

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

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In re:	:	Chapter 11
	:	
SUPERIOR ENERGY SERVICES, INC., <i>et al.</i> , ¹	:	Case No. 20-35812 (DRJ)
	:	
Reorganized Debtors.	:	(Jointly Administered)
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**APPELLEES' DESIGNATION OF ADDITIONAL
ITEMS TO BE INCLUDED IN RECORD ON APPEAL**

[Relates to Docket No. 332]

Pursuant to Federal Rule of Bankruptcy Procedures 8009(a)(2), the appellees, the above-captioned reorganized debtors (the “**Debtors**” or “**Reorganized Debtors**,” as applicable), by and through their undersigned counsel, respectfully submits this designation of additional items to be included in the record on appeal in connection with the *Notice of Appeal* filed on February 10, 2021 [Docket No. 332] by appellants Michael Sammons, Elena Sammons, and Stephen Sammons:

<u>Docket No.</u>	<u>Date Filed</u>	<u>Description</u>
11	December 7, 2020	Debtors' Plan of Reorganization
12	December 7, 2020	Debtors' Disclosure Statement (including all exhibits attached thereto)
88	December 8, 2020	Order Establishing Bar Date
98	December 8, 2020	Order Granting Solicitation Procedures Motion
109	December 10, 2020	December 8, 2020 First Day Hearing Transcript
150	December 11, 2020	Debtors' First Plan Supplement

¹ The Reorganized Debtors in these cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Superior Energy Services, Inc. (9388), SESI, L.L.C. (4124), Superior Energy Services-North America Services, Inc. (5131), Complete Energy Services, Inc. (9295), Warrior Energy Services Corporation (9424), SPN Well Services, Inc. (2682), Pumpco Energy Services, Inc. (7310), 1105 Peters Road, L.L.C. (4198), Connection Technology, L.L.C. (4128), CSI Technologies, LLC (6936), H.B. Rentals, L.C. (7291), International Snubbing Services, L.L.C. (4134), Stabil Drill Specialties, L.L.C. (4138), Superior Energy Services, L.L.C. (4196), Superior Inspection Services, L.L.C. (4991), Wild Well Control, Inc. (3477), and Workstrings International, L.L.C. (0390). The Reorganized Debtors' address is 1001 Louisiana Street, Suite 2900, Houston, Texas 77002.



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<u>Docket No.</u>	<u>Date Filed</u>	<u>Description</u>
157	December 14, 2020	Certificate of Service for First Plan Supplement
160	December 15, 2020	Certificate of Service for Bar Date Notice
164	December 16, 2020	Certificate of Service for Solicitation Packages
214	January 8, 2021	Debtors' Second Plan Supplement
215	January 8, 2021	Notice of Cash Opt-Out Election Deadline Extension
223	January 12, 2021	Certificate of Service for Second Plan Supplement
244	January 13, 2021	Supplemental Certificate of Service for Notice of Cash Opt-Out Election Deadline Extension
263	January 15, 2021	Debtors' First Amended Plan
265	January 15, 2021	Declaration of James Lee Regarding Solicitation of Votes and Tabulation of Ballots
266	January 15, 2021	Declaration of Westervelt T. Ballard Jr. in Support of Plan Confirmation
267	January 15, 2021	Declaration of Joshua C. Cummings in Support of Plan Confirmation
268	January 15, 2021	Declaration of Ryan Omohundro in Support of Plan Confirmation
270	January 15, 2021	Memorandum of Law in Support of Approval of Disclosure Statement and Confirmation of Plan
N/A	N/A	January 19, 2021 Plan Confirmation Hearing Transcript
306	January 27, 2021	Sammons Motion to Reconsider Order Approving Disclosure Statement and Plan of Reorganization
314	February 1, 2021	Notice of Filing of Third Plan Supplement

<u>Docket No.</u>	<u>Date Filed</u>	<u>Description</u>
317	February 2, 2021	Notice of Effective Date and Entry of Order Approving Disclosure Statement and Confirming First Amended Plan
318	February 3, 2021	Certificate of Service for Debtors' Third Plan Supplement
323	February 4, 2021	Order Denying Sammons Motion to Reconsider Order Approving Disclosure Statement and Plan of Reorganization
325	February 5, 2021	Certificate of Service for Notice of Effective Date and Entry of Order Approving Disclosure Statement and Confirming First Amended Plan
333	February 10, 2021	Emergency Motion for Stay Pending Appeal
339	February 15, 2021	Reorganized Debtors' Objection and Response to Emergency Motion for Stay Pending Appeal

Signed: February 18, 2021
Houston, Texas

Respectfully Submitted,

/s/ Timothy A. ("Tad") Davidson II

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CERTIFICATE OF SERVICE

I certify that on February 18, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

3) CASE NO: 20-35812-DRJ
4)
4 SUPERIOR ENERGY SERVICES) Houston, Texas
Inc., et al.,)
5) Tuesday, January 19, 2021
Debtors.)
6) 2:15 pm - 3:45 pm
7)
7 -----)

8 CONFIRMATION HEARING

9 BEFORE THE HONORABLE DAVID R. JONES
10 UNITED STATES BANKRUPTCY JUDGE

11 APPEARANCES:

12 For Debtors: KEITH SIMON
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24 Proceedings recorded by electronic sound recording;
25 Transcript produced by transcription service.

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DEBTORS' EXHIBITSRECEIVED

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Exhibits 274-1 through 274-32

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Exhibits 274-34 through 274-36

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Exhibit 279-3

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Exhibit 279-2

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GOVERNMENT'S EXHIBITSRECEIVED

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1 HOUSTON, TEXAS; TUESDAY, JANUARY 19, 2021; 2:15 PM

2 (Call to Order)

3 THE COURT: Good afternoon, everyone. This is
4 Judge Jones. The time is 12 noon. Today is January the
5 19th, 2021. This is the docket for Houston, Texas. Next on
6 this afternoon's docket we have confirmation hearing in the
7 jointly administered cases under Case No. 20-35812, Superior
8 Energy Services, Inc.

9 Folks, please don't forget to record your
10 electronic appearance. If you haven't done this in a while
11 or perhaps never, it's a quick trip to the website, two
12 clicks. It'll take you less than 20 seconds and you can do
13 it at any time prior to the conclusion of the hearing.

14 First time that you speak this afternoon, I would
15 ask that you state your name and who you represent. That
16 will give us a good voiceprint in the event that a written
17 transcript is requested. And finally, we are recording
18 using CourtSpeak, so we'll get the audio up on the docket
19 and available for download shortly after the conclusion of
20 the hearing.

21 Mr. Simon, are you starting this off this
22 afternoon?

23 MR. SIMON: Yes, sir. Good afternoon, Your Honor.
24 Thank you for making the time for us. Keith Simon of Latham
25 and Watkins. Your Honor, that was my part again. I got

1 stacked with just the intro. I'm going to turn over to my
2 partner, Mr. Klidonas who will handle the confirmation, our
3 case in chief. I would like to say, Your Honor, that
4 probably we'll save some time to do a closing and perhaps
5 some rebuttal points, based on the objections, but Mr.
6 Klidonas will handle the tough part, which is the
7 confirmation in chief.

8 THE COURT: All right. Thank you. Mr. Klidonas?

9 MR. KLIDONAS: Good afternoon, Your Honor.

10 THE COURT: Good afternoon.

11 MR. KLIDONAS: George Klidonas from Latham and
12 Watkins representing Superior Energy Services, Inc. and its
13 Debtor affiliates. First and foremost, I'd like to thank
14 Your Honor, your staff, and the U.S. Trustee for
15 accommodating us today and throughout these Chapter 11
16 cases.

17 Your Honor, despite the multiple objections that
18 were filed on the docket, the company believes it has a
19 confirmable Chapter 11 plan and I'm pleased to report that
20 we do have a plan that is accepted by all voting classes of
21 creditors. Most of the objections or the informal comments
22 have been resolved and that leaves us with a group of
23 creditors that have objected to the plan all on similar
24 grounds which I can discuss in a few moments.

25 Before I get into the substance, I'd just like to

1 make a few introductions and as Your Honor notes and has
2 noted in the past, employees are the heart and soul of
3 companies in Chapter 11 and the employees here, including
4 management, have dedicated themselves to maintain
5 uninterrupted operation during these cases. And they should
6 be commended for their incredibly hard work, so I'd like to
7 introduce some members of management with us in the
8 courtroom today: David Dunlap, the CEO; Wesley Ballard, the
9 CFO; and Bill Masters, general counsel.

10 THE COURT: Good afternoon, everyone.

11 MR. KLIDONAS: We also have a number of advisors,
12 Your Honor, in the courtroom that represent the company,
13 some of which we will be submitting declarations for today,
14 including James Lee of KCC, Joshua Cummings of Johnson Rice,
15 Ryan Omohundro of Alverez and Marsal, and of course, Tad
16 Davidson, Ashley Harper, and Philip Guffy of Hunton, Andrews
17 and Kurth.

18 THE COURT: Thank you.

19 MR. KLIDONAS: I'd like to begin, Your Honor, with
20 the evidentiary record as set forth in the witness and
21 exhibit list filed at Docket No. 274. Company requests that
22 Exhibits Nos. 1 through 37 be admitted into evidence for
23 today's hearing. There are also a few declarations, as I
24 mentioned, that we request move into evidence. I was going
25 to start with the DIP order, but I just saw that it got

1 entered about a few minutes ago, but the declarations there
2 would've been Wesley Ballard, Docket No. 8 and Ryan
3 Omohundro at Docket No. 7.

4 And for confirmation, we have four declarations
5 which are James Lee of KCC, Docket No. 265; Wesley Ballard,
6 Docket No. 266; Josh Cummings, Docket No. 267; Ryan
7 Omohundro, Docket No. 268. And with that, Your Honor, we
8 request that the exhibits and four declarations be admitted
9 into evidence only for the purposes of this confirmation
10 hearing and we also ask to provide an opening statement to
11 the extent there's any cross exam to be part of rebuttal.

12 THE COURT: Certainly.

13 MR. ALANIZ: Your Honor, we --

14 THE COURT: Let me -- hold on. Let me go through
15 and do these sequentially. With respect to the Debtors'
16 exhibits, which pursuant to the protocol would be 274-1
17 through 274-37, are there any objections?

18 MR. ALANIZ: Yes, Your Honor.

19 THE COURT: Mr. Alaniz, good afternoon.

20 MR. ALANIZ: Good afternoon. (sound drops) on
21 behalf of (sound drops). Your Honor (sound drops) --

22 THE COURT: Mr. Alaniz -- and I'm sorry for
23 interrupting. The device that you're on is just cutting out
24 so I was hearing every other word. We are picking up some
25 background noise. I was hoping to leave everything unmuted.

1 Let me go ahead and mute everyone's line. That will help.

2 And if you plan on speaking, if you would hit five star on
3 your phone, please.

4 AUTOMATED VOICE: Conference muted.

5 MR. ALANIZ: Your Honor, am I coming through okay?

6 THE COURT: Yes, sir, and Mr. Alaniz, give me just
7 -- there was a long list. Let me get through all of them.
8 All right, that should be everybody. And Mr. Alaniz, the
9 sound was much, much better.

10 MR. ALANIZ: Okay. Thank you, Your Honor. Your
11 Honor, we do not have an objection to a majority of the
12 exhibits. With respect to Exhibit 34 through 36, our --
13 we're okay with admitting those declarations subject to our
14 cross examination.

15 Your Honor, with respect to Exhibit 33, though, we
16 do have an objection. Mr. Lee's declaration includes
17 Exhibits A through D, which are summaries of the tabulation
18 voting and that exhibit -- those exhibits are inadmissible
19 under Federal Rule of Evidence 1006 if they're proving the
20 contents of -- as summary of the underlying evidence, so we
21 would object to that declaration's admissibility, Your
22 Honor.

23 THE COURT: All right. And so let me --

24 MR. CLEMENT: Your Honor?

25 THE COURT: Yes, sir.

1 MR. CLEMENT: Your Honor, I don't want to
2 interrupt at an inappropriate time. We object to the use of
3 the James Lee KCC affidavit. It's hearsay. It needs to
4 come in through a witness. We think there's substantial
5 issues with it. I can't tell whether it is currently being
6 offered or will be offered in a moment, but we --

7 THE COURT: It is --

8 MR. CLEMENT: But we object.

9 THE COURT: All right. So Mr. Clement that is 33
10 which Mr. Alaniz had objected to, so let me see if I can
11 narrow this down. Any objections to 274-1 through 274-32?
12 All right, then they are admitted. With respect to 274-33,
13 Mr. Klidonas, you're going to have to do that one the hard
14 way, and Mr. Alaniz, as I understood it, no objections to
15 34, 35, and 36 subject to your right of cross examination,
16 correct?

17 (Exhibits 274-1 through 274-32 Entered Into Evidence.)

18 MR. ALANIZ: Correct, Your Honor.

19 THE COURT: All right, then they are admitted.
20 All right. Mr. Klidonas?

21 (Exhibits 274-34 through 274-36 Entered Into Evidence.)

22 MR. KLIDONAS: Sure, Your Honor. I'd like to just
23 confer with my litigation team to set up to have Mr. James
24 Lee come up on the stand so we can put in some evidence.

25 THE COURT: Certainly. Do you need --

1 MR. CLEMENT: Your Honor?

2 THE COURT: Yes, sir. Mr. Clement?

3 MR. CLEMENT: Your Honor, while they're doing
4 that, would you like to hear an opening statement from Mr.
5 Alaniz and me about what the issue is?

6 THE COURT: So I would love to, but let me do this
7 in -- sort of sequentially, if I could. So Mr. Klidonas,
8 let me ask you. I want to make sure I understood the
9 request. So you would like to take just a couple minute
10 break to coordinate making sure that Mr. Lee can appear and
11 then come back and we'll taking openings, correct?

12 MR. KLIDONAS: Yeah, but to Mr. Clements point,
13 because it sounds like obviously they would want to do an
14 opening as well, perhaps -- and what I would recommend, Your
15 Honor, is the Debtor so an opening with sort of our summary
16 of what our arguments would be. We can set forth evidence
17 particularly of Mr. Jim Lee with respect to the voting and
18 tabulation and then the objectors can also obviously do an
19 opening and then we can sum up at the end based on all the
20 evidence.

21 THE COURT: All right. So let me -- because now
22 I'm probably a little more confused than I was a couple
23 minutes ago. Why don't you just take -- we won't take this
24 as opening. Just -- we'll take this just as getting me
25 focused on the right issue. Mr. Klidonas, do you know what

1 the issue is with Mr. Lee?

2 MR. KLIDONAS: I do.

3 THE COURT: So --

4 MR. KLIDONAS: -- know what the issue is and I can
5 briefly walk the Court through the confirmation issue and
6 the tabulation issue, if that's helpful.

7 THE COURT: Well, I don't -- I'm struggling with
8 how Mr. Lee really factors into confirmation. I mean, he
9 simply records the mail, if you will, not -- and not trying
10 to be disrespectful to Mr. Lee, but that's really what he
11 does in terms of the vote tabulation.

12 Mr. Clement, take a couple minutes and tell me
13 what the dispute is, because I'm not appreciating something.

14 MR. CLEMENT: Your Honor, could Ms. Devan Dal Col
15 be permitted to put something up on the screen?

16 THE COURT: Of course. I see her and Ms. Dal Col,
17 you should have control.

18 MR. CLEMENT: Your Honor, this is the abused puppy
19 picture from our point of view in this trial.

20 THE COURT: Right.

21 MR. CLEMENT: It contains at the bottom a very
22 clear admission by the Debtor. Once upon a time, they had a
23 plan that would permit our guarantee claims that back up
24 (indiscernible) cleanup to ride through and they even
25 provided for an equity (indiscernible) for the old equity.

1 But apparently the bondholders told them, and they admit so
2 here, no, we want you to respect our structural seniority
3 and wipe out those guaranteed claims so that our stock will
4 be worth more, and they did. And they did so in a way that
5 violates the rules.

6 So if Your Honor would just take a moment and read
7 through what's at the bottom there in Paragraph 152, it will
8 say it more professionally than I just did. The Debtor
9 admits that this plan is one that the bondholders asked them
10 to file, to benefit the bondholders and, frankly, to harm my
11 client and others similarly situated.

12 MR. KLIDONAS: Your Honor, just to respond to
13 that. I'm not sure how --

14 MR. CLEMENT: You will have your chance. I want
15 to get my story on the table here.

16 THE COURT: All right, Mr. Clement. Go ahead.

17 MR. CLEMENT: Your Honor, as to the top of the
18 page, the chart shows Classes 5, 6, and 7.

19 THE COURT: Right.

20 MR. CLEMENT: They created this artifice in
21 Classes 5 and 6 which are parent company classes and they
22 said in one class, you bondholders at the parent company
23 level, you'll get your pro rata share of \$125,000. And then
24 in Class 6, they say you guarantee claimants and other
25 claimants of unsecured sort at the parent level, you get

1 your share of that same \$125,000.

2 THE COURT: Right.

3 MR. CLEMENT: Class 5 is plainly gerrymandered for
4 the purpose of getting an impaired accepting class by the
5 bondholders and they have this further artifice in there
6 where they say, and we're voting for the plan and we're
7 going to give our share of the \$125,000 back. So we're not
8 even going to take anything from this class.

9 THE COURT: Right.

10 MR. CLEMENT: Then they come down to Class 6 where
11 one would -- anyone who has any material claim at all would
12 plainly vote to reject this class. And in a first day
13 order, they get an order that if it's a contingent claim, it
14 will be allowed for voting at a dollar and my client never
15 had an opportunity to object to that, never got notice of
16 this case except reading it in -- about it, in essence, the
17 newspaper, and has never had an opportunity to object to
18 that \$1 estimation of its claim for voting purposes.

19 Assuming that there are a lot of us like that, how
20 in the world did they get \$19 million? There are all sort
21 of questions about what assumptions went into their claim
22 that Class 6 accepted. And if Class 6 didn't accept, Class
23 5 doesn't work as an impaired accepting class because the
24 bondholders take nothing pursuant to that class. Their
25 answer in the brief over the weekend was, well, we get our

1 money elsewhere. That is down in Class 8 where they get all
2 the stock of the company.

3 But from that class, they get nothing, and so it's
4 deemed to reject and so there's substantial issues about how
5 in the world they claim that Class 6 voted to accept and
6 beyond that a very substantial issue about whether Class 5
7 counts as an impaired accepting class. It's very plain that
8 what happened is that the bondholders asked the Debtor to
9 leave my client and others similarly situated out. We've
10 tried to make an offer and said, look, we'll cap our \$21
11 million contingent cleanup claim in half at \$10 million. We
12 were fairly promptly told, offer rejected.

13 So we're willing to come up with a fair solution,
14 but they can't go forward with what they've got on the table
15 here today.

16 THE COURT: All right.

17 MR. CLEMENT: And I think Mr. Alaniz's cross
18 examination of Mr. Lee will explain the detail behind what I
19 just outlined.

20 THE COURT: So Mr. Clement, let me ask you a
21 couple question. I mean, what possible -- given what you
22 just said, what possible information could Mr. Lee have? I
23 mean, the number are what the numbers are, right? I mean,
24 are you --

25 MR. CLEMENT: Your Honor, I believe a lot of

1 assumptions went into what Mr. Lee put on that piece of
2 paper.

3 THE COURT: Okay.

4 MR. CLEMENT: I don't think --

5 THE COURT: Fair enough.

6 MR. CLEMENT: -- he acted like a mere counter of
7 votes.

8 THE COURT: All right. And so if I tell the
9 Debtors that they can't give back the 125 and we'll just
10 consolidate the two classes, I'm still trying to appreciate
11 why this is -- why this matters.

12 MR. CLEMENT: Why it matters is that once upon a
13 time, they were going to treat our claims fairly. They did
14 not treat us fairly as to due process of being able to
15 object to the way they set the amount of our claim for
16 voting. They got a facially deficient plan that has a
17 gerrymandered class and that class is deemed to reject, and
18 so they can't go forward with this plan.

