

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

WINDSTREAM HOLDINGS, INC., et al.,

Debtors.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

**APPELLANT GLM DFW, INC.'S DESIGNATION OF
ITEMS FOR THE RECORD ON APPEAL**

COMES NOW GLM DFW, Inc. ("GLM"), the appellant pursuant to that certain *Notice of Appeal* filed on May 2, 2019 at docket no. 463, and files this its *Appellant's Designation of Items for the Record On Appeal*, as follows:

<u>Item No.</u>	<u>Case No. 19-22312 Docket No.</u>	<u>Description</u>
<u>Pleadings, Orders and Documents</u>		
1	16	Debtor's Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Certain Prepetition Claims of (i) Critical Vendors, (ii) Lien Claimants, and (iii) Section 503(b)(9) Claimants In the Ordinary Court of Business on a Postpetition Basis
2	27	Declaration of Tony Thomas, Chief Executive Officer and President of Windstream Holdings, Inc., (i) In Support of Debtors' Chapter 11 Petitions and First Day Motions and (ii) Pursuant to Local Bankruptcy Rule 1007-2
3	61	Interim Order Authorizing the Debtors to Pay Certain Prepetition Claims of (i) Critical Vendors, (ii) Lien Claimants, and (iii) Section 503(b)(9) Claimants In the Ordinary Course of Business on a Postpetition Basis
4	204	Objection of GLM DFW, Inc. to Debtors' Motion for Authority to Pay Critical Vendors and Lien Claimants
5	291	Debtors' Reply In Support of Debtor's Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Certain Prepetition Claims of (i) Critical Vendors, (ii) Lien Claimants, and (iii) Section 503(b)(9) Claimants In the Ordinary Court of Business on a Postpetition Basis
6	377	Final Order Authorizing the Debtors to Pay Certain



		Prepetition Claims of (i) Critical Vendors, (ii) Lien Claimants, and (iii) Section 503(b)(9) Claimants In the Ordinary Course of Business on a Postpetition Basis
<u>Transcript</u>		
7	none yet	April 16, 2019 (attached hereto As Exhibit “A”)
<u>Other</u>		
8	none	GLM Proof of Claim, Claim #501 (attached hereto as Exhibit “B”)

RESPECTFULLY SUBMITTED this 2d day of May, 2019.

MUNSCH HARDT KOPF & HARR, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 2d day of May, 2019, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof and that, additionally, he caused true and correct copies of this document to be served by U.S. first class mail, postage prepaid, on the following:

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By: /s/ Davor Rukavina
Davor Rukavina

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 19-22312-rdd
4 Adv. Case No. 19-08246-rdd
5 - - - - - x
6 In the Matter of:
7 WINDSTREAM HOLDINGS, INC.,
8 Debtor.
9 - - - - - x
10
11 United States Bankruptcy Court
12 300 Quarropas Street, Room 248
13 White Plains, NY 10601
14
15 April 16, 2019
16 11:33 AM
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20
21 B E F O R E :
22 HON ROBERT D. DRAIN
23 U.S. BANKRUPTCY JUDGE
24
25 ECRO: A. VARGAS

1 HEARING re Notice of Agenda/ Agenda for Second Day Hearing
2 Statement / Notice of Filing of Superpriority Secured
3 Debtor-in-Possession Credit Agreement (related
4 document(s)42)

5
6 HEARING re LIMITED OBJECTION OF SANTANDER BANK, N.A. TO
7 DEBTORS AMENDED MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
8 PURSUANT 11 U.S.C. 105, 361, 362, 363, 364, 503 AND 507 (I)
9 AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED
10 SUPERPRIORITY POSTPETITION FINANCING, (II) GRANTING LIENS
11 AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III)
12 AUTHORIZING USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE
13 PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI)
14 SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED
15 RELIEF (related document(s)42)

16
17 HEARING re Final Hearing on the Motion Authorizing the
18 Debtors to Pay Certain Prepetition Claims of (I) Critical
19 Vendors, (II) Lien Claimants, and (III) Section 503(b)(9)
20 Claimants in the Ordinary Course of Business on a
21 Postpetition Basis (related document(s)16).

