

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF DELAWARE

3 IN RE: . Chapter 11
4 STARRY GROUP . Case No. 23-10219 (KBO)
HOLDINGS, INC., *et al.*, . (Joint Administration Requested)
5 .
6 .
7 Debtors. . Courtroom No. 3
8 . 824 Market Street
9 . Wilmington, Delaware 19801
10 .
11 . Wednesday, February 22, 2023
12 . 1:07 p.m.
13

10 TRANSCRIPT OF ZOOM HEARING
11 BEFORE THE HONORABLE KAREN B. OWENS
12 UNITED STATES BANKRUPTCY JUDGE13 APPEARANCES:

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1 (Proceedings commenced at 1:07 p.m.)

2 THE COURT: Good afternoon, everyone. This is
3 Judge Owens. We are gathered virtually for a first day
4 hearing in the Starry Group Holdings Chapter 11 cases.

5 We have a large agenda today, so I will get right
6 to it and turn the virtual podium over to proposed counsel
7 for the debtors and you can walk me through today's agenda.

8 MS. COYLE: Good afternoon, Your Honor. Kara
9 Coyle, Young Conaway Stargatt & Taylor, proposed co-counsel
10 to the debtors, Starry Group Holdings, Inc. and certain of
11 its affiliates.

12 Can you hear me, Your Honor?

13 THE COURT: I can.

14 MS. COYLE: Great. On behalf of the company, we
15 would like to thank Your Honor and your chambers for making
16 the time to hear us today. We certainly appreciate it. We'd
17 also like to take the time to thank Mr. Hackman and the
18 Office of the United States Trustee for working with us so
19 constructively over the past week. I believe we've addressed
20 all of Mr. Hackman's questions and concerns and should have a
21 fully consensual hearing today.

22 Your Honor, we're pleased to be working with our
23 colleagues from Latham & Watkins, many of whom you will hear
24 from today. They've each been admitted *pro hac vice*. If it
25 pleases the Court, I will cede the podium to Mr. Dillman, who

1 will make some introductions and take us through the first
2 day presentation.

3 THE COURT: Okay. Thank you, Ms. Coyle.

4 Good afternoon, Mr. Dillman. How are you?

5 MR. DILLMAN: I am well, Your Honor. Thank you
6 very much and good afternoon. And just to echo Ms. Coyle,
7 thank you for accommodating us. We're very happy to be here.

8 As you can probably tell from all the stuff that
9 was filed, a lot of work has gone into getting us here today
10 and so we're happy to be before you. Also, I would like to
11 just echo what Ms. Coyle said about working with Mr. Hackman
12 from the Office of the United States Trustee. We were able
13 to resolve all of his issues and so we're very happy to be
14 here and to thank him for working with us so constructively.

15 A few introductions. With me from the Latham
16 team, I have Jeffrey Mispagel and Nicholas Messana, who will
17 be presenting, along with other members of the Latham team.
18 We're also joined by Chaitanya Kanojia, who goes by "Chet."
19 He's the debtors' chief executive officer and co-founder, as
20 well as Bill Lundregan, the debtors' chief legal officer.
21 Mr. Kanojia is the first day declarant and we'll, after we go
22 through introductions and the first day presentation, we'll
23 move his declaration into evidence.

24 THE COURT: Okay. Welcome to everyone.

25 MR. DILLMAN: We also have Michael Schlappig from

1 PJT Partners, the debtors' investment banker. I think he has
2 a declaration that will be submitted in support of the DIP.
3 He's also here on Zoom. And, finally, Mike Katzenstein and
4 Heath Gray from FTI, who are the debtors' restructuring
5 advisors, are here.

6 I'd also just like to take a moment to thank the
7 company's lenders and their professionals who we've been
8 working with to provide DIP and exit financing and a
9 commitment to support the company through the restructuring
10 support agreement that we filed. It's been a very
11 collaborative process and we're happy to be here with a path
12 that will hopefully provide for an organized path through
13 Chapter 11.

14 So, with that, I'd like to give a high-level
15 overview of the company and then we can turn to where the
16 cases are going. As is unsurprising, the Chapter 11 filing
17 and RSA entered into by the company and the lenders is an
18 important step and the -- all of the parties have been
19 working tirelessly to be here with a process for a
20 comprehensive restructuring and deleveraging of the business,
21 while, in parallel, we run a sale process and market check.

22 To that end, you will see we have filed a large
23 suit of documents, including a motion to approve bidding
24 procedures, a proposed plan of reorganization, a proposed
25 disclosure statement. We will want to find a time with Your

1 Honor for a hearing to approve the disclosure statement so we
2 can get our motion for solicitation procedures and to approve
3 the disclosure statement on file.

4 I'm happy to do that now or to pick that up at the
5 end if Your Honor has any preference.

6 THE COURT: Why don't we just wait until the end.

7 MR. DILLMAN: Okay. That sounds good.

8 So, with that, if we can screen share, we have a
9 few slides on the background of the company.

10 THE COURT: I think we gave sharing privileges to
11 one of your colleagues prior to today's hearing.

12 MR. DILLMAN: It looks like it's coming up.
13 Great.

14 If you could go to Slide 4. So, Starry, Inc.,
15 which is the level below the public company, holding company
16 was founded in 2014. The company is headquartered in Boston.
17 And from its founding, Starry has been focused on delivering
18 high-quality and affordable broadband internet access, using
19 a proprietary technology.

20 The company currently had 292 employees, over
21 90,000 direct-customer relationships, and if we can move to
22 Slide 5, since launching in Boston in 2014, the debtors'
23 internet service has expanded to markets across the U.S. and
24 is available currently in the Boston, New York, Denver, Los
25 Angeles, and Columbus metropolitan areas.

1 Slide 6 gives an overview of the company's
2 approach. Starry was built on the idea that homes can
3 receive high-speed internet access wirelessly, similar to the
4 way smartphones do. The company developed a proprietary
5 technology stack, operating in licensed spectrums to offer
6 last-mile, fixed broadband access. This currently involves
7 providing internet access primarily to residential buildings.

8 The company's business is highly capital-
9 intensive. It's much less costly than its competitors that
10 do fiber to the home build-outs, but it's still a fairly
11 capital-intensive business. The business is built around
12 outstanding customer service and having a very simple, no-
13 hidden fees, no bundling approach with its customers. It's
14 also focused on increasing internet access through the Starry
15 Connect Program, which is a low-cost program designed to
16 bring broadband access to underserved communities.

17 The company, as you would imagine, has invested
18 heavily in R&B and technology and maintains a portfolio of
19 company-owned IP rights, including patents and patent
20 applications. It also has a number of FCC licenses.

21 Going to Slide 7 is the company's organizational
22 chart. This is also Exhibit A to the first day declaration
23 and it also indicates the entities that are obligors under
24 the pre-petition credit facilities. Just one note, you'll
25 see down below, there are a couple of foreign entities.

1 Those entities don't have any material assets or operations
2 and are in the process of being closed down, but they're not
3 debtors. They're also not obligors on the credit facilities.

4 Starry Group Holdings is the lead debtor in these
5 cases. It's the ultimate parent. Starry Group went public
6 through a de-SPAC merger in March 2022 and was publicly
7 traded on the New York Stock Exchange under the ticker symbol
8 "STRY." The company was -- had its trading suspended in
9 December of last year for failing to maintain the minimum
10 share price and was ultimately delisted in January.

