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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

THE MCCLATCHY COMPANY,	Main Case No.
Debtor.	20-10418-mew

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

April 29, 2020
11:00 AM

B E F O R E:
HON. MICHAEL E. WILES (TELEPHONICALLY)
U.S. BANKRUPTCY JUDGE

1
2 Application for Entry of an Order Authorizing the Employment
3 and Retention of Berkeley Research Group, LLC as Financial
4 Advisor to the Official Committee of Unsecured Creditors Nunc
5 Pro Tunc to February 26, 2020 [Docket No. 249]

6
7 Application of the Official Committee of Unsecured Creditors
8 for Entry of Order Authorizing Employment and Retention of
9 Moelis & Company LLC as Investment Banker Effective as of March
10 9, 2020 [Docket No. 278]

11
12 Debtors' Motion for Entry of an Order Authorizing and Approving
13 the Rejection of the Wipro Contract and Granting Related Relief
14 [Docket No. 289]

15
16 Debtors' Motion for Order Authorizing Rejection of Partnership
17 Agreement and Abandonment of Partnership Interests in Ponderay
18 Newsprint Company [Docket No. 292]

19
20 Debtors' Motion for Entry of an Order (I) Authorizing Debtor
21 McClatchy Newspapers, Inc. to Enter Into a Secured Letter of
22 Credit Facility Agreement, (II) Modifying the Automatic Stay
23 With Respect Thereto, and (III) Granting Related Relief [Docket
24 No. 295]

1
2 Motion of Debtors for an Order Authorizing and Approving
3 Procedures for the Sale, Transfer, or Abandonment of De Minimis
4 Assets [Docket No. 288]

5
6 Debtors' Motion for an Order Pursuant to Bankruptcy Code
7 Sections 105, 363, 365, and 554, Bankruptcy Rules 6006 and
8 9014, and Local Bankruptcy Rule 6006-1 Authorizing and
9 Approving Expedited Procedures for Rejection or Assumption of
10 Executory Contracts and Unexpired Leases and Granting Related
11 Relief [Docket No. 290]

12
13 Application for an Order Authorizing the Debtors and Debtors-
14 in-Possession to Retain and Employ Deloitte & Touche LLP as
15 Independent Auditor Nunc Pro Tunc to the Petition Date [Docket
16 No. 294]

17
18 Debtors' Motion for Entry of an Order (I) Authorizing and
19 Approving (A) the Debtors' Entry Into the Purchase Agreement
20 and (B) the Sale of the Debtors' Property Located at 310 S.
21 Dawson Street, Raleigh, North Carolina, 27601 and (II) Granting
22 Related Relief [Docket No. 291]

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Debtors' Motion for Modification of Final Debtor-In-Possession
Post-Petition Financing Order and Related Relief [Docket No.
299]

Application for Order Authorizing the Retention of Dundon
Advisers LLC as Co-Financial Advisor for the Official Committee
of Unsecured Creditors of The McClatchy Company, LLC, et al.,
Nunc Pro Tunc to February 26, 2020 [Docket No. 248]

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CHRISTOPHER J. KEARNS, Berkeley Research Group, LLC (BRG)

JACK SURDOVAL, Berkeley Research Group, LLC (BRG)

DAVID E. GALFUS, Berkeley Research Group, LLC (BRG)

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

2 THE COURT: Good morning everybody. Are we waiting
3 for anybody else?

4 Ron (ph.), Lorraine (ph.), are we waiting for anybody
5 else?

6 Can anybody hear me?

7 MS. ROSENBERG: Judge, yes. It's Andy Rosenberg.

8 We can hear you, but there hasn't been any roll call
9 or anything before you joined.

10 THE COURT: All right. Is the committee present?

11 MR. HANSEN: Yes, Your Honor. It's Kris Hansen on
12 behalf of the committee. We're here with my colleagues, and
13 the BRG, Moelis, and Dundon folks are on as well.

14 THE COURT: All right. It looks like the debtors and
15 the lenders' counsel are on as well. Why don't we proceed?

16 UNIDENTIFIED SPEAKER: Sorry, Judge, I was muted
17 before.

18 THE COURT: All right. Okay.

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

20 Thanks again for the work of chambers and your staff
21 in doing this hearing under unusual circumstances. We're going
22 to try to make it brief. There's quite a bit that's already
23 been resolved, so we're happy about that.

24 I'm looking at docket 375, which is the agenda for
25 today. Wanted to touch on just a few brief things in terms of

1 status.

2 All of the fifty-five debtors' schedules of assets and
3 liabilities and statements of financial affairs have been filed
4 as of yesterday, and the 341-meeting telephonic will be held on
5 May 7 at noon Eastern. That's set up.

6 Second, the mediation continues to proceed, although,
7 as is probably obvious, it has been impossible for there to be
8 live principals engaged with each other in rooms, and that's
9 unfortunate and has slowed the pace of the mediation, but Judge
10 Carey has done a good job of interacting with everybody on a
11 regular basis, so we're pleased about that.

12 In terms of --

13 THE COURT: Don't tell me --

14 MS. DURRER: Sorry, Your Honor.

15 THE COURT: -- the details, but are you getting close
16 to any kind of agreement to the mediation?

17 MS. DURRER: Here's what I'll say, Your Honor, and I
18 do want to respect the mediation privilege, there has -- there
19 has been -- there have been proposals made, I'll put it that
20 way, and I'll leave it at that.

21 So "close", I think, is an aggressive term, but there
22 have been proposals made --

23 THE COURT: No problem.

24 MS. DURRER: -- which we're happy that we've made that
25 progress.

1 THE COURT: Okay.

2 MS. DURRER: In terms of the impact of COVID-19, the
3 debtors have developed a very rigorous view of the impact on
4 2020, and that's been shared with all stakeholders as part of
5 the mediation process, and the mediation process has actually
6 helped us to do that so that everybody's sort of on a level
7 playing field.

8 And then the company has, likewise, developed a view
9 for outer years, 2021 and 2022, and we expect that those ideas
10 will be shared in the coming days as we continue on that
11 process.

12 The last thing I'll say -- and there's been some
13 confusion, it seems, but the debtors are not seeking any relief
14 whatsoever today with respect to any sale process.

15 We did include, as an attachment, to the agenda sort
16 of a summary of where we are today and how we got to where we
17 are today, but we're not asking for any relief on that, so I
18 just wanted to be clear about that, and we'll discuss that in
19 more detail, I think, when we get deeper in the agenda.

20 But unless Your Honor has any questions, that's all,
21 and I apologize, I didn't enter my appearance. Van Durrer,
22 Skadden, Arps, Slate, Meagher & Flom on behalf of the debtors.
23 That's all I have in terms of status, Your Honor, and I would
24 turn the podium over to Mr. Hansen if he wants to walk through
25 the -- a couple to his applications.

1 THE COURT: Just to clarify for me, on the stipulation
2 that you attached, are you asking me to so order that
3 stipulation?

4 MS. DURRER: We are not, Your Honor. And I apologize,
5 there's a trailing reference to "an order" in that, but we are
6 specifically not asking Your Honor to so order that.

7 THE COURT: All right. We'll come back to that.

8 Mr. Hansen?

9 MR. HANSEN: Good morning, Judge Wiles. Again, it's
10 Kris Hansen with Stroock & Stroock & Lavan on behalf of the
11 official creditors' committee.

12 With respect to the applications, my partner, Erez
13 Gilad, will handle those for the Court, so I'm going to pass
14 the podium to him. I also have some remarks regarding the
15 status, but I think they're better reserved for when we move
16 over to the DIP modification motion, and the cross-motion that
17 the noteholders had made.

18 THE COURT: Well, why don't you make those comments
19 now just to frame everything in front of me?

20 MR. HANSEN: Sure, Your Honor.

21 So look, from the committees' perspective, they're --
22 we feel that the process is being a little bit ambushed as a
23 result of the cross-motion and the debtors' effective embrace
24 of it.

25 We've remained relatively quiet in court to this point

1 in time because we've been working very hard behind the scenes
2 to try to advance the process along with the debtors and along
3 with the other parties in the mediation, but we're moving to a
4 point in the case where things are now being put in front of
5 the Court which we believe are being done in an effort to try
6 to take the case in a different direction.

7 And so from the committees' perspective, we didn't
8 come self-swinging at the beginning of the case, but we are
9 getting to a point now where our view clearly is that Chatham
10 and the board conspired to elevate Chatham's unsecured claims
11 above everybody else's before they filed the case, and then to
12 use that status as the hammer through which to drive their
13 acquisition nail at the expense of unsecured creditors and the
14 PBGC. And that the manner in which they swung the hammer was a
15 bit clumsy because they filed an unconfirmable plan, and then
16 they had the mediation request tied to it at the first day
17 hearing, and that process costs money.

18 You don't get to prepare a plan, file it, put a
19 disclosure statement on file, abandon it, go through mediation,
20 and expect all of that not to be expensive, and it seems like
21 the debtors and Chatham and their professionals somehow
22 underestimated that the cost and the time associated with that
23 process -- I mean, for example, they didn't put in the budget
24 that they prepared their own investigation of claims against
25 Chatham, the fees of the U.S. Trustee, or realistic costs

1 associated with producing documents necessary to review the
2 transactions at the heart of the plot that was really the
3 storyline for this case.

4 So now, it feels like, after waking up to the reality
5 of the failure of that plot, they're trying to fast-track these
6 cases to the same place that they started, which is handing the
7 keys over to Chatham and attempting to strand administrative
8 expenses and dismissing any and all claims against them in the
9 process via the credit bid, which is -- and we'll get to it
10 someday, maybe, but it is absolutely a sub rosa plan because
11 the terms of it are effectively what was filed on the first
12 day, but a little worse, and it's really just a motion to lift
13 the stay to foreclose on assets.

14 And to shut down opposition to that process as best
15 they can, the debtors and Chatham have now tried to take away
16 your oversight of a sale process by agreeing to expedite a
17 deadline and publicly embracing the credit bid, which seems
18 like a more -- again, a more aggressive version of the plan,
19 and it's also being done through the veneer of a need for
20 enhanced adequate protection with no proof, like, literally, no
21 evidence having been submitted of the need for that adequate
22 protection. And they've also come up, as part of that adequate
23 protection, with handcuffs for the committee and their own
24 investigators in the form of a fee limitation that I think is
25 unprecedented, which is that somebody has to prove to the Court

1 that the case is administratively solvent.

2 I've been at this for twenty-five years, and I've
3 never seen a situation where somebody was forced to prove
4 administrative insolvency -- administrative solvency, not
5 insolvency -- in order to pay the fees incurred by estate
6 professionals.

7 And candidly, in kind of calling this process what it
8 is, they don't like how it's unfolding, and they'd like to stop
9 it, and they don't get to make those choices.

10 The DIP today is not drawn. The debtors themselves
11 have said that they liquidity through the fourth quarter. The
12 global pandemic which they cite as the, I guess, take judicial
13 notice of it as evidence of the need for additional adequate
14 protection is actually starting to recede, with countries and
15 states also slowly starting to reopen, and the mediation which
16 was scheduled to have it's first sessions, as Mr. Durrer just
17 said, on April 27th and 28th had actual settlement proposals on
18 the table from the various parties. I don't want to get into
19 the details there, but -- and it's progressing.

20 So since the final DIP order was entered a number of
21 weeks ago -- it wasn't that long ago. And by the way, we were
22 all, back then, on the phone together working through the
23 pandemic, as we were. Really, nothing has changed, and there's
24 nothing that's changed from the noteholder's collateral for
25 this in either.

1 So candidly, the shift for the debtors to their
2 digital platform has actually helped them, and again, there's
3 no DIP draws. And again, the pandemic is starting to ease.

4 So if anything, it looks to me -- and you have the
5 mediation moving forward. So it looks to the committee like
6 the need for adequate protection is, again, really just a
7 smokescreen by which these parties want to put in front of you
8 to carry out what they otherwise want to do.

9 So we don't believe there's any reason for enhanced
10 adequate protection of any kind. We had the debate before you,
11 likely when the order was entered, but budgets are budgets, and
12 if people believe that adequate protection needs to be reset
13 because those budgets were inadequate if they are, in fact, a
14 part of adequate protection, they should come before the Court
15 with real evidence and ask for it.

16 And in terms of the sale process itself, if the
17 debtors really want to do it, they should come and have the
18 Court -- ask the Court for permission to do it in the proper
19 way like so many other cases. And to cry that they're going to
20 run out of time, so they need to do it this way, is unfair
21 when, in fact, they said themselves that they have liquidity
22 through the fourth quarter.

23 So we think that the entire cross-motion and any
24 changes to the DIP order that result from it that were added as
25 a compromise by the debtors should be denied, and candidly,

1 that the debtors should be prevented from entering into a stip
2 as -- again, as part of adequate protection, because what
3 happens if they don't abide by that stip? We don't really --
4 no one even knows what the consequences are, and we'll be back
5 here in front of Your Honor talking about it again. It doesn't
6 make sense.

7 And so for us, while we support the view that we
8 should take down the interim reimbursement of professional fees
9 across the board to give the debtor a little bit of extra
10 liquidity along the way until they actually capture cash, this
11 whole cross-motion and the debtors' agreement to it, one, seems
12 incredibly contrived; and two, seems completely misguided.