22
23 HEARING re Objection of OLM DFW, Inc.to Debtors' Motion for
24 Authority to Pay Critical Vendors and Lien Claimants
25 (related to document #16)(document #2040)

1 HEARING re Final Hearing on the Motion Authorizing the
2 Debtors to Maintain and Administer Their Existing Customer
3 Programs and Honor Certain Prepetition Obligations Related
4 Thereto (related document(s)3).

5
6 HEARING re Final Hearing on the Motion Authorizing the
7 Debtors to (I) Pay Prepetition Employee Wages, Salaries,
8 Other Compensation, and Reimbursable Employee Expenses and
9 (II) Continue Employee Benefits Programs (related
10 document(s)18).

11
12 HEARING re Debtors' Supplemental Motion to Approve for Entry
13 of Interim and Final Orders Authorizing the Debtors to (I)
14 Pay Prepetition Employee Wages, Salaries, Other
15 Compensation, and Reimbursable Employee Expenses and (II)
16 Continue Employee Benefits Programs (related document(s) 18)

17
18 HEARING re Final Hearing on the Motion Authorizing the
19 Debtors to (I) Pay their Obligations Under Prepetition
20 Insurance Policies, (II) Renew, Supplement, Modify, or
21 Purchase Insurance Coverage and (III) Enter into New
22 Financing Agreements in the Ordinary Course of Business
23 (related document(s)9).

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25

1 HEARING re Final Hearing on the Motion Authorizing the
2 Debtors to Continue (I) to Operate Their Cash Management
3 System, Honor Certain Prepetition Obligations Related
4 Thereto, and Maintain Existing Business Forms and (II) Their
5 Intercompany Transactions (related document(s)13).

6
7 HEARING re Final Hearing on the Motion Authorizing the
8 Payment of Certain Prepetition Taxes and Fees. (related
9 document(s)11).

10
11 HEARING re Final Hearing on the Motion Approving
12 Notification and Hearing Procedures for Certain Transfers of
13 and Declarations of Worthlessness with Respect to Common
14 Stock . The to be held on 4/16/2019 at 10:00 AM at Courtroom
15 118, White Plains Courthouse (related document(s)s).

16
17 HEARING re Final Hearing on the Motion Establishing Certain
18 Notice, Case Management, and Administrative Procedures
19 (related document(s)23).

20
21 HEARING re Hearing, (I) Prohibiting Utility Providers from
22 Altering, Refusing, or Discontinuing Utility Services, (II)
23 Determining Adequate Assurance of Payment for the Future
24 Utility Services, and (III) Establishing Procedures for
25 Determining Adequate Assurance (related document(s)7, 131).

1 HEARING re Motion to Join /Joinder Of Public Service
2 Electric And Gas Company To The Objection Of Certain Utility
3 Companies To Debtors Motion For Entry Of An Order (I)
4 Prohibiting Utility Providers From Altering, Refusing, Or
5 Discontinuing Utility Services, (II) Determining Adequate
6 Assurance Of Payment For Future Utility Services, And (III)
7 Establishing Procedures For Determining Adequate Assurance
8 Of Payment (related document(s)228)

9
10 HEARING re Objection to Motion /Objection Of Certain Utility
11 Companies To Debtors Motion For Entry Of An Order (I)
12 Prohibiting Utility Providers From Altering, Refusing, Or
13 Discontinuing Utility Services, (II) Determining Adequate
14 Assurance Of Payment For Future Utility Services, And (III)
15 Establishing Procedures For Determining Adequate Assurance
16 Of Payment (related document(s)7)

17
18 HEARING re Objection to Motion (related document(s)7)

19
20 HEARING re Debtors' Motion Granting a Second Extension of
21 Time to File Schedules and Statements of Financial Affairs

22
23 HEARING re Debtor's Motion Establishing Procedures for
24 Interim Compensation and Reimbursement of Expenses for
25 Retained Professionals

1 HEARING re Debtors' Motion for Procedures for the Compromise
2 and Settlement of De Minimis Claims

3
4 HEARING re Objection to Motion to Approve Procedures for De
5 Minimis Asset Transactions (Limited Objection) (related
6 document(s)184)

7
8 HEARING re Debtors' Motion for Order Modifying the Automatic
9 Stay to Permit the Debtors to Prosecute Certain Pending
10 Multi-District Litigation

11
12 HEARING re Debtors' Motion for Procedures to Reject or
13 Assume Executory Contracts and Unexpired Leases

