

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
TECT AEROSPACE GROUP Case No. 21-10670 (KBO)
HOLDINGS, INC., et al,
824 Market Street
Wilmington, Delaware 19801
Debtors.
Tuesday, October 19, 2021

TRANSCRIPT OF VIDEO HEARING RE:
EMERGENCY MOTION OF UTICA EQUIPMENT FINANCE, LLC AND UTICA
REALTY WELLINGTON, LLC TO REMOVE EQUIPMENT FROM DEBTORS'
LOCATION
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES VIA ZOOM:

For the Debtors: Daniel J. DiFranceschi, Esq.
Paul N. Heath, Esq.
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RICHARDS, LAYTON & FINGER, PA
For the U.S. Trustee: Linda Casey, Esq.
OFFICE OF THE U.S. TRUSTEE
For the Official Committee
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David Posner, Esq.
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(Appearances Continued)

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For Spirit AeroSystems, Inc.:	Rahmon Brown, Esq. HOGAN LOVELLS US, LLP
For the Utica Entities:	Storm John, Esq. Ropke Nelson, Esq. William Price, Esq. Jennings Horace, Esq. Karen Grivner, Esq. CLARK HILL, PLC
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Also Appearing:	Christopher Glass Joseph Cascio Todd Fleisher THE BOEING COMPANY Matthew Czerkowitz Shaun Martin Nicholas Vara Matthew Dalton Kurt Hedderich RIVERON RTS, LLC Walther Armin BAVIUS-TECHNOLOGIE Devon Patel Jeff Ficks ERNST & YOUNG Sanjuro Kietlinski PROVINCE, LLC Brown Scott, Witness

(Appearances Continued)

APPEARANCES VIA ZOOM: (Continued)

Also Appearing: Kevin Kidwell, Bar Applicant

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INDEX

	<u>Page</u>
<u>ARGUMENT BY MR. PRICE</u>	7
<u>ARGUMENT BY MR. SMITH</u>	17
<u>COMMENTS BY MR. HEATH</u>	19
<u>COMMENTS BY MR. POSNER</u>	22
<u>COURT DECISION</u>	23

1 (Proceedings commence at 1:02 p.m.)

2 THE COURT: Good afternoon, everyone. This is
3 Judge Owens. We're gathered virtually for an omnibus hearing
4 in TECT Aerospace Group Holdings. I have a fairly lengthy
5 agenda, but I think there was only one matter scheduled to go
6 forward, I think.

7 Why don't I turn the podium over to counsel for the
8 debtors; or, if there's only one matter going forward,
9 counsel to the movants, and we can talk about where things
10 stand.

11 MR. HEATH: Good afternoon, Your Honor. Paul Heath
12 of Richards, Layton & Finger. I hope you can hear me.

13 There is only one matter scheduled for today. And
14 we are in receipt from the email from your chambers yesterday
15 regarding how Your Honor would like to proceed. I think the
16 -- it was stated that the Court would not be proceeding today
17 with an evidentiary hearing. So, Your Honor, we're happy to
18 take guidance from you as to how you would like to proceed.
19 And if that is as simple as just simply turning it over to
20 Mr. Price on behalf of the movant, we can do that.

21 THE COURT: Okay. Well, I toyed with -- well, let
22 me tell you. I had the opportunity to read all of the
23 pleadings before I sent the email yesterday, and it seemed to
24 me that there was a threshold legal issue that was presented
25 by the objecting parties as to whether it was appropriate to

1 move forward with the relief requested by the movants on a
2 motion, as opposed to an adversary proceeding. That's why I
3 advised the parties that we would not be moving forward with
4 an evidentiary hearing today.

5 I guess I need to understand from the movants --
6 and I'll allow the movants to argue this point, which is:
7 Why is it appropriate to move forward seeking the relief that
8 you seek by motion? I think that is really the threshold
9 issue and the one that we have to discuss today. To the
10 extent that I think we can move forward in the fashion that's
11 been proposed, then we can talk about scheduling a hearing.