11 If you can go to Slide 8.

12 This includes a breakdown of the company's pre-
13 petition capital structure. It's a fairly simple capital
14 structure. It has, essentially, one credit facility totaling
15 approximately \$287.5 million in secured, funded debt. It's
16 secured by substantially all of the assets of the company.

17 The Tranche A, B, and C loans all rank *pari passu*
18 with one another. The Tranche D loans were bridge loans that
19 were provided in December and January recently and they have
20 payment priority in the waterfall under the credit facility.
21 They're also proposed to be rolled-up into the DIP facility
22 and the company does not have any other funded indebtedness.

23 So, how do we find ourselves here? Slide 10 is a
24 high-level timeline, but fundamentally, as a growth-stage
25 company, the debtors have invested significant capital to

1 develop their technology to build market share in their
2 established markets. But as a result and due to the capital-
3 intensive nature of the business, while the debtors' customer
4 base has been growing rapidly and the company has been moving
5 towards cash-flow positive, the company was not able to raise
6 sufficient capital to get all the way to being cash flow
7 positive based on its original plan, despite, frankly, having
8 explored every viable path to do so.

9 As part of that, the company did go public through
10 the de-SPAC merger in March of '22. And while the company
11 raised a substantial amount of capital in that process, it
12 was less than originally anticipated, due to substantial
13 redemptions. After that, the company engaged Silicon Valley
14 Bank to assist with potential refinancing of the pre-petition
15 term loans, additional capital raises, including equity
16 placements. And then in the third quarter of '22, the
17 debtors engaged Morgan Stanley to assist with looking at
18 strategic transactions involving the sale of the debtors to a
19 third party.

20 While there was interest in all of these
21 processes, nothing came to fruition. The debtors worked
22 substantially in the Morgan Stanley process with one
23 strategic party and believed that they were close to entering
24 into definitive documents, but that didn't ultimately come to
25 fruition, at which point in October, the company really

1 pivoted to capital preservation to extend its runway and
2 explore strategic alternatives.

3 As part of this, the company did do a reduction in
4 force in October, a very substantial one, and also did
5 another one in January of this year. And it brought on PJT
6 and FTI to assist with strategic planning.

7 Before the petition date, PJT was able to run a
8 substantial pre-petition marketing effort and contacted 79
9 parties, 32 of which signed nondisclosure agreements, but
10 ultimately, that didn't lead to a definitive bid. And while
11 the debtors have extensively -- been extensively marketed
12 pre-petition, the debtors intend to continue those marketing
13 efforts for the business post-petition, while running the
14 sale process that's outlined in the RSA.

15 Throughout this process, two things were very
16 clear. One was that the debtors needed substantial capital.
17 The other was that while the company was pursuing M&A
18 alternatives, it would make sense to parallel track planning
19 for a solution with the lenders. And to this end, the
20 debtors entered into the Tranche D loan financings, which
21 provided bridge capital to allow the company to run the PJT
22 process, as well as prepare for an orderly Chapter 11 case,
23 and in parallel, enter into the restructuring support
24 agreement.

25 You can go to Slide 12.

1 So, where are we going? The lenders and the
2 debtors have entered into, and it's 100 percent of the pre-
3 petition lenders, have entered into a restructuring support
4 agreement for a toggle plan under which the lenders agree to
5 take ownership of the company, provide substantial DIP and
6 exit financing to support the business in the Chapter 11
7 process while the company continues to seek, in parallel,
8 value-maximizing bids from third parties, pursuant to the
9 bidding procedures that have been filed in the case.

10 To support the process, the pre-petition lenders
11 have agreed to provide nearly \$75 million in DIP financing,
12 which includes \$43 million in new-money DIP financing, all of
13 which will convert into an exit facility, plus an additional
14 \$11 million of committed exit financing to support the
15 company's continued operation if the plan option is
16 consummated, as opposed to a sale to a third party.

17 And while, you know, the debtors and the lenders
18 hope that we'll have a robust marketing and bidding process,
19 and we don't mean to prejudge the process, we also recognize
20 that based on the extensive pre-petition marketing that's
21 happened to date, there's a strong possibility that the value
22 here breaks inside the secured debt and that the transaction
23 proposed with the lenders will represent, or may represent
24 the value-maximizing outcome here.

25 So, with that, unless Your Honor has any

1 questions, I'll move the declarations into evidence and then
2 we can move forward with the first day motions.

3 THE COURT: That sounds like a good plan moving
4 forward. I have no questions at this time. I appreciate the
5 overview.

6 MR. DILLMAN: Thank you, Your Honor.

7 At this time, I'd like to move into evidence the
8 declaration of Chaitanya Kanojia. It can be found at
9 Docket 41. Mr. Kanojia is available on Zoom today and
10 available for cross-examination.

11 THE COURT: Okay. Does anyone object to the
12 admission of Mr. Kanojia's declaration?

13 (No verbal response)

14 THE COURT: Okay. I'm hearing no objection.

15 It's admitted into evidence.

16 (Kanojia Declaration received in evidence)

17 THE COURT: For my housekeeping purposes, does
18 anyone intend to cross-examine Mr. Kanojia on the substance
19 of his testimony today?

20 (No verbal response)

21 THE COURT: Okay. Thank you.

22 I'm hearing no one at this time.

23 MR. DILLMAN: Next, Your Honor, while it's only
24 related to the DIP financing, which we'll come to last, I'd
25 like to move into evidence the declaration of Michael

1 Schlappig of PJT Partners, the debtors' investment banker, in
2 support of the DIP motion. His declaration is Exhibit B to
3 the DIP motion at Docket 18.

4 Mr. Schlappig is here on Zoom today and available
5 for cross-examination.

6 THE COURT: Thank you. Does anyone object to the
7 admission of Mr. Schlappig's declaration in support of the
8 DIP?

9 (No verbal response)

10 THE COURT: Okay. Hearing no objection, the
11 declaration is admitted.

12 (Schlappig Declaration received in evidence)

13 THE COURT: Again, for my housekeeping purposes,
14 does anyone intend to cross-examine or wish to cross-examine
15 Mr. Schlappig on the declaration today?

16 (No verbal response)

17 THE COURT: All right. I'm not hearing anyone.
18 Okay.

19 MR. DILLMAN: With that, I will turn this over to
20 Emily Jones from Young Conaway to start on the first day
21 motions.

22 THE COURT: Excellent. Thank you very much.

23 Ms. Jones?

24 MR. DILLMAN: Thank you, Your Honor.

25 THE COURT: Ms. Jones, how are you?

1 MS. JONES: I'm doing well, thank you.

2 Good afternoon, Your Honor. Emily Jones from
3 Young Conaway Stargatt & Taylor, proposed counsel for the
4 debtors and debtors-in-possession.

5 I just wanted to note, Your Honor, that there have
6 been a few changes to the items that I will be presenting
7 today since these items were filed and that these changes
8 have been provided in the blacklines that were sent to the
9 Court prior to this hearing.

10 I'd also like to move to Agenda Item 3 and thank
11 Your Honor for entering the order and getting that on the
12 docket.

13 THE COURT: You're welcome.

14 MS. JONES: Thank you, Your Honor.

15 And I'd like to move now to Agenda Item 4. I'd
16 like to note first, Your Honor, that the creditor matrix in
17 this case has more than 200 creditors, and thus, the debtors
18 are required to retain a claims and noticing agent under the
19 local rules. In addition, before filing this application,
20 the debtors solicited claims agent proposals from at least
21 two other firms and as set forth in the application, selected
22 KCC based on its competitive pricing and expertise.