14
15 HEARING re Debtors' Motion for the Retention and
16 Compensation of Professionals Utilized in the Ordinary
17 Course of Business

18
19 HEARING re Motion to Reject Lease or Executory Contract /
20 Debtors First Omnibus Motion to Reject Certain Unexpired
21 Leases Effective Nunc Pro Tunc to the Petition Date

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1 HEARING re Debtors Application for Entry of an Order (I)
2 Authorizing the Retention and Employment of Kurtzman Carson
3 Consultants LLC as Administrative Advisor Effective, Nunc
4 Pro Tune to the Petition Date (document(s)190)

5
6 HEARING re Debtors Application for Entry of an Order (I)
7 Authorizing the Retention and Employment of
8 PricewaterhouseCoopers LLP as Independent Auditor and
9 Accounting Services Provider Effective Nunc Pro Tune to the
10 Petition Date (document(s) 113)

11
12 HEARING re Debtors Application for Entry of an Order (I)
13 Authorizing the Retention and Employment of Alvarez & Marsal
14 North America, LLC as Financial Advisor Effective Nunc Pro
15 Tune to the Petition Date (document(s)192)

16
17 HEARING re Debtors Application for Entry of an Order (I)
18 Authorizing the Retention and Employment of PJT Partners LP
19 as Investment Bankers, Nunc Pro Tune to the Petition Date
20 and (II) Granting Related Relief (document(s)193)

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1 HEARING re Statement of the Official Committee of Unsecured
2 Creditors Regarding the Debtors Application for Entry of an
3 Order (I) Authorizing the Retention and Employment of PJT
4 Partners LP as Investment Bankers, Nunc Pro Tune to the
5 Petition Date and (II) Granting Related Relief (related
6 document(s) 193)

7
8 HEARING re Debtors Application for Entry of an Order (I)
9 Authorizing the Retention and Employment of Karlen Muchin
10 Rosenman LLP as Conflicts Counsel for the Debtors and
11 Debtors in Possession Effective Nunc Pro Tune to the
12 Petition Date (document(s) 194)

13
14 HEARING re Debtors Application for Entry of an Order (I)
15 Authorizing the Retention and Employment of Kirkland & Ellis
16 LLP and Kirkland & Ellis International LLP as Attorneys for
17 the Debtors and Debtors in Possession Effective, Nunc Pro
18 Tune to the Petition Date (document(s) 195)

19
20 HEARING re Notice of Proposed Order/ Notice of Filing of
21 Revised Proposed Order (I) Prohibiting Utility Providers
22 from Altering, Refusing, or Discontinuing Utility Services,
23 (II) Determining Adequate Assurance of Payment for Future
24 Utility Services, and (III) Establishing Procedures for
25 Determining Adequate Assurance of Payment (related

1 document(s)7, 196)

2

3 HEARING re Notice of Proposed Order /Notice of Filing of

4 Further Revised Proposed Order Approving Procedures for De

5 Minimis Asset Transactions (related document(s)315, 184)

6

7 HEARING re Notice of Proposed Order / Notice of Filing of

8 Revised Proposed Order (I) Authorizing the Retention and

9 Employment of PJT Partners LP as Investment Bankers Nunc Pro

10 Tune to the Petition Date and (II) Granting Related Relief

11 (related document(s)311, 193)

12

13 HEARING re Notice of Proposed Order/ Notice of Filing of

14 Proposed Final Order (A) Authorizing the Debtors to Obtain

15 Postpetition Financing, (B) Authorizing the Debtors to Use

16 Cash Collateral, (C) Granting Liens and Providing

17 Superpriority Administrative Expense Status, (D) Granting

18 Adequate Protection to the Prepetition Secured Parties, (E)

19 Modifying the Automatic Stay and (F) Granting Related Relief

20 (related document(s)42, 313)

21

22 HEARING re Notice of Proposed Order / Notice of Filing of

23 Further Revised Proposed Order Authorizing and Approving

24 Procedures to Reject or Assume Executory Contracts and

25 Unexpired Leases (related document(s)314, 186)

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HEARING re Notice of Proposed Order / Notice of Filing of
Further Revised Proposed Order Authorizing and Approving
Procedures to Reject or Assume Executory Contracts and
Unexpired Leases (related document(s)314, 186)

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P R O C E E D I N G S

THE COURT: In re Windstream Holdings, Inc.