13 So at a status level, we, from the committees'
14 perspective, believe the case is supposed to proceed on the way
15 that cases proceed, which is the mediation is going forward.
16 If they want to get a sale process approved, they should do it
17 by motion in front of you on a more formal basis so that
18 everybody who participates in that process can rely upon the
19 integrity of a court-order process and not a back-room process
20 being done in, candidly, probably the worst environment ever
21 for anybody to try to sell an asset, and that really what we
22 should focusing on is finding a way to get to a deal in the
23 mediation, and if we can't, figuring out where the case goes
24 with your oversight, not essentially off the record.

25 And with respect to the committee itself, we're going

1 to be filing our motion for standing to pursue the claims
2 against the various defendants in this case very soon because
3 the terms of that credit bid, one of them is that they assume
4 those claims and then dismiss them, and those claims belong to
5 the estate. They don't belong to the secured creditors to
6 effectively buy and then get rid of as they would have tried in
7 their original plan.

8 So at a status level, Judge, I'm sorry for the
9 long-winded speech, but it is -- the committee is at a point
10 now where it hopes the mediation is successful, but if it's
11 not, it, too, has to start taking steps in front of Your Honor
12 to prepare you and the committee for the future of this case
13 which is going to be quite contested.

14 THE COURT: Okay. All right. Which matters do you
15 wish to proceed with first?

16 MR. GILAD: Good morning, Your Honor. This is Erez
17 Gilad from Stroock & Stroock & Lavan on behalf of the
18 creditors' committee.

19 Before Your Honor there are three applications to
20 retain professionals by the creditors' committee: BRG as
21 financial advisor, Moelis as investment banker, and Dundon
22 Advisers as a specialist.

23 There were no objections to the BRG and the Moelis
24 retention applications. However, we were informed by chambers
25 that Your Honor may have some questions for us. So what we

1 would suggest is, to the extent the Court has any questions
2 about those applications, we're happy to answer them.

3 THE COURT: Yes. The papers were unclear in my mind
4 as to the difference between what Berkeley and Moelis will be
5 doing and why they're not above each other, why you need both.

6 MR. GILAD: So Your Honor, we're happy to explain
7 that. So it's very common, as you know, in connection with the
8 many cases that you have presided over. It's common for a
9 creditors' committee to determine that there is a need for both
10 a banker and a financial advisor, and they do maintain and
11 undertake very different roles, and we have been very careful
12 about regulating the different roles that they each play in the
13 case.

14 And let me just tip off a few of those. First, it's
15 important to note that given the time line -- the compressed
16 time line of the cases that when -- with the imposition of the
17 full plan mediation during the first week of the case, and in
18 light of the known controversies surrounding the 1L and 2L
19 liens and claims, the committee did determine that they needed
20 to hire both an SA and a banker as quickly as possible to help
21 across both administering the cases, as well as the
22 investigation.

23 In terms of Moelis, what is Moelis going to be doing?
24 From the outset of the case, the lenders threatened the
25 possibility of pivoting to a sale. The debtors noted that it

1 was a possibility. It was a major part of their negotiating
2 posture, as well.

3 So from the committees' perspective, it was necessary
4 to retain an independent investment banker to evaluate a
5 potential sale transaction, the underlying valuation of a
6 potential sale, the impact of a potential sale on unsecured
7 creditors, whether the sale process would be adequate and
8 impartial. And obviously, that's coming and playing out and it
9 will be realized full-bore in terms of the debtors now pitted
10 to the sale process.

11 Other things that the investment banker is focusing on
12 includes evaluation and analysis of the bankruptcy plan, the
13 structure, the terms, the prospect of alternative term
14 structures, analyzing recoveries to want to get creditors under
15 that plan, analyzing the debtors' capital structure, analyzing
16 debt capacity, and total enterprise value. That is, taking the
17 management's projections and determining an enterprise value.

18 The ibanker's primary role is also to assist the
19 committee with respect to negotiating the plan and its terms.
20 Another thing that the ibanker helps with is, of course,
21 analyzing the terms of any financing that may be before the
22 Court, whether it be DIP financings or exit financings,
23 determining whether those terms are fair, whether they've
24 marked it, what was the process by which the debtors obtained
25 that financing, and, if necessary, to identify other potential

1 sources of financing.

2 One important resource that bankers bring to the
3 table is their significant M&A and capital markets expertise.
4 So we hope to tap those resources in connection with this case,
5 as well.

6 On the investigation side, Moelis, of course, is very
7 helpful to us in terms of analyzing the fundamental economic
8 transactions that are being investigated. Moelis, as one of
9 the leading investment banks and restructuring advisory firms
10 in the country, has had a fair amount of experience. So not
11 only would they -- in connection with out-of-court exchange
12 transactions. So they are in a position to assist the
13 committee in identifying certain transactions and whether they
14 were market, whether they were feasible, whether they
15 reasonably (indiscernible) value inured to the company.

16 So it's our expectation that they will be providing
17 expert testimony in that regard, if need be, as well as any
18 expert testimony in connection with the plan or -- and/or the
19 sale.

20 Now, that's distinct from the services that BRG would
21 be providing. So BRG is more, I would consider, on the
22 financial and operational side of the committees' work ledger.
23 Their focus is primarily on performing current and historical
24 financial review and analysis of the debtors' financial data,
25 diligence with respect to the debtors' businesses and

1 operations. So what do I mean by that? They've been focusing
2 on the debtors' DIP budgets, liquidity forecasts, variance
3 reports, monthly operating reports, some of the schedules and
4 statements of financial affairs when they're filed. They'll be
5 taking a quick look on that.

6 Their focus is in assessing and monitoring the
7 short-term and long-term cash flows of the company: the
8 liquidity, the operating needs. It's fair to say that the
9 company's runaway in liquidity is a major source of discussion
10 here. It's the primary underpinning of the debtors' decision,
11 purportedly, to pivot to a Chapter 11 sale -- I'm sorry, a
12 Section 363 sale.

13 Another area that's been of incredible importance to
14 the committee is BRG has been essential in assessing the
15 company's financial projections. That is identifying,
16 assessing, and evaluating the model, identifying potential cost
17 savings, operating expense reductions, and other improvements.
18 And what's interesting here -- and I don't want to -- I don't
19 want to get ahead of the closed portion of the hearing -- BRG
20 was actually instrumental in identifying certain adjustments
21 that we believe do need to be made to the company's 2020
22 forecast.

23 And that, of course, will drive a number of
24 discussions across the adequacy of the marketing materials,
25 valuation, and the like.

1 Other things that they have been focusing on that the
2 ibanker is not focusing on is reviewing incentive and retention
3 benefit programs. To the extent that the company is looking to
4 assume or reject contracts, understanding the impact of those
5 rejections or assumptions on unsecured creditors, performing a
6 cost benefit analysis, interacting with the companies' advisors
7 in connection with that. They've also been very helpful in
8 identifying tax related issues, NOLs, and operating losses.
9 They've been instrumental in identifying what we believe will
10 be the adverse impact of a sale from a tax perspective upon
11 these estates.

12 They've also been instrument in helping us articulate
13 claim estimates. What is the ultimate estimate, at least based
14 on what we currently know of general unsecured claims,
15 reconciliation of claims? Are there intercompany claims? So
16 those two buckets of services are fairly distinct. And of
17 course, we've been monitoring and regulating what each firm has
18 been doing, to maximize efficiency.

19 I can also address the Dundon -- the scope of Dundon
20 services. That's a subject of an objection, though. So I can
21 address that objection now or we can address it later, whatever
22 Your Honor prefers.

23 THE COURT: All right. I don't have any objections to
24 the Berkeley and Moelis retentions. I think we have a few
25 comments on the proposed orders that just reflect things that I

1 usually do in connection with those retentions, and after the
2 hearing, we'll send those to you so you can see what they are.
3 But does anybody wish to be heard on the Berkeley and Moelis
4 retentions?

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

7 Our office did review those retention applications,
8 and we did provide some comments that were incorporated into
9 the redline versions of the orders that were filed with the
10 certificates of no objection. So I did just want to flag that
11 for you, Your Honor.

12 THE COURT: Okay. All right.

13 As to Dundon, let me ask you, just as background. The
14 debtors and Chatham have said that the credit default swap
15 issue that you want to investigate, actually, to go forward
16 wasn't consummated. So what exactly is it that you know about,
17 at this point, that you need Dundon's help to evaluate?

18 MR. GILAD: Appreciate the question, Your Honor, but
19 there's a very simple answer to that. And I do have Mr. Dundon
20 available by phone if Your Honor has any questions and would
21 like to speak directly with him. But the simple answer is,
22 number one, identifying the nature and substance of the
23 transaction itself and trying to understand what motivated the
24 parties, how it is that the company determined to enter into
25 that transaction in the first instance, and determining what

1 impact the mere announcement of that contract may have had on
2 the capital markets, because that -- the announcement of that
3 transaction, and then the subsequent determination not to
4 proceed with the transaction preceded the exchange transactions
5 that we are -- that are the focus of our investigation.

6 THE COURT: So why --

7 MR. GILAD: And we are examining whether or not there
8 is, then --

9 THE COURT: But --

10 MR. GILAD: -- an in --

11 THE COURT: One second.

12 MR. GILAD: Sorry, Your Honor.

13 THE COURT: Say it affected the market, where does
14 that get you? I don't understand.

15 MR. GILAD: Well, it gives us an oppor -- first, I
16 think we need to understand the transaction. Second, we are
17 also exploring potential equitable subordination claims against
18 the Chatham parties, and part of the CDS-related investigation
19 is to determine whether or not there is a -- whether or not
20 there is a basis for equitable subordination based on potential
21 misconduct.

22 And again, I don't want to get too far into -- I
23 believe, information that's been provided by Chatham has been
24 on attorney's eyes-only basis. So I'm unable to get into
25 further detail on the call, but I think it's fair to say there

1 are a number of things we're exploring, including the level of
2 influence that Chatham may have had.

3 Chatham would have us believe that the mere
4 announcement of the transaction, even though it never
5 consummated, didn't have an impact on the estate. That's an
6 assumption, and it's a self-serving one at that. We don't
7 accept that assumption, and that's part of what we are
8 concerned about.

9 We are also concerned about the --

10 THE COURT: How --

11 MR. GILAD: -- extent to which there may have -- I'm
12 sorry, Your Honor.

13 THE COURT: Explain that for me. What would the
14 impact on the estate have been?

15 MR. GILAD: I think the impact on the estate could
16 have been, to the extent there was inappropriate
17 misappropriation of information or confidential information,
18 that could serve as a basis for equitable subordination.

19 To the extent that there was an attempt to manipulate
20 the company's pro forma capital structure and suppress the
21 debtors' efforts to obtain alternative financing, which drove
22 them to what we believe is an -- was an inappropriate exchange
23 transaction, that inured to the inordinate benefit of Chatham,
24 that is something we are exploring.

25 THE COURT: All right.

1 MR. GILAD: We do believe, and Mr. Dundon can --

2 THE COURT: In answering my questions, I'd like you to
3 differentiate between what Mr. Hansen and other parties have
4 said here about allegations that Chatham was elevating an
5 unsecured position -- secured position to give itself an
6 advantage over unsecured creditors, which seems to me something
7 you don't need Dundon to investigate. The lawyer, your other
8 advisors can do that.

9 You said you want Dundon because of credit default
10 swap transactions. So tell me specifically as to credit
11 default swap transactions, especially if the one transaction
12 you've identified wasn't actually consummated. Just where are
13 you going and why do you --

14 MR. HANSEN: Your Honor, it's Kris Hansen. Would it
15 be okay if jumped in a little bit? I have more CDS experience
16 than Mr. Gilad, and I might be able to answer it in a more
17 simplified format, if that's okay with you?

18 THE COURT: Of course.

19 MR. HANSEN: Thank you, Your Honor. So from the
20 credit default swap perspective, it's basically the purchase or
21 sale of insurance on an underlying obligation. And so here,
22 the allegation is that Chatham was a seller of credit default
23 swap protection.

24 When you do something that makes it more or less
25 likely for the company to get into a position where it will

1 either default and have a failure to pay credit event which
2 then triggers the CDS, you -- whether it's more or less likely,
3 you change, effectively, the spreads or the trading prices
4 associated with CDS. And so when the transaction -- the main
5 transaction that people point to was the concept of doing a
6 financing that would orphan the CDS.

7 So essentially, a seller would collect premiums on
8 that insurance throughout its life and never have any risk of
9 having to pay on that insurance. However -- and they're right,
10 that transaction was abandoned. Obviously, that had an impact,
11 when it was announced, on market pricing, and so a pretty
12 common thing that happens when you trade CDS is if you sold it
13 and you do something to change the price to your advantage or
14 away from you, you can turn around and then buy it,
15 effectively, to lock in profit, so depending upon whether you
16 adjust the price up or down. And so there's a benefit that may
17 have accrued to Chatham as a result of that.

18 But at the same time, another way that you can change
19 the pricing associated with CDS is by increasing the price of
20 what's known as the cheapest to deliver security, in parlance,
21 so to speak. So the ultimate payout price on the insurance, if
22 it actually is triggered, is determined primarily through an
23 auction process. And via that auction process, if there are
24 very little cheap deliverables, the auction process can be
25 manipulated effectively to have the seller pay out almost

1 nothing, and if the cheapest to deliver is a very high-priced
2 security, then you wind up in a situation again where the CDS
3 seller doesn't have to pay very much on its insurance.