12 So, Mr. Price, I believe you're the moving party,
13 so I'm happy to hear from you on this threshold legal issue.
14 Good afternoon.

15 MR. PRICE: Thank you, Your Honor. William Price,
16 Clark Hill, on behalf of the movant. Your Honor, can you
17 hear me okay?

18 THE COURT: I can, yes. And just so you know,
19 because I don't think you've appeared me, I have a series of
20 screens, series of cameras. And when I'm looking like this,
21 I am actually looking at you. So I don't want you to think -
22 - you, or any other witnesses or parties presenting, thinking
23 that I'm ignoring you. But I -- it's a little awkward and I
24 like to tell that to people that are new to my court.

25 MR. PRICE: I appreciate --

1 THE COURT: So welcome.

2 MR. PRICE: -- that, Your Honor. Thank you very
3 much, Your Honor, and thank you for your time today.

4 This is, you know, at least in my experience, not a
5 typical or usual situation that I see in cases, so I
6 understand the specific issue that the Court has raised.
7 Before I get into the substance of the motion, I'd like to
8 address the procedural posture, if that is -- if that's what
9 you would prefer for me to proceed with.

10 THE COURT: Yes, I think that's what we have to
11 talk about today.

12 MR. PRICE: Okay. Thank you, Your Honor.

13 The respondent, Central Kansas/Boeing, has filed in
14 its papers a variety of filings and positions, *vis-a-vis* the
15 motion. And I'll openly admit, Your Honor, that this was
16 something that was discussed internally amongst our team as
17 to the appropriate vehicle, including which court to go to,
18 as to how to address the issue. And Your Honor, there is no
19 easy citation that I can point to, so it will take me a few
20 moments to walk through the decision tree that we had on it,
21 and we obviously hope that you side with our analysis. But
22 we understand if you have a different view and we'd like to
23 understand it, so we proceed in a fashion that we get the
24 relief that we're seeking and that that the estate can be
25 administrated in an orderly fashion.

1 Your Honor, we filed it in the form of a motion
2 because we believe that there is a controlling order already
3 in place. We believe, based on the few filings related to
4 this piece of equipment in this case, that there's a few
5 things that have not been disputed by any party at this
6 point. Those points are this:

7 The debtor filed a standard statement of financial
8 affairs and identified in that statement that there is
9 specific property in its possession that it is holding for a
10 third party. This piece of equipment is one of those items
11 that were identified that was filed under penalty of perjury
12 and that has -- to our knowledge, nobody has objected to that
13 assertion by the debtor. So there does not appear to be any
14 actual dispute as to the debtor -- from the debtors'
15 perspective, that this is not an item that is within their
16 control that is their item; rather, it is a third party's
17 item.

18 The next thing to go through with the filings is
19 that there was, as you know, two sales administered in this
20 case, and the debtor can sell what the debtor owns. And the
21 debtor administered a sale of the Washington process and then
22 had a sale of the Kansas assets. This specific machine is
23 located at one of the debtors' Kansas facilities and would
24 have been under the umbrella, if you will, of the Kansas
25 assets.

1 There is no suggestion that we believe that has
2 been made that this specific asset was transferred in
3 connection with that sale order. Rather, there is a question
4 that flows directly from the entry of that sale order, *vis-a-*
5 *vis* the lease interest that CKAM/Boeing has with respect to
6 the Kansas facilities.

7 That interest, as dealt with in the asset purchase
8 agreement -- which you approved its form and you ordered its
9 entry and the time has passed for appeal of that order, that
10 order is before this Court, which is why we filed with this
11 Court -- that any rights that relate to that machine, in our
12 view, the debtor has admitted it's not their machine. We
13 have consulted the landlord, which openly admit is another
14 affiliate that we are connected to. There's no response from
15 them as to how we would administer an extraction of the
16 machine.