MR. HESSLER: Good morning, Your Honor.

THE COURT: Good morning.

MR. HESSLER: Steve Hessler of Kirkland and Ellis on behalf of the Debtors. I suppose I should ask while we're plugging this in, if you're okay with us opening with a very quick status update.

THE COURT: That's fine.

MR. HESSLER: Okay.

THE COURT: I don't know what it is. Have you previewed it with the other parties?

MR. HESSLER: It's just factually what's happened since the first day hearing. So, we haven't had a chance to actually hand them this document.

THE COURT: Is it a movie?

MR. HESSLER: It's not a movie. No, no, I didn't ...

THE COURT: All right. I was going to say I've never had that before. All right, go ahead.

MR. HESSLER: Thank you. As I was setting up, I just want to make sure that we had your permission to do it. Great. Thank you, Your Honor. And given we have 25 motions up today, we'll endeavor to get through this very quickly to get to the meat of it. But just a few topics that we wanted

1 to discuss at the outset to apprise the Court, as well as
2 (indiscernible) the stakeholders what's happened before you
3 at our first day hearing. Just a quick update on the
4 company's engagement with various stakeholders and then a
5 quick preview of what we think the docket and the agenda for
6 today is going to be.

7 Your Honor, it's been 50 days exactly since we
8 were before you on the first day here, and the most
9 important headline is at the bottom of this slide, which is
10 management working in concert with the professionals has
11 done an excellent job of making sure that there's been no
12 material business interruption since the filing. All of the
13 sort of smooth landing --

14 THE COURT: I think you may want to have a caveat
15 to that, based on what I ruled on yesterday.

16 MR. HESSLER: I should say, the Court, and we
17 appreciate your ruling yesterday, but as a result of that
18 ruling, we think that that buttresses that conclusion. But
19 all of the other operational impacts that we believe that
20 this Court would expect in terms of what employees and
21 vendors and their communication strategy and all that, that
22 is all proceeding in a very constructive and productive
23 manner, Your Honor.

24 A quick summary on both, what I'll call kind of
25 the bankruptcy-related fronts, SOFAs and schedules on target

1 for the proposed filing date for all 205 debtor entities.

2 As we've been discussing with stakeholders, and I'm going to
3 come to that in a moment, work on the business plan is well
4 underway, given the very expedited nature of the filing.

5 This has had to be more of a post-petition exercise than
6 perhaps would have been ideal. But it is going to be a key
7 foundational element of the ability to undertake planned
8 negotiations, and this will be in ... we will be in a
9 position to be able to share this with key stakeholders in
10 the relatively near term and get those planned negotiations
11 underway; review of contingent liabilities -- again, as
12 expected, of a chapter 11 debtor, particularly one of a, you
13 know, a case of this size and scope. All of that remains
14 underway as well.

15 I do want to make a particular note about claims
16 investigation, as has been raised by the company and by
17 other parties. Whether and what claims may exist in this
18 case is going to be a key element of getting to a successful
19 plan resolution. The Board of Directors has formed a
20 special committee that is constituted of four existing
21 directors and, again, working with the professionals, that
22 work is well underway to determine the viability of
23 potential claims on that front, Your Honor.

24 THE COURT: Okay. On that latter point,
25 obviously, a committee has been formed and proposed counsel

1 identified. Are the Debtors and the Committee adopting a
2 protocol on how to share information and streamline the
3 process for that type of review?

4 MR. HESSLER: Let me take that in pieces, Your
5 Honor. The first part of that, I would say is, to clarify
6 one point, the Board does have its own counsel who is here
7 in Court today, that's Mr. Strubeck of the Norton Rose firm.
8 The Special Committee does not have its own counsel. We,
9 otherwise, Kirkland, are endeavoring to represent the
10 Committee in addition to the Debtors. With regard to the
11 second piece of your question with regard to the UCC, Mr.
12 Marinuzzi can speak to this in a moment -- there's no formal
13 protocol in place, but as I'm going to get to in a moment,
14 all the information sharing on a global level is already
15 underway and expect that we will not have any issues on the
16 claims investigation for us specifically, to the extent that
17 a protocol needs to be put in place. We, of course, would
18 engage in that dialog with the Committee to that end.

