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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

THE MCCLATCHY COMPANY, et al.,	Main Case No.
Debtors.	20-10418-mew

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

March 25, 2020
11:15 AM

B E F O R E:

HON. MICHAEL E. WILES (TELEPHONICALLY)
U.S. BANKRUPTCY JUDGE



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Application authorizing the employment of Groom Law Group,
Chartered, as special employee-benefits counsel to the debtors
nunc pro tunc to the petition date.

CERTIFICATE OF NO OBJECTION FILED.

Application authorizing the employment of Evercore Group LLC as
investment banker and financial advisor to the debtors
effective nunc pro tunc to the petition date, approving the
terms of the Evercore agreement, waiving certain timekeeping
requirements, and granted related relief.

Application authorizing employment of Skadden, Arps, Slate,
Meagher & Flom LLP as counsel to the debtors nunc pro tunc to
the petition date.

Objection by the UST filed.

Application for ex parte relief of the Former Knight Ridder and
McClatchy Salaried Employees Association for production of
documents under Rule 2004.

Objection filed.

Application authorizing the employment of Togut, Segal & Segal
LLP as co-counsel to the debtors nunc pro tunc to the petition
date.

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Limited objection by the UST filed.

Application authorizing the employment of FTI Consulting, Inc.
effective nunc pro tunc to the petition date, approving the
terms of FTI's employment, designating Sean M. Harding as chief
restructuring officer, and granting related relief.

CERTIFICATE OF NO OBJECTION FILED.

Motion authorizing rejection of unexpired lease of
nonresidential real property located at 401 I Street, Suite
200, Sacramento, California 95814.

CERTIFICATE OF NO OBJECTION FILED.

Debtors' second omnibus motion for entry of an order
authorizing and approving the rejection of certain leases and
related agreements.

CERTIFICATE OF NO OBJECTION FILED.

Application authorizing employment of Kurtzman Carson
Consultants LLC as administrative advisor to the debtors nunc
pro tunc to the petition date.

CERTIFICATE OF NO OBJECTION FILED.

Final hearing re: motion authorizing the debtors to obtain post-petition financing and use cash collateral, granting liens, and providing superpriority administrative-expense status and adequate protection to certain pre-petition lenders, modifying the automatic stay, scheduling a final hearing, and granting related relief.

Objection filed.

Final hearing re: motion authorizing continued use of existing cash-management system, bank accounts, and business forms, and payment of related pre-petition obligations, modifying certain deposit requirements, and authorizing continuance of intercompany transactions, and honoring certain related pre-petition obligations.

CERTIFICATE OF NO OBJECTION FILED.

Final hearing re: motion establishing notice-and-hearing procedures for trading in, or treating as becoming worthless, equity securities in the debtors.

CERTIFICATE OF NO OBJECTION FILED.

Motion authorizing debtors to pay pre-petition wages, compensation, and employee benefits (2019 nonexecutive retention plan)

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PENSION BENEFIT GUARANTY CORPORATION

Office of the General Counsel

1200 K Street NW

Washington, DC 20005

BY: ERIKA E. BARNES, ESQ.

ALSO PRESENT:

EVAN GERSHBEIN, Kurtzman Carson Consultants LLC

SEAN M. HARDING, FTI Consulting, Inc.

STEPHEN HANNAN, Evercore Group, LLC

BO YI, Evercore Group, LLC

1 P R O C E E D I N G S

2 THE COURT: Parties, are we ready to proceed?

3 Can anybody hear me?

4 UNIDENTIFIED SPEAKER: Yes, Your Honor, we hear do
5 hear you.

6 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

7 THE COURT: Okay. Okay, who wishes to proceed on
8 behalf of the debtor?

9 MR. DURRER: Your Honor, I'm here.

10 I'm not -- can anyone hear me? This is Van Durrer.

11 UNIDENTIFIED SPEAKER: We can hear you, Van.

12 Van, we can hear you.

13 MR. DURRER: Okay. This is Van Durrer of Skadden,
14 Arps, Slate, Meagher & Flom, on behalf of The McClatchy Company
15 and the affiliated debtors. The agenda is Docket 220. On that
16 agenda, Your Honor, we had a status report that we wanted to
17 just give you a brief update on what those are. Obviously, the
18 company and all the parties are reacting in real time to the
19 COVID-19 pandemic. I think, as we all are spread across our
20 home offices and dining-room tables, we have a deeper
21 appreciation for the effort that Your Honor goes through to
22 stay organized.

23 The good news is that today's agenda is largely
24 uncontested, and that's due to the good-faith efforts and
25 negotiations of every party with (indiscernible) exception,

1 working very hard, notwithstanding the crisis, notwithstanding
2 that some folks are in containment zones, et cetera. And we
3 really do appreciate that. Everybody took that to heart to try
4 and put aside differences, to get to where we got to today,
5 which is a smooth launch of the DIP financing, which is
6 obviously critical, especially under the current circumstances.

7 Not everybody is happy, to be clear. And we'll get
8 into some of those details as we proceed to the agenda. But
9 people decided that the better course here was to try and adopt
10 a consensual approach, at least for now. We're obviously very
11 thankful for the Court's dedication, and all the court staff,
12 in setting this up. This is not easy, and we appreciate that.
13 And we'll do our best to keep it as streamlined as possible.

14 In terms of the investigation, the investigation is in
15 high gear. There are interviews that have already taken place.
16 There're interviews that are expected to take place next week.

17 In terms of mediation, we have check-ins this
18 afternoon with Judge Carey and then again on the 30th, on
19 Monday. And then our first, sort of, full principal session is
20 designed to be virtual, on April 7th. Obviously, we're trying
21 to adapt to a new normal, but I think I can comfortably report
22 that the case is about as normal a Chapter 11 case otherwise as
23 you would expect under, obviously, bizarre circumstances.

24 With respect to witnesses for today, Your Honor, many
25 of the core witnesses are on the phone: Mr. Harding, Mr.

1 Hannan, and others. Ms. McConkey is not available, due to a
2 conflict with -- we have a set of board meetings today, and
3 she's conducting committee meetings in anticipation of those
4 board meetings.

5 And of the things that are contested -- Ms. McConkey
6 is a witness with respect to the Skadden retention and the
7 Togut retention, and those are Docket Numbers -- I'm sorry,
8 agenda items 11 and 12. She may become available at noon
9 Eastern. If Your Honor has questions, we will make sure that
10 that happens. If Your Honor doesn't have questions, the U.S.
11 Trustee has already advised that the U.S. Trustee did not
12 intend to examine Ms. McConkey.

13 So we can, obviously, cross that bridge when we get to
14 it, but I did want to alert the Court to that.

15 And then last little status update before we proceed
16 into the agenda is, the debtors did file an additional
17 affiliate yesterday in the Chapter 11 case: Oak Street
18 Redevelopment. That entity's sole purpose to exist is in
19 connection with certain tax attributes, the local tax benefits.
20 And it otherwise would be a member of the control group for
21 purposes of pension liability, so in abundance of caution we
22 did go ahead and file that. We filed a motion to jointly
23 administer that entity with the other debtors. And that's on
24 the notice of presentment, and that objection deadline comes up
25 next week. I just wanted to alert you to that if you noticed

1 that and had a question you might have had.

2 So with that, Your Honor, I'm happy to go into the
3 uncontested matters on the agenda.

4 THE COURT: Okay.

5 MR. DURRER: Thank you. So, number one is Docket
6 Number 14. This is the cash-management motion. There were no
7 objections. We did file a certificate of no objection, which
8 is Docket Number 208. We did -- we were able to work out some
9 issues with the United States Trustee, but -- so that matter is
10 otherwise resolved.

11 THE COURT: All right, are there any objections on the
12 cash management?

13 I have an issue. You put something back in that I
14 always take out and that I took out in the interim order, which
15 is in paragraph 10, where it says that the banks have no
16 liability if they make a payment of a pre-petition amount, even
17 without the debtor saying that they can, even without a good-
18 faith belief, as long as it is an innocent mistake. You really
19 got to take out that "innocent mistake". I don't usually even
20 give you the "good-faith belief" thing. I usually make the
21 banks rely on statements by the debtor. But I'll give you the
22 "good-faith belief" in this case, but the banks have to take
23 some responsibility to monitor this. So just take that
24 language out.

25 MR. DURRER: Understood, Your Honor. We will stick to

THE MCCLATCHY COMPANY, et al.

17

1 that and we will take your offer of the good-faith belief. We
2 appreciate that. Thank you, Your Honor.

3 With respect to agenda item number 2 -- this is Docket
4 Number 19 -- this is to address the preservation of NOLs. We
5 worked out some additional language with the creditors'
6 committee, and we were able to file a certificate of no
7 objection with respect to the final order, at Docket Number
8 215.

9 THE COURT: Okay. Anybody have any objections or any
10 further comments?

11 All right, that one is fine.

12 MR. DURRER: Thank you, Your Honor. Agenda item
13 number 3 -- this is Docket 15 -- this is another iteration of
14 the original wage relief. This particular layer of employee
15 benefits relates to eight employees that are in a nonexecutive
16 retention program. We worked with the committee and the U.S.
17 Trustee on their concerns. We filed a supplemental declaration
18 for this as well. We're laying out the elements of that
19 program, with respect to those particular employees. There
20 were no objections with respect to this iteration, so we would
21 ask Your Honor approve the payment on the nonexecutive
22 retention plan at this time.

23 There is yet another element that will come up at the
24 April hearing, and that relates to the corporate incentive plan
25 for, in our view, rank-and-file employees. But again, the U.S.

1 Trustee wants to put us to our proof on that, which is fair.
2 And then we do anticipate that we would file the key-executive
3 incentive plan at the same time, for that April hearing, but
4 that's not for today.

5 THE COURT: All right, the nonexecutive retention
6 plan -- we basically -- if I understand it, we have seven
7 people who are budgeted to receive 330,000 dollars if they stay
8 for another two weeks through April 7th, right?

9 MR. DURRER: Yeah; that's fair, Your Honor. They have
10 been staying, right, for -- the original program started last
11 year.

12 THE COURT: I --

13 MR. DURRER: And we --

14 THE COURT: I didn't mean to imply that it was brand-
15 new, but -- yeah, but that's what's left of it, right?

16 MR. DURRER: Correct, Your Honor. And these
17 particular employees were sufficiently junior-level within the
18 total organization, that it would have been risky to bring them
19 under the tent in the whole Chapter 11 preparation process at
20 the time when others were. And that's why we -- just over half
21 a dozen were sort of caught in the crossfire of the filing.

