCloy.                  8 We represent the Official Committee of Unsecured                  9 Creditors of ATP Oil &amp; Gas Corporation.                  10 I and my colleague, David Cohen, are here to                  11 take your deposition today in connection with ATP's                  12 motion to sell its assets.                  13 <b>A. Okay.</b>                  14 MR. WELLS: Before we start, could --                  15 could we have counsel around the table introduce                  16 themselves and state the party that they represent?                  17 MR. HARRIS: Charles Harris, Mayer Brown,                  18 for ATP.                  19 MR. GRENARD: Josh Grenard from Mayer                  20 Brown, also ATP.                  21 MS. STEPHENSON: Kelli Stephenson from                  22 Haynes and Boone on behalf of Credit Suisse.                  23 MS. CHADEAYNE: Brooke Chadeayne from                  24 Locke Lord on behalf of BP and Total.                  25 MR. HANCOCK: Tye Hancock, appearing on</p>	<p>1 <b>A. Black Stone or Black Hill?</b>                  2 Q. Oh, Black Hill. I'm sorry.                  3 <b>A. Yeah. Yes, I have an employment relationship</b>                  4 <b>with them.</b>                  5 Q. How long have you been working for Black Hill?                  6 <b>A. I believe about 12 years.</b>                  7 Q. And what position do you hold with them?                  8 <b>A. Managing director.</b>                  9 Q. And how long have you held that position?                  10 <b>A. Since inception.</b>                  11 Q. And you've been deposed many times before; is                  12 that correct?                  13 <b>A. I have. Right.</b>                  14 Q. I'll just go through the rules briefly, then.                  15 <b>A. Okay.</b>                  16 Q. So the court reporter is transcribing this                  17 deposition, so if you could make all of your answers                  18 verbal so she can record them. Is that okay?                  19 <b>A. Yes. I understand.</b>                  20 Q. And if you could speak as loudly as possible.                  21 I know you said you're ill.                  22 <b>A. I'm glad we're close.</b>                  23 Q. But if you could speak as loudly as possible                  24 so she can understand what you're saying and so that                  25 she can get an accurate record.</p>
Page 6	Page 8
<p>1 behalf of NGP Capital Resources Company.                  2 MR. BECKHAM: Charles Beckham, Haynes and                  3 Boone, on behalf of Credit Suisse.                  4 MR. PADDOCK: Robert Paddock, on behalf                  5 of the indenture trustee, Bank of New York.                  6 MR. DAVIS: Sean Davis with Winstead, on                  7 behalf of certain of the DIP lenders.                  8 MR. BOULEY: Ryan Bouley with Duff &amp;                  9 Phelps, here on behalf of the unsecured creditors.                  10 Q. (BY MR. WELLS) All right. Mr. Latimer, could                  11 you please state and spell your name for the court                  12 reporter?                  13 <b>A. Sure. James Robert Latimer, III. James is</b>                  14 <b>J-A-M-E-S, and Robert is R-O-B-E-R-T. Latimer is</b>                  15 <b>L-A-T-I-M-E-R.</b>                  16 Q. And what is your business address?                  17 <b>A. 2602 McKinney Avenue, Suite 400, Dallas,</b>                  18 <b>Texas, 75204.</b>                  19 Q. And who is your current employer?                  20 <b>A. I am -- I've been retained through the court</b>                  21 <b>process as the chief restructuring officer for ATP Oil</b>                  22 <b>&amp; Gas Corporation.</b>                  23 Q. And are you employed by anybody else?                  24 <b>A. Not at the present time, no.</b>                  25 Q. Are you currently employed for Black Stone?</p>	<p>1 Also, so she can get an accurate record, if                  2 you could wait for me to finish my question before you                  3 respond. I know conversationally we often interrupt                  4 each other; but for the purposes of deposition so we                  5 can get a record, if you could just wait for me to                  6 finish my question.                  7 And do you understand that you've just taken                  8 the same oath that you would if you were testifying in                  9 court?                  10 <b>A. I do.</b>                  11 Q. Now, if you don't understand a question, let                  12 me know, and I'll try to rephrase it.                  13 And if you need a break, also let me know, and                  14 I'll find a good stopping place.                  15 <b>A. Okay.</b>                  16 Q. So, your lawyer may object, but you still have                  17 to answer my question unless he instructs you                  18 otherwise.                  19 <b>A. Okay.</b>                  20 Q. Also, make sure that all of your answers to my                  21 questions are verbal so that they can be reflected on                  22 the transcript.                  23 Now, you can speak to your attorney, but if I                  24 have asked you a question, I ask that you please answer                  25 the question before you speak to your attorney unless</p>

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1 you need to speak to him about privilege -- a  
 2 privilege issue.  
 3 If you remember something later in the  
 4 deposition, just let me know. We can -- I'm sorry. If  
 5 you remember something later in the deposition that  
 6 would more fully answer a question that I've already  
 7 asked, let me know, and we can return to that at a --  
 8 at a convenient spot.  
 9 And if you need a document to jog your memory,  
 10 let me know. We can -- we might have it here, or we  
 11 might be able to get it for you.  
 12 **A. Okay.**  
 13 Q. Do you agree with all these rules that I have  
 14 just asked you?  
 15 **A. I do.**  
 16 Q. Great. And is there any reason you can't  
 17 provide accurate testimony today?  
 18 **A. I do not believe so.**  
 19 Q. Great. All right. Mr. Latimer, I'm about to  
 20 hand you what we have premarked as exhibit -- I'm  
 21 sorry -- as Exhibit 1.  
 22 **A. Okay.**  
 23 MR. HARRIS: Thank you.  
 24 Q. (BY MR. WELLS) Now, Mr. Latimer, if you could  
 25 take your time looking over it, and let me know when

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1 you're ready, and I'll ask my question.  
 2 **A. Thank you. Subject to a further break that I**  
 3 **might need to look a little further at something, let's**  
 4 **proceed.**  
 5 Q. Great. Do you recognize the document I just  
 6 gave you?  
 7 **A. I do.**  
 8 Q. Could you tell me what it is?  
 9 **A. It's a group of points regarding the bid made**  
 10 **by the lenders, requiring at least elaboration or**  
 11 **further information that would allow us to -- to assess**  
 12 **it further.**  
 13 **And it's also a list of points as -- as**  
 14 **labeled information required for board consideration**  
 15 **for approval of the sale process.**  
 16 Q. Great. And do you recognize the document?  
 17 **A. Yes, I have seen it.**  
 18 Q. Do you remember receiving this e-mail and its  
 19 attachment?  
 20 **A. I -- I don't -- I have seen this in the past,**  
 21 **whether -- I'm not sure whether it was before the**  
 22 **e-mail or as part of the e-mail, but --**  
 23 Q. And are you generally familiar with the  
 24 document?  
 25 **A. I am generally familiar with it.**

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1 Q. Great. Now, let me take a step back before I  
 2 ask you more about the document.  
 3 As you sit here today, do you believe that the  
 4 sale of the -- of the debtor's assets is in the best  
 5 interest of the estate?  
 6 **A. It could be.**  
 7 Q. What do you mean by it could be?  
 8 **A. Well, it has -- it -- it -- to -- to go**  
 9 **forward, it has a -- and to be in the best interest, it**  
 10 **requires a budget that will get the transaction to**  
 11 **closing, and the funding of a liquidity -- there's a --**  
 12 **there's a -- there's a funding need that has to be**  
 13 **satisfied to be able to get that closing.**  
 14 Q. So, as of right now, is the sale of the  
 15 debtor's assets in the best interest of the estate?  
 16 MR. HARRIS: Objection, form.  
 17 **A. As I said, it could be. If those -- if those**  
 18 **conditions can be satisfied, it would -- it would be a**  
 19 **-- it would be in the best interest of the debtor to**  
 20 **conclude the transaction.**  
 21 Q. (BY MR. WELLS) But as of today, what -- what  
 22 you've agreed to with the DIP lenders as of today is  
 23 not acceptable?  
 24 MR. HARRIS: Objection to form.  
 25 **A. The matters that are -- we would think of as**

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1 **necessary to go forward and -- and conclude it's in the**  
 2 **best interest are ones that are being actively worked.**  
 3 **There's not a conclusion on them.**  
 4 **So, literally today, there's not closure, so**  
 5 **there is not an ability to say this would be in the**  
 6 **best interest of the estate. It certainly can be.**  
 7 Q. (BY MR. WELLS) But it isn't right now?  
 8 **A. As of --**  
 9 MR. HARRIS: Same objection.  
 10 **A. -- 1:00 p.m. on Monday, no, it is not.**  
 11 Q. Okay. I'm about to hand you what's been  
 12 marked as Exhibit 2.  
 13 **A. Okay.**  
 14 Q. Are you ready to proceed, Mr. Latimer?  
 15 **A. Yes.**  
 16 Q. Just a moment ago you mentioned that the sale  
 17 of the debtor's assets cannot be in the best interest  
 18 of the debtor's estate if there wasn't a budget to get  
 19 the transaction to closing.  
 20 Is that -- does that accurately capture your  
 21 testimony?  
 22 **A. That was one of the points.**  
 23 Q. Now, isn't it true that it is not in the best  
 24 interest of the estate to go forward with the sale of  
 25 the debtor's assets unless there's enough to get the --



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<p style="text-align: right;">Page 13</p> <p>1 enough liquidity to get the company to plan                  2 confirmation?                  3 MR. HARRIS: Objection, form.                  4 <b>A. Our focus has been primarily in getting to the</b>                  5 <b>closing. Certainly getting to a plan confirmation is</b>                  6 <b>a -- desirable and something we expect to -- would</b>                  7 <b>expect to pursue, but the -- certainly, adequate</b>                  8 <b>funding at any point is important to success.</b>                  9 Q. (BY MR. WELLS) But is it in the best interest                  10 of the estate to get to a plan confirmation?                  11 MR. HARRIS: Objection to form.                  12 <b>A. If it can be done, certainly getting to a plan</b>                  13 <b>confirmation is the desirable end -- end result.</b>                  14 Q. (BY MR. WELLS) Do you think it can be done?                  15 <b>A. Well, as I have noted, the -- there are some</b>                  16 <b>issues that are unresolved at this point, and whether</b>                  17 <b>it can be or not depends on their successful</b>                  18 <b>resolution.</b>                  19 Q. But do you believe it can be done?                  20 MR. HARRIS: Objection to form.                  21 <b>A. I don't -- I don't have a -- the -- it</b>                  22 <b>certainly can be done. I don't know if it will be</b>                  23 <b>done.</b>                  24 Q. (BY MR. WELLS) And what if it isn't? If --                  25 if the DIP lenders and the debtor do not agree to a</p>	<p style="text-align: right;">Page 15</p> <p>1 <b>closing and go until a -- a -- we have a plan</b>                  2 <b>confirmation or other equivalent termination.</b>                  3 Q. You just listed three parts --                  4 <b>A. Uh-huh.</b>                  5 Q. -- of the negotiations, getting the company --                  6 or getting the sale approved through closing -- do you                  7 have something else?                  8 <b>A. Well, I think the points were -- those were</b>                  9 <b>the components of a -- of a -- of our budget</b>                  10 <b>discussions.</b>                  11 Q. And if any one of those components failed,                  12 would -- would the sale still be in the best interest                  13 of the estate?                  14 <b>A. Well, I -- I would say that we are working</b>                  15 <b>hard to get them to resolution. And we think that if</b>                  16 <b>they're resolved, it's in the best interest of the</b>                  17 <b>estate.</b>                  18 Q. How long have you been negotiating these three                  19 components of the deal?                  20 <b>A. More than a month.</b>                  21 Q. But less than two months?                  22 <b>A. I don't have a fix on the specific start date,</b>                  23 <b>so I would stay with more than a month, and it -- it</b>                  24 <b>may have been as long as you suggest.</b>                  25 Q. Have you been negotiating these three</p>
<p style="text-align: right;">Page 14</p> <p>1 budget that would allow ATP to get to a confirmed plan,                  2 would that be in the best interest -- would that still                  3 be in the best interest of the debtors -- of the                  4 debtor's estate, to have the sale of the debtor's                  5 assets approved?                  6 <b>A. Our -- our view is that we -- we believe the</b>                  7 <b>sale of the debtor's assets is advantageous, subject to</b>                  8 <b>the conditions mentioned.</b>                  9 Q. What is the current status of negotiations                  10 regarding funding -- funding the company through plan                  11 confirmation?                  12 <b>A. I should say it's a very active dialog and has</b>                  13 <b>been for a number of days. Each of the -- in -- in</b>                  14 <b>good faith. There's not a -- no issue, at least as far</b>                  15 <b>as the debtor is concerned, with regard to good faith</b>                  16 <b>and good intentions.</b>                  17 <b>We've had a -- an active period of</b>                  18 <b>negotiation. We have pretty much divided the</b>                  19 <b>discussion and -- into perhaps three parts: One having</b>                  20 <b>to do with the operation of the company through the</b>                  21 <b>point of anticipated closing on August 30th or 31st.</b>                  22 <b>A second part has to do with the professional</b>                  23 <b>fees and related issues.</b>                  24 <b>And a third part has to do with the -- if I --</b>                  25 <b>a wind-down period that would essentially commence at</b></p>	<p style="text-align: right;">Page 16</p> <p>1 components since the date of the auction?                  2 <b>A. I would -- again, the components of them</b>                  3 <b>are -- are -- have been discussed over some period of</b>                  4 <b>time. I -- and I don't have a specific day I'd say we</b>                  5 <b>dropped the flag and started, but certainly these have</b>                  6 <b>been active discussion points for quite some time.</b>                  7 Q. Did the discussions begin before the auction                  8 on any of the three components?                  9 <b>A. I think our focus was on getting to the</b>                  10 <b>auction, and my belief is that whatever may have --</b>                  11 <b>that the substance of these began once the auction was</b>                  12 <b>concluded and we were -- we had the expectation of</b>                  13 <b>closing with a -- with a lender group.</b>                  14 Q. Great. Now, let's break down these three                  15 component parts. First, you mentioned that you're                  16 negotiating a budget through a closing of the sale; is                  17 that correct?                  18 <b>A. Yes.</b>                  19 Q. What is the status of those negotiations?                  20 <b>A. They -- substantial progress has been made on</b>                  21 <b>those. We, I think, would characterize it as being on</b>                  22 <b>the same page.</b>                  23 <b>There are some elements that are, we think,</b>                  24 <b>smaller ones, you know. But in -- but in general,</b>                  25 <b>while we haven't absolutely declared victory, we think</b></p>

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<p style="text-align: right;">Page 17</p> <p>1 we are substantively very far along in -- in that 2 process. 3 Q. What are the elements that are still up in the 4 air? 5 A. Largely, I believe they are things having to 6 do with the inclusion in the operating budget of 7 matters that in prior drafts of those budgets were not 8 included because the anticipated closing date moved 9 from the end of June to the end of August. 10 And as a result, things that would not have 11 been included in a budget that might have been ended on 12 June 28th would be included in one that would have run 13 through August. 14 So, there's -- it's an alignment of these 15 things, to make sure we've got the right number in the 16 right place. I don't believe -- I wouldn't 17 characterize them as substantive differences. 18 Q. What are the additional costs that have been 19 added since -- since -- or I'm sorry. 20 What are the additional elements that are 21 included now in the operating budget that wouldn't have 22 if it had closed as scheduled? 23 A. One example is the -- just the -- the ongoing 24 operating costs for the -- for the company and the -- 25 and the -- that we would incur as -- as an operator of</p>	<p style="text-align: right;">Page 19</p> <p>1 group, but that -- those -- there's not a lot of detail 2 around those discussions. 3 Q. So the DIP lenders have not agreed to pay for 4 the additional -- for -- for the operation -- operating 5 budget through the closing of the sale? 6 A. I think the -- I think the -- a better 7 characterization would be to say that they -- they are 8 aware of the elements, and we're -- we're working to -- 9 working to get to resolution on them as of today. 10 I think, as I have characterized earlier, we 11 are in substantive agreement on these points, and -- 12 but we don't have a budget ready to file with the court 13 or distribute generally. 14 Q. So, as we sit here today, there's no 15 commitment for the DIP lenders to pay further operating 16 expenses through closing of the sale? 17 A. No. 18 Q. Now, you mentioned the second component of 19 issues that are still being negotiating -- still 20 subject to negotiation with the DIP lenders are 21 professional fees. 22 Could you describe the status of negotiations 23 regarding professional fees? 24 A. There's been active and ongoing dialog. 25 The debtor and its associated professionals have put</p>
<p style="text-align: right;">Page 18</p> <p>1 oil and gas properties. There are also the -- the 2 normal G and A costs and other things like that that 3 would continue into a period which previously had not 4 been budgeted for, so that would be a -- a form of 5 adjustment. 6 Those -- those, in terms of an operating 7 budget, would be the -- would be, you know, significant 8 items. 9 Q. In addition to the items that have been added 10 to the operating budget as a result of the delay in the 11 closing, have there been any other issued that are left 12 unresolved between the debtor and the DIP lenders 13 regarding operation -- an operation budget through 14 closing of the sale? 15 A. I think we have substantial agreement on 16 those. I don't think we -- to the extent we've got to 17 make adjustments, they would be small matters. 18 Q. Do any come to mind or -- 19 A. None of consequence. 20 Q. None of consequence. And have you agreed on 21 who is going to pay for the operations through closing? 22 A. Well, as I noted earlier, we -- we have 23 identified that there's a -- there is a need for 24 additional funding that we would anticipate would be 25 provided in some form, as yet unresolved, by the lender</p>	<p style="text-align: right;">Page 20</p> <p>1 forward a proposal that we think is a reasonable and 2 solid way to proceed. 3 That was provided to the lenders yesterday, 4 and I think response is pending. 5 Q. Have -- so you have not heard a response from 6 your latest proposal? 7 A. We have not. 8 Q. And could you describe the proposal that you 9 sent to the debtor? 10 A. It represented a -- it was a -- a compilation 11 of the professional fees that had been incurred through 12 the date of the termination notice and the -- and 13 that -- which was June 7th. 14 That information was compiled. A modest -- 15 moderate discount to the accrued and unpaid fees was 16 identified. A proposal was made to the lenders to -- 17 that the combination of that amount it paid and the 18 carve-out amount that was laid out in the termination 19 notice would be funding, we believe, adequate to get to 20 closing. 21 Q. If there isn't an agreement between the debtor 22 and the DIP lenders on professional fees, is the debtor 23 willing to go forward with approval of the sale? 24 A. Well, the -- as I said, the things we need are 25 the resolution of the -- some of the funding issues and</p>

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<p style="text-align: right;">Page 21</p> <p>1 <b>the resolution of the budget and the budget and all of</b> 2 <b>its components, and this is one of the components.</b> 3 Q. You didn't answer my question. 4 If there is no resolution to the outstanding 5 issues surrounding professional fees, is the debtor 6 willing to move forward with approval of the sale? 7 MR. HARRIS: Objection, form. 8 <b>A. No.</b> 9 Q. (BY MR. WELLS) Now, your own fees are at 10 issue with regard to this component of the 11 negotiations; is that correct? 12 <b>A. All of the retained debtor professionals are</b> 13 <b>involved, yes.</b> 14 Q. So you have a personal interest in reaching a 15 resolution of the professional fees issue with regard 16 to the ongoing negotiations for approval of the sale? 17 <b>A. My firm does, as do others represented here.</b> 18 Q. If there is no agreement or resolution of 19 issues surrounding professional fees in this case, 20 would approval of the sale be in the best interest of 21 the estate? 22 MR. HARRIS: Objection, form. 23 <b>A. The issue would be the resolution of the</b> 24 <b>entire budget, and there are parts of that budget all</b> 25 <b>of which need to be in sync to proceed.</b></p>	<p style="text-align: right;">Page 23</p> <p>1 agreed wind-down budget after the closing but before 2 plan confirmation; is that correct? 3 <b>A. Yes.</b> 4 Q. And what's the status of negotiations with the 5 DIP lenders regarding that issue? 6 <b>A. Very active and as yet not concluded. They --</b> 7 <b>that dialog has been undertaken very actively in the</b> 8 <b>recent days. I think there is -- we have -- everybody</b> 9 <b>is working intensely to get to something that can be</b> 10 <b>satisfactory in that way, and I -- I would attribute to</b> 11 <b>it a positive tone.</b> 12 Q. Could you please describe the outstanding 13 issues that the debtor and the DIP lenders have not 14 come to an agreement on? 15 MR. HARRIS: Objection, form. 16 Q. (BY MR. WELLS) With regard to this third 17 component. 18 <b>A. Primarily these are, I think, there -- there's</b> 19 <b>some -- the -- the issues are clarification of amounts</b> 20 <b>that, realizing that we had a budget form and have by</b> 21 <b>the moving -- movement of the closing date, have had to</b> 22 <b>re -- re-examine a number of factors, I think -- but to</b> 23 <b>make sure we've got the right amount in the right</b> 24 <b>pocket, but I don't think the -- our belief is that we</b> 25 <b>can come to an agreement on it.</b></p>
<p style="text-align: right;">Page 22</p> <p>1 Q. (BY MR. WELLS) When you say "budget," do you 2 mean budget for -- budget through a closing of the 3 sale? 4 <b>A. I -- I -- I describe the three components</b> 5 <b>which would carry past the -- through the -- through a</b> 6 <b>closing and into the post closing period.</b> 7 Q. All right. So, the answer is no, without 8 fees, resolution of the sale would not be in the best 9 interest of the estate; is that correct? 10 MR. HARRIS: Objection, form. 11 Q. (BY MR. WELLS) Actually, let me rephrase 12 that. Sorry. 13 All right. So, let me rephrase that. So, the 14 answer is no, that without -- without a resolution of 15 the issues surrounding professional fees, it would not 16 be in the best interest of the estate to go forward 17 with the sale? 18 MR. HARRIS: Same objection. 19 <b>A. It would not be in the best interest of the</b> 20 <b>estate to go forward without resolution of the entire</b> 21 <b>budget.</b> 22 Q. (BY MR. WELLS) All right. Well, let's move 23 on to that third component that we discussed. 24 <b>A. Okay.</b> 25 Q. You said that third component was coming to an</p>	<p style="text-align: right;">Page 24</p> <p>1 <b>There are -- I don't -- I don't at this point</b> 2 <b>have anything I would characterize as a greater</b> 3 <b>divisive issue, but the realignment of things in light</b> 4 <b>of the -- what goes into the operating budget or</b> 5 <b>becomes part of the wind-down budget is -- is a set</b> 6 <b>of -- it's a -- a tremendous amount of work has gone</b> 7 <b>into getting it right, and that's the -- that's the</b> 8 <b>kinds of things that -- of which the message traffic</b> 9 <b>and other discussions have gone on.</b> 10 <b>I don't believe that at this point we -- I</b> 11 <b>think we have a good chance of reaching a substantive</b> 12 <b>agreement.</b> 13 Q. Just to be clear, reading your answer, you say 14 that you believe there is a good chance that there will 15 be a substantive agreement; is that correct? 16 <b>A. Yes.</b> 17 Q. Okay. All right. Now, you said that one of 18 the outstanding issues regarding this wind-down budget 19 was a clarification of amounts. 20 Could you be more specific, please? 21 MR. HARRIS: Objection, form. 22 <b>A. Well, previously, we had anticipated that the</b> 23 <b>period from closing to a -- an anticipated conclusion</b> 24 <b>of the case would be approximately three months.</b> 25 <b>I think with the movement of the closing date,</b></p>