17 And then the last piece of the -- the only piece
18 that remains, in our view, is that Boeing/Central Kansas
19 could assert some sort of an assertion by virtue of the,
20 quote/unquote, "designation rights" that it has with respect
21 to the lease of the facility; and then, from what
22 designation, what rights actually flow to CKAM/Boeing.

23 And those rights are controlled under a single
24 provision. That provision says that it is, not surprisingly,
25 as the purchaser has been designated the right to select

1 leases for assumption and assignment or rejection, and that
2 there's a period of time mandated by the Code -- which can be
3 extended, and there's a motion pending for that extension --
4 as to when they can designate that lease for assumption and
5 assignment. It also provides a contractual, and now order-
6 based obligation for that CKAM organization to pay the lease
7 obligations for the debtor while it goes through that
8 designation period.

9 And so the core issue that we see here is that --
10 because there has been a response by Boeing, both outside of
11 this Court and now in this Court, that says you can't enter
12 the facility and remove the machine. So we view it as
13 whatever rights that they may have that assert the ability to
14 close the gates -- and we can get into the substance as to
15 whether or not we think that it can be done in a matter that
16 impairs Boeing's ability to operate within the facility, and
17 we think that that can be sorted out and we think it was
18 sorted out, but we can go back to that drawing board to
19 ensure that this Court is comfortable that we're not
20 impairing the buyer's operational use of the space.

21 But what we really are asking and what we think is
22 appropriate by motions practice is seeking direction from
23 Your Honor on an interpretation of the order and the exhibit
24 to that order as to what these designation rights really
25 provide Boeing and the ability to lock the gates and to step

1 into the shoes of the debtor and say you cannot enter the
2 facility to remove your asset, which they don't say is not
3 our asset.

4 Now they raise other issues about it being the
5 subject of a fraudulent transfer, and we can orally argue
6 those issues and brief them, if necessary. But we really did
7 believe that this flows from a preexisting motion ordered by
8 this Court, with certain provisions that we think are open to
9 interpretation by one person, and that person is you.

10 Now could we have filed an action in replevin in
11 the form of an adversary proceeding and named CKAM/Boeing as
12 a third-party defendant? Because they are not the tenant
13 under the lease right now, Your Honor; they have these,
14 quote/unquote, "designation rights." And there's a variety
15 of jurisdictional questions and the ability for us to, you
16 know, utilize the marshal to transfer it to Kansas to get the
17 thing out of there. And I'm sure the parties like to point
18 to the truncated process of motions practice versus an
19 adversary proceeding. And we have to file an adversary
20 proceeding, Your Honor, because you interpret that the
21 situation is requiring one, we'll do so.

22 We just believe and assert that there is a motion
23 that has already been ruled upon. It created a somewhat
24 complicated -- but it's now memorialized and be reviewed --
25 order, the sale order, that approved an asset purchase

1 agreement that we were a notice party and we didn't object
2 to. And we just believe that there's a need for
3 interpretation.

4 And if interpreted in the way that we would like,
5 we think that it opens the gates in a very seamless fashion,
6 where we will sit down in a commercially reasonable fashion
7 with Boeing, CKAM, the debtor and administer an extraction
8 that does not happen overnight. It will take weeks to
9 administer the removal of the machine. We are coordinating
10 with the underlying titleholder to do it in a fashion that
11 doesn't harm the machine. The machine has not been paid off
12 in full yet, but it is coming due very soon. And so we'd
13 like to get to it.

14 We'd like to understand what the rights are of the
15 parties from your prior order. And if it gives us the
16 ability to move forward with alacrity to get the machine out,
17 that's fantastic. If we have to go back to the drawing board
18 and draft up an adversary proceeding before Your Honor, or
19 you say you don't have jurisdiction and we should all go to
20 Kansas, we'll do as Your Honor suggests and we will move
21 forward and draft in a manner that we think will hyper-focus
22 the issues and get to the task at hand, which is we do have
23 Bavius, the third party, telling us we want that machine put
24 into the stream of commerce because there's money owed on it
25 and we think that it's more likely that you'll be able to pay

1 if you're monetizing the value of the asset. But if it can't
2 happen today, we understand, and we'll go back to the drawing
3 board.