4 So when you take that background into consideration,
5 and we look at it from an equitable subordination perspective,
6 so yeah, we have the one category of, like, fraudulent
7 transfers, other types of things like that. When you look at
8 equitable subordination or, candidly, breach of fiduciary duty
9 and aiding and abetting breaches of fiduciary duty, you have to
10 look at what the benefit or the gain was to the party who was
11 involved in that process and, in essence, what the whole bad
12 act was associated with equitable subordination.

13 So from our perspective, understanding the market
14 movements -- so its price incurs associated with CDS, whether
15 the spread, which effectively is the main component of price
16 that people pay -- went up or down based upon moves that were
17 made in the case, either announcement, for example of that
18 abandonment transaction taking that back off the table,
19 up-tiering the debt and securing unsecured debt, which would
20 have changed the trading price on that debt in the market, and
21 leaving behind tiny little pieces of unsecured debt that could
22 be put into the auction such that the auction might be subject
23 to manipulation, et cetera.

24 What we wanted to try to understand, and the reason we
25 needed a CDS expert on it was what the impact was, right, for

1 Chatham from a benefit perspective of all the transactions that
2 were announced by the company in which they participated,
3 either via negotiations with the board and then having had
4 those transactions launched or having had those transactions
5 launched and then pulled back. So it kind of all falls into
6 that realm.

7 The Dundon fees are really low, and we could talk a
8 little bit about that, but it was really to help us from an
9 expertise perspective, because it's a bit outside of the
10 skillset of BRG and Moelis, to really think through those
11 issues collectively to determine whether there were viable
12 causes of action, and if there were, being armed with an expert
13 who, then, could obviously take the stand and explain it to
14 you.

15 So it's very complicated, the world of synthetic
16 derivatives, and especially with CDS, but they are an area that
17 people look at on that basis. So that's really why the
18 committee thought it was appropriate to retain Dundon.

19 THE COURT: Are you saying that you need Dundon even
20 to analyze what happened and to determine whether there is a
21 equitable subordination claim or anything else, or that you're
22 thinking of them as a potential expert witness?

23 MR. GILAD: It's really more on the analysis front,
24 Your Honor, because it's -- the complication -- like, I could
25 talk to you about the legality of the contracts associated with

1 it, and we can go and try and grab third-party data and ask
2 Moelis and BRG to look at it, but it's -- the true -- the
3 people who understand this stuff best are the people who trade
4 it. And so thankfully, with respect to Dundon, we have
5 somebody who is an expert in that sense, like, a former trader
6 associated with CDS product who can help us understand how the
7 market moves may have occurred in correlation to decisions that
8 the company made that Chatham was a part of.

9 So that's the -- again, it's -- we're in the analysis
10 phase. And so we're trying to work through that, and the
11 parties have been trying to produce in the context of
12 mediation. So I don't want to get into the strength or
13 weaknesses of the claim, but yeah, it's really on the front end
14 of the analysis, and it's not a huge job. It's actually
15 relatively contained in terms of analyzing that data.

16 THE COURT: And help me -- assume that your
17 investigation verifies your worst suspicions. What is the
18 equitable subordination claim? Tell me what it is.

19 MR. GILAD: I guess, in theory, it would be that
20 through the efforts to -- there are two paths. One path would
21 be insider status, in essence, like driving the company to have
22 made decisions with respect to Chatham's position in the
23 capital structure that not only benefitted it there, but also
24 gave them a personal gain. So that has a whole breach of
25 fiduciary duty element associated with it, and that can play

1 into the question of equitable subordination.

2 And then the second --

3 THE COURT: Well, the question of whether Chatham had
4 influence seems to be something ordinary discovery gets to. I
5 don't see why you need a CDS expert to determine that.

6 MR. GILAD: Yeah, I guess equitable subordination also
7 looks at -- well, from -- I guess aiding and abetting breaches
8 of fiduciary duty to look at the gain that the party who was
9 exerting its influence obtained, and then equitable
10 subordination also looks at what a bad act might have been and
11 what the benefit to the party conducting the bad act was, and
12 then the damage, obviously, to the parties as a result of the
13 bad act.

14 So it's a link where you look and say, at least from
15 the committees' perspective, if the CDS transactions were part
16 of the -- were part of the more global fraudulent transfer
17 strategy and potential breach of fiduciary duty strategy and
18 Chatham benefitted from those individually as a result of that,
19 does Chatham then -- are they in a position where they
20 benefitted financially personally not only as a claimant in the
21 case, but as a third party, and therefore, you have kind of a
22 greater claim.

23 So that's -- we're still in the process of trying to
24 analyze it. It's not an easy thing to work through, but
25 that's, at least, the theory.

1 THE COURT: All right. Who else wants to be heard on
2 this?

3 MR. TECCE: Your Honor, it's James Tecce of Quinn
4 Emanuel on behalf of Chatham Asset Management. Would you like
5 to hear my response or are you asking if there's anyone else on
6 the committees' side?

7 THE COURT: No, no. You can go ahead.

8 MR. TECCE: Thank you very much, Your Honor.

9 We submitted an objection as to ECF 322, and in sum
10 and substance, it raises two points in response to the Dundon
11 application.

12 The first, which Your Honor noted, is that Dundon's
13 being retained to review a transaction that while it was
14 disclosed and aligned with the Securities and Exchange
15 Commission, it was abandoned.

16 Three months later, what happened was Chatham actually
17 facilitated McClatchy's refinancing of its revolving credit
18 facility and its first-lien notes by contributing new money
19 through a second-lien investment.

20 And Chatham respectfully submits that in this
21 particular environment, it's not the sound exercise of business
22 judgment to retain a third financial advisor to review a
23 transaction that did not take place. And this is especially
24 true when Moelis and BRG are both expert in all aspects of
25 restructurings and can easily advise the creditors' committee

1 with respect to CDS transactions.

2 Second point, Your Honor, requires me to make a
3 caveat, which is that Chatham disputes that there are any
4 claims arising out of the so-called April 2018 framework
5 agreement, the so-called orphaned CDS transaction, and the
6 assumption about the existence of any such claims is solely for
7 purposes of today's argument.

8 There was an allegation made earlier on this call of
9 misappropriation of information, or use of inside information,
10 and that is absolutely disputed by Chatham as a factual matter.
11 And to the extent that we have any discussion going forward
12 about any claims relating to that, it's solely for purposes of
13 the argument today, Your Honor.

14 But assuming, arguendo, that there are claims relating
15 to CDS transactions, it would bear emphasis that any such
16 claims are not estate claims that can be asserted by the debtor
17 directly or by the creditors' committee derivatively. And
18 that's because a CDS contract is a bilateral agreement where
19 the CDS buyer makes periodic payments to the CDS seller in
20 exchange for the CDS seller's agreement to cover the CDS
21 buyer's losses in the event the reference entity -- which,
22 here, would be McClatchy -- suffers one of the credit events
23 enumerated in the CDS contract.

24 But as the reference entity, McClatchy is not a party
25 to any CDS contract, and critically, McClatchy has no economic

1 interest in the outcome of any CDS trade. So while the
2 committee has spoken this morning at length about the impacts
3 of pricing in the CDS market, about what would happen with
4 respect to an auction, those are not McClatchy issues, and
5 those are not issues that go to economic losses suffered by
6 McClatchy or its estate. They are issues between the two
7 parties to the CDS contract, which would be Chatham in certain
8 instance, and another party.

9 And this point, Your Honor, of the absence of
10 McClatchy having an economic interest and/or being a party to
11 the contract, prompted the debtor to weigh in on the Dundon
12 retention. I note, Your Honor, in their response, which is at
13 ECF Number 325 in paragraph 2 they note that given the debtors
14 are not parties to any agreements implicating credit default
15 swaps, the debtors do not understand the committees' business
16 judgment in seeking to retain Dundon.

17 THE COURT: Didn't the debtors also say they don't
18 object, although they reserve the right to object to the fee
19 amounts?

20 MR. TECCE: That is correct, Your Honor, but they do
21 point out that they're not a party to that -- to any of those
22 contracts. That's a critical point, because it goes to whether
23 there are really any estate claims that are at issue.

24 THE COURT: Well, put aside whether the CDS contracts
25 involve the estate, are you saying that it is inconceivable

1 that there is no imaginable set of facts under which CDS
2 contracts would have motivated behavior and been relevant to
3 behavior that might constitute grounds for equitable
4 subordination?

5 MR. TECCE: I'm saying, Your Honor, as a factual
6 matter, we dispute the assertions that are made about Chatham,
7 but as a legal matter -- Your Honor used the phrase "worst-case
8 scenario" okay. Let's assume, again, solely for purposes of
9 discussion, I think the Aeropostale decision from Judge Lane is
10 highly probative on this issue.

11 In that particular case, Your Honor -- and I
12 apologize, it would be nice if I was in court because I would
13 like to hand you a copy of it -- but it's highly relevant to
14 what's being alleged here because in that particular case, the
15 private equity firm was an eight percent equity owner of the
16 debtor, was also the private equity firm owned the lenders to
17 the company which lended 150-million dollars to Aeropostale,
18 and they also owned a company which was a sourcing company.
19 Aeropostale was an apparel company.

20 And the allegation that was made in that particular
21 case was that this particular private equity firm had access to
22 inside and material information about Aeropostale because, as a
23 lender, they were in receipt of reports, financial reporting
24 about the company, and its financial performance. And the
25 allegation was made by the debtors in that case -- who, I note,

1 had BRG representing them -- that the receipt of that
2 information constituted the receipt of material nonpublic
3 information and enabled this private equity firm to insider
4 trade in the debtors' securities.

5 And what Judge Lane observed in that, Your Honor --
6 and I'm reading from page 411 of the decision which appears at
7 555 B.R. 369 is the following. "The debtor's argue, urge the
8 Court to find that the Debtors were harmed because an insider's
9 unauthorized use of information to trade 'sends a signal to the
10 world that something important (albeit unknown to the general
11 public) is happening at the company, harming the company by
12 artificially manipulating its financial condition.' The
13 debtors argue that by selling their stock in Aeropostale, Mr.
14 Kaluznsky (sic) and the Sycamore Parties undermined the
15 integrity and public's regard of the debtors. But this is not
16 the type of harm that courts are concerned about when
17 determining whether to equitably subordinate a claim."

18 And then Judge Lane says on page 410, "The debtors'
19 theory around the stock trading fails because it does not
20 satisfy the requirements for equitable subordination. The
21 debtors have failed to demonstrate harm to creditors or the
22 debtors, or that the Sycamore Parties obtained an unfair
23 advantage."

24 So my point to Your Honor is while Chatham disputes
25 the allegations, insider trading, manipulation, those types of

1 claims are not a basis to subordinate its claims. And claims
2 related to the CDS contracts are not estate claims, they would
3 be claims asserted by the counterparties to those contracts,
4 and that does not include McClatchy. So harm to creditors
5 cannot be shown.

6 I can't emphasize enough, though, Your Honor, that we
7 don't agree with their characterization of the events, or that
8 any of these activities took place. But as a legal matter,
9 it's not a basis to support any claims.

10 THE COURT: Okay. I understand.

11 Mr. Hansen, what was the -- reminded me -- the dollar
12 amount of the committees' investigation budget in the DIP
13 budget. Was it 900,000 or something?

14 MR. HANSEN: Your Honor, I think it was 750,000
15 dollars, but Mr. Gilad will correct me. And I believe that was
16 a combined budget for everybody, but Mr. Gilad knows the order
17 better than I do. He may correct me on that.

18 MR. GILAD: For the committees' side, that's correct.

19 THE COURT: For the committees' side it was 750?

20 MR. GILAD: Correct. I think it was a separate
21 investigation budget for the debtors.

22 THE COURT: Okay. And this particular expense would
23 come out of -- and be chargeable to that part of the
24 committees' budget, right?

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

1 Yes, to the extent that, exactly, Dundon is helping to
2 evaluate the strengths or the investigation associated with
3 claims against Chatham as a result of this and linking it to a
4 larger claim, I think that's right. There are -- part of
5 this -- we're probably going to deal with this later when we
6 get to fee objections at some point later, but we obviously
7 have a mediation ongoing that we were ordered into -- and so
8 part of our investigatory work has been done as part of a
9 mediation, as well, so we'll have to work through all that
10 together, but yeah, you are correct in that assumption.

11 THE COURT: Well, there is an agreed budget as to
12 the -- what the committee can spend on its investigation. I'm
13 troubled that I don't really have a very clear statement of
14 where this could possibly lead in terms of a claim against --
15 claim for equitable subordination or other claim that I really
16 feel like that I could articulate right now. It seems kind of
17 hopeful that's -- more of a sense of hopefulness that somebody
18 will be able to put something together rather than something
19 concrete.

20 On the other hand, the committee has a budget, whether
21 they spend it on lawyers or Moelis or Dundon or hourly fees for
22 Berkeley is a matter of judgment in their eyes. I will hold
23 them to their budget, but if they think that within that that
24 it makes sense to retain Dundon, in the absence of objection by
25 anybody other than the party who is being investigated, I will

1 approve it. Okay?

2 MR. GILAD: Yeah, thank you, Your Honor.

3 MR. HANSEN: Thank you, Your Honor.

4 THE COURT: Okay. What next?

5 MS. MADDEN: Good morning, Your Honor. It's Jennifer
6 Madden with Skadden, Arps, counsel to the debtors.

7 I'm going to take us back up near the top of the
8 agenda to the uncontested matters, and the next uncontested
9 matter on the agenda is item number 3, the debtors' relief from
10 rejection motion which was filed as docket number 289.