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<p style="text-align: right;">Page 25</p> <p>1 we're looking at a period that is more like one month, 2 so -- at least for our projections estimating and 3 other -- other type of budgeting. 4 So, the -- the change from that longer period 5 to a shorter period has meant that we have ended up 6 with a -- trying to make sure we have the right amounts 7 to be paid in the right time frame. 8 And there are, you know -- I think these are 9 not large dollar issues, so, we're anticipating that we 10 will be able to resolve them. 11 Q. (BY MR. WELLS) If an agreement is not reached 12 on a wind-down budget, would it be in the best interest 13 of the estate to proceed with the approval of the sale 14 anyway? 15 MR. HARRIS: Objection, form. 16 A. I think this one may have more flexibility 17 than the other two because we're trying to anticipate 18 things 190 days away, so that to the extent that there 19 were matters that arose, we might have a -- an 20 opportunity to review them or discuss them in some 21 fashion with the -- with the lenders, who would 22 presumably be the provider of the funding for this. 23 So, I would think and expect it's in the best 24 interest to have a completed budget. Whether the -- we 25 would, frankly, have a -- a -- have a question that I'm</p>	<p style="text-align: right;">Page 27</p> <p>1 A. That's not my expectation. 2 Q. (BY MR. WELLS) So, you mentioned -- so, you 3 mentioned that you aren't sure whether you would stop 4 the whole sale process if an operating budget through 5 plan confirmation is reached; is that correct? 6 MR. HARRIS: Objection, form. 7 A. Perhaps restate your question. I got a 8 different reaction than -- 9 Q. (BY MR. WELLS) Sure. So, if a budget 10 agreement is not reached, do you believe that the 11 debtor -- it is in the best interest of the debtor's 12 estate to proceed with the approval of the sale? 13 MR. HARRIS: Same objection. 14 A. No, I don't. 15 Q. (BY MR. WELLS) If you don't reach an 16 agreement for an operating budget that will get the 17 debtor through plan confirmation, would approval of the 18 sale still be in the best interest of the estate? 19 MR. HARRIS: Objection, asked and 20 answered. 21 A. I don't believe it would be in the best 22 interest of the estate if we don't have a comprehensive 23 budget resolution. 24 Q. (BY MR. WELLS) All right. Mr. Latimer, if 25 you could turn to the last page of what has been marked</p>
<p style="text-align: right;">Page 26</p> <p>1 not sure I have the answer for as to whether we would 2 halt everything for this much -- much smaller component 3 of the total picture. 4 Q. Is -- 5 A. But I would -- I would fully expect we would 6 get there, and -- and it's certainly possible that we 7 would not proceed if we didn't have this. 8 Q. You said that there is more flexibility on 9 this point; is that correct? 10 A. Well, only in that the -- we're attempting to 11 come up with numbers for a time period that's more 12 extended and is different than the past. 13 So, we are working very hard to come up with 14 an accurate representation of the costs that might be 15 incurred in that time period. 16 But I -- you know, if there's a -- if there's 17 some significant variation or deviation, I think we 18 would perhaps look to reopen; but I -- I would want 19 right now to lock it down, have it be part of the full 20 budget. 21 Q. Is it your expectation that if new costs do 22 arise after closing that the DIP lenders would be 23 amenable to helping the debtors pay those operating 24 costs? 25 MR. HARRIS: Objection to form.</p>	<p style="text-align: right;">Page 28</p> <p>1 as Exhibit 2. 2 A. Uh-huh. 3 Q. Could you please generally describe what's on 4 this page? 5 A. This takes the Clipper project costs, both 6 incurred and -- they're incurred but not paid, and 7 as -- and isolates them by vendor and details them out 8 by potential week of perhaps anticipated disbursements. 9 Q. Is there a budget for -- is there a similar 10 budget for assets other than Clipper? 11 A. Well, Clipper has been looked at as a -- on a 12 project-specific basis. 13 The other range of operations of the company 14 would be those that would be folded into the -- the 15 budgets that have been worked -- that are -- I would 16 think of as the -- both the operating budget on a 17 go-forward basis and the other, you know, financial 18 records of the company, be they accounts payable or 19 receivable or other types of things like that. 20 MR. WELLS: We will request that the 21 debtor -- 22 Q. (BY MR. WELLS) Is there -- Mr. Latimer, is 23 there a document that reflects all of the -- the costs 24 of the remaining debtor's assets in the possession of 25 the debtor?</p>

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<p>1 MR. HARRIS: Objection, form.                  2 Q. (BY MR. WELLS) The operating costs and                  3 expenses. Let me restate.                  4 Is there a document that reflects all of the                  5 operating costs and expenses of the remaining debtor's                  6 assets other than Clipper in the possession of the                  7 debtor?                  8 MR. HARRIS: Same objection.                  9 <b>A. There are analyses done for a variety of</b>                  10 <b>reasons. I'm not familiar with a specific one that</b>                  11 <b>would be an analogue to the one I'm looking at.</b>                  12 Q. (BY MR. WELLS) But is there a document that                  13 reflects your agreed costs with the DIP lenders on the                  14 remaining assets?                  15 MR. HARRIS: Objection, form.                  16 <b>A. Well, pursuant to the lending documents, we</b>                  17 <b>have an approval process for disbursements for all --</b>                  18 <b>all of our outlays.</b>                  19 <b>So, when things come up, they are submitted</b>                  20 <b>for approval and the lenders approve them. This is</b>                  21 <b>generally a weekly process.</b>                  22 Q. (BY MR. WELLS) You testified that you reached                  23 substantial -- substantial agreement with the DIP                  24 lenders on the amounts of remaining costs and operating                  25 expenses of the debtor's assets.</p>	<p>1 a break.                  2 MR. HARRIS: I don't -- I don't                  3 exactly -- I don't know what budgets we're talking                  4 about, but I mean to the extent that there is one, I                  5 mean, we'll consider it.                  6 But I know we produced documents yesterday                  7 which I think included the latest budget, so, I mean --                  8 MR. WELLS: All right.                  9 Q. (BY MR. WELLS) If you could -- Mr. Latimer, if                  10 you could turn to what's been marked as Exhibit 1.                  11 <b>A. Okay.</b>                  12 Q. If you could turn to the second page.                  13 <b>A. Is this a page titled Evidentiary Concerns or</b>                  14 <b>is it one --</b>                  15 Q. To be clear, it's the first page of the                  16 attachment to the e-mail which is the cover page.                  17 <b>A. Okay.</b>                  18 Q. The Bates number is ATP SALE 0007882.                  19 <b>A. Okay.</b>                  20 Q. Are you there?                  21 <b>A. Yes.</b>                  22 Q. Great. The first bullet point there, could                  23 you read that for me?                  24 <b>A. "How do we address satisfaction of ATP's</b>                  25 <b>anticipated liquidity need in excess of the remaining</b></p>
Page 30	Page 32
<p>1 MR. HARRIS: Objection.                  2 Q. (BY MR. WELLS) Is that correct?                  3 MR. HARRIS: Objection, form.                  4 <b>A. We have -- I think we have substantial</b>                  5 <b>agreement on a budget going forward on the outlays we</b>                  6 <b>would anticipate and, obviously, the purposes for which</b>                  7 <b>they're made.</b>                  8 Q. (BY MR. WELLS) To closing?                  9 MR. HARRIS: Same objection.                  10 <b>A. That would be -- that would be -- that would</b>                  11 <b>be part of the operating budget, to close it, yes.</b>                  12 Q. (BY MR. WELLS) Is it memorialized in a single                  13 document?                  14 <b>A. It's part of a -- well, it -- there are a</b>                  15 <b>number of draft budgets, and it would be in those draft</b>                  16 <b>budgets. I don't know -- since it's not a final</b>                  17 <b>document at this point, I think there's a number of</b>                  18 <b>things that have gone back and forth, but I don't -- I</b>                  19 <b>don't have a -- I don't have a -- a -- I mean, the</b>                  20 <b>budgeted items have been provided for in the -- for the</b>                  21 <b>period of time from an anticipated court approval to</b>                  22 <b>the closing.</b>                  23 MR. WELLS: All right. We're going to                  24 ask the debtor's counsel to produce the latest draft of                  25 that budget. You could see if you can track it down at</p>	<p>1 <b>availability into the DIP facility in order to get to a</b>                  2 <b>closing?"</b>                  3 Q. As we stand today, have the DIP lenders and                  4 the debtor agreed to a resolution of this issue?                  5 <b>A. I think there's concurrence on the size of the</b>                  6 <b>liquidity need or the components of that need, subject,</b>                  7 <b>obviously, to some resolution of some budget issues;</b>                  8 <b>but there's no agreement at this point with regard to</b>                  9 <b>how that liquidity need will be satisfied.</b>                  10 Q. So, that first bullet point remains as a                  11 concern that could remain as an impediment to the                  12 approval of the sale of the debtor's assets?                  13 <b>A. We do not have clarity on it, so, yes.</b>                  14 Q. Yes, it is an unresolved impediment to the                  15 sale?                  16 <b>A. It is --</b>                  17 MR. HARRIS: Objection to form.                  18 <b>A. It is an unresolved impediment to closing.</b>                  19 Q. (BY MR. WELLS) Is it an -- is it an                  20 unresolved impediment to the debtor's motion to approve                  21 the sale of the debtor's assets?                  22 MR. HARRIS: Same objection.                  23 <b>A. Well, we believe the closing is the prize.</b>                  24 <b>Approval is a necessary component of that. So, we</b>                  25 <b>are -- we would anticipate having a much clearer</b></p>

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1 **picture as part of a -- a going-forward.**  
 2 Q. We --  
 3 MR. HARRIS: Let's take a quick break, if  
 4 you don't mind.  
 5 Q. (BY MR. WELLS) Just one more follow-up  
 6 question on that.  
 7 **A. Sure.**  
 8 Q. Without -- without resolution of that issue,  
 9 is approval of the sale of the debtor's assets in the  
 10 best interest of the estate?  
 11 MR. HARRIS: Objection, form.  
 12 **A. No.**  
 13 MR. HARRIS: All right.  
 14 (A break was taken from 1:32 to 1:44.)  
 15 Q. (BY MR. WELLS) All right. Mr. Latimer, you  
 16 testified before we went on break that you believe the  
 17 closing of the sale is the prize; is that correct?  
 18 **A. Yes.**  
 19 Q. If the sale is approved and the estate is --  
 20 immediately becomes administratively insolvent, is that  
 21 a prize?  
 22 MR. HARRIS: Objection to form.  
 23 **A. I'm -- I wouldn't comment on the issue of the**  
 24 **administrative insolvency, but certainly the sale is**  
 25 **the focus of what we're doing and a successful**

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1 **conclusion of the case thereafter.**  
 2 Q. (BY MR. WELLS) But is reaching a closing of  
 3 the sale necessarily in the best interest of the estate  
 4 if the estate is left administratively insolvent  
 5 immediately thereafter?  
 6 MR. HARRIS: Same objection.  
 7 **A. I don't have a -- the issue of administrative**  
 8 **insolvency is something I'm not in a position to offer**  
 9 **a response to. A lot of things go into it. But**  
 10 **certainly the conclusion of the sale and the**  
 11 **confirmation of a plan would be the path forward, as we**  
 12 **see it.**  
 13 Q. (BY MR. WELLS) But you testified that closing  
 14 is the prize and not necessarily the confirmation of  
 15 the plan; is that correct?  
 16 MR. HARRIS: Object --  
 17 **A. I believe I -- I'm sorry.**  
 18 MR. HARRIS: Objection, form.  
 19 **A. I believe I was differentiating between the**  
 20 **approval of the sale and the closing of the sale**  
 21 **without reference to the point regarding a plan.**  
 22 Q. (BY MR. WELLS) If the debtor's crown jewel  
 23 assets are sold and the estate is left with no money to  
 24 go forward, how is that a prize?  
 25 MR. HARRIS: Same objection.

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1 **A. Well, as we noted, the provision of adequate**  
 2 **budgets is -- a provision of agreed budgets is part of**  
 3 **the process of moving forward. So, if there was a sale**  
 4 **and an agreed budget on how to proceed from there,**  
 5 **reaching -- reaching a -- reaching the plan would be an**  
 6 **integral component of it.**  
 7 Q. (BY MR. WELLS) So, closing the case through a  
 8 confirmation plan is ultimately the prize?  
 9 MR. HARRIS: Objection, form.  
 10 **A. As I said, my point earlier was a comparison**  
 11 **of two things. The plan was not one of those two.**  
 12 **Certainly, concluding a plan is a -- a desirable and --**  
 13 **target -- desirable target for all of us.**  
 14 Q. (BY MR. WELLS) But if approving the sale --  
 15 approving a sale that would effectively render a  
 16 conceptual plan of bankruptcy impossible --  
 17 Let me start over. But if approving a sale --  
 18 approving a sale that would effectively render a  
 19 consensual plan of bankruptcy impossible, would -- I'm  
 20 sorry.  
 21 Let me try this one more time. But if  
 22 approving a sale that would immediately leave the  
 23 debtor's estate administratively insolvent, wouldn't  
 24 that render a consensual plan of bankruptcy impossible?  
 25 MR. HARRIS: Objection. Calls for a

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1 legal conclusion. Is this a hypothetical you're  
 2 asking?  
 3 MR. WELLS: Yes.  
 4 **A. Well, our -- I don't see that as a -- a -- our**  
 5 **process has been to take steps to have that**  
 6 **hypothetical be something that's not a risk.**  
 7 **So I wouldn't really react to the idea that**  
 8 **just because we close a sale, we -- we would have the**  
 9 **exposure to being administratively insolvent.**  
 10 Q. (BY MR. WELLS) Without the possibility of a  
 11 plan, can a sale that is in the best interest of the  
 12 estate -- estate proceed?  
 13 MR. HARRIS: Same objection.  
 14 **A. I don't know how to answer because I don't**  
 15 **know what could have been done to make a plan**  
 16 **impossible.**  
 17 Q. (BY MR. WELLS) If there was a risk that by  
 18 closing the sale, a plan of bankruptcy would not be  
 19 possible, would that sale be in the best interest of  
 20 the estate?  
 21 MR. HARRIS: Objection, form.  
 22 **A. Steps we are taking are ones to render the**  
 23 **question moot. A lot of things can happen in the Gulf**  
 24 **of Mexico, and I don't -- a set of circumstances that**  
 25 **would prevail on August 29th may be very different than**

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1 **what we see today.**  
2 **So our objective is to follow through from a**  
3 **sale to plan, and we are developing plans, budgets and**  
4 **other things to do that.**  
5 Q. (BY MR. WELLS) But as we sit here today and  
6 as we will sit in the courtroom on Thursday, if there's  
7 a significant risk that approval of the sale would  
8 render a consensual plan of bankruptcy impossible,  
9 would approval of the sale be in the best interest of  
10 the estate?  
11 MR. HARRIS: Objection, form.  
12 **A. It's a decision we would make at the time.**  
13 Q. (BY MR. WELLS) What if you can't render this  
14 question moot because there's no agreement with the DIP  
15 lenders? Would that be in the best interest of the  
16 estate?  
17 MR. HARRIS: Same objection.  
18 **A. The -- our pathway forward is to reach an**  
19 **agreement with the DIP lenders. So I would anticipate**  
20 **we would have some major challenges if we are unable to**  
21 **do that.**  
22 Q. (BY MR. WELLS) And by major challenges, do  
23 you mean that you would not proceed with the approval  
24 of the sale?  
25 **A. I believe I answered that question earlier**

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1 **when you asked about proceeding without a budget and**  
2 **without agreement, and I answered, No.**  
3 Q. All right. If you could turn back to  
4 Exhibit 1. I'm sorry. The same -- the same place, the  
5 next bullet down, the second bullet. Could you read  
6 that, please?  
7 **A. "How can ATP address feasibility of the sale**  
8 **when it needs certainty on the mechanics for accessing**  
9 **the remaining portion of the DIP facility,**  
10 **approximately 8.4 million, prior to month end?"**  
11 Q. Well --  
12 **A. Sub-bullets, "Waiver of existing defaults that**  
13 **permit funding of the final amount, additional**  
14 **commitments or assumptions of Clipper payables or other**  
15 **expenditures related to acquiring assets preclosing."**  
16 Q. As we sit here today, has this concern been  
17 resolved between the debtor and the DIP lenders?  
18 **A. No.**  
19 Q. Until that concern is resolved, would a sale  
20 of the debtor's assets be in the best interest of the  
21 estate?  
22 **A. This has been, I think, significantly**  
23 **overtaken by events, such that it's -- we are**  
24 **proceeding and -- proceeding on a basis where if we**  
25 **receive it, we receive it, and if we don't, we would --**

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1 **if the waivers and other things required are not**  
2 **obtained, we will continue to proceed.**  
3 Q. So, it's your response that if this concern is  
4 not addressed, the sale still might be in the best  
5 interest of the estate?  
6 **A. Yes.**  
7 Q. All right. If you could read the -- the third  
8 bullet for me.  
9 **A. "How does ATP demonstrate buyer sufficiency of**  
10 **financing, given M&M and wind-down commitments exceed**  
11 **amount of commitment letter received by debtor from**  
12 **agent."**  
13 Q. Could you please explain this concern for me?  
14 **A. I think, simply put, the amount of a**  
15 **commitment letter provided to the debtor by the agent**  
16 **was less than the aggregate commitments that at this**  
17 **time were anticipated to exist.**  
18 Q. As we sit here today, has this concern --  
19 excuse me. As we sit here today, has this concern been  
20 addressed between the debtor and the DIP lenders?  
21 **A. As I noted earlier, the -- this set of issues**  
22 **would be ones that are a component of closing, and**  
23 **the -- the structure and funding of the commitments**  
24 **that would arise both before closing and -- and at the**  
25 **time of the closing are not -- are not resolved at this**

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1 **point.**  
2 Q. So the answer is, no, this -- this concern has  
3 not been addressed?  
4 **A. I would not agree that it has not been**  
5 **addressed. It has not been resolved.**  
6 Q. If this issue does not get resolved, would  
7 approval of the sale of the debtor's assets be in the  
8 best interest of the debtor's estate?  
9 **A. No.**  
10 Q. If you could read the next bullet, please.  
11 **A. "Debtor must be able to testify if the**  
12 **substance and amount of the wind-down budget are**  
13 **acceptable to the estate. This would also enable the**  
14 **debtor to defeat a sub rosa plan argument."**  
15 Q. What is your understanding of the sub rosa  
16 plan argument?  
17 **A. In very general terms, the argument is that**  
18 **the removal of the assets of value from the estate**  
19 **would -- without recognition of the obligations of the**  
20 **estate would have the -- have the effect of -- of being**  
21 **essentially a sub rosa plan.**  
22 Q. Why would this be a concern to the debtor?  
23 MR. HARRIS: Objection, since that calls  
24 for legal advice.  
25 MR. WELLS: To be clear, that's not a