22 THE COURT: Right. I just wanted to make sure I
23 understood the underlying facts.

24 The committee is fine with this?

25 MR. HANSEN: Yes, Your Honor. It's Kris Hansen on

1 behalf of the committee. We're fine with it.

2 THE COURT: Okay. I'll approve it, then. Just submit
3 your order.

4 MR. DURRER: Thank you, Your Honor. Now, there are a
5 handful of matters that are being handled by the Togut firm,
6 that are sort of broken up. So my recommendation is that we
7 skip number 4 for the time being, so that we don't have back-
8 and-forth passing (ph.) of the time, to the little -- to the
9 least extent possible. So with Your Honor's permission, we
10 will go to agenda item number 5.

11 THE COURT: Okay.

12 MR. DURRER: Thank you, Your Honor. So this is Docket
13 Number 99. This is for the retention of the Groom law firm.
14 Their primary responsibility is addressing the pension, all
15 matters, ERISA, and engaging directly on any termination of the
16 qualified pension plan relative to the PBGC, and also
17 interacting with representatives of the supplemental
18 nonqualified plan participants.

19 We filed a certificate of no objection at Docket
20 Number 209. And Groom is on the phone, and they're also very
21 much aware of the efforts that everybody's undertaken not to
22 duplicate effort, and as is Skadden and Togut.

23 So with that, Your Honor, we ask Your Honor to approve
24 the Groom application.

25 THE COURT: All right. Does anybody else wish to be

1 heard on that application?

2 MR. HIGGINS: Your Honor, this is Ben Higgins for the
3 U.S. Trustee. May I be heard briefly?

4 THE COURT: Yes.

5 MR. HIGGINS: We had a number of revisions, which the
6 debtors incorporated into the proposed order and -- as
7 reflected on the docket. So with those changes, we have no
8 objection, Your Honor.

9 THE COURT: Right, I can guess what they were. The
10 original application had a 328 retention, and I see it's all
11 been changed to make clear that it's a retention subject to the
12 normal 330 and 331 standards; is that right?

13 MR. HIGGINS: That's right, Your Honor. There's also
14 our standard language regarding rate increases and also some
15 clarification regarding payment of the -- on account of the
16 retainer.

17 THE COURT: Right. Okay. All right, and there are no
18 objections, and I reviewed it. With the changes to the
19 proposed order, it's fine with me.

20 MR. DURRER: Thank you, Your Honor. That takes us,
21 then, to agenda item 6, which is the Evercore Group retention
22 as the debtors' investment banker. At the request of the
23 committee, we had pushed this back to this hearing, from March
24 9. And we worked closely with the committee in qualifying
25 certain of the compensation arrangements for Evercore.

1 Basically, Your Honor, the -- and the application is
2 Docket Number 100, for the record. Basically, this engagement
3 was struck in September of last year. There were other
4 opportunities available for the debtors' restructuring,
5 including some out-of-court possibilities at that time.
6 Obviously, those were incapable of being executed, ultimately,
7 and that's why we're in Chapter 11.

8 But now that we are and there's more clarity about the
9 likely pathways, we worked with the committee to clarify that,
10 in essence, if there's a restructuring transaction through a
11 plan of reorganization, that would entitle Evercore to a
12 reorganization fee and, if there was a sale, that that would
13 entitle Evercore to a sale fee. And obviously, if there was
14 some combination -- obviously, it's a sale 3 (ph.) plan -- or a
15 sale that was then followed by a plan, that Evercore would
16 still be entitled to -- first, to the sale fee, or the
17 restructuring fee, depending on which was higher, based upon
18 how the case actually ended up.

19 So we were able just to clarify those, and that's all
20 burned (ph.) in the form of order that Your Honor has with the
21 blackline. And I believe that that now is uncontested. I
22 don't know if the committee wants to comment on that at all,
23 but we would ask Your Honor to approve the Evercore
24 application.

25 MR. HANSEN: Your Honor, it's Kris Hansen on behalf of

1 the official committee again, with Stroock.

2 Mr. Durrer's recitation of the facts on that one is
3 correct. We appreciate the flexibility of the parties working
4 through the issues to try to clarify them so that it was clear,
5 obviously, for all parties-in-interest and the Court.

6 THE COURT: Okay. I have a couple questions. Number
7 one, the definition of "restructuring" is very broad. And as I
8 understand it, under the DIP that I've already approved on an
9 interim basis -- or maybe it only happens on a final, but I
10 think it happened on the interim -- we already repaid the old
11 asset-based loan; is that correct?

12 MR. DURRER: Most of it, Your Honor. So as Your Honor
13 may recall, there are -- there's a letter-of-credit facility,
14 embedded in the ABL, that remains outstanding. We may be
15 coming back to Your Honor with a replacement for that as well,
16 down the road. But for now, that still sits with Wells. And
17 then Wells still has the various bank products that are
18 available to the debtors under the -- under the cash-management
19 order that Your Honor just approved.

20 THE COURT: I just -- in an abundance of caution,
21 given the broad way in which restructuring is defined as to
22 preexisting obligations, I understand that Evercore would be
23 entitled to a DIP-financing fee upon approval of the DIP, but
24 just would like confirmation on the record that nobody thinks
25 they get a restructuring fee just because that also included a

1 repayment of the prior ABL or --

2 MR. DURRER: For the debtors -- yeah, for the debtors,
3 Your Honor, that's confirmed. And I don't think that Evercore
4 needs to confirm that as well but, if they want to, I'm happy
5 for them to do so.

6 MR. HANNAN: Steve Hannan, Your Honor. And I
7 definitely confirm.

8 THE COURT: Okay. I was confident you would; I just
9 thought it was a good --

10 Another question I have, and I raised this in other
11 engagements -- I think -- I can't remember which case it was,
12 but I think I raised it in another one where Evercore was
13 involved. I know it's customary for the banks to seek approval
14 of restructuring, sale, and financing fees upfront. But in my
15 own experience and private practice, it was that financing fee
16 being approved in the abstract when no financing was actually
17 contemplated and nobody really knew what the banker's role in a
18 potential financing was going to be; that after being
19 approved -- and 328 was the one most likely to produce
20 headaches, with people claiming that the things that had
21 happened were not really what they thought were going to
22 happen.

23 So is there any reason why that needs to be approved
24 now? Shouldn't that separate part of the engagement be
25 approved if and when you're pursuing a financing and if and

1 when we have a better idea of what exactly Evercore's role will
2 be, so that we can actually make a judgment about whether
3 that's the -- under -- for purposes of 328, really is
4 reasonable as a matter of advance approval?

5 MR. DURRER: Yeah; this is Van Durrer, Your Honor.
6 It's a good question. I think that the debtors very much want
7 Evercore engaged. So I think it's fair, again, to have some
8 idea. These are very market rates. The committee actually did
9 engage with Evercore on some (indiscernible) of the
10 (indiscernible), particularly as it relates to potential future
11 transactions with Encina, which ultimately Evercore did agree
12 to.

13 But I think that -- the way I would interpret your
14 comments, Your Honor, and maybe you could just ask Mr. Hannan
15 again to confirm, is that if Evercore's not involved in the
16 financing effort, that Evercore would not seek a fee in that
17 arena. But obviously, if the debtors are asking Evercore to do
18 that, I think it's fair for them to have an understanding what
19 the fee package would be, right now.

20 THE COURT: Well, just to give you examples; I can
21 remember being involved in cases where there was a financing
22 fee and the financing turned out to be much bigger than people
23 thought it was originally going to be, and so they were upset.
24 More often, I remember a few instances where financing fees
25 were approved kind of on the assumption, at the beginning of

1 the case, that there would be a private placement or some
2 privately negotiated deal, only to have the debtors, at the end
3 of the process, do a public underwriting, and where the banker
4 was getting -- I think I remember in one case a five-percent
5 equity fee on top of the normal underwriting fee, from the
6 people who were actually doing the underwriting of the equity.

7 And the point is -- I'm not -- I don't mean to
8 criticize the size of the fee or the reasonableness of work
9 that Evercore might do, or the marketing. The point is, in
10 order to judge today whether it's reasonable, I can't really be
11 sure exactly what you're going to be pursuing and, therefore,
12 whether it's reasonable. That's my question.

13 So -- maybe I'm missing something, so tell me if I am.

14 MR. DURRER: Well, Your Honor, all the constituents
15 are on the phone; the UCC, the secured creditors from the pre-
16 petition debt are all here, and they've all had an opportunity
17 to comment on this, and they -- again, from the debtors'
18 perspective, we want to make sure that Evercore's completely
19 engaged. And we do anticipate that there's going to be some
20 measure of a financing effort. So we'd rather have all hands
21 on deck, with all respect, Your Honor.

22 MR. HANNAN: And, Your Honor, this is Steve from
23 Evercore. I'll also confirm, those fees are only after -- if
24 Evercore actively gets involved in a capital raise. So that
25 if -- as part of a raise, that the company may need liquidity,

1 at that point we would be working to raise it. But if a third
2 party or someone else raised capital, we would not expect to be
3 paid.

4 THE COURT: All right, let me ask the committee. You
5 heard me explain my usual question about this. What's your
6 position on it?

7 MR. HANSEN: Your Honor, it's Kris Hansen with Stroock
8 again, on behalf of the official committee.

9 I'm aware of the cases to which you refer. And we
10 were involved in some of those, where the financing fees turned
11 out to be dramatically larger than people anticipated at the
12 beginning of the case. I know it's impossible to foresee what
13 the outcome in this case might be in terms of that. But from
14 the committee's perspective, we were comfortable with the way
15 that the letter was structured and the fees associated with the
16 financing.

17 And as Mr. Hannan points out, if they're asked to and
18 are running a process under which they find financing, I think
19 we're comfortable with what's in the letter. And while we
20 recognize the Court's concern, I think that we're okay in terms
21 of where we foresee the case going, at this point in time.