4 THE COURT: Okay. That was a very helpful
5 explanation of the issue tree. Okay. I don't think I
6 appreciated that the issue that you think is the threshold
7 issue is Boeing's right to block your ability to access the
8 premise. I don't know if I appreciated that.

9 Why don't I hear from --

10 MR. PRICE: And if my --

11 THE COURT: Oh, I'm sorry.

12 MR. PRICE: I'm sorry, Your Honor.

13 THE COURT: Go ahead.

14 MR. PRICE: And if I -- and if our papers didn't
15 address that, I apologize, but it really is the core issue
16 that we have.

17 And we're not saying that Boeing has no rights with
18 respect to the lease. But by way of examine, Your Honor, the
19 lease has a subleasing provision, which Boeing doesn't have a
20 sublease, and there's a requirement for consent. And the
21 entire purpose behind the designation is to decide if Boeing
22 ultimately becomes the beneficiary of that lease. So there's
23 just real questions about what does a designee have and what
24 rights can they assert.

25 And then the next step, we believe -- let's say

1 they do have the ability to say you can't get in, it's our
2 decision to make, we're a designee. Then the next question
3 is: You know, at what level and at what point in time is
4 somebody actually impairing, as the landlord, the quiet
5 enjoyment by letting somebody else in to remove a piece of
6 equipment, and has that quiet enjoyment been impaired?

7 There is a quiet enjoyment provision, we're not
8 denying that. But again, they have not sublease --
9 subtenant, there's no assignment of this lease to them; they
10 have these designation rights. It's a -- it's purely an
11 interpretation by Your Honor, we believe, as to what that
12 designation actually means. And then, if you say that they
13 stepped into the shoes of TECT, they have all the rights of
14 TECT, we think that there's some questions as to whether TECT
15 or Boeing, as their designee, is able to say you just -- you
16 can't come in no matter what.

17 And that's just -- that's really where we stand.
18 And if we have to file a complaint to address all those
19 issues, we'll file a complaint, Your Honor.

20 THE COURT: Okay. So you -- so, just so I
21 understand, I mean, your client was aware that Boeing has
22 been on the premises, operating or --

23 MR. PRICE: Your Honor --

24 THE COURT: -- conducting --

25 MR. PRICE: -- we are --

1 THE COURT: -- business on the premise.

2 MR. PRICE: We are fully aware that Boeing is there
3 and has conducted production.

4 THE COURT: Okay.

5 MR. PRICE: And we have reviewed the papers filed
6 by the creditors' committee, that have now been withdrawn, in
7 the form of conversion. We had, as referenced in our motion,
8 detailed discussions directly with Boeing/CKAM about what an
9 extraction would look like and how we would do it in a manner
10 that would not impair that extraction -- that production.
11 So, yeah, we are aware, we know that they're there.

12 We're not here to say that they have no right to be
13 in the premises, we're not here to say they have no right to
14 operate in the premises. We're just trying to understand the
15 length, the breadth, the scope of what their rights are to
16 lock the gates in perpetuity for a party.

17 And if they -- and if they have that right, Your
18 Honor, then, yes, we would have to file an action in
19 replevin, whether it's with this Court or a court out in
20 Kansas that you think is appropriate, and -- because we'd be
21 mindful of the stay, even though this is -- the party with
22 standing is not the beneficiary of the stay, they're stepping
23 in the shoes of someone who has the stay, but we would be
24 mindful of the stay first. And then we would analyze how do
25 we go about getting the force of law to provide access to the

1 facility.

2 But again, this is not something that we could just
3 open the door and take out overnight. This is -- the roof
4 has to be removed, there has to be a sub-roof installed
5 during that extraction, there has to be cordoning off to --
6 and we believe that it can be done in a manner that will not
7 impair the remaining production of Boeing, which we're not
8 interested in creating damages against the estate or, you
9 know, something that we would have -- flow damages for us for
10 causing harm to Boeing's production. We're not -- that's not
11 our goal here.