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1 privilege objection, correct?  
 2 MR. HARRIS: Well, I don't -- I don't  
 3 know if his answer is based on a discussion with legal  
 4 counsel. It could be.  
 5 Q. (BY MR. WELLS) Mr. Latimer, I'm going to --  
 6 MR. WELLS: If you could -- if the  
 7 reporter could reread that question.  
 8 (The requested material was read.)  
 9 MR. HARRIS: And my objection is if your  
 10 understanding of why it would be a concern to the  
 11 debtor is based on your discussions with legal counsel,  
 12 that would be privileged, and I'll instruct you not to  
 13 answer that.  
 14 MR. WELLS: Of course, if you have shared  
 15 any of this information with the DIP lenders and you  
 16 have given it to us, you have waived your right to  
 17 claim privilege with regard to that information.  
 18 MR. HARRIS: But -- but just to be clear,  
 19 I mean, that's what he's saying. But listen to my  
 20 objection.  
 21 **A. I have had no discussions with the DIP lenders**  
 22 **regarding this point, and my knowledge of it has been**  
 23 **derived from counsel. So I do not believe that**  
 24 **privilege has been violated or compromised.**  
 25 Q. (BY MR. WELLS) So to be clear, have you

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1 withheld any testimony as a result of your counsel's  
 2 objection to privilege, as per privilege?  
 3 **A. With regard to which of the points here?**  
 4 Q. With regard to my question as to why the sub  
 5 rosa plan argument was a concern of the debtor.  
 6 **A. I -- perhaps you -- could you restate your**  
 7 **question? I have an answer, but I want to be sure I'm**  
 8 **answering straightforward here.**  
 9 Q. Sure. Have you withheld any testimony with --  
 10 in response to my question regarding the sub -- sub  
 11 rosa plan argument as a result of your counsel's  
 12 objection for privilege?  
 13 **A. Yes.**  
 14 MR. WELLS: We're going to reserve our  
 15 right to -- to bring this issue before the court.  
 16 Q. (BY MR. WELLS) So let me -- let's just make  
 17 the record clear. What is your -- could you explain to  
 18 me again why the sub rosa plan argument was a concern  
 19 to the debtor?  
 20 MR. HARRIS: Objection, asked and  
 21 answered. And -- and, again, I mean, if your  
 22 understanding of that concern is based on discussions  
 23 with legal counsel, I will instruct you not to answer  
 24 that question.  
 25 And that was the same question you asked

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1 before.  
 2 **A. An answer I might provide was -- was based on**  
 3 **conservations with counsel; and, therefore, I would not**  
 4 **proceed further in answering.**  
 5 Q. (BY MR. WELLS) Great. All right. Has  
 6 that -- has that concern --  
 7 MR. WELLS: It is our position that --  
 8 that that claim of privilege has been waived due to  
 9 sharing the information both with the DIP lenders and  
 10 with the committee, so we're -- we reserve the right to  
 11 bring that issue before the court.  
 12 MR. HARRIS: We accept that.  
 13 Q. (BY MR. WELLS) Now, Mr. Latimer, could you  
 14 tell me, has the debtor's concern regarding the defeat  
 15 of a sub rosa plan argument been resolved with the DIP  
 16 lenders?  
 17 **A. Can -- the -- presuming the -- the matters**  
 18 **that are pending with regard to budgets and financing**  
 19 **are resolved, I think the debtor's concerns on that**  
 20 **point are also resolved.**  
 21 Q. Why is that?  
 22 **A. The debtor would -- presuming, again, that the**  
 23 **funding and the budgets are resolved satisfactorily,**  
 24 **the pathway to a -- a successful resolution and -- and**  
 25 **confirmed plan would be greatly aided, if not,**

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1 **completely resolved.**  
 2 Q. And if these issues are not resolved, will the  
 3 debtor still have a concern regarding the sub rosa plan  
 4 argument?  
 5 MR. HARRIS: Objection, form.  
 6 **A. Well, those two matters are ones that are**  
 7 **things we would expect to be resolved to be able to**  
 8 **proceed. So if we cannot resolve the budget and the**  
 9 **funding, then a lot of this other stuff doesn't make**  
 10 **much difference.**  
 11 Q. (BY MR. WELLS) But if you can't resolve the  
 12 budget and the funding issues, then the sub rosa plan  
 13 argument would still be a concern of the debtors?  
 14 MR. HARRIS: Objection to form.  
 15 **A. I think the two items I referred to are**  
 16 **necessary to proceed. If we don't proceed, this**  
 17 **argument -- whatever might be involved in this argument**  
 18 **is -- we'd never get to that point.**  
 19 Q. (BY MR. WELLS) What do you mean by "we'd  
 20 never get to that point"?  
 21 **A. Well, if we don't go forward with the sale**  
 22 **motion, the elements that might give rise to issues or**  
 23 **concerns surrounding a sub rosa plan would not be**  
 24 **reached.**  
 25 Q. Okay. And if there is no resolution, just to



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1 be clear, then approval of the sale of the debtor's  
 2 assets would not be in the best interest of the estate,  
 3 correct?  
 4 MR. HARRIS: Objection, form.  
 5 **A. I believe I have answered that "yes" in the**  
 6 **past.**  
 7 Q. (BY MR. WELLS) And to be clear, the issues  
 8 that we're -- that we're talking about here are the  
 9 budget to closing, as well as the budget to plan  
 10 confirmation, correct?  
 11 **A. I believe --**  
 12 MR. HARRIS: Object to form.  
 13 **A. His listing of the two items were ones with**  
 14 **which I agree.**  
 15 Q. (BY MR. WELLS) Let me ask that again, to --  
 16 to make the record clean.  
 17 **A. Yes.**  
 18 MR. WELLS: If you could -- actually, if  
 19 you could just read the question again, that would be  
 20 great.  
 21 **A. I can answer it.**  
 22 (The requested material was read.)  
 23 MR. HARRIS: Objection, asked and  
 24 answered.  
 25 **A. Yes.**

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1 Q. (BY MR. WELLS) And unless those issues are  
 2 resolved, the debtor is not going forward with the sale  
 3 motion because it's not in the best interest of the  
 4 estate, correct?  
 5 **A. Yes.**  
 6 Q. And that would -- that's why the sub rosa plan  
 7 argument would be moot?  
 8 MR. HARRIS: Object to form.  
 9 **A. Yes.**  
 10 Q. (BY MR. WELLS) Thanks. If you could read the  
 11 next bullet, please. It's under the heading "M&M  
 12 Liens."  
 13 **A. "How does the debtor satisfy its evidentiary**  
 14 **burden of establishing that DIP lenders' assessment**  
 15 **that 45 million is sufficient reserve to address senior**  
 16 **M&M lien claims on acquired assets?**  
 17 (How do we address from an evidentiary  
 18 standpoint that we are not pre-deciding lien amount and  
 19 priority issues at the sale hearing)."  
 20 Q. As we stand here today, has that concern been  
 21 resolved between the debtor and the DIP lenders?  
 22 **A. In substance, the amount has been increased by**  
 23 **the DIP lenders. And that discussion, as between the**  
 24 **DIP lenders and those M&M lienholders, has lead, I**  
 25 **believe, to that increase.**

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1 **And I think the -- I believe at the time of**  
 2 **the hearing, Mr. Zumbro, counsel for the agent, said**  
 3 **that if -- if the amount was not sufficient, that the**  
 4 **liens would be carried forward onto the new co-assets.**  
 5 **So I -- I would think, to a substantial degree**  
 6 **here, this issue has been addressed through**  
 7 **negotiation.**  
 8 Q. What has the amount been raised to?  
 9 **A. 55 million.**  
 10 Q. And was the resolution of this issue suggested  
 11 by Mr. Zumbro acceptable to the debtor?  
 12 **A. Well, the -- the -- the suggestion was made in**  
 13 **court prior to further discussion of this and the**  
 14 **change in the amount, and if it -- I believe that**  
 15 **resolution would be satisfactory to the debtor.**  
 16 Q. And do you believe that the resolution  
 17 suggested by Mr. Zumbro would be in the best interest  
 18 of the estate?  
 19 **A. Yes.**  
 20 Q. Could you read the next bullet, please?  
 21 **A. "How does the debtor address the disputed M &**  
 22 **M liens post-closing?"**  
 23 Q. As we sit here today, has this issue been  
 24 resolved by the debtor, between the debtor and the DIP  
 25 lenders?

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1 **A. I'm not aware that it has been resolved.**  
 2 Q. If it has not been resolved, would approval of  
 3 the debtor's motion to sell its assets be in the best  
 4 interest of the estate?  
 5 **A. So long as these liens were fully addressed in**  
 6 **the -- in the process that I understand to have been**  
 7 **laid out by Mr. Zumbro in court, I think that would be**  
 8 **satisfactory to the debtor.**  
 9 Q. Do you know whether Mr. Zumbro's solution  
 10 would fully address this issue?  
 11 **A. No. Oh, excuse me. I anticipated something**  
 12 **different.**  
 13 **I believe the -- I believe it should address**  
 14 **it.**  
 15 Q. What do you mean by "should"?  
 16 **A. I mean if it's as I understand it, liens that**  
 17 **are in excess of what has been provided would be**  
 18 **carried forward onto the -- onto the acquired assets;**  
 19 **and, thereby, the lienholder would have a means of**  
 20 **achieving resolution of his -- of his lien and the**  
 21 **status of that lien.**  
 22 Q. All right. Thank you. If you could take a  
 23 moment to just read to yourself the bullets under the  
 24 heading "BOEM/BSEE Matters," and let me know when  
 25 you're done.

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1 **A. Okay. I've read them.**  
 2 Q. As we sit here today, have these concerns been  
 3 addressed between the debtor and the DIP lenders?  
 4 **A. Partially.**  
 5 Q. Could you tell me which concerns still remain?  
 6 **A. I can tell you that we have statements --**  
 7 **verbal statements from the lenders as to their intent**  
 8 **with regard to a number of these points.**  
 9 **The implementation of some -- of them is**  
 10 **something that is anticipated to take place as -- as**  
 11 **the sale process -- you know, as we work -- work our**  
 12 **way through the sale process and the necessity for a**  
 13 **particular answer comes forward.**  
 14 **So the -- we have had descriptions of what we**  
 15 **think they intend to do, and it's up to them to do the**  
 16 **implementation.**  
 17 Q. Could you clarify what verbal statements from  
 18 the lenders you are referring to?  
 19 **A. That they intend to establish a newco, and**  
 20 **they intend to staff it in such a manner as to become**  
 21 **a -- make it a qualified operator and that the -- the**  
 22 **insurance issue has been addressed through the**  
 23 **operating budget, the -- or the proposed operating**  
 24 **budget.**  
 25 **And the resolution between BOEM and the**

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1 lenders, as -- as noted on the record in court last  
 2 week, is one that would permit the resolution of some  
 3 abandonment/decommissioning claims that could be lodged  
 4 against ATP, or ones that we believe, in -- in light of  
 5 the BOEM lender agreement, that the points of  
 6 importance to us with regard to decommissioning would  
 7 be resolved satisfactorily with BOEM.  
 8 Q. So if the verbal statements by the DIP lenders  
 9 are true, what would the remaining unresolved issues  
 10 regarding BOEM and BSEE be?  
 11 **A. We have two properties that are not covered**  
 12 **under the umbrella here of BOEM resolution with ATP.**  
 13 **One of them is a property in which ATP owns half**  
 14 **interest and Chevron owns a half interest.**  
 15 **And Chevron is to take over that property and**  
 16 **take with it the abandonment/decommissioning**  
 17 **obligations that go with it.**  
 18 **A second one is a deep -- deepwater pipeline**  
 19 **system that -- where there are two other parties, both**  
 20 **of them financially substantial. And the ATP is likely**  
 21 **to act in negotiations that we expect to come out**  
 22 **satisfactorily.**  
 23 **The -- the takeover of the ATP interest and**  
 24 **with it the abandonment obligation by one or the other**  
 25 **of those other two parties would close off the**

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1 **abandonment issues insofar as ATP is concerned.**  
 2 Q. If those issues aren't resolved, would  
 3 approval of the sale motion be in the best interest --  
 4 excuse me -- the best interest of the estate?  
 5 **A. Yes.**  
 6 Q. Why?  
 7 **A. Because each of them is at a sufficiently**  
 8 **advanced stage that the documentation of terms of a**  
 9 **deal, that kind of thing, is -- would be a -- would not**  
 10 **be -- it would not reasonably be something done in as**  
 11 **short a period of time as we're talking about.**  
 12 **But we would do it on the confidence that**  
 13 **those issues would get resolved satisfactorily.**  
 14 Q. Thank you. Could you read the first bullet  
 15 under the heading "Adequate Funding for Administrative  
 16 Claims" for me, please?  
 17 **A. "Is there an agreement on wind-down budget**  
 18 **covering items debtor believes, in its reasonable**  
 19 **business judgment, are necessary to conclude the**  
 20 **estate's affairs post-closing, including reasonable**  
 21 **administrative expenses?"**  
 22 Q. Now, we have already addressed this  
 23 extensively, but let me ask specifically, if this  
 24 concern is not resolved, would approval of the sale of  
 25 the debtor's assets be in the best interest of the

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1 estate?  
 2 MR. HARRIS: Objection. Calls for a  
 3 legal conclusion.  
 4 **A. No.**  
 5 Q. (BY MR. WELLS) Could you read the next bullet  
 6 for me, please?  
 7 **A. "How does ATP satisfy the evidentiary**  
 8 **requirement that the mechanics are in place and support**  
 9 **for funding wind-down budget exists with the DIP**  
 10 **lenders?"**  
 11 **This I would expect to be satisfied by the**  
 12 **agreed budget.**  
 13 Q. And until the budget is agreed upon, going  
 14 forward with the sale would not be in the best interest  
 15 of the estate, correct?  
 16 **A. Yes.**  
 17 Q. If you could turn to the next page and read  
 18 the first bullet under the heading "Intangibles."  
 19 **A. "How does the debtor address the local rules**  
 20 **for 363 sale which require adequate and reasonable**  
 21 **notice of certain intangibles that are subject" --**  
 22 **"that are the subject of the credit bid but were not**  
 23 **marketed, such as the BP claim, the NPI/ORRI**  
 24 **litigation, and the decommissioning trusts?"**  
 25 Q. Let's break this down into component parts.

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<p style="text-align: right;">Page 53</p> <p>1 Could you tell me what the BP claim is?</p> <p>2 <b>A. The company has a -- I think it's a -- I guess</b></p> <p>3 <b>I would describe it as a lawsuit against BP for damages</b></p> <p>4 <b>that are the result of the moratorium following the</b></p> <p>5 <b>Macondo spill in 2010, and that is pending at the -- at</b></p> <p>6 <b>the present time.</b></p> <p>7 Q. Could you -- could you tell me what the</p> <p>8 NPI/ORRI -- generally, what the NPI/ORRI litigation is?</p> <p>9 <b>A. Let me emphasize generally in this discussion,</b></p> <p>10 <b>because there are, I believe, 17 different documents</b></p> <p>11 <b>referring to either a net profits interest or an</b></p> <p>12 <b>overriding royalty interest.</b></p> <p>13 <b>And the -- the litigation here has to do with</b></p> <p>14 <b>events very early in the case in which the -- there was</b></p> <p>15 <b>a -- I believe a request for clarification that these</b></p> <p>16 <b>were proper obligations of the estate.</b></p> <p>17 <b>The court opined that they were not intending</b></p> <p>18 <b>immediately to resolve those but that the payments that</b></p> <p>19 <b>were -- had been made in the past, pursuant to the</b></p> <p>20 <b>existing documents, were to be made subject to</b></p> <p>21 <b>disgorgement.</b></p> <p>22 <b>The continuation of those -- the -- the</b></p> <p>23 <b>various adversary proceedings involving these have been</b></p> <p>24 <b>ongoing with -- through the case and are pending at the</b></p> <p>25 <b>present time.</b></p>	<p style="text-align: right;">Page 55</p> <p>1 ascribed to the claims in the complaint?</p> <p>2 <b>A. I recall -- I don't recall specifically the --</b></p> <p>3 <b>the number. It was several million dollars. And I</b></p> <p>4 <b>have not attempted to apply valuation principles to it.</b></p> <p>5 Q. You said you have not attempted to apply</p> <p>6 valuation principles to it.</p> <p>7 Has anybody at the debtor attempted to apply</p> <p>8 valuation principles to the claim?</p> <p>9 <b>A. This claim has been actively investigated and</b></p> <p>10 <b>pursued by a law firm. And so, our window on its</b></p> <p>11 <b>progress has been primarily through interaction with</b></p> <p>12 <b>them, and so, our reliance in this case is -- has been</b></p> <p>13 <b>primarily on the work that's been done by that law</b></p> <p>14 <b>firm.</b></p> <p>15 Q. So, your sworn testimony is that ATP -- let me</p> <p>16 start over.</p> <p>17 How much of -- you said that the work on the</p> <p>18 BP claim has been done by a law firm.</p> <p>19 What law firm is that?</p> <p>20 <b>A. I believe it is Motley Rice.</b></p> <p>21 Q. And what has Motley Rice told the debtor</p> <p>22 regarding the value of the BP claim?</p> <p>23 MR. HARRIS: Really, come on. I mean --</p> <p>24 I'm going to instruct you not to answer that question.</p> <p>25 Attorney/client privilege.</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. What is the value to ATP of the NPI/ORRI</p> <p>2 claims?</p> <p>3 <b>A. I would not comment on value. I believe the</b></p> <p>4 <b>amount that has -- that has been disbursed by ATP since</b></p> <p>5 <b>the Judge's order is approximately \$225 million.</b></p> <p>6 Q. What have you done to quantify the value of</p> <p>7 this claim, or these claims?</p> <p>8 <b>A. Let me ask for a clarification. Are you</b></p> <p>9 <b>speaking to the -- the middle one of these three?</b></p> <p>10 Q. Excuse me. Yes, the NPI/ORRI litigation.</p> <p>11 What has been done to value these claims?</p> <p>12 <b>A. Well, they're subject of adversary proceedings</b></p> <p>13 <b>currently and have only uncertainties associated with</b></p> <p>14 <b>them. We have not undertaken a -- we understand the</b></p> <p>15 <b>numbers that go with them, but those are not</b></p> <p>16 <b>necessarily a representation of value.</b></p> <p>17 Q. Let me circle back. I forgot to ask the same</p> <p>18 question regarding the BP claim.</p> <p>19 What is the value to ATP of the claim against</p> <p>20 BP?</p> <p>21 <b>A. I don't know.</b></p> <p>22 Q. Have you read the complaint that was filed in</p> <p>23 that case?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And you don't recall the value that was</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. (BY MR. WELLS) What portion -- well, let me</p> <p>2 restate.</p> <p>3 Has Motley Rice told you a value of that</p> <p>4 claim?</p> <p>5 MR. HARRIS: Same -- same objection.</p> <p>6 MR. WELLS: Are you instructing him not</p> <p>7 to answer that question?</p> <p>8 MR. HARRIS: Yes. Yes. Absolutely.</p> <p>9 Q. (BY MR. WELLS) How much of the credit bid</p> <p>10 that was submitted by the DIP lenders represents</p> <p>11 consideration for the BP claim?</p> <p>12 <b>A. I don't -- I do not know.</b></p> <p>13 Q. Then how do you know that ATP is receiving</p> <p>14 fair value for the claim?</p> <p>15 <b>A. It's my understanding that the lenders have</b></p> <p>16 <b>a -- a -- not sure whether they have a lien. I think</b></p> <p>17 <b>they may have a lien on that particular claim.</b></p> <p>18 <b>And, frankly, the other people in my</b></p> <p>19 <b>management team have worked this issue much more than I</b></p> <p>20 <b>have. I don't have a lot of familiarity with it per</b></p> <p>21 <b>se, as a specific item.</b></p> <p>22 Q. So, it's your understanding that -- well, you</p> <p>23 believe that the DIP lenders have a lien on the BP</p> <p>24 claim?</p> <p>25 <b>A. I believe they may have one. I can't -- I</b></p>