19 THE COURT: Well --

20 MR. CLEMENT: If they are told that they can't go
21 forward, they might actually make a reasonable negotiation
22 with us about our claims which we have made an offer about
23 and it's been rejected.

24 THE COURT: So Mr. Clement, that's very artful but
25 didn't come close to addressing the question that I asked

1 you. So I listened to you. How about answering my
2 question, please?

3 MR. CLEMENT: Yes, Your Honor.

4 THE COURT: So even if your claim is \$21 million
5 as you say it is, if you just combine Classes 5 and 6 and
6 don't let -- and you don't let the give-back occur, where
7 does that leave us at the end of the day? There is no more
8 gerrymandering. You can't carry the class with a billion
9 dollars voted in favor. I'm having trouble working my way
10 through this.

11 MR. CLEMENT: Well, Your Honor, first off, I can
12 put the two classes together. One of the questions that
13 will be asked is, did the bondholders each have a right to
14 vote, so you're going to get amount issues and you're going
15 to get number of voters issues.

16 THE COURT: I don't think that's right, but we'll
17 see. All right. Mr. Alaniz, you want to add something to
18 this?

19 MR. ALANIZ: Yes, Your Honor. So let me just -- I
20 can answer your questions, Your Honor, but -- and I would
21 like to kind of (indiscernible) that to explain what the
22 issue is. Your Honor, we do believe that the tabulation
23 report by KCC is inaccurate.

24 THE COURT: Okay.

25 MR. ALANIZ: The substantial claim amount in Class

1 6 voted to reject the plan. In fact, 99.97 percent in terms
2 of claim amounts voted to reject the plan and yet the voting
3 certification says that there was an acceptance. Now that
4 shaded coloring permeates through the confirmation brief and
5 also -- and other pleadings, declarations. The Debtors, I
6 know, will argue that the voting procedure provides that
7 contingent and unliquidated claims are counted at a dollar.

8 And of course, I've seen that procedure in other
9 solicitation procedures. It makes sense when you have a
10 creditor that has a hypothetical claim that may never come
11 to life. It disproportionally affects the voting within a
12 class. But had Hess didn't file its claim as a contingent
13 claim and I believe that's true for other producers in our
14 class. We filed a claim in the amount of \$140.8 million for
15 the parent guarantee of its former affiliates
16 decommissioning obligations that are now being blown back to
17 Hess under the Fieldwood plan that's targeted for
18 confirmation in March.

19 And that \$140.8 million claim is based on
20 estimates from the federal regulators. Under Section 502(a)
21 of the Bankruptcy Code, Hess has an allowed claim at \$140.8
22 million as of today. It was thus shocking and completely
23 surprising Friday night that the Debtors filed a voting
24 report saying that only \$19,000 worth of claims voted to
25 reject the plan.

1 Your Honor, there's a transparent way to
2 accomplish what the Debtors wanted to accomplish and the
3 Debtors did not choose transparency. If the Debtors believe
4 that our claims were inflated or incorrect, the Debtors
5 could've objected to the claim, but they didn't and so our
6 claim is still allowed under 502(a). Had the Debtors
7 objected, the Court would have held a hearing to temporarily
8 allow the claim at a voting amount under Rule 3018(a).

9 So in sum, Your Honor, there was not a transparent
10 and open process for the Debtors to accomplish what they
11 want, and that's the issue we have.

12 THE COURT: Well, I --

13 MR. ALANIZ: To address your --

14 THE COURT: No, I got why Mr. Lee's a witness. I
15 got it. Okay. So you were going to --

16 MR. CLEMENT: Your Honor, can I please answer the
17 question you asked me earlier?

18 THE COURT: I would love for you to.

19 MR. CLEMENT: Better -- all right. Your Honor, I
20 put this thing up here on purpose. They're showing that 500
21 or so voters among the bondholders and that's how they're
22 going to be numerosity. As to amount, it's not clear what
23 the amount is, for the very reasons that Mr. Alaniz was
24 describing. We can't tell what the face amount of the
25 claims were. We have an assumption in a first day order

1 that they can be used for voting purposes at a dollar, which
2 we weren't given notice of or any opportunity to challenge.
3 The points that Mr. Alaniz made about where the claims stand
4 now, ours stands at \$21 million. His is much larger. By
5 the time you get all those numbers, it's entirely possible
6 that they don't carry on the proper amount of that class,
7 and that's why Mr. Lee is a witness.

8 THE COURT: Well, that's now why Mr. Lee is a
9 witness, but if I added \$160 million to a consolidated five
10 and six, that doesn't change the outcome.

11 MR. CLEMENT: Your Honor, may I take a shot at
12 that?

13 THE COURT: Sure.

14 MR. CLEMENT: Response to that question?

15 THE COURT: Sure.

16 MR. CLEMENT: Your Honor, so if our classes
17 combined -- so first of all, the issue is important because
18 if our class is rejecting, then that implicates the cramdown
19 provisions of fair and equitable and unfair discrimination.
20 So my theory is that they are vouching that the class is
21 accepting so that they can get around the cramdown
22 provisions.

23 THE COURT: No, I got that, but that's -- I mean,
24 that would run -- you don't want to make the gerrymandering
25 argument. You want to say absolutely the classification is

1 great and we'll win on that way. But Mr. Clement's saying
2 five and six are gerrymandered and one of the things -- one
3 of the things that I'm to consider when I have a
4 gerrymandered class is to simply put it back together,
5 right? So I get true voting of creditor -- of a creditor
6 class that is situated in a similar fashion.

7 MR. CLEMENT: Your Honor, I believe you have broad
8 power, including that. You also have the power to tell
9 them, this doesn't comply with the law and go renegotiate
10 something that's fair.

11 THE COURT: Right. So Mr. Alaniz, did you see the
12 question that I was asking of you? You actually don't want
13 make the gerrymandering argument because you want the two
14 classes to stand alone.

15 MR. ALANIZ: Right, and -- right. Yeah, I wasn't
16 suggesting that, Your Honor. If we're going to combine the
17 classes then we should get combined in the treatment --

18 THE COURT: Agreed.

19 MR. ALANIZ: And so we should be sharing in the
20 recovery that the noteholders get.

21 THE COURT: Agreed. I got it. Okay. Mr.
22 Klidonas, you want to respond?

23 MR. KLIDONAS: Sure. Your Honor, just on a couple
24 points on separating them out or actually putting them
25 together. I think we should step back for a second because

1 the structure here is very important, and since we have
2 something up, I'd ask that Mr. Guffy or Ms. Harper put up
3 the presentation that we have just for a second.

4 THE COURT: But I need one of the two, because I
5 have to make them the presenter.

6 MR. KLIDONAS: It's Philip Guffy.

7 THE COURT: All right. Mr. Guffy, you have
8 control.

9 MR. KLIDONAS: Thank you, Your Honor. Just a
10 couple points in response. I mean, there's something to
11 consider here that's very important, and that is the
12 structure that we -- that the company deals with in terms of
13 (indiscernible) the RSA and confirming a plan.

14 Superior Energy Services, Inc., which is where
15 these parent guarantee claims are, is a publicly traded
16 company of all the Debtor companies and is only -- its only
17 equity interest is in SESI, LLC which also a Debtor here and
18 is also the issuer of over \$1.3 billion in notes. When the
19 company presented its plan and solicited its plan, it didn't
20 do so on a substantively consolidated basis. In fact, at
21 our first day hearing, we specifically said these are being
22 jointly administered and each plan, therefore, is a separate
23 and independent plan per Debtor.

24 So going into the classes for a second, each
25 Debtor has two separate classes of unsecured creditors.

1 There's the prepetition notes and the general unsecured
2 creditors. Again, the parent claims which are the legacy
3 parent guaranteed claims in Class 6 are against the parent
4 only. They are not claims of any, what we call the
5 affiliate Debtors, SESI, LLC and below.

6 In addition, the only material asset of Superior
7 Energy Services, Inc. which is the parent, is an equity
8 interest in SESI, LLC which again, is the issuer of the \$1.3
9 billion. So for any value to get up to the parent, it would
10 have to clear SESI, LLC and if you look at our valuation
11 analysis, there's no value to the parent since the value
12 ranges between \$710 million on the low end, \$800 million on
13 the high end.

14 So from a valuation perspective, you never get any
15 assets up from the parent. And relatedly, from a best
16 interest Chapter 7 liquidation perspective, values would
17 materially decrease. So there's certainly no value up at
18 the parent. That's how, essentially, we -- the company and
19 the RSA parties came up with the \$125,000 cash recovery for
20 the legacy parent guarantee claims which is more than the
21 zero percent recovery they'd be entitled to in a Chapter 7.

22 I just want to address the unfair discrimination,
23 because the plan doesn't unfairly discriminate between the
24 general unsecured creditors up at the parent and the general
25 unsecured creditors at the affiliate Debtors since they're

1 not substantially similar. The creditors up at the parent
2 are structurally subordinate to the creditors at the
3 affiliate Debtors because that's where all the value is.

4 And just as a final point, which I know we've sort
5 of been talking about, should we combine them, should we not
6 combine them. With respect to the parent, the separate
7 classification of those two classes from our position is
8 proper. They could've been classified together. The plan
9 separates them into two different types of claims. The
10 first is fixed claims while the other general unsecured
11 parent guarantee claims as you hear earlier, are contingent
12 and unliquidated.

13 If we classified them together as one class, Your
14 Honor, then those would essentially dominate and control
15 that class. In fact, if you go to the second slide, which
16 is a sort of snapshot from the voting results, we actually
17 did what they asked, combined that classes at that last line
18 all the way at the bottom where we have five and six
19 combined, and we actually took the extra step and took into
20 account not the \$1 that, frankly, is what they're entitled
21 to because they didn't file a motion for -- to ask for
22 anything more than a dollar, but we took into account the
23 \$230 million in contingent claims.

24 And if you combine those classes, the class still
25 overwhelmingly accepts the plan. So we're happy to flesh

1 that out a little more through evidence, but we believe the
2 evidence is on the record or should be on the record. We
3 believe this plan should be confirmed.

4 THE COURT: I mean, this is the question I asked.
5 I still haven't figured out why it matters, but I do
6 understand why Mr. Lee's going to need to be a witness. All
7 right. So let me ask this. Mr. Klidonas, is this the point
8 which you want to take a quick break and figure out how to
9 get Mr. Lee available to testify?

10 MR. KLIDONAS: Yeah, I would take just a few
11 minutes, Your Honor, if that's okay.

12 THE COURT: Of course. Tell me, realistically,
13 how long do you need. Do you need ten minutes? You need 15
14 minutes? What do you need?

15 MR. KLIDONAS: Let's do ten, is fine.

16 THE COURT: All right, then.

17 MR. KLIDONAS: That's all right.

18 THE COURT: No, we'll break until 12:40.

19 MR. KLIDONAS: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (Recess)

22 THE COURT: All right, we are back on the record
23 in the jointly administered cases under Case No. 20-35812,
24 Superior Energy Services. Mr. Klidonas, how are we going to
25 proceed?

1 MR. KLIDONAS: Your Honor, I'd like to turn the
2 podium over to my colleague, Blake Denton who will be
3 admitting the evidence for KCC.

4 THE COURT: Got it. Thank you. Mr. Denton, I
5 don't see you. There he is. Mr. Denton, could you just
6 confirm for me that you can hear me and that we can hear
7 you?

8 MR. DENTON: Your Honor?

9 THE COURT: There we go.

10 MR. DENTON: I heard it unmute. Can you hear me
11 now, Your Honor?

12 THE COURT: Yes, sir. Very well, thank you.

13 MR. DENTON: Great.

14 THE COURT: All right.

15 MR. DENTON: So Your Honor I believe we have Mr.
16 Lee on the phone. He's having issues with the video, but he
17 should be available by phone.

18 THE COURT: I would rather, if we can, see if we
19 can get that remedied. It just works so much better. Do we
20 know if the problem is one that can be remedied quickly? Is
21 it one that -- camera's just not working today? Do we know?

22 MR. DENTON: I don't know, but if Mr. Lee could
23 raise his hand, he could give a little more --

24 THE COURT: Got it. Mr. Lee, if you can hear me
25 and you haven't already done so, if you could hit five star.

1 Mr. Lee?

2 MR. LEE: Yes, I'm here, Your Honor.

3 THE COURT: Thank you. Are we having camera
4 problems today?

5 MR. LEE: I believe so.

6 THE COURT: Can you tell me what has worked,
7 what's not worked, and see if we can -- because that --
8 sometimes I can help.

9 MR. LEE: Sure. I'm at the GoToMeeting website.
10 I click on my camera to share my video.

11 THE COURT: So --

12 MR. LEE: And I get a message that pops up that
13 says we apologize but we're experiencing difficulties with
14 the video conference and are no longer able to share your
15 camera.

16 THE COURT: All right. So that's a setup issue,
17 so if I could ask you if -- just close out of the
18 GoToMeeting site and if you would, if you would go to my
19 website.

20 MR. LEE: Okay.

21 THE COURT: When you get there, you'll see about a
22 third of the way down, it'll say, "Join GoToMeeting," or
23 "Join the electronic hearing," or something to that effect.
24 What that does is that that actually tries to make some of
25 the adjustments on the settings, and sometimes it just -- it

1 fixes problems. Not all the time, but sometimes, it does.

2 MR. LEE: All right. Just one minute, Your Honor.

3 THE COURT: Sure.

4 MR. LEE: I do see a link for "Click here to

5 connect to GoToMeeting video link."

6 THE COURT: That's it.

7 MR. LEE: That what you're referencing?

8 THE COURT: Mm hmm. Has it given you any feedback
9 at all?

10 MR. LEE: Yeah, so I'm back into the web meeting.
11 I click on the camera, but I'm just kind of circling there.

12 THE COURT: Okay. So are you at home?

13 MR. LEE: I am, Your Honor.

14 THE COURT: And when you were calling in, were you
15 calling in over an IP connection or are you just calling in
16 on your cell?

17 MR. LEE: I'm calling in through my cell.

18 THE COURT: Okay.

19 MR. LEE: Still having the same difficulty.

20 THE COURT: Normally -- yeah, normally when you
21 see that circle, it's because it doesn't have enough
22 bandwidth to carry the video, which is why I asked you if
23 you were at home. Have you got little one who's on -- if
24 only I knew a game. I blew that one. So --

25 CLERK: Fortnight.

1 THE COURT: Fortnight. There we go. Thank you,
2 Albert.

3 MR. LEE: Yeah, I'm going to ask anyone to stop
4 using their internet, although unfortunately, they are
5 schooling from home because of the coronavirus.

6 THE COURT: See, I bet that's exactly what you
7 probably have is you probably have multiple video streams
8 all on the same connection, so there is something else we
9 can try. On your cellphone, if you -- you can actually --
10 this works just fine on your cellphone. I have done it
11 before and people do it every day, is that you can very
12 quickly just download the GoToMeeting app and you can
13 connect on video from your cellphone.

14 MR. LEE: Your Honor, if you can give me three
15 minutes, I'm going to try something different.

16 THE COURT: Sure. Let me ask the parties while
17 Mr. Lee is working on that, just to try to make efficient
18 use of our time. Mr. Alaniz, I know that you said you
19 wanted to cross examine Mr. Ballard and Mr. Omohundro. Is
20 it critical that we hear from Mr. Lee first or could we go
21 ahead and proceed with that cross examination in hopes that
22 Mr. Lee will be able to solve his issue?

23 MR. ALANIZ: I don't have any problem with that,
24 Your Honor.

25 THE COURT: Mr. Denton, do you have any objection

1 to that?

2 MR. DENTON: No objection, Your Honor.

3 THE COURT: All right. Thank you. And Mr. Alaniz
4 -- or Mr. Clement, do you have any objection to that?

5 MR. CLEMENT: No, Your Honor.

6 THE COURT: All right, thank you. Then let's do
7 this. Mr. Denton, I assume that you have the declarations
8 for Mr. Ballard and Mr. Omohundro close by?

9 MR. DENTON: I do, Your Honor.

10 THE COURT: All right, thank you. Mr. Alaniz, do
11 you want to -- who would you like to start with? I kind of
12 let --

13 MR. ALANIZ: Your Honor, I apologize. That is a
14 question directed to me?

15 THE COURT: Yes, because I took their -- what Mr.
16 Klidonas did was he offered their direct by declaration and
17 then subject to your cross, and since I let them in
18 together, there really wasn't an order and so I was kind of
19 giving you the option of who you wanted first.

20 MR. ALANIZ: Okay. Thank you, Your Honor. I
21 guess we can go with Mr. Cummings first.

22 THE COURT: I'm sorry, I just couldn't hear you.

23 MR. ALANIZ: Mr. Joshua Cummings.

24 THE COURT: All right, thank you. Let's see, do
25 we have -- there's Mr. Cummings. Can you hear me, sir? I

1 see you talking to me. Have you hit five star on your
2 phone? All right, give it just a second.

3 MR. DENTON: Your Honor, Mr. Lee has appeared on
4 the screen.

5 THE COURT: Well, I knew as soon as I went down a
6 different path that that would just fix everything. Let me
7 -- Mr. Alaniz, let me ask you this. Do you want to proceed
8 with Mr. Cummings or do we want to go back and do Mr. Lee?
9 And I am relatively indifferent.

10 MR. ALANIZ: It's fine, Your Honor. Since we have
11 Mr. Lee right now, we might as well strike while the iron is
12 hot.

13 THE COURT: All right. Thank you. Then Mr.
14 Cummings, I take it you'll be next. My apologies for the
15 interruption. All right.

16 MR. DENTON: So Your Honor, may I then proceed
17 with the direct since Mr. Lee's declaration isn't in
18 evidence?

19 THE COURT: Yes, sir. Let me make sure. Mr. Lee,
20 can you both hear us and make sure we can -- that you can be
21 heard? So let me see, 310. So --

22 MR. LEE: -- hear me now, Your Honor?

23 THE COURT: Yes, sir. Thank you, Mr. Lee. All
24 right, if you could sir, if you'd please raise your right
25 hand. Do you swear or affirm the testimony you're about to

1 give will be the truth, the whole truth, and nothing but the
2 truth?

3 THE WITNESS: I do.

4 THE COURT: All right, thank you. Mr. Denton,
5 whenever you're ready, sir.

6 MR. DENTON: Thank you, Your Honor. And just one
7 thing. I can see six tiles on the screen. I can't see Mr.
8 Lee. I don't know if there's a way for me to be able to see
9 him.

10 THE COURT: So you're on an iPad, right?

11 MR. DENTON: I am, so --

12 THE COURT: The iPad --

13 MR. DENTON: If that's a limitation, that's a
14 limitation.

15 THE COURT: The iPad's limited to the first six.

16 MR. DENTON: Okay. All right, that's fine.

17 DIRECT EXAMINATION OF JAMES LEE

18 BY MR. DENTON:

19 Q Mr. Lee, can you hear me okay?

20 A I can hear you.

21 Q Okay. Could you --

22 MR. DENTON: Your Honor, if I may proceed?

23 THE COURT: Please.

24 BY MR. DENTON:

25 Q Mr. Lee can you state your full name for the record,

1 please?

2 A James Lee.

3 Q And where do you work, Mr. Lee?

4 A KCC.

5 Q And what is KCC's role in these cases?

6 A We are the claims noticing and solicitation agents.

7 Q I'd like to talk a little bit about the classes of
8 creditors here. So first, did you personally design how
9 many classes of creditors there were for voting purposes or
10 who was included or excluded from each class?