12 We simply have a piece of machinery that is large
13 in nature, complex to remove. And there is some, you know,
14 law school, foreign aid procedural, you know, jurisdictional
15 questions here. So we start -- you got to start somewhere,
16 and here we are in our first hearing.

17 THE COURT: Okay. Very helpful. Thank you.

18 Why don't I turn --

19 MR. PRICE: Thank you --

20 THE COURT: -- the podium --

21 MR. PRICE: -- Your Honor.

22 THE COURT: -- over to the -- I guess to Boeing
23 because you are the formally -- former -- excuse me -- you
24 have filed a formal objection to the motion. And I -- after
25 I hear from you, I'm happy to hear from other parties-in-

1 interest, who may not have filed something, but wish to be
2 heard in connection with the matter. So, Mr. Smith --

3 MR. SMITH: Yes.

4 THE COURT: -- how are you?

5 MR. SMITH: Thank you, Your Honor. Al Smith of
6 Perkins Coie for Boeing and Central Kansas Aerospace
7 Manufacturing, or "CKAM," as it is known.

8 The -- Your Honor, I disagree with what a lot of
9 what Mr. Price just said, but most of it is on the --
10 frankly, on evidentiary grounds. We disagree with a number
11 of things regarding the history here and so forth. But the
12 fundamental disconnect here, I think, is that everything that
13 Mr. Price just said, frankly, supports the contention we're
14 making that this is an injunction proceeding and you need an
15 adversary proceeding.

16 That is, at most, what Mr. Price has articulated is
17 the fact that they may have a defense to Boeing's arguments
18 here, in that Boeing has -- he contends, we disagree --
19 limited rights to complain about what's happening out at the
20 facility, in terms of removal of this. But he does not deny,
21 and I don't think he can deny that the gravamen of their
22 action is either turnover or injunction, it's one of the two,
23 and those have to be adversary proceedings.

24 And the fact that there may be a defense that
25 involves a legal issue, even a gating legal issue -- that is,

1 prior to -- that the Court has to rule on that isn't
2 necessarily always going to arise in the context of an
3 injunctive proceeding, such is life. But it does not affect
4 the fact that this is an injunction proceeding, a turnover
5 proceeding. That's what they're asking for, that's the --
6 that's what this whole case is about. And therefore, Your
7 Honor, we just don't see this as a close case. Rule 7001 is
8 really pretty clear about what's supposed to be in an
9 adversary.

10 So I will stop there, Your Honor. I think that's
11 all we have to address, as I understand the Court's initial
12 comments.

13 THE COURT: Okay. Appreciate your -- appreciate
14 that.

15 All right. Does anyone else wish to be heard in
16 connection with this dispute?

17 (No verbal response)

18 THE COURT: Okay. I'm not hearing anyone
19 voluntarily coming forth.

20 But let me ask you, Mr. Heath. The debtors are
21 remarkably silent in this matter. I guess I would say not --
22 putting aside the substance, do you have a preference on how
23 you wish to proceed in this matter? I assume you would be a
24 -- you are a necessary party to this dispute.

25 MR. HEATH: Yes, Your Honor. Thank you. I hope

1 you can hear me.

2 The debtor -- the debtors did not take a position
3 with respect to the motion. Your Honor, one of the -- I'm
4 sure you can appreciate, having sold all of its assets, the
5 debtor no longer has any operations, it has no employees, it
6 has no presence in the Kansas facilities. And so being a
7 party charged with coordinating an agreement or the logistics
8 for removing equipment from the plant made no -- it really
9 wasn't something that the debtors could participate in, in
10 any meaningful way, because we don't have the ability to do
11 it. We don't have any boots on the ground there. So, Judge,
12 either way, whether it was preventing the removal of the
13 equipment or consenting to it and agreeing to how it would
14 happen, the debtors really weren't in a position with no
15 presence in Kansas, we didn't think, to take that action.