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<p style="text-align: right;">Page 57</p> <p>1 <b>don't have a means of confirming it right here.</b> 2 Q. Does the adequacy of the consideration offered 3 by the credit bid change depending on whether or not 4 the DIP lenders have a lien on the BP claim? 5 MR. HARRIS: Objection, form. 6 <b>A. No.</b> 7 Q. (BY MR. WELLS) Now, you -- why is that? 8 <b>A. The -- the fact that these are not separately</b> 9 <b>priced or tabbed within the aggregate credit bid would</b> 10 <b>permit the attribution of value to be moved in such a</b> 11 <b>way that generally our overall view is that there is</b> 12 <b>adequate value, and it's not specifically tied to a</b> 13 <b>single item.</b> 14 Q. What is the basis of the view that there is 15 adequate value? 16 <b>A. The processes that we have gone through in</b> 17 <b>terms of both offering it to the marketplace and</b> 18 <b>resolving a variety of kind of open issues with the</b> 19 <b>lenders have given us the sense that -- that we are --</b> 20 <b>we are in a position to receive value that's -- we</b> 21 <b>anticipate is satisfactory for the assets to obtain.</b> 22 Q. You -- if you haven't valued each item that 23 you're selling through the sale motion, how can you 24 concede -- or conclude that the aggregate price of the 25 credit bid is fair?</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. You -- do you realize that the stated -- the 2 stated claim in the BP litigation is for \$3 billion? 3 <b>A. I have seen that number, yes.</b> 4 Q. And you're testifying today that purchasing 5 this \$3 billion claim would represent an immaterial 6 portion of the credit bid? 7 <b>A. These are by their nature intangible items,</b> 8 <b>and the assessments of them are things that are</b> 9 <b>certainly subject to judgment, and whatever may come of</b> 10 <b>that is -- is something that's -- we don't see as</b> 11 <b>determinable today.</b> 12 <b>There are -- so, I don't -- I don't want to</b> 13 <b>judge the claim; but at the same time, I don't believe</b> 14 <b>the face amount of the claim is something that would</b> 15 <b>factor significantly into its value.</b> 16 Q. Are you saying that you ascribe no value to 17 it? 18 <b>A. No.</b> 19 MR. HARRIS: Objection to form. 20 Q. (BY MR. WELLS) Your firm -- your firm values 21 intangible items all the time, correct? 22 <b>A. My firm? You mean Blackhill?</b> 23 Q. Blackhill, correct. 24 <b>A. I'm not familiar with anything we have done</b> 25 <b>recently in that area, but I do know that from time to</b></p>
<p style="text-align: right;">Page 58</p> <p>1 MR. HARRIS: Objection to form. 2 <b>A. The -- there are components of -- there are --</b> 3 <b>as noted, these are not separately marketed, and they</b> 4 <b>are elements that, while they have some value in the --</b> 5 <b>in the aggregate, they are not things that necessarily</b> 6 <b>have -- have a degree of value that I would believe</b> 7 <b>that would be material, at least certainly the first</b> 8 <b>and the last.</b> 9 <b>The -- with regard to the handicapping of</b> 10 <b>litigation which involves two of these items,</b> 11 <b>there's -- there's -- valuation can be in the eye of</b> 12 <b>the beholder.</b> 13 <b>I don't believe that we are -- I believe we</b> 14 <b>are able to assess the overall credit bid in the</b> 15 <b>situation we have with the understanding we have of</b> 16 <b>these three items.</b> 17 Q. (BY MR. WELLS) You just testified that the BP 18 claim -- the value of the BP claim and the 19 decommissioning trusts are immaterial. 20 <b>A. I didn't say that. I said that, within the</b> 21 <b>context of the aggregate amount of the bid, these items</b> 22 <b>are -- the prospective value of them has been</b> 23 <b>considered and is -- I'm -- prospective value has been</b> 24 <b>considered, and in the aggregate, I think we believe</b> 25 <b>the credit bid is satisfactory.</b></p>	<p style="text-align: right;">Page 60</p> <p>1 <b>time we have attempted to be helpful.</b> 2 Q. You've attempted to value intangible items? 3 <b>A. I'm not familiar with that history, if it</b> 4 <b>exists.</b> 5 Q. All right. If your -- if three -- if this \$3 6 billion claim -- if purchasing this \$3 billion claim 7 represents an immaterial portion of the credit bid, why 8 is the company aggressively pursuing the claim? 9 MR. HARRIS: Objection to form. 10 <b>A. Company is able to pursue the claim on a -- on</b> 11 <b>a no-cost basis to the company and, you know, it was --</b> 12 <b>and therefore, the -- pursuit of it is something that</b> 13 <b>potentially has merit; but it is something that, in the</b> 14 <b>company's current condition, it's not -- it -- it may</b> 15 <b>have potential, but its current intangible form is not</b> 16 <b>something we are -- well, we see that on -- on a -- on</b> 17 <b>the basis in which we are pursuing it, having it</b> 18 <b>pursued makes sense; and therefore, that's what's</b> 19 <b>happening.</b> 20 Q. (BY MR. WELLS) But you agree that the claim 21 has value, correct? 22 <b>A. Positive value, yes.</b> 23 Q. And who in the debtor's management is 24 working -- or sorry -- worked on getting -- on whether 25 ATP was getting adequate consideration in exchange for</p>

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1 the BP claim?  
 2 **A. Primarily Leland Tate.**  
 3 Q. Anybody else?  
 4 **A. Not recently. Prior years, I believe a**  
 5 **gentleman named John Tschirhart may have had some**  
 6 **things to do with it.**  
 7 Q. Anybody else?  
 8 **A. No, not that I recall.**  
 9 Q. And who is John Tschirhart?  
 10 **A. Formerly the general counsel.**  
 11 Q. And when did he leave the firm?  
 12 **A. December 2012.**  
 13 Q. All right. You would agree that the NPI/ORRI  
 14 litigation has positive value as well, right?  
 15 **A. Yes.**  
 16 Q. And who in management worked on whether ATP  
 17 was getting adequate consideration for the NPI/ORRI  
 18 litigations?  
 19 **A. That has largely fallen, I think, to Al Reese.**  
 20 Q. Anybody else?  
 21 **A. No.**  
 22 Q. What al -- the same question with regard to  
 23 the BP claim? What -- or what portion of the credit  
 24 bid is allocated to the NPI/ORRI litigation?  
 25 **A. I don't have a good answer to that.**

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1 Q. Do you have any answer?  
 2 **A. No.**  
 3 Q. Do you believe that the NPI/ORRI litigation  
 4 represents a material portion of the credit bid?  
 5 MR. HARRIS: Objection, form.  
 6 **A. Well, as I understand it, the NPI/ORRI**  
 7 **litigation referred to here does not include the Gomez**  
 8 **claims or the Gomez-related interests, and it -- it may**  
 9 **or may not. I -- I don't -- I don't think it's a**  
 10 **primary driver of value, but I think it does have**  
 11 **value.**  
 12 Q. (BY MR. WELLS) To your knowledge, has anyone  
 13 at ATP determined how much value it has given away by  
 14 selling the NPI/ORRI litigation?  
 15 MR. HARRIS: Objection, form.  
 16 **A. I don't believe there's a view that value has**  
 17 **been given away in any form.**  
 18 Q. (BY MR. WELLS) Sold?  
 19 **A. I -- and I don't have a -- a number I would**  
 20 **speculate on.**  
 21 Q. Well, I wasn't asking for a number.  
 22 What I was saying -- or what I was asking is:  
 23 To your knowledge, has anyone at ATP determined how  
 24 much value it is selling by including these claims in  
 25 the sale motion?

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1 MR. HARRIS: Objection, form.  
 2 **A. To do that would require handicapping the**  
 3 **outcome of the litigation, and that has not been done.**  
 4 Q. (BY MR. WELLS) Why has it not been done?  
 5 **A. The -- perhaps due to the uniqueness of the**  
 6 **litigation. It -- it's a -- this is something that**  
 7 **the -- can have significant value; it can have no value**  
 8 **at all. And I -- our discussion has not been around**  
 9 **handicapping the value.**  
 10 **So, it is contingent value, and how much that**  
 11 **contingency is, is not something we have a tight fix**  
 12 **on.**  
 13 Q. So you're selling it as part of the sale  
 14 motion and you don't know whether the value of these  
 15 claims is material?  
 16 MR. HARRIS: Objection, form.  
 17 **A. I don't think anyone knows whether it's**  
 18 **material.**  
 19 Q. (BY MR. WELLS) And is -- are you suggesting  
 20 that it is impossible to value the BP claim?  
 21 **A. I'm suggesting that the -- the contingent**  
 22 **aspect of these -- at least the litigation component of**  
 23 **them makes a valuation of them a highly speculative**  
 24 **activity.**  
 25 **And for purposes of this sale and the -- the**

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1 **inclusion of them and the position that the company**  
 2 **has and is in allows the -- has meant that the**  
 3 **inclusion of them is something we were asked to do,**  
 4 **have done, and it's -- we have -- we have not attempted**  
 5 **to, that I'm aware of, independently place -- place**  
 6 **independent dollar value on the components.**  
 7 Q. Then how do you conclude that you're selling  
 8 these claims for fair value?  
 9 **A. Because we don't -- we look at the aggregate**  
 10 **value and realize that there is a range on any of the**  
 11 **values we could include, and whether these -- the**  
 12 **ranges that one might apply to one of these as opposed**  
 13 **to one of the gas properties as opposed to any of the**  
 14 **other things that are included is such that, in the**  
 15 **aggregate, we see the valuation as -- as a reasonable**  
 16 **outcome.**  
 17 Q. But the NPI/ORRI litigation and the BP claim  
 18 are being sold as part of the ATP sale motion; is that  
 19 correct?  
 20 **A. They are.**  
 21 Q. And you have not made any attempt to value  
 22 either the BP claim or the NPI/ORRI litigation; is that  
 23 correct?  
 24 **A. I didn't --**  
 25 MR. HARRIS: Objection, mischaracterizes

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<p style="text-align: right;">Page 65</p> <p>1 his testimony.</p> <p>2 <b>A. I did not say we made no effort to do that. I</b></p> <p>3 <b>said we don't have a conclusive result.</b></p> <p>4 Q. (BY MR. WELLS) What efforts have been made?</p> <p>5 <b>A. They're mostly conversational, and I don't</b></p> <p>6 <b>have a -- I'm -- I am comfortable at this point we</b></p> <p>7 <b>don't have a applicable range of value.</b></p> <p>8 Q. So, if you have no sense, no -- well, let me</p> <p>9 use your words.</p> <p>10 So, if you don't have an applicable range of</p> <p>11 value for these claims, how do you know that you're</p> <p>12 selling them for fair value?</p> <p>13 MR. HARRIS: Objection, asked and</p> <p>14 answered.</p> <p>15 <b>A. As I have said, there's many components of</b></p> <p>16 <b>items that are in this sale, each of them probably has</b></p> <p>17 <b>some kind of range.</b></p> <p>18 <b>The view that we would have in -- in our</b></p> <p>19 <b>judgment as to the value of these is such that, when we</b></p> <p>20 <b>include them in the overall picture, we are comfortable</b></p> <p>21 <b>with the value that's been applied.</b></p> <p>22 Q. (BY MR. WELLS) And you said that your</p> <p>23 attempts to value these claims were mostly</p> <p>24 conversational; is that correct?</p> <p>25 <b>A. I perhaps should withdraw that, and inasmuch</b></p>	<p style="text-align: right;">Page 67</p> <p>1 that are the subject of the credit bid, but were not</p> <p>2 marketed?</p> <p>3 MR. HARRIS: Again, to the extent that</p> <p>4 your understanding is based on discussions with legal</p> <p>5 counsel, I'll instruct you not to answer that question.</p> <p>6 <b>A. I don't know.</b></p> <p>7 Q. (BY MR. WELLS) You don't know why --</p> <p>8 <b>A. I don't know why it was included in this list.</b></p> <p>9 Q. You don't know why your -- why the e-mail was</p> <p>10 sent to you?</p> <p>11 <b>A. No. I -- perhaps you could restate your</b></p> <p>12 <b>question because I think I may have understood it</b></p> <p>13 <b>differently than you asked it.</b></p> <p>14 MR. WELLS: Could you read the question</p> <p>15 back to him.</p> <p>16 (The requested material was read.)</p> <p>17 MR. HARRIS: I repeat my instruction. Do</p> <p>18 you remember that?</p> <p>19 THE WITNESS: Based on privilege?</p> <p>20 MR. HARRIS: Uh-huh.</p> <p>21 <b>A. Based on the issue of privilege, I will -- I</b></p> <p>22 <b>do not have an answer.</b></p> <p>23 MR. WELLS: We will again reserve our</p> <p>24 right to bring that issue before the Court --</p> <p>25 THE WITNESS: Sure.</p>
<p style="text-align: right;">Page 66</p> <p>1 <b>as the -- I have not specifically been involved in</b></p> <p>2 <b>attempts to valuation -- to value them. I've had</b></p> <p>3 <b>some -- some discussions. But that's -- that's kind of</b></p> <p>4 <b>the extent of my individual involvement in that -- in</b></p> <p>5 <b>this situation.</b></p> <p>6 Q. Well, who would be involved?</p> <p>7 <b>A. Probably in each case, the counsel.</b></p> <p>8 Q. But you don't know?</p> <p>9 <b>A. You mean who is the counsel on -- I told you</b></p> <p>10 <b>who the counsel was on the BP claim. Are you --</b></p> <p>11 <b>what --</b></p> <p>12 Q. You don't know whether or not they were</p> <p>13 involved in -- in valuing these claims?</p> <p>14 <b>A. I don't believe either one was asked for a</b></p> <p>15 <b>number.</b></p> <p>16 Q. Why not?</p> <p>17 <b>A. Lots of things get done, and I don't have an</b></p> <p>18 <b>answer.</b></p> <p>19 Q. Turning back to the first bullet point under</p> <p>20 intangibles, to your knowledge, why was that a concern</p> <p>21 of the debtor?</p> <p>22 <b>A. Perhaps you could rephrase it and define that?</b></p> <p>23 Q. Okay. Why was the debtor concerned about</p> <p>24 addressing the local rules for a 363 sale which require</p> <p>25 adequate and reasonable notice of certain intangibles</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. WELLS: -- on the grounds that it was</p> <p>2 waived when this document was shared with both the DIP</p> <p>3 lenders and with the committee.</p> <p>4 MR. HARRIS: Okay. Do you see any</p> <p>5 substance of any legal advice in what's written here?</p> <p>6 I don't -- I don't know if I really understand what</p> <p>7 you're reserving.</p> <p>8 MR. WELLS: You're addressing --</p> <p>9 MR. HARRIS: What's your basis, I guess</p> <p>10 is what I'm asking?</p> <p>11 MR. WELLS: You're asking -- or you're</p> <p>12 communicating with the DIP lenders regarding how you</p> <p>13 can meet the evidentiary burden for a 363 sale, which</p> <p>14 require adequate and reasonable notice of certain</p> <p>15 intangibles.</p> <p>16 MR. HARRIS: My question was: Can you</p> <p>17 point to the substance of any legal advice that's</p> <p>18 included in these bullet points under intangibles?</p> <p>19 MR. WELLS: Yes, the local rules for a</p> <p>20 363 sale.</p> <p>21 MR. HARRIS: Okay. I got it. Let's</p> <p>22 continue.</p> <p>23 Q. (BY MR. WELLS) Mr. Latimer, to your</p> <p>24 knowledge, were all the assets that are part of the ATP</p> <p>25 sale motion marketed?</p>

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<p style="text-align: right;">Page 69</p> <p>1 <b>A. I'm aware of the ones that were marketed. I'm</b> 2 <b>not -- not sure about the ones that were not. If they</b> 3 <b>were -- it -- if -- if there were any that were not</b> 4 <b>marketed.</b> 5 Q. If the assets -- if any of the assets that are 6 subject to the sale were not marketed, would proceeding 7 with the sale motion be in the best interest of the 8 estate? 9 <b>A. Yes.</b> 10 MR. HARRIS: Object to the form. 11 Q. (BY MR. WELLS) Why? 12 <b>A. Because the items that would -- I would</b> 13 <b>consider to be on a -- from a global view the -- the</b> 14 <b>matters that were not such that they would draw</b> 15 <b>attention in the -- in the sale process, would be ones</b> 16 <b>I would think would be ones not worth forgoing a sale</b> 17 <b>merely because they were not marketed.</b> 18 Q. Okay. If you could read -- to your knowledge, 19 Mr. Latimore -- Latimer, rather, were -- or was the BP 20 claim marketed in the sale process? 21 MR. HARRIS: Objection, form. 22 <b>A. I don't know specifically.</b> 23 Q. (BY MR. WELLS) Why not? Did you review the 24 marketing materials? 25 MR. HARRIS: Objection, form.</p>	<p style="text-align: right;">Page 71</p> <p>1 bullet, please? 2 <b>A. "How does the debtor address the argument from</b> 3 <b>an evidentiary standpoint that recoveries under</b> 4 <b>NPI/ORRI litigation could fall under Chapter 5 actions</b> 5 <b>for which the DIP lenders do not have a lien, and that</b> 6 <b>proceeds would otherwise go to the UCC or certain M&amp;M</b> 7 <b>lien claimants."</b> 8 Q. Could you explain to me what that concern -- 9 or could you describe that concern to me? 10 <b>A. These claim -- I think in the interval since</b> 11 <b>this has been written, there have been some</b> 12 <b>modifications here in that the -- the lenders have</b> 13 <b>expressed an intention to acquire certain of the NPI</b> 14 <b>override litigation pieces and that -- that those have</b> 15 <b>imprints on some of the adjustments as to what's been</b> 16 <b>considered in that part of the package.</b> 17 <b>But I'm not particularly well versed in this</b> 18 <b>topic, and so, I don't have a -- an extensive knowledge</b> 19 <b>base on which to comment.</b> 20 Q. Who would be well versed on this issue? 21 <b>A. I believe Mr. Reese.</b> 22 Q. One more bullet point on this document, and 23 then we will move on. 24 Could you read the bullet point under 25 Conditions to Closing?</p>
<p style="text-align: right;">Page 70</p> <p>1 <b>A. Yes. Sorry.</b> 2 MR. HARRIS: Objection. 3 <b>A. Yes.</b> 4 Q. (BY MR. WELLS) And you don't remember if the 5 BP claim was marketed? 6 MR. HARRIS: Same -- same objection. 7 <b>A. The -- those materials covered the matters</b> 8 <b>of -- that were the -- primarily the oil and gas assets</b> 9 <b>and properties. And this was not a -- obviously, was</b> 10 <b>an intangible asset, and the focus of the selling</b> 11 <b>effort, I think, was primarily on the -- on the things</b> 12 <b>for which value -- value was attributed or could be</b> 13 <b>determined.</b> 14 <b>And these are -- this particular item was not</b> 15 <b>something that I recall being -- recall seeing in</b> 16 <b>those -- those materials.</b> 17 Q. (BY MR. WELLS) So, to your knowledge, the BP 18 claim was never marketed? 19 MR. HARRIS: Objection, form. 20 <b>A. That's correct.</b> 21 Q. (BY MR. WELLS) Same question: Were the 22 NPI/ORRI litigations marketed? 23 MR. HARRIS: Same objection. 24 <b>A. I don't recall.</b> 25 Q. (BY MR. WELLS) Could you read the next</p>	<p style="text-align: right;">Page 72</p> <p>1 <b>A. "Clarification of what recourse is available</b> 2 <b>to ATP in the event of a failure to fund commitments by</b> 3 <b>certain lenders under the APA."</b> 4 Q. Could you explain what is meant by this 5 concern? 6 <b>A. Well, I think it's probably a -- an issue in</b> 7 <b>most purchase and sale transactions, which is the</b> 8 <b>consequences of -- for the -- the consequences of</b> 9 <b>nonperformance by one party to the -- to the other</b> 10 <b>party.</b> 11 <b>And this would -- I think the question is</b> 12 <b>what -- what can ATP do if the buyers don't perform</b> 13 <b>under the APA.</b> 14 Q. Are the DIP lenders buying the D&amp;O claims in 15 their credit bid? 16 MR. HARRIS: Objection, form. 17 <b>A. As you -- could I ask you to elaborate on --</b> 18 <b>are there specific D&amp;O claims about which you're</b> 19 <b>asking? Are there --</b> 20 Q. (BY MR. WELLS) Any. 21 <b>A. I don't know. I'd have to review the</b> 22 <b>document. I haven't seen that.</b> 23 Q. Has that -- going back to that last bullet on 24 the document, has that concern been resolved, to your 25 knowledge, between the DIP lenders and the debtor?</p>