11 A No --

12 MR. ALANIZ: Objection, Your Honor.

13 THE COURT: What's the objection, Mr. Alaniz?

14 MR. ALANIZ: It's a compound question --

15 THE COURT: I agree.

16 MR. ALANIZ: -- follow it.

17 THE COURT: So I'll sustain the compound
18 objection. Mr. Denton, if you'd just break it down, please.

19 MR. DENTON: Sure, Your Honor.

20 BY MR. DENTON:

21 Q Mr. Lee, did you personally design how many classes of
22 creditors there were for plan voting purposes?

23 A I did not.

24 Q And did you design which creditors were included in
25 each class?

1 A I did not.

2 Q No can you then explain to the Court what was your role
3 in the solicitation and tabulation process?

4 A KCC as the claims noticing and solicitation agent was
5 responsible for mailing out the solicitation materials to
6 the relevant classes. As the ballots came in, our
7 responsibility was to review those ballots and tabulate them
8 according to the solicitation and tabulation procedures.

9 Q Now I'd like to talk about the unsecured classes at the
10 parent, so Classes 5 and 6. First of all, can you tell us
11 based off of your solicitation and tabulation which, if any,
12 of those classes voted in favor of the plan?

13 A Based on my declaration -- as I stated in my
14 declaration, both Classes 5 and 6 voted to accept the plan.

15 Q And are you aware that there was a solicitation
16 procedures motion and an order approving those procedures?

17 A I am.

18 Q And per those procedures, how were unliquidated
19 contingent claims valued?

20 A Unliquidated and contingent claims were valued for \$1
21 for voting purposes only.

22 Q In your -- how many different plan voting process have
23 you been involved in before?

24 A Prior to this, maybe 30 or 40.

25 Q And in your experience, is it common for unliquidated

1 contingent claims to be valued at a dollar?

2 A Yes, it's very common.

3 Q And in this case, do you know if anyone objected to the
4 solicitation procedures motion or the order approving it,
5 with regard to that question of how you value unliquidated
6 contingent claims?

7 A I'm not aware of any objection with regard to that
8 particular procedure.

9 Q And relatedly, are you aware of anybody filing a motion
10 to change the procedures in any way or to argue that they
11 should be different as applied to a specific creditor?

12 A No, I'm not aware.

13 MR. DENTON: Now if Mr. Guffy is on the line, Your
14 Honor, I'd like to take a look at a document that was on
15 Hess' exhibit list which is Docket 279-3, and if Mr. Guffy
16 is able to share his screen, Your Honor, I'd like to take a
17 look at -- I believe it's the 30th page of the PDF.

18 BY MR. DENTON:

19 Q Mr. Lee, can you see that on your screen?

20 A I can.

21 Q And what is this document titled?

22 A It is the ballot for Class 6 general unsecured claims
23 against parent.

24 Q And you can take your time and look, sir, if you need
25 to, but is this in fact the ballot that KCC mailed out to

1 the members of Class 6?

2 A Yes. It looks like it, yes.

3 MR. DENTON: Your Honor, at this time, I'd move
4 this document into evidence, please.

5 THE COURT: Any objection?

6 MR. ALANIZ: No objection.

7 THE COURT: Thank you, 279-3 is admitted without
8 objection.

9 (Exhibit 279-3 Entered Into Evidence)

10 BY MR. DENTON:

11 Q Now, Mr. Lee, were you on earlier where there was some
12 argument about lack of notice to the class members as to how
13 their claims were being treated?

14 A Yes, I was on.

15 Q And if we can look at the next page of this document,
16 and in particular looking towards the bottom of the page,
17 you'll see there's an underlined spot. It says, "Item one
18 amount of claim." Do you see that?

19 A Yes.

20 Q And do you see here in explaining the voting, you see
21 item number one underneath that, the sub-bullet, that the
22 amount of the claim set forth -- that the claim will be
23 valued based off of the amount of the allowed claim set
24 forth in an order from the Court? Do you see that?

25 A I do.

1 Q And are you aware of any of the claims in Class 6 being
2 the subject of an order from the Court setting the amount?

3 A I am not aware of any.

4 Q And then second, it says "or agreed to by the Debtors."
5 Are you aware of the Debtors agreeing with any of the
6 objectors here today about the amount of their claim?

7 A I am not aware of any.

8 Q And then if you look under number two, so where that
9 does not apply, do you see under the long romanette i that
10 it says that "If a proof of claim is filed for a claim that
11 is contingent or in a wholly unliquidated or unknown amount,
12 any (indiscernible) on account of such claim shall be
13 treated as valid for a claim in the amount of \$1, solely for
14 the purposes of satisfying the dollar amount provision," and
15 it goes on. Do you see that?

16 A I do.

17 Q And so accordingly, how did you value the contingent
18 claims from Class 6?

19 A Consistent with this language and the solicitation
20 procedures, we value contingent claims at \$1 for voting
21 purposes.

22 Q And did the creditors who are here objecting in fact
23 fill out this ballot form that we're looking at right now
24 that explains that?

25 A Yes.

1 Q Okay. I think we can put this to the side. Just
2 because we don't have it in the record yet, although I don't
3 think it's disputed here, can you explain at the affiliate
4 level, Class 7, the prepetition notes claims, how did they -
5 - did they vote for or against the plan?

6 A They voted for the plan.

7 Q So now going back to Class 6, the one that we were
8 talking about, what is the total amount for Class 6 what was
9 claimed on the face of the ballots, putting aside what we
10 talked about the \$1 estimation. How much did the class
11 member of Class 6 claim on their ballots in total?

12 A In total, \$228,827,799.

13 Q And can you remind us the size of Class 5, the
14 unsecured notes?

15 A The size, it's \$1.3 billion.

16 Q And so is it fair to say that Class 5 is larger than
17 Class 6 in terms of the dollar amount, even if you use the
18 face value?

19 A Yes, that's correct.

20 Q And so if -- just for the sake of argument, let's say
21 that Class 6 rejected. What impact, if any, does that have
22 on Class 5 votes in favor of the plan?

23 A If Class 6 voted to reject, it would have virtually no
24 impact on Class 5.

25 Q And you heard arguments from counsel that Class 5 was

1 created as the result of gerrymandering. Do you remember
2 hearing that?

3 A I do.

4 Q So what would happen if instead, you combined Classes 5
5 and 6 for voting purposes?

6 A If you combine Class 5 and 6 for voting purposes, the
7 aggregate will still be a class that's voting to accept the
8 plan.

9 Q And why is that?

10 A Numerosity-wise, it would be above 50 percent and the
11 value-of-the-claim-wise, it would be above the two-thirds
12 amount.

13 MR. DENTON: Your Honor, I don't think I have any
14 other questions for Mr. Lee at this time, unless there's any
15 -- because we (indiscernible) his declaration, if there's
16 any other requirements that you think we need to take with
17 him I'm happy to do that, but I believe that covers the
18 issues.

19 THE COURT: Got it. Mr. Lee, let me just ask you.
20 Your voting tabulation that you submitted, is it true and
21 accurate to the best of your knowledge?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Does it truthfully and accurately
24 represent all the ballots that were received by KCC?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: And have you exercised any discretion
2 in tabulating those votes or did you simply follow the
3 procedures?

4 THE WITNESS: We simply followed the procedures,
5 Your Honor.

6 THE COURT: All right, thank you. Mr. Clement,
7 Mr. Alaniz, did you all discuss an order for cross or do you
8 have thoughts?

9 MR. ALANIZ: Yes, Your Honor. I believe that I
10 was going to go first with respect to Mr. Lee.

11 THE COURT: All right, go ahead. And I'm going to
12 go ahead and give presenter role to Ms. Dal Col so she can
13 pop up things as you need them.

14 MR. ALANIZ: Thank you, Your Honor.

15 CROSS EXAMINATION OF JAMES LEE

16 BY MR. ALANIZ:

17 Q Mr. Lee, you were asked about the solicitation
18 procedures order. Do you recall Mr. Denton asking you that
19 question?

20 A Yes.

21 Q Do you happen to recall when the motion to approve
22 those procedures was filed?

23 A I don't know the exact date, but probably on or
24 immediately after the petition date.

25 Q And how was notice of that motion accomplished?

1 A I don't recall off the top of my head, but we did file
2 an affidavit of service explaining our methodology and to
3 whom service was made.

4 Q Okay. Mr. Lee, were you aware that the bar date for
5 creditors to file claims against the Superior Energy
6 Services, Inc. parent was January 7th, 2021?

7 A Yes.

8 Q And were you aware that the deadline for creditors to
9 vote on Superior's plan was the next day, January 8th, 2021?

10 A Yes.

11 Q What procedures were used to get ballots to creditors
12 to vote on Superior's plan?

13 A Procedures? Well, we followed the procedures that was
14 approved by the Court. Specifically, we mailed out the
15 solicitation packages to the holders of Class 5, 6, and 7
16 claimants at the time that they were known and proofs of
17 claims were -- specifically for Class 6 as proofs of claims
18 were submitted, we would supplement our service by sending
19 out solicitation packages to them.

20 Q So if a creditor filed a claim on the bar date, January
21 7th, and yet the voting deadline was the next day, how did
22 KCC deliver the ballots to such creditor?

23 A Again, I don't recall exactly off the top of my head
24 and would have to rely on our certificates of service. But
25 generally, we would either email or overnight the

1 solicitation package, especially given that the deadline was
2 the following day.

3 Q Okay, thank you. Mr. Lee, I'd like to discuss the
4 ballots that Mr. Denton went over with you. So I'm going to
5 ask Ms. Dal Col to go to Exhibit 3 of Docket 279. First,
6 Mr. Lee, is it KCC's standard procedure to pre-populate the
7 creditor's claim amount on the ballot?

8 A If it's available, yes.

9 Q Okay. Can we scroll down? Mr. Denton had asked you
10 about items one and two and I'd like to scroll down just a
11 little bit on the next page. Mr. Lee --

12 MR. ALANIZ: You can stop there, Ms. Dal Col.

13 BY MR. ALANIZ:

14 Q Do you see that \$140 million number in the box?

15 A Yes.

16 Q Who filled in that number?

17 A I'm -- I have to believe this was a ballot that was
18 prepared by KCC. It was entered by KCC.

19 Q So it's your testimony that KCC filled in that \$140
20 million number?

21 A Correct.

22 Q Okay, thank you. Going to direct your attention now,
23 Mr. Lee, to Exhibit 2 of docket 279, so it's 279-2.

24 MR. ALANIZ: Ms. Dal Col, if you could scroll up.

25 BY MR. ALANIZ:

1 Q Mr. Lee, does this document look familiar to you?

2 A Yes.

3 Q Can you describe it?

4 A It's the ballot generated by the electronic submission
5 of a ballot (indiscernible).

6 Q And so KCC generated this document?

7 A Correct.

8 MR. ALANIZ: Your Honor, I would like to move into
9 evidence Exhibit 279-2.

10 THE COURT: Any objection?

11 MR. DENTON: None from the Debtors, Your Honor.

12 THE COURT: Thank you. Then 279-2 is admitted
13 without objection.

14 (Exhibit 279-2 Entered Into Evidence)

15 MR. ALANIZ: Ms. Dal Col, can you scroll down,
16 please?

17 BY MR. ALANIZ:

18 Q Okay. Mr. Lee, do you see the response of \$140,807,921
19 votes?

20 A Yes.

21 Q What is that referring to?

22 A Well, it's the amount that voter entered to vote on the
23 plan.

24 Q When you say entered, where would the creditor have
25 entered the number?

1 A I believe on the e-ballot portal. It would have --
2 there's a field whereby they can put in the voting amount.

3 Q And is this voting amount consistent with the KCC
4 populated number that we just reviewed?

5 A Yes.

6 Q Okay. Mr. Lee, I'm going to have Ms. Dal Col -- I
7 understand it's not in evidence, but I'd like you to review
8 an exhibit to the declaration that attempted to be admitted
9 for your testimony.

10 A Okay.

11 MR. ALANIZ: Your Honor, I need a point of
12 clarification here. We can either pull up the exhibit that
13 was attached to the Debtors' exhibit list. There's an
14 overlapping docket ID, so it's kind of difficult to pull
15 that up, or we can pull up the actual declaration from the
16 docket.

17 THE COURT: Why don't you just pull up 265?

18 MR. ALANIZ: Okay. Ms. Dal Col, can you scroll to
19 the last page? By the last page, I believe, Exhibit H.

20 THE COURT: So you want her to go to 47 of 47.

21 MR. ALANIZ: I apologize. It might be Exhibit D.
22 I've got my numbers -- I apologize. Exhibit D.

23 BY MR. ALANIZ:

24 Q Mr. Lee, I read this tabulation to say that with
25 respect to tabulation by voting amount, 99.97 percent of the

1 Class 6 claims voted to reject the plan. Is that correct?

2 A That's correct.

3 Q And you had a Footnote 1. Could you please explain
4 what that footnote is?

5 A Yes. We made a assumption for this hypothetical that
6 giving all credit to the parties who voted to reject the
7 plan, to assume that the amount that they recorded on their
8 ballot was valid. So we even said we (indiscernible) \$1, so
9 we used the amount that they placed on the ballot.

10 Q Okay. Do you know if it is KCC standard procedure to
11 assign a dollar value to contingent claims?

12 A It's KCC's standard procedures to follow the procedures
13 that's approved by the Court.

14 Q And then you --

15 A -- that calls -- if that calls for placing a \$1 value
16 for voting purposes on contingent claims, that's what we'll
17 do.

18 Q And do you recall in other cases when contingent
19 creditors were assigned a dollar vote, whether they were
20 mailed a notice of limited voting status?

21 A Can you repeat the question, please?

22 Q Sure, and -- well, let me frame it this way. You
23 mentioned earlier in your testimony that you have been
24 involved in approximately 30 to 40 voting tabulations for
25 Chapter 11 plans. Is that correct?

1 A That's correct.

2 Q So drawing on your experience from those cases, do you
3 recall other cases in which creditors were mailed a notice
4 of limited voting status when their contingent claims were
5 going to be counted as a dollar?

6 A No, we didn't --

7 MR. DENTON: Objection, Your Honor. Lacks
8 foundation. We haven't established what the notice is or
9 what it entails.

10 THE COURT: Mr. Alaniz?

11 MR. ALANIZ: Your Honor, I'm asking if he knows.
12 If he doesn't know, that's fine.

13 THE COURT: I agree. I'll overrule the objection.
14 Mr. Lee, do you remember the question?

15 THE WITNESS: Could you repeat it one more time,
16 please?

17 THE COURT: Sure, he can.

18 BY MR. ALANIZ:

19 Q Sure. Do you recall other cases in which creditors
20 were mailed a notice of limited voting status when their
21 contingent claims were valued at a dollar?

22 A No.

23 Q Okay. Did you -- strike that. Are you aware if KCC
24 informed Hess that its vote would be counted only at a
25 dollar?

1 A I'm sorry, you broke up for a second. Can you repeat
2 the question?

3 Q Are you aware if KCC notified Hess that its claim would
4 be counted at only a dollar?

5 A I'm not aware of any notice to Hess, no.

6 Q Thank you. Mr. Lee, can you explain the process for
7 determining whether a claim is contingent?

8 A We take direction from counsel and financial advisors
9 when we do the claims.

10 Q So (indiscernible).

11 A Well, KCC, you know, when we receive a proof of claim,
12 we record it as listed on the claim form and any addendums.
13 We make a -- based on our experience, we make our best
14 assumptions and review the claim to see if it's a
15 contingent, unliquidated, or disputed claim, and we record
16 that on the claims reports. But it is further reviewed by
17 counsel and their advisors.

18 Q So is it your testimony that there was a judgment made
19 as to whether Hess' claim was contingent?

20 A That a judgment was made that Hess' claim was
21 contingent?

22 Q Yes.

23 A Yes, I suppose a judgment was made. Yes.

24 Q And that wasn't your judgment, was it?

25 A I think -- I'd say yes, that's correct.

1 Q Whose judgment was it?

2 A I think it's in connection with KCC's review of the
3 claim as well as the discussions with counsel -- Debtors'
4 counsel.

5 Q Is it your testimony that in every single ballot that
6 KCC tabulates, it reviews the claim to determine whether it
7 is contingent or not?

8 A Yes.

9 Q And can you explain the determination as to Hess' claim
10 as to why it was contingent?

11 MR. DENTON: Objection, Your Honor. He just
12 testified that he wasn't the one who made the final
13 judgment.

14 THE COURT: Mr. Lee, if you know.

15 BY MR. ALANIZ:

16 A Well, if I recall, based on the review of Hess' claim,
17 it was a guarantee claim against the parent as well as an
18 estimated claim amount. Based on those two factors, it
19 leads to that it's a contingent claim. Contingent and
20 unliquidated claim.

21 Q Were there other creditors who submitted ballots --
22 well, let me rephrase the question. You mentioned earlier
23 that the decision to count Hess' claim as contingent was
24 based on a review of claims by counsel. Is that correct?

25 A It was based on a report of claims received by KCC and

1 after discussions with counsel.

2 Q Were there discussions about the contingent nature of
3 other creditors' claims that submitted ballots?

4 A Yes.

5 Q How many other creditors submitted ballots for a
6 liquidated amount but yet were counted as contingent?

7 A Approximately seven.

8 Q And do you recall those amounts?

9 A I have the report, if I'm allowed to have access to it,
10 but off the top of my head, I cannot recall.

11 Q Well, Mr. Lee, I don't want you to guess, so I would
12 like you to review whatever is necessary to inform the Court
13 as to the amount of claims that voted to reject the plan.

14 THE COURT: Can we ask it this way? Is it
15 included in the \$228 million?

16 THE WITNESS: Yes. The \$228 million consists of
17 all claims that voted to reject the plan and we have given
18 them the voting amount of what was listed on the ballot.
19 For example, for Hess' claim, instead of using \$1, we gave
20 them \$140,807,921 vote (indiscernible). Does that answer
21 the question?

22 BY MR. ALANIZ:

23 Q Yes, Mr. Lee. Mr. Lee, did -- you presented the
24 information on this tabulation certification in summary
25 format, correct?

1 A Yes.

2 Q Is that KCC's standard procedure?

3 A We don't have a standard procedure. I'd say, again, in
4 my experience, half of the reporting that we've done when
5 we've done -- provided summary. The other half, provided
6 additional details. So it's a really -- isn't a set
7 procedure KCC follows that only summary reports are
8 provided.

9 Q Why did you decide to not include the detail of which
10 creditors voted to accept or reject the plan?

11 A It was at the request of counsel that summary will be
12 sufficient in this case.

13 Q Mr. Lee, who drafted your declaration?

14 A I did.

15 Q You typed up the words that were submitted in the
16 declaration?

17 A I believe I drafted the first draft and it was
18 subsequently reviewed and revised by Debtors' counsel.

19 Q Do you know if a previous draft of your declaration
20 included an Exhibit G? That's Exhibit G as in Gary.

21 MR. DENTON: Objection, Your Honor. Calls for
22 privileged information. We're going through drafts of the
23 declaration. The final declaration is here before the
24 Court.

25 THE COURT: And help me understand. What

1 privilege would we be talking about?

2 MR. DENTON: Well, this is -- it would be attorney
3 work product and it would be our comments to a declaration
4 or attorney-client privilege, and so to ask about what's in
5 this declaration is fine, but to ask what all the different
6 prior drafts contained, I think that includes the
7 impressions of counsel and our advice.

8 THE COURT: Mr. Alaniz?

9 MR. ALANIZ: Your Honor, well, first of all, this
10 is a declaration, not of an attorney. It's of the Debtors'
11 agent. And furthermore, Your Honor, the reason why I'm
12 asking is because there is a reference to Exhibit G in the
13 Debtors' confirmation brief in Footnote 67, so I'm really
14 trying to understand what this exhibit was.