16 As far as how we proceed, Judge, I guess I would
17 just note the following. And I was hoping I wouldn't have to
18 say anything on this issue. I will tell you I did not read
19 Utica's papers as being a request for this Court to
20 definitively determine the scope of designation rights when
21 they're provided for in an asset purchase agreement. And I
22 think Your Honor, of course, as we all are, is very familiar
23 with designation rights, and they're used in lots of cases.

24 To the extent that questioning the scope of those
25 designation rights were to expand to a point that it could be

1 come what I think it could become, which is the collateral
2 attack on your sale order, which was entered many months ago,
3 then I am concerned that the debtors would have concerns with
4 proceeding in that fashion.

5 I don't know -- I'm not saying that we're there
6 right now, but I do want to raise that because I think that
7 those designation rights were a key part of the asset
8 purchase agreement. I think it was a part of helping us
9 determine, you know, value, highest and best bid. I'm not
10 sure that we get the same value if we don't have designation
11 rights for our winning bidder. And with full notice to all
12 parties, and now challenging what rights can be asserted
13 through its designation rights, I think, in short, the
14 debtors may have to take a position on that.

15 As far as whether or not we proceed by adversary
16 proceeding or motion, Your Honor, I know that I don't need to
17 tell you the law on what's appropriate under Rule 7001. I
18 can't say that the debtors have a preference. I'm certain
19 that, if Your Honor needs to hear evidence and needs to hear
20 it from the debtors' position, we will, of course, provide
21 you with that.

22 THE COURT: Okay. Well, there's been an allegation
23 that there is a property of the estate interest here because,
24 as Boeing has alleged, there could be a potential fraudulent
25 conveyance action against the movant and, therefore, there's

1 a property of the estate interest. I don't believe -- and
2 correct me if I'm wrong. In the sale order, you didn't sell
3 the avoidance proceeds, correct? Or Boeing --

4 MR. HEATH: No, Your Honor --

5 THE COURT: -- has the lien on them, as the DIP --
6 as the DIP -- or excuse me, as -- well, I don't know if DIP -
7 - actually, I don't know the state of play for that DIP lien
8 because it was credit bid, correct? I'm not sure what the
9 state of play is. But it seems as if you would have to be
10 involved, if there's an allegation that the estate has a
11 property interest in this asset in some way --

12 MR. HEATH: And --

13 THE COURT: -- relating to a fraudulent transfer.
14 Okay.

15 MR. HEATH: Yes, Your Honor. I think it may get a
16 little complicated, but I think the way it works is we did
17 not sell any causes of action pursuant to the Kansas sale
18 transaction.

19 I do believe that Boeing, as DIP lender, has a lien
20 on those causes of action and, as a DIP lender, I think has
21 an interest. But as of right now, Judge, I do believe that
22 the only party who would be able to assert that cause of
23 action as an avoidance -- as an avoidance action or a
24 fraudulent conveyance would be the estate because those
25 causes of action remain with the debtor. Boeing has a lien

1 on proceeds, but it doesn't have a lien on the cause of
2 action itself.

3 THE COURT: Okay. All right. That's very helpful.
4 Thank you. Okay.

5 Mr. Posner, I don't want to put you on the spot,
6 but when I see people on my screen, I assume they want to
7 talk to me. So did you want to say anything or are you just
8 observing?

9 MR. POSNER: I do want to make one point, Your
10 Honor. For the record, David Posner, Kilpatrick, Townsend &
11 Stockton, for the Official Committee of Unsecured Creditors.

12 We didn't file any papers, so I'm not going to
13 weigh in on the threshold legal issue. But I did want to
14 alert the Court to one thing that I think, you know, it lurks
15 in the background and shouldn't be lost on anybody. I know
16 it's not lost on the debtors.

17 But CKAM is operating at the premises. That's
18 generating revenue, that's helping reduce Boeing's deficiency
19 claim, as well as their DIP claim. It's likely,
20 unfortunately, that they're going to have a little bit of
21 both left in this case when we get to the end of the road.
22 And so anything that would happen that would disrupt their
23 ability to continue to operate, obviously, is not a wonderful
24 development from the perspective of unsecured creditors and
25 the estate because their ability to operate is generating

1 revenue, and it's helping reduce those obligations. So I
2 just wanted to make that point, Your Honor.