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<p>1 <b>A. I don't know. I don't have a basis to</b> 2 <b>comment.</b> 3 Q. Do you know who would? 4 <b>A. No.</b> 5 MR. WELLS: All right. Let's take a -- 6 take a break. 7 MR. COHEN: Actually, before we go off 8 the record, I want to make sure we put on the record 9 what Shawn Scott representing debtors and I talked 10 about. 11 We understand that certain aspects of this, in 12 light of the sworn testimony thus far, are still being 13 negotiated, and Mr. Scott, on behalf of ATP, has agreed 14 to make you available for deposition on Wednesday, to 15 the extent deal terms are finalized or changed. 16 MR. HARRIS: All right. Mr. Scott -- I 17 just want to put on the record, Mr. Scott isn't here, 18 so, as far as what he agreed to, you know, I can't 19 speak to that. 20 MR. COHEN: And I'll also put on the 21 record that while I was speaking, Mr. Latimer was 22 nodding in the affirmative. 23 MR. HARRIS: Well -- 24 MR. COHEN: Thank you. 25 MR. HARRIS: Well, were you -- what were</p>	<p>1 Q. (BY MR. WELLS) The lenders have proposed to 2 give back the BP claim from the credit bid in exchange 3 for a deduct on their credit bid; is that correct? 4 <b>A. I understood they had excluded -- it was</b> 5 <b>included in excluded assets of an APA draft from last</b> 6 <b>night. If -- I wasn't -- I wasn't alerted that there</b> 7 <b>was a -- something else that they wanted back, but I</b> 8 <b>don't have a basis to comment one way or the other.</b> 9 <b>I was aware of the -- of its return to</b> 10 <b>inclusion in the excluded assets.</b> 11 Q. If the BP claim is removed from the credit 12 bid, do you think a deduct of their -- of their -- I'm 13 sorry. If the BP claim was included in the excluded 14 assets of their APA, would a deduct of their credit bid 15 be appropriate? 16 MR. HARRIS: Objection, form. 17 <b>A. I haven't discussed it with counsel or others,</b> 18 <b>so I'd have to --</b> 19 Q. (BY MR. WELLS) In your opinion. 20 MR. HARRIS: Same objection. 21 <b>A. It's not something I have an opinion on.</b> 22 Q. (BY MR. WELLS) What would you like to know 23 before forming an opinion? 24 <b>A. What -- what other modification was expected</b> 25 <b>in the -- in the APA.</b></p>
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<p>1 you nodding for? 2 THE WITNESS: I was sleeping. 3 MR. COHEN: To most people, that's 4 agreement. 5 (A break was taken from 3:08 p.m. to 3:37 6 p.m.) 7 Q. (BY MR. WELLS) All right. Mr. Latimer -- 8 MR. HARRIS: Before we do start, let me 9 just put on the record, I had a discussion with 10 Mr. Cohen and Shawn Scott off the record. 11 And just to clarify, Mr. Scott did not agree 12 to present Mr. Latimer again for deposition on 13 Wednesday. What he said is he would consider it. And 14 do you agree with that. 15 MR. COHEN: I agree that's what he said. 16 And we can keep my response to that off the record. 17 Q. (BY MR. WELLS) All right. Mr. Latimer, who 18 is leading negotiations with the DIP lenders on behalf 19 of ATP? 20 <b>A. Generally, I have.</b> 21 Q. So you're aware of all -- all major aspects of 22 the negotiations? 23 MR. HARRIS: Objection, form. 24 <b>A. I am generally aware of the aspects of the</b> 25 <b>negotiations.</b></p>	<p>1 Q. If the only modification was a deduction of 2 the credit bid, in your opinion, would that be 3 appropriate? 4 MR. HARRIS: Objection to form. 5 <b>A. I'd have to look into it further. I don't</b> 6 <b>know. I wouldn't -- I wouldn't comment before I knew</b> 7 <b>more than I do. I -- that was an event that happened</b> 8 <b>last night, and a lot of us were moving around a lot of</b> 9 <b>directions last night, so...</b> 10 Q. (BY MR. WELLS) How much of a deduction of the 11 credit bid would be acceptable to the debtor in 12 exchange for including the BP claim on the list of 13 excluded assets? 14 <b>A. I don't have an answer.</b> 15 Q. Who would? 16 <b>A. I don't know, but I am not going to answer it</b> 17 <b>here.</b> 18 Q. Why not? 19 MR. HARRIS: Objection, asked and 20 answered. 21 <b>A. It requires further evaluation and assessment</b> 22 <b>that hasn't been carried out.</b> 23 Q. (BY MR. WELLS) What type of assessment and 24 evaluation? 25 <b>A. There are -- there are a number of things that</b></p>



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<p>1 go into those. I don't -- I'll look into it</p> <p>2 thoughtfully and perhaps come to a conclusion. I'm</p> <p>3 not -- there are many, many parts in the APA and</p> <p>4 components of the APA. How this small one relates to</p> <p>5 them, I have to understand better.</p> <p>6 Q. But my question was, all things being equal,</p> <p>7 nothing else in the APA has changed, the BP claim is</p> <p>8 included on the list of excluded assets, what size</p> <p>9 deduction of the credit bid would be acceptable to the</p> <p>10 debtor?</p> <p>11 A. I told you.</p> <p>12 MR. HARRIS: Objection, form.</p> <p>13 A. I do not know at this point.</p> <p>14 Q. (BY MR. WELLS) All right. Mr. Latimer, could</p> <p>15 you describe the role that you played in the sale</p> <p>16 process?</p> <p>17 A. I have been significant, if not the</p> <p>18 principal -- probably the ultimate decisionmaker in the</p> <p>19 matters relating to the sale process.</p> <p>20 Jefferies has conducted this process and</p> <p>21 has -- has had capable people involved in it, and we've</p> <p>22 had a good working relationship.</p> <p>23 Q. Other than -- other than you, who else at the</p> <p>24 debtor has worked on the sale process?</p> <p>25 A. Every member of the senior management team.</p>	<p>1 purchasers that expressed interest in the debtor's</p> <p>2 assets?</p> <p>3 MR. HARRIS: Objection, form.</p> <p>4 A. He would know the names; and to some extent,</p> <p>5 because he's been around in the business for a while,</p> <p>6 he would perhaps know additional information.</p> <p>7 Q. (BY MR. WELLS) What role did Leland Tate play</p> <p>8 in the sale process?</p> <p>9 A. Let me think. Leland is familiar with the</p> <p>10 assets generally, as the president of the company and a</p> <p>11 long-serving executive. And many of the aspects of</p> <p>12 historical performance, other particulars of an</p> <p>13 operational or asset-related nature, he was familiar</p> <p>14 with.</p> <p>15 And he would be -- he would contribute</p> <p>16 comment, respond, as -- as appropriate or as needed,</p> <p>17 when bidders had particular questions that -- that were</p> <p>18 of an operational, technical type of nature.</p> <p>19 Q. And he would be the person that ATP would</p> <p>20 refer potential purchasers to if they had operational</p> <p>21 questions?</p> <p>22 MR. HARRIS: Objection, form.</p> <p>23 A. Generally, yes.</p> <p>24 Q. (BY MR. WELLS) And what role did Keith</p> <p>25 Godwin play in the sale process?</p>
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<p>1 Q. Which would include?</p> <p>2 A. Al Reese, Leland Tate, George Morris and Keith</p> <p>3 Godwin.</p> <p>4 Q. What role has Al Reese played in the sale</p> <p>5 process?</p> <p>6 A. He's worked a lot with the confidentiality</p> <p>7 agreements; and he has, through time, been able to</p> <p>8 obtain information from multiple sources about</p> <p>9 prospective bidders.</p> <p>10 Q. Could you clarify what confidentiality</p> <p>11 agreements you're referring to?</p> <p>12 A. The -- any -- the initial contact with the</p> <p>13 sale process by most parties was a -- what's called a</p> <p>14 teaser.</p> <p>15 Those who were interested enough in -- in the</p> <p>16 opportunity to follow up and want more information were</p> <p>17 offered a confidentiality agreement that essentially</p> <p>18 binds them to keep confidential the information that</p> <p>19 they got from ATP with regard to their properties,</p> <p>20 assets, and other matters.</p> <p>21 The terms of those are negotiated, and Al was</p> <p>22 -- Al took a primary role in those negotiations of</p> <p>23 terms and just handled that aspect of the sale process.</p> <p>24 Q. So, would it be fair to say that Al Reese</p> <p>25 would have good knowledge about the various potential</p>	<p>1 A. He had a major role in assembling the</p> <p>2 schedules, the financial information, the -- things</p> <p>3 like the lease operating statements, other financially</p> <p>4 important things with regard to the assets offered for</p> <p>5 sale.</p> <p>6 Q. Do you mean he would gather these documents or</p> <p>7 he was in charge of gathering these documents?</p> <p>8 A. Well, he would be the -- he was the -- he's</p> <p>9 the chief accounting officer, and he -- the people who</p> <p>10 have the knowledge of that kind of thing generally work</p> <p>11 for him. So, he would be integrally involved in</p> <p>12 assembling information that was for inclusion in the</p> <p>13 data room or otherwise made available to prospective</p> <p>14 bidders.</p> <p>15 Q. And what role did George Morris play in the</p> <p>16 sale process?</p> <p>17 A. George is our COO, and he was particularly</p> <p>18 involved in evaluation, estimation of reserves and how</p> <p>19 those were done, and others -- similar things relating</p> <p>20 to the -- you know, shall we say, the reserves in</p> <p>21 place, the reserves that would be considered at various</p> <p>22 levels of -- whether they were proved, whether they</p> <p>23 were probable or possible, those kind of</p> <p>24 categorizations. He also was a major contributor on</p> <p>25 operational issues.</p>

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1 Q. So is it fair to say that, if potential  
 2 purchasers had questions about the reserve reports,  
 3 both from Collarini or NSAI, they would contact George  
 4 Morris?  
 5 **A. Certainly with Collarini. With regard to  
 6 NSAI, the -- those questions were generally referred to  
 7 NSAI because they were the people who did the work.**  
 8 Q. You mentioned them briefly, but more  
 9 specifically what role did Jefferies play in the sale  
 10 process?  
 11 **A. They handled the process as -- as a capable  
 12 mergers and acquisitions investment banking firm would.  
 13 They -- they assembled the information. They -- they  
 14 reached out to the various prospective parties. They  
 15 were integral in the working out of confidentiality  
 16 agreements. They advised the company on what matter --  
 17 what information would be useful in the -- to have in  
 18 the virtual data room and the organization of that data  
 19 room.**  
 20 They also worked directly with prospective  
 21 bidders once they identified themselves, had questions.  
 22 They would refer the questions to the right people in  
 23 ATP who could handle them or answer them. And as we --  
 24 as we drew to a -- to a closing date for offers or  
 25 other, you know, indications of -- both indications of

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1 interest as well as firm -- firm bids, they handled the  
 2 interaction with the -- each of those parties who were  
 3 interested in -- in making a bid or considering a bid  
 4 or otherwise being involved. And they -- they -- as  
 5 they needed to or as there was an issue, they would  
 6 reach out to -- to me or to the others in the senior  
 7 management team to respond or make a decision. And so,  
 8 their -- their role was a comprehensive one in both --  
 9 from assembling the information to working with the  
 10 ultimate users of it.  
 11 Q. And who at Jefferies was leading their  
 12 involvement in the sale process?  
 13 **A. Well, the two people who were primarily -- who  
 14 were involved in the sale process only were -- were  
 15 John Ernst and Dave Roussel. The second name is  
 16 R-O-U-S-S--E-L.**  
 17 The -- they work with the restructuring  
 18 component of Jefferies, which was in this case headed  
 19 by Tero Janne and -- and his team, in a -- you know, as  
 20 needed and appropriate since -- and the -- the M&A  
 21 people were not devoted, or not exclusively working the  
 22 restructuring area, whereas Tero's team is primarily  
 23 restructuring exclusively.  
 24 Q. Did anyone else at Jefferies work the sale  
 25 process?

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1 **A. Well, Tero and his team, he's got two or three  
 2 people, but -- and the two fellows I named were -- were  
 3 the ones on the M&A side. I -- to some degree the head  
 4 of energy M&A, a fellow named Steve Straty is a very  
 5 senior guy at Jefferies, and he was -- he was involved  
 6 somewhat behind the scenes, and then also, obviously,  
 7 at key points in the process, he would be involved and  
 8 contribute.**  
 9 Q. How would he be involved?  
 10 **A. Well, he's the big boss. So, to the extent  
 11 that there were issues of direction or strategy or  
 12 anything else, he would be particularly involved. A  
 13 lot of day-to-day things were handled by the other two  
 14 fellows.**  
 15 Q. You mentioned Tero Janne had a couple of  
 16 people on his team. Do you recall the names of those  
 17 individuals?  
 18 **A. Alex Rohan, R-O-H-A-N, and Bhoomica Reddy,  
 19 B-H-O-M-I-C-A, two O's, B-H-O-O-M-I-C-A, R-E-D-D-Y,  
 20 were -- have also been actively involved through the  
 21 process.**  
 22 Q. Was anybody at the debtor responsible for  
 23 overseeing the work done by Jefferies?  
 24 **A. You mean apart from the -- myself and the  
 25 senior management team?**

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1 Q. Who was the primary person responsible for  
 2 overseeing the work done by Jefferies?  
 3 **A. Myself. I would add also a gentleman named  
 4 Tim McGinty, who is the V.P. business development for  
 5 ATP, and he is -- he was -- he was a geoscientist, and  
 6 he worked a lot with the technical teams that came to  
 7 investigate and review the information we had.**  
 8 Q. What role -- you mentioned them again, or you  
 9 mentioned them also; but more specifically what role  
 10 did Opportune in the sale process?  
 11 **A. They hosted the data room, which was a -- I  
 12 think a -- I have heard estimates of like 60,000  
 13 documents in that data room.**  
 14 Q. I believe 72,000 now.  
 15 **A. Is it 72,000. Okay. I didn't mean -- I  
 16 didn't mean to underestimate their skill.**  
 17 They were integral in making that work, and  
 18 also, would from time to time develop, assemble,  
 19 financial information that was useful or requested by a  
 20 particular party, who was perhaps doing some looking  
 21 back in a way that would -- that would not necessarily  
 22 be supported by the conventional accounting system.  
 23 Q. What types of financial information would that  
 24 be?  
 25 **A. Most typically cost information.**

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1 Q. Could you be more specific?

2 **A. Operating costs, capital costs, run costs,**

3 **estimating relationships, things like that.**

4 Q. Why would those costs not necessarily be

5 supported by conventional accounting systems?

6 **A. Well, to the extent you want to -- a**

7 **distinctive cut that is not provided through the**

8 **conventional system, they would be a means of obtaining**

9 **it.**

10 Q. Who at Opportune was responsible for working

11 on the sale process?

12 **A. Such as they had a role I think it would be**

13 **Sean Clements primarily. There were others involved to**

14 **a lesser degree, but he would be the -- I think, the**

15 **primary person for Opportune to the extent they had a**

16 **role.**

17 Q. Do you recall the names of the other people?

18 **A. James Fisher, John Echols, Ella Reckers,**

19 **spelled R-E-C-K-E-R-S.**

20 Q. Who at the debtor was primarily responsible

21 for overseeing the work done by Opportune regarding the

22 sale process?

23 **A. George Morris or Keith Godwin.**

24 Q. Do you think that the timelines along which

25 the sale process proceeded in this case were

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1 appropriate?

2 MR. HARRIS: Objection, form.

3 **A. Inclusive of the extensions and adjustments to**

4 **those timelines, I believe they were satisfactory in**

5 **exposing the assets to the marketplace and getting a --**

6 **a reading of the value the market attributes to them.**

7 Q. (BY MR. WELLS) What do you mean by

8 "satisfactory"?

9 **A. Is that confusing?**

10 Q. Were the timelines ideal?

11 **A. Oh, let's see. They were certainly within the**

12 **range of reasonable time periods for this kind of sale.**

13 **The assets were exposed to the market for 120 days or**

14 **more.**

15 Q. Did the timelines, in your opinion, maximize

16 the value received for the assets included in the sale

17 motion?

18 MR. HARRIS: Objection, form.

19 **A. Yes.**

20 Q. (BY MR. WELLS) Who is involved in determining

21 the schedule for the sale process on behalf of the

22 debtor?

23 **A. Initially, it was negotiated as part of the**

24 **second amendment. So, it was part of the amendment**

25 **negotiations, and I was involved, Al Reese was**

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1 **involved, as well as retained professionals.**

2 Q. Who negotiated on behalf of the DIP lenders?

3 **A. I think the primary negotiation there was with**

4 **the senior representatives of Houlihan Lokey.**

5 Q. Was anyone else involved in the negotiations

6 regarding the timeline of the sale process?

7 **A. Infrequently, were they EBIT'd to us because**

8 **the dialog was primarily through the financial adviser.**

9 **So, the -- the various roles played on the lender's**

10 **side were not transparent.**

11 Q. How long did you negotiate the timelines for

12 the sale process?

13 **A. Seems like it was more than a month.**

14 Q. Prior to the second DIP amendment, do you

15 mean?

16 **A. Yeah. It was a part of the second DIP**

17 **amendment, those deadlines, those timelines, were in**

18 **there, and they were -- the dialog on that amendment,**

19 **as I recall, took quite an extended period of time.**

20 Q. What considerations went into agreeing to the

21 scheduling of the sale process?

22 **A. Well, the sale process was in the -- the**

23 **urgency to conclude it was of importance to the DIP**

24 **lenders, and we started from a -- essentially an ask on**

25 **their part of us, and through negotiations, that the --**

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1 **a number of the -- the initial periods were extended**

2 **for -- both for the compilation of information, for the**

3 **start of it, for the various deadlines of it, and so**

4 **those -- the -- you know, there was -- there was a --**

5 **an active negotiation as to what cube done, and how**

6 **quickly it could be done. Our view was that a longer**

7 **period was probably more useful than what had been**

8 **proposed. We ended up with a longer period, and -- in**

9 **the initial agreement, the amendment, and events**

10 **extended that period significantly.**

11 Q. You said the DIP lenders were interested in a

12 faster scheduling process; is that correct?

13 **A. I think that's fair to say.**

14 Q. Why is that?

15 **A. Well --**

16 MR. HARRIS: Objection to form.

17 **A. It -- it -- I can't speculate on what they**

18 **thought. Clearly a faster sale process in their mind**

19 **may have been faster resolution of the -- of the -- of**

20 **the case.**

21 Q. Why did the debtor want a more drawn out

22 time -- timeline?

23 **A. The debtor wanted more time to be sure that**

24 **the assets had had adequate and -- or full dis --**

25 **exposure to the marketplace, and the that the -- we had**

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1 reached out in every direction that we thought could be  
 2 helpful to assure the best price.  
 3 Q. Did you originally get the timeline that you  
 4 had requested?  
 5 A. We got a longer timeline than they requested.  
 6 Our -- the ultimate outcome was -- was with extensions  
 7 and other elements like that provided the -- what I  
 8 would think of as adequate exposure to the marketplace.  
 9 Q. In agreeing to the scheduling of the sale  
 10 process, did the debtor and the DIP lenders discuss  
 11 issues related to the -- the operational issues related  
 12 to the Clipper well?  
 13 A. Well, there was a -- continuing dialog with  
 14 regard to operational issues on the Clipper well, and  
 15 others -- other wells that were relevant to -- to  
 16 value.  
 17 So, I don't -- I don't know that it could be  
 18 distilled to something which was a specific day or  
 19 date, but we -- we had a continuing expectation of  
 20 getting the Clipper well on sooner than we did, and the  
 21 sooner -- you know, and obviously, being able to  
 22 demonstrate that value to a bidder was -- was an  
 23 important element, and they were -- to some degree, I  
 24 think we made adjustments in the ultimately realized  
 25 timeline based on the opportunity to have Clipper

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1 results available more quickly -- I mean have Clipper  
 2 results available to a bidder at a point they were  
 3 making a bid.  
 4 Q. So, it was important to the debtor that  
 5 Clipper be operational prior to the sale?  
 6 A. Yes.  
 7 Q. Is Clipper fully operational as of today?  
 8 A. The -- there were two wells. We refer to them  
 9 as the Clipper oil well and the Clipper gas well.  
 10 The Clipper oil well is producing in a  
 11 relatively normal fashion today. The Clipper gas well  
 12 has not been brought on to production as yet.  
 13 Q. So, was it less important for the debtor that  
 14 the gas well be put online prior to the sale?  
 15 A. The reason the gas well is not on is -- is not  
 16 a matter of -- of -- an evaluation or desire not -- in  
 17 a conclusion that it should not be brought on. The gas  
 18 well is not on because, shortly after the start of the  
 19 oil well, the start of production of the oil well, the  
 20 control -- electrical control system that was intended  
 21 to operate both wells failed, and it has not as yet  
 22 been restored. And we have been able to operate the  
 23 oil well only on a basis where we have used alternative  
 24 control mechanisms to assure its safety and continued  
 25 operation.

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1 Q. That's fine. But that wasn't my question.  
 2 My question was: Was it less important for  
 3 the debtor that the gas well be put online prior to the  
 4 sale --  
 5 MR. HARRIS: Objection.  
 6 Q. (BY MR. WELLS) -- than the oil well?  
 7 MR. HARRIS: Objection, form.  
 8 A. Both are important, but the revenue stream  
 9 from the oil well is significantly greater than from  
 10 the gas well. So, it would be the -- to go -- to put  
 11 on production the oil well was the most economically  
 12 attractive option.  
 13 Q. (BY MR. WELLS) So the debtor wasn't concerned  
 14 about the gas well not being online prior to the sale?  
 15 A. We would have liked to have had it online, but  
 16 construction and operational difficulties have  
 17 precluded it.  
 18 Q. Did you discuss delaying the sale process  
 19 until after the gas well came online?  
 20 A. No.  
 21 Q. Why not?  
 22 A. The -- we had good test information on the gas  
 23 well. We had production information on the oil well.  
 24 The -- the ability to estimate the performance, we had  
 25 one known and one that we believed we could estimate

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1 reasonably well and that bidders could make an informed  
 2 determination as to their expectations and valuation of  
 3 that were -- were in hand. And to delay the sale  
 4 process indefinitely while we were awaiting a start  
 5 time for the gas well, we didn't -- didn't believe was  
 6 the best thing to do. So, we -- we had continued  
 7 through the -- through the -- through the process that,  
 8 again, with some extensions included in it, that we had  
 9 undertaken to we begin with. We obviously anticipated  
 10 initially, at the start of the sale process, that we  
 11 would have access to both, both wells would be on  
 12 production. But it was not something we could have  
 13 accomplished, but -- but had to -- you know, concluded  
 14 that we were not going to be penalized as to value  
 15 because the gas well -- you know, kind of all things  
 16 considered, it was not worth waiting.  
 17 Q. Not worth it to who?  
 18 A. Not worth it to us as the seller.  
 19 Q. Why is that?  
 20 A. Because we don't believe we are taking a  
 21 valuation hit because of the gas wells not being on  
 22 production. It was worth taking in light of the other  
 23 factors in the case and the progress that we were -- we  
 24 were making toward a sale.  
 25 Q. What factors would that be?