23 Additionally, following comments to the U.S.
24 Trustee, changes were made to paragraphs 10 through 15, 16,
25 and 19, which are outlined in the blackline provided to the

1 Court before this hearing.

2 Unless Your Honor has any questions, we would
3 respectfully request entry of the order for the claims agent
4 motion.

5 THE COURT: Okay. Thank you, Ms. Jones.

6 Does anyone wish to be heard in connection with
7 the application to retain KCC as claims agent in these cases?

8 MR. HACKMAN: Your Honor, this is --

9 THE COURT: Mr. Hackman, I see you're on my
10 screen -- oh, go ahead.

11 MR. HACKMAN: Yes. Good afternoon, Your Honor.

12 May I please the Court? This is Ben Hackman for
13 the U.S. Trustee.

14 I rise to confirm that our comments about this
15 motion have been resolved and that our comments about all of
16 the other motions before Your Honor today have also been
17 resolved and I thank counsel for working with us to resolve
18 our comments. Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Hackman.

20 Okay. Would anyone else like to be heard?

21 (No verbal response)

22 THE COURT: Okay. I've had the opportunity to
23 review the application, as well as the revisions to the
24 proposed order. I have no questions or concerns with respect
25 to the revisions, as well as the relief requested. It's

1 standard and appropriate in these cases and I am happy to
2 enter that order.

3 I instructed counsel to upload revisions, or
4 excuse me, file the revised orders that have substantive
5 changes under certification of counsel. Once that's done and
6 the revised order is uploaded, then we can enter them as soon
7 as that happens.

8 Okay. So, does that take us to Number a 5?

9 MS. JONES: Yes, it does, Your Honor.

10 Turning next to Agenda Item 5, which is the motion
11 to consolidate and redact certain personal information, and
12 also to modify notice requirements related to the list of
13 equity holders.

14 As set forth in the motion, the debtors believe
15 that certain personal identification information, namely, the
16 home and email addresses of the debtors' creditors who are
17 individuals should be redacted from the creditor matrix and
18 other similar filings in this case. We believe that due to
19 the concern that third parties could cause identity theft or
20 other unlawful injury to these creditors by virtue of the
21 disclosure of this information, that it is significant and,
22 therefore, redaction is appropriate.

23 We also believe that Section 107(b) of the
24 Bankruptcy Code authorizes the Court to grant this relief by
25 permitting the Bankruptcy Court to issue orders that protect

1 parties from disclosure and confidential information, and the
2 cause exists, pursuant to Section 107(c) to grant the relief.

3 In addition, the debtors have agreed to submit an
4 unredacted copy of the creditor matrix and similar pleadings
5 to the Court, the U.S. Trustee, and any subsequently
6 appointed trustee in the Chapter 11 cases, any Committee
7 appointed in this case, and the debtors will make these
8 available to any party in interest upon request.

9 In regard to noticing, the motion also requests
10 authority to modify the noticing requirements related to
11 equity holders. We are proposing to provide notice by
12 serving equity holders directly registered with the transfer
13 agent for the debtors' common equity, publishing a notice of
14 commitment on the debtors' case website, and filing a
15 Form 8-K with the SEC within five business days following the
16 petition date.

17 The debtors believe that with the large amount of
18 creditors in this case that these modifications would be
19 both, more efficient and effective, and that servicing each
20 creditor individually would be unduly burdensome.

21 I would also like to note an update was made to
22 paragraph 7 of the order, pursuant to the U.S. Trustee's
23 comments, providing that service for redacted individuals
24 will be made to the individuals' residential address.

25 Unless Your Honor has any questions, we'd

1 respectfully request the entry of the order.

2 THE COURT: I actually have one question for you.
3 With respect to the modification of service of the notice of
4 commencement to equity holders, and I'm referring to
5 paragraph 5 of the proposed order, it proposes that each
6 equity security holder that's directly registered with the
7 transfer agent for the debtors' common stock will receive
8 notice, as well as, of course, in addition to the Form 8-K
9 and the publishing.

10 One question, and it may be, I don't want to say
11 silly, but I notice that for the equities trading motion that
12 nominees are also getting served directly with that motion,
13 and I guess my question is how are the nominees being
14 treated, with respect to the notice of the commencement of
15 the case? Are those entities registered agents, such that
16 they would be covered by the current service in paragraph 5
17 or are they just not getting served at all with the notice of
18 commencement?

19 And I'm happy for anyone to jump in to the extent
20 that the parties understand the mechanisms of service here.

21 MS. JONES: Yeah, my apologies, Your Honor. I
22 would appreciate if any of my colleagues would like to assist
23 with this question.

24 THE COURT: Okay. If anyone happens to know that
25 would be very helpful. Of course, if not -- and my thought

1 process, just while you are all looking, is if you already
2 are serving the equity securities motion on nominees then to
3 me it makes little sense to carve them out of receiving the
4 notice of commencements. Again, perhaps the nominees are
5 already covered in Paragraph 5(a).

6 Mr. Gott, you're raising your hand.

7 MR. GOTT: Good afternoon, Your Honor. Jason Gott
8 from Latham on behalf of the debtors.

9 I think that's fine. I think it would be a
10 separate group of entities, the nominees versus registered
11 holders. But there's no reason that we can't pass that
12 notice through to the nominees a well.

13 THE COURT: Okay, yes. If you wouldn't mind
14 amending Paragraph 5 to include the nominees, similar to the
15 notice parties for your equity securities motion, then I
16 would be prepared to -- subject to hearing other folks'
17 comments that would satisfy my current concerns with the
18 order.

19 MR. GOTT: Thank you.

20 THE COURT: Thank you all for that.

21 Let me ask, for the record, does anyone else wish
22 to be heard in connection with this relief?

23 (No verbal response)

24 THE COURT: Okay. I am not hearing anyone.

25 As evident from my questions I was able to review

1 the motion and the revisions to the proposed order prior to
2 taking the bench. I am fine with the relief requested and
3 understand why it's necessary, subject to the one revision
4 that I just discussed with counsel on the record to
5 Paragraph 5. And once I receive that modification, under
6 certification of counsel, I will approve the order and have
7 it entered.

8 MS. JONES: Thank you, Your Honor. I will now
9 cede the virtual podium to Nicholas Messana unless you have
10 any further questions.

11 THE COURT: I do not. Thank you, Ms. Jones.
12 Mr. Messana.

13 MR. MESSANA: Good afternoon, Your Honor. Nick
14 Messana of Latham & Watkins on behalf of the debtors.

15 Your Honor, my presentation this afternoon will
16 cover Agenda Items 6 through 9, and also, I believe, 12. And
17 unless the Court has another preference I would propose that
18 we work through them in order.

19 THE COURT: I am fine with however you wish to
20 move forward.

21 MR. MESSANA: Okay. First up is Agenda Item 6,
22 that is the debtors' utilities motion which is also Docket
23 No. 5. The utilities motion seeks entry of an order by the
24 Court prohibiting the debtors utility providers from
25 altering, refusing, or discontinuing service on account of

1 outstanding amounts. It also seeks a determination by the
2 Court that adequate assurance has been provided and the
3 approval of certain procedures for resolving any adequate
4 assurance disputes.

5 The United States Trustee had some like comments
6 on this motion. I believe a redline has been submitted to
7 Chambers reflecting those changes. And I think we have a COC
8 ready to go too pending any further comments by Your Honor.

9 Now as the Court will likely be unsurprised to
10 hear, the debtors require various utility services to operate
11 their business including electricity, internet,
12 telecommunication services, and also waste services. The
13 debtors have historically maintained a good payment record
14 with utility providers and there are no significant defaults
15 or arrearages as of the petition date.