22 THE COURT: Okay. All right, well, I'm not going to
23 overrule the business judgment of people who are actually
24 involved in the ongoing discussions about where this is going
25 to go. But I appreciate your input. But in light of that,

1 I'll approve the financing (sic). Okay.

2 MR. DURRER: Thank you, Your Honor.

3 THE COURT: There are --

4 MR. DURRER: So this is --

5 THE COURT: There are a few relatively minor points.

6 Paragraph 12 of the engagement letter says that Evercore's
7 counsel fees will be paid if Evercore is a witness. I haven't
8 allowed that in other cases. And paragraph 17 of the
9 engagement letter is to be -- the order needs to be a hundred-
10 percent clear that any dispute, any question over the quality
11 of services or the compensation is to be decided by me. As a
12 statutory matter, I think I need to keep that. So I need to
13 override any -- when I approve an engagement letter, I need to
14 override any contrary statements and (indiscernible).

15 I think, in the indemnification provisions, that the
16 introductory paragraph has now been -- maybe it's always been
17 worded that way, but it may have been reworded so that it
18 doesn't just cover claims against Evercore but expenses
19 incurred in any capacity, including as a witness, which even my
20 prior comment is something I don't usually allow. Particularly
21 since Evercore's most likely to be a witness in a valuation
22 issue, for example, where the debtor will be the main counsel,
23 I don't really see reason why separate counsel fees need to be
24 approved.

25 The indemnity provisions, the paragraph -- the main

1 paragraph -- I don't have it right in front of me, so -- but
2 the main numbered paragraph seems to have the usual
3 qualifications in it. But then there's a second paragraph, the
4 one that begins with the statement that liability will be
5 determined based on benefit and then the benefit to Evercore
6 will be equal to the fees that it received. I don't approve
7 that provision. I approve provisions that limit liability to
8 gross negligence and willful misconduct and bad faith. So in
9 light of that, there's really no reason or justification for
10 any other limit.

11 And then finally, the sixth paragraph says that all
12 disputes are to be in New York state courts or the district
13 court. That too needs to be modified to make clear that I have
14 sole jurisdiction. Okay?

15 MR. DURRER: Understood, Your Honor. We'll mark up
16 the order and submit it.

17 THE COURT: Okay.

18 MR. DURRER: And we'll share it with the parties.

19 THE COURT: Great.

20 MR. DURRER: So with that, Your Honor -- this is Van
21 Durrer again -- I recommend that we turn the microphone over to
22 the Togut firm for items 4, 7, 8, 9. And then they may just
23 want to roll right into the contested matter that they have,
24 which is 12, but we can take that up when we get to the
25 uncontested matters shortly.

1 THE COURT: Okay.

2 MR. DURRER: Thank you.

3 MS. ODEN: Good morning, Your Honor. Amy Oden of
4 Togut, Segal & Segal, on behalf of the debtors.

5 The next item on the agenda is the debtors'
6 application for authority to employ and retain KCC as
7 administrative advisor nunc pro tunc to the petition date,
8 which was filed at Docket Number 95. The application is
9 supported by the initial declaration of Evan Gershbein,
10 executive vice president of KCC, which was filed with the
11 application, as well as a supplemental declaration filed at
12 Docket Number 195.

13 Mr. Gershbein is on the phone today and, if called
14 upon to testify, would attest to the truth and accuracy of his
15 declaration. We respectfully request to move Mr. Gershbein's
16 declaration and supplemental declaration into evidence.

17 THE COURT: Okay, is there any objection?

18 All right, the declaration is admitted.

19 (Declaration and supplemental declaration of Evan
20 Gershbein in support of debtors' motion to retain KCC were
21 hereby received into evidence as debtors' exhibit, as of this
22 date.)

23 MS. ODEN: Thank you, Your Honor. KCC has already
24 been retained as the debtors' claims-and-noticing agent
25 pursuant to Section 156(c) of the Bankruptcy Code. The debtors

1 secured -- retained KCC as administrative advisor because they
2 believe that administration of these cases will require KCC to
3 perform duties outside the sort (ph.) authorized under the
4 Section 156(c) retention order.

5 No formal objections to the application were received.
6 In response to informal comments from the U.S. Trustee, the
7 debtors filed the supplemental Gershbein declaration, which
8 provides disclosures regarding KCC's relationship with
9 Computershare Limited. We filed a certificate of no objection
10 on Monday, Docket Number 213, along with the revised proposed
11 order reflecting the filing of the supplemental Gershbein
12 declaration. After filing the CNO, we noticed a typo on the
13 first page of the proposed order, and we will submit a new
14 version of the order with that revision, to chambers.

15 Unless Your Honor has any questions, the debtors
16 respectfully request entry of the proposed order as revised.

17 THE COURT: All right, does anybody have any
18 objection?

19 Anybody have any other comments you wish me to
20 consider?

21 Okay, that one is fine. Just submit your revised
22 proposed order and we'll enter it.

23 MS. ODEN: Okay. Thank you, Your Honor. The next
24 item is the debtors' motion to reject their lease to the space
25 located at 401 I Street, Suite 200, in Sacramento, which was

1 filed at Docket Number 111. The motion is supported by the
2 declaration of Sean Harding, the debtors' CRO. Mr. Harding is
3 on the phone today and, if called upon to testify, would attest
4 to the truth and accuracy of his declaration. We respectfully
5 request to move Mr. Harding's declaration into evidence.

6 THE COURT: Any objections?

7 Okay, it's so admitted.

8 (Declaration of Sean Harding in support of debtors' motion
9 to reject lease at 401 I Street in Sacramento was hereby
10 received into evidence as debtors' exhibit, as of this date.)

11 MS. ODEN: Thank you, Your Honor. We filed a
12 certificate of no objection on Monday, at Docket Number 217,
13 along with a revised proposed order. The revised order
14 requires the lease counterparty to file its rejection-damages
15 claim, if any, at the later of the claims bar date to be
16 established in these cases, or thirty days after the rejection
17 date of the lease.

18 The debtors have determined in their business judgment
19 that continued performance under the lease is no longer of any
20 benefit to their ongoing business or the bankruptcy estate, for
21 the remaining term of the lease. By rejecting the lease, the
22 debtors will save approximately 1.5 million over the life of
23 the lease.

24 Unless Your Honor has any questions, the debtors
25 respectfully request entry of the revised proposed order.

1 THE COURT: I'm going to ask you an odd question. But
2 I assume that the various restraints from the coronavirus
3 problems haven't inhibited your ability to communicate with the
4 landlord, and that the landlord knows the relief that you're
5 seeking?

6 MS. ODEN: Yes, Your Honor; I believe that's the case.

7 MR. ORTIZ: Your Honor, Kyle Ortiz from Togut, Segal &
8 Segal. I can confirm that's the case.

9 THE COURT: Okay. Thank you.

10 All right. I will approve the relief. I have no
11 problem with it in concept. I'll just ask you to do one thing.
12 The proposed order uses a defined term, "Rejection Date". I
13 usually like my orders to be self-contained; so instead of
14 referring back to the definition in the papers, which is not a
15 specific date but ten days after notice, not to be later than
16 April 30th. Would you just put that in the order itself?

17 MS. ODEN: Yes, Your Honor.

18 THE COURT: Okay.

19 MS. ODEN: Okay, the next item is the debtors' second
20 omnibus lease-rejection motion, which was filed at Docket
21 Number 182. The motion is also supported by the declaration of
22 Sean Harding, who's on the phone today and, if called upon to
23 testify, would attest to the truth and accuracy of his
24 declaration. We respectfully request to move Mr. Harding's
25 declaration into evidence.

1 THE COURT: Any objections?

2 Okay, it's admitted.

3 (Declaration of Sean Harding in support of Debtors' second
4 omnibus lease-rejection motion was hereby received into
5 evidence as debtors' exhibit, as of this date.)

6 MS. ODEN: Thank you, Your Honor. We filed a notice
7 of adjournment of the hearing on the motion, solely with
8 respect to the RYLB FW Properties LP lease, at Docket Number
9 198. On Monday we filed a certificate of no objection at
10 Docket Number 214, along with a revised proposed order. Like
11 the Sacramento lease-rejection order, the revised order
12 requires counterparties to file a rejection-damages claim, if
13 any, by the later of the claims bar date to be established in
14 these cases, or thirty days after the rejection date of the
15 respective rejected lease. Schedule 1 to the proposed order
16 was also revised to remove the RYLB FW Properties lease.

17 The debtors have determined in their business judgment
18 that the rejected leases are either no longer of any benefit to
19 their estates or are on terms that are too onerous for estates
20 with a footprint that'd be no longer compatible with the
21 debtors' current and future business needs. And then we, of
22 course, would also make sure that the order is revised to
23 include a definition of the rejection date.

24 Accordingly, unless Your Honor has any questions, the
25 debtors respectfully request entry of the revised proposed

1 order.

2 THE COURT: In this particular case, you may not have
3 to revise the order, because it already explains how the
4 rejection date will work as to each of the separate leases.
5 It's all explained in the attachment.

6 MS. ODEN: Okay.

7 THE COURT: So unless there are any objections, that
8 one is fine with me.

9 Any objections?

10 MS. ODEN: Thank --

11 THE COURT: Okay. I hear no objection, so submit your
12 order; we'll enter it.

13 MS. ODEN: Thank you, Your Honor.

14 MR. ORTIZ: Good morning, Your Honor. Kyle Ortiz with
15 Togut, Segal & Segal, on behalf of McClatchy Company.

16 The next item on the agenda is the FTI retention and
17 Harding CRO designation application, which the debtors filed at
18 Docket Number 116. The application is supported by the
19 declaration of Sean Harding, which I believe has now been well
20 established that he is on the phone. And if he was called to
21 testify, would to attest to the truth and accuracy of this
22 declaration. That, at your time -- at this time, Your Honor,
23 we respectfully request that the Harding declaration be moved
24 into evidence.

25 THE COURT: Is this the same one I've now admitted two

1 or three times, or is it a different one?

2 MR. ORTIZ: No, it's three different -- it's three
3 different declarations in support of different motions. It's
4 slightly different language, but, as CRO, he's our guy for
5 declarations, for the time being.

6 THE COURT: Does anybody have an objection?

7 All right, the declaration is admitted.

8 (Declaration of Sean Harding in support of debtors'
9 application to retain FTI Consulting, and for related relief,
10 was hereby received into evidence as debtors' exhibit, as of
11 this date.)

12 MR. ORTIZ: Thank you, Your Honor. Your Honor, the
13 board of the company appointed Mr. Harding as CRO, subject to
14 this Court's approval, at a board meeting on February 23rd,
15 2020. Thus, the application is a bit of a hybrid, seeking to
16 retain FTI as financial advisor from the petition date through
17 the 22nd, and then a restructuring management-services
18 engagement effective the 23rd, along with designation of Mr.
19 Harding as CRO. Both Mr. Harding and FTI are well qualified
20 and have extensive experience representing companies in Chapter
21 11 and other distress situations.