15 THE COURT: Mr. Lee, do you know if there was ever
16 an Exhibit G?

17 THE WITNESS: I don't recall there being Exhibit
18 G, no.

19 THE COURT: All right. Mr. Alaniz, go ahead.

20 MR. ALANIZ: Thank you, Your Honor.

21 BY MR. ALANIZ:

22 Q Mr. Lee, the voting reports show that 15 members of
23 Class 6 voted to accept the plan. Is that correct?

24 A Yes.

25 Q Do you recall who those creditors were?

1 A Again, I don't recall, but we do have a detailed report
2 of who each of those 15 parties are.

3 Q Do you have access to that information?

4 A I do.

5 Q Can you please access that information?

6 A Okay. I'm ready.

7 Q Okay, can you please list out the creditors that voted
8 to accept the plan and their claim amounts?

9 A Sure. Anna D. Ferrell \$15,000; Baker and McKenzie, \$1;
10 Baker and McKenzie another dollar; C and B Pumps and
11 Compressors, LLC \$20,380.17; CAPASCO, Inc., \$1,247.65; Clyde
12 Warner, \$1; Xamien Ramon Davis \$10,000; Donna Wray Davis \$1;
13 Eaton Oil Tools, Inc., \$10,191; (indiscernible) \$10,000;
14 Houston Casing Specialty, LLC \$1,771; K&J Supplies, LLC
15 \$8,841.59; Southwest Impreglon Sales, Inc., \$19,875 -- I'm
16 sorry, that voted to reject. I take that back. Houston
17 Casing Specialties, LLC \$1,771.; K&K Supplies, LLC
18 \$3,841.59. I apologize. If those are two (indiscernible) I
19 previously said. Larry Calvin Davis \$1; Daniel Monjares \$1;
20 Taylor's Industrial Services, Limited, \$167.46; Excalibur
21 Container, LLC \$270.52.

22 Q And Mr. Lee, while you have the voting report up or
23 your voting record, you mentioned earlier that there were
24 seven creditors that had listed an amount but that -- where
25 KCC assigned a dollar. Can you please go through those

1 seven creditor claims?

2 A Sure. It's actually a little bit more than seven, so
3 I'll give you additional details. Apache Corporation, an
4 unknown amount. We gave them \$1. Arena Energy, LLC,
5 \$21,500,000. Arena Offshore, LP, \$21,500,000. Casey Evans,
6 et al. undetermined amount. We assigned \$1. Chevron
7 MidContinent, LP, \$15 million. Chevron USA, Inc., \$15
8 million. Hess Corporation \$140,807,921. We assigned \$1.
9 Jose Luis Morales voted for \$1 and no different amount was
10 listed. And finally, Union Oil Company of California voted
11 for \$1, but their ballot was for \$15 million.

12 Q Mr. Lee, I'm sorry, I didn't hear Hess in that list.

13 A Hess was there --

14 THE COURT: He read it.

15 BY MR. ALANIZ:

16 A -- \$140,807,921.

17 Q Apologize if I missed it. Mr. Lee, do you know if
18 anyone from Superior contacted any of the creditors that
19 voted to accept the plan prior to their submission of their
20 ballots?

21 A I'm not aware of Superior contacting anyone.

22 Q Are you aware of any of the Debtor professionals
23 contacting the creditors about their vote?

24 A No, I'm not aware of that.

25 Q Did any of the creditors that voted to accept the plan

1 -- strike that. Let me start over. Did any of the
2 creditors that voted to accept the plan submit a late
3 ballot?

4 A No, I do not believe so.

5 Q Is there a way to easily verify?

6 A No, I'd have to go back into our database. It'll take
7 a little bit of time.

8 Q Do you know if any of these accepting creditors
9 originally voted to reject the plan?

10 A No. I'm not aware of that.

11 MR. ALANIZ: Okay. Pass the witness.

12 THE COURT: All right. Thank you. Mr. Clement?

13 MR. CLEMENT: Your Honor, if I could ask Ms. Dal
14 Col to bring back up the exhibit I had earlier in the
15 hearing.

16 THE COURT: Sure.

17 CROSS EXAMINATION OF JAMES LEE

18 BY MR. CLEMENT:

19 Q Now, Mr. Lee, you testified in response to Judge Jones
20 that you exercised no discretion. Isn't it a fact that you
21 exercised discretion to take the Arena claim that was filed
22 for \$21 million and reduce it to a dollar?

23 MR. DENTON: Objection. Misstates the prior
24 testimony.

25 THE COURT: Sustained.

1 BY MR. CLEMENT:

2 Q Sir, did you exercise discretion when you reduced the
3 Arena claim of approximately \$21 million down to a dollar?

4 A I'm trying to properly answer that. If (indiscernible)
5 exercise discretion when we review the proof of claim of
6 Arena and determined that it was a contingent claim and
7 therefore it should be voting for a dollar. If that -- I
8 guess that process can be -- I guess that's exercising our
9 discretion. I'm not -- I'll be honest, sir. I don't how to
10 answer that question accurately. I explained the process
11 that we followed to determine how it was given a \$1 vote.
12 But to say that it was our discretion, I don't think that's
13 accurate to say that.

14 Q Sir, did you exercise discretion when you took a face
15 amount Hess claim of \$140 million and reduced it down to a
16 dollar?

17 A We exercised -- again, yes, we exercised discretion in
18 reviewing the claim, determining that it was a contingent
19 claim, applying the procedures, and assigning it \$1. Yes.

20 Q Are you aware that the person who filed the Apache
21 claim believed it wasn't contingent?

22 MR. DENTON: Objection --

23 BY MR. CLEMENT:

24 Q Excuse me, the person who filed the Arena claim
25 believed it was not contingent?

1 MR. DENTON: Objection. Calls for speculation.

2 THE COURT: Mr. Lee, if you know.

3 BY MR. CLEMENT:

4 A I don't know what the person who filed a claim thought
5 or didn't think, no.

6 Q Did you make the decision to move it from \$21 million
7 to one or did someone else make that decision?

8 A If someone at KCC made that analysis, it wasn't me
9 specifically, but someone on the case team.

10 Q That person a lawyer?

11 A No.

12 Q Did that person -- did anyone at KCC consult with a
13 lawyer in making that decision?

14 A Well, we forwarded our analysis to counsel and it was
15 discussed with them.

16 Q And they told you that you should reduce certain claims
17 from the filed amount down to a dollar?

18 A Yes.

19 Q Who?

20 A Again, I don't think I was part of that call or
21 discussion. People -- there's multiple people on our case
22 team that handle these analyses.

23 Q Who at what firm told KCC how to reduce these claims?

24 A Well, we shared our analysis with counsel at Latham and
25 Watkins.

1 Q Are they the ones --

2 A I --

3 Q -- told you what to do?

4 A Were they the ones who told us what to do? Again, they
5 didn't --

6 Q Yes.

7 A It was a discussion on how certain claims should be
8 treated for voting purposes, right. We (indiscernible)
9 original amount (indiscernible) individual claims. We
10 provided to counsel. They reviewed it. And to the extent
11 they had comments, we discussed it and made a decision.

12 Q Do you call that exercising discretion?

13 A Yes, I would.

14 Q Going back to a list of 15 voters of Class 6 and voting
15 to accept their pro rata share of \$125,000. Why would
16 anybody vote to accept that?

17 MR. DENTON: Objection (indiscernible).

18 THE COURT: Sustained.

19 MR. CLEMENT: Was there objection -- where do we
20 stand?

21 THE COURT: I sustained the objection, Mr.
22 Clement.

23 MR. CLEMENT: I understand.

24 BY MR. CLEMENT:

25 Q Baker McKenzie, a dollar. Is that correct?

1 A Yes.

2 Q Why did the file a dollar claim?

3 A They didn't. They actually filed a claim for \$9
4 million plus, but for voting purposes, we gave them a
5 dollar.

6 Q Do you owe them \$9 million?

7 MR. DENTON: Objection.

8 BY MR. CLEMENT:

9 Q Or does Superior owe them \$9 million?

10 MR. DENTON: Objection. Lacks foundation.

11 MR. CLEMENT: Does Superior owe them \$9 million?

12 I don't know that I need foundation to ask that.

13 THE COURT: Well, how could this witness possibly
14 what Superior owes? He's a noticing agent with a third-
15 party company. Let's move along.

16 MR. CLEMENT: I'll ask it differently.

17 BY MR. CLEMENT:

18 Q What was the basis to reduce that \$9 million claim to a
19 dollar?

20 A I believe it was a contingent claim against the parent.

21 Q Did anybody ask Baker McKenzie to vote in favor of the
22 plan?

23 A I am not aware of anyone asking Baker McKenzie to vote
24 in favor of the plan, no.

25 Q There was another claim further down that was a dollar.

1 Can you tell me which one that was?

2 A (sound drops) plan for \$1. Yes. Secondly, there was a
3 Clyde Warner who voted for \$1, but on the ballot they listed
4 an undetermined amount of claim. Donna Wray Davis was
5 voting for a dollar. Again, it was an undetermined amount
6 of claim. Larry Calvin Davis voted for a dollar because
7 again, was an undetermined amount of claim. Daniel Monjares
8 voted to -- voted for a dollar since there was no response
9 on the amount of the claim. And that's it for consenting
10 parties.

11 Q And I think you might've answered this but do you know
12 whether the Debtor contacted any of those people to
13 encourage them to vote for the plan?

14 A I am not aware of the Debtor contacting any of them to
15 vote in favor of the plan, no, other than the solicitation
16 package we know about.

17 Q Why was Arena Energy not on the original list of
18 creditors?

19 A I don't have that information in front of me, no. I
20 can't answer that question right now.

21 Q When Arena Energy filed a proof of claim. Did you then
22 send them a ballot?

23 A Yes.

24 Q When did they file their proof of claim?

25 A I believe they filed their proof of claim on December

1 31.

2 Q Do you know whether, prior to that, the Debtor had ever
3 included them on any schedule?

4 A Again, off the top of my head, I don't know. I'd have
5 to look at the schedule.

6 MR. ALANIZ: I pass the witness, Your Honor.

7 THE COURT: All right. Thank you. Mr. Denton,
8 any redirect?

9 MR. TAYLOR: Your Honor, this is Clay Taylor. Can
10 you hear me?

11 THE COURT: Yes. Oh Mr. Taylor there you are. My
12 apologies. Did you have questions for Mr. Lee?

13 MR. TAYLOR: I did, Your Honor.

14 THE COURT: Go ahead, please.

15 REDIRECT EXAMINATION OF JAMES LEE

16 BY MR. TAYLOR:

17 Q Mr. Lee, my name is Clay Taylor. I represent Marathon
18 Oil Company. Are you aware that the proof of claim of
19 deadline was extended by agreement with Debtors' counsel?

20 A I am not aware of that, no.

21 Q Are you aware if Marathon Oil filed its proof of claim
22 in the approximate amount of \$46 million prior to that
23 deadline?

24 A Without reviewing our database, off the top of my head
25 I do not know that.

1 Q You didn't include Marathon Oil in your votes rejecting
2 this plan, correct?

3 A Correct. I don't see it on our report, no.

4 Q Are you aware that Marathon Oil filed its objection to
5 confirmation of the plan timely -- and by timely, I mean
6 within the extended deadline it had reached with the
7 Debtors' counsel?

8 A I'm not aware of what Marathon filed, no.

9 Q Thank you, no further questions, Your Honor.

10 THE COURT: Thank you, Mr. Taylor. And you've
11 raised an interesting issue. Is there anyone else that
12 wishes to ask questions? All right, Mr. Denton, now, any
13 redirect?

14 MR. DENTON: Briefly, if I may, Your Honor.

15 THE COURT: Certainly.

16 DIRECT EXAMINATION OF JAMES LEE

17 BY MR. DENTON:

18 Q Mr. Lee, if you recall earlier, you were asked some
19 questions about numbers that were prepopulated on a ballot.
20 Do you recall that?

21 A Yes.

22 Q Did you have any view as to whether those claim amounts
23 were validly asserted?

24 A Do I have any view as to whether those claims were
25 validly asserted? No, we --

1 Q Let me rephrase it. Did you have any view as to
2 whether those claim amounts are the right amounts that the
3 Debtors actually owe?

4 A No, I don't have -- we don't know that, no.

5 Q And so, where did you get those numbers that were
6 prepopulated on the ballot?

7 A It was purely from the proofs of claim submitted.

8 Q And who prepared those proofs of claim? Was that
9 prepared by the Debtors or the Creditors?

10 A Well, the Creditors would complete the proof of claim
11 forms.

12 Q If we could take a look, if we may, at document -- it's
13 on the Docket 279-1. It's another one of the exhibits that
14 testified. Thank you, Mr. (indiscernible). So, if you can
15 flip to the next page, do you see, Mr. Lee, the document on
16 the screen labeled the proof of claim?

17 A Yes.

18 Q And is it an example of one of those proof of claims
19 that was prepared and submitted by a creditor?

20 A Yes.

21 Q And see here, under part one, it lists that creditor as
22 Hess Corporation. Do you see that?

23 A Yes, I do.

24 MR. DENTON: Your Honor, I would offer Docket
25 number 279-1 into evidence.

1 THE COURT: Any objection?

2 MR. ALANIZ: No objection.

3 THE COURT: All right. 279-1 is admitted without
4 objection.

5 (Exhibit ## is admitted into evidence)

6 BY MR. DENTON:

7 Q And if we can look at the addendum to this document.

8 So, Mr. Lee, do you see there's an addendum that was
9 submitted with this proof of claim?

10 A Yes.

11 Q And you see, once again, it's submitted by Hess
12 Corporation?

13 A Yes.

14 Q And if we can look first down at paragraph two do you
15 see that Hess describes its claim and says, "By filing this
16 claim Hess asserts any and all claims against the Debtors
17 under the guarantee to sign below, including but not limited
18 to all liquidated, unliquidated and contingent pre-petition
19 claims for fees involved." Do you see that?

20 A I do.

21 Q And do you see that later in that paragraph, after
22 describing these liquidate and liquidated and contingent
23 claims, it estimates the total amount at that \$140 million
24 amount that we discussed earlier?

25 A Yes.

1 Q And then, further -- if we can flip to paragraph 13
2 please -- and you see once again here, Hess writes, in
3 paragraph 13, "In the event that Hess is required to pay any
4 P&A costs ..." -- do you understand that to be plugging and
5 abandonment costs?

6 A Do I understand that to be ...? Yes.

7 Q And you see it says that, "In the event they're
8 required to pay those costs, or otherwise held liable ...,"
9 and then you see later on the sentence, it says that then,
10 "... Hess may have claims against Superior under the
11 guarantee." Do you see that?

12 A Yes, I do.

13 Q Does this claim that these are fixed amounts that are
14 currently owed?

15 A No.

16 Q And doesn't it explain that these area amounts that may
17 be owed in the future?

18 A Correct.

19 Q And then, if we can just look at one other document;
20 it's on the Docket at 274-4. And if we can look at -- why
21 don't we look at first the cover. Is this the first page?
22 Okay, so, do you see this document, Mr. Lee, labeled the
23 global notes methodology and specific disclosures regarding
24 Superior Energy Services Inc., schedules of assets and
25 liabilities and statement of financial affairs? Do you see

1 that?

2 A Yes, I do.

3 Q And then, sorry, Mr. (indiscernible), we can go back to
4 the page we were looking at. I believe it's 31 of the PDF.

5 And do you see -- are you aware that at the outset of this
6 case, the Debtors filed a statement of schedules and
7 statements listing their creditors, their known creditors?

8 A Yes, I am aware.

9 Q And do you see that this section is titled List of All
10 Creditors with Non-Priority Unsecured Claims? Do you see
11 that?

12 A Yes.

13 Q And if you look down, the second one on the list,
14 number 3.2 -- do you see that, list one for Amerada Hess
15 Corporation?

16 A I do.

17 Q And you understand that's the same Hess Corporation
18 that we've been talking about here that submitted an
19 objection, right?

20 A Yes.

21 Q And do you see the Debtors describe, on the right-hand
22 side, there's different boxes they check, and that they
23 describe Hess's claim as contingent and unliquidated and
24 disputed. Do you see all those boxes checked?

25 A I do.

1 Q And this is information that the Debtors made publicly
2 available on the very first day of the case, isn't it?

3 A Yes.

4 Q I have no further questions.

5 THE COURT: All right, thank you. Mr. Alaniz, any
6 further or any re-cross?

7 MR. ALANIZ: I do have some re-cross, Your Honor.

8 THE COURT: All right, go ahead, please.

9 RE-CROSS-EXAMINATION OF JAMES LEE

10 BY MR. ALANIZ:

11 Q Mr. Lee, just on this last line of questioning, Mr.
12 Denton pointed your attention to the schedules that were
13 filed on December 7, correct?

14 A Yes.

15 Q And Hess filed its claim on January 7?

16 A Hess claim, filed its claim on ... well, it was
17 processed, actually, on January 8, (indiscernible), so it
18 might have been dated January 7.

19 Q Do you know the legal effect of filing a claim and how
20 that interacts with a scheduled claim?

21 MR. DENTON: Objection. Calls for a legal
22 conclusion.

23 THE COURT: Mr. Alaniz, why are we doing this with
24 this witness?

25 MR. ALANIZ: Well, Your Honor -- fair enough, Your

1 Honor. I was addressing this last line of questioning, but
2 I have one, just one line of questioning that I would like
3 to address with this witness.

4 THE COURT: All right.

5 MR. ALANIZ: One prong line of questioning.

6 BY MR. ALANIZ:

7 Q Mr. Lee, let's return back to the procedures that say
8 if a claimant contingent, it's awarded at a dollar.

9 A Okay.

10 Q If the claim is partially liquidated, or there's an
11 amount that's partially liquidated, how do you count that
12 claim?

13 A Well, under the procedures, partially liquidated claims
14 are voting for that partially liquidating amount.

15 Q How do you know which portion of Hess's \$140 million
16 claim is liquidated or unliquidated?

17 A You don't.

18 Q So, then how are you able to comply with the procedure
19 that says that if there's a partially liquidated amount,
20 that you count it as a partially liquidated amount?

21 A Well, typically, we'll see claims that a claimants, for
22 example, a claimant is owed \$1,000 plus interest. But we
23 don't know what that interest amount is, but we do know
24 that, on the face of the claim, they do have a liquidated
25 claim for \$1,000, they would be voting for \$1,0000, as an

1 example.

2 Q Do you know if -- has incurred any losses in connection
3 a \$140 million claim?

4 A I do not, no.

5 Q Did you ask Hess about it?

6 A No.

7 MR. ALANIZ: No further questions, Your Honor.

8 THE COURT: All right. Mr. Clement, any re-cross?

9 MR. CLEMENT: Give me a moment, Your Honor.

10 THE COURT: Sure.

11 MR. CLEMENT: Please.

12 RE-CROSS EXAMINATION OF JAMES LEE

13 BY MR. CLEMENT:

14 Q Mr. Lee, was Arena Energy on that list that you showed
15 us a moment ago?

16 A Can you specify what list are you talking about?

17 Q Your counsel had it up on the screen. It was a list
18 out of the schedules, I think, but listed off certain
19 people, where they had checked, contingent unliquidated.
20 It's no longer on the screen.

21 A Yes. I think they only showed a portion of that
22 schedule of liability. I'd have to look at the whole
23 document to see if Arena was included or not.

24 MR. CLEMENT: Your Honor, I can't tell if this is
25 within the scope or not, but I'll just start asking it and

1 I'll be told what the answer is.

2 If we could, please go back to this Exhibit A, the
3 sell call, which is the document that you had up for the --
4 at the beginning of the hearing?

5 THE COURT: Mr. Clement, it's there.

6 BY MR. CLEMENT:

7 Q Mr. Lee, if we look at the top of the page, for class
8 six, it says, "Amount accepted ...," -- am I correct -- "... 72
9 million"?

10 THE COURT: No, that's 72,000, Mr. Clement.

11 MR. CLEMENT: Is that the -- okay. In that case,
12 I have no further questions, Your Honor.

13 THE COURT: All right. Thank you. Mr. Taylor,
14 any additional cross?

15 MR. TAYLOR: No, Your Honor.

16 THE COURT: Thank you, sir. Any reason Mr. Lee
17 cannot be excused? Mr. Lee, thank you for your time today.
18 You are free to go.

19 MR. LEE: Thank you, Your Honor.

20 THE COURT: Thank you. All right, so, I think now
21 -- I've now lost him. Mr. Alaniz, you pop on, pop off. Are
22 we back to Mr. Cummings?