16 The debtors have calculated, based on their 12
17 month average, that the cost of utility services in the 30
18 days following the petition date will be approximately
19 \$8,805.28. Through the utility motion the debtors are
20 proposing to deposit half that amount into a segregated bank
21 account for the benefit of the utility providers. The
22 debtors believe that deposit, together with their good
23 historical payment record, continued cash flow from
24 operations and the proposed DIP financing should constitute
25 adequate assurance of payment within the meaning of

1 Section 366 of the Code.

2 To the extent that any utility providers dispute
3 the debtors' proposed adequate assurance the utility motion
4 contemplates procedures by which the debtors and the utility
5 providers can either consensually resolve those issues or
6 schedule them for a hearing before the Court as necessary.

7 Your Honor, the debtors believe that the requested
8 relief is consistent with other similar relief regularly
9 approved by Courts in this district, and Section 366 of the
10 Code, and requests that the Court, therefore, enter the
11 proposed interim order.

12 THE COURT: Okay. Thank you very much. There's
13 many participants on the phone today and perhaps have not
14 seen the redlines. Can you walk me through the substantive
15 changes so that parties on the phone have the opportunity to
16 hear them?

17 MR. MESSANA: Sure. So, the first change is in
18 Paragraph 6(b). I will give parties a moment to turn to that
19 if they're interested.

20 (Pause)

21 MR. MESSANA: So, the clarification there was that
22 to the extent utility providers received any other, and
23 here's the addition, post-petition value from the debtors as
24 adequate assurance of payment the adequate assurance deposit
25 can be reduced.

1 The second change was in Paragraph 10 to the order
2 and that was to allow the utility providers two-weeks to
3 object to the removal of amounts from the adequate assurance
4 deposit.

5 THE COURT: Okay. Thank you very much.

6 It's worth noting at this point that prior to the
7 start of this hearing I did give debtor's counsel a second
8 day hearing date which has been inserted into all of the
9 orders. So, for those who are participating the second day
10 hearing is currently scheduled for March 22nd at 2 p.m.

11 Thank you very much. Let me ask does anyone wish
12 to be heard in connection with the interim utilities relief?

13 (No verbal response)

14 THE COURT: Okay. I am not hearing anyone. I have
15 reviewed the motion as well as the proposed order and its
16 revisions. I have no questions or concerns. The relief
17 requested is necessary, appropriate, and customary for this
18 district. I am satisfied that Rule 6003 is satisfied and I
19 will go ahead and enter this order once it has been filed and
20 submitted.

21 MR. MESSANA: Thank you very much, Your Honor.

22 Moving on, next up is Agenda Item 7, I believe
23 that's Docket No. 6, and that is the debtors' equity trading
24 and worthless stock motion. So, by this motion the debtors
25 are seeking Court approval procedures to monitor and, if

1 necessary, restrict trading of their equity securities and
2 claiming of worthless stock deductions in connection with the
3 same.

4 The United States Trustee, again, had minor
5 comments on the form of order that had been incorporated.
6 Again, I understand a redline has been submitted, but I will
7 take a moment to go through those right now unless the Court
8 would prefer I do that at the end.

9 THE COURT: No, that's fine. You can do it now.

10 MR. MESSANA: Sure. So, as was the first change,
11 there were a few changes to the actual procedures, but the
12 first change was to insert those procedures into the actual
13 form of order. So, we have gone ahead and done that.

14 With that said, Paragraph (a) of the stock
15 procedures -- so, we have modified the timing set forth in
16 that paragraph specifically to provide parties 20 calendar
17 days after the entry of the proposed interim order in order
18 to file a substantial stock ownership notice. Then this
19 change would also be carried through to the corresponding
20 paragraph in the worthless stock procedures. So, the effect
21 there is to give parties, essentially, an extra 15 days after
22 entry of the interim order.

23 The second change was in the procedures, stock
24 procedures, and worthless stock procedures. The order had
25 previously provided for -- it would allow parties to redact

1 not only their taxpayer identification number, but also the
2 amount of the stock that they beneficially own. The United
3 States Trustee had requested that we delete that second
4 portion, the amount of stock owned, and we have issued.

5 I believe those were the only changes to the form
6 of order.

7 THE COURT: Okay. Thank you very much. I think
8 the U.S. Trustee captured some of my comments. So, I
9 appreciate you all working together on those.

10 MR. MESSANA: Of course. So, Your Honor, the
11 debtors have significant tax attributes including over
12 \$900 million in aggregate federal and state NOL's as of year-
13 end 2021, and those have continued to accrue across 2022 and
14 to date. While the debtors are continuing to evaluate the
15 extent to which these attributes remain available, they are
16 potentially highly valuable estate assets that could be
17 seriously harmed in the absence of the requested procedures.

18 In the event that the debtors consummate a debt
19 for stock recapitalization or a potential sale transaction,
20 as contemplated by the proposed RSA and plan, those tax
21 attributes could remain available under applicable provisions
22 of the tax code. As a result, the debtors are seeking
23 approval of the procedure described in the motion and will
24 provide notice of the same through publication of notice in
25 the Wall Street Journal, on the KCC website, and also by

1 filing a Form 8-K.

2 The debtors believe that the proposed procedures
3 are narrowly tailored to preserve the value of potentially
4 highly valuable estate assets and are consistent with relief
5 granted in this district and others, and would, therefore,
6 ask that the proposed interim order be approved.

7 THE COURT: Thank you very much.

8 Let me ask, does anyone have any -- wish to be
9 heard in connection with the relief requested.

10 (No verbal response)

11 THE COURT: Okay. I am not hearing anyone.

12 I had the opportunity to review this motion as
13 well as the procedures. As I mentioned, Mr. Hackman's
14 comments captured my limited comments to the proposed form of
15 order. I have no further questions or concerns. I
16 understand why the relief is requested and I am prepared to
17 enter the order as revised. I will wait to receive it.

18 MR. MESSANA: Thank you very much, Your Honor.

19 THE COURT: Thank you.

20 MR. MESSANA: Next up is Agenda Item 8, Docket
21 No. 7, that is the debtors' critical vendor motion. Your
22 Honor, the debtors are seeking narrowly tailored relief to
23 pay a portion of the prepetition claims of certain vendors
24 that they have determined are critical to their business.
25 Specifically, the debtors are seeking to pay up to \$250,000

1 on an interim basis and \$1 million on a final basis which
2 represents approximately five percent of their outstanding
3 trade debt as of the petition date.

4 The critical vendors fall broadly into several
5 categories:

6 The first category is suppliers of component parts
7 for the debtors' equipment which are often proprietary in
8 nature and subject to stringent regulatory approval
9 processes, and also require ongoing support to maintain.

10 The second category is cloud storage providers.
11 The debtors entire network control system is built on a
12 custom cloud platform and losing access to this platform
13 would be extremely detrimental to their business.

14 The third category is providers of corporate and
15 technical support which, among other things, helps to prevent
16 personal data loss and cyber-attacks.

17 The final category are vendors that assist the
18 debtors with customer support including by providing billing
19 and communication support that are necessary to maintain
20 customer relationships.

21 Your Honor, the debtors worked closely with their
22 advisors and assessed a number of factors that are laid out
23 in the motion in order to ensure that the requested relief
24 was narrowly tailored to vendors that are critical.
25 Additionally, to ensure that the debtors are able to maximize

1 the benefit of the requested relief, they are proposing to
2 use the form vendor agreement attached to the motion in their
3 discretion.