11 In support of that, the debtors chief restructuring
12 officer, Mr. Sean Harding, filed declaration in support of the
13 motion, which was attached as Exhibit B. He's on the line, and
14 he can testify if anyone seeks to ask him about that. So we
15 would respectfully request that Your Honor admit that
16 declaration into evidence.

17 THE COURT: I'm afraid, on my phone, you cut out for a
18 second. Is this the rejection procedures motion or the
19 rejection of the Wipro contract?

20 MS. MADDEN: It's the rejection of Wipro contract,
21 Your Honor.

22 THE COURT: Okay. All right. Any objections to the
23 admission of the declaration into evidence in support of this
24 motion?

25 All right. Hearing none, it is admitted.

1 THE COURT: Do any -- I didn't see any objections.

2 Does anybody have an objection to this motion?

3 All right. I'll approve that one.

4 MS. MADDEN: All right. Thank you, Your Honor.

5 Then turning to the next agenda item is number 4, the
6 debtor's motion to reject the Ponderay partnership agreement
7 and abandon this partnership interest. That was filed at
8 docket number 292.

9 The chief restructuring officer, Mr. Harding, also
10 filed a different declaration in support of that motion at 293.
11 Again, he's on the line and available to testify to the facts
12 set forth therein. And we would respectfully request that Your
13 Honor admit this declaration into evidence, as well.

14 THE COURT: Are there any objections to admitting that
15 declaration into evidence?

16 Okay. It is admitted.

17 Any objections to the motion?

18 All right. I reviewed it and it's fine. I'll approve
19 it.

20 MS. MADDEN: Thank you, Your Honor.

21 The next item on the agenda is item number 5. The
22 debtors' motion to enter into a new letter of credit facility.
23 Again, the debtors have a declaration in support of that motion
24 from Mr. Harding, which is attached to the motion as Exhibit B.

25 Again, he's on the line and available to testify. So

1 we would respectfully request that Your Honor admit that
2 declaration into evidence as well.

3 THE COURT: Any objections?

4 Okay. The declaration is admitted.

5 Any objections to the motion?

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

8 We have no objection to the motion. I did want to
9 flag that there was a redline filed that removed some language
10 from the order regarding a waiver of the provisions of Section
11 345(b). So with that change, the U.S. Trustee has no
12 objection, Your Honor.

13 THE COURT: Okay. All right. I've reviewed the
14 motion, it's fine, and will approve it.

15 MS. MADDEN: Thank you, Your Honor.

16 With that, I'm going to turn the podium over to my
17 colleagues at Togut and we'll take you through the next couple
18 of items on the agenda.

19 THE COURT: And all of these, whatever we do today,
20 I'll ask you to submit revised up-to-date Word format orders,
21 so if we have any additional edits, we can do them, but so that
22 we don't have to try to figure out what the current state of
23 play is, okay?

24 MS. MADDEN: Certainly, Your Honor.

25 MR. ORTIZ: Thank you, Ms. Madden.

1 Good morning, Your Honor. Kyle Ortiz of Togut, Segal
2 & Segal on behalf of the debtors.

3 The next matter on the agenda is the debtor's motion
4 to establish procedures for the sale or abandonment of de
5 minimus assets, which was filed at docket number 288.

6 The procedures provide a streamlined process for the
7 debtors to monetize and/or dispose of that, since they are of
8 relatively low value and not part of the debtors' go-forward
9 business plan.

10 The procedures track those that this Court approved in
11 Westinghouse, except they have smaller dollar amounts for each
12 noticed threshold. In the interest of time, Your Honor, unless
13 you have any particular questions, I won't go through the
14 details of this particular motion.

15 THE COURT: All right. Does anybody wish to be heard
16 on this motion?

17 I certainly have no objection to the concept. I -- we
18 went through it and I tried to make some comments and changes
19 to it yesterday that I had hoped to be able to send you before
20 the hearing, but due to the press of a number of matters, we
21 weren't able to do that.

22 In general, it does track what I did in Westinghouse,
23 but I'm concerned in the current environment that the time
24 periods are not reasonable. It's one thing to say that people
25 can be asked to react within seven days if everything is

1 functioning normally, as it was in Westinghouse, but that's not
2 the case right now. Some people who might have to react to
3 things aren't even in their offices. Hopefully, most of the
4 people on this phone have remote access to their emails and
5 other things, but even for lawyers, mail that's arriving at
6 their offices is sometimes delayed and it's difficult to
7 receive.

8 So I think, given where we are right now, due process
9 requires me to extend those time periods. We made some other
10 little changes that I don't think anybody will care about, but
11 we'll circulate them to you and if you think we've done some
12 horrible injustice, you can let us know.

13 MR. ORTIZ: That makes perfect sense, Your Honor. I
14 imagine something along the lines of fourteen days or whatever
15 Your Honor is going to put in makes perfect sense in this
16 environment, and we have no issue with that.

17 THE COURT: Okay.

18 MR. ORTIZ: The next matter on the agenda, Your Honor,
19 is the debtors' motion related to expedited procedures for the
20 rejection and assumption of executory contracts and unexpired
21 leases that was filed at docket number 249 (sic). This motion
22 is line with kind of the debtors' general theme of today's
23 hearing of savings costs and focusing on efficiency.

24 The debtors are party to roughly 2,000 executory
25 contracts and anticipate seeking to reject or assume many of

1 them during the case and, thus, the streamlined procedures for
2 doing so.

3 The procedures do ensure notice and opportunity to
4 object can be heard concerning any rejection or assumption by
5 the contract counterparties, and the procedures seek to
6 streamline, but still track closely to Bankruptcy Rule 9014 and
7 6006. And based on your comments to the previous motion, I
8 think we provide ten days' notice for both of the rejection
9 notice and the assumption notice, which is actually a little
10 bit more than you would necessarily have to reject if we filed
11 a motion on fourteen days' notice, but I'm happy to expand that
12 ten days to fourteen days, as well, in light of your earlier
13 comments.

14 We had some small changes to the proposed order
15 requested by the committee that are reflected in the blackline.
16 Unless Your Honor has any additional questions, we would
17 respectfully request entry of the proposed order.

18 THE COURT: Yes. I'm not really sure how much time or
19 money this saves as opposed to the process of making omnibus
20 assumption or rejection motions. It seems to limit and reduce
21 the objection periods, but that's not really a fee savings.

22 For the same reasons that I mentioned about, I think
23 rejection notices, you should make it fourteen. But if you
24 want the cure, and your proposed cure to be deemed to be
25 accurate, in these circumstances, I think ten or fourteen is

1 going to have to be expanded. It's going to have to be
2 twenty-one, okay?

3 MR. ORTIZ: Okay.

4 THE COURT: And you proposed selling -- or assigning
5 contracts free and clear of liens. What exactly are you doing?
6 What liens are you proposing to extinguish?

7 MR. ORTIZ: Well, to the extent that we're assuming
8 and then assigning the contracts being assigned to that entity
9 free and clear of liens, we added a provision to the order
10 based on comments we've heard from you in a number of hearings
11 that limits that to only parties that actually we know about
12 and received notice of the actual assignment.

13 So if there were somebody out there -- because I know
14 that this is a concern Your Honor has had in a number of
15 hearings in a number of contexts, that there might be someone
16 who has a lien on a particular property or has a lien in
17 connection with a contract that we don't notice and never is
18 aware of it, and has their lien extinguished. So it would only
19 apply to those who actually receive notice.

20 THE COURT: Okay. All right. And you have included
21 in this proposal for some abandonment procedures. Is this
22 supposed to be separate from the asset abandonment procedures
23 that you make subject to the other motion?

24 MR. ORTIZ: Well, so that was actually one of the
25 committees' comments, and it was to paragraph QH, which

1 basically makes it so that that track the procedures in the de
2 minimis asset procedures order. So to the extent that we're
3 seeking to abandon property at a lease that is being rejected,
4 we will follow procedures in the order that was entered just a
5 moment ago.

6 THE COURT: Okay. All right. Submit the Word version
7 of the order reflecting your agreements with the committee. If
8 we have any additional changes we think are appropriate, we'll
9 let you know, but in concept, we'll approve something.

10 MR. ORTIZ: Thank you, Your Honor.

11 The next item on the agenda is the debtor's
12 application to employ Deloitte as the debtors' independent
13 auditors filed at docket number 294.

14 Meryl Rothchild, which is the -- who is the associate
15 general counsel is on the line if Your Honor has any questions.

16 A supplemental declaration was filed at docket number
17 353 providing additional detail on Deloitte's relationship with
18 the PBGC and a notice of filing business associate agreements,
19 which is a document that was referenced but not attached to the
20 2019 engagement, was filed at docket number 371.

21 No objections were received, and the only
22 modifications to the order that we've made were to reflect
23 those additional filings.

24 Deloitte has been the debtors' independent auditor
25 since at least 1984, and thus is intimately familiar with the

1 debtors' business, and is well qualified to continue to serve
2 in that role during the pendency of these cases.

3 Thus, unless Your Honor has any questions, we
4 respectfully request entry of the order approving the retention
5 of Deloitte.

6 THE COURT: Okay. We have some minor changes to the
7 order that conformed to what we've done in other cases in which
8 Deloitte as been retained and that I know people would not have
9 any issue, so if then, fine, we'll send those to you and if I'm
10 wrong and if you do have a major issue with them, let us know.
11 Okay?

12 MR. ORTIZ: Thank you, Your Honor.

13 And with that, I'll hand it back over to Mr. Durrer,
14 who I think will be handling the contested items.

15 MR. DURRER: Yes, Your Honor. This is Van Durrer for
16 the debtors. Can you hear me okay?

17 THE COURT: I can.

18 MR. DURRER: Okay. Great. Sometimes transition
19 back-and-forth is not as easy as it should be.

20 The next item on the agenda, Your Honor, number 9, is
21 docket number 291 which is our motion to sell a parking lot
22 with a handful of spaces in Raleigh, North Carolina. Once upon
23 a time, the debtors had operations there. The debtor no longer
24 has operations there.

25 Sean Harding, again, in connection with this, did file

1 a declaration in support of the motion, which is attached as
2 Exhibit B. We'd like to ask that Your Honor consider that
3 declaration to be in evidence.

4 THE COURT: Any objections?

5 All right. It's considered to be in evidence.

6 MR. DURRER: Thank you, Your Honor.

7 So again, this property is approximately thirty-one
8 spaces. The buyer is not affiliated with anybody in the case.
9 The purchase price is a million-and-a-half dollars. They did
10 request that we not further market the property, but we
11 obviously noticed it up. McClatchy's a very public case and we
12 didn't receive any objections by anyone who was wanting to pay
13 more than this buyer.

14 The one response we did receive from the committee,
15 which makes it contested, is that there was a disagreement over
16 application of proceeds.

17 We've agreed that we'll simply apply the proceeds
18 consistent with the DIP order. And the DIP order, as I think
19 Your Honor will recall, has a pretty broad reservation of
20 rights. So whatever -- and this, by the way, is notes priority
21 collateral. Most real estate that we had is. So we're happy
22 to comply with the DIP order. We're not seeking for any
23 different relief than that.

24 And as I said, depending on whether the notes
25 creditors are over- or undersecured and/or entitled to adequate

1 protection or not entitled to adequate protection, will
2 ultimately be the driver for how this money gets applied at the
3 end of the day. But we would like to get the money out the
4 door to reduce our obligations to the lenders, that's our
5 preference. And given that it's a modest amount of money, it
6 really doesn't change anything with respect to COVID one way or
7 the other.

8 THE COURT: Well, your change as to the disposition of
9 the proceeds, does that resolve the committee objection

10 MS. DURRER: It wasn't crystal clear to me --

11 MR. GILAD: Your Honor --

12 MS. DURRER: -- Your Honor, if --

13 MR. GILAD: Your Honor, this is Erez Gilad from
14 Stroock & Stroock & Lavan on behalf of the creditors'
15 committee.

16 We do not have an objection to the sale. We believe
17 and agree with the debtors that the sale is fine. The concern
18 was with the application of the proceeds. So it's unclear to
19 us, as well, where things currently stand in terms of how those
20 proceeds will be applied.

21 We, too, believe that the proceeds should be applied
22 consistent with the DIP order. To be clear, our understanding
23 of the final DIP order prior to any modifications proposed
24 today is that the proceeds with respect to notes priority
25 collateral would be applied first to adequate protection

1 payments owed to the first-lien creditors.

2 So to the extent that the proceeds are being
3 so-applied, we would have no objection. We do plan to cite the
4 fact that adequate protection payments are being paid down as a
5 factor that the Court should consider in considering the DIP
6 modifications, but so long as what I've just laid out is the
7 case and is truly consistent with the DIP order, then we have
8 no objection.

9 I think our concern was with the paragraph in the DIP
10 order that suggested that the fee -- the proceeds would be
11 applied and held in a segregated account, or, perhaps, in a
12 prior version indicated that they were going to used to pay
13 down the balance of the first-lien debt which would be
14 inconsistent with the debtors' austerity of liquidity measures.