23 MR. DENTON: Yes, Your Honor.

24 THE COURT: All right, thank you. Mr. Cummings,
25 can you confirm for me that you can both hear and be heard?

1 MR. CUMMINGS: I can, Your Honor.

2 THE COURT: All right. Thank you. If you'd raise
3 your right hand, please, sir. Do you swear or affirm the
4 testimony you are about to give will be the truth, the whole
5 truth, and nothing but the truth?

6 MR. CUMMINGS: I do, Your Honor.

7 THE COURT: Thank you. Ms. (indiscernible), could
8 you take that down please? I'll tell you what, I'll do that
9 for you. All right, Mr. Alaniz, whenever you're ready.

10 MR. DENTON: Thank you, Your Honor.

11 DIRECT OF JOSH CUMMINGS

12 BY MR. DENTON:

13 Q Mr. Cummings, when were you retained as an investment
14 banker by Superior?

15 A It was this spring.

16 Q Do you have a rough idea of the month?

17 A I believe it was in May.

18 Q When did you begin your evaluation work?

19 A Our evaluation work really goes back with this company
20 for a long period of time. We've worked with this company
21 since 1993 as an organization. And I've worked with them
22 since 1997. As you know, evaluation is a dynamic and
23 ongoing process. So, typically, the valuation exercise has
24 gone on for decades and over multiple transactions as it
25 relates to this specific assignment, starting back in May.

1 Q Starting back in May? I'm sorry, is that what you
2 said?

3 A That's correct.

4 Q Okay. Were you aware that there was an initial RSA
5 that did not go forward?

6 A I am.

7 Q Had you performed a valuation when the parties had
8 (indiscernible) that initial RSA?

9 A The final valuation work had been submitted in
10 conjunction with the initial RSA and updated for the final
11 RSA.

12 Q Was there a difference in the valuation amount?

13 MR. DENTON: Your Honor, I just want to object to
14 this line of questioning here. I mean, obviously, Mr.
15 Cummings submitted a declaration explaining his valuation
16 analysis. However, there's been no objection to evaluation.
17 We're not having a valuation flight today. And so I'm not
18 really clear what counsel is getting at, or the relevance
19 here.

20 THE COURT: Mr. Alaniz?

21 MR. ALANIZ: Your Honor, we have objected, Your
22 Honor. They're putting forth this witness as a valuation
23 expert, and I think I should be entitled to ask questions about
24 his valuation analysis. It goes to the fair and equitable
25 standard, Your Honor.

1 THE COURT: I agree. I'll overrule the objection.

2 Mr. Cummings?

3 BY MR. DENTON:

4 A Yes, Mr. Alaniz, can you repeat the question?

5 Q Yes. You had mentioned that you had initially
6 performed a valuation at the time of the original RSA, but
7 then that was updated for the second RSA. Is that correct?
8 Did I get that right?

9 A (indiscernible)

10 Q Okay. Was there a difference in the number?

11 A There was no substantive change in the going concern
12 and the (indiscernible) with Superior Energy Services, no.

13 Q And when did you complete the valuation?

14 A The valuation date -- forgive me for one second -- is
15 dated November 27, 2020.

16 Q And what are you reviewing to get that date?

17 A Our valuation analysis.

18 Q And can you please elaborate? When you say a valuation
19 analysis, what do you mean? What documents are you
20 referring to?

21 A I think if you go to our declaration statement, the
22 valuation analysis described, in detail, in the
23 (indiscernible) of the valuation analysis.

24 Q Was there a valuation report?

25 A There was no formal report submitted.

1 Q Did you present your valuation to a board of directors?

2 A No, we did not specifically present our valuation
3 analysis to the board of directors.

4 Q Did you present a valuation analysis to anyone at the
5 company?

6 A Certainly, we walked through our valuation analysis.
7 The assumption is there too, or the derivation of it, to the
8 company.

9 Q Thank you, Mr. Cummings. And that's what I'm asking
10 about. What did you walk through?

11 A We had a presentation of, as I specifically referenced,
12 an expert report of Johnson Rice & Company. And that report
13 contains the valuation analysis therein.

14 Q I'm just curious, how long is that valuation report?

15 A Forgive me, it's not paginated in a way to make it
16 simple to answer that question; approximately 25 pages.

17 Q And why was that valuation report not submitted as
18 evidence today?

19 MR. ALANIZ: Objection, Your Honor, calls for a
20 legal conclusion outside the witness's direct knowledge.

21 THE COURT: Sustained. And Mr. Alaniz, you told
22 me this was going to fair and equitable. We're a long way
23 from that.

24 MR. DENTON: Your Honor, I don't have that many
25 more questions, Your Honor, but I --

1 THE COURT: Okay, go ahead. I'm just telling you,
2 that's what -- you told me one thing, but we're a long way
3 from fair and equitable.

4 MR. DENTON: And Your Honor, I will explain in my
5 argument why this line of questioning is relevant to the
6 fair and equitable analysis.

7 THE COURT: Okay.

8 MR. DENTON: Thank you.

9 BY MR. DENTON:

10 Q I'm going to ask Ms. (indiscernible) to pull up page
11 356 of the disclosure statement. I'm sorry, page 356. Are
12 you able to read this document, Mr. Cummings?

13 A Yes. I actually have it in front of me.

14 Q Okay. Do you see there, in the middle of the third
15 paragraph the statement that the estimated going concern
16 enterprise value of the reorganized debtors is 710 to 880
17 million?

18 A I do.

19 Q Is that valuation limited to the reorganized debtors?

20 A I think that valuation is as of the date, or the
21 effective date, as implied in the sentence prior to, or it's
22 the preamble to that sentence.

23 Q Well, let me do this another way. Does that valuation
24 take into account the Debtors' foreign operations?

25 A A going concern enterprise value of the parent

1 organization is a comprehensive and fundamental review of
2 that enterprise value. It utilizes historical, projected
3 financial statements of that parent company, and is
4 inclusive of the value of all debtor and non-debtor
5 subsidiaries. So it's a comprehensive view of the
6 organization in a going concern enterprise value.

7 Q Did you speak with anyone at the foreign subsidiaries
8 companies?

9 A I spoke to executive management multiple times
10 throughout this process, as you can imagine. I don't recall
11 specifically speaking to a representative of an
12 international subsidiary.

13 Q Thank you. Can we pull up your declaration? Ms.
14 (indiscernible), can you please pull up Mr. Cummings
15 declaration? And if we look at paragraph 12, it states that
16 Johnson, in completing the valuation analysis, Johnson
17 writes, "Assumed the financial projection set forth in the
18 disclosure statement, were reasonably prepared in good
19 faith." Do you see that statement?

20 A I do.

21 Q So, is it your testimony that Johnson & Rice just took
22 the numbers from the Debtors and didn't perform any
23 investigation as to whether the numbers were accurate?

24 MR. ALANIZ: Objection.

25 THE COURT: Mr. Denton?

1 MR. ALANIZ: It lacks foundation, Your Honor, and
2 it calls for speculation.

3 THE COURT: Mr. Cummings, if you know, go ahead
4 and answer the question.

5 BY MR. DENTON:

6 A Can you repeat the question one more time?

7 Q Sure. The first sentence of paragraph says, "In
8 completing the valuations analysis, Johnson & Rice assumed
9 that the financial projections set forth in the disclosure
10 statement, were reasonably prepared in good faith." And it
11 goes on to say, "On the basis reflecting the Debtors' best
12 estimate and judgment." Is that correct?

13 A I think there was another part to your question that
14 you were asking me to respond to.

15 Q My question is, did you do anything to satisfy yourself
16 that those assumptions were accurate?

17 A As part of our valuation analysis, we had a variety of
18 opportunities to ask questions, work with management, to
19 understand the derivation of the projections, to understand
20 the historical financial statements, to understand the
21 necessary conditions of the company -- again, not only
22 during this period of time, but over a broad decade-long
23 relationship with the company. So, to suggest that it was
24 that limited, no, I would not agree with that.

25 Q Okay. Ms. (indiscernible), can you scroll to the end

1 of the declaration, page 9 and 10? Mr. Cummings, it says
2 here that you conducted such other studies, analysis,
3 inquiries and investigations as deemed appropriate. Can you
4 please explain what that phrase means?

5 A It means that in looking at a valuation analysis, there
6 are judgments and there are determinations made by the
7 person providing that valuation analysis that go beyond what
8 conceivably could be listed in a short period of time. It's
9 based on expertise, experience, relevant engagements,
10 relevant experiences. So, it's a broad and comprehensive
11 understanding of our experience and our expertise as it
12 relates to this industry, this company and, you know, this
13 type of valuation work.

14 Q Okay, I understand better. So, you're not referring to
15 analysis or inquiries with respect to this company?

16 A Again, I don't think I suggested that there was some
17 limitation in what any of those works mean. They're
18 comprehensive and relate specifically to the company,
19 disengagement, and all the experiences that are deemed
20 relevant in this type of valuation work.

21 MR. DENTON: Pass the witness, Your Honor.

22 THE COURT: All right. Thank you. Mr. Clement --

23 MR. CLEMENT: Your Honor?

24 THE COURT: Yes, sir.

25 MR. CLEMENT: I'm sorry I didn't mean to interrupt

1 you, Your Honor.

2 THE COURT: Go ahead. Are you going to have
3 cross, Mr. Clement?

4 MR. CLEMENT: Yes, Your Honor.

5 THE COURT: Let me do this: I have a very quick
6 two o'clock. I'm just going to get a status report of a
7 hearing that occurred in another bankruptcy court today.
8 So, if I could ask everybody, just go pencils down for a
9 couple of minutes, don't go away. I can't imagine this
10 takes more than ten minutes. If you do want to step away
11 that's fine, just leave your phone connected and your camera
12 on. Albert, tell me when we're ready.

13 CLERK: I'm ready, Judge.

14 THE COURT: Thank you. The time is 2:05. Today
15 is January 19, 2021. This is the docket for Houston Texas -
16 -

17 (OFF THE RECORD)

18 THE COURT: The time is 2:15, we are back on the
19 record in the General Administer cases under case number 20-
20 35812, Superior Energy Services, Inc. When we broke, Mr.
21 Clement was about to undertake his cross examination of Mr.
22 Cummings. And, let's see, Mr. Clement, I've lost your
23 video. Are you with me?

24 MR. CLEMENT: I'm there someplace, Your Honor.

25 THE COURT: I'll promise you, you cannot hide for

1 me on the video.

2 MR. CLEMENT: Share my web cam, I thought I had
3 done so already.

4 THE COURT: There you are, you just popped in.
5 All right, whenever you're ready.

6 MR. CLEMENT: Thank you.

7 CROSS-EXAMINATION OF JOSH CUMMINGS

8 BY MR. CLEMENT:

9 Q Mr. Cummings, you did a valuation, an evaluation, of
10 what entity?

11 A The going concern valuation is the parent corporation,
12 Superior Energy Services, Inc., and all of the debtor and
13 non-debtor affiliates thereto.

14 Q You didn't do an evaluation of any of the debtor
15 subsidiaries, did you?

16 A That comprehensive valuation, at the parent level, like
17 I said, includes all debtor and non-debtor affiliates. So,
18 it's a complete analysis of the going concern value of the
19 enterprise.

20 Q When you received projections, they were for what
21 entity?

22 A They were for the parent company, as I mentioned,
23 Superior Energy Services, Inc., which is the consolidated
24 financial statements for all of the debtor and non-debtor
25 subsidiaries.

1 Q And was there anything in your valuations that caused
2 the change from the first RSA to the second RSA?

3 A As you may know, valuations are a living, dynamic,
4 breathing animal that change every day based on conditions
5 inherent in the economy, the industry, the specific company.
6 So, if you ask me tomorrow would it be different than today,
7 of course it would. But it's just normal changes to
8 valuation that resulted in, again, what I would characterize
9 as a non-substantial change in value from one day to the
10 other.

11 Q So, I think the answer I heard just then was the same
12 as I thought I heard earlier, and that is, your evaluations
13 didn't cause the change from the first RSA to the second
14 RSA?

15 A I don't think that's how I responded. I think I
16 responded that the change was non-substantive.

17 Q Thank you. And your valuation was for the parent and
18 all of its subsidiaries?

19 A That's correct.

20 MR. CLEMENT: Pass the witness, Your Honor.

21 THE COURT: All right, thank you. Let's see, Mr.
22 Taylor, did you wish to ask questions?

23 MR. TAYLOR: Yes, briefly, Your Honor.

24 THE COURT: Go ahead please.

25 CROSS-EXAMINATION OF JOSH CUMMINGS

1 BY MR. TAYLOR:

2 Q Mr. Cummings, the first initial RSA, just so I
3 understand what you're talking about, is that the initial
4 RSA where the parent decommissioning obligations were going
5 to receive a pass-through treatment?

6 A That is correct.

7 Q Okay. And the subsequent RS -- and that was agreed,
8 that initial RSA, was agreed to and contractually bound the
9 bondholders, correct?

10 A I know that it was agreed to. All the contractual
11 (indiscernible) a different (indiscernible) other than
12 myself.

13 Q Okay. And I believe your testimony was that your
14 overall global valuation did not substantially change
15 between the initial RSA and the final RSA. Is that correct?

16 A That is correct.

17 Q But yet the final RSA had substantially different
18 treatment for the parent decommissioning obligations. Is
19 that correct?

20 A As I mentioned, the valuation work is a going concern
21 value of the enterprise which, by definition, includes all
22 of the components of value, both positive and negative, for
23 the organization.

24 Q And that valuation didn't change, correct?

25 A That is correct.

1 Q But the treatment of the parent decommissioning
2 obligation certainly materially changed from the initial to
3 the final, correct?

4 A As it relates to how we value the aggregate enterprise.

5 Q Thank you for that answer, but I believe the question
6 was, did the parent decommissioning obligations receive
7 materially different treatment from the initial to the final
8 RSA.

9 A That is correct.

10 Q And I believe your testimony is you did not conduct a
11 valuation analysis independently on non-debtor subsidiaries.
12 Correct?

13 A As I mentioned, our going concern value is at the
14 parent level, which includes value of all debtor and non-
15 debtor subsidiaries.

16 Q Right, but you didn't conduct an independent analysis
17 of each non-debtor subsidiary, correct?

18 A Did we provide multiple valuation analyses on different
19 subsidiaries as opposed to the aggregate enterprise value of
20 the parent company, no, we did not.

21 Q Thank you.

22 MR. CLEMENT: No further questions, Your Honor.

23 THE COURT: Thank you. Anyone else wish to ask
24 questions of Mr. Cummings? All right, Mr. Denton, any
25 redirect?

1 MR. DENTON: Just very briefly, Your Honor.

2 THE COURT: Go ahead, please.

3 REDIRECT OF JOSH CUMMINGS

4 BY MR. DENTON:

5 Q Mr. Cumming, did you prepare your valuation analysis in
6 good faith?

7 A We did.

8 Q And you remind the Court, what was your conclusion as
9 to the enterprise value of the Debtors?

10 A We had a range in value from \$710 million in the low
11 range to \$850 million on the high end -- I'm sorry, \$880
12 million on the high end.

13 Q And are you aware that these cases are not
14 substantively consolidated and the Debtors are offering a
15 plan at each Debtor level?

16 A Mr. Denton, can you repeat the question. You sort of
17 cut out on me.

18 Q Sure. Are you aware that these cases are not
19 substantively consolidated and the Debtors are seeking to
20 confirm a plan at each debtor level?

21 A Yes.

22 Q Okay. So, when we talk about valuation that you spoke
23 about before, how did the value that you arrived at compare
24 with the amount of the bond debt at the affiliate level?

25 A It's obviously inside the aggregate value of the bond

1 debt.

2 Q The bond debt is greater than the aggregate enterprise
3 value of the Debtors, is that right?

4 A That is correct.

5 Q And does that leave any residual value then to flow up
6 to the parent and the creditors of the parent?

7 A No, it does not.

8 Q And just lastly, you were asked some questions about
9 projections before. About how many evaluations have you
10 performed in your career, Mr. Cummings?

11 A Certainly dozens, and a relatively high number of
12 dozens.

13 Q And in your experience, is it common when performing a
14 going concern valuation, to rely on the company's
15 projections in the doing so?

16 A It is.

17 MR. DENTON: Thank you, Your Honor. No further
18 questions.

19 THE COURT: All right, thank you. Mr. Alaniz, any
20 re-cross?

21 MR. ALANIZ: No, Your Honor.

22 THE COURT: Thank you. Mr. Clement, same
23 question.

24 MR. CLEMENT: Yes, just a couple of things, Your
25 Honor.

1 THE COURT: Go ahead, please.

2 RE-CROSS-EXAMINATION OF JOSH CUMMINGS

3 BY MR. CLEMENT:

4 Q Mr. Cummings, you're not a lawyer, are you?

5 A I'm not.

6 Q You were asked about value flowing from a subsidiary up
7 to a parent. Is that a subject that you studied?

8 A I think only in the context of the enterprise value
9 exceeding the no value. And, therefore --

10 Q Enterprise -- excuse me, sorry. Can you finish, sir?
11 I didn't mean to interrupt.

12 A What I'm saying is, only in the context of
13 understanding that the enterprise value is inside the value
14 of the notes, and the availability of recovery above and
15 beyond the notes; the actual structural entities behind
16 that, is not -- it's a detailed part of, to your point, you
17 know, my profession and my expertise, my relation to the
18 value of the organization, the value of the enterprise.

19 Q As a whole?

20 A That's correct.

21 Q Not as to any specific entity within that whole?

22 A We included in our analysis all of the debtor and non-
23 debtor subsidiaries. So, to suggest that one is dependent
24 or independent of another, is not necessarily reflective of
25 the work that was performed.

1 Q Thank you.

2 MR. CLEMENT: I pass the witness, Your Honor.

3 THE COURT: Thank you. Mr. Taylor, anything else?

4 All right. Thank you, sir. Any reason Mr. Cummings cannot

5 be excused? All right, Mr. Cummings, thank you for your

6 participation this afternoon. You are free to go.

7 Obviously, you're free to stay and watch. But if you've got

8 better things to do, and I hope you do, you're free to go.

9 MR. CUMMINGS: Thank you, Your Honor. d

10 THE COURT: All right. Mr. Alaniz, who would you

11 like to take next?

12 MR. ALANIZ: Your Honor, I think we have two

13 witnesses left.

14 THE COURT: Yes, sir. So, Mr. Ballard or Mr.

15 Omahundro?

16 MR. ALANIZ: Mr. Ballard is fine, Your Honor.

17 THE COURT: All right, thank you. Mr. Ballard,

18 can you just confirm for me that you can both hear and be

19 heard?

20 MR. BALLARD: (indiscernible).

21 THE COURT: I see you talking. Had you hit five-

22 star? Or do you have it muted from your side? I see you

23 just popped up. Let me get you. How about now?

24 MR. BALLARD: Yes, sir, can you hear me?

25 THE COURT: Very well. All right, Mr. Ballard, if

1 you would please, sir, raise your right hand. Do you swear
2 or affirm the testimony you are about to give will be the
3 truth, the whole truth and nothing but the truth?

4 MR. BALLARD: I do.

5 THE COURT: Thank you. So, you've given your
6 direct by declaration, and Mr. Alaniz, your cross please,
7 sir.

8 MR. ALANIZ: Thank you, Your Honor.

9 CROSS-EXAMINATION OF MR. BALLARD

10 BY MR. ALANIZ:

11 Q Mr. Ballard, I just have a few questions. If Ms.
12 (indiscernible) could pull up your declarations to Docket
13 266. And actually, while she's getting -- I don't even know
14 if we need to pull it up. Mr. Ballard, do you recall
15 stating in your declaration that the Debtors engaged in
16 arm's-length negotiations with the consenting noteholders
17 over the terms of the restructure and support agreement?