19 THE COURT: Okay.

20 MR. HESSLER: So, Your Honor, that actually is a
21 perfect segue into stakeholder engagement. With regard to
22 the official committee of unsecured creditors formed on
23 March 12, we've been in a very active dialog with the
24 Committee and its professionals since that time. Notably,
25 last Monday there was a sort of all-hands-on-deck meeting

1 between the company, meaning the management team itself, and
2 all of its professionals; the Committee, including its
3 principals and professionals. And so, that dialog, in a
4 formal way is underway. I would also say, in an informal
5 way. And again, Mr. Marinuzzi can speak to this directly,
6 and I believe he will. There's been a very, very fulsome
7 information sharing. All the motions have been vetted.
8 There are no pending objections by the unsecured Creditors
9 Committee to any of the 25 motions today. So, I believe
10 that we already have what I think is a very productive line
11 of communication, and the Committee can speak to that
12 directly. And to the extent we need to augment that with
13 any formality, of course, we'll do so.

14 In a similar vein, Your Honor, with regard to the
15 secured lenders, you know, we were in an active dialog with
16 them on a pre-petition basis and that has continued post-
17 petition. Similarly, last week, after we had met with the
18 Committee, the next day the management team and its
19 professionals on behalf of the Debtors met with a combined
20 group of the first and second lean lenders, all of their
21 principals -- not all of them, but many of their principals
22 and their professionals, certainly was open to anybody who
23 wanted to participate. That was probably 80 to 100 people
24 in that room, and that dialog remains underway, and I expect
25 that we will continue to be in an active dialog with them.

1 I know that there is -- we'll get to objections in
2 a moment -- there is one objection, I believe, to the DIP on
3 behalf of US Bank as an unsecured lender trustee. I don't
4 believe the secured lenders, similarly, have any objections
5 to any of the relief we're seeking for the Court today,
6 which I think is a further testament to, as I said, the
7 very, very active modes of communication that are already
8 underway. All the other stakeholders -- I won't read this
9 but -- given the breadth of the relief that's being sought,
10 with final approval of the first day motions, and approval
11 of the second day motions, this really does, in some way,
12 touch almost every constituency in this case. And to the
13 extent that we have only two unresolved objections, again, I
14 think a testament to how much communication is actually
15 ongoing.

16 With regard to what we propose to do today, Your
17 Honor -- so, these are the first day motions that are up for
18 approval on a final basis. There is, as I said -- to our
19 knowledge, there's the one objection to the DIP, one
20 objection to the vendor motion. There were filed objections
21 to cash management and utilities. Those are, our
22 understanding, had been resolved. There were no objections
23 filed to the other first day motions. There was a great
24 deal of discussion, as is typically the case, with informal
25 issues that were raised. And, fortunately, we've been able

1 to work out all of those. So, like I said, I think the only
2 pending objections on the first day motions are going to be
3 on the DIP and vendors, and then we have also proposed
4 another dozen or so, what we'll call second day motions.
5 There were filed objections on (indiscernible) assumption
6 and rejection procedures, de minimis asset sale; those have
7 all been resolved, we think. And then with regard to, as I
8 said, the other motions, in retention applications. There
9 certainly was dialog with all the critical parties, the UCC,
10 the secured creditors, the United States Trustee. And
11 fortunately, we believe that we'll hopefully have a
12 relatively streamlined hearing today because we've been able
13 to get all of those taken care on an informal basis.

14 THE COURT: Okay. I reviewed the blacklined
15 order, so that evidence is the Debtors working with various
16 parties, either to file formal objections or who reached out
17 to the Debtors to try to resolve those objections.

18 MR. HESSLER: And I guess the one other -- thank
19 you very much, Your Honor -- the one other point I should
20 just mention quickly, I know some, at least the first lien
21 lenders have filed a rule 2019 statement on behalf of their
22 group. We expect more may be forthcoming. And I would note
23 also, we're hearing via various modes of communication that
24 there may be other ad hoc groups coming in this case and
25 we've extended an invitation to any of those folks if they

1 want to say anything today. Or, we will, of course, engage
2 with them if and when those folks come to the fore.

3 THE COURT: Okay.

4 MR. HESSLER: That's all I have, Your Honor.
5 Before we get to the motions, I didn't know, I think maybe
6 Mr. Marinuzzi wanted to say something on behalf of the
7 Committee.