15 MS. DURRER: Yeah, paragraph -- this Van Durrer, Your
16 Honor. Paragraph 18 of the DIP order does provide these funds
17 would go first to adequate protection payments, if necessary.
18 And again, that's an end-of-case determination. So we're happy
19 to rely on the reservation of rights if there is ultimately a
20 disagreement between us and the committee and/or the first-lien
21 lenders about where this money goes. But it doesn't sound like
22 this particular agenda item number 9 is contested anymore.

23 THE COURT: It doesn't sound that way to me, either.
24 So just come up with language in paragraph 9 that the committee
25 is happy with, and then submit it.

1 Paragraph 10 has a provision that I often see in these
2 sale orders which says that I'm purported to give the debtors
3 the authority to make filings in the names of other people if
4 for some reason those other people don't do so. I'm at a loss
5 to understand how I have the power to do that.

6 MS. DURRER: There are various provisions of the Code,
7 Your Honor, that do give that authority, such as with respect
8 to proofs of claim. 1142 contains some more authority. But
9 we're happy to come back to Your Honor if that language
10 disturbs you, we can simply come back to you if somebody's not
11 agreeing to release a lien based upon the --

12 THE COURT: Okay.

13 MS. DURRER: -- the sale free and clear.

14 THE COURT: Filing authorities to accept my order for
15 filing which --

16 MS. DURRER: Okay.

17 THE COURT: -- is something you've already said
18 elsewhere in this proposed order, but give you kind of a
19 court-ordered power of attorney to file documents in the names
20 of other people, I don't think I have power to do that.

21 MS. DURRER: Understood, Your Honor.

22 THE COURT: Okay.

23 MS. DURRER: So that takes us to agenda item number
24 10, Your Honor, which is the debtors' motion for modification
25 of the final DIP Order. Let me make a few remarks at the

1 outset.

2 And the good news, I think, is that the reduction and
3 deferral only, not elimination, of fifteen percent of adequate
4 protection payments and fifteen percent professional fees
5 appears to be agreed across the board. And then I'll get into,
6 in a moment, where the differences lie.

7 Again, just for the record, Van Durrer speaking, and
8 we're talking about docket number 299.

9 We filed this motion exactly two weeks after entry of
10 the DIP order, and that was while the company was still
11 analyzing the 2020 budget for a post-COVID-19 reality.

12 We did that because we were concerned that Your
13 Honor's jurisdiction to go back and modify that order under
14 Rule 59 and Bankruptcy Rule number 9023 would, perhaps, be
15 limited if we waited too long. And so we made an estimate
16 based upon what we already knew and the initial work that had
17 been done.

18 On the heels of that filing, the very following week,
19 we did share with all the stakeholders that revised budget,
20 which took into account what we've casually referred to as the
21 "austerity measures", those deferrals in that budget, and the
22 company had also made some judgments about the sale process,
23 which I'll come back to. But in essence, the -- what the
24 motion is designed to accomplish is to give us the flexibility
25 to continue in the case on a conservative basis when no one can

1 actually say with a straight face that they know what the
2 impact of COVID-19 is going to be.

3 I mean, for example, China was very quick to open its
4 theaters. Nobody's going to the theater. Countries in Asia
5 that were -- that flattened the curve earlier than western
6 countries, candidly because in Asian countries people tend to
7 follow the rules better than we do in more free societies,
8 they're already experiencing what's been referred to as the so-
9 called second wave.

10 So it's not clear where we're going to go, so the
11 company has tried to be conservative in terms of analyzing
12 this. And as a professional, my partners would probably smack
13 me, and my peers and colleagues might too, because interim
14 allowance and payment of professional fees in Chapter 11 cases
15 has become routine. But it is a privilege and not a right.

16 And so the company, with the support of its
17 professionals, with the acquiescence of its first-lien lenders,
18 and with the cooperation of others including some givebacks by
19 executives -- and not to mention, by the way, furloughs and
20 layoffs, which hurt real people that don't have the luxury of
21 doing their work from their living room, as many of us on the
22 phone are able to do. There was a contribution across the
23 entire system to make sure that COVID-19 didn't overcome us.

24 Now, going back to what does divide us, so -- and
25 they're sort of mirror images of each other. The first-lien

1 lender said --

2 THE COURT: Before you do that.

3 MR. DURRER: Yes, Your Honor.

4 THE COURT: Would you (indiscernible) do that, your
5 initial motion asked to defer fifteen percent of the adequate
6 protection payments, which as I understand it was fifteen
7 percent of the monthly interest payments, and I guess fifteen
8 percent of the fees incurred by the advisors to the lenders.
9 How much are we talking about in terms of the monthly interest
10 payments, and what would fifteen percent of that be?

11 MR. DURRER: I think Mr. Harding might correct me, but
12 I believe that the fifteen percent on the interest payments is
13 approximately 200,000 dollars a month. And the professional
14 fees of the lenders' counsels and their bankers are in the
15 neighborhood of a few hundred thousand dollars a month. So
16 again, fifteen percent of that is modest.

17 The lion's share of the liquidity impact comes from
18 the professional fees for the debtors' professionals, as well
19 as the professional fees for the committee's professionals.
20 And that number -- I believe over the time period we're talking
21 about, so aiming at the end of Q3, I think the total benefit,
22 Your Honor, is between four and five million dollars, which is
23 where that tax refund comes into play.

24 Basically, we would give the debtor more liquidity
25 today and then shift those professional fee reserves and

1 payments to an 11.6-million-dollar tax refund, which is
2 anticipated in July or August if -- there are some people still
3 waiting for their enhanced workers -- or unemployment checks
4 from the federal government. There's people that haven't
5 received their additional 1,200-dollar check, which I'm -- my
6 mother and my ex-mother-in-law are among them. They haven't
7 gotten their checks yet. They look every day. So
8 conservatively, it would come sometime over the summer.

9 We know, by the way, the amount pretty precisely, Your
10 Honor, because we have actually filed that return. We waited
11 to get guidance from the government as to what boxes to check,
12 to ensure that this refund would be expedited. And so once we
13 got that guidance, we filed it I believe a Friday or two ago.
14 I know it was on a Friday. It may have just been last Friday.

15 THE COURT: Much of the debate that's been generated
16 by your request has to do with the fact that you're -- that you
17 want to limit adequate protection payments and, therefore,
18 modify the DIP. Even though most of the savings you want to
19 get are really to modification of the timing of professional
20 fee payments, which doesn't require modification of the DIP.
21 The adequate protection payment deferral is so small, I'm
22 actually stumped as to why you even included it in your
23 request.

24 MR. DURRER: Yeah, it's a good question, Your Honor.
25 The reason why we included it is we wanted to create an

1 alignment of interests. And we could have filed two motions.
2 We could have filed a motion to modify the interim-comp order
3 as well. But we wanted to demonstrate to the lender group that
4 we thought that enhancing liquidity by itself was a form of
5 adequate protection and, therefore, eliminating the payouts to
6 professionals, which as I said, again, is a privilege not a
7 right, was one way of enhancing that liquidity.

8 One of the big concerns we have, Your Honor, is that
9 this isn't --

10 THE COURT: Well, let me -- again, I didn't even see
11 specifics as to how much -- what your liquidity issue was, what
12 you needed to defer in order to meet liquidity requirements,
13 whether that could be done in terms of professional fees,
14 whether this is purely a timing issue and how much -- if all it
15 is, as you say, that I make people wait for quarterly
16 allowances, which is what the Code normally requires, that
17 seems to require no change to adequate protection and no change
18 to the DIP order. So I just don't understand why -- it seems
19 to me you've almost got an artificial request for a change to
20 adequate protection that brings a whole lot of other issues
21 into play, and I don't understand why.

22 MR. DURRER: Well, the reason why, Your Honor -- and
23 I'm being careful about keeping this a public conversation, but
24 we thought that it might -- we did not -- we were not prepared,
25 and we did not think it wise to publish the debtors'

1 anticipated 2020 budget, especially when we're in the midst of
2 a sale process.

3 We have shared it and been completely transparent
4 about it with the stakeholders. And no one, not the committee,
5 not the first-lien lenders objected to the relief on the basis
6 that they don't have that information.

7 And if Your Honor would like to have a conversation
8 with Mr. Harding, who is the keeper of that information, in
9 a -- in a private, sealed courtroom, which I understand is at
10 least possible, we can go into those details.

11 But we thought it imprudent to go public with those --
12 with that information. And I think Your Honor can take it on
13 face value that none of our most important stakeholders thought
14 that imprudent -- or thought that prudent to do otherwise,
15 given that no one has objected or complained about that.

16 THE COURT: Yes, but it's generated, at least in part,
17 some purported justification for other demands by people who
18 occupy the dual positions of secured creditors and interested
19 buyers of the company for concessions about the sale process
20 and things like that. I have to tell you I am absolutely at a
21 loss because it seems to me this particular part of your
22 request is totally unnecessary, even by your own descriptions
23 of your liquidity.

24 If you -- you could make it up by just deferring more
25 professional fees, which you yourself say you will have enough

1 to pay, if and when they're allowed at a quarterly hearing. So
2 why am I, in effect, artificially acknowledging something that
3 gives the lender some purported right to complain that they
4 need other concessions for? I don't get it.

5 MR. DURRER: It's not clear, based upon a post-COVID
6 environment, where value breaks. And so we thought that,
7 again, both to align interests, and also because it's not
8 crystal clear what adequate protection lenders are going to be
9 entitled to at the end of the day. So we thought a deferral
10 across the board made the most sense in trying to preserve
11 liquidity.

12 THE COURT: All right. Go ahead and continue.

13 MR. DURRER: Thank you, Your Honor. So with
14 respect -- so again, we got two sets of comments, one from the
15 first-lien lenders and one from the committee. The first-lien
16 lenders said we concur with -- again we can call it austerity
17 for convenience -- we concur with the austerity approach to
18 liquidity, but we're distressed with the way that this case is
19 going. And we're going to insist on a court order directing
20 the debtors to pursue a sale process.

21 And then there's the investigation budget issue, which
22 again, we didn't consider to be controversial. Based on Your
23 Honor's earlier comments, it doesn't sound like you view
24 sticking to the budget to be particularly controversial, so
25 let's set that to the side.

1 With respect to the sale process, the debtors had
2 already made a judgment, and the board of directors had already
3 made a judgment that absent meaningful progress with respect to
4 the mediation that, as a contingency planning measure, the
5 debtors were going to pursue a sale process. Mr. Gilad
6 conceded as much in his remarks. We made that known early and
7 often.

8 And so the one-page sale-process summary that's
9 attached to the agenda docket 375 lays out that before the
10 filing of this motion we started to reach out to folks and
11 distributed a teaser. We within days of that began
12 communicating with the UCC advisors here's the list of people
13 we're going out to. Here's a draft of the confidential-
14 information memorandum. Here's the 2020 budget. Here's the
15 process letter that contains the May 5 deadline for preliminary
16 expressions of interest.

17 So we were already going down this road. So in one
18 sense, Your Honor, the demand by the first-lien lenders was
19 sleeves off our vest, because it was already underway. And we
20 told them -- and I don't expect Your Honor to express a point
21 of view on this, but we told them that we thought it was highly
22 unlikely that Your Honor would direct the debtors to pursue a
23 sale, or in the case of the committee, direct the debtors not
24 to pursue a sale because, contrary to the comments that Mr.
25 Hansen made, we do get to make these choices.

1 How a debtor determines to get out of a case and when
2 is absolutely within the business judgment of the debtor. And
3 we developed a time line that is, by the way, not what the
4 first-lien lenders wanted. It is longer by design, because we
5 want to have an opportunity to do due diligence with bidders --
6 bidders that are serious that clear a preliminary indication of
7 interest.

8 So we've developed a time line that is longer, but
9 bidding procedures are never required except in two instances.
10 One, where a bidder itself insists that I need to be protected,
11 I want to know when the process is over, and that's typically
12 driven by a stalking horse bidder, and when such a stalking
13 horse bidder insists on a fee.

14 I think it's unfair for the committee to say that we
15 publicly embraced the credit bid that the lenders announced in
16 their cross motion. Rather, we made an announcement to ensure
17 that employees, vendors, other stakeholders weren't confused
18 about what was going on when someone else took the microphone.

19 So we issued our own release to make it clear how the
20 company viewed that to make it clear that the company, in
21 advance of receipt of that term sheet, which was also, by the
22 way, provided substantially contemporaneously to the committee,
23 that the company had already begun to pursue a process. And
24 this was merely one element of that potential process. And the
25 process would run out several weeks into the summer.

1 So again, we don't think it's -- and we did this with
2 Your Honor in Westinghouse. We don't think it's controversial
3 not to bring bidding procedures to the Court under these
4 circumstances. It would be perhaps laughable to ask Your Honor
5 to approve a stalking horse fee under the circumstances where
6 we have such interests. And that really gets us to the point
7 of the matter.

8 We have twenty entities under NDA, monied, qualified,
9 legitimate entities that are interested in our assets, at
10 least -- and by the way, we're still negotiating, candidly, a
11 reupped NDA with the first-lien lenders, that we hope to
12 conclude this week. So the twenty exclude that credit-bid term
13 sheet that we've heard so much about this morning.

14 So it's those pressures that who knows if we've got
15 our COVID-19 predictions right, number one. Number two, we
16 were supposed to have principals at live mediation sessions on
17 April 7, April 27, and April 28 when we sat down at the end of
18 February, early March. None of that happened.