22 There was no objection to the debtors' engagement of
23 Mr. Harding and FTI that was made either formally or
24 informally. The debtors did file a certificate of no objection
25 at Docket Number 212, which includes a revised proposed order,

1 at Exhibit A, that has comments from the U.S. Trustee, which
2 are their typical comment on the rate increase, the application
3 of the cash on account, and the indemnification language, which
4 is reflected in the redline at Exhibit B to that certificate of
5 no objection.

6 Happy to walk Your Honor through those if you'd like;
7 otherwise, any questions Your Honor has regarding the proposed
8 order --

9 THE COURT: All right, well, first, are there any
10 objections?

11 Okay, I had minor comments on the engagement terms,
12 and they're similar to what I have done in the four or five
13 other cases I've had with FTI. And there seemed to be two
14 different engagement letters, so, to take them separately, in
15 the July 31, 2019 engagement letter that will govern through
16 February 22nd, in the standard terms and conditions, paragraph
17 6.2 about limiting liability, and 7.2 about jurisdiction, have
18 to change.

19 As I've said, I'm willing to say that professionals
20 are liable only for their bad faith, gross negligence, or
21 willful misconduct, but I never approve other bits of
22 liability. In particular, I never approve the provision that
23 says that liability is limited to the amount of fees paid.
24 That other limitation ought to be enough. And then on
25 jurisdiction, it needs to make clear that I have exclusive

1 jurisdiction.

2 Similarly, on the February 23, 2020 letter, it's
3 worded differently. But in paragraph 6.1, there's an
4 additional indemnity paragraph about paying witness expense.
5 And then it also seems to pick up all the items in the prior
6 paragraph, about potential liability but without the exclusions
7 in the prior paragraph that relate to gross negligence and
8 willful misconduct. I don't really see any reason for that
9 separate paragraph, although you can tell me if I'm missing
10 something.

11 And then 6.3 has the limited-liability language that I
12 never approve. You should take out the first paragraph of 6.3.
13 You can leave in the first sentence of the second paragraph of
14 6.3, but then take out the second sentence of the second
15 paragraph as well. Okay?

16 MR. ORTIZ: Okay.

17 THE COURT: All right, I will presume that's fine with
18 you, unless you tell me otherwise.

19 MR. HARDING: Your Honor, this is Sean Harding.
20 That's fine.

21 THE COURT: Okay.

22 MR. HARDING: Thank you.

23 THE COURT: All right. All right, with those changes,
24 I'll approve it.

25 MR. ORTIZ: Thank you, Your Honor. And that'll bring

1 us into the contested matters. Happy to hand it back over to
2 Mr. Durrer for the DIP or, if you'd like, I can just continue
3 on with the Togut application first. Whatever's easier for
4 Your Honor.

5 THE COURT: I'm going to leave the order in your
6 hands.

7 MR. ORTIZ: I guess I'll just continue since I am at
8 the, I guess, telephonic podium.

9 So we're going to skip to the last item on the agenda,
10 which is item number 12 -- I guess not the last item; there's
11 an ex parte application as well. But item number 12 is the
12 application to retain the Togut firm as co-counsel to the
13 debtors, which was filed at Docket Number 101. The application
14 is supported by the Togut declaration and the McConkey
15 declaration as well as the Ortiz declaration and the
16 supplemental McConkey declaration that were filed along with
17 the debtors' reply at Docket Number 207, which was in response
18 to the U.S. Trustee's limited objection at Docket Number 201.

19 Sounds like Ms. McConkey is not currently on the line,
20 but both Mr. Togut and I are. And if called upon to testify,
21 we would attest to the truth and accuracy of our declarations.
22 And if we needed Ms. McConkey, we could get her on the line as
23 early as eight minutes from now. That's -- we respectfully
24 request Your Honor enter those declarations into evidence.

25 THE COURT: Let me start by asking the United States

1 Trustee, which filed the objection, but I don't know how
2 they've reacted to the reply that you filed; are they
3 continuing with the objection? And if so, to what extent?

4 MR. HIGGINS: Your Honor, this is Ben Higgins for the
5 U.S. Trustee.

6 We do still have concerns; I'm happy to go into them
7 now. As Mr. Ortiz (indiscernible) first. So I'm happy to do
8 it either way. But we are (indiscernible) the objection,
9 though.

10 THE COURT: Okay. Why don't you go ahead and explain
11 your objection, then.

12 MR. HIGGINS: Sure, Your Honor. So the U.S. Trustee's
13 objection, as Mr. Ortiz stated, it's limited to the proposed
14 investigation of the pre-petition transactions with Chatham.
15 First of all, the U.S. Trustee does appreciate the efforts of
16 both the Togut firm and the committee to coordinate the
17 investigation in order to minimize the duplication of work and
18 unnecessary expense to the estate.

19 That being said, the U.S. Trustee does continue to
20 have concerns about the utility of a professional employed by
21 the debtors being able to conduct an independent investigation
22 of the transactions in question. These debtors come into the
23 court on day one and ask the Court to approve stipulations as
24 to the validity of the pre-petition lien and to grant broad
25 relief as to Chatham, apparently without having conducted their

1 own investigation or doing appropriate due diligence.

2 Now, the reply states, at paragraph 6, that the
3 debtors are giving no direction to the Togut firm. But at the
4 end of the day, the Togut firm is a professional, and a
5 professional reports to a principal and owes its fiduciary duty
6 to that principal. And in this case, the Togut firm's clients,
7 to whom it owes this duty and to whom it takes direction from,
8 are the same debtors that a month ago would have stipulated to
9 the validity of these transactions if Your Honor had allowed
10 them to do it.

11 Not only that, but it appears -- it's still unclear
12 from the papers how many of the debtors' parent board members
13 approved the underlying transactions that the Togut firm is
14 investigating. The papers state that there is overlap between
15 the board's disbanded refinancing committee that approved the
16 pre-petition transactions, and the parent strategic committee
17 to whom the Togut firm would be making its report. But the
18 papers don't indicate how much overlap there is, what the
19 parent strategic committee (indiscernible) unconflicted members
20 (indiscernible) any information generated by the investigation.

21 And so we reiterate, unless there has been some change
22 in the strategic committee's composition in the past month,
23 even if the members who are not involved in the underlying
24 transactions -- even the members who are not involved in the
25 underlying transactions were apparently (indiscernible) can

1 stipulate to the validity of the transactions a month ago,
2 without having done the investigation.

3 So under these unique circumstances, Your Honor, the
4 U.S. Trustee believed this investigation was best left to the
5 committee, to an examiner, and that's (indiscernible).

6 Finally, to the extent Your Honor may disagree with
7 this, the U.S. Trustee reserves his right to object to
8 unnecessary fees and expenses at the fee-application stage.

9 THE COURT: Let me ask you -- it struck me, when I
10 read your objection and when I listened to your statement here,
11 that you weren't objecting so much to the ability of the Togut
12 firm to do an investigation or to be independent in doing an
13 investigation; you were objecting more along -- more based on
14 who they would be reporting to. Is that correct?

15 MR. HIGGINS: Your Honor, we don't have any issue with
16 the Togut firm's qualifications or their ability, as a firm, to
17 have the resources or wherewithal to do this. It is a concern
18 that they are a professional being directed by the principal,
19 and it's the principal who is conflicted in this. So that is
20 our concern.

21 MR. TOGUT: Your Honor, this is Al Togut. We are not
22 being directed in any way, other than once where PBGC asked the
23 debtor to do the investigation. We were asked to do that job.
24 And in undertaking that job, we insisted on complete
25 independence, that no one would direct us. And that's exactly

1 where we are, as our response says.

2 THE COURT: So in other words, you plan to report
3 whatever you find to the board, without discussing with them or
4 without taking their advice as to what position you should
5 take, et cetera?

6 MR. TOGUT: Yes, sir.

7 THE COURT: All right.

8 MR. ORTIZ: But I should note -- this is Kyle Ortiz
9 from Togut -- that once we deliver our report to the strategic
10 committee, we will obviously be in discussions with them about
11 any next step that may be required based on the outcome of the
12 investigation.

13 THE COURT: All right. Anybody else wish to be heard
14 on this?

15 MR. HANSEN: Your Honor, it's Kris Hansen again, with
16 Stroock, on behalf of the official committee.

17 I mean, we've obviously worked with the Togut firm to
18 try to coordinate ourself to minimize the expense to the
19 estate. We recognize that the debtors made a choice here in
20 terms of how they wanted to proceed on this basis. And so,
21 obviously, they're exercising their business judgment to do it.

22 We're -- from a committee perspective, we need the
23 charge here. And again, we've coordinated with the Togut firm
24 as best as both firms can, to ensure that we don't have any
25 duplication. There will obviously be some duplication and some

1 added expense but, from the committee's perspective, our view
2 is the debtor has its business judgment and has the right to
3 make a choice. And so that's why we are not objecting to the
4 application to retain the Togut firm. And we're just doing our
5 best to try to avoid loading up on extra fees on the estate,
6 with the two of us doing somewhat similar jobs.

7 MR. ORTIZ: Yeah, I think, Your Honor -- Kyle Ortiz
8 again, for the debtors. I would note, I commend the committee
9 for the level of coordination and cooperation we've had. And
10 the mediation and the mediation privileges made it so that we
11 can share really a unique amount of information. And we have
12 been speaking nearly every day and shared a lot of material in
13 coordinating on the review of documents.

14 Efficiency is a hallmark of the Togut firm's business,
15 and it's something we take very seriously. And we've been
16 having a lot of communications with the committee to ensure
17 that we are doing the investigations as efficiently as
18 possible. And again, the mediation and the mediation privilege
19 and having a mediator that we can go to, to talk to if we need
20 to, really aids in that efficiency.

21 THE COURT: All right, anybody else?

22 Okay. Number one, as I understand it, the Togut firm
23 is going to be doing various things and -- various things today
24 other than this investigation. So I think the retention is
25 appropriate. The question is whether I should carve out, from

1 the scope of the retention, the conduct of an investigation on
2 the theory, I guess, that it would inevitably be useless
3 because the investigation -- the clients to whom Togut would
4 report are all people who may have approved the prior
5 transactions.