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1 **A. Well, of the -- let me think. The Clipper gas**  
 2 **well was -- certainly was and is an important asset.**  
 3 **It was certainly not the only asset, and it was not the**  
 4 **highest value asset. So, we expected to move forward**  
 5 **with the sale process, and we had -- and the ability**  
 6 **to -- in discussion with our advisers was that the --**  
 7 **the penalties for not having it on were not substantial**  
 8 **enough to justify delaying the sale -- the sale process**  
 9 **move forward.**

10 Q. But what were the factors that outweighed the  
 11 value hit that was taken by proceeding with the sale  
 12 motion prior to the gas well coming online?

13 MR. HARRIS: Objection to form. It  
 14 miscategorizes his testimony.

15 **A. We're not sure we took any valuation hit. And**  
 16 **if -- because it's -- it's not a knowable thing.**  
 17 **Nobody came up to me and said, We'd give you X million**  
 18 **more if that well was on.**

19 **So, the progression of the -- the case, the**  
 20 **progression of the sale process, which was underway and**  
 21 **had the -- had a number of people looking at various**  
 22 **assets to -- looking at the assets to buy, was -- that**  
 23 **had momentum, and if you -- frankly, we were concerned**  
 24 **that, if you did not continue with the momentum, you're**  
 25 **never sure those people are going to come back and be**

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1 **interested at the point that the sale -- that the gas**  
 2 **well might be on and you would have production**  
 3 **information from it.**

4 **And we -- if we had done that, we would be in**  
 5 **September, the way things have unfolded; but we didn't**  
 6 **know -- we didn't know that was the case at the time.**  
 7 **But, our -- our -- we did, in our construction program**  
 8 **for -- for the Clipper project, when we realized that**  
 9 **we only had so many man-hours, we applied as many**  
 10 **man-hours as we could to getting the oil well on, which**  
 11 **had much better economics, and deferred the -- the**  
 12 **construction to completion of the gas well, of the**  
 13 **facilities needed for the gas well, I should say, and**  
 14 **so, that -- the -- the gas -- excuse me.**

15 **I think market interest, prepared evaluation,**  
 16 **and you know, momentum within the sale process to**  
 17 **conclusion were factors we considered.**

18 Q. (BY MR. WELLS) Did you discuss the  
 19 operational issues confronting the Gomez properties in  
 20 determining the timelines for the sale process?

21 MR. HARRIS: Objection, form.

22 **A. The operational issues at Gomez were not a**  
 23 **factor in -- in determining schedule or other elements**  
 24 **of the sale process.**

25 Q. (BY MR. WELLS) Why not?

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1 **A. I don't -- why should they be any more than**  
 2 **any other? It wasn't -- there weren't -- there weren't**  
 3 **issues that would drive it to speed up or slow down,**  
 4 **that I recall.**

5 Q. Were there generally discussions regarding how  
 6 the timing of the sale might affect the value of the  
 7 assets?

8 **A. Could you elaborate on timing? I can imagine**  
 9 **an answer having to do with months of the year or --**

10 Q. Sure.

11 **A. -- the calendar or something else.**

12 Q. Were there discussions regarding the timeline  
 13 of the sale process, of how that might affect the  
 14 number of bids on the shelf in deepwater assets?

15 MR. HARRIS: Objection, form.

16 **A. Well, only in the general case of compressing**  
 17 **the timeline forces, faster valuation, and often that**  
 18 **may not lead to the best valuation.**

19 **We did initiate it in December for the -- I**  
 20 **think we did both, but I know we did the shelf assets,**  
 21 **and when -- in a sense, restarted it right after the**  
 22 **first of the year when everybody is back from vacation**  
 23 **and so forth, but that was two weeks.**

24 **I mean, that -- in a -- in a tight timeline,**  
 25 **that might make a difference. The way things**

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1 **ultimately unfolded, I don't believe it made a**  
 2 **difference.**

3 Q. (BY MR. WELLS) The sale of the shelf and  
 4 deepwater assets were bifurcated, correct?

5 **A. Initially.**

6 Q. In your view was this appropriate -- the  
 7 appropriate way to schedule the sale -- the sale of the  
 8 debtor's assets?

9 MR. HARRIS: Objection, form.

10 **A. I don't think having different schedules was**  
 11 **harmful because, in large measure, the prospective**  
 12 **markets for each are different.**

13 **The type of company that would be interested**  
 14 **in a shelf asset or a deepwater asset are generally --**  
 15 **there's not much overlap. So, the fact that they were**  
 16 **initially separated and ultimately came together, I**  
 17 **don't -- I don't think had a -- an effect of**  
 18 **consequence.**

19 Q. (BY MR. WELLS) Whose idea was it to bifurcate  
 20 the sale of the shelf and deepwater assets?

21 **A. I don't recall. I was in many discussions,**  
 22 **but I just don't recall who it was, who pushed it.**

23 Q. So you don't recall who between the DIP  
 24 lenders and the debtor pushed for the bifurcation of  
 25 the sale?

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1 **A. Or the advisers to each. I mean, there were a**  
 2 **number of people involved. So, it could have been**  
 3 **anybody who had the -- had the idea, and it gained**  
 4 **traction and moved forward.**  
 5 Q. Do you know what the justification for  
 6 bifurcating the process was?  
 7 **A. I could only speculate that the focus of the**  
 8 **respective buyer groups was different in the length of**  
 9 **time to -- needed to evaluate them. It was perhaps not**  
 10 **as long for the shelf assets as for the deepwater**  
 11 **assets.**  
 12 Q. To your knowledge, did any potential  
 13 purchasers inquire about the purpose -- excuse me.  
 14 Did any potential purchasers inquire about the  
 15 purpose of bifurcating the sale process?  
 16 **A. I don't recall hearing that, but I know in --**  
 17 **I wasn't in the hour-to-hour discussions with the -- as**  
 18 **between our financial advisers and the -- and the**  
 19 **prospective buyer.**  
 20 Q. Who would know that?  
 21 **A. If it happened, it would be one of the -- the**  
 22 **Jefferies Energy M&A Team.**  
 23 Q. Between the shelf and the deepwater assets,  
 24 which are more valuable?  
 25 MR. HARRIS: Objection to form.

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1 **A. The deepwater assets, by a very substantial**  
 2 **margin.**  
 3 Q. (BY MR. WELLS) So, what considerations went  
 4 into determining to sell the less valuable assets  
 5 first?  
 6 **A. I don't know that it was driven by value, as**  
 7 **to why one versus the other.**  
 8 Q. So, you don't know?  
 9 **A. They happened to have different values, but**  
 10 **it's not necessarily a driver of process.**  
 11 Q. So, you don't know?  
 12 **A. I'm not persuaded that value was the reason it**  
 13 **was split.**  
 14 Q. Who would know about the purposes for the  
 15 bifurcation of the sale process?  
 16 **A. Perhaps the Jefferies M&A Team; perhaps the**  
 17 **Jefferies Restructuring Team.**  
 18 Q. Have you ever been involved --  
 19 MR. COHEN: Can we take a two-minute  
 20 break?  
 21 MR. HARRIS: That's fine.  
 22 (A break was taken from 4:25 p.m. to 4:38  
 23 p.m.)  
 24 Q. (BY MR. WELLS) Mr. Latimer, when did the  
 25 marketing process for the sale of ATP's assets begin?

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1 MR. HARRIS: Objection, form.  
 2 **A. I think there were two starts. One was --**  
 3 **called December 14th, and I'm not sure whether the**  
 4 **other one was the 7th or the 21st. Those were the days**  
 5 **by which the teasers were prepared.**  
 6 Q. (BY MR. WELLS) So the initial step was  
 7 preparing the teasers?  
 8 **A. Yes.**  
 9 Q. And who prepared those?  
 10 **A. Substantially, they were prepared by**  
 11 **Jefferies, with input from company records and**  
 12 **individuals.**  
 13 Q. Who had ultimate signoff on the teasers?  
 14 **A. I did.**  
 15 Q. After the teasers, what was the next step in  
 16 the marketing process?  
 17 **A. Outreach.**  
 18 MR. HARRIS: Same objection.  
 19 Q. (BY MR. WELLS) What role did you have in  
 20 preparing the teasers?  
 21 **A. Review and contribution of an idea, where**  
 22 **appropriate.**  
 23 Q. Did anybody else have input besides Jefferies  
 24 and yourself?  
 25 **A. Certainly. The other members of the senior**

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1 **management.**  
 2 Q. And what roles did they play?  
 3 **A. Each in his own way, they had information and**  
 4 **background that was helpful in developing a crisp,**  
 5 **accurate picture.**  
 6 Q. Did Al Reese play a role?  
 7 **A. I believe so.**  
 8 Q. Do you know what role he played?  
 9 **A. No. But it -- in constructing a one-page**  
 10 **statement, the individual roles are --**  
 11 Q. Nebulous?  
 12 **A. -- not easy to identify.**  
 13 Q. Have you been involved in asset marketing --  
 14 excuse me. Let me restart. Have you been involved in  
 15 an asset marketing process before?  
 16 **A. Yes.**  
 17 Q. And did the teasers appear to provide similar  
 18 substance as teasers in the other asset marketing  
 19 processes that you've been involved in?  
 20 **A. Generally, yes.**  
 21 Q. How are they different?  
 22 **A. The assets were -- the assets -- offshore**  
 23 **assets are different than on-land assets. The points**  
 24 **of emphasis may be different. Too many -- too many**  
 25 **opportunities to be different to really come up with a**

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<p>1 catalog.</p> <p>2 Q. Okay. What were the points of emphasis in the</p> <p>3 teasers?</p> <p>4 A. Well, there were two teasers, one for</p> <p>5 deepwater and one for the shelf. Deepwater would</p> <p>6 emphasize the prospects that have been developed and</p> <p>7 the upside potential.</p> <p>8 I have to admit, I haven't looked at these in</p> <p>9 six months, so I'm not fresh on them.</p> <p>10 The ones for the shelf would emphasize</p> <p>11 existing production and redevelopment opportunity.</p> <p>12 Q. And you said that the next step was outreach;</p> <p>13 is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Could you explain what you mean by that?</p> <p>16 A. Jefferies, in their role as the M&amp;A</p> <p>17 specialists, had compiled an extensive list of people</p> <p>18 to whom the teaser was sent.</p> <p>19 And they would then follow up with the</p> <p>20 individuals to whom it was directed and attempt to</p> <p>21 encourage them to participate in the process, engage in</p> <p>22 discussion.</p> <p>23 Q. Did anyone else have an input as to who these</p> <p>24 teasers were sent to?</p> <p>25 A. A -- to the extent that an individual in the</p>	<p>1 who were interested would be provided with a</p> <p>2 confidentiality agreement in the interest of pursuing</p> <p>3 further information about the properties and assets.</p> <p>4 And that process continued all through the remainder of</p> <p>5 the sale process.</p> <p>6 Certainly, there was an initial group. And</p> <p>7 then as others identified themselves or we became aware</p> <p>8 of them, we would reach out to them as well.</p> <p>9 Q. After a purchaser, or a potential purchaser,</p> <p>10 signed the confidentiality agreement, what would happen</p> <p>11 next?</p> <p>12 A. They would be provided access to the</p> <p>13 substantial body of information in the virtual data</p> <p>14 room, 72,000, I believe you said it was, documents.</p> <p>15 Many, but not all, would be relevant to things</p> <p>16 that they would be interested in or various parts of</p> <p>17 the company would be interested in.</p> <p>18 The due diligence process would continue as</p> <p>19 they evaluated the information they now had access to,</p> <p>20 and there would be kind of a continuing dialog</p> <p>21 generally with the Jefferies M&amp;A Team, responding to</p> <p>22 questions, clarifying points, other things like that.</p> <p>23 Q. What other marketing materials were circulated</p> <p>24 to potential purchasers?</p> <p>25 A. There were -- from time to time, a PowerPoint</p>
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<p>1 company had a relationship or a reason to think someone</p> <p>2 would be interested, they were -- the -- they added</p> <p>3 names to the contact list.</p> <p>4 Q. Do you recall any such instances?</p> <p>5 A. Yes, but I'll defer to Al Reese because it was</p> <p>6 a contact that he worked closely for a period of time</p> <p>7 until it became clear that the party was not able to be</p> <p>8 a valid participant.</p> <p>9 Q. Do you recall the name of that party?</p> <p>10 A. No.</p> <p>11 Q. Were any names removed from the list that</p> <p>12 Jefferies provided of potential purchasers?</p> <p>13 A. Well, some disqualified themselves quickly, so</p> <p>14 they were not -- they were sort of mooted.</p> <p>15 Q. You mean they --</p> <p>16 A. I don't recall any -- I don't recall any</p> <p>17 specific name that was removed from the list.</p> <p>18 Q. Did the DIP lenders or any of the DIP lenders'</p> <p>19 representatives have any input on the list of potential</p> <p>20 purchasers that would be sent to the teasers?</p> <p>21 A. I'm not aware of any.</p> <p>22 Q. So after outreach, what was the next step in</p> <p>23 the marketing process?</p> <p>24 A. Well, the outfall of that process would be</p> <p>25 people who were interested or not interested, and those</p>	<p>1 presentation that would serve as an introduction. And</p> <p>2 in the sense, then, from an information standpoint, the</p> <p>3 next step after the teaser would be a PowerPoint that</p> <p>4 would lay out the picture.</p> <p>5 That might be done in conjunction with the due</p> <p>6 diligence review of information in the data room. And</p> <p>7 in certain cases, toward the end of the review period,</p> <p>8 there would be an in -- a prospective bidder might have</p> <p>9 operational or geotech professionals come to review</p> <p>10 data on a work station or review data in a -- in a more</p> <p>11 intense form.</p> <p>12 Q. Who prepared the PowerPoint presentation?</p> <p>13 A. Jefferies.</p> <p>14 Q. Who else had input in the PowerPoint</p> <p>15 presentations?</p> <p>16 A. The senior management team.</p> <p>17 Q. Yourself included?</p> <p>18 A. Yes.</p> <p>19 Q. So you reviewed the PowerPoint presentations</p> <p>20 before they were circulated to potential purchasers?</p> <p>21 A. Yes.</p> <p>22 Q. What involvement did the DIP lenders have in</p> <p>23 preparing the PowerPoint presentations?</p> <p>24 MR. HARRIS: Objection, form.</p> <p>25 A. They were provided a copy, and I do not know</p>

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1 **of any other involvement in that aspect of the sale**  
 2 **process by the DIP lenders.**  
 3 Q. (BY MR. WELLS) You don't know if they offered  
 4 comments on the PowerPoint presentation before they  
 5 were sent to potential purchasers?  
 6 MR. HARRIS: Objection, form.  
 7 **A. I do not know that.**  
 8 Q. (BY MR. WELLS) Who decided what assets to  
 9 include in the PowerPoint presentations?  
 10 MR. HARRIS: Objection, form.  
 11 **A. Generally, the assets in the PowerPoint were**  
 12 **the assets in the reserve report.**  
 13 Q. (BY MR. WELLS) Was there ever any discussion  
 14 of including other assets in the PowerPoint  
 15 presentations?  
 16 MR. HARRIS: Same objection.  
 17 **A. The ownership or effective management of the**  
 18 **two floating production platforms was identified in, I**  
 19 **believe, if I recall correctly -- in the PowerPoint,**  
 20 **though those explicitly were not items in the reserve**  
 21 **report. They were integral to the reserves that**  
 22 **were -- for which they were used to produce.**  
 23 Q. (BY MR. WELLS) Was there ever any discussion  
 24 including other assets in the PowerPoint presentations  
 25 that were not ultimately included?

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1 **A. The -- modest reference was made to the**  
 2 **overseas assets for inclusion. And there was a --**  
 3 **again, it's been four or five months since I looked at**  
 4 **these the last time.**  
 5 **I believe the -- there was an inclusion of**  
 6 **some reference to the international assets, and I**  
 7 **believe there was some dialog with the lenders at that**  
 8 **time about including them, but that would be the**  
 9 **only -- that's the only point I recall in which the**  
 10 **lenders had said boo.**  
 11 Q. So other than the -- the foreign subs, the  
 12 platforms, and the assets that are listed in the  
 13 reserve report, was there ever any discussion of  
 14 including any additional assets in the PowerPoint  
 15 presentations?  
 16 MR. HARRIS: Objection, form.  
 17 **A. None that I recall.**  
 18 Q. (BY MR. WELLS) Were the presentations ever  
 19 updated or revised?  
 20 **A. Yes. The company received an updated reserve**  
 21 **report with a later effective date. And when that was**  
 22 **available, the presentation was evolved to include that**  
 23 **later information.**  
 24 Q. But there was never any discussion of  
 25 including additional assets on these updated or revised

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1 presentations?  
 2 MR. HARRIS: Objection, form.  
 3 **A. No. The kinds of asset buyers we were working**  
 4 **with were the ones that were interested in oil and gas**  
 5 **assets, and the other assets were not things that were**  
 6 **of interest.**  
 7 Q. (BY MR. WELLS) I'm sorry. I'm just seeing  
 8 what we can skip over here.  
 9 To your knowledge, what types of documents  
 10 were included in the -- in the data room?  
 11 **A. I couldn't possibly give you everything, but I**  
 12 **can suggest some examples of things that were included.**  
 13 Q. Please do.  
 14 **A. The reserve report information. The**  
 15 **ownership, the leases and similar evidence of**  
 16 **ownership. The agreements with the holders of NPIs and**  
 17 **overrides. The financial and production information**  
 18 **about the properties that was available. An example**  
 19 **would be a lease operating statement.**  
 20 **Well logs and other data that pertain to a**  
 21 **drilled or drilling well. Information on the floating**  
 22 **platforms, specifications and other matters. And**  
 23 **production history information, particularly for the**  
 24 **older wells.**  
 25 **And generally, a -- I believe there was**

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1 **information on opportunities for additional drilling or**  
 2 **exploitation of existing situations. I believe I can**  
 3 **say that the full suite of information that a buyer**  
 4 **would expect was provided.**  
 5 Q. Who decided what to include in the data room?  
 6 **A. The Jefferies M&A Team took a lead in saying,**  
 7 **every good data room has the following information.**  
 8 **And as additional requests were received for**  
 9 **information not in the data room, those items were**  
 10 **included.**  
 11 **So, our senior management team had been**  
 12 **involved in acquisitions in the past, and they also had**  
 13 **a significant group of ideas on points that would be**  
 14 **helpful to include, information that would be helpful**  
 15 **to include.**  
 16 Q. Was the debtor consulted before adding  
 17 documents to the data room at the request of a  
 18 potential purchaser?  
 19 **A. Generally, yes.**  
 20 Q. And who at the debtor would that inquiry have  
 21 been referred to?  
 22 **A. It depends on the kind of inquiry. An**  
 23 **operational inquiry might have gone to George Morris or**  
 24 **Leland Tate and then probably ultimately to me.**  
 25 **A financial evaluation or something like that**



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1 would have gone to Keith Godwin or Al Reese and  
 2 ultimately to me.  
 3 Q. Were any requests for additional documents or  
 4 information by potential purchasers ever denied?  
 5 A. Initially, yes, for one particular item, which  
 6 was the NSAI report, which we did not own or have a --  
 7 have anything to say about.  
 8 And there was a separate confidentiality  
 9 process -- I believe the court was involved in that, as  
 10 well -- for anyone who could access the NSAI report.  
 11 So we would receive inquiries asking for that,  
 12 and we said, it's not ours; check with the lenders; if  
 13 they say it's okay, it's probably okay.  
 14 Q. Do you recall any other instances where  
 15 requests by a potential purchaser for additional  
 16 documents or information was denied?  
 17 A. I don't specifically -- the primary way it  
 18 might have occurred is where excessive detail was asked  
 19 for, when more summary information would be fine, a --  
 20 a monthly production instead of a daily production,  
 21 something like that, where the -- the burden of  
 22 supplying it was unreasonable.  
 23 Q. Who on a day-to-day basis managed the data  
 24 room? It was Opportune, you said, correct?  
 25 A. Yes. And Tim McGinty and probably George

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1 Morris had the most involvement with it from the  
 2 company's standpoint.  
 3 Q. And who controlled access to the data room?  
 4 A. The person who handled it was Jennifer Hoss,  
 5 H-O-S-S, with Opportune. Upon the direction of --  
 6 generally, once a CA was signed, a person would be  
 7 granted access. And Al Reese was the integral party in  
 8 completing the CAs.  
 9 Q. What efforts were made to identify potential  
 10 purchasers of the shelf and deepwater assets?  
 11 MR. HARRIS: Objection, form.  
 12 A. Well, Jefferies has an extensive energy M&A  
 13 practice and has a number of relationships and so on,  
 14 and we relied heavily on that inventory of  
 15 relationships and -- and experience. To the extent we  
 16 could augment it, we did.  
 17 Q. (BY MR. WELLS) Do you recall how many  
 18 potential purchasers were contacted regarding the --  
 19 we'll start with the shelf assets?  
 20 MR. HARRIS: Objection to form.  
 21 A. There were three groups. There were those who  
 22 were interested in the shelf, those who were interested  
 23 in the deepwater, and those who immediately or  
 24 ultimately were interested in both.  
 25 Q. (BY MR. WELLS) Uh-huh.