18 A I do.

19 Q When did the Debtors enter into the original RSA with
20 the consenting note holders?

21 A That was back in September of 2020.

22 Q Can you explain why the consenting noteholders backed
23 out of the original RSA?

24 MR. CLEMENT: Objection. Lacks foundation,
25 misstates his testimony.

1 THE COURT: Mr. Alaniz, what does this go to in
2 terms of your objection?

3 MR. ALANIZ: It goes to the good faith of the
4 (indiscernible) Your Honor.

5 THE COURT: Mr. Ballard, I'll overrule the
6 objection. Mr. Ballard, if you know.

7 BY MR. ALANIZ:

8 A You'd have to ask him as to why they ultimately backed
9 out.

10 Q Okay. So, you're not -- you don't have personal
11 knowledge as to why they backed out?

12 A I wasn't privy to their conversations. We only have
13 our understanding but I can't -- I don't know beyond that.

14 Q Okay.

15 MR. ALANIZ: Then pass the witness.

16 THE COURT: All right, Mr. Clement.

17 MR. CLEMENT: No questions, Your Honor.

18 THE COURT: All right. And Mr. Taylor?

19 RE-CROSS EXAMINATION OF MR. BALLARD

20 BY MR. TAYLOR:

21 Q Yes, Mr. Ballard, what consideration did the Debtor
22 receive for allowing the noteholder to back out of the
23 initial RSA and instead enter into the final RSA.

24 MR. ALANIZ: Objection, calls for a legal
25 conclusion.

1 THE COURT: Mr. Ballard knows what consideration
2 is. Whether or not an RSA is a binding agreement, I
3 suppose, depends upon which judge you're in front of. This
4 one doesn't believe it's binding in any shape, way or form.
5 But with that assumption, Mr. Ballard, did you get anything
6 in order to go from RSA-A to RSA-B?

7 THE WITNESS: No.

8 THE COURT: Okay, Mr. Taylor?

9 MR. TAYLOR: No further questions, Your Honor.

10 THE COURT: All right, thank you. Mr. Denton,
11 anything else for Mr. Ballard?

12 MR. DENTON: Just very briefly, Your Honor.

13 RE-CROSS EXAMINATION OF MR. BALLARD

14 BY MR. DENTON:

15 Q Mr. Ballard, you were asked about the RSA and the
16 different treatment of the general unsecured that the
17 parent, under the initial RSA and the amended one. Is that
18 right?

19 A Yes.

20 Q Were there any notable developments between the
21 original RSA and the amended one as to the general unsecured
22 obligations at the parent?

23 A The development that was and is continuing to be
24 ongoing is the Fieldwood bankruptcy proceedings.

25 Q And can you give some context to why that's relevant?

1 A Well, it's relevant because we have parent company
2 guarantees and we sold assets to Fieldwood several years
3 ago. And the uncertainty that is a bound in that proceeding
4 has caused, I guess, alarm for a variety of constituents in
5 this case.

6 Q And can you list any of those constituents who was
7 concerned by the amount of potential liability?

8 A Yeah, the Debtors as well as our noteholders.

9 Q Thank you. No further questions.

10 THE COURT: All right, Mr. Alaniz, any re-cross?

11 MR. ALANIZ: No, Your Honor.

12 THE COURT: Mr. Clement?

13 MR. CLEMENT: Yes, Your Honor.

14 THE COURT: Okay, go ahead please.

15 RE-CROSS EXAMINATION OF MR. BALLARD

16 BY MR. CLEMENT:

17 Q What was done to deal with those concerns about
18 liability from Fieldwood?

19 A No specific -- I don't think I understand the question.

20 Q Well, you said there was a concern about greater
21 liabilities relating to Fieldwood. What did you do about
22 them?

23 A We had direct outreach with Fieldwood to try better
24 understanding the disposition of the case and didn't walk
25 away from any discussions that we've had that this was going

1 to be -- there was going to be any degree of certainty
2 beyond what was known. And so, you know, other concerns was
3 their inability to sell assets, was a concern of ours, as
4 well as some of the direct messages that they were giving us
5 about the rejection of certain leases. And so, a variety of
6 factors caused significant concern to ourselves and, I would
7 suspect, the noteholders as well.

8 Q And due to that concern, what did you do?

9 A We talked to our noteholders about the concern and
10 recognized that there was not going to be a remedy given
11 that the case is still going. So, there was nothing that we
12 could do in talking to our noteholders or to Fieldwood.

13 Q Is that why you came up with the current plan
14 structure?

15 A You mean the amended RSA?

16 Q And the current plan structure?

17 A Well, it was a fairly longwinded discussion of
18 negotiation between ourselves as well as the noteholders,
19 ultimately arriving at the plan structure. But it was a
20 variety of factors that went into it.

21 Q Did you ever try to negotiate with any of the claimants
22 on the P&A guarantees?

23 MR. ALANIZ: Objection. Are we talking this
24 witness individually or are we talking everyone at the
25 company?

1 THE COURT: I think -- he's here as a rep of the
2 company. Mr. Ballard can answer the question. Mr. Ballard?

3 BY MR. CLEMENT:

4 A Do you mean Fieldwood or do you mean the claimants in
5 this proceeding?

6 THE COURT: He's asking you if you negotiated with
7 him.

8 BY MR. CLEMENT:

9 Q The (indiscernible) proceeding.

10 A We reached out to several claimants in this proceeding
11 to advise them that we were not going to -- in the
12 proceeding -- we're not going to allow the parent company
13 guarantees to ride through, and as a result of such, we
14 wanted them to know, given, really, the sensitivity of that
15 claimant, which is a customer of ours.

16 Q Did you negotiate with them about different treatment?

17 A We received some in-bound suggestions and offers that
18 were rejected.

19 Q By whom?

20 A I can't answer that.

21 Q Sir, you can answer. Did you reject them or did the
22 bondholders reject it?

23 A The bondholders rejected it.

24 Q Thank you.

25 MR. CLEMENT: I pass the witness, Your Honor.

1 THE COURT: All right. Mr. Taylor?

2 RE-CROSS EXAMINATION OF MR. BALLARD

3 BY MR. TAYLOR:

4 Q Yes, Mr. Ballard, the concerns that the bondholders and
5 the Debtors had, that related to the Fieldwood bankruptcy,
6 all of your other claimants have the exact same concerns,
7 just related to various different, discreet buckets of
8 assets, correct?

9 A Correct.

10 Q Thank you. No further questions.

11 THE COURT: All right, thank you. Mr. Denton,
12 anything else?

13 MR. DENTON: No, Your Honor.

14 THE COURT: All right, thank you. Any reason Mr.
15 Ballard cannot be excused? All right, Mr. Ballard, thank
16 you sir. Obviously, I want you to hang around. But you are
17 excused from further testimony.

18 MR. BALLARD: Thank you, Your Honor.

19 THE COURT: Mr. Alaniz, still want to cross
20 examine Mr. Omahundro?

21 MR. ALANIZ: Yes, Your Honor.

22 THE COURT: All right. Thank you, Mr. Omahundro,
23 could you just confirm for me that you can both hear me and
24 be heard? There you are. Good afternoon. Do you have me
25 muted from your side? Because I think I unmuted -- I'm

1 pretty sure I unmuted you.

2 MR. OMAHUNDRO: Sorry. I did have it muted. Can
3 you hear me now?

4 THE COURT: Very well, thank you. Good afternoon.
5 If you'd raise your right hand, please, sir. Do you swear
6 or affirm the testimony you are about to give will be the
7 truth, the whole truth and nothing but the truth?

8 MR. OMAHUNDRO: I do.

9 THE COURT: All right, thank you. Again, your
10 direct was by declaration. Mr. Alaniz, your cross please,
11 sir.

12 RE-CROSS EXAMINATION OF RYAN OMAHUNDRO

13 BY MR. ALANIZ:

14 Q Good afternoon Mr. Omahundro. I'm going to ask some
15 questions from your declaration. If you need us to pull it
16 up, we can easily do that.

17 A I have it. Yeah, if you could, that would be helpful.

18 Q Absolutely. Ms. (indiscernible) do you want to cue
19 that up, just in case? Thank you. Mr. Omahundro, you
20 referred, in paragraph 11 of our declaration to an original
21 restructure and support agreement, correct?

22 A Yes.

23 Q And that original RSA provided a return to equity,
24 correct?

25 A It did,

1 Q And you mentioned that the Debtors sought and initially
2 obtained -- I have a typo in my outline so I'm going to read
3 with you: "The Debtors engaged in hard-fought negotiations
4 with the ad hoc noteholder group in agreeing to the
5 restructure and support agreement." Do you see that
6 sentence?

7 A Yes.

8 Q Can you describe the nature of those hard-fought
9 negotiations?

10 A Yes. That was a series of negotiations that had been
11 ongoing with the ad hoc group of noteholders and the company
12 board for several months, and even predated our engagement,
13 in August of 2020. And ultimately resulted in the original
14 RSA that was signed in August -- I mean in September, excuse
15 me.

16 Q Thank you. The next sentence says the Debtors fought
17 for and initially obtained, in the prior iteration of the
18 RSA, a recovery for existing prepetition equity holders. Do
19 you see that?

20 A I do.

21 Q Did that original RSA -- well, first of all, scratch
22 that. Let me ask this question. If I use the words
23 unimpaired or reinstated, do you know what that means?

24 A I do.

25 Q Okay. Did that original RSA leave the general

1 unsecured creditors at the parent level unimpaired or
2 reinstated?

3 A It did.

4 Q Okay. Can we scroll down to paragraph 12, Ms.
5 (indiscernible)? Okay. Mr. Omahundro, this is a long
6 sentence, but I'm going to ask you just a couple of
7 questions about this sentence, so please stop me. And I
8 really don't have that many questions for you.

9 It says, "However, after the original RSA was executed,
10 and given certain developments in the chapter 11 cases that
11 Fieldwood Energy, LLC, that are currently pending before
12 this Court, the ad hoc noteholder group became concerned
13 with the likelihood and amount of certain historical
14 guarantees issued by parent with respect to the legacy oil
15 and gas obligations, which could expose the parent to
16 liability for the legacy parent guarantee claims, i.e.,
17 asset retirement obligations."

18 The first part of that sentence says given certain
19 developments in the cases of Fieldwood, that the ad hoc
20 group became concerned. Can you elaborate on those
21 developments?

22 A My understanding is the growing certainty that
23 Fieldwood be pursuing, become a split company plan, where
24 they would be leaving behind certain assets that be related
25 to these legacy indemnity claims, and would ultimately give

1 rise or increase the chance of the contingent claims coming
2 to fruition as opposed to, you know, the thought that
3 previously these claims would never result in an actual
4 liability.

5 Q Understood. And I just want to understand your
6 testimony. So, it's not the mere filing of the Fieldwood
7 case that caused the concern; it was developments after the
8 case was filed?

9 A Yes. That's my understanding.

10 Q What was your reaction when you learned that the ad hoc
11 group was not going to go forward with the original RSA?

12 A I don't recall what my reaction was.

13 Q Okay. All right, moving onto paragraph 14 -- and I
14 promise, I have only just a few more questions. You
15 mentioned, at the end of the paragraph 14, that the Debtor -
16 - sorry that the plan enjoys the support of a strong
17 majority of predators in all voting classes, correct?

18 A Correct.

19 Q What was the basis of making that statement?

20 A It was the redeclaration.

21 Q Thank you. Scrolling down to page 28 -- I'm sorry,
22 paragraph 28 -- you mentioned in paragraph 28, that each
23 class of creditors is being treated under the plan on a per-
24 debtor basis. Correct?

25 A Correct.

1 Q Can you elaborate as to what your understanding of what
2 that phrase means?

3 A The plan -- again, this case is not substantively
4 consolidated, so the plan and the recovery to creditors is
5 handled on a debtor-by-debtor basis.

6 Q And is the reason that the plan has a separate class --
7 I apologize, let me start over. Is your explanation, the
8 reason why the plan has a separate class for the
9 (indiscernible) plans at the parent level?

10 A I'm sorry, can you repeat the question?

11 Q Are you aware that there is a separate class for
12 noteholders at the parent level?

13 A Yes.

14 Q But there isn't a separate class as to each debtor,
15 with respect to the noteholders. Is that correct?

16 A There is a class where the note claims as a parent, and
17 there is a class for the note claims as the affiliate
18 debtors.

19 Q And the affiliate debtors are all aggregated into that
20 single class correct?

21 A Correct.

22 MR. ALANIZ: No further questions, Your Honor.

23 THE COURT: Thank you. Mr. Clement, do you have
24 questions for Mr. Omahundro?

25 MR. CLEMENT: No, Your Honor.

1 THE COURT: All right, thank you. Mr. Taylor?

2 MR. TAYLOR: No, Your Honor. Mr. Alaniz covered
3 it.

4 THE COURT: All right, thank you. And let's see.
5 Mr. Denton, do you have anything else for Mr. Omahundro?

6 MR. DENTON: Just very briefly, Your Honor.

7 CROSS EXAMINATION OF RYAN OMAHANDRO

8 BY MR. DENTON:

9 Q Mr. Omahundro, do you remember the questions you were
10 just asked about the separate plan, you know, for each
11 debtor?

12 A Yes.

13 Q And how many classes of unsecured creditors are there
14 at each debtor entity?

15 A Two.

16 Q And what are they?

17 A One is for the prepetition note claims and the other is
18 for other, you know, general unsecured claims.

19 Q And are you aware -- let's talk about the general
20 unsecureds. Are you aware that the ones at the affiliate
21 debtor levels are receiving different recoveries under the
22 plan than the ones at the parent level?

23 A Yes.

24 Q And so in your view, does the plan unfairly
25 discriminate amongst creditors because general unsecureds at

1 the affiliate and the parent level get different treatment?

2 MR. CLEMENT: Objection to the extent it calls for
3 a legal conclusion, Your Honor.

4 THE COURT: All right. I don't think that it
5 does. I'll overrule the objection. Mr. Omahundro, go
6 ahead, please.

7 BY MR. DENTON:

8 Q Would you like to repeat, Mr. Omahundro?

9 A If you would, please.

10 Q Because of those different treatment of unsecureds at
11 the affiliate level and at the parent level, do you think
12 that results in unfair treatment and discrimination among
13 them, because they're all unsecureds?

14 A I do not.

15 Q And can you explain why?

16 A The general unsecured claims that the debtor affiliates
17 are for claims for the reorganized entity, trade claims,
18 employee claims, claims resulting from the ongoing business;
19 whereas, the general unsecured claims of the parent result
20 in these legacy indemnity claims from 15 years ago, plus.

21 Q And is there enough value here under the plan to pay
22 all creditors in full at the affiliate level, and that have
23 leftover value that goes upstream to the parent?

24 A There is not.

25 Q Thank you.

1 MR. DENTON: No further questions, Your Honor.

2 THE COURT: All right, thank you. Mr. Alaniz?

3 MR. ALANIZ: Nothing further, Your Honor.

4 THE COURT: Mr. Clement?

5 MR. CLEMENT: Yes, Your Honor.

6 THE COURT: Go ahead please?

7 CROSS EXAMINATION OF RYAN OMAHANDRO

8 BY MR. CLEMENT:

9 Q Sir, under the first plan, was it inappropriate to
10 treat the creditors at the parent level the same as the
11 parents at the operating subsidiary level?

12 A Can you repeat the question please?

13 Q Under the first plan, parent level were treated the
14 same as creditors at the operating level. Was that
15 inappropriate?

16 A No.

17 Q Then why is it appropriate to change that in the new
18 plan?

19 A As we discussed, the view on the likelihood of that
20 contingent claim coming to fruition changed between the two
21 plans. And so, as a result, the bondholders amended their
22 agreement to let those claims ride through.

23 Q They dropped their agreement to let those claims ride
24 through, and asked that they be treated differently.

25 A Correct.

1 Q And they are treated differently, aren't they?

2 A They are.

3 Q But you don't call that a discrimination.

4 A No.

5 MR. CLEMENT: Pass the witness, Your Honor.

6 THE COURT: Mr. Taylor?

7 MR. TAYLOR: Nothing further, Your Honor.

8 THE COURT: All right, thank you. Mr. Denton,
9 anything else? I think you have me muted.

10 MR. DENTON: Apologies. No further questions,
11 Your Honor.

12 THE COURT: Any reason Mr. Omahundro cannot be
13 excused? Mr. Omahundro, thank you for your time this
14 afternoon. You are obviously free to go. You're also free
15 to continue to watch.

16 MR. OMAHUNDRO: Thank you.

17 THE COURT: Thank you, sir. All right, so let me
18 ask, Mr. Denton, does that conclude the evidentiary
19 presentation on behalf of the Debtors?

20 MR. DENTON: Yes it does, Your Honor.

21 THE COURT: All right, thank you. Mr. Alaniz, did
22 you intend on offering any additional evidence?

23 MR. ALANIZ: Not beyond the three exhibits that
24 are already in evidence, Your Honor.

25 THE COURT: All right, now, 279, 1, 2 and 3 have

1 been admitted and I've noted that. Mr. Clement, did you
2 wish to offer any additional evidence?

3 MR. CLEMENT: No, Your Honor.

4 THE COURT: Thank you. Mr. Taylor?

5 MR. TAYLOR: No, Your Honor.

6 THE COURT: All right, thank you. Then we'll
7 consider the evidence closed. Mr. Denton, at this point,
8 are you yielding back to Mr. Klidonis? Is that where we're
9 going?

10 MR. DENTON: Yes, please, Your Honor.

11 THE COURT: All right. Thank you very much, sir.
12 All right, Mr. Klidonis?

13 MR. KLIDONIS: Thank you, Your Honor. I think at
14 this point we'd like to make some closing remarks. I think
15 my colleague, Mr. Simon, would like to make some closing
16 remarks. So, I'd like to pass the podium to him.

17 THE COURT: Sure. Mr. Simon, oh, there you are.
18 So, this will be terrific. I'll just listen to you in
19 silence. I can't hear you.

20 MR. SIMON: I have my phone off mute.

21 THE COURT: Let's see. Mr. Simon, let's try
22 again.

23 MR. SIMON: Can you hear me now, Your Honor?

24 THE COURT: Very well.

25 MR. SIMON: Your Honor, just a few things.

1 Obviously, we covered a lot. I did just want to hit the
2 highlights which is, we obviously were very aware of the
3 voting results, the reaction people might have, which is why
4 we had a declaration with seven different combinations,
5 because we didn't want people to be surprised and upset when
6 the results said what they said. I think the tabulation
7 procedures were done correctly. I think that that class six
8 voted to accept, but if not, notwithstanding that these
9 plans are contingent, and notwithstanding the ballot calls
10 it out on its face, notwithstanding that, our brief goes
11 into painful detail why this plan can be confirmed even if
12 class six votes to reject.

13 So, again, like we weren't trying to surprise
14 anyone, which is why the declaration has all these different
15 permutations. And Your Honor, it is spot on from the first
16 question, which is, class five would dominate class six
17 anyway. And so, again, we have a brief in every declaration
18 that says, even if class six votes to reject, here's why the
19 plan can be confirmed.

20 So, Your Honor, so, in terms of the voting
21 declaration, again, we're not here to debate, you know,
22 whether they had notice. I'm happy to assume, for purposes
23 of argument, just for argument's sake, that class six voted
24 to reject. Okay, our brief covers that. All the
25 declarations cover that. Our brief and our declarations

1 absolutely do not rely solely and exclusively on class six
2 voting to accept, even though they did.

3 But that being the case, we do not rely only on
4 that. Our confirmation even says if class six voted to
5 reject, the plan is still confirmable. So, (indiscernible)
6 any misunderstanding that will rely on class six voting to
7 accept as the sole and exclusive basis.

8 The next thing, Your Honor, is the valuation
9 evidence is uncontested. According to our valuation expert,
10 the company is short by about \$500 million on the value of
11 the bonds. And no value can cross (indiscernible) LLC, the
12 issuer, to get to the parent without the bondholders'
13 consent, period, full stop.