3 THE COURT: Okay. That's helpful.

4 Mr. Ward, you popped on my screen. Did you want to
5 say anything?

6 MR. WARD: No, other than, you know, I'm just here
7 as local counsel for the creditors' committee, Your Honor.
8 And you know, I figured it would be appropriate for me to
9 turn on the video as Mr. Posner was speaking.

10 THE COURT: Okay. I have trouble keeping track
11 since we're in the virtual courtroom. I just indicate that
12 as somebody stepping up to the podium. But it's nice to see
13 you and it's always good to see your face on camera, so good
14 to see you.

15 MR. WARD: Likewise.

16 THE COURT: So I think that I appreciate
17 everybody's candor in explaining the issues here. I do think
18 that it's not appropriate to move by motion. In the past, I
19 have been a little relaxed when it comes to motions that may
20 seek relief that's covered under 7001 and, to be honest with
21 you, I've run into some problems. Okay? I think because we
22 run into some procedural problems that often arise when a
23 party wants to allege a counterclaim and they can't
24 necessarily allege the counterclaim in the context of a
25 motion. And we may have issues related to that in connection

1 with this motion.

2 So, also, I do find that what the movants are
3 seeking is a mandatory injunction, essentially. You want an
4 order from this Court requiring the debtor and Boeing to
5 allow you access to the facility and permit you to remove the
6 equipment by way of a process that would involve material
7 time and effort and alteration of the facility, I don't think
8 that's in dispute.

9 And I think obtaining an injunction before a trial
10 on the merits is extraordinary, is drastic, and we can't do
11 it by way of -- well, we either need to have an expedited
12 trial on the merits of the action or we would need to have
13 some sort of preliminary injunction obtained and we're not
14 there. We haven't had briefing on those issues. I -- and we
15 just -- I don't have briefing on all of the issues that are
16 before me, quite frankly, whether it's a request for some
17 sort of preliminary injunction or whether it's a request for
18 interpretation of my sale order. I mean, I don't have full
19 briefing on the issues it sounds like this case is going to
20 present.

21 So I think we do need a complaint and I think you
22 need to give the parties an opportunity to respond to that in
23 however the parties see fit. It probably makes sense to
24 bring Boeing and the debtors as the defendants for it, but
25 I'll leave you to decide how you want to bring it. All

1 right?

2 I'm not going to put my finger on the scales here,
3 but it seems like this is going to cost a lot of money, and I
4 guess everybody should weigh whether it's worth it because,
5 in the end, I think that, if you do achieve, Mr. Price, what
6 you want to achieve, the parties still have to sit down and
7 determine how you achieve it. And I think Boeing has made it
8 very clear of what they expect to see, in terms of a proposal
9 and insurance. I would think the debtors would expect to see
10 the same thing, if it turns out that Boeing is not the one
11 that's in control of the process.

12 So I guess I'm misunderstanding. But if Boeing is
13 not the one that can assert a defense here, the debtors would
14 be the one that could do it under the lease. So we'll go
15 through this whole process, and I imagine the debtors would
16 have a feel -- have a say about what they would expect to see
17 when it comes to the removal of the equipment. So I just
18 want to make sure that, if we go down this path and it's a
19 lot of expense and energy of the people, that we -- of the
20 parties, that we get you the relief -- all the parties get
21 the relief that they need in the most efficient and expedited
22 fashion. So, you know, file your complaint and tee it up as
23 you see fit, but perhaps it just makes sense to work out a
24 business solution to this situation.

25 MR. PRICE: Your Honor, William Price, just for the

1 record.

2 I appreciate your position on the issue, and will
3 proceed accordingly. And I can assure Your Honor that it's
4 our view that those discussions are necessary, no matter when
5 we get approval to extract the equipment from the facility,
6 that we would have to work through the business items,
7 including insurance.