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1 A. I do not recall a specific number, but I  
 2 believe for the shelf it was more than 25, and I  
 3 believe for the deepwater it was more than 70.  
 4 Q. Are you familiar with the term or the acronym  
 5 "IOI"?  
 6 A. Not --  
 7 Q. Let me go about it a different way. Do you  
 8 know -- do you know what an indication of interest is?  
 9 A. I certainly do.  
 10 Q. That was better. Do you know how many -- I'll  
 11 refer to them as IOIs. Do you know how many IOIs were  
 12 received with regard to the shelf assets?  
 13 MR. HARRIS: Object to the form.  
 14 A. No.  
 15 Q. (BY MR. WELLS) Do you know how many potential  
 16 purchasers ultimately accessed the data room?  
 17 MR. HARRIS: Objection, form.  
 18 A. No, I don't know an exact number, but I  
 19 believe it to be substantial.  
 20 Q. (BY MR. WELLS) Do you know how many bidders  
 21 ended up showing up at the auction for the sale of the  
 22 shelf and deepwater assets?  
 23 MR. HARRIS: Objection, lack of  
 24 foundation.  
 25 A. I do not know the exact number. I know one

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1 came and dropped out, and I know one came to bid on  
 2 a specific asset. So, otherwise...  
 3 Q. (BY MR. WELLS) Do you recall the name of the  
 4 party that bid on the specific asset?  
 5 A. Blue Water Industries.  
 6 Q. And what asset were they bidding on?  
 7 A. Patents.  
 8 Q. And do you remember the one -- the party that  
 9 came to the auction and dropped out?  
 10 A. Yes.  
 11 Q. What was the name of the party?  
 12 A. I -- I can tell you its initials, but I can't  
 13 pronounce it. It's E&I, the Italian company. Please  
 14 give me a pass.  
 15 Q. Approved. Do you know why E&I dropped out?  
 16 A. They, I think, mistakenly believed that to be  
 17 a bidder, you had to be a qualified operator.  
 18 Q. And they dropped out because of that mistaken  
 19 belief?  
 20 A. That's what they told us.  
 21 Q. When did they tell you that?  
 22 A. The morning of the auction.  
 23 Q. Did you advise them that that wasn't the case?  
 24 A. Yes.  
 25 Q. What was their response?

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1 **A. "Thanks. We're going back to New Orleans."**  
 2 **They did not want to offer further or**  
 3 **participate further.**  
 4 Q. Did they offer any other reason why?  
 5 **A. I'm not aware of one.**  
 6 Q. Was there a stalking-horse bidder?  
 7 **A. No.**  
 8 Q. Why not?  
 9 **A. I'm not quite sure how to establish the**  
 10 **negative. The -- we aggressively marketed, and such a**  
 11 **bidder was sought, but we were unable to identify one.**  
 12 MR. HARRIS: While we're on a break here,  
 13 let me just say, the testimony about the bidding  
 14 process is confidential and under the Court's bidding  
 15 procedures orders. I just want to get that on the  
 16 record.  
 17 MR. GRENARD: And at least the extent of  
 18 what happened at the auction and the parties who  
 19 participated, that's all confidential, under the  
 20 bidding procedures.  
 21 MR. WELLS: Noted.  
 22 MR. GRENARD: So, just for all parties  
 23 who are present.  
 24 Q. (BY MR. WELLS) Was any interested party  
 25 denied the right to participate in the auction?

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1 **A. Well, there were n-- within the bidding**  
 2 **procedures, matters one had to comply with or provide**  
 3 **to be a qualified bidder. And there were -- and they**  
 4 **were -- there was no one -- there was no one who was a**  
 5 **qualified bidder who met the criteria that were part of**  
 6 **the bidding procedures.**  
 7 **The lenders were qualified bidders by**  
 8 **definition, or by -- I don't know whether -- there was**  
 9 **some prior establishment that they -- they didn't have**  
 10 **to clear the same hurdles that the other bidders did.**  
 11 Q. In the bidding procedures?  
 12 **A. I think it must have been in that doc -- in**  
 13 **that document.**  
 14 Q. Do you know how many qualifying bids were  
 15 received for the shelf and deepwater assets?  
 16 MR. HARRIS: Objection, lack of  
 17 foundation.  
 18 **A. I believe zero.**  
 19 Q. (BY MR. WELLS) Who would --  
 20 **A. Let me clarify that. The lender group was by**  
 21 **definition a qualified bidder.**  
 22 Q. Yeah.  
 23 **A. So, that -- that was -- they were a qualified**  
 24 **bidder.**  
 25 **In addition to them, I do not believe we had**

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1 **any.**  
 2 Q. Was E&I Petroleum a qualified bidder?  
 3 **A. I believe they would have been if they had**  
 4 **chosen to participate.**  
 5 Q. And the same with BlueWater?  
 6 **A. No.**  
 7 Q. Well --  
 8 **A. Well, excuse me, BlueWater -- BlueWater did**  
 9 **not -- I don't recall exactly. BlueWater was bidding**  
 10 **\$10,000 on the patent to which that bid was topped,**  
 11 **and -- and I don't recall whether it -- BlueWater put**  
 12 **up their money and did the other things they were**  
 13 **required to do. That was the only asset they were**  
 14 **interested in.**  
 15 Q. So, other than the credit bid, there was only  
 16 one other bid, BlueWater?  
 17 **A. The bidding procedures permitted a bidder to**  
 18 **bid for all or any part that bidder selected.**  
 19 **BlueWater selected one item. In the attribution of**  
 20 **value in the credit bid, the value attributed to the**  
 21 **item BlueWater wanted was ten times BlueWater's bid.**  
 22 **So, with the presentation of the credit bid, they had**  
 23 **been overbid, if that -- in that sense by ten times,**  
 24 **and they declined to participate further.**  
 25 Q. Were you surprised by the low number of bids

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1 that you received at the auction?  
 2 **A. We had hopes for more, but they didn't**  
 3 **materialize. So, we considered it to be an active**  
 4 **process. It's just at the end, the -- those who wanted**  
 5 **to follow through were -- did not return.**  
 6 Q. Were you surprised?  
 7 **A. Not really.**  
 8 Q. Why not?  
 9 **A. The -- these kind of assets in the Gulf have**  
 10 **been in a flat to down cycle. I believe there has only**  
 11 **been one transaction that was anywhere comparable in**  
 12 **the prior year, or maybe 18 months. So, it's not a**  
 13 **high activity area.**  
 14 **The complexity of the assets, given that they**  
 15 **were sold -- or they were offered for sale burdened, as**  
 16 **they were, by the API's overrides, meant that it**  
 17 **took extra effort to assess them and arrive at an**  
 18 **evaluation.**  
 19 **So, a buyer who has a choice will go to the**  
 20 **point where the path of least resistance and the**  
 21 **greatest value. And some companies were**  
 22 **probably deterred by the fact it involved bankruptcy.**  
 23 Q. One of the reasons you just mentioned was that  
 24 the presence of NPI and overrides on the property  
 25 required extra effort to analyze the -- the viability

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<p>1 of the assets; is that fair?</p> <p>2 <b>A. I think that's right.</b></p> <p>3 Q. Given that these burdened properties required</p> <p>4 extra effort to scrutinize, would the debtor -- or I'm</p> <p>5 sorry -- would the sale process have benefited from</p> <p>6 offering potential purchasers more time to scrutinize</p> <p>7 these properties?</p> <p>8 <b>A. I don't think so.</b></p> <p>9 Q. Why not?</p> <p>10 <b>A. Beyond a certain point, there's diminishing</b></p> <p>11 <b>returns. I think we reached the point where those who</b></p> <p>12 <b>were potentially interested in the assets had full</b></p> <p>13 <b>access to them, and so, I don't think that was a -- I</b></p> <p>14 <b>don't think the timeline, the way it played out, was a</b></p> <p>15 <b>deterrent to realizing value.</b></p> <p>16 Q. How are oil and gas properties typically</p> <p>17 valued, in your experience?</p> <p>18 <b>A. It can be kind of a triangulation around the</b></p> <p>19 <b>value of -- including factors, the value of the -- the</b></p> <p>20 <b>reserves in place, the --</b></p> <p>21 Q. How are the reserves in place valued?</p> <p>22 <b>A. Well, from a -- from an -- once the</b></p> <p>23 <b>engineering work is determined -- has been done to</b></p> <p>24 <b>estimate the reserves in place, the -- the rate at</b></p> <p>25 <b>which those reserves can be produced is estimated also</b></p>	<p>1 Collarini?</p> <p>2 <b>A. They acquired some assets from British</b></p> <p>3 <b>Petroleum, and those assets had been evaluated for</b></p> <p>4 <b>British Petroleum by Collarini.</b></p> <p>5 <b>So, in the -- when the assets were transferred</b></p> <p>6 <b>to ATP, ATP asked this engineering firm to stay on and</b></p> <p>7 <b>continue to do the work on those reserves.</b></p> <p>8 Q. Why did they do that?</p> <p>9 <b>A. Because the engineering firm who had done them</b></p> <p>10 <b>for BP was familiar with them, had worked with them for</b></p> <p>11 <b>a period of time, and had a comparative advantage over</b></p> <p>12 <b>somebody who would be starting out cold.</b></p> <p>13 Q. So, you're saying Collarini had a competitive</p> <p>14 advantage for the engineering for the --</p> <p>15 <b>A. Yes, I am.</b></p> <p>16 Q. Does the debtor have confidence in the</p> <p>17 conclusions and work of Collarini?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Has Collarini's work historically been</p> <p>20 satisfactory to the debtor?</p> <p>21 <b>A. Yes, it has.</b></p> <p>22 Q. How did Collarini typically prepare its</p> <p>23 reserve reports for the debtor?</p> <p>24 MR. HARRIS: Objection, form.</p> <p>25 <b>A. The -- the typical pattern with reserve</b></p>
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<p>1 as part of the engineering process.</p> <p>2 <b>And the prices that are anticipated, the cost</b></p> <p>3 <b>to operate them, a number of those factors go into</b></p> <p>4 <b>constructing a cash flow from the property, and various</b></p> <p>5 <b>discount rates can be applied to that cash flow that,</b></p> <p>6 <b>depending on the buyer's views of -- on that matter.</b></p> <p>7 <b>So, cash flow is one factor. Reserves in</b></p> <p>8 <b>place is another factor. Another one that you see from</b></p> <p>9 <b>time to time is dollars per flowing unit of production,</b></p> <p>10 <b>barrel of oil, MCF of gas.</b></p> <p>11 <b>In some cases you have value accorded to</b></p> <p>12 <b>proved undeveloped reserves, or you can have value</b></p> <p>13 <b>accorded to acreage under lease, which oftentimes does</b></p> <p>14 <b>not have wells on it. So, there's a lot of things that</b></p> <p>15 <b>go into it, and every party who does this kind of work</b></p> <p>16 <b>has their own points of emphasis in determining a</b></p> <p>17 <b>value.</b></p> <p>18 Q. Did the debtor have an engineer that they</p> <p>19 typically used to get at this value?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. What is the name of that engineer?</p> <p>22 <b>A. Collarini &amp; Associates or -- has been the --</b></p> <p>23 <b>the engineering firm the company has used for the last</b></p> <p>24 <b>five or six years at least.</b></p> <p>25 Q. Do you know why the debtor originally retained</p>	<p>1 engineering firms is to work with the debtor's</p> <p>2 information and analyses, be they logs or pressure</p> <p>3 information or other kinds of operational data.</p> <p>4 <b>Those are assembled into, along with the -- a</b></p> <p>5 <b>seismic picture, if that's available.</b></p> <p>6 <b>That's assembled into some determinations</b></p> <p>7 <b>typically of reserves, and -- in place and how much of</b></p> <p>8 <b>those reserves can be recovered, and -- you know, and</b></p> <p>9 <b>what would be a forward projection of the production</b></p> <p>10 <b>from those reserves.</b></p> <p>11 <b>And with that information, they can then make</b></p> <p>12 <b>the projections about flow rates and -- and typically,</b></p> <p>13 <b>the -- the company, the client, would provide the price</b></p> <p>14 <b>case or price information to use, and the company would</b></p> <p>15 <b>have a major role in providing the cost, operating</b></p> <p>16 <b>cost, information, the capital cost information, the</b></p> <p>17 <b>abandonment information.</b></p> <p>18 <b>So, the engineering and determination of how</b></p> <p>19 <b>much is there, and how much of it is -- what percent of</b></p> <p>20 <b>it can you get out and how fast would be a central</b></p> <p>21 <b>aspect of the reservoir engineer's work.</b></p> <p>22 Q. Who at the debtor would work closest with --</p> <p>23 excuse me. Let me start over.</p> <p>24 Who at the debtor would work closest with</p> <p>25 Collarini typically?</p>

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1 **A. Jerry Kennedy. He is the company -- the**  
 2 **primary individual, and he would be -- he would --**  
 3 **he's -- he works for George Morris. George is a very**  
 4 **seasoned engineer and would be integral to that**  
 5 **process.**  
 6 Q. Anybody else?  
 7 **A. Generally, no.**  
 8 Q. So, you discussed a moment ago the types of  
 9 information that Collarini or an engineer would  
 10 consider in creating its reserve reports.  
 11 How long would Collarini or any engineer  
 12 review such information before producing its reserve  
 13 reports?  
 14 MR. HARRIS: Objection, form.  
 15 Q. (BY MR. WELLS) To your knowledge?  
 16 **A. Well, obviously, it depends on how familiar**  
 17 **that engineer is with the work. And the more familiar**  
 18 **they are, the quicker they could typically complete it**  
 19 **because it's more of an update to prior work than it is**  
 20 **a de novo start.**  
 21 **But 45 to 60 days is typically adequate to**  
 22 **get -- and, obviously, it depends on how many wells you**  
 23 **have.**  
 24 Q. Was Collarini's reports for the debtor made  
 25 available to potential purchasers of the shelf and

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1 deepwater assets?  
 2 **A. Yes, they were.**  
 3 Q. Did any of the potential purchasers of the  
 4 shelf or deepwater assets request -- or I'm sorry --  
 5 inquire further about the reports?  
 6 **A. Yes. And -- and I believe there was some**  
 7 **direct in-person discussion as between the Collarini**  
 8 **engineering people and -- I'm not sure if every one,**  
 9 **but more than one, of the prospective purchasers --**  
 10 Q. Do you know which?  
 11 **A. -- had that.**  
 12 **No.**  
 13 Q. You don't know which purchasers?  
 14 **A. I don't recall.**  
 15 Q. Are you familiar with Netherland, Sewell &  
 16 Associates?  
 17 **A. Yes.**  
 18 Q. Who are they?  
 19 **A. They're a reserve engineering firm with**  
 20 **offices in a number of places, Dallas and Houston**  
 21 **primarily.**  
 22 Q. Did they create a report or reports on the  
 23 debtor's deepwater assets?  
 24 **A. Yes, they did.**  
 25 Q. And who retained NSAI?

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1 **A. I believe formally it was retained by Cravath,**  
 2 **Swaine & Moore at the request of the agent.**  
 3 Q. Do you know when NSAI was retained?  
 4 **A. No, I don't. My involvement in the case began**  
 5 **in mid-September, but I -- and I don't have a fix on**  
 6 **when it might have begun.**  
 7 Q. Would you have an approximation?  
 8 **A. At or near the time of the inception of the --**  
 9 **of the DIP loan.**  
 10 Q. And when did NSAI create their first reserve  
 11 report regarding the debtor's assets?  
 12 MR. HARRIS: Objection, form.  
 13 **A. When you say "create" --**  
 14 Q. (BY MR. WELLS) When was it first circulated  
 15 to the debtor?  
 16 **A. I don't recall exactly. It was perhaps late**  
 17 **September, early October 2012.**  
 18 Q. And given your testimony -- your prior  
 19 testimony regarding Collarini's experience with the  
 20 assets, the debtor's assets, how did NSAI's knowledge  
 21 and experience with the debtor's assets compare?  
 22 **A. I'm not aware that NSAI had any contact with**  
 23 **debtor assets prior to the inception of the report they**  
 24 **were retained to do.**  
 25 **That period of examination of reserves was**

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1 **modest, and when compared with the years that Collarini**  
 2 **had been there, it was obviously much, much shorter.**  
 3 Q. You testified that one of the reasons that ATP  
 4 could -- retained Collarini was because of their  
 5 extensive experience with the debtor's assets; is that  
 6 correct?  
 7 **A. Yes.**  
 8 Q. So, is it fair to say that the debtor would  
 9 trust the work of an engineer who has -- all things --  
 10 all things being equal, who has more experience with  
 11 particular assets?  
 12 **A. Well, the -- the debtor has -- had confidence**  
 13 **in Collarini, and without disparaging others, certainly**  
 14 **the duration of that experience is a real plus.**  
 15 **The Netherland, Sewell people are widely**  
 16 **respected, but they had a very short time period to**  
 17 **work with these assets and come to their conclusions.**  
 18 Q. To your knowledge, were the reserve reports  
 19 created by NSAI made available to potential purchasers?  
 20 **A. After a procedure was established through the**  
 21 **Court, of which those who wanted them could -- could**  
 22 **execute appropriate confidentiality agreements specific**  
 23 **to the NSAI report, those were -- they were available**  
 24 **on a specific company basis to those who had exercised**  
 25 **the -- who executed the -- the appropriate additional**

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<p style="text-align: right;">Page 125</p> <p>1 <b>confidentiality agreement.</b> 2 Q. Did any potential purchasers inquire further 3 regarding the results of the NSAI report? 4 <b>A. "Further" meaning --</b> 5 Q. More than just requesting the document? 6 <b>A. I don't recall which ones or how, but I</b> 7 <b>believe there potentially was some follow-up that ATP</b> 8 <b>was not involved in.</b> 9 Q. Do you have any knowledge of the nature of the 10 follow-up? 11 <b>A. No.</b> 12 Q. To your knowledge, did any of the potential 13 purchasers have their own engineers? 14 <b>A. I would say everyone had his own engineer.</b> 15 Q. Did any of the -- those engineers review the 16 Collarini or NSAI reports? 17 MR. HARRIS: Objection, form. 18 <b>A. The Collarini was certainly available in the</b> 19 <b>data room, and under the special effort, the NSAI one</b> 20 <b>was available.</b> 21 <b>And inasmuch as they could be -- had been</b> 22 <b>examined in the data room, we would not have a direct</b> 23 <b>window on a formal organization by company engineers.</b> 24 <b>We just presume it would have taken place because it's</b> 25 <b>a very central and normal part of an acquisition</b></p>	<p style="text-align: right;">Page 127</p> <p>1 <b>A. That's the restructuring team. This is John</b> 2 <b>Ernst and Dave Roussel, and I -- and I -- because it</b> 3 <b>was a credit bid, there is obviously some "what's in</b> 4 <b>and what's out type of questions.</b> 5 <b>There weren't -- you know, we didn't -- we</b> 6 <b>mostly got talked through and negotiated, but the</b> 7 <b>elements of it are -- they would have a -- a fix on.</b> 8 Q. Was anybody at the debtor involved in 9 negotiating the purchase price? 10 MR. HARRIS: Objection to form. 11 <b>A. Primarily, I think that would fall to Al Reese</b> 12 <b>in terms of involvement with the APA.</b> 13 Q. (BY MR. WELLS) And you testified that you 14 were not involved in those negotiations? 15 MR. HARRIS: Objection, form. 16 <b>A. I was aware of them. I wasn't day-to-day,</b> 17 <b>hour-to-hour involved in them.</b> 18 Q. (BY MR. WELLS) Did you play any role? 19 MR. HARRIS: Same objection. 20 <b>A. Well, in the sense of being where the buck</b> 21 <b>stops, I played that role. I didn't play the</b> 22 <b>hour-to-hour negotiating role.</b> 23 Q. (BY MR. WELLS) So in determining the 24 negotiation -- or in agreeing to the negotiated 25 purchase price, the buck stopped with you?</p>
<p style="text-align: right;">Page 126</p> <p>1 <b>evaluation.</b> 2 Q. (BY MR. WELLS) Are you aware of any comments 3 or assessments made by such third-party engineers 4 regarding the Collarini or NSAI reports? 5 <b>A. No. I just -- people keep to themselves.</b> 6 Q. As it stands now, do you know the total 7 purchase price offered by the DIP lenders under the 8 asset purchase agreement for the debtor's assets? 9 <b>A. I believe it is approximately \$645 million;</b> 10 <b>but I also know this is moving around, and the -- the</b> 11 <b>most recent appraisal I've heard is 645.</b> 12 Q. How was the original price offered in the 13 original asset purchase agreement determined? 14 <b>A. There is a negotiated number. I was not</b> 15 <b>centrally involved in the determination of that. So,</b> 16 <b>I -- I don't have a good point of reference to suggest.</b> 17 Q. Who would have been centrally involved in that 18 determination? 19 <b>A. Well, it would have been a -- something that</b> 20 <b>certainly in its initial stages, Jefferies would have</b> 21 <b>been -- I would expect Jefferies would have been</b> 22 <b>importantly involved in.</b> 23 Q. Who at Jefferies? Do you know? 24 <b>A. The M&amp;A team.</b> 25 Q. So that would be Tero Janne and his team?</p>	<p style="text-align: right;">Page 128</p> <p>1 <b>A. Yes.</b> 2 Q. And when was the final negotiated purchase 3 price arrived at? 4 <b>A. It's still moving around.</b> 5 Q. But the buck will stop with you? 6 <b>A. Yes, it will.</b> 7 Q. How was the deficiency claim above and beyond 8 the purchase price determined? 9 MR. HARRIS: Objection, form. 10 <b>A. We are aware it's above the purchase price.</b> 11 <b>We have some indications from Credit Suisse as to what</b> 12 <b>their calculation of the total amount owed, obviously,</b> 13 <b>less the amount bid.</b> 14 <b>So the -- at this point, and subject to</b> 15 <b>confirmation, our -- we -- we have a -- a number, but</b> 16 <b>we don't have a lot of information on how it was</b> 17 <b>arrived at.</b> 18 Q. (BY MR. WELLS) In determining the purchase 19 price, the original purchase price -- I know it's still 20 in flux -- were values allocated to certain assets? 21 MR. HARRIS: Objection, form. 22 <b>A. I'm familiar with the allocation of value to</b> 23 <b>the patent. The -- and I -- I'm trying to -- I don't</b> 24 <b>have a good fix on the allocation is among the other</b> 25 <b>components, and -- and we're still kind of allocating.</b></p>