4 As noted, the debtors believe that the request for
5 relief is narrowly tailored, appropriate, and will benefit
6 all parties, and it is consistent with relief granted in this
7 district and others. For these reasons the debtors would
8 request that the Court approve the interim order.

9 THE COURT: Thank you.

10 Does anyone wish to be heard in connection with
11 the interim critical vendor relief?

12 (No verbal response)

13 THE COURT: Okay. I'm not hearing anyone.

14 I feel like a broken record, but I did review the
15 motion prior to taking the bench as well as the revised
16 order -- excuse me, the proposed order that was submitted
17 with the motion. I don't think any revisions have been made
18 to the order that was attached to the motion.

19 I have no questions or concerns. I understand why
20 this relief is requested. I do agree it appears to be
21 narrowly tailored for an interim -- for the interim period. I
22 do find that the debtors have met their burden necessary to
23 carry the motion including that of Rule 6003 and I will
24 approve the relief requested today.

25 MR. MESSANA: Thank you, Your Honor. We're happy

1 to hear it.

2 Next up is, I believe, Agenda Item No. 9, Docket
3 No. 8, and that is the debtors' foreign vendors, lien
4 claimants, and 503(b)(9) motion. Your Honor, similar to the
5 critical vendor motion, the debtors are seeking narrowly
6 tailored relief to pay certain foreign vendors, parties that
7 may be entitled to asset liens against the debtors' property,
8 and parties entitled to administrative expense priority under
9 Section 503(b)(9) in an interim amount not to exceed
10 \$355,000.

11 I should note that the debtors expect little to
12 any 503(b)(9) claims and are only seeking relief under the
13 final order out of an abundance of caution.

14 Starting with the lien claimants, the debtors
15 regularly engage various shippers, warehousemen, and third-
16 party logistics service providers that may be able to assert
17 various state law liens if they are not paid. These parties
18 could also refuse to deliver or release the debtors property
19 they are in possession of which could, unsurprisingly, harm
20 the business.

21 The debtors also use several key vendors located
22 outside of the United States that manufacture component parts
23 and provide software and related services. Now, given these
24 parties potential unfamiliarity with the Chapter 11 process
25 and their importance to the business the debtors are seeking

1 authority to a portion of these parties outstanding trade
2 claims in their discretion.

3 Now as with the critical vendor relief the debtors
4 will seek to have the parties impacted by this motion execute
5 a vendor agreement where it would be beneficial to the
6 business.

7 Your Honor, one other point to note is that the
8 motion also seeks confirmation that purchase orders entered
9 into prepetition, but fulfilled post-petition, are entitled
10 to administrative priority in order to reassure potentially
11 impacted vendors.

12 The debtors believe that the requested relief is
13 narrowly tailored, appropriate, and in the best interest of
14 all parties, and is consistent with relief frequently granted
15 in this district and others. As a result, the debtors would,
16 again, request that the Court approve the interim order.

17 THE COURT: Thank you.

18 Does anyone wish to be heard in connection with
19 this motion?

20 (No verbal response)

21 THE COURT: Okay. I am not hearing anyone.

22 My comments with respect to the critical vendor
23 motion apply equally to this motion. I have no questions or
24 concerns and do find that the debtors have met their burden
25 necessary to carry the motion and entry of the relief. I

1 will do so shortly following the conclusion of today's
2 hearing.

3 MR. MESSANA: Thank you very much, Your Honor.

4 Now that should bring us to the final motion that
5 I will be presenting today, and we're going to go a little
6 bit out of order right now, which is Agenda Item 12, Docket
7 No. 11, the debtors' customer programs motion. The debtors
8 maintain various programs in the ordinary course for the
9 benefit of their customers are seeking to continue these
10 practices and honor associated prepetition obligations in an
11 amount not to exceed \$515,000.

12 The customer programs include a revenue sharing
13 program, a refund policy, discounted subscription promotions
14 and also a referral bonus program. The debtors also accept
15 various electronic payments consistent with industry practice
16 and for their customers convenience. They have an
17 arrangement with Stripe they are seeking to continue.

18 Your Honor, the customer programs are essential to
19 the continued growth and satisfaction of the debtors'
20 customer base, and continuing these practices and paying any
21 associated prepetition obligations will benefit all parties.
22 The debtors believe that the requested relief is consistent
23 with relief previously granted in this district and are
24 requesting that the Court enter the proposed interim order.

25 THE COURT: Thank you.

1 Does anyone wish to be heard in connection with
2 the interim customer programs relief?

3 (No verbal response)

4 THE COURT: I am not hearing anyone.

5 I had the opportunity to review the motion. I
6 certainly understand the need for the customer programs and
7 what they are. I have no questions or concerns with respect
8 to the interim relief that is requested. I will go ahead and
9 approve and enter that order following the conclusion of
10 today's hearing.

11 MR. MESSANA: Thank you very much, Your Honor.

12 With that I will cede the podium to my colleague
13 Jeff Mispagel.

14 THE COURT: Thank you very much.

15 Good afternoon, Mr. Mispagel. How are you?

16 MR. MISPAGE: Good. How are you, Your Honor.

17 THE COURT: Doing well. Thank you.

18 MR. MISPAGE: For the record Jeffrey Mispagel
19 from Latham & Watkins, proposed counsel to the debtors.

20 Next item is the insurance motion, which is Agenda
21 Item 10, Docket No. 9. By this motion the debtors seek
22 authority to maintain their insurance program including
23 Workers Compensation Insurance and their surety bond program
24 in the ordinary course of business. The debtors do not
25 believe that they owe any prepetition amount on account of

1 their insurance or bonding programs, or any brokers fees, but
2 seek, through the interim order, authority to pay up to
3 \$5,000 to satisfy any prepetition amounts that are determined
4 to be outstanding.

5 The U.S. Trustee received the motion prior to
6 filing and we believe that the proposed interim order that
7 was filed with the motion is acceptable to the U.S. Trustee.

8 I am happy to answer any questions that Your Honor
9 may have; otherwise, I would respectfully request that the
10 Court enter the interim order that was filed with the motion.

11 THE COURT: Okay. Thank you.

12 Does anyone wish to be heard in connection with
13 the insurance relief?

14 (No verbal response)

15 THE COURT: All right. I am not hearing anyone.

16 I have reviewed the motion as well as the proposed
17 relief. I have no questions or concerns. The relief is
18 customary, and is necessary, and appropriate. The debtors
19 have met their burden to carry the motion including that of
20 Rule 6003. I will go ahead and enter that order.

21 MR. MISPAGEL: Thank you, Your Honor.

22 The next item is the taxes motion, Docket No. 10,
23 Agenda No. 11. By this motion the debtors seek authority to
24 pay prepetition taxes and fees in the ordinary course, as and
25 when due, up to \$109,500 on an interim basis.

1 The U.S. Trustee received the motion prior to
2 filing and we believe that the proposed interim order is
3 acceptable to the U.S. Trustee subject to a few modifications
4 to the version that was filed with the motion. Notably, the
5 revisions to the order will make clear that the order does
6 not authorize the debtors to pay any past-due taxes. And the
7 other revision to the order that was filed is that the order
8 will provide for service of the order on all relevant taxing
9 authorities.

10 Unless Your Honor has any questions I would
11 respectfully request that the Court enter the revised interim
12 order which we plan to file under certification of counsel
13 after the hearing.