19 We've had no principal-to-principal sessions at all.
20 We've had constructive discussions, to be sure. We've got
21 offers that are circulating, which is all good. But we're a
22 good month behind where we wanted to be.

23 We have antitrust issues, assuming that Your Honor
24 does sign an order regarding a transaction on July 14. We
25 still have to clear that. So we're right up against the

1 liquidity predictions that we've made, again, assuming we have
2 it right. So that's why we requested the relief. We think
3 it's pretty fair. As we mentioned in our papers, Your Honor,
4 we could have gone in a Pier 1 or a Modell's kind of direction.
5 We thought that that wouldn't help us with our problem.
6 Extending the runway and making sure that if we do -- if we are
7 overly aggressive in our assumptions as opposed to overly
8 conservative, we wanted to make sure that we had a safety net.

9 The last issue that the committee raised is with
10 respect to the waterfall of the refund. I think Your Honor hit
11 the nail on the head. The reality is that the professional
12 fees for the first-lien lenders are a modest increment in the
13 deferral. So although it doesn't matter, it is their
14 collateral, and we thought it would frankly be offensive to
15 push them down a waterfall on their own collateral, given that
16 the tax refund we're talking about here is more than double the
17 professional-fee deferral that we're talking about. So we
18 didn't think that that objection was well founded. So those
19 are -- I'll let the first-lien lenders speak for themselves
20 unless Your Honor has more questions of me.

21 THE COURT: Well, I will have questions about the sale
22 process, but I'm going to defer those for a minute. On the
23 proposed order, I really can't understand what you're proposing
24 to do on the investigation budget, and whose investigation
25 you're proposing to limit, to what extent you're just proposing

1 to defer those payments, or to cap them. And what on earth you
2 mean by an administrative solvency test for them, particularly
3 when they're otherwise subject to a carve-out. So what exactly
4 are you proposing to do?

5 MR. DURRER: This -- what we're proposing to do is
6 make interim payments of up to sixty-five percent of those
7 budgets until further order of the Court. The first-lien
8 lenders have agreed that if they're satisfied or if we
9 otherwise make the demonstration of administrative solvency,
10 because we have -- presumably because we have a transaction for
11 Your Honor to approve, that they'll allow that to go back up to
12 beyond the full investigation budget because, obviously, if
13 there's administrative solvency, and they're paid and gone,
14 which would be a consequence of administrative solvency, they
15 don't care what happens to that money.

16 The unsecured creditors' committee, in general as a
17 class, may care. But they don't care about people getting paid
18 behind them anymore. From our perspective, Your Honor, we
19 thought abiding by the budget for the time being was plenty.
20 So candidly, Your Honor, we view the unless demonstrated to be
21 administratively solvent language as almost surplusage because
22 the reality is we always thought that we were abiding by that
23 budget.

24 THE COURT: And what is the budget -- I know there was
25 a specific budget for the committee. At least I recall that.

1 What's the overall investigation budget?

2 MR. DURRER: The overall investigation budget is a
3 million dollars, and it's split between 250,000 for the
4 debtors, professionals, the Togut firm, and 750,000 dollars for
5 the committee professionals. And then there's some carve-outs
6 from that. So for example, to the extent that discovery
7 requests are made, and the company's digging up emails or
8 paying contract attorneys to go through those, those sit
9 outside of those numbers.

10 THE COURT: So what you're actually proposing then is
11 to require the debtor and the committee to live by their
12 respective budgets, potentially the budgets to which they
13 previously agreed.

14 MR. DURRER: Exactly, Your Honor. And again, we can
15 always come back to you and say we won a judgment against
16 Shadem (ph.); you should give us more budget. Or we have a
17 transaction that's going to pay 500 million dollars to the
18 estate. We can pay all our bills. So it's just pressing
19 pause. It's the same deferral.

20 And again, from a bankruptcy perspective, right, we
21 were worried about the fourteen-day clock that was running on
22 making these modifications and your jurisdiction. And we
23 preferred a consensus approach, which again, subject to
24 comments around the edges -- it's a fair point that a sale
25 process is not around the edges, but we viewed it as such

1 because we had already commenced it.

2 But the reality is we did get largely a consensus on
3 the fifteen-percent deferral. But we didn't know that when we
4 filed the papers on -- earlier in the month of April. I think
5 it was the 16th. So I know I've complained about this before,
6 but the debtors were forced to follow a read, fire, aim
7 approach. But we're very happy that the parties worked with us
8 to understand the numbers and to get sort of comfortable with
9 the numbers and the conservatism for the meantime.

10 Again, I know that the committee has concerns about
11 the sale process. We're going to take stock of those concerns.
12 We've already been working with Moelis. We'll continue to do
13 so, as any debtor should. But as I said at the outset, it's
14 really not for today. I know Your Honor said you had some
15 questions about it, which I'm happy to answer.

16 THE COURT: On the investigation fees, if there is an
17 adequate protection concern about the professional-fee costs in
18 the Chapter 11 case, the normal secured creditor would seek to
19 cap the professional fees. The fact that the objection is
20 raised by the very people who are the targets of the
21 investigation, and that it purports to single out only the fees
22 that are spent on that investigation raises the obvious
23 question of whether some interest other than adequate
24 protection is really motivating the objection and the proposed
25 agreement. So what's the answer to that?

1 MR. DURRER: Well, the answer to that is there's -- I
2 haven't heard any allegation, and maybe I just missed -- but I
3 haven't heard any allegation or attack with respect to the
4 first-lien debt. And it is a first-lien debt that is -- that
5 has announced its credit bid. So there's 263 million reasons,
6 Your Honor, why I think it is a fair objection. Chatham sits
7 by itself in the second- and third-lien debt. And I think
8 that's where the investigation is focused. So I don't want to
9 speak for Brigade and other first-lien lenders, but that's I
10 think the answer to your questions.

11 THE COURT: Well, basically, the first lienholders,
12 seems to me by their prior agreements and their continued
13 insistence that they be paid monthly interest -- ongoing
14 interest accruals and ongoing professional fees, have
15 essentially acknowledged that there is more value there than
16 the amounts of their claims, including their amounts of their
17 claims that have accrued to date.

18 And they seem to have acknowledged that a sale process
19 is sufficient to give them adequate protection, to the extent
20 that we're worried that COVID-19 might affect the value of the
21 business. So what the heck is the big deal about the
22 investigation budget insofar as the first-lien lenders are
23 concerned? Seems to me, at least I'd like people to explain to
24 me why this isn't just a request by Chatham to target a
25 particular part of the budget that, for reasons that relate to

1 its separate interest, as the target of the investigation.

2 MR. MANNAL: Your Honor, this is Doug Mannal, from
3 Kramer Levin, on behalf of Brigade Capital, who is the single
4 largest holder of first-lien notes. It may make sense for me
5 to address the Court's question.

6 THE COURT: Go ahead.

7 MR. MANNAL: Your Honor, I would want to disagree with
8 the conclusion that there's been any determination made as to
9 the over-secured status of the first-lien notes. Let me begin,
10 Your Honor, with where we were at the last hearing.

11 And at that time, the Court suggested that should the
12 landscape change that the first-lien noteholders, again Brigade
13 Capital, would be free to come back to the Court and ask for
14 additional adequate protection beyond that what was
15 contemplated in the proposed final DIP order.

16 And Your Honor, the landscape has certainly changed,
17 and therefore --

18 THE COURT: Let me ask you bluntly. What is your
19 position as to whether you are or are not over-secured?

20 MR. MANNAL: It may be. It very well may be that we
21 are not over-secured. And therefore, there will be no value
22 beyond --

23 THE COURT: That's not an answer -- that's not an
24 answer to my -- that's not an answer to my question. If I
25 don't know for sure that you're over-secured, why am I

1 continuing to pay monthly interest payments?

2 MR. MANNAL: Because there is a diminution or a
3 potential diminution in value of our collateral, Your Honor.
4 And as part of our negotiated adequate protection, it included
5 current payment of interest. It included current payment of
6 professional fees. It was not as a result of us being over-
7 secured.

8 THE COURT: Payments of interest don't -- payments of
9 interest leave your claim in place. That's not the way you
10 deal with a decline in collateral value.

11 MR. MANNAL: To the -- to the --

12 THE COURT: I pay your (indiscernible) only if they're
13 covered.

14 MR. MANNAL: To the extent the payment of interest --
15 excuse me, Your Honor. To the extent it's subsequently
16 determined that we are not over-secured, those payment of
17 interest would certainly be applied to principal.

18 THE COURT: Okay. You told me in your papers that you
19 submitted a proposed bid for the debtors that implies a value
20 higher than the amount of the first-lien debt.

21 MR. MANNAL: There is a credit bid of the first-lien
22 debt, Your Honor. That is not a determination as to value.
23 That is a credit bid that's combined with a cash bid that the
24 first-lien noteholders are supportive of.

25 THE COURT: Go ahead.

1 MR. MANNAL: Your Honor, I want to talk about how the
2 landscape has changed, and what the basis is for the first-lien
3 noteholders to receive additional adequate protection, and the
4 conversations we had with the debtors about what that
5 additional adequate protection would be.

6 As Mr. Durrer said, we are in possession of updated
7 numbers from the debtors that show the impact of COVID-19 on
8 the debtors' business, which, of course, is our collateral, as
9 are the committee, as are the other first-lien noteholders.
10 And it's important, Your Honor, as Mr. Van Durrer said, that as
11 a result of that, there's a need for adequate protection.

12 In addition, Your Honor, the estate professional fees
13 that this debtor has incurred I think in the first forty-five
14 days of the case exceeded nine million dollars. That's well in
15 excess of what the DIP budget proposed and was estimated to be.

16 And the third issue that's changed, Your Honor
17 while --

18 THE COURT: Didn't you know that -- didn't you know
19 that on the date that I approved the final DIP order?

20 MR. MANNAL: I did not have access to that information
21 on the date the final DIP order was entered, Your Honor. That
22 was subsequent. We did not know that.

23 In addition, Your Honor, there has been a request by
24 the debtors to modify the adequate protection payments being
25 made to the first-lien noteholders. And while it's 200,000

1 dollars a month, arguably a small sum, over time, that will
2 significantly add up. And I think -- I think it is material.

3 And so as Mr. Van Durrer said in his remarks, we've
4 been able to resolve our objection and motion for additional
5 adequate protection between the debtors, the noteholders, and
6 the DIP lenders. And we have consented to the reduction in the
7 payment of our adequate protection as set forth in the amended
8 DIP order.

9 And we did that as a result of agreeing with the
10 debtors on a sale process. And as Mr. Durrer said, we believe
11 the debtors' sale process has -- it's very lengthy. Let's put
12 it that way. They are holding us out until the middle of July
13 to have a sale hearing under their proposed schedule. We think
14 this asset can be sold much quicker, however, we defer to the
15 debtors' business judgment as to what they thought was an
16 adequate sale process.

17 And to be clear, Your Honor, we remain hopeful that we
18 can achieve a consensual Chapter 11 plan in this case. But we
19 think the sale process is extremely important, and this dual-
20 track sale process is extremely important to provide the best
21 opportunity for a successful restructuring and preserve the
22 business as a going concern, because I think it's very
23 important that Your Honor recognize that there is tremendous
24 risk to this asset. And a dual-track process can avoid
25 administrative insolvency.

1 And second, Your Honor, I want to talk a little bit
2 about the investigation budget that's been the topic of a lot
3 of conversation.

4 THE COURT: Why does what you just said argue in favor
5 of a sale process that you and the debtors determine, as
6 opposed to a sale process with procedures that are presented to
7 me for my advance approval?

8 MR. MANNAL: Your Honor, I think the idea is that
9 this -- there is tremendous administrative burn in this case.
10 And there's really no need for an approval of a bid
11 protections, your typical stalking horse bid protections that
12 Your Honor would have to approve the payment of, where there's
13 a schedule that the debtors in their business judgment have
14 created and notified other parties. And it's at that sale
15 hearing that the Court will determine whether or not that sale
16 process resulted in the highest and best --

17 THE COURT: Then why would you want to defer --

18 MR. MANNAL: -- proposal.

19 THE COURT: -- instead of having the -- having the
20 time period and the details decided upfront?

21 MR. MANNAL: Your Honor, I will just say that this was
22 a negotiated resolution of our limited objection and motion
23 with the parties. And I think that this was a way to ensure
24 that there was a process in place that the debtors thought was
25 the best process. I don't know if the debtors want to discuss

1 at all the Court's question with respect to the sale process
2 being proposed.

3 THE COURT: Well, for example, you require in -- you
4 proposed to require initial indications of interest by May 5th.
5 Are people who don't express initial indications of interest
6 barred from further participation?

7 MR. MANNAL: Your Honor, I believe the debtors' sale
8 process began on April 6th. And I'm looking at what was
9 attached to the agenda, today's agenda. It's called "Project
10 Mercury Sale Process Summary". And so for the last month, I
11 understand that the debtors' advisors have been out discussing
12 a possible sale with the relevant parties. I believe they've
13 been in communication with advisors for the committee.

14 They've certainly been in communications with advisors
15 for the first-lien noteholders as to who they are reaching out
16 to and making sure that if we had -- while we don't know
17 exactly who was reached out to, if we had questions about those
18 parties, that we would have the ability to submit alternative
19 parties to supplement whatever list that they had. So this
20 process has been ongoing.