6 I'm not willing to say on that basis that the retention
7 should be refused and that Togut should not even be allowed to
8 do the investigation. I don't know what's going to happen. I
9 don't know what the Togut firm will conclude. I don't know to
10 whom they will -- who individually will ultimately act on a
11 recommendation or what that recommendation will be. And
12 certainly, if there are arguments later in the case that I
13 should take a skeptical eye towards the opinions of
14 businesspeople if they conclude that things that they
15 themselves previously approved shouldn't be the basis of a
16 lawsuit, well, then I'll consider that at that time. And if
17 the U.S. Trustee wants to reserve its rights to argue in
18 hindsight that things were done that were wrong or that weren't
19 actually independent or that weren't worth the money -- all
20 those things are preserved, as they always are, under Section
21 330.

22 But these obviously are the big issues in this case.
23 It's ridiculous to take the view that other people get to
24 investigate them and to inform themselves about them and
25 potentially to litigate about them but that the debtors don't.

1 The debtors' views on these things have to be heard. I may or
2 may not agree with them. I may or may not credit them. But to
3 say that the debtors should even proceed with an investigation,
4 I think, just goes too far.

5 So I'll approve the retention.

6 MR. ORTIZ: Thank you, Your Honor. Kyle Ortiz again
7 for the debtors.

8 There were a couple comments that the U.S. Trustee
9 made to the order, again with regards to the timing of
10 application of the retainer amount and to add the committee as
11 a notice party for any fee increases. We, of course, had no
12 issues with those. And that -- a form of that order was sent
13 down to chambers yesterday.

14 THE COURT: Okay. All right, I don't remember -- I
15 don't think I've seen that, but I'll take a look at it. And if
16 we have any issues, we'll let you know, but I'm sure --

17 MR. ORTIZ: Thank you, Your Honor. And with that,
18 I'll hand it back over to Mr. Durrer of Skadden Arps.

19 THE COURT: Okay.

20 MR. DURRER: Thank you, Mr. Ortiz.

21 Again, Van Durrer, for the record, on behalf of the
22 debtors.

23 We're now, Your Honor, in the agenda, at Docket --
24 agenda item number 10, which is Docket 11, the DIP-financing
25 motion. We're happy to report that this is, in fact, now not a

1 contested matter. For the record, we already have the
2 declaration of Bo Yi at Evercore, in terms of how the DIP
3 financing was sourced, and declaration of Sean Harding in
4 connection with the budget, that were already put into evidence
5 at the first-day hearing back on February 14. I would just ask
6 the record reflect that those continue to be the evidentiary
7 bases for the motion.

8 THE COURT: Any objections?

9 Okay, they're admitted.

10 MR. DURRER: Thank you, Your Honor. We had two
11 objections, Your Honor, filed. The PBGC had filed a limited
12 objection back some time ago; Docket Number 58. I believe that
13 that was primarily a placeholder. And then the U.S. Trustee
14 had likewise filed a limited objection at Docket Number 199.
15 We filed our reply at Docket 210 and included a couple of
16 things: a blackline against Your Honor's interim order, but
17 also a clean version of the order, that highlighted the
18 changes, because they wouldn't have shown up in the blackline,
19 that we were able to effectively negotiate with the creditors'
20 committee as well as the pre-petition secured creditors and
21 Encina itself.

22 Last night, upon request by your chambers for an
23 additional blackline, we sent that over. There was an
24 additional change that found its way into that, that was
25 requested by Wells Fargo, and it's in paragraph 17(a). Encina

1 requires deposit-account control agreements from Wells Fargo,
2 because Wells Fargo is -- remains our cash-management and
3 primary bank. I think it's our exclusive bank. And so with
4 respect to those DACAs, Wells Fargo wanted clear language in
5 the order that, since those would be post-petition agreements
6 that the debtors would be entering into with Encina and with
7 Wells Fargo, that those would be enforceable. And so that's
8 the import of the additional language that found its way into
9 17(a) last night.

10 So with that, Your Honor, I'm happy to walk through,
11 just, sort of, in summary narrative, the positive changes that
12 were made to the DIP-financing order, almost all of which were
13 issues that the U.S. Trustee and the PBGC had originally
14 identified.

15 THE COURT: I've reviewed the papers, and I've
16 reviewed the changes to the order except for the last one that
17 you just described. I don't think that you need to walk
18 through them all. I think --

19 MR. DURRER: Okay. Under the circumstances, I'm happy
20 to be brief.

21 THE COURT: Unless there's something new about them
22 that you want to tell me, you don't need to go over them again.

23 MR. DURRER: No, understood, Your Honor. No, I would
24 want to just thank the parties again for their diligent
25 efforts, over nights and weekends, to help us get to this

1 place. It is appreciated by the company, and definitely, under
2 the circumstances, not putting an extra burden on the Court,
3 under the circumstances of telephonic hearings, is also very
4 much appreciated.

5 THE COURT: All right. Does anybody have any
6 remaining issues about the debtor-in-possession financing that
7 they wish me to consider?

8 MR. HIGGINS: Your Honor, this is Ben Higgins for the
9 U.S. Trustee.

10 I just did want to note for the record we filed our
11 limited objection, and most of the issues, as Mr. Durrer
12 stated, are resolved. To the extent some of those issues are
13 not resolved, we are deferring to the committee's judgment and
14 we're not opposing an entry of the final order as it's been
15 negotiated by the parties.

16 THE COURT: Okay. Thank you. All right.

17 MR. MANNAL: Your Honor, this is Doug Mannal, from
18 Kramer Levin, on behalf of Brigade Capital.

19 I don't have any opposition to entry of the order, but
20 I did want to flag for Your Honor something that may be coming
21 down the pike.

22 THE COURT: Okay.

23 MR. MANNAL: Your Honor, Brigade Capital's the largest
24 first lien bondholder of McClatchy, and I wanted to focus Your
25 Honor on the investigation budget that's part of the proposed

1 order. The investigation budget, essentially, Your Honor, asks
2 for the first lien creditors to fund the litigation between the
3 unsecured creditors' committee and the junior lienholders.

4 I wanted to highlight for Your Honor the significant
5 amount of the investigation budget. I think it's currently an
6 aggregate of one million dollars, well in excess of any
7 investigation budget I'm familiar with and well in excess of
8 any of the cases that were cited by the debtors in their reply
9 to the U.S. Trustee's objection in paragraph 21.

10 But even the million-dollar limitation on fees would
11 be meaningless if the estate professionals are to receive
12 current payment of their fees on a monthly basis under the
13 interim comp order, to the extent those amounts exceed the
14 budgeted amount.

15 And therefore, Your Honor, Brigade wants to reserve
16 the right to object to the payment of any estate professional
17 fees to the extent it looks like such fees will exceed the
18 budget amounts. Such fees, if reasonable, Your Honor, could
19 become part of a holdback until an order is entered as part of
20 any final fee application for those professionals. I did just
21 want to raise this issue, Your Honor. It's related to the DIP
22 order, but it's likely coming down the pike, given that we have
23 an investigation that could cost the estate millions of
24 dollars.

25 And just as an aside, Your Honor, the investigation

1 between the junior creditor classes is putting a significant
2 liquidity strain on the debtor. And I think, in these
3 uncertain times, that liquidity is very precious. And we'd ask
4 the parties to consider a balancing of the interests of the
5 reorganized or ongoing debtor, in their employees and the
6 future of this company, when compared to what appear to be
7 significant professional fees.

8 THE COURT: All right. Does anybody wish to respond?

9 MR. DURRER: Your Honor, this is Van Durrer.

10 I just want to make something clear for the record.
11 Definitely, I think I can speak for all of the estate
12 professionals when we say we are mindful of the limited
13 resources that are available in any Chapter 11 case. Just to
14 be clear, the debtors have in excess of ten million dollars of
15 cash on the balance sheet and, at present, the DIP financing is
16 undrawn.

17 So we appreciate the fact that the impact of the
18 coronavirus remains somewhat opaque. We're working to make
19 that more transparent. But for the time being, we're mindful
20 of Mr. Mannal's comments, but from a liquidity perspective, the
21 debtors are in very good shape as we stand here today.

22 MR. HANSEN: Your Honor, it's Kris Hansen with
23 Stroock, on behalf of the committee.

24 I think, from the committee's perspective we
25 appreciate Mr. Mannal's commentary, but the order says what the

1 order says, and it doesn't say that the investigation budget
2 binds the Court with respect to its ability to improve and
3 authorize payment of fees and expenses of estate-retained
4 professionals in connection with interim fee applications.

5 Of course the parties all reserve their rights,
6 obviously, to review and object to those fees, but really the
7 question of an investigation budget is a part of adequate
8 protection and it isn't really designed to be a limiter in
9 connection with the reimbursement of fees and expenses that are
10 applied for and approved by the Court.

11 So we'll cross whatever bridge we cross when we get
12 there, but I just wanted to make sure that all of the parties
13 here were aware that, in conjunction with the traditional view
14 of a negotiated adequate-protection package, if the noteholders
15 believe that, if fees exceed the budget, that somehow impairs
16 them, from an adequate-protection perspective, they're always
17 free to return to the Court and ask for additional forms of
18 adequate protection.

19 I think, as you would recognize under this order, the
20 adequate-protection package provided to the secured parties
21 here is quite robust. And there are also, candidly, issues
22 with respect to intercreditor agreements and what types of
23 resources, from the estate's perspective, and primarily cash,
24 can be used to administer the case and what other parties'
25 rights are in connection with that.

1 So rather than get into the weeds of all of that, what
2 is currently an uncontested motion and order, we would ask that
3 the order be entered, and the Court obviously consider the fee
4 applications when they arrive as fee applications, and not
5 really with an eye towards any limitation imposed by this
6 order.

7 THE COURT: All right. Anybody else?

8 All right. If circumstances are such at the time of
9 any fee application as to warrant the request for a change in
10 adequate protection, then a request can be made, and
11 everybody's got their rights to object and to be heard in that
12 time. I don't see any real need to address that issue today,
13 and I'm not going to address it today.

14 I do agree that, from the point of view of the first
15 lien creditors, they can object, as any creditor can, to the
16 reasonableness of the fees, but to the extent that their
17 objection is one of adequate protection, it's going to depend
18 on whether this package that I've already given them is already
19 enough. There's no agreement to waive any request for further
20 adequate protection, is there?

21 MR. MANNAL: No, Your Honor.

22 MR. DURRER: No, Your Honor.

23 THE COURT: Okay. Very good. Then sufficient to the
24 day is the evil thereof. We'll cross those bridges when we
25 come to them.