8 And at least in my experience, when there is an
9 allegation of a cause of action that may loom over your head,
10 that you -- when the underlying item is not being used by the
11 party and not to be used by the party that is standing in the
12 way, that you usually post forms of security to deal with
13 those types of litigation, which I can't get into settlement
14 discussions outside your Court. But we understand how
15 parties deal with these issues, and we'd welcome an
16 opportunity to resolve those issues. And we appreciate your
17 Court's time today, and we will be back with the complaint to
18 take it to the next step.

19 THE COURT: Okay. I'll just make one other
20 preliminary comment, and this is more to Boeing. Mr. Smith,
21 I am concerned about the allegation regarding the fraudulent
22 transfers, I've always been concerned about them. But
23 there's been no action that's actually been commenced. Okay?
24 And so I think that, if this does get to a merits trial, I do
25 need to understand more thoroughly the position of Boeing or

1 other parties-in-interest why a potential fraudulent transfer
2 action could hold up return of a third party's property, if
3 it turns out that it is properly the property of UEF. So I
4 am -- I will tell you I am struggling with that concept. I'm
5 not telling you I made a decision on it. But at the time
6 that we resolve this issue, I doubt I'm going to have a
7 fraudulent transfer action in front of me, and so I will not
8 have a decision on the merits there. I'll have an allegation
9 that there's a fraudulent transfer, but I'm not going to have
10 anything more than that, I suspect.

11 So, like I said, I think a negotiated business
12 solution is probably the right way to go here, but I'll leave
13 it to the parties and I'll see how this unfolds.

14 So, Mr. Price, I look forward to receiving your
15 complaint and how you wish to move forward. If you want to
16 seek an injunction of some sort, you're welcome to, of
17 course, do that, and you know how to do it. You're an
18 experienced practitioner with experienced local counsel, so
19 you know how to get me in front of the issues on a quick
20 basis if you need to do it. All right?

21 MR. PRICE: Thank you very much, Your Honor. And
22 if for nothing else today, I think it was a helpful exercise
23 for you to know, when we filed what we filed, that -- what
24 we're trying to focus on. So we will be back and we'll go
25 from there.

1 THE COURT: Sounds great. Okay.

2 All right. Is there anything else that we need to
3 discuss, Mr. Heath or other parties on the phone, before we
4 part ways? I think we have, actually, a hearing it looks
5 like coming up on the 28th. So maybe I'll just see you in a
6 couple of days, ten days from now. Is that right?

7 MR. HEATH: We do have a hearing coming up on the
8 28th, Your Honor. I don't think there's anything left to
9 discuss for today. The only matters that I will go forward
10 at that hearing on the 28th are the debtors' request to
11 extend under Section 365(d)(4) of the Bankruptcy Code and
12 interim fees. Your Honor, I don't believe that there are any
13 pending objections to interim fees, so that issue, to the
14 extent Your Honor doesn't have any questions, it may go away
15 before the hearing.

16 THE COURT: Okay. Sounds good. Well, then I look
17 forward to that. And yes, we'll try to take the -- try to
18 get rid of -- try to make a decision on the fees before the
19 hearing, so we don't drag everybody into a court hearing and
20 cause more time and expense for the estate.

21 So, with that, we will consider the hearing
22 adjourned. Thank you all very much for your presentations
23 today, and I look forward to seeing you all in the future.
24 Take care.

25 MR. PRICE: Thank you --

1 THE COURT: We'll stand --

2 MR. PRICE: -- very much --

3 THE COURT: -- adjourned.

4 MR. PRICE: -- Your Honor.

5 THE COURT: Thank you.

6 UNIDENTIFIED: Thank you, Your Honor.

7 (Proceedings concluded at 1:34 p.m.)

8 *****

CERTIFICATION

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

A handwritten signature in cursive script, appearing to read "Coleen Rand", is written over a horizontal line.

October 20, 2021

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

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