21 THE COURT: All right, but that didn't answer my
22 question. If people don't express an initial indication of
23 interest by May 5, are you purporting to bar them from any
24 further participation in the process?

25 MR. MANNAL: That is not a decision --

1 MR. DURRER: May I respond --

2 MR. MANNAL: -- for the noteholders, Your Honor.

3 Yes, please.

4 MR. DURRER: Yeah, so this is Van Durrer, Your Honor,
5 and I appreciate the opportunity to respond to that because I
6 agree with Mr. Mannal that that's not a first-lien lender call.

7 As Your Honor knows, because you've been doing this
8 quite a while now, there's always a tension between finality
9 and fairness on the one end of the spectrum and getting that
10 last dollar on the other end of the spectrum. And so from a
11 fairness perspective to all the bidders and the stakeholders in
12 the case, the committee as well as the first-lien lenders, we
13 would do our level best to have folks adhere to the deadlines.

14 That said, if an opportunity for value maximization
15 presented itself that, in the business judgment in consultation
16 with the other parties, including the committee, suggested that
17 we should modify or temper deadlines and things, then we would
18 definitely examine that opportunity and apply business judgment
19 to it, as you would expect us to do even if there was a court
20 order that set a deadline.

21 There's Judge Carey, as a matter of fact, has an
22 opinion on this very point himself. And I'm sure other judges
23 do as well, where they are forced to balance that tension
24 between somebody who shows up at the eleventh hour with more
25 money, but they missed a deadline here or there. That's

1 something we'll have to confront.

2 But yes, for fairness of everybody else who's spending
3 money on the process, investing resources and attorneys and
4 their own financial advisors -- from a fairness and process
5 perspective, we should do our very best to adhere to these
6 deadlines, again, subject to that judgment that may or may not
7 come down the road.

8 THE COURT: What information have people been given,
9 and does it include the same information that's been given to
10 Chatham and Brigade?

11 MR. DURRER: Yes, Your Honor, there's equal
12 information across the process. In fact, there's more
13 information arguably that's been given to the rest of the
14 bidder community than Chatham and Brigade for two reasons.
15 One, Chatham and Brigade are not yet under NDA, so they haven't
16 had access to certain things that -- for which they might want
17 to see a cleanse. And again, I hope that we'll clear the
18 negotiation on that this week.

19 Number two, individual bidders have been directly
20 engaged on literally a day-by-day basis with their own request
21 for additional information. If they have a question about X or
22 Y or Z, we answer the question. And it's not -- it's not for
23 us to tell Chatham or Brigade hey, bidder 7 asked this piece of
24 information. So if an additional -- if any individual bidder
25 is more proactive about asking additional diligence questions,

1 they will naturally have an accumulation of more information.

2 There should be a data room populated this week. And
3 again, the design was we didn't -- as you know, Your Honor,
4 again with these processes, it's inevitable that one or more of
5 our competitors will sign an NDA more for the purpose of
6 getting a look under our hood to better understand their own
7 business than because they're genuinely serious about a
8 transaction.

9 So under those circumstances, it's routine to withhold
10 the more sensitive information until a round two, to make sure
11 that people are real and have expressed a desire to be
12 considered serious. So that's why we've structured it this
13 way. But all those things will be rolling out later this week
14 and upon the heels of the May 5 deadline, once we actually get
15 those expressions of interest in. And then we'll have a solid
16 five-week period for people to come up with committed bids.

17 THE COURT: Well, it strikes me that if what you
18 really want is a process that will get you finality, you ought
19 to be proposing a process to me where I can make rulings in
20 advance as to what the various deadlines will be, and whether
21 they are reasonable, as to the information that will be made
22 available, and whether it's reasonable, as to what assets are
23 being offered for sale and whether they include the potential
24 claims against Chatham, as the committee has indicated might be
25 an issue.

1 Why you would want to defer all that and just hope
2 that you can convince me at the end that every single decision
3 on those points you made was a reasonable one I don't
4 understand. It's not the right thing to do. And by
5 definition, the people who are asking you for this process have
6 dual interests. They're not just secured lenders. They are
7 potential buyers.

8 On the one hand, they are entitled to adequate
9 protection up to the value of their current secured interests,
10 but they're not entitled to a sale process that, because of
11 timing or other issues, arguably is to their advantage as
12 buyers not as lenders.

13 So those are issues that ought to be decided up front
14 not in hindsight. And under your existing DIP I think that's
15 what was contemplated. You had up until a certain period to
16 decide whether to pursue a sale process, and then to make a
17 procedures motion. And maybe you've decided earlier. That's
18 fine.

19 But why you would want to proceed just on something
20 you've negotiated with people who are wearing two hats and
21 defer all these other potential issues to later is beyond me,
22 even from the adequate protection point of view. If I disagree
23 with something in your proposed schedule or procedures because
24 I think it is not likely to maximize value, by definition, what
25 I think maximizes value maximizes adequate protection.

1 MR. DURRER: This is Van Durrer. I understand your
2 comments, Your Honor, and we'll certainly take stock of them.
3 I think that there's a -- there's a false assumption perhaps in
4 your comments, which I'll address first, and that is that we
5 were driven here. We frankly dragged the first-lien lenders
6 here. They wanted to insist on an order. And I think if Your
7 Honor's saying you want one too, the debtors aren't opposed to
8 that in concept because we developed a time line, and we
9 consider it irrelevant as to whether Your Honor signs an order
10 or not, other than the comments that you just made.

11 THE COURT: Well, let's hear from all -- let's hear
12 from all creditors and have a decision as to what a reasonable
13 process and time period is up front, so that those issues are
14 behind us.

15 MR. DURRER: Yeah, and it's a fair comment, Your
16 Honor. Two things -- one, this is a well-trodden path. We
17 have done this with you before. Two, we are trying to limit
18 costs in the case. Three, we believe that you'll be satisfied,
19 because we've done this quite a few times. And we are running
20 a good process with talented professionals. And we are going
21 to work with the committee on it. At the end of the day, we
22 think you'll be satisfied.

23 Injecting another motion and another hearing in the
24 midst of it we are afraid would simply delay the process and
25 cause more breakage along the way than it'll help. And maybe

1 that's a mistake in your eyes, Your Honor, that we made earlier
2 this month. But we definitely want to stay on course, and
3 we're very confident that you're going to be satisfied with the
4 process.

5 And candidly, we're very confident that the committee
6 will be satisfied with the process at the end of the day. We
7 take their comments seriously, and we have -- to be candid,
8 Moelis canceled the last call we were supposed to have about
9 the sale process. We don't know why. That might have been
10 just to pressures of schedule, but we are -- we absolutely have
11 an open-door policy with the committee on engaging with respect
12 to the process and the substance of the -- of the sale process
13 in terms of information sharing, et cetera. So we are -- we
14 are absolutely committed to do that.

15 THE COURT: Well, it sure seems to me that you're not
16 really avoiding issues or saving expense by refusing to put
17 bidding procedures forward. You're just punting all of those
18 potential issues down the road and potentially creating more
19 uncertainty and more expense instead of resolving them with all
20 creditors' notice and input up front.

21 MR. DURRER: And again, Your Honor, we take your --

22 THE COURT: I can't remember a case where so many
23 significant things were purportedly going on without any
24 advance procedures. You already had --

25 MR. DURRER: It was Westing --

1 THE COURT: -- a proposed --

2 MR. DURRER: It was Westinghouse, Your Honor.

3 THE COURT: -- (indiscernible). What's that?

4 MR. DURRER: It was Westinghouse. If you recall, we
5 confirmed a plan, and we did a sale through the plan. There
6 was -- we never had bidding procedures approved in that case.

7 THE COURT: Westinghouse had a proposed sale that was
8 subject to competitive offers after the fact, but which also
9 provided for payment in full of everybody, right?

10 MR. DURRER: Correct.

11 THE COURT: You don't contemplate --

12 MR. DURRER: That's correct.

13 THE COURT: You're not contemplating that here, are
14 you?

15 MR. DURRER: No, Your Honor. I must admit that we are
16 not contemplating payment in full for everyone. As I said,
17 Your Honor, we're going to take stock of your comments and
18 circle up with the parties. And we'll evaluate them. We're
19 not asking for any relief with respect to the sale today. But
20 I hear you loud and clear. I want to be very candid about
21 that.

22 THE COURT: And on your proposed modifications to the
23 DIP order, I have to admit that I'm still not entirely sure I
24 understand the changes as to the investigation budget. But
25 you're telling me all it does is defer any consideration or

1 payment of amounts in excess of the existing budgets?

2 MR. DURRER: Right, and with the sixty-five-percent
3 metric, Your Honor, effectively people could still get what
4 their entitled to get, based upon fee statements that exceed
5 the investigation budget. But they would -- they would top out
6 at sixty-five percent of it until we get the tax refund in the
7 door, and then some other determination.

8 THE COURT: Mr. Hansen, what's the problem with that?

9 MR. HANSEN: Well, Your Honor, the problem is that's
10 not what the language says in the order. Not to channel you
11 too much here, but the whole concept of modifications to this
12 order for purposes of adequate protection don't make any sense.

13 I mean, if the debtor wants to do its sale process
14 behind closed doors and has just said that it's not going to
15 prejudice any other parties' rights to bring before you at some
16 sale hearing deficiencies associated with that process, then I
17 guess the committee on that side is -- we'll live with that
18 because it preserves our rights.

19 With respect to all the other stuff that's in here
20 regarding adequate protection, we couldn't agree with you more.
21 It seems to us that the reason it's all in here has a lot to do
22 with gamesmanship around the process and really nothing to do
23 with the points that were made by the other parties. I mean,
24 if you take the -- we've heard a lot about these revised COVID
25 projections, but of course, you have no testimony on it, so

1 it's all podium testimony at this point, so it's of no value.

2 We've heard that the estate professional fees were a
3 shock to everybody. We all report estimated amounts on a
4 weekly basis into FTI. And that information is provided to
5 other parties, so if people don't have access to that, then
6 that's their own fault because the company has it. And they
7 ask us every week for updates in arrears. And it's really for
8 purposes of evaluating the carve-out as it proceeds.

9 And then with respect to the request for the
10 modification of adequate protection, from the committee's
11 perspective, we're okay with the debtors and the committee
12 professionals moving down the fifteen percent and not tagging
13 the secured creditors with that and leaving their adequate
14 protection in place. And so if the point is well, we needed
15 all these changes in the order because we were asked to modify
16 ours, then don't modify it. To your point, it's negligible in
17 any instance.

18 And so from our perspective, when Mr. Durrer says that
19 language at the end about administrative solvency and proof and
20 all that stuff is just surplusage to kind of focus on a
21 specific piece of this, well, if it's surplusage, then it
22 doesn't need to be there.

23 And with respect to living by the budget, we're all
24 trying the best we can to live by the budget. One point that
25 I'd also make is that the language that got injected in here

1 actually says the investigation of estate claims. The
2 challenge -- the other place of the -- the investigation budget
3 applies to the Challenge, capital C, which is defined as the
4 investigation effectively ultimately bringing claims against
5 the pre-petition secured creditors.

6 Part of our investigation is also against directors
7 and officers with respect to whether or not they've breached
8 fiduciary duty, and whether other parties aided and abetted
9 them in that process. So those are outside of the scope of the
10 investigation budget, which is limited to the secured parties.

11 I don't know, so when I read this language, I also see
12 a sleight of hand that was designed to try to impose even a
13 further restriction on the investigation budget than exists.
14 So I kind of retreat to we should remove all of the additional
15 adequate protection stuff in here and leave the lenders where
16 they are.

17 If we have some later dispute in this case, which I
18 hope we don't have about whether people were over- or under-
19 secured and entitled to keep their AP or offset it against
20 their claim, et cetera -- I hope we never arrive there.

21 I hope we have a consensual process for you at the end
22 of the day. But from the committee's perspective, we don't
23 want to agree to put language in here that changes anything
24 from what we had approved, and what we all worked really hard
25 on to put in front of you as the form of final DIP order.

1 So we're okay -- and again, if there is no change to
2 the adequate protection with respect to the secured parties,
3 then when the debtors get their tax refund, they can apply
4 those to basically pay people for the fifteen percent that they
5 took off. And this is really less about the limitation
6 associated with the investigation budget, which of course
7 highlights the issue of why people want to try and choke us a
8 little bit here in this process. And it's just more about
9 unnecessary aspects of the order.

10 So from the committee's perspective, Your Honor, we
11 disagree that this is just surplusage. Those words have
12 meaning, and they are clearly designed to try to suffocate any
13 remaining efforts to investigate, to the extent that they might
14 exceed the budget.

15 And to the extent they exceed the budget, people
16 reserve their rights to one, object to the fees as being
17 unreasonable. And candidly, they can do that with or without a
18 budget. And two, people reserve the right to come back and say
19 you exceeded the budget, which was a component of my adequate
20 protection, and therefore, I don't believe I'm being adequately
21 protected.

22 But I don't know. I think to put all this language in
23 here is a shame. And it's really designed for something that's
24 very different than preserving this estate and giving them a
25 little bit more capital as we move forward. And the comment

1 about that they could have chosen a Modell's or Pier 1 style
2 process, those are both retailers that are in liquidation.
3 It's a totally different situation.

4 So here the professionals are basically kicking in to
5 improve liquidity and move forward. We shouldn't have to deal
6 with something else that's designed to benefit the secured
7 creditors.