1 On the various changes that have been made, I'm fine
2 with most of the changes. So long as the committee is okay on
3 the 506(c) 552 marshalling and avoidance-action-proceeds
4 issues, that's fine.

5 I have previously said, in this case and other cases,
6 that, on the challenge period, I don't really normally impose a
7 challenge period for people whose cash collateral is being
8 used, as opposed to new money, but I'll treat it, in this
9 particular case, as not so much an adequate-protection issue as
10 a case management issue, that it just makes sense, as an agreed
11 point of case management that, if we're going to try to get to
12 a plan at some point, that we have some kind of a deadline so
13 that issues are teed up, if there are issues, so that they can
14 be resolved. And I'll approve it with that understanding.

15 A couple of minor comments. In paragraph 7A of the
16 proposed order, you've reinserted some qualifying language.
17 The interim order said the first liens will be subject to valid
18 and perfected pre-petition liens, other than the ones of the
19 lenders who had agreed to be subject to the DIP. Now you've
20 reinserted language saying that the DIP liens shall be subject
21 to other pre-petition liens only to the extent that other pre-
22 petition liens were senior to the liens of the pre-petition
23 first lien and ABL creditors.

24 Why is that language there? Don't you need consent or
25 proof of some adequate protection to prime anybody, even if

1 they were otherwise junior to the pre-petition first lien,
2 second lien, third lien, and ABL creditors?

3 MR. DURRER: This is Van Durrer, Your Honor. I think
4 the concept there is if you're junior to 700 million dollars of
5 debt, you're effectively out of the money. I don't think
6 there's anybody that believes that the company is worth in
7 excess of the debt factor.

8 THE COURT: Well, you don't think anybody believes
9 that it's worth more than the pre-petition first lien?

10 MR. DURRER: That's a closer question, Your Honor, in
11 fairness.

12 THE COURT: Well, that's what the language says. And
13 whether it makes sense or not, I mean, basically, you're asking
14 me to prime unknown liens out there, without knowing what they
15 are and without -- since they're unknown, without their consent
16 and without really an evidentiary showing that they're
17 adequately protected. It just doesn't seem to me that you've
18 done something or that you're saying something that I have the
19 right to do under 364.

20 MR. DURRER: Yeah, I think it's a question for Mr.
21 Simard, on behalf of Encina, if we're willing to go back to the
22 original definition of pre-petition permanent liens which I
23 thought Encina was comfortable with, but I don't want to speak
24 for Mr. Simard.

25 MR. SIMARD: Yes, Your Honor, Kevin Simard of Choate

1 Hall & Stewart, for Encina Business Credit.

2 Your Honor, our view on this is that we are
3 effectively stepping -- Encina is effectively stepping into the
4 same shoes as Wells Fargo. Therefore, we're not further
5 impairing any existing pre-petition lien holders who are junior
6 to Wells Fargo. Wells Fargo had a seventy-million-dollar
7 credit facility; we have a fifty-million-dollar credit
8 facility. So I think that, in and of itself, is proof of
9 adequate protection.

10 THE COURT: Well, you can say that you're stepping
11 into Wells Fargo's shoes, right? That's not what this language
12 says.

13 MR. SIMARD: Your Honor, if the Court -- again, Kevin
14 Simard for the record.

15 If the Court has an issue with this, we're fine to
16 strike it. We've done our diligence. We've done our lien
17 searches. There should be nothing that falls into this basket.

18 THE COURT: Okay. Thanks. I appreciate it.

19 So then on page 46 -- this is page 46 of the markup;
20 forgive me, I don't know what it is in the clean, but it's the
21 markup that compares the new order to my interim order. Page
22 46 puts back a provision saying that I am pre-approving a
23 payment of interest if there is a restructuring support
24 agreement. As I said before, that should wait for such time as
25 there is an RSA. I don't see any reason to pre-approve that

1 here when I don't even know what the circumstances would be or
2 what the conditions would be, okay?

3 MR. DURRER: Unless Brigade or Chatham has an
4 objection to that, that's okay with the company. The reality,
5 Your Honor, is there's not an RSA today, and the company's
6 intention, in the absence of that, is to make the payments of
7 interest as it accrues. We would expect to make our first
8 payment by the end of this week, and then on the 15th of the
9 month thereafter, as we go forward.

10 THE COURT: Okay. And then one last comment. On page
11 51 of the redline, it says that if you want to make a material
12 amendment to the DIP, you'll give notice, and if nobody
13 objects, it's automatically approved. I'm not comfortable with
14 that. You can certainly file a certificate of no objection. I
15 will always look at it promptly. I will always let you know if
16 I have a problem with it, but I don't want to give you carte
17 blanch that way.

18 MR. DURRER: Understood, Your Honor.

19 THE COURT: Okay. So with those, I think, minor
20 issues, I'll be happy to approve it.

21 MR. DURRER: Thank you, Your Honor. We will submit an
22 order with those changes.

23 THE COURT: Thanks.

24 MR. DURRER: So that takes us, Your Honor -- this is
25 Van Durrer, again, for the record -- go agenda item 11, Docket

1 Number 117, the application of the debtors to retain Skadden
2 Arps.

3 There was an objection by the U.S. Trustee that was at
4 Docket Number 202. The U.S. Trustee had advised us of their
5 concerns relative to the transactions under investigation. We
6 filed a supplemental declaration in response to those concerns,
7 and they sort of crossed in the mail, effectively. The
8 supplemental declaration was Docket Number 203.

9 Just two comments, and I know Your Honor reads all of
10 the papers, so we did file a reply at Docket Number 206. Just
11 two comments I'm going to make, and then I'll turn the podium
12 over, obviously, to Your Honor, but also to Mr. Higgins for his
13 comments.

14 As Your Honor is aware, the obligation to disclose
15 connections is something that Skadden takes very seriously as
16 do all of the professionals in the case, and it is quite a
17 burden already. What the U.S. Trustee seems to focus on is
18 really the disclosure of a nonconnection. We had disclosed the
19 time period during which we had represented the debtors. And
20 we're talking here about a representation of the debtors not of
21 some other party that might impinge on Skadden's ability to be
22 disinterested. So that just seems a little bit upside down to
23 us.

24 In terms of what we did do, just to be crystal clear,
25 we did not represent the debtors in connection with the July

1 2018 transaction that is the focus of the investigation, nor
2 are we conducting an investigation, right? That is turned over
3 to the Togut firm who had only been representing the debtors
4 for approximately a week before the filing.

5 That transaction put in motion a number of potential
6 follow-on transactions if the parties involved took certain
7 actions and those parties were nondebtor parties. And they
8 did. At the end of 2018 they made certain elections, and
9 Skadden's other efforts, just coincidentally representing the
10 debtors in M&A transactions, made it such that it was efficient
11 to turn to Skadden to issue opinions necessary to effectuate
12 the transactions occasioned by those elections.

13 Specifically, Bank of New York Mellon was entitled to
14 an opinion confirming that a number of boxes in the indenture
15 had in fact been checked, and that was the sum and substance of
16 the opinions that we provided at the end of 2018, some six
17 months after the July 18th transaction -- the ink on that
18 transaction was dry.

19 And then in 2019, in the spring, similarly, further
20 elections and exchanges were made. We gave opinions on those.
21 All of the 2019 opinions are all on time -- in connection with
22 a series of transactions all simultaneous, all contained the
23 typical disclaimer language regarding equitable rights and
24 remedies and bankruptcy powers and insolvency and all that.

25 The December 2018 opinion did not contain that because

1 it literally just says yes, the various pieces of papers that
2 have been put before you are within the provisions of the
3 indenture.

4 So we kind of view this as much ado about nothing
5 except I do want to reiterate we do take disclosure very
6 seriously. When the issue was raised, we immediately responded
7 and made the additional disclosure. But again, the disclosure
8 is in the nature of a nondisclosure of a nonconnection. So I
9 think it is a little different from, for example, the Leslie
10 Fay case that is cited in the U.S. Trustee's papers.

11 But with that, Your Honor, I'll pause, if you do have
12 questions or if you want to inquire.

13 THE COURT: Let me ask one question before I forget.
14 The opinions you're describing, they were given to other
15 parties; they weren't private, privileged materials just shared
16 with the client?

17 MR. DURRER: Correct, Your Honor, but the December
18 2018 opinion was provided to Bank of New York Mellon as
19 collateral agent. To be clear, I don't believe that these were
20 filed with the SEC; that would be atypical. But I know that's
21 the 2018, and then the 2019, likewise, were opinions provided
22 to Bank of New York Mellon.

23 THE COURT: Okay. Have you --

24 MR. DURRER: And they've been provided to the UCC and
25 to the U.S. Trustee.

1 THE COURT: That was my next question, whether you'd
2 given them to the trustee. Okay.

3 MR. DURRER: Correct. And I would hand them up, Your
4 Honor, but that would be little awkward.

5 THE COURT: Okay. All right. Mr. Higgins, do you
6 want to be heard on this?

7 MR. HIGGINS: Yes, Your Honor, thank you. Ben Higgins
8 for the U.S. Trustee.

9 Your Honor, as has been mentioned earlier today, the
10 pre-petition transactions that were the subjects of
11 investigations by the committee and the debtors are one of if
12 not the major issue in this case. The debtors' proposed plan
13 hinges on the validity of those transactions, and Skadden's
14 involvement in those transactions is not mere minutia that can
15 be glossed over with language in their retention application.
16 And as their retention application says, it's "various
17 corporate matters, including federal income tax matters,
18 acquisition matters, and a debt exchange". That's the Skadden
19 application at paragraph 9.

20 In the supplemental declaration that was filed after
21 the U.S. Trustee's declaration, Mr. Durrer states, in paragraph
22 6, he describes Skadden's role as "effectuating the terms of
23 the July 2018 transaction".

24 And Skadden may not have been involved in negotiating
25 the terms of the transaction, but they did issue opinion

1 letters, as has been stated, in December of 2018 and March
2 2019, that were necessary for the ultimate confirmation of the
3 series of transactions through which Chatham exchanged
4 unsecured debt for secured debt and upon which the whole course
5 of this Chapter 11 case now depends.

6 Both the committee and Togut firm have now identified
7 the December 2018 transaction and the March 2019 transaction as
8 part of the subject of their investigation. And that can be
9 found in the committee's Rule 2004 application, Docket Number
10 132, at paragraphs 19 through 20, and the declaration of Kyle
11 Ortiz, attached to the Togut reply brief, at Docket Number 207
12 at paragraph 4.