8 THE COURT: All right.

9 MR. HESSLER: Thank you, sir.

10 MR. MARINUZZI: Good morning, Your Honor, Lorenzo
11 Marinuzzi, Morrison & Foerster, proposed counsel for the
12 Official Committee of Unsecured Creditors. March 12, the US
13 Trustee formed a seven-person committee and it consists of
14 the Pension Benefit Guarantee Corporation, the Communication
15 Workers of America, AT&T Services Inc., VeloCloud Networks,
16 Inc., Crown Castle Fiber, LEC Services Inc., and UNB Bank as
17 indenture trustee for the 8.75 notes in the principal amount
18 of \$105 million.

19 Mr. Hessler is right in that chart reflects a lot
20 of input from the Committee and its advisors on the first
21 day motions, the final orders for today, as well as the
22 second day motions. And we've been able to resolve every
23 one of our concerns, and we'll talk about some of them when
24 we get to them. The DIP, I think it's important to note for
25 the Court that we thought we were resolved on the DIP this

1 morning. There's one issue that we think we have a solution
2 that kicks it down the road. I don't want to get ahead of
3 it, but we'll talk about it in a little bit.

4 But Your Honor, as far as protocol, the Committee
5 is conducting, as you would expect, its own investigation.
6 Much of the data that we've requested and our looking at is
7 coming from the Debtors files. As of right now, there
8 hasn't been a need to come to a protocol, but there will be
9 at some point. And for the sake of efficiency, if for no
10 other reason, we'll be discussing that with the company.

11 THE COURT: Okay.

12 MR. MARINUZZI: Thank you.

13 MR. RUKAVINA: Your Honor, good morning. I'm
14 Davor Rukavina with Munsch Hardt Kopf & Harr. I represent
15 GLN DFW Inc., the objecting creditor to the vendors motion.
16 I'd appreciate a chance to discuss that with the Court when
17 the time comes, otherwise I take no interest in the balance
18 of the proceedings.

19 THE COURT: We'll just deal with the individual
20 motions now, unless someone wants to raise anything relating
21 to the brief status update that we got. Okay. So, shall we
22 go down the agenda?

23 MR. WEILAND: Yes, Your Honor. Thank you. For
24 the record, Brad Weiland of Kirkland and Ellis LLP, here on
25 behalf of the Windstream Debtors. Your Honor, I think what

1 we will do with today's agenda, if it pleases the Court,
2 would be to just take it in order. We do have two contested
3 matters as Mr. Hessler mentioned. I'll start with the DIP
4 before ceding the podium to my colleague, Mr. Luze, once
5 objections and other argument is put forward on the DIP.

6 THE COURT: Okay, that's fine.

7 MR. WEILAND: Thank you, Your Honor. Before I go
8 into my argument, I would remind the parties and the Court,
9 we did submit two declarations in support of the DIP motion.
10 That was the first day declaration on docket number 27, and
11 the declaration of Nicholas Leon at docket number 38. We do
12 not have further evidence to submit today, given that those
13 were both admitted into evidence at the last hearing.
14 Understand that we do have one live objection here, which
15 I'll get to, and I'm not trying to bury the lead, but
16 opposing counsel for US Bank on that objection as said that
17 they don't intend to submit any further evidence either,
18 don't think we'll have any live testimony on this one.

19 THE COURT: Okay. Can I interrupt you for a
20 second? The agenda item for the DIP motion lists responses,
21 the formal responses that were filed, and also lists the
22 formal withdrawal of many of them. There are a few besides
23 the US Bank one where there is no formal withdrawal. Are
24 you representing that notwithstanding that, they're not
25 pursuing their objections?

1 MR. WEILAND: That's correct, Your Honor. And
2 without reply papers that were filed on Friday, we did
3 include a chart of objections that was current as of Friday.
4 I have an updated chart that walks through all the
5 objections. Several withdrawals were filed yesterday. I
6 think all of the formal objections, and in fact, all of the
7 informal objections that we received, have been resolved.
8 And there is language for each formal objection, and some
9 other parties, in the final order. I can give you the
10 updated chart, but I will represent on behalf of the Debtors
11 that all of the other objections, even if there's not a
12 formal withdrawal on file, have been resolved.