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<p style="text-align: right;">Page 129</p> <p>1 <b>So, it's not a -- nothing's -- I wouldn't say</b>                  2 <b>it's, you know, nailed down to a precise number.</b>                  3 Q. (BY MR. WELLS) But is there a value                  4 allocation?                  5 <b>A. I haven't seen last night's APA. I apologize.</b>                  6 <b>I -- so, I -- I don't recall what they have in there</b>                  7 <b>now. I would -- as to allocation of value.</b>                  8 Q. Well, I'm not asking for the specific                  9 allocation of value for each asset. I'm just asking                  10 was there an allocation.                  11 <b>A. I can't say with confidence.</b>                  12 Q. Who would know?                  13 <b>A. Counsel, and perhaps Al Reese.</b>                  14 MR. WELLS: If we can take a short                  15 five-minute break. We'll just see if we have any                  16 further questions. I think we're about done here.                  17 MR. GRENARD: Sure.                  18 (A break was taken from 5:45 p.m. to 5:48                  19 p.m.)                  20 MR. WELLS: All right. Well, no further                  21 questions. We pass the witness.                  22 THE WITNESS: Okay.                  23 MR. HARRIS: Okay. We just have a couple                  24 of questions to kind of clear up the record on a couple                  25 of things.</p>	<p style="text-align: right;">Page 131</p> <p>1 <b>A. We think it's quite advanced. We have made a</b>                  2 <b>lot of progress in that and -- and are, we believe,</b>                  3 <b>working out some of the final points, but we're</b>                  4 <b>positive on getting to, acceptable to both sides, a</b>                  5 <b>resolution.</b>                  6 Q. Do you see it as an absolute prerequisite to a                  7 sale hearing that there's an agreement between the                  8 debtor and the DIP lender on the operating budget?                  9 <b>A. Yes. That's the assurance that we have the --</b>                  10 <b>that's the potential assurance that we have the funding</b>                  11 <b>to reach a closing.</b>                  12 Q. Same question with the professional fees. You                  13 see professional fees as an absolute prerequisite to                  14 the support of a sale hearing?                  15 <b>A. I think certainly we expect to come to an</b>                  16 <b>acceptable resolution on that. I think we would expect</b>                  17 <b>that we will accomplish that resolution.</b>                  18 <b>I think we make -- we consider -- consider</b>                  19 <b>what's in the best interest of the estate at the point</b>                  20 <b>we have to make the decision and be guided accordingly.</b>                  21 Q. There's no decision at this point?                  22 <b>A. That's correct.</b>                  23 Q. And the last component of the budget we talked                  24 about is the wind-down budget. Tell me what you                  25 understand what a -- what a wind-down budget is, in</p>
<p style="text-align: right;">Page 130</p> <p>1 EXAMINATION                  2 BY MR. HARRIS:                  3 Q. So, Mr. Latimer, we talked earlier about a                  4 couple of things that the debtor would need -- well,                  5 from your view, that a debtor would need in order to                  6 support a sale hearing going forward. Do you                  7 remember --                  8 <b>A. Yes, I do.</b>                  9 Q. -- the two things you talked about? What were                  10 those?                  11 <b>A. The budget that was responsive to the</b>                  12 <b>situation we have and -- and funding to cover the</b>                  13 <b>financial needs that we see looming ahead of us in July</b>                  14 <b>and August.</b>                  15 Q. Okay. Let's talk about the budget first.                  16 <b>A. Okay.</b>                  17 Q. The budget has various components, doesn't it?                  18 <b>A. Yes.</b>                  19 Q. What are those?                  20 <b>A. There's an operating component, a professional</b>                  21 <b>fee component, and a -- a post-closing wind-down</b>                  22 <b>component.</b>                  23 Q. What's the status of the negotiations between                  24 the debtor and the DIP lenders concerning the operating                  25 budget right now?</p>	<p style="text-align: right;">Page 132</p> <p>1 your view?                  2 <b>A. A wind-down budget is -- what happens is the</b>                  3 <b>money that has to be spent between the closing of a</b>                  4 <b>sale and the -- the confirmation of a plan or whatever</b>                  5 <b>may transpire.</b>                  6 <b>We are -- our target and expectations is to</b>                  7 <b>have a simple and straightforward plan confirmed, and</b>                  8 <b>this would be funding that -- in an amount appropriate</b>                  9 <b>to get to that point.</b>                  10 Q. So, again -- again, this is kind of the same                  11 question I had before about the other two components of                  12 the budget. Do you see the -- an agreement with the                  13 DIP lenders on a wind-down budget as an absolute                  14 prerequisite to a sale in this case?                  15 <b>A. I think, again, we look at what's in the best</b>                  16 <b>interest of the estate here. There are -- you know,</b>                  17 <b>with oil and gas properties, you've got a lot of</b>                  18 <b>health, safety, and environment types of issues and</b>                  19 <b>some other things; and we want to be sure that,</b>                  20 <b>regardless of what we do, those are covered off.</b>                  21 <b>But -- but our -- our expectation here is to</b>                  22 <b>be guided by what's in the best interest of the estate,</b>                  23 <b>and our -- our further expectation is that we will have</b>                  24 <b>a budget that's satisfactory for that purpose.</b>                  25 Q. So if -- you talked -- you talked about best</p>

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1 interest of the estate. So if there are some expenses  
 2 that go unpaid under the budget, the wind-down budget,  
 3 that the DIP lenders and the debtor ultimately agree  
 4 to, you have to evaluate at that time, I assume,  
 5 whether to go forward to sale on that basis?  
 6 **A. You have to look at a holistic basis, and**  
 7 **that's what we would do. And if there are some things**  
 8 **like you described that aren't covered and -- and**  
 9 **predominance of our assessment of benefit is that it's**  
 10 **worth going ahead, well, we would have to do that.**  
 11 Q. Now, the other thing you talked about is  
 12 funding to cover the financials post-closing.  
 13 **A. Uh-huh.**  
 14 Q. Do you see that?  
 15 **A. Post -- approval -- oh, excuse me. You're**  
 16 **talking about the wind-down --**  
 17 Q. Right.  
 18 **A. -- period. Yeah. Okay. I'm sorry.**  
 19 Q. So we talked about the budget, and then you  
 20 talked about funding, as well, right, funding  
 21 mechanism?  
 22 **A. Uh-huh.**  
 23 Q. Okay. The funding mechanism, do you see that  
 24 as an absolute prerequisite to approval of a sale -- or  
 25 I should say support of a sale?

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1 **A. Well, we -- yes, because if we don't have a --**  
 2 **if we don't have funding, we don't get to closing. And**  
 3 **our -- you know, our -- as we talked earlier, the**  
 4 **approval is a step on the road, but it's not the end of**  
 5 **the road.**  
 6 MR. HARRIS: That's all I have.  
 7 MR. WELLS: No further questions over  
 8 here.  
 9 MR. HARRIS: We will reserve signature.  
 10 (Proceedings concluded at 6:14 p.m.)  
 11  
 12 -- SIGNATURE REQUIRED --  
 13  
 14  
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 16  
 17  
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 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 CHANGES AND SIGNATURE  
 2 WITNESS NAME: JAMES R. LATIMER, III  
 3 DATE OF DEPOSITION: JUNE 17, 2013  
 4 PAGE LINE CHANGE REASON  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_  
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 21 \_\_\_\_\_  
 22 \_\_\_\_\_  
 23 \_\_\_\_\_  
 24 \_\_\_\_\_  
 25 \_\_\_\_\_

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1 I, JAMES R. LATIMER, III, have read the  
 2 foregoing deposition and hereby affix my signature that  
 3 same is true and correct, except as noted above.  
 4 \_\_\_\_\_  
 5 JAMES R. LATIMER, III  
 6 THE STATE OF \_\_\_\_\_ )  
 7 COUNTY OF \_\_\_\_\_ )  
 8 Before me, \_\_\_\_\_, on this day  
 9 personally appeared JAMES R. LATIMER, III, known to me  
 10 (or proved to me under oath or through  
 11 \_\_\_\_\_) (description of identity  
 12 card or other document) to be the person whose name is  
 13 subscribed to the foregoing instrument and acknowledged  
 14 to me that they executed the same for the purposes and  
 15 consideration therein expressed.  
 16 Given under my hand and seal of office this  
 17 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
 18  
 19 \_\_\_\_\_  
 20 NOTARY PUBLIC IN AND FOR  
 21 THE STATE OF \_\_\_\_\_  
 22 My commission expires: \_\_\_\_\_  
 23  
 24 \_\_\_ No Changes Made \_\_\_ Amendment Sheet(s) Attached, In  
 25 re: ATP Oil & Gas Corporation, Debtor.

JAMES R. LATIMER, III - June 17, 2013

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1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE SOUTHERN DISTRICT OF TEXAS  
 3 BANKRUPTCY DIVISION  
 4 IN RE: )  
 5 ) CASE NO. 12-36187  
 6 )  
 7 ATP OIL & GAS CORPORATION ) Chapter 11  
 8 )  
 9 )  
 10 DEBTOR. ) JUDGE MARVIN ISGUR  
 11 )  
 12 \*\*\*\*\*  
 13 REPORTER'S CERTIFICATION OF THE ORAL  
 14 DEPOSITION OF JAMES R. LATIMER, III  
 15 JUNE 17, 2013  
 16  
 17 I, Kathy Miller, Certified Shorthand Reporter in  
 18 and for the State of Texas, hereby certify to the  
 19 following:  
 20 That the witness, JAMES R. LATIMER, III, was duly  
 21 sworn by the officer and that the transcript of the  
 22 oral deposition is a true record of the testimony given  
 23 by the witness;  
 24 That the original deposition was delivered to Mr.  
 25 Jeremy Wells.  
 That a copy of this certificate was served on all  
 parties and/or the witness shown herein on  
 \_\_\_\_\_.  
 I further certify that pursuant to FRCP Rule  
 30(f)(1) that the signature of the deponent:

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1 THE STATE OF \_\_\_\_\_)  
 2 COUNTY OF \_\_\_\_\_)  
 3  
 4 I hereby certify that the witness was notified on  
 5 \_\_\_\_\_ that the witness has 30 days, or  
 6 (\_\_\_\_ days per agreement of counsel) after being  
 7 notified by the officer that the transcript is  
 8 available for review by the witness and if there are  
 9 changes in the form or substance to be made, then the  
 10 witness shall sign a statement reciting such changes  
 11 and the reasons given by the witness for making them;  
 12 That the witness' signature \_\_\_\_ was / \_\_\_\_ was not  
 13 returned as of \_\_\_\_\_, 2013  
 14 Subscribed and sworn to by me on this, the \_\_\_\_ day  
 15 of \_\_\_\_\_, 2013.  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

\_\_\_\_\_  
 Kathy Miller, CSR, RMR, CRR  
 Texas CSR No. 739  
 Expiration Date: 12/31/14

\_\_\_\_\_  
 CRC for Tracey Richardson Reporting  
 Firm Registration No. 62  
 1225 North Loop West, Suite 327  
 Houston, Texas 77008  
 Tel: 713-626-2629/Fax: 713-626-1966

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1 \_\_\_\_ was requested by the deponent or a party before  
 2 the completion of the deposition and that the signature  
 3 is to be before any notary public and returned within  
 4 30 days from date of receipt of the transcript.  
 5 I further certify that I am neither counsel for,  
 6 related to, nor employed by any of the parties or  
 7 attorneys in the action in which this proceeding was  
 8 taken, and further that I am not financially or  
 9 otherwise interested in the outcome of the action.  
 10 Certified to by me on this, the 18th day of  
 11 \_\_\_\_\_, 2013.  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

*Kathy Miller*

\_\_\_\_\_  
 Kathy Miller, CSR, RMR, CRR  
 Texas CSR No. 739  
 Expiration Date: 12/31/14

\_\_\_\_\_  
 CRC for Tracey Richardson Reporting  
 Firm Registration No. 62  
 1225 North Loop West, Suite 327  
 Houston, Texas 77008  
 Tel: 713-626-2629/Fax: 713-626-1966



**Exhibit B**

**E-mail from R. Toland to A. Kyle and A. Gallo (May 7, 2013, 16:36 CST)**

**From:** Toland, Rue <RToland@mayerbrown.com>  
**Sent:** Tuesday, May 7, 2013 4:36 PM  
**To:** Kyle, Amy L. <amy.kyle@bingham.com>; Gallo, Andrew J. <andrew.gallo@bingham.com>  
**Cc:** Kelley, Charles S. <CKelley@mayerbrown.com>; Hyman, Frederick D. <FHyman@mayerbrown.com>; Scott, Sean T. <STScott@mayerbrown.com>; Grenard, Joshua M. <JGrenard@mayerbrown.com>; Al Reese <AR Reese@atpog.com>; James R. Latimer <JLatimer@atpog.com>  
**Subject:** ATP - Credit Bid Post-Auction Issues List [MB-AME.FID918690]  
**Attach:** ATP - Credit Bid Post-Auction Issues List (706483122\_1).DOCX

---

Amy and Andrew,

As requested, please find attached the Debtor's list of items in conjunction with the credit bid that present issues for Debtor's ability to secure Board approval and make our evidentiary record at the sale hearing regarding the credit bid.

Best regards,  
Rue

---

**Rue K. Toland**

Restructuring, Bankruptcy & Insolvency

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### **Evidentiary Concerns for a Sale Hearing**

#### Liquidity

- How do we address satisfaction of ATP's anticipated liquidity need in excess of the remaining availability under the DIP facility in order to get to a closing?
- How can ATP address feasibility of the sale when it needs certainty on the mechanics for accessing the remaining portion of the DIP facility (approximately \$8.4 million) prior to month end?
  - Waiver of existing defaults that permits funding of the final amount?
  - Additional commitments or assumption of Clipper payables or other expenditures related to acquired assets pre-closing?
- How does ATP demonstrate Buyer's sufficiency of financing given M&M and wind-down commitments exceed amount of Commitment Letter received by Debtor from Agent?
- Debtor must be able to testify the substance and amount of the wind-down budget are acceptable to the estate. This would also enable the Debtor to defeat a sub rosa plan argument.

#### M&M Liens

- How does the debtor satisfy its evidentiary burden of establishing that DIP Lenders' assessment that \$45 million is sufficient reserve to address senior M&M lien claims on acquired assets? (How do we address, from an evidentiary standpoint, that we are not pre-deciding lien amount and priority issues at the sale hearing?)
- How does the Debtor address the disputed M&M liens post-closing?

#### BOEM/BSEE Matters

- How does ATP satisfy evidentiary requirement that there is a reasonable likelihood that this transaction will close in light of the open BOEM issues or concession from BOEM that this is a transaction that it will support?
- What evidence can ATP present that it anticipates there will be a satisfactory resolution of the BOEM objection or of potential obstacles to a subsequent closing, including:
  - Identification of an operator acceptable to BOEM, or acceptable agreement with ATP to serve as operator during interim period until a substitute operator is named or Newco becomes a qualified operator?
  - Sufficient funding or "waiver" of decommissioning obligations to satisfaction of BOEM for properties acquired and properties left with the Debtor to enable closing?
  - Adequate funding of offshore insurance coverage pending closing?

#### Adequate Funding for Administrative Claims

- Is there an agreement on wind-down budget covering items Debtor believes, in its reasonable business judgment, are necessary to conclude the estate's affairs post-closing, including reasonable administrative expenses?
- How does ATP satisfy the evidentiary requirement that the mechanics are in place and support for funding wind-down budget exists with the DIP Lenders?

Intangibles

- How does the Debtor address the local rules for a 363 sale, which require adequate and reasonable notice of certain intangibles that are the subject of the credit bid but were not marketed, such as the BP Claim, the NPI/ORRI litigation, and the Decommissioning Trusts?
- How does the Debtor address the argument, from an evidentiary standpoint, that recoveries under the NPI/ORRI litigation could fall under Chapter 5 actions for which the DIP Lenders do not have a lien, and the proceeds would otherwise go to the UCC or certain M&M lien claimants?

Conditions to Closing

- Clarification of what recourse is available to ATP in the event of a failure to fund commitments by certain lenders under the APA

### **Information Required for Board Consideration for Approval of Sale Process**

#### Liquidity

- How does Board address satisfaction of ATP's anticipated liquidity need in excess of the remaining availability under the DIP facility in order to get to a closing?
- Board evaluation of feasibility of the sale when ATP needs certainty on the mechanics for accessing the remaining portion of the DIP facility (approximately \$8.4 million) prior to month end.
  - Waiver of existing defaults that permits funding of the final amount
  - Additional commitments or assumption of Clipper payables or other expenditures related to acquired assets pre-closing
- Board consideration of Buyer's sufficiency of financing given M&M and wind-down commitments exceed amount of Commitment Letter received by Debtor from Agent.
- Board must approve the substance and amount of the wind-down budget are acceptable to the estate. Board will want input on various issues in wind-down budget.

#### M&M Liens

- Explanation for board of DIP Lenders' assessment that \$45 million is sufficient reserve to address senior M&M lien claims on acquired assets?
- Consideration of process for addressing disputed M&M liens post-closing?

#### BOEM/BSEE Matters

- Board evaluation of reasonable likelihood that this transaction will close in light of the open BOEM issues or concession from BOEM that this is a transaction that it will support.
- View towards satisfactory resolution of the BOEM objection or of potential obstacles to a subsequent closing, including:
  - Identification of an operator acceptable to BOEM, or acceptable agreement with ATP to serve as operator during interim period until a substitute operator is named or Newco becomes a qualified operator.
  - Sufficient funding or "waiver" of decommissioning obligations to satisfaction of BOEM for properties acquired and properties left with the Debtor to enable closing.
  - Adequate funding of offshore insurance coverage pending closing.

#### Adequate Funding for Administrative Claims

- Is there an agreement on wind-down budget covering items Debtor believes, in its reasonable business judgment, are necessary to conclude the estate's affairs post-closing, including reasonable administrative expenses?
- Board satisfies itself of feasibility of accessing sufficient wind-down funds.

#### G&A Wind-Down Budget

- Does wind-down budget satisfactorily address Board's concerns regarding KERP/Severance?
- Board recognizes need to invest funds in long-tail D&O insurance coverage both for prudence and preservation of claims

- Other G&A items associated with wind-down of employee matters and similar administrative budgetary concerns

#### Intangibles

- How does Board conclude fair value is reasonable for intangibles given marketing and notice concerns?
- What should the Debtor convey to its Board regarding adequate and reasonable notice of certain intangibles that are the subject of the credit bid but were not marketed, such as the BP Claim, the NPI/ORRI litigation, and the Decommissioning Trusts?
- Satisfaction of Board questions that DIP Lenders' liens cover the intangibles fully and the proceeds therefrom?

#### Conditions to Closing

- Clarification of what recourse is available to ATP in the event of a failure to fund commitments by certain lenders under the APA