13 With respect to the March 2019 exchange, the
14 committee's application states in paragraph 20: "Thus to the
15 March 2019 transaction, Chatham was able to exchange whatever
16 unsecured claims it had left into secured claims for apparently
17 no additional consideration."

18 Skadden issued an opinion letter necessary for the
19 effectuation of both of these transactions that have now been
20 subject to investigation. And despite Skadden's attempts to
21 minimize the significance of these acts, the issuance of an
22 opinion letter by a law firm is a big deal; it's not merely
23 mechanical. It generally involves approval by the law firm's
24 opinion committee and it subjects the law firm to potential
25 liability.

1 And if the Skadden law firm opined on the validity of
2 transactions that are now being investigated by the committee
3 and the debtors for avoidance, that creates at least the
4 perception of a meaningful incentive to act contrary to the
5 interests of the estate which constitutes disabling adverse
6 interests under the case law cited by Skadden in its reply
7 brief.

8 So it seems that Skadden and the debtors may have
9 recognized as much because they put the Togut firm in charge of
10 the investigation. And even if the Court does not ultimately
11 agree that Skadden's role rises to the level of a disabling
12 adverse interest, Skadden's failure to informatively and
13 specifically disclose its involvement with these potential
14 avoidable pre-petition transactions up front is highly
15 problematic.

16 This has been a hot issue since the first day of this
17 case, and as has been discussed, the bankruptcy rules and the
18 case law make clear that this shouldn't be a game of cat and
19 mouse. Professionals have an obligation to affirmatively
20 disclose all connections -- we will say all connections to the
21 debtors or creditors or parties-in-interest, and it shouldn't
22 be the case that my office has to ferret out this information.

23 And as we said in our objection, the failure of
24 disclosure is not a minor issue. The Court and the parties
25 need to rely on professionals making complete disclosure

1 upfront in their retention papers, and this was not done until
2 the U.S. Trustee raised this issue and objected.

3 So for these reasons, Your Honor, the U.S. Trustee
4 respectfully requests that the Court deny the application.

5 THE COURT: All right. Who else would like to be
6 heard on this?

7 MR. HANSEN: Your Honor, it's Kris Hansen again, with
8 Stroock, on behalf of the official committee.

9 The committee chose not to object to Skadden's
10 retention application for a number of reasons. From our
11 perspective, Your Honor, we were comfortable with the
12 supplemental disclosures that the Skadden firm made.
13 Representations that Mr. Durrer has made in front of Your Honor
14 today were also made to us on the committee side.

15 And from a case perspective, our view is that
16 obviously the Togut firm has been retained. They can function
17 in a conflict capacity, where necessary, in addition to
18 handling the other tasks that they have. So to the extent that
19 there were issues like this that the Skadden firm has potential
20 difficulty being able to handle, the Togut firm picks it up, so
21 that essentially makes it more efficient and ensures that we
22 don't have any conflict, if they were there, coming to the
23 fore.

24 I think the committee also recognizes the practicality
25 of where we are. Everybody wants to try to move this case

1 forward as quickly as possible. The Skadden firm's been
2 working hard to try to make that happen. And a dislocation to
3 the estate, and the concomitant expense associated with it of
4 not having them approved at this time, is hard for a lot of
5 parties. You know, the debtors will wind up with someone else,
6 but it'll cost a lot of money to get there, and it will
7 probably be inefficient because Skadden's been managing and
8 running the process thus far.

9 So from the committee's perspective, we're fine with
10 the Skadden firm being retained, and we chose not to object on
11 that basis.

12 THE COURT: Okay. Anybody else?

13 All right. Mr. Higgins, when you say that Skadden's
14 opinion shouldn't be treated lightly because it opined about
15 the validity of the transaction, people get opinions that deal
16 with lots of different matters. The main challenge, as I
17 understand it here, or potential challenge to these
18 transactions is all based on an allegation of potential
19 fraudulent transfer -- fraudulent intent.

20 I don't have the opinion, but did Skadden purport to
21 say that these transactions were valid from a fraudulent-
22 transfer perspective or from an intent perspective, or did they
23 just say that, hey, they comply with the terms of the
24 indentures?

25 MR. HIGGINS: It would be the latter, Your Honor.

1 They don't opine on the fraudulent-transfer issue. And as Mr.
2 Durrer said, one of them does have the reservation point, and
3 they're not dealing on the other issue, the other indictments.
4 But it is -- as Your Honor described, it's more of the entire
5 corporate formality in terms of indentures.

6 THE COURT: Well, I understand and would sympathize
7 with your objection if Skadden had actually expressed an
8 opinion about matters that are going to be in dispute or
9 potentially in dispute in the case. That might be something
10 that should have been highlighted and should be of greater
11 concern. But if all they did was say we don't express an
12 opinion on anything else, we didn't do the underlying
13 transaction, but to the extent you need comfort that it doesn't
14 violate the written terms of the indenture, we'll confirm that
15 it doesn't, how is that an issue? What conflict does that
16 present? How is that going to be challenged or create an issue
17 for Skadden in the course of doing other work in this case?

18 MR. HANSEN: Well, Your Honor, part of the issue is
19 both of these transactions are being investigated, and we don't
20 know what issues could come up. So it's a little bit of an
21 unknown on that end that. We don't know if there are
22 deficiencies with other opinions Skadden reached, but it could
23 be raised. At the very least, we think it should have been
24 affirmatively disclosed.

25 THE COURT: Well, maybe so, but I don't find it so

1 outrageous as to say that the result should be visited on
2 everybody else and that Skadden should not even be retained.

3 If you want to reserve your right to say that there
4 should be some adjustment to fees at the end of the case for
5 failure to disclosure, that'll be something we can deal with
6 later. I don't really find it, under all of the
7 circumstances -- it may not be perfect, but I don't find it
8 quite a big a sin as you seem to think.

9 The one thing I have not heard anybody contend is that
10 the transactions that were done here actually did violate the
11 terms of any of the indentures. And quite frankly, even if
12 they did, I'm not sure where that would get anybody. All of
13 these seem to be based on entirely different things that
14 Skadden was not involved in. And while it may be providing
15 other work for the debtors here, it's not the counsel who
16 investigate and report on the transaction.

17 So I thank you for calling it to my attention, and I
18 thank you for getting the further clarifications that you got,
19 but I think, under the circumstances, I'm comfortable with the
20 situation.

21 MR. HIGGINS: Understood, Your Honor. Thank you.

22 THE COURT: Okay.

23 MR. DURRER: And, Your Honor, this is Van Durrer. The
24 U.S. Trustee had also circulated some more comments regarding
25 the form of order, including the rate change, et cetera, and

1 we're happy to incorporate those, and we'll send over an order,
2 assuming Your Honor is prepared to approve the application.

3 THE COURT: Very good.

4 MR. DURRER: Thank you, Your Honor. So that leaves us
5 with agenda item number 13, which is the application of the
6 Knight Ridder nonqualified plan participants, under Rule 2004,
7 which is Docket Number 171. I'm happy to turn the virtual
8 podium over to Mr. Goldowitz.

9 MR. GOLDOWITZ: Thank you, Mr. Durrer.

10 Good afternoon, Your Honor. If I have the privilege
11 of closing, I'll do my best to be brief.

12 I would like to first say that the issues, as of this
13 morning, are really quite narrow, because we have receded from
14 many of our requests. The debtors, frankly, have persuaded us
15 of the merits of some of their points, though not all, and in
16 some cases it's just not worth -- it's just not a priority for
17 us to pursue certain requests at this point.

18 We are actually down to one request, and that is for
19 what I'll call the demographic data, that is to say the benefit
20 amount, ages, marital status, spouse's ages and form of benefit
21 of the approximately 400 people, at least by the debtors'
22 estimation, whose benefits have been suspended, and the purpose
23 of that is so that we may calculate the present value of those
24 benefits and eventually put forward either a group or a class
25 claim.

1 The debtors have offered us what's known as an
2 actuarial valuation report, and if I may, I'll just take a
3 minute or so to explain what I think that is. In the defined
4 benefit pension world, the actuary does a report that is based
5 upon aggregated data and uses certain assumptions as to
6 mortality and interests and presents a present value of the
7 benefits owed. At least that's the case for PBGC covered
8 plans. We've not seen the one in question here, so I can't say
9 what it consists of or whether it is an adequate proxy for what
10 we've actually requested.

11 So while we appreciate your offer, and we've taken the
12 debtors up on that, and I believe have reached closure with
13 them on a form of protective order, I'm unable to say that our
14 request for the demographic data has been or will be satisfied.

15 Your Honor, the legal standard is good cause. The
16 case law indicates that that consists of relevancy and
17 proportionality. I think it's highly relevant in this case in
18 that if we were to aggregate the claims of the 450 or so
19 people, the debtor has, at one point, suggested it might be in
20 the range of a hundred million dollars. We have done some very
21 rough calculations based on public information suggesting it
22 might be even higher.

23 In any case, in the aggregate it would represent the
24 second largest general unsecured claim after the PBGC. And so
25 I think that not only the association but I believe many

1 parties-in-interest in the case would have an interest in
2 knowing what the second largest unsecured claim might be.

3 Debtors say it's pretty mature.

4 Yes, sir?

5 THE COURT: Much of your argument about the need to
6 know this number to file a claim seems to presume that you have
7 or will obtain authority -- claims on behalf of other people.
8 But you don't have that authority as of today. That's correct.

9 MR. GOLDOWITZ: Your Honor, the debtors have attached
10 the Rule 2019 disclosure and suggested that we represent only
11 five people. That is a misreading. This is an association
12 that was formed by five individuals. They are the initial
13 directors, and they are the initial Members with a capital M,
14 but as the certificate of incorporation indicates, this is a
15 membership organization whose mission is to advocate for its
16 members, and that's members with a lower-case m. And our
17 statement indicates there are more than 200 such members, so it
18 is very much a bona fide organization.

19 It is formed with the intent of complying with
20 Internal Revenue Code 501(c)(4). I'm informed that the
21 requisite filings with the IRS to proceed under that provision
22 have been filed. So it is very much an organization of 200
23 plus people. It is not, to be sure, an organization of all
24 450, but I think that the case law suggests that even though we
25 are not now filing a class claim or not now filing an adversary

1 proceeding on a class or group basis, that discovery until Rule
2 2004 may well proceed such action in order to determine whether
3 there are grounds to do so. And I would refer to the -- none
4 of the cases we've cited, but one that the debtor just cited,
5 Transmar.