14 THE COURT: Thank you very much.

15 Does anyone wish to be heard in connection with
16 the interim tax motion?

17 (No verbal response)

18 THE COURT: All right. I am not hearing anyone.

19 I have also reviewed this motion as well as the
20 revised proposed form of order. I have no questions or
21 concerns. I understand why this relief is requested, why it's
22 necessary and appropriate. I find that the debtors have met
23 their burden to carry the motion including that of Rule 6003.
24 I will go ahead and enter the revised form of order once it's
25 been filed and I have received it.

1 MR. MISPAGE: Thank you, Your Honor.

2 The next is the wages motion, Agenda No. 13,
3 Docket No. 12. By this motion the debtors seek authority to
4 pay prepetition wages and other obligations to or for the
5 benefit of the debtors' employees and work force, and to
6 continue the debtors current work force programs in the
7 ordinary course.

8 The U.S. Trustee received the motion prior to
9 filing and we believe that the proposed interim order is
10 acceptable to the U.S. Trustee subject to one modification,
11 the version of the order that was filed with the motion.
12 That modification to the proposed order clarifies that the
13 debtors do not seek authority to make any retention payments
14 under the interim order.

15 The debtors do seek authorization to pay severance
16 under the interim order, but only to non-insiders, only up to
17 \$18,000 in the aggregate, and no individual former employee
18 would be paid more than the statutory priority cap under
19 Section 507(a)(4).

20 One thing that I would like to note for the Court
21 is that the motion filed incorrectly listed the total amount
22 of outstanding prepetition obligations that the debtors will
23 seek to pay on a final basis. The grand total on the Chart
24 on page 5 of the motion should be \$465,000 rather than
25 \$495,000. But the interim order correctly listed the amount

1 that the debtors seek authority to pay on an interim basis
2 which is \$435,000.

3 Unless Your Honor has any questions I would
4 respectfully request that the Court enter the revised interim
5 order which we plan to file under certification of counsel
6 after the hearing.

7 THE COURT: Okay. Thank you very much. I have no
8 questions; Mr. Hackman's comments covered mine.

9 I'll ask for the record, does anyone wish to be
10 heard in connection with the wages motion?

11 (No verbal response)

12 THE COURT: Unsurprisingly, I'm not hearing
13 anyone.

14 I have no questions or concerns, as I mentioned.
15 I'm happy to approve this order and I will do so as soon as I
16 receive it. I find that the relief is necessary and
17 appropriate, and the debtors have met their burden to carry
18 the motion, including that of Rule 6003.

19 Thank you very much.

20 MR. MISPAGEL: Thank you, Your Honor.

21 The next item on the agenda is the cash management
22 motion, which is Agenda Number 14 and Docket Number 13.

23 By this motion, the debtors seek authority to
24 continue and maintain their existing cash management system,
25 including the maintenance of the debtors' existing bank

1 accounts, checks, and business forms. The debtors also seek
2 authorization to pay up to \$1,400 of prepetition fees in
3 connection with the cash management system.

4 Additionally, the debtors seek authorization to
5 continue ordinary course intercompany transactions, but do
6 not seek authority to enter into any transactions with their
7 non-debtor affiliates.

8 The U.S. Trustee received the motion prior to
9 filing and we believe that the proposed interim order is
10 acceptable to the U.S. Trustee, subject to a few
11 modifications. The modifications consist of a provision
12 requiring that the debtors calculate U.S. Trustee fees based
13 on disbursements of each debtor, regardless of who pays those
14 disbursements; a requirement that the debtors serve a copy of
15 the interim order on all of their banks; and the
16 clarification that the extension of time to comply with the
17 requirements of Section 345(b) of the Bankruptcy Code is
18 applicable only to banks that are not party to a uniform
19 depository agreement with the U.S. Trustee.

20 Unless Your Honor has any questions, I would
21 respectfully request that the Court enter the revised interim
22 order, which we plan to file under certification of counsel
23 after the hearing.

24 THE COURT: Okay. Thank you very much.

25 Does anyone wish to be heard in connection with

1 the interim cash management relief?

2 (No verbal response)

3 THE COURT: Okay, I'm not hearing anyone.

4 I do have one -- I reviewed the motion and the
5 revised order and I only have one question or concern. With
6 respect to material changes to the cash management system,
7 I've started to ask that those be -- that those be made only
8 upon Court approval. There's a couple different ways I think
9 you could handle that, including filing a certification of
10 counsel with a proposed order perhaps that has been shared
11 with the U.S. Trustee and a committee and the lender and who
12 have signed off or just file a motion.

13 So I'll leave it to you of how you want to address
14 the issue, but my view is that material changes to the cash
15 management system would require Court approval in addition
16 to, I think, how it's written now, that ArrowMark would be
17 the only party that would need to consent.

18 So, for purposes of the interim order, I think to
19 expedite its entry, I would ask you to add to paragraph 18
20 that a material change should require Court order. And, if
21 you would like to streamline the process through, you know, a
22 certification-of-counsel mechanism, I'll give you time to
23 think about it and perhaps you could propose it in a final
24 order. I'll leave it to you of how you wish to handle it.

25 MR. MISPAGE: Understood, Your Honor. I think

1 your suggestion as to paragraph 18 will likely work for the
2 interim order.

3 THE COURT: Okay.

4 MR. MISPAGE: And we'll submit a revised order
5 with that change under certification of counsel.

6 THE COURT: Okay. Thank you very much, I
7 appreciate that.

8 With that change, I will go ahead and approve the
9 order and the relief requested, and I'll wait to receive the
10 revised order.

11 MR. MISPAGE: Great. Thank you, Your Honor.

12 With that, I will turn the virtual podium back
13 over to my colleague Mr. Dillman.

14 THE COURT: Okay. Thank you.

15 MR. DILLMAN: All right, thank you. So that
16 brings us to the DIP motion, which is at Docket Number 18.

17 As we mentioned before and thanks to Mr. Hackman
18 engaging with us last week and making time to talk to us on
19 Presidents' Day, the form of the order that we were able to
20 file with the DIP motion reflects all the U.S. Trustee's
21 comments and we've resolved all the open issues with the U.S.
22 Trustee. I'm happy to give an overview of the DIP, unless
23 Your Honor would prefer to ask any questions upfront.

24 THE COURT: Well, I studied the motion, as well as
25 the order, and I don't want to truncate your presentation,

1 but I'm fully -- I think I'm fully up to speed of what the
2 terms are. I've read the declaration as well --

3 MR. DILLMAN: Okay.

4 THE COURT: -- but I'll leave it to you. I have a
5 few minor comments, but other than that, I would let you move
6 forward how you wish to proceed.

7 MR. DILLMAN: Sounds good.

8 So, as we previously noted, the Mr. Schlappig
9 submitted a declaration in support of the DIP. It goes
10 without saying in a case like this that the debtors require a
11 DIP. We filed with limited cash on hand and require interim
12 financing in order to operate their businesses and support
13 the Chapter 11 cases.

14 Through the DIP motion, the debtors seek
15 authorization for the debtors to enter into the DIP credit
16 agreement and incur the DIP financing.

17 The DIP consists of \$43 million of new money term
18 loans, of which 12 million will be available upon entry of
19 the interim order. It also seeks approval of a rollup of the
20 tranche D loans under the prepetition credit agreement in an
21 aggregate amount of \$15 million upon entry of the interim
22 order, and the balance of the tranche D loans on entry of the
23 final order.

24 I won't go through all the different provisions
25 summarized in the order, but -- or in the motion, but the key

1 economic terms of this are a 13-percent interest rate, which
2 is payable in kind, that's the same interest rate as on the
3 prepetition tranche D loans; a maturity date of the earlier
4 of six months, the conversion or dismissal of the cases and
5 the closing of a sale of all or substantially all assets. It
6 includes a commitment fee payable to the lenders of
7 \$3 million, which is payable in kind.