14 So, that's just the world we live in. And the
15 only way that's even possible, the only reason we're only
16 \$500 million short, is because we're paying the creditors of
17 the affiliate debtors in full. If you don't pay those
18 people in full, you literally can't give any value to the
19 parents. So, I understand why the parent creditors are
20 upset. But that doesn't change the structural subordination
21 that they face.

22 So, again, we have to pay the affiliate debtors in
23 full -- their creditors, I mean -- to get value to the
24 parents. So, that's why we pay them, the trade creditors,
25 in full; because we have to. So, that's from the valuation

1 standpoint.

2 And again, the valuation testimony is uncontested.
3 No one is disputing that somehow the notes are getting more
4 than 100 cents on the dollar.

5 And then, look, there's obviously been a lot of
6 background. And our disclosure statement talked about it.
7 Our first day hearing we covered the change in the RSA, and
8 why it happened, and everyone's favorite topic of Fieldwood.
9 Again, like, we knew this would be not welcome news to the
10 counterparties. We got that; which is why we reached out to
11 them in advance when the RSA changed. There was an AK on
12 it; we reached out to them. We disclosed that to Your
13 Honor. We have a disclosure statement that says it. We had
14 a schedule as to who they were.

15 I completely understand why their counsels are up
16 here fighting. I totally get it. They don't love the
17 change. I wouldn't either if I was them. I understand.
18 But that doesn't mean that the treatment between creditors
19 at different debtors, is unfair. It is a function of where
20 they sit in the structure.

21 So, again, like the fact is, the original RSA, it
22 says what it says, but we couldn't operate under it.
23 Circumstances changed and the noteholders have the absolute
24 right to terminate. And so, what we did on the company
25 standpoint is fight for as hard as we could to have this

1 process, which is a pre-pact with the company converting all
2 of its -- this is what happens when I'm upstate, like the
3 country -- can you see the sun, like now it looks like I
4 have like an aura. I've got to move my chair because I
5 can't see anything. Oh, my goodness. There we go, that's
6 getter. In about five minutes, I'll have to move again.
7 Okay.

8 Where was I? I probably said something funny.
9 What was I saying? Oh, the noteholders. Yes.

10 So, the -- as the circumstances changed, and these
11 contingent claims became more possible, whatever that means
12 in Fieldwood, people reassessed the situation. And that
13 doesn't show lack of good faith or lack of trying to fight
14 for people; it's just a result that, well, (indiscernible)
15 has in particular. They filed a claim for \$140 million.
16 That's not chump change.

17 And if you're a noteholder looking at that, you
18 have to ask yourself, you know, what if I'm willing to let
19 ride through and be on the hook for?

20 So, again, like I don't criticize anyone for
21 fighting about the change that happened. I understand why
22 they're unhappy. But that doesn't mean that the plan
23 structure is unconfirmable. It just means we're living with
24 the structure of the fact that the family of affiliates is
25 structurally senior to the parent. And that's all. And

1 that's the world we live in.

2 And because these creditors are at different
3 debtor entities, unfair discrimination doesn't even apply
4 across debtor entities. I understand if we try to say at
5 the parent, we got the notes, we got Hess and then we have
6 others. Like if we had three classes at the parent, that
7 would be an issue. But across debtors, I don't see how
8 unfair discrimination applies.

9 And certainly, Your Honor, if we combine class
10 five and six, by definition, unfair discrimination doesn't
11 apply, because then we have an overwhelmingly accepting
12 class at that level.

13 And again, by the way, I'll say -- I hope credit
14 for this, it was my idea to separate class five and six.
15 Because I would think those creditors would want to see how
16 they vote independent of the bonds. Why would they want to
17 be classified together with someone who's agreed to support
18 the plan, and absolutely drowns them out in terms of dollars
19 and numbers?

20 So, again, like it wasn't meant to gerrymander.
21 It was meant to recognize the fact that we assumed they'd
22 want to be separate. But if we want to combine them, that's
23 the easiest role for us. That makes the plan very simple.
24 Then we clearly don't even have to deal with unfair
25 discrimination and fair and equitable.

1 So, that, Your Honor was my original closing. I
2 guess I would reserve a couple of minutes based on what my
3 friends say, from the objectors' side, but those are the
4 things that I just wanted to highlight; which is we're
5 living with the structural subordination and capital
6 structure that we have. And these claims are only at the
7 parent.

8 THE COURT: Got it. Thank you, Mr. Simon.

9 MR. SIMON: Thank you.

10 THE COURT: Anyone else that supports confirmation
11 wish to make any closing remarks?

12 MR. SHPEEN: Your Honor, can you hear me?

13 THE COURT: I can. Who is this?

14 MR. SHPEEN: Thank you, Your Honor. For the
15 record, it's Adam Shpeen.

16 THE COURT: Oh, there you are. Yes, sir.

17 MR. SHPEEN: Davis Polk & Wardwell.

18 THE COURT: Yes, sir.

19 MR. SHPEEN: Thank you. Again, for the record,
20 Adam Shpeen of Davis Polk & Wardwell on behalf of the ad hoc
21 noteholder group. Present today, also in the virtual
22 courtroom on behalf of the ad hoc noteholder group is Damien
23 Schaible of Davis Polk, as well as John Higgins of Porter
24 Hedges. Mr. Schaible is on the line and happy to speak to
25 any of the objections raised today.

1 Yesterday evening, you may have seen, Your Honor,
2 we filed an amended 2019 statement that disclosed the
3 identities of and the economic interests held by the members
4 of the group. It was filed at Docket number 280.

5 Collectively, the group holds approximately \$1
6 billion in base amount of the Debtors' unsecured notes,
7 which constitutes approximately 79 percent of all of the
8 unsecured notes.

9 Your Honor, I think it goes without saying, the ad
10 hoc group is firmly supportive of the Debtors' plan. We
11 filed a joinder to the Debtors' brief at Docket number 269.

12 I'll limit my remarks to just three points, Your
13 Honor. First, I'd like to take a moment, briefly, to
14 discuss the evolution of the RSA. It's been discussed today
15 by some of the plan objectors. And I think it's fair to say
16 it's a red herring.

17 It's true that in late September we entered into
18 an original RSA that did not impair the parent guarantee
19 claims, but it's also true that at the time we were not
20 aware of the existence or did not appreciate the magnitude
21 of those claims.

22 In the plan contemplated by the original RSA, the
23 centerpiece of that plan was for the bondholders to equitize
24 their debt so that the company could emerge (indiscernible)
25 concern, all jobs remaining in place with a completely

1 (indiscernible) balance sheet, and as part of the plan
2 contemplated by that RSA, the bondholders, party to the RSA,
3 also agreed to allow trade and other unsecured creditors to
4 ride through unimpaired.

5 But as I mentioned earlier, and this is set forth
6 in the first-day declaration, docket number eight, we
7 weren't aware of and didn't appreciate the guarantee claims
8 until late October and early November, and at that point we
9 were in a tough situation given where the (indiscernible)
10 bankruptcy was. On the one hand, we wanted to salvage the
11 plan. We still wanted to equitize the bonds. We thought it
12 was in the company's best interest to have a restructuring
13 that de-levered their balance sheet. We wanted to have the
14 unsecured trade claims ride through, but then on the other
15 hand, we couldn't let guarantee claims that could
16 potentially saddle the emerged company with hundreds of
17 millions of dollars in potentially -- you know, potential
18 liability ride through.

19 And moreover, the claims from the guarantee
20 claimants are at the parent company where the bond claims
21 were -- are structurally senior at all the opcos. So, if
22 the guarantee claims had ridden through the bankruptcy and
23 the bondholder claims had equitized, it would have turned
24 the debt priorities that exist today upside down. It would
25 have allowed the guarantee claims to effectively leapfrog

1 and become senior to the equity that the bondholders were
2 converting into.

3 And so, what do we do? As Mr. Simon alluded to,
4 in late October, early November, we immediately negotiated
5 with the company to amend the RSA to revise the plan. We
6 proposed alternatives that the company, for a variety of
7 reasons, rejected. What the -- what ultimately came out of
8 the negotiation was an amended plan that exists today, and
9 it's true that we were not willing to move forward with the
10 original RSA plan. We believed we had grounds to terminate
11 the RSA. It was not binding on us. But once the plan that
12 Mr. Simon proposed was found to be acceptable that dealt
13 appropriately with the parent guarantee claims, we entered
14 into the amended and restated RSA on December 4th and
15 proceeded with the restricting.

16 So, again, there was nothing untoward that
17 occurred here, nothing malicious, it was just a realization
18 that the original plan contemplated by the original RSA was
19 no longer tenable in light of the new information that came
20 to light.

21 The second point, I'll hit briefly on
22 gerrymandering. This again is a -- is a headscratcher,
23 because if there was any gerrymandering at all, it was to
24 benefit the unsecured creditors at the parent. Mr. Simon's
25 correct. It was his idea, and we didn't push back, you

1 know, to the Debtor's credit, to give a \$125,000
2 distribution to the parent creditors and have them -- you
3 know, the parent creditors share in that pool.

4 However, if the bondholders shared in that pool
5 with the other general unsecured creditors, the 1.3 billion
6 of bondholder claims would have massively diluted what could
7 otherwise have been distributed to general unsecured
8 bondholders.

9 So, the solution to that issue was to bifurcate
10 the classes and have an agreement by the bondholders to
11 waive their right to distribution of the 125,000 -- from the
12 \$125,000 pool. So, the gerrymandering, it wasn't with the
13 intent to deliver an impaired consenting class. It was with
14 the intent to provide a meaningful distribution to general
15 unsecured creditors at the parent.

16 And like Mr. Simon said, there's -- you know, I
17 can think of at least two ways you could cure the
18 gerrymandering issue, if it is an issue at all. One is to
19 combine the classes, and the class would overwhelmingly vote
20 in favor of the plan, but if you -- if you have two separate
21 classes to address I think Arena's 1126(g) argument where if
22 you assume that the general unsecured class at the parent
23 votes to reject the plan and you assume that the waiver of
24 the distribution by the bondholder class causes that class
25 to be deemed to reject the plan, so you don't have -- you

1 don't have an accepting class, then to solve that issue you
2 could just remove the waiver from the bondholders and have
3 the bondholders recover from the (indiscernible) cash pool
4 and have quintessentially equal treatment between both
5 classes. There'd be no discrimination at all, no difference
6 in treatment, no argument with respect to that. So, again,
7 the gerrymandering argument falls flat when scrutinized.

8 And the last point I'd like to make, you know, is
9 the plan objectors raised the best interest of creditors
10 test as a basis for objected. I would -- it's worth noting,
11 Your Honor, that the liquidation analysis has not been
12 challenged. Whether the class votes to accept the plan or
13 reject the plan, every creditor is entitled to the
14 protection of the best interest of creditors test. But the
15 parent guarantee claimants haven't -- at least I haven't
16 heard them challenge the liquidation analysis put forward by
17 the Debtors, and that analysis clearly shows that there's no
18 recovery for any creditor of the parent in a liquidation.

19 So, Your Honor, that concludes my remarks and we,
20 on behalf of the Ad Hoc Noteholder Group, would urge Your
21 Honor to approve the plan -- approve the disclosure
22 statement and confirm the plan. Thank you.

23 THE COURT: All right. Thank you. Anyone else
24 that supports confirmation of the proposed plan wish to make
25 any closing remarks?

1 All right. Mr. Alaniz?

2 MR. ALANIZ: Yes, Your Honor. Your Honor, Hess
3 objects to any finding in the Court's confirmation order
4 that Class 6 voted to accept the plan. To begin with, Mr.
5 Lee's testimony is that it was the Debtor's counsel that
6 exercised the judgment to count Hess's claim at \$1 and other
7 similarly situated creditors. I think Your Honor made a
8 casual observation early in the hearing that the voting
9 agent normally just opens the mail and counts the votes, and
10 that's not what happened here.

11 Had KCC done that, Hess would have -- Hess's
12 (indiscernible) would have been counted at \$140.8 million.
13 Exhibit 279-3 reflects the \$140.8 million amount. Exhibit
14 272-2 reflects a voting confirmation from KCC in the amount
15 of \$140.8 million. I asked Mr. Lee to go through each of
16 the voting creditors for a reason. Had KCC tabulated the
17 votes according to the stated amounts, the amounts voting to
18 accept the plan at Class 6 would be 0.03 percent, and thus
19 the Debtor doesn't meet the voting threshold of 1126(c).

20 Your Honor, I think that what the Debtors have
21 done here sets a dangerous precedent. If it is the law now
22 that the Debtors control the way a voting agent would
23 tabulate a vote -- and in fact I believe that was his
24 testimony. He testified that he was instructed to reduce
25 the claim down to \$1. I see a lot of potential for

1 mischief. The fact is, our claim, Hess's claim, is allowed
2 under the bankruptcy code, under Section 502(a), at that
3 amount.

4 The solicitation procedures, Your Honor, were -- I
5 meant to check this before -- I believe it was one day's
6 notice. It was filed on the first day. We had -- you had a
7 first-day hearing, entered the ordered. So, I think it's
8 unfair for the Debtors to argue that creditor -- if
9 creditors had a problem they could have objected.

10 As Your Honor is aware, there are a host of types
11 of claims that are your classic, contingent claims,
12 (indiscernible) claims for indemnity, (indiscernible) you
13 know, contingent, unliquidated. I get it, you know, on the
14 procedures where those would be counted at \$1. Here, this
15 case is different. Hess faces a very real scenario that
16 Superior's guarantee back in 2004 was intended to address,
17 which is becoming potentially liable for Superior's former
18 affiliate obligations.

19 But we didn't even get the chance to explain, Your
20 Honor. KCC didn't -- it's sort of shocking to me that they
21 would make -- that they would adopt the judgment of the
22 Debtors, but we could have explained. There are losses
23 incurred. I asked Mr. Lee, if you look at the claim, it
24 says it's \$140 million including but not limited to all of
25 these costs for (indiscernible) obligation. He could have

1 said, well, (indiscernible) occurred, and I would have said,
2 well, yes, we have -- we do have losses. They've incurred
3 \$50,000 in attorney's fees alone.

4 Well, we didn't get that chance, and we just got a
5 voting report that stated it, you know, summarily. There
6 was no process or procedure to assure the creditor's vote
7 would be counted fairly.

8 I want to leave Your Honor with this notion, and
9 that is -- on this point, and that is creditors really don't
10 get much in these Chapter 11 cases. We get two things. We
11 get our voting amount -- or we get our claims and recovery
12 of whatever the plan entitles us to, and the Bankruptcy
13 Code, and second we get our vote. And the vote is a
14 fundamental right of the creditors. And here, the Debtors
15 have basically disenfranchised the vote, so I go back to the
16 point of I think that the Court does not have sufficient
17 evidence to make a finding that Class 6 has accepted the
18 plan.

19 As to why it matters, Your Honor, it matters
20 because Class -- the Debtors have made several statements in
21 their pleadings. I think there was testimony -- well, there
22 was testimony in the declaration that the Debtors are
23 seeking to confirm their plan on a -- on a per-Debtor basis.
24 So, to me that implies that they need a (indiscernible)
25 class at the parent level. We reject at Class 6. The

1 evidence shows that. At Class 5, the bondholders are not
2 receiving any property. They are deemed to reject under
3 1126(g) --

4 THE COURT: No, they are receiving property.
5 There's actually -- the language of the plan says that they
6 are receiving a recovery and they are waiving their right to
7 receive the property. That's very different than saying you
8 get nothing.

9 MR. ALANIZ: Oh, Your Honor, I would -- I would
10 respectfully disagree with the interpretation --

11 THE COURT: Then --

12 MR. ALANIZ: -- because the --

13 THE COURT: -- then --

14 MR. ALANIZ: -- 1126(b), it says because the plan
15 is idle.

16 THE COURT: -- then fine. I'll simply -- I'll
17 simply reject the waiver.

18 MR. ALANIZ: Well, Your Honor -- and this goes to
19 the point of what I've heard all through today, which is a
20 common theme, if our plan did this, if our plan
21 (indiscernible) that, if we didn't have the waiver, but this
22 is the plan that is put forth before the Court, and I would
23 respectfully request that the Court judge the plan as to how
24 it is -- it is presented to the Court.

25 As it's presented to the Court, there is -- they

1 are not entitled to receive a recovery. If I --

2 THE COURT: No, they are.

3 MR. ALANIZ: -- waived the claim --

4 THE COURT: They are, Mr. Alaniz. They're
5 entitled to receive their share. And then the language says
6 that they waive the right to receive it. That is very
7 different than saying they're not entitled to do something.
8 If Mr. Shible wanted to pop on the screen right now and say
9 I've thought twice about it, I want to retract my waiver,
10 what the Debtors had to do doesn't change. They still have
11 to put up \$125,000. It's just who gets it.

12 MR. ALANIZ: I -- and Your Honor, I would just
13 proffer maybe a different scenario. If I have a claim
14 against Mr. Shible and I release that claim, I'm not
15 entitled to, you know, (indiscernible) that claim. And I
16 understand -- I mean, I'm just trying to make a --

17 THE COURT: I have -- I have no -- I have no idea
18 what you just said. That made no sense. You want to try
19 again?

20 MR. ALANIZ: Well, Your Honor -- sure. I think --
21 I think that the operative word in Section 1126(b) is
22 entitled.

23 THE COURT: Right.

24 MR. ALANIZ: And I would ask the Court to review
25 the whole -- the entire provision of what that class is

1 receiving, which are what they're entitled to.

2 THE COURT: Right.

3 MR. ALANIZ: And if they're waiving their
4 distribution, then the plan doesn't entitle them to any
5 property.

6 THE COURT: That makes -- you understand how
7 disjointed that is? The plan provided for a recovery. It's
8 like executing a disclaimer. I don't want it.

9 MR. ALANIZ: I understand, Your Honor, and I will
10 respect the Court's ruling. I mean, my simple argument is
11 that the language isn't -- the language says what is the
12 plan entitled to, not what are they recovering, and I would
13 respectfully urge the Court to review the language in the --
14 and the plan and make the determination.

15 THE COURT: Okay.

16 MR. ALANIZ: Okay. Your Honor, moving on to -- I
17 just have -- well, no, I have one other point, well,
18 actually two other -- two other points. And I want to be
19 clear, Your Honor. I sat back today to listen to the
20 testimony, and I don't want to waste the Court's time or any
21 of the parties' time, so I'm not moving forward and -- but
22 you know, the other objectors may. I'm not moving forward
23 on good faith or as to unfair discrimination. I just wanted
24 to raise two issues for the Court's consideration.

25 The first one is on fair and equitable. Of

1 course, I understand, Your Honor, that the fair and
2 equitable test is only met if -- or is only -- they only
3 have to prove that the plan is fair and equitable if the
4 Court determines that our class rejected. So, fair enough.

5 Assuming that the Court rules in our favor on that
6 point, we do look at fair and equitable. And Section
7 1129.05 (indiscernible) I think (indiscernible) that says
8 that a key, albeit uncodified, component of the fair and
9 equitable test is that no class is paid more than the
10 allowed amount of their claim, and that principle was
11 espoused in the -- in the (indiscernible) case, which I have
12 a cite for, nothing that senior debt (indiscernible) to
13 receive money or property having a value in excess of its
14 claim including interest, and then finally the
15 (indiscernible) case in applying the fair and equitable
16 standard in 1129(b), the Court need only determine that no
17 senior class (indiscernible) class will receive more than
18 full compensation of their claim.

19 And Your Honor, that is why I was asking Mr.
20 Cummings the line of questioning I was -- I was
21 (indiscernible) to understand the methodology as -- and
22 determine whether the Court -- we could persuade the Court
23 to not adopt the valuation, and I would argue, Your Honor,
24 that there is not sufficient information for the Court to
25 adopt the valuation by Mr. -- by Mr. Cummings. There was no

1 voting report that was submitted. He mentioned that he
2 didn't talk to anybody at the subsidiary level. If the
3 Debtors sold off that whole chunk of the (indiscernible)
4 subsidiaries on a standalone basis, we don't have a sense of
5 what value could be extracted from the subs.