6 So I think there is good cause. I think the procedure
7 is proper. And whether or not this Court ultimately did
8 entertain a class claim or certify members of this association
9 as class representatives -- it's from every day, but I think
10 that we are entitled to seek the predicate information.

11 THE COURT: Well, I'll note that --

12 MR. GOLDOWITZ: So --

13 THE COURT: Your association may have been formed of
14 representing other people, but you can't self-appoint you as
15 their representatives, and unless they either authorize you to
16 speak for them or I authorize you to speak for them, in the
17 absence of one of those two things, you do not speak for them.
18 It doesn't matter what you purport or want to do. That's just
19 the way it is.

20 And so much of your argument seems to assume something
21 that doesn't exist right now, which is that you are actually
22 asking for them and that you're just seeking information so
23 that you can pursue authority to act on them that you have
24 already have, whereas what you're actually seeking to do is to,
25 kind of, get yourself that authority.

1 Now, as to the proofs of claim, if you wanted to file
2 a proof of claim, why didn't you do so already? Why do you
3 have to know already the names, details, demographics,
4 statistics and all details? You can see the debtors have that
5 information. They haven't made it available to you. And if
6 you want to seek permission to file a proof of claim, you could
7 do that. Why do you need anything else?

8 MR. GOLDOWITZ: Well, Your Honor, I appreciate that we
9 do not speak for all 450, or whatever that number might be. We
10 do, I believe, speak for the 200 who are members of the
11 organization. We could file the proof of claim, as Your Honor
12 has suggested, based on a very wide, perhaps, range of
13 estimates. I don't know how useful that is, frankly.

14 We do not seek names. We no longer seek that. We
15 seek only the raw data that presumably informs the actuarial
16 valuation report. And that would just enable us to be more
17 precise about what our proposed class-wide claim would be.
18 Obviously proceeding on that basis would be subject to the
19 Court's approval and presumably to objection by the debtors and
20 any other interested party.

21 THE COURT: All right. And let me ask the debtors.
22 What's the objection to revealing this information? It's going
23 to come out sooner or later. It's going to be relevant sooner
24 or later, isn't it?

25 MR. DURRER: Well, Your Honor, we have a handful of

1 issues with the application. With respect to that specific
2 question first, the information, as I understand it, is the
3 basis for the actuarial report that we have agreed to provide.
4 Culling out that information and providing it separately would
5 be an expensive process. It's already been done. It is a stat
6 report. We are a public company. We've been reporting these
7 numbers based upon that actuarial report. So it puts the
8 debtors to an unnecessary burden on someone that may or may not
9 represent these people.

10 Cuing off Your Honor's point about who do they, in
11 fact, represent, you'll hear 200, but if you look at footnote 1
12 of the purported Rule 2019 statement, which is Docket 194, it
13 says that that number is in flux. It's approximate. And that
14 the five directors don't seem to know who those people are, and
15 that it depends, in part, on their interest in participating.

16 So we don't know who the heck we're talking to, and it
17 seems -- that's exactly what Rule 2019 was designed to address.
18 And there had been abuses in the past on exactly this point.
19 So we think we're entitled to know who we're dealing with.

20 The last thing that really bothers us about the
21 application, candidly, is the ready, fire, aim approach. We
22 thought we had a good active dialogue with Mr. Goldowitz at the
23 last hearing, and it was less than thirty-six hours after that
24 hearing that this application was filed on an ex parte basis
25 with respect to information we were already providing. And we

1 just figure it sets the wrong tone for the case if people
2 realize that they can take that kind of ready, fire, aim
3 approach, especially when we are, in fact, cooperating.

4 To be clear the committee's filing of a Rule 2004
5 application is completely different, right? They're a
6 fiduciary. They represent all these constituents whose -- we
7 wanted to move fast, and they wanted to make sure that they
8 could keep pace with us. So really, we were a little surprised
9 at the timing of it, to be honest, but we took it in stride,
10 and we've been working successfully with the committee ever
11 since. So that's what we're going to do there.

12 But this one is different. We think it should be
13 treated differently. And like I said, we think it's up for the
14 long term going forward.

15 THE COURT: All right. Anything else?

16 MR. GOLDOWITZ: Your Honor, Israel Goldowitz, again,
17 for the Association. I wish I could say with some confidence
18 that that the valuation report is a fair compilation of the
19 data, but we've not seen it. We reached closure, I thought,
20 yesterday evening on the protective order, which would be, of
21 course, submitted for Your Honor's review and approval. But
22 we've not seen it at all, so I can't say whether it is what Mr.
23 Durrer represents that it is.

24 The names, this Court has expressed concern, as has
25 the U.S. Trustee, as have other parties, about abuse of

1 personal information. We have not disclosed those names. If
2 it were absolutely necessary we would disclose them but under a
3 protective order or under seal. We're not losing membership,
4 to my knowledge. We do have the names.

5 As to ready, fire, aim, we made this request actually
6 before the case was filed. And while there have been some
7 attempts at dialogue, frankly, I have to take issue with Mr.
8 Durrer's view that it's been a cooperative exchange. It's
9 been, obviously, a robust discussion, but there really hasn't
10 been much meeting of the minds. And it had lingered
11 sufficiently long that we felt that we had to exercise our
12 rights under the rules. I apologize if that has set a bad
13 tone, but we felt that we had no choice.

14 And we do, as a -- or at least the directors do, of
15 course, of this association, have a fiduciary duty to the
16 membership. We don't say that we're on the same footing as the
17 committee or a different, but I do believe that it would be --
18 it is, one, a proportional request, two, probably not very
19 burdensome to comply with. And third, I think in the end,
20 useful information for the benefit of all parties in the case,
21 in that it would inform us all as to what the amount of,
22 perhaps, the second largest unsecured claim is.

23 THE COURT: Okay. I'm going to deny the application
24 without prejudice at this time. You can get the report and see
25 what it tells you about what the dollar amounts are, and then

1 if there is further information you think might be relevant,
2 you can have a discussion with the debtors about it, and if you
3 can't reach agreement, you can come back to me. I find it hard
4 to believe that there isn't some detail that -- if the report
5 is just a bare bones conclusion with no description of the
6 underlying demographics, I find it hard to believe, since --
7 easy way to get that information without completing
8 reconstructing it. But I'll leave that for further discussion
9 after you get the report.

10 I urge you to talk to each other. I'm not going to
11 make rulings based on what anybody thinks are good or bad
12 manners. Quite frankly, what I've heard so far may not be as
13 cooperative as I would like, but in the scale of things that
14 I've experienced over my legal career and as a judge, it's not
15 even close to being impolite, let alone bad faith.

16 So just work together. See if you can resolve this.
17 Get the report and look at it and see if it answers your
18 questions in good faith before you start asking for more.
19 Okay?

20 MR. GOLDOWITZ: We will. Thank you, Your Honor.

21 THE COURT: All right. Is there anything else for
22 today?

23 MR. DURRER: Van Durrer, Your Honor. Only to thank
24 chambers and staff again for working with us in this difficult
25 time. We will endeavor to try and keep the Court time to a

1 minimum, but obviously the DIP financing and other elements of
2 today's hearing were very important to get us off on the right
3 footing, so we are very grateful.

4 THE COURT: Okay. Well, the timing is perfect,
5 because I think all that beeping is my phone, which is about to
6 lose its battery.

7 MR. DURRER: Okay. We will keep in mind in the
8 future.

9 THE COURT: So we are adjourned then. Thank you.

10 (Whereupon these proceedings were concluded at 12:50 PM)

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I N D E X			
E X H I B I T S			
DEBTORS'	DESCRIPTION	MARKED	ADMITTED
--	Declaration and supplemental declaration of Evan Gershbein in support of debtors' motion to retain KCC		29
--	Declaration of Sean Harding in support of debtors' motion to reject lease at 401 I Street in Sacramento		31
--	Declaration of Sean Harding in support of debtors' second omnibus lease-rejection motion		33
--	Declaration of Sean Harding in support of debtors' application to retain FTI Consulting and for related relief		35

		PAGE	LINE
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2	RULINGS:		
3	Debtors' cash-management motion is	16	24
4	granted, with the modification stated		
5	on the record.		
6	Debtors' motion as to preservation of	17	11
7	NOLs is granted.		
8	Debtors' motion for authorization to	19	2
9	pay pre-petition wages, compensation,		
10	and employee benefits (2019 nonexecutive		
11	retention plan), is granted.		
12	Debtors' motion for retention of the	20	19
13	Groom law firm is granted.		
14	Debtors' motion for retention of	27	1
15	Evercore Group retention as their		
16	investment banker is granted.		
17	Debtors' application for authority to	30	21
18	employ and retain KCC as		
19	administrative advisor nunc pro tunc		
20	to the petition date, is granted.		
21	Motion authorizing rejection of	32	10
22	unexpired lease of nonresidential real		
23	property located at 401 I Street,		
24	Suite 200, Sacramento, California		
25	95814, is approved.		

		PAGE	LINE
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2	RULINGS (cont'd.):		
3	Debtors' second omnibus	34	12
4	lease-rejection motion is granted.		
5	Debtors' motion to retain FTI	37	24
6	Consulting, Inc. effective nunc pro		
7	tunc to the petition date, approving		
8	the terms of FTI's employment,		
9	designating Sean M. Harding as chief		
10	restructuring officer, and granting		
11	related relief, is granted as modified		
12	on the record.		
13	Debtors' application to retain the	45	5
14	Togut firm as co-counsel is approved.		
15	Declaration of Bo Yi at Evercore as to	46	9
16	how DIP financing was sourced, and		
17	declaration of Sean Harding as to the		
18	budget, are made part of the record		
19	for purposes of the DIP-financing		
20	motion.		
21	Debtor-in-possession financing approved.	56	17
22	Retention application of Skadden,	66	16
23	Arps, Slate, Meagher & Flom LLP is		
24	approved.		
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RULINGS (cont'd.):	PAGE	LINE
Application for production of	74	13
documents under Rule 2004 is denied		

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

I, Clara Rubin, certify that the foregoing transcript is a true
and accurate record of the proceedings.



Clara Rubin

eScribers

352 Seventh Ave., Suite #604

New York, NY 10001

Date: March 26, 2020

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