8 It also includes an exit fee of eight percent on
9 the funded amount of new money DIP loans and five percent on
10 the rollup loans, but these fees are waived in the event that
11 the plan is consummated and the DIP is converted into the
12 exit facility.

13 I think the debtors have met their burden based on
14 the first day declaration and the declaration of Michael
15 Schlappig. The debtors believe this is the best and only
16 viable financing option that's available to the debtors under
17 these circumstances.

18 In connection with the Chapter 11 case, PJT
19 assessed the market for DIP financing based on the debtors'
20 liquidity needs and feedback from the extensive prepetition
21 sale process that PJT conducted and determined that a DIP
22 loan from the prepetition lenders is really the only viable
23 option. The debtors have few, if any, unencumbered assets
24 that could be used to collateralize DIP financing. So any
25 DIP from parties other than the DIP lenders would have

1 required their consent, which they were not willing to
2 provide a willingness to fund on a junior basis, which, given
3 the feedback of the sale process, was not going to be viable,
4 and also based on the information that PJT gleaned through
5 that process didn't believe we could establish an equity
6 cushion or other ability to have a nonconsensual priming DIP.

7 It's also -- the DIP financing is integrated with
8 the lender's support for the company and the Chapter 11 cases
9 through the restructuring support agreement, under which they
10 have agreed to effectively backstop a plan that provides the
11 debtors with an orderly path to emerge from Chapter 11 as a
12 deleveraged company and includes their commitment both to
13 provide new money exit financing and convert the DIP
14 financing into exit financing.

15 Your Honor, I'm happy to touch on the rollup. We
16 recognize first day rollups are a bit unusual, though by no
17 means unheard of. We believe the rollup here is appropriate;
18 it's part of the conditions that the prepetition lenders have
19 attached. The interest rate is the same on the prepetition
20 and the post-petition debt, so the rollup doesn't cost the
21 estates more from an interest-expense perspective.

22 And, you know, ultimately, the DIP rollup is
23 subject to the challenge rights of the committee, so any
24 rights that unsecured creditors have will be preserved and
25 the committee will have the opportunity to look at this and

1 vindicate those rights, if there's anything there.

2 We'd also note that rollups of similar or greater
3 magnitude, including on the first day, have been granted in
4 this jurisdiction and in other jurisdictions, including, I
5 think, GNC, which Latham had before Your Honor.

6 Just one housekeeping item. We would note that
7 the DIP debtors include four entities that are not
8 prepetition obligors on the prepetition debt and the U.S.
9 Trustee asked that we represent that the DIP obligors who are
10 not prepetition obligors do not have material assets, and
11 that is the case that they do not have material assets.

12 As I mentioned at the beginning, I think not
13 having -- on the immediate-and-irreparable-harm standard
14 failure to have immediate access to the DIP facility and the
15 use of cash collateral would cause immediate and irreparable
16 harm to the estates. We have little cash, as I mentioned,
17 the company needs the ability to fund its ongoing operations.

18 So, with that, Your Honor, we would respectfully
19 request that the relief requested is appropriate, satisfies
20 the requirements of Section 364 of the Bankruptcy Code, and
21 would ask that Your Honor grant the requested relief. As
22 with the other first days, we'd also ask that it be effective
23 immediately.

24 THE COURT: Okay. Thank you very much.

25 Let me ask for the record, does anyone wish to be

1 heard in connection with the interim DIP and cash collateral
2 order?

3 MS. GOOD: Good afternoon, Your Honor, Katie Good
4 from Potter Anderson & Corroon on behalf of ArrowMark Agency
5 Services, LLC. I'm joined today by my co-counsel Mr. Justin
6 Bernbrock from Sheppard, Mullin, Richter & Hampton, and I
7 would turn the virtual podium over to him to address the
8 Court on the DIP.

9 THE COURT: Okay. Thank you, Ms. Good.

10 Mr. Bernbrock, how are you?

11 MR. BERNBROCK: Good afternoon, Your Honor, Justin
12 Bernbrock of Sheppard, Mullin, Richter & Hampton. Can you
13 hear me okay?

14 THE COURT: I can, yes, and welcome.

15 MR. BERNBROCK: Very good, Your Honor. Thank you
16 so much for the opportunity to be heard today and I assure
17 you that it will be very brief.

18 I support Mr. Dillman's presentation to the Court
19 in full and we're certainly happy on behalf of the DIP agent
20 and the lenders within the DIP facility, which I should note
21 the agent is ArrowMark Agency Services, LLC, and the agent,
22 as well as all of the lenders, support the relief requested
23 under the motion. We very, very much appreciate the hard
24 work of the debtors, and if I may join the chorus in thanking
25 Mr. Hackman for contributing his holiday time to review and

1 work with us on the motion, on the order, it's very much
2 appreciated that he was willing to do so.

3 Unless Your Honor has any further questions, we
4 support entry of the order.

5 THE COURT: Okay. Thank you very much.

6 All right, does anyone else wish to be heard in
7 connection with the DIP and the cash collateral?

8 (No verbal response)

9 THE COURT: Okay, I'm not hearing anyone.

10 I will extend my -- once again, extend my
11 appreciation to the parties and Mr. Hackman in this case. I
12 had the opportunity to review the interim order prior to
13 taking the bench and it was clear that the parties worked
14 cooperatively and efficiently with Mr. Hackman to incorporate
15 some comments that were clearly from his office.

16 So I very much appreciate when the parties do that
17 because the U.S. Trustee knows who we are and knows what the
18 Court likes, and so it's often frustrating when I know
19 comments are made by the U.S. Trustee's Office and are not
20 accepted and then -- are then covered in court by myself. It
21 just speeds up the process and makes me more happy, makes all
22 of us happy.

23 So, with that, let me say I just have a few minor
24 comments, very, very --

25 MR. DILLMAN: Sure.

1 THE COURT: -- non-substantive, that I was hoping
2 we could run through.

3 MR. DILLMAN: Absolutely.

4 THE COURT: Nothing on the economics, okay? These
5 are just little nits and the first one is paragraph -- sorry,
6 I'm on page 27 and it's paragraph 8(g), and it starts with
7 "Miscellaneous."

8 MR. DILLMAN: Uh-huh.

9 THE COURT: So let me know when you all are there,
10 but this is the paragraph that I often --

11 MR. DILLMAN: I'm there, Your Honor.

12 THE COURT: Okay. This is a paragraph I often see
13 and I customarily request that this be made an event of
14 default. I view this as something that would, perhaps
15 inappropriately, tie my hands later. I certainly understand
16 why the lenders want it, but I view it more as an agreement
17 between the parties and that it would really not bind me in
18 the future.

19 So, in order to avoid confusion, I typically ask
20 parties to just simply make this an event of default or an
21 agreement between the parties. I'm happy to discuss that and
22 the lenders' views on it and have a discussion, if we think
23 it's worthwhile.

24 MR. DILLMAN: It's obviously fine with the
25 debtors, Your Honor.

1 THE COURT: Okay. I'm just waiting for
2 Mr. Bernbrock.

3 MR. DILLMAN: Yeah.

4 MR. BERNBROCK: No issues from the lenders, Your
5 Honor.

6 THE COURT: Okay, wonderful. I will say it may
7 appear at another location in the order. I think I may have
8 seen it twice. So, if I am correct that this provision
9 repeats itself later on in the order, my comment stands with
10 respect to the repetition. I could be wrong that it's --

11 MR. DILLMAN: We'll check it, Your Honor.

12 THE COURT: Yes, please do.

13 And then my second and final comment is --
14 actually, let me backtrack, it's on page 21, in paragraph 6,
15 and it's the last sentence. And that sentence states,
16 "Except as set forth in this interim order or the final
17 order, no other super-priority claims shall be granted or
18 allowed in the Chapter 11 cases."