6 He also testified he didn't conduct a valuation of
7 the -- of the individual subsidiaries. Under the
8 methodology and assumptions in paragraph 12, (indiscernible)
9 testified that he assumed the financial projections in the
10 disclosure statement were the Debtor's best estimates and
11 judgment.

12 The financial projections are contained on page
13 354, so I would request that the Court review that. It's
14 one simple page that doesn't provide much detail, and so
15 thus we would just respectfully request that the Court not
16 adopt the valuation. And so, if we -- if that is not a
17 finding, then we don't know how much property is being given
18 to the noteholders, and that's our concern. It's a very
19 straightforward argument.

20 THE COURT: You do agree --

21 MR. ALANIZ: And then fine --

22 THE COURT: -- that I'm required to rule on the
23 record and the only record is the testimony that we heard,
24 right?

25 MR. ALANIZ: Yes. Yes, Your Honor. I appreciate

1 that.

2 THE COURT: Okay. Go ahead.

3 MR. ALANIZ: And then, Your Honor -- and not to
4 belabor the point, but I just want to make sure that I --
5 that I've honed in on the legal argument that I was making
6 just a minute ago on 1129(a)(10). If the Court determines
7 that we rejected and the Court determines that the plan
8 doesn't entitle Class 5 to property deemed to reject,
9 there's not an (indiscernible) accepting class at that
10 level, and as I said earlier they're seeking to confirm the
11 plan under a per-Debtor basis, and so accordingly they don't
12 have (indiscernible) accepting claim at that level. And
13 that's all I have, Your Honor.

14 THE COURT: Okay. Thank you. Mr. Clement?

15 MR. CLEMENT: I think the old song is you don't
16 need a weatherman to see which way the wind's blowing, and
17 so I think I have a hard row to hoe here.

18 Your Honor, Mr. Alaniz's cross made it clear that
19 Class 6 voted to accept, so now we're down to Class 5. And
20 is it an impaired accepting class -- I'll use my verbiage --
21 when the creditors take no value from that class? And I was
22 looking in the brief. The Debtors said in essence in their
23 brief, yeah, we take a lot of value elsewhere
24 (indiscernible) Class 7, which is to say --

25 THE COURT: And it was the wrong argument to make.

1 MR. CLEMENT: Your Honor, that's the argument they
2 make.

3 THE COURT: I know. It was a silly argument to
4 make. I got it. Go ahead.

5 MR. CLEMENT: So, they knew that they had some
6 risk there with this notion of having a class vote to accept
7 where their creditors are (indiscernible) creditors were
8 taking nothing and only getting value elsewhere. And so, I
9 can -- I'll move away from that for a moment, Your Honor.

10 Your Honor asked me a question earlier. What if
11 you just combine Classes 5 and 6? And frankly, I did what
12 most people do when they haven't thought it through and
13 didn't answer the question. I'm going to answer the
14 question now. You could do that, but it requires you to fix
15 something that they put here for a purpose. And what Mr.
16 Simon told us is that when there came a time and they became
17 worried about guarantor claims. The bondholders came
18 worried and then he came up with the structure for Class 5
19 and 6 as he thought it would make the bondholders relax, and
20 he thought somehow it was polite to the unsecured creditors
21 to let us have our own class where we could share \$125,000.

22 Didn't seem all that polite to my client. And so,
23 the question here is whether you ought to fix the problem
24 they brought you. There are two ways you can fix their
25 problem. One is you can put Classes 5 and 6 together, and

1 yes indeed, now that I've seen the numbers through the
2 cross-examination, they could carry that combined class.
3 The next thing you could do is interpret in their favor
4 something they gave away in the brief when they said, oh,
5 yeah, well, we don't get any value there but we get it
6 elsewhere.

7 I'm asking Your Honor not to do that and for the
8 following reason. They'll probably put on my tombstone,
9 "Reorganize your company in the court in Houston. You can
10 do it promptly and efficiently." That's what they're doing
11 here, kind of thing that I think is highly patriotic, except
12 that they changed course to harm my class of creditors and
13 they did it with this imaginative new Class 5 and 6 that has
14 a problem, and I'm asking Your Honor don't fix their problem
15 for them. Tell them -- and they also told us in examination
16 that they never bothered to negotiate with us about this.
17 They just decided we were too big to (indiscernible) the
18 company going forward, (indiscernible) the bondholders going
19 forward. They never negotiated with us. They came up with
20 this scheme, Class 5 and 6. They didn't carry -- and it has
21 the two problems that I described. And they're asking you
22 to fix their problem for them so that they can go forward
23 and confirm their plan promptly and efficiently.

24 It's a good thing to do. They could have crammed
25 down a plan on the bondholders and treated (indiscernible)

1 substantively consolidated. They could have done that.

2 They chose to do this instead.

3 And the one last thing, Your Honor, it appears
4 that what may be happening in the gulf is that one Debtor
5 after another manages to get rid of its obligations to
6 (indiscernible) abandon these facilities. If enough of them
7 go broke over time, it will end up on the government's
8 doorstep. The step just before that is when enough of them
9 go broke over time it'll end up on the doorstep of the two
10 or three remaining solvent companies that should never have
11 had to go into bankruptcy, and it may force them in.

12 So, they came up with a scheme that has flaws in
13 order to humor the bondholders who wanted them to get rid of
14 us. It's not such great public policy to let that be the
15 way it's done in every case and I'm asking you as
16 professionally as I know how to ask, don't fix their problem
17 for them. Tell them to go come back with a new plan and
18 they might actually negotiate with us, and our opening bid
19 was we'll cap our claim at half of what we claimed, but
20 nobody wants to have that conversation. They just want to
21 flush us out. And you've got to fix their problem for them
22 to let them do it today. Please don't do it.

23 THE COURT: All right. Thank you, Mr. Clement.

24 Mr. Taylor?

25 MR. TAYLOR: Your Honor, I won't belabor the point

1 too much other than what Mr. Alaniz and Mr. Clement have
2 said. In short, I do think we have a tough row to hoe based
3 upon Your Honor's comments. If Your Honor believes that it
4 is fair and equitable and not discriminatory for the
5 bondholders to have come up with this scheme where they
6 sweep all the equity value over to themselves at the
7 detriment of the parental guarantee obligors which have
8 significant, over \$200 million plus worth of potential
9 liability, then Your Honor is going to confirm this plan, we
10 do not believe that is either fair and equitable nor
11 unfairly discriminatory and we ask that Your Honor consider,
12 as Mr. Clement said, don't fix their problems for them and
13 please make them come back and we might have a different
14 result based upon some negotiations that may happen.

15 THE COURT: All right.

16 MR. TAYLOR: That's it, Your Honor.

17 THE COURT: Thank you. Mr. Simon, you want to
18 respond?

19 MR. SIMON: Just at a very high level, obviously I
20 take -- I disagree with the assertions of scheme. I think I
21 heard that word 17 different times. This is a public,
22 Chapter 11 plan for which the uncontested evidence
23 (indiscernible) value (indiscernible) the bonds. Again,
24 like, as I said during my original closing, I understand why
25 they're upset, but just the nature of (indiscernible) the

1 capital structure.

2 So, again, fundamentally this objection about the
3 bond that the parent can vote yes, they're literally
4 complaining about getting more than their pro rate share of
5 the parents. Fundamentally, they're actually asking to get
6 less. So, again, like, I think that they are entitled to
7 get recovery. They're voluntarily giving it up to other
8 people, and I don't think we have any problems, but Your
9 Honor is onto something when you keep asking them, like,
10 what's step 2 in their objection? Like, Your Honor is very
11 familiar with the fact that you or judges (indiscernible)
12 might be on the bench and say, okay, this is the issue I
13 have with your plans. If you make this change, now it's
14 confirmable. It happens all the time. So, to the extent
15 that people want to actually argue that a voluntary waiver
16 so that they can get more than their pro rata piece somehow
17 makes Class 5 fail, we have an (indiscernible). And so,
18 Your Honor is spot on, which is, you know, what's step 2 in
19 your argument?

20 And so, I just really feel like we need to add an
21 element of the practical, which is we can fix this
22 immediately to the extent you determine there's a problem.
23 I don't think there's a problem, but ultimately this is of
24 course your courtroom, and if you tell me we have a problem,
25 then we'll fix it, and we can fix it immediately.

1 And then we have Class 5. They'll get their
2 recovery and we have a (indiscernible) impaired class and
3 off we go. So, again, I just feel like we're getting stuck
4 a little bit in theory, which is I think they can clearly
5 vote in favor. They have. If people are really going to be
6 sticklers on this waiver, (indiscernible) we'll be happy to
7 say they can get rid of the wavier.

8 So, anyway, Your Honor, I take -- again, like, I -
9 - I definitely -- I don't want to say I take offense.
10 That's too dramatic. But to call this a scheme, we've been
11 open about this from day one. We filed an AK when the
12 amended RSA was filed. We reached out to these very
13 constituents. We had a disclosure statement. We had the
14 disclosure statement -- we had an end of disclosure
15 statement. We had a first day hearing.

16 I understand why they're upset. That doesn't
17 change where value breaks and the uncontroverted evidence is
18 that there's a \$500 million gap to the bonds. So, that was
19 all I had, Your Honor.

20 THE COURT: All right. Thank you. Anyone else?
21 All right. Then I'll consider the arguments now completed.

22 I've got before me a request for approval of the
23 Debtor's disclosure statement as well as confirmation of the
24 Debtor's amended plan. I do find that I have jurisdiction
25 over both matters pursuant to 28 U.S.C. Section 1334. I do

1 find that both matters constitute core proceedings under 28
2 U.S.C. Section 157. I also find that I have the requisite
3 constitutional authority to enter a final order with respect
4 to both matters.

5 Let me start first with the disclosure statement.
6 There really wasn't a -- there really wasn't an objection to
7 the disclosure statement. I've had the chance to re-read it
8 with the benefit of hindsight and to have thought though all
9 of the objections that were filed to the plan itself. I do
10 find that the disclosure statement contains adequate
11 information as that term is defined under Section 1125 of
12 the code. I will give final approval to the disclosure
13 statement.

14 With respect to the plan itself, I have listened
15 to the arguments, and part of this I still just don't get.
16 I do think that there probably is a fundamental
17 misunderstanding of what constitutes a contingent claim
18 versus an unliquidated claim, a contingent claim obviously
19 being one that depends upon the occurrence of a future
20 event, and an unliquidated claim which all of -- which all
21 of the issues to impose liability have occurred and you're
22 simply waiting for a determination of the amount, and I've
23 heard arguments that stray very far from just my fundamental
24 understanding of what the difference between contingent and
25 unliquidated are.

1 I do think that Mr. Alaniz makes a valid point
2 that when his client gets a proof of claim that has a number
3 on it, that is a liquidated number until someone says
4 different, I do think that it was incumbent upon the Debtors
5 to come in and do something, and so I am going to find that
6 with respect to Class 6 -- and Mr. Clement, you said that
7 Mr. Alaniz argued that Class 6 voted in favor of the plan.
8 I don't think that's what you meant. I think that --

9 MR. CLEMENT: Said it backwards.

10 THE COURT: Yeah. I think that's right. I am
11 going to -- based upon the record that I -- that I have
12 before me to find that Class 6 voted to reject the plan. I
13 also don't think it makes a bit of difference.

14 The argument that says that where the treatment of
15 a claim in Class 5 is a pro rate share of a fixed fund for
16 purposes of 1126(g), I mean, it has nothing to do with value
17 received. 1126(g) is that the -- that the -- it's
18 entitlement. It's entitlement to receive or retain and the
19 plan is clear. It's unambiguous that that's what the
20 treatment is. But to the extent that I am wrong in that, I
21 will simply just not affect the waiver.

22 And to the extent that I don't have the ability to
23 do that, I would consolidate the claims -- I'm sorry,
24 consolidate the classes. The outcome is the same no matter
25 which way you do that, and so while I appreciate the

1 advocacy, the substance and the reality just doesn't change.

2 So, with that, and based upon the evidence, the
3 arguments, my review of the proposed plan, I will find
4 pursuant to 1123(a) that the plan satisfies the mandatory
5 requirements set forth thereunder. I will find that the
6 proposed plan does not run afoul of any of the permissive
7 requirements of 1123(b) or other applicable sections of the
8 Bankruptcy Code.

9 With respect to confirmation, I am required to
10 conduct an independent analysis of each of the 1129 factors.
11 With that, I'll make the following findings. I will find
12 that the proposed amended plan satisfies the requirements of
13 1129(a)(1), (a)(2), (a)(3), (a)(4), (a)(5). I will find
14 that the requirements of 1129(a)(6) are not applicable to
15 this case. I will find that the proposed plan satisfies the
16 requirements of 1129(a)(7), (a)(9), (a)(10), (a)(11),
17 (a)(12), (a)(13). I'll find that (a)(14), (a)(15), and
18 (a)(16) are not applicable to this case.

19 Then having found that the proposed plan satisfies
20 all of the requirements -- all of the applicable
21 requirements of 1129(a) other than (a)(8), I will go to
22 1129(b), and again, I think the argument -- and I forget who
23 made it -- that the analysis is on a case-by-case basis, a
24 plan-by-plan basis, I think Mr. Alaniz realizes that, and
25 with the evidence that I have before me, I will find that

1 the proposed plan is fair and equitable with respect to each
2 class of claims or interest that is impaired under and has
3 not voted to accept the plan.

4 I will further find that there's only one plan
5 before me for confirmation; therefore, the requirements of
6 1129(c) have been satisfied. I will also find that the
7 primary purpose of the proposed plan is not the avoidance of
8 taxes or the application of Section 5 of the 1933 Securities
9 Act; therefore, the requirements of 1129(d) have been
10 satisfied. And with respect to 1129(e), this is not a small
11 business case obviously, so that section is not applicable.

12 Now, the plan does contain a series of releases
13 and compromises, and based upon the record that I have and
14 my reading of the plan, I will find that the requirements
15 for approval of a compromise within the 5th Circuit have
16 been satisfied, specifically references cases such as In re:
17 (indiscernible), In re: Foster Mortgage, In re: Jackson
18 Brewing. I will find that the scope of the releases that
19 are contemplated are reasonable and are an integral part of
20 the proposed reorganization.

21 I appreciate the fact that there was a change, but
22 that just happens, and I just don't -- I find no substance
23 in the argument that says we thought the lay of the land was
24 one way, it was different, and we had to change.

25 We all have to pivot. We all do it every day.

1 And it is just not sensible to think that bondholders are
2 going to equitize and then turn around and put millions of
3 dollars potentially in front of them. That -- no rational
4 economic actor would ever do that.

5 I also want to take issue. Mr. Clement said, you
6 know, that the Debtor's escaping their P&A liability. There
7 will never be a Debtor in a court in a case over which I
8 preside that will ever escape a P&A liability. I am more
9 sensitive to environmental concerns than anybody on this
10 video conference, but in this case we're not talking about a
11 P&A liability. We're talking about a contractual
12 obligation.

13 The Bankruptcy Code is built to deal exactly with
14 these types of issues, and I don't find anything
15 inappropriate or not in accordance with the Bankruptcy Code.
16 So, with that, to the extent that I haven't addressed a
17 particular objection specifically, they are overruled. I am
18 confirming the plan.

19 The proposed order is 271 by my count. Can
20 somebody confirm that for me?

21 MAN: I'm just checking, Your Honor. That's
22 right, 271.

23 THE COURT: All right. Again, I've had a chance
24 to read the order. There are certain findings that I've
25 made that are not present within the proposed order. They

1 are incorporated therein by reference pursuant to Bankruptcy
2 Rule 7052. There are certainly findings and conclusions
3 that are in the order that I haven't stated on the record.
4 I adopt them in their entirety.

5 I also, to the extent that there is an issue, the
6 options that I have put on the record as to what the steps
7 would be, they are incorporated therein into the proposed
8 order. And with that, I will sign the order. Anything else
9 that we need to talk about this afternoon?

10 MR. SIMON: Your Honor, it's Keith Simon from
11 Latham. I (indiscernible) want to thank you for your
12 ruling. I guess just for the record, the draft order did
13 say that Class 6 I think accepts. It then says but to the
14 extent they do not, you know, it's still confirmable. So, I
15 mean, the -- your record is obviously very clear that you
16 made a different finding. I don't know if you want us to
17 submit an updated order? We could do it with Judge Isgur
18 and do it, you know, on the screen together, whatever you
19 think, but I know that's in there.

20 THE COURT: I remember it. And so -- because I
21 thought it was -- I -- it was an interesting read that to
22 the extent that it's not then this happens. So --

23 MR. SIMON: Right.

24 THE COURT: -- let's do this. Do you remember
25 where that language is?

1 MR. SIMON: It should be right there, (i).

2 THE COURT: So, is there any reason -- as I read
3 this, I didn't understand, and especially given the findings
4 that I've made why we need this at all?

5 MR. SIMON: Well, I think the record that you
6 said, you know, speaks for itself, so --

7 THE COURT: And I just don't -- I don't think that
8 does anything in terms of the validity of the plan.

9 MR. SIMON: Okay.

10 THE COURT: Sorry for the X's, but if I delete it,
11 I'll lose all of the formatting.

12 MR. SIMON: (Indiscernible). You know what I
13 could do is I could just do a quick search on my end for the
14 -- for the reference to Class 6, because that will -- that
15 will do it. Okay. So, let's see. So, you struck it in
16 (i), and then the other reference I have is -- so, in
17 paragraph (k), the last sentence says (indiscernible) would
18 likewise apply. If Class 6 had voted to reject -- we've
19 just got to tweak that last sentence of (k).

20 THE COURT: You okay with that?

21 MR. SIMON: So, we've struck it. Okay.

22 THE COURT: Yeah.

23 MR. SIMON: That -- do we have to add Class 6 in
24 the first sentence of (k)? Because (k) defines rejecting
25 class (indiscernible) 10 and 12.

1 THE COURT: Ah.

2 MR. SIMON: (Indiscernible).

3 THE COURT: Going the wrong direction.

4 MR. SIMON: Yeah. If you just scroll up, you'll
5 see it right there. Or deemed to have rejected the plan.
6 Maybe we should just say and Class 6 has voted to reject the
7 plan.

8 THE COURT: Okay with that?

9 MR. SIMON: Sure.

10 THE COURT: All right. Anyone else have any other
11 comments? I just want to make sure we've got all the
12 attachments. All right?

13 MR. CLEMENT: Your Honor, thank you for your time.

14 THE COURT: Thank you, gentlemen. I appreciate
15 all of the hard work that went into this, always appreciate
16 good lawyering.

17 Mr. Ballard, before you go, you have to listen to
18 me for just a second. Every time that I approve one of
19 these, I am reminded that society in general and creditors
20 pay a cost. It's a cost that our government, by passing the
21 Bankruptcy Code, says is appropriate, but it's not something
22 that should be taken lightly. It's not something that
23 should be forgotten. It should echo through your head every
24 time that you deal with employee issues. It should deal --
25 it should factor into your thought process every time you

1 engage in what will hopefully be responsible decision-
2 making.

3 And let me define responsible decision-making for
4 you. The decision-making is we pick up the analysis and we
5 look at the numbers, we seek advisors, and we figure out
6 what we can do. Responsible decision-making is once we have
7 that data we figure out if we should do it, and I know that
8 sounds really simple, but if you will keep that in mind, my
9 view is you pay homage to the process, you are a good
10 corporate citizen, and hopefully along the way you help
11 someone the way that the process has helped your company.
12 Fair request?

13 MR. BALLARD: We absolutely will, Your Honor.

14 THE COURT: All right. Then with that, thank you.
15 Good luck to everyone. Please stay safe. We'll be
16 adjourned.

17

18 (Proceedings adjourned at 3:45 p.m.)

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CERTIFICATION

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I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

A handwritten signature in dark ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

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Suite 300

Mineola, NY 11501

Date: January 21, 2021