13 THE COURT: Okay. Let me just confirm that. Is
14 there any party in interest that filed a formal objection,
15 with the exception of US Bank National Association that
16 continues to want to pursue that objection? Obviously, you
17 want to confirm that your agreed-upon resolution is in the
18 final order. But subject to that, is there anyone else
19 besides US Bank that is pursuing that objection to the DIP
20 motion today? Okay, you can go ahead.

21 MR. WEILAND: Thank you, Your Honor. The court
22 will recall, Debtor's filing, given the circumstances, was
23 such that the Debtor filed with essentially zero liquidity
24 before the adverse litigation ruling that put the Debtors
25 into bankruptcy. The Debtors had \$450 of availability under

1 the prepetition revolver. That disappeared overnight given
2 the defaults that that judgement caused. We were fortunate
3 enough that the -- through hard work over the course of the
4 week that we had to prepare for the filing, that we secured
5 a substantial DIP financing package on very favorable terms.
6 The DIP essentially replaced the availability under the
7 prepetition revolver and provides additional financing to
8 fund the cases, in a total amount of \$1 billion consisting
9 of \$500 million of revolving loans and \$500 million of term
10 loans. Again, all at favorable interest rates and other
11 price.

12 DIP provides for a two-year maturity. I think we
13 mentioned at the first day we hoped to be out of bankruptcy
14 well in advance of that, but given the uncertainty we
15 thought that that was a favorable term. And importantly,
16 over the course of that maturity the DIP provides no case
17 milestones. There's no default trigger to achieving
18 something in a set timeframe before the ultimate maturity.

19 DIP facilities are priming loans that place an
20 additional billion dollars of debt on top of our first lien
21 and second lien secured creditors. One component of the
22 deal that we negotiated in connection with the original
23 filing was the -- to obtain the consent of the prepetition
24 first lien lenders under the credit agreement. That
25 included a consent fee which we did solicit and pay in

1 accordance with the interim order. Happy to say, probably
2 in no small part because of that fee, we do have 98 percent
3 of prepetition credit agreement lenders consenting to being
4 primed here by a significant amount of debt and we
5 appreciate that consent.

6 We also have the consent, Your Honor, of
7 substantially all of the key creditor stakeholders in the
8 case. The first lien lenders support this. The Midwest
9 notes, the Midwest first lien notes, support what we're
10 doing here. We have been in close contact with the
11 Creditors Committee and subject to the one disagreement that
12 Mr. Marinuzzi mentioned, which I'll get to in just a moment;
13 believe we have their consent and support to what we're
14 doing. All of those parties, Your Honor, filed statements
15 in support last Friday, at the same time we filed our reply.

16 We believe we are substantially -- we have the
17 substantial support of the second lien noteholders, subject
18 to one disagreement that's arisen among the Debtors and the
19 Committee and the second liens, concerning whether or not
20 the final order will grant adequate protection claims and
21 liens in favor of the second liens at the holding company
22 level, Midwest Holdings.

23 What we would propose, Your Honor, because we
24 filed the order on Friday, filed a very slightly amended
25 version yesterday; that version includes a change requested

1 by the Committee, the effect of which is to not grant those
2 adequate protection liens and claims. We would go forward
3 today requesting authority to grant those liens and claims
4 to the extent that the Committee agrees to that. Understand
5 that this is an issue that really just came up. We've been
6 talking in the hall. It's not possible to convene the
7 Committee members on an important issue like this at the
8 last moment, but there is a Committee call at 10:30 in the
9 morning tomorrow where this will be discussed. To the
10 extent the Committee agrees, we would file a further amended
11 order, presuming that the DIP is approved today and then
12 order is entered, that incorporates whatever agreement we do
13 reach among the Debtors and the second liens of the
14 Committee. But today, we would be seeking to get authority
15 to grant adequate protection at the holdings level in favor
16 of the second liens, and that is also a component of the US
17 Bank objection. We would seek to overrule that portion of
18 the objection in full, so that to the extent we do agreement
19 with the Committee and the second liens, we can submit a
20 further amended order that incorporates that agreement.

21 THE COURT: I'm sorry, I thought you said that you
22 were going to go with the order and submit it. But if the
23 Committee changes its mind and is willing to have the grant
24 of the adequate protection liens then that, you would be
25 seeking that.