19 I will not approve that statement; however, it
20 is -- it can be an event of default, it can be an agreement
21 between the parties, but I'm not going to agree to that.
22 Again, my view is this would not bind me and I would be free
23 to do what I wish. And so I think it's best to just clear
24 this up now and make it an agreement of the parties rather
25 than an order from this Court.

1 If that's acceptable to you, Mr. Bernbrock, then
2 it's acceptable to me.

3 MR. BERNBROCK: Of course, Your Honor.

4 THE COURT: Excellent. Well, those are my only
5 two comments. It's clear that -- again, that the parties
6 worked productively to try to capture any anticipated
7 comments that I may have. And there's also a few other
8 provisions in there that I thought were, I guess, an olive
9 branch to any committee that may be appointed, and I
10 certainly see them and I appreciate them and I think it sets
11 a good path forward for these cases.

12 So, based on all that, as well as the facts and
13 circumstances described in both declarations into evidence
14 and on the record today, as well as the revisions to the
15 proposed order that have just been agreed to by the parties,
16 I will approve the interim DIP and cash collateral order,
17 subject to the appropriate revisions being made and the order
18 being filed under certification of counsel.

19 I'm satisfied that the debtors have met their
20 burden necessary to carry the motion, including that of
21 Rule 6003, and that the relief is appropriate and warranted.

22 So I will wait to receive the revised order under
23 COC and, once it's received, enter it as soon as possible.

24 MR. DILLMAN: Great. Thank you, Your Honor.

25 THE COURT: Okay. And before we turn to

1 scheduling the disclosure statement hearing and as well as
2 other items that you may want to discuss with me, I just want
3 to make sure that I have my marching orders with respect to
4 the orders.

5 So, based on my notes, I think right now I am not
6 waiting for revisions to the following motions: critical
7 vendor, customer programs, foreign vendors, and insurance. I
8 think those are the four orders that I can enter as I sit
9 here. If there's any changes to that list or there's more --
10 Mr. Mulvihill, you're coming on or at least you did come on,
11 but you can let me know, I guess, at some point if there's
12 more that I can enter, but I just want to make sure we
13 expedite the entry of what I can prior to waiting for COCs.

14 Mr. Mulvihill, lend me a hand here. You're on
15 mute, though. You're trying to lend me a hand, but you're on
16 mute.

17 MR. MULVIHILL: Can you hear me now, Your Honor?

18 THE COURT: I can. Thank you.

19 MR. MULVIHILL: Good afternoon. For the record,
20 Joseph Mulvihill of Young Conaway, proposed counsel for the
21 debtors.

22 You do have it correct, Your Honor. I do believe
23 we've uploaded the four orders that you're waiting on and the
24 other 12 will be -- I'm sorry, the other eight will be coming
25 via certification of counsel as soon as this hearing is over.

1 We've been putting them together during the hearing and we'll
2 get them submitted shortly.

3 THE COURT: Very good. Thank you very much.

4 Okay, Mr. Dillman, should we discuss scheduling
5 and anything else that you need from me at this time?

6 MR. DILLMAN: That would be great, Your Honor.
7 Other than setting a time for a disclosure statement hearing,
8 I don't believe we have anything else.

9 THE COURT: Okay. So do you have the motion ready
10 to go and you're just waiting for a date, or is there going
11 to be some time in between now and filing?

12 MR. DILLMAN: We do, we do, Your Honor -- I mean,
13 it will be filed within days. I think we were just hoping
14 that when we served notices, particularly given the breadth
15 of the notice around that, that we'd be able to fill in the
16 dates.

17 THE COURT: Okay. I just want to make sure we
18 comply with the rule if I give you a date now.

19 MR. DILLMAN: Right.

20 THE COURT: So what is the time frame that you're
21 looking for?

22 MR. DILLMAN: I think we will be looking for a
23 date either in the second part of the week, the last week of
24 March, or first part of the following week. So I believe
25 the 29th through the 31st of March would work, or it could be

1 the prior week, if Your Honor is not available at that point.

2 THE COURT: I'm sorry, you said the prior week or
3 the week thereafter?

4 MR. DILLMAN: Sorry, the following week.

5 THE COURT: Okay. And so do you think it will be
6 on file by the end of this week?

7 MR. DILLMAN: I believe it will, yes.

8 THE COURT: Okay.

9 MR. DILLMAN: And I think, if that's the case --
10 hold on just -- yeah, so if it's -- if we file it by the end
11 of this week, 28 days would get us to the 24th of March. I
12 believe we can actually file it before then and so we could
13 do a hearing the 30th or the 31st. Maybe we can have an
14 extra day just to be safe --

15 THE COURT: Okay.

16 MR. DILLMAN: -- but the 30th or 31st with giving
17 the 28 days' notice, plus having objections due at least a
18 week before the hearing.

19 THE COURT: Okay. How about the morning of
20 the 31st, which is a Friday? And I'm available starting at
21 9 o'clock, but if you'd like more time, I'm happy to set it
22 at 10:00 a.m. Really, whatever is most convenient for the
23 parties, I'm free all day.

24 It would be in person, so if you have --

25 MR. DILLMAN: Yes.

1 THE COURT: -- a preference on starting later,
2 that's fine.

3 MR. DILLMAN: Either is fine, but why don't we set
4 it at 10 o'clock, just in case there's last-minute things
5 happening before, it can give a little more time for them to
6 get worked out.

7 THE COURT: Okay, excellent. So I'll put you on
8 for March 31st at 10:00 a.m. Eastern time. And the hearing
9 will be in person and of course I have my procedures that set
10 forth Zoom participation, and the parties can review those
11 prior to the hearing.

12 MR. DILLMAN: Understood. We'll be there in
13 person and appreciate you accommodating us remotely on the
14 first day.

15 THE COURT: I'm happy to do it. I think it's
16 easier for everyone to do it this way.

17 Okay, all right. Well, is there anything else we
18 should discuss before we part ways and get to entering and
19 uploading all the orders?

20 MR. DILLMAN: Not from my perspective, but I will
21 give just one moment for any of my Latham or Young Conaway
22 colleagues to jump in. But seeing nobody taking their
23 screens off blank, I think we're good to go.

24 THE COURT: Excellent. Well, it was a pleasure
25 meeting all of you, to the extent I haven't met you before;

1 it's a pleasure to see you again, to the extent that I often
2 come across you. And I look forward to seeing you all at the
3 second day hearing and receiving all of your first day
4 orders. I know there's a lot of work that has been done to
5 get you to this point in time and I'm sure you feel relieved,
6 but we're just getting started, so there will be a lot more.

7 But thank you all very much and I will see you at
8 the next hearing. If not, if something comes up between now
9 and then, you all know how to get a hold of me.

10 So, with that, we'll stand adjourned. Thank you
11 all very much. Take care.

12 MR. DILLMAN: Great. Thank you, Your Honor.

13 (Proceedings concluded at 2:19 p.m.)
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CERTIFICATION

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

/s/ William J. Garling

February 22, 2023

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams

February 22, 2023

Tracey J. Williams, CET-914
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/s/ Mary Zajackowski

February 22, 2023

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