8 THE COURT: All right. Does anyone else want to be
9 heard?

10 MR. ROSENBERG: Your Honor, Andrew Rosenberg, Paul,
11 Weiss, Rifkind, Wharton & Garrison for Chatham. Actually, if
12 anyone from Kramer Levin would like to go first. Other than
13 that, I just have a couple of things to add.

14 MR. MANNAL: Go ahead, Andy.

15 MR. ROSENBERG: One of the disadvantages of not being
16 in court together. Can't just look over at somebody.

17 Your Honor, I just wanted to just step back a second,
18 at least from Chatham's perspective, what we are hoping to
19 achieve here, forgetting individual words and processes. And
20 it's as simple as this.

21 The process that we started this case with, and let's
22 just say it was too optimistic, whatever else, but obviously,
23 it did not happen. That process was designed pre-COVID and
24 simply reflected the fact that this was a business that was
25 in -- it is media, it is newspapers, obviously trying to make a

1 digital transformation, but in having huge secular issues.

2 And that plan, optimistic as it may have been in terms
3 of times and fees, and Mr. Durrer can attest to this -- as is,
4 we barely had enough liquidity to do an exit. And there was
5 not unlimited money. And Chatham was going to have to put in
6 thirty million dollars just to fund the exit costs of that.

7 Obviously, since you have had COVID, you have had --
8 and you have a tremendous amount of additional professional
9 fees, and I'm not knocking anyone saying they're too high,
10 they're too low, they just are. But it puts incredible strain
11 as to right now we have a liquidity of a limited amount. And
12 we can say what month it might expire in all of this. I prefer
13 not to do that on the open line. But it does have an expiry.
14 And it doesn't take into account the issue that we started the
15 case with, which was how you're going to fund the exit in terms
16 of all the transaction fees, cure costs, et cetera, et cetera.

17 So this was tight to begin with. It is much, much
18 tighter now. Chatham would love there to be a plan. If
19 there's not a plan, there needs to be a sale. If there's
20 somebody who will outbid at the right price, Chatham does not
21 have to own this thing. Brigade does not have to own this.
22 Happy to have somebody outbid us.

23 What we've been -- what we are deathly afraid of is
24 the people who may be -- depending on where value break, we may
25 be -- this entirely a first-lien affair, particularly in terms

1 of where all the costs are coming out of. If there is no
2 surplusage, it may all be coming out of that and, again,
3 increasing pressure on how you're going to fund the exit here.

4 What we can't have though, Your Honor, and what we've
5 been trying to avoid, is that we go through a whole mediation
6 process -- and there's been a little bit of talk about it, but
7 the one thing I will say is that the first offers came in this
8 week, though we've obviously been at it a long time and would
9 have a while to go if we're going to accomplish anything -- is
10 to have a plan or sales process -- a plan process or mediation
11 process fail, and then have to switch to a 363 process.
12 However, we do it, if we don't get that started, we do not
13 think there's enough liquidity and to fund an exit in order to
14 pivot, unless you do them in parallel tracks.

15 So what we've been trying to -- we've talked about
16 this to the debtor forever, is to have a parallel track, so if
17 a plan process does not work, a sales process is underway. And
18 whatever it is, and whoever gets the highest bid or whatever
19 else, we'll live with that. But we just don't have time to
20 have a pivot from a potentially failed plan or mediation
21 process to a sales process that one end and have the other
22 start. There's simply not enough liquidity, not enough exit
23 costs in our view to make this work.

24 So the main thing we're trying to do is to have a dual
25 process so that, if the one process doesn't work, the other is

1 ready to go. And to not -- and to have some governor -- and I
2 don't care what it is, on administrative expenses, professional
3 fees, including as I said, we're willing to chip in some of
4 our -- or defer some of our own here just to make sure that
5 there's enough to get through this process. That's it.

6 To the extent that it seems to be a natural
7 inclination to say that Chatham is somehow gaming this process
8 or pressuring -- or something else as an interested party, yes,
9 we are interested because we have hundreds and hundreds and
10 hundreds of millions of dollars of secured debt. Much of it
11 was "new money," so we are extremely interested. And to the
12 extent there's a shortfall, it very well may be coming out of
13 Chatham's hide. So we are a interested party.

14 That being said, we do not have to own this thing in
15 any way, shape, or form. We're happy to work on a process.
16 And in terms of a sales process, as long as it's a fair
17 process, if we are the successful bidder, then we will be. If
18 we're not, and somebody outbids, ultimately, we're okay with
19 that too. So we're not trying to game this process in terms of
20 making it so that we're the "winning bidder".

21 We're trying to make sure this process is started and
22 has a reasonable time frame in the context of COVID, secular
23 decline, limited liquidity, and a real concern as to how and
24 who is going to fund this exit, because we do not have
25 unlimited resources to do it.

1 So that, Your Honor, is my five-minute summary, but I
2 thought it was important to hear Chatham's perspective, because
3 we keep getting painted as somebody who's up to something or
4 gaming or something else. We want to make sure that this is
5 a -- that this business has an opportunity to survive through
6 plan or sale, and we just don't want to see a process unfolding
7 that perhaps does not give it an opportunity to survive.
8 That's all we're looking for.

9 THE COURT: Okay. Anybody else wish to be heard?

10 MR. HIGGINS: Your Honor, this is Ben Higgins for the
11 U.S. Trustee. I'll be very brief, Your Honor.

12 THE COURT: Okay.

13 MR. HIGGINS: With respect to the sale process, we
14 were confused as to whether the debtors were seeking approval
15 of the stipulation and seeking Court approval of the -- of the
16 deadlines, including the May 5th deadline. And our position I
17 think is fairly well summarized in the comments that you've
18 already made, Your Honor.

19 But we believe that any sale process should be
20 disclosed up front on notice to all parties-in-interest. And
21 the Court should have an opportunity to review that to
22 determine whether those procedures are reasonable, and whether
23 they're designed to maximize the return to the estate.

24 It sounds like the debtors are now -- or maybe they
25 have never been seeking approval of their process today. So

1 I'll leave it at that, Your Honor, but we were concerned about
2 it. And if they are seeking approval at a later date, I think
3 these deficiencies, if there are deficiencies, they need to be
4 dealt with so that everybody has an opportunity to raise those
5 issues with the Court in some format. Thank you, Your Honor.

6 MR. HANSEN: Your Honor, it's Mr. Hansen again for the
7 committee. Just one point I wanted to remark on, which we were
8 surprised to hear, was that Chatham and Brigade are not under
9 NDA with the company. I mean, they have access to the current
10 data rooms that the -- at least as we understand it. I don't
11 know at a business-person level, but certainly at the
12 professional level, and they can speak for themselves on this
13 call. But to the data rooms associated with the mediation
14 process, and those data rooms do include the updated models and
15 original projections.

16 And it appears that other bidding parties in
17 connection with the sale process don't have access, at least to
18 those models and other things that are in there. So it speaks
19 to the heart of the integrity of this sale process. And again,
20 it's the debtors' call on how they want to do it. It is really
21 like, at the end of the day do they want to put themselves at
22 risk that they ran a bad process, and it wound up in a bad
23 result? Like God bless if it turns into a wonderful result.
24 Like that's great for everybody.

25 But on the -- our view at least is that in this

1 environment, running a process in this manner creates a lot of
2 skepticism associated with bidders. And we would also
3 obviously prefer if this was done in a more traditional and
4 straightforward manner, and that debtors demonstrated that it
5 has time to do it. But we just wanted to point out to Your
6 Honor that at least from where we stood we were surprised to
7 hear that they are not under NDA and may not have information
8 to financial info, because it's certainly been pushed around
9 inside the mediation, which they're parties to.

10 MR. DURRER: Yeah, Your Honor, this is Van Durrer.
11 Let me speak to that just quickly. And then I don't have
12 anything further. The information that Chatham and Brigade
13 have is pursuant to a mediation process. Your Honor has an
14 order on that. And there's an absolute prohibition on sharing
15 that information, number one.

16 Number two, the projections that are -- that Mr.
17 Hansen just referenced are disclosed. We have a disclosure
18 statement. It's filed. The whole world can see it. And so
19 there's no issue there.

20 And then there is no suspicion regarding this process
21 other than by the committee itself, which we've had them
22 involved in it. And by the way, none of these concerns -- none
23 were raised with us in the many interactions between Evercore
24 and Moelis. They only found their way into a pleading. And
25 the bidders themselves, twenty of them, are engaged with us on

1 a daily basis.

2 So if there was some suspicion, I'm at a loss for
3 where it is. And everybody at Moelis has my phone number.
4 Everybody at Strook has my phone number. If you have
5 suspicions, ring me up.

6 THE COURT: All right. Anybody else? All right, on
7 the proposed order, there seems to be a disconnect between its
8 wording and its description during the hearing today. If all
9 you wish to do is to say that people will live by the budgets
10 to which they previously agreed in terms of the investigation,
11 and anything in excess of that budget will only be paid if and
12 when approved by me, I don't even see that that's a change to
13 the DIP order. And that would be fine.

14 If what (indiscernible), though, is to put a cap on
15 professional fees in total, from a perspective of adequate
16 protection, targeting the investigation budget particularly is
17 not an appropriate adequate protection way of doing that. It
18 may provide additional comfort to the people who are being
19 investigated, but if the concern is adequate protection, that's
20 not the answer.

21 And if somebody thinks that there has to be a cap
22 that's not already in the existing DIP papers, a cap on
23 professional fees, then they need to propose that as an overall
24 cap not targeting the specifics of the investigation budget. I
25 won't approve it in that format. It seems inappropriate to me.

1 To be honest, I'm at a loss to understand why any
2 change to the DIP is warranted by what I have in front of me.
3 It seems to me what the lenders mainly wanted was a sale
4 process, and yet, the parties seem to want to do that on their
5 own without making it subject to comments by other creditors
6 and getting my approval of the process in advance.

7 I cannot say strongly enough how crazy that seems to
8 me. Maybe you don't trust what I will do with a sale process,
9 but it makes absolute positive sense if you think a sale
10 process is appropriate to get approval in advance for what the
11 terms of that process will be and not just to take the chance
12 that you will be several months into the future and find that I
13 either agree or didn't agree with something that you did. That
14 just doesn't make sense.

15 (Break in audio) a modification of the interim
16 payments to professionals, which the other professionals have
17 said they would be willing to agree to do -- if the first-lien
18 holders will agree to a deferral of fifteen percent, that's
19 fine. If they want as a condition of that a limit on the
20 investigation budget, that's not fine for the reasons that I've
21 said. It's hard for me to see that you really need their
22 agreement on the deferral.

23 And if they think that the circumstances in the case
24 as a whole have changed so that they need something more than
25 the existing adequate protection, and more than what will

1 happen in terms of a sale process, then they can so request,
2 and I'll schedule a hearing on it. But it'll be a hearing
3 where I will decide not only whether they're entitled to
4 addition adequate protection but whether they're entitled to
5 what they already have, because I will consider the whole issue
6 to be open again, including for the committee to reinvestigate
7 the issue. So let me know how you'd like to proceed.

8 MR. ROSENBERG: Your Honor, it's Andy Rosenberg. I
9 think we need to confer a little bit amongst our -- we hear
10 you, and I think we just need to confer amongst ourselves,
11 which again, if we had a hallway, we would go into it, but we
12 don't.

13 THE COURT: Okay. That's fair. And listen, I
14 understand that your clients have been accused of many things
15 here. It's not my objective to pre-judge any of those issues
16 or to even try to limit a reasonable sale process. I do want
17 to make sure that whatever process we have actually does
18 maximize value and actually does not unnecessarily limit the
19 ability to pursue those claims.

20 And it's in everybody's interest to get clarity on
21 those terms up front rather than later.

22 MR. ROSENBERG: Understood.

23 THE COURT: Okay.

24 MR. DURRER: What we'll do -- this is Van Durrer, Your
25 Honor. What we'll do is we'll confer with the parties,

1 including the committee regarding Your Honor's comments and
2 hopefully come back to you with a consensual form of order.
3 Otherwise, we might have -- we might ask for Your Honor to hop
4 back on with us perhaps by telephone.

5 THE COURT: All right. That would be fine. And you
6 should see if you can agree on the terms of the sale process
7 here.

8 MR. DURRER: That would be on my list of things to
9 inquire about, Your Honor.

10 THE COURT: I don't really understand why that should
11 be so hard. There's got to be some things you can -- you can
12 agree on with the committee.

13 MR. DURRER: Again, we completely agree with Your
14 Honor, and we've spent time on the phone -- the bankers talking
15 about his, and we would have hoped that someone would raise
16 their hand if there was a violent reaction to it.

17 THE COURT: Okay. All right. All right, then let's
18 do that. What I'd like you to do is to report to me on Monday
19 as to -- as to the progress of continued discussions among you
20 as to whether you can all agree on a sale process. And I would
21 very much like you to try to do that. Okay.

22 MR. DURRER: Understood, Your Honor. Thank you.

23 THE COURT: All right. Anything else for today?

24 MR. DURRER: I think that's it, Your Honor. Thanks
25 again for your time.

1 THE COURT: Thank you very much.

2 MR. HANSEN: Thank you, Your Honor.

3 THE COURT: All right, thank you. We are adjourned.

4 (Whereupon these proceedings were concluded at 1:10 PM)

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

I, Ellen S. Kolman, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Date: April 30, 2020

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