1 MR. WEILAND: That's correct, Your Honor.

2 THE COURT: I thought I misheard you. I thought
3 you said you were looking to change it today to say that the
4 liens would be granted.

5 MR. WEILAND: No, I think what we proposed is to
6 not change it today, to get approval today --

7 THE COURT: Then I heard you right the first time.
8 Okay.

9 MR. WEILAND: Thank you, Your Honor. As noted, we
10 have resolved a number of formal and informal objections
11 filed by taxing authorities, landlords and equipment lessors
12 as well as Chubb Insurance and Bank of America. Those
13 agreements are embodied in specific language in the final
14 order; happy to walk through, Your Honor, but the treatment
15 of those parochial issues is essentially to say we're not
16 prejudicing for people's rights with the Debtor.

17 THE COURT: Well, I've read the blackline, so I
18 think I understand those provisions. I think they're clear.

19 MR. WEILAND: Thank you, Your Honor.

20 THE COURT: The version I have is the one enclosed
21 in the binders. I don't know if -- you mentioned something
22 filed yesterday. I'm not sure I saw that. Did anything
23 filed yesterday change what was in the binders that were
24 provided on Friday?

25 MR. WEILAND: There is one minor change, Your

1 Honor and I do have just two changed pages, if you'd like me
2 to hand them up.

3 THE COURT: Okay.

4 MR. WEILAND: One moment. If I may approach, Your
5 Honor. Your Honor, yesterday, Maricopa County Arizona did
6 file an objection to the DIP. That was obviously a little
7 late but we had no problem resolving that objection and that
8 is reflected in those minor changes.

9 THE COURT: That's Paragraph 44.

10 MR. WEILAND: Yes.

11 THE COURT: That's fine.

12 MR. WEILAND: In addition to the schedule of
13 taxing authorities.

14 THE COURT: Okay.

15 MR. WEILAND: That's the only change in the
16 version from yesterday.

17 THE COURT: Okay.

18 MR. WEILAND: With those objections resolved, that
19 really leaves us with the one -- the two potential live
20 objections. With the Committee, I don't think we have an
21 objection, we have a disagreement, as I just walked through.
22 We were very happy to get the Committee's support to the
23 DIP. Generally, in response to the Creditors Committee
24 concerns, discussions among all the parties, we did
25 incorporate a number of revisions that the committee viewed

1 as improvements into the DIP order. Those are reflected in
2 the filing on Friday, but just to walk through at a high
3 level, we included an effective marshalling provision that
4 says that the DIP secured parties and the prepetition
5 secured parties will use commercially reasonable efforts to
6 recover first from existing collateral other than proceeds
7 of avoidance actions, proceeds of commercial tort claims,
8 claims against directors and officers of the Debtors, and
9 claims against the prepetition secured parties other than
10 the prepetition revolving lenders. That satisfied the
11 Committee's concerns about liens, both DIP liens and
12 adequate protection liens on those assets, and we're happy
13 that we reached that resolution.

14 THE COURT: You used the term 'marshalling,' but
15 this isn't the legal doctrine on marshalling which only
16 secured creditors, arguably, probably, can assert. But this
17 is for the benefit of all creditors, this provision.

18 MR. WEILAND: That's true, Your Honor. And that's
19 why I called it an effective marshalling provision.
20 Marshalling doesn't really apply, and this is qualified by
21 commercially reasonable efforts, but I think everyone's
22 happy with where we arrived at.

23 THE COURT: Okay.

24 MR. WEILAND: Also includes, Your Honor, in the
25 final order, an express preservation of rights regarding the

1 Debtors master lease with Unity Group, and that's set forth
2 in footnote 10 on the redline of the order. We also note
3 that payment of the consent fee that I mentioned a moment
4 ago will not constitute a diminution in value for any future
5 adequate protection claim brought by any of the secured
6 parties. The challenge period regarding the first lien
7 security interests was extended through 90 days after entry
8 of the final order, and would provide that should a motion
9 seeking standing to challenge the liens be filed before the
10 end of that 90 days, the deadline will be tolled pending a
11 decision on that standing motion.

12 We increased the Creditors Committee's
13 investigation budget to \$250,000. That's all parties have
14 agreed to. And we included a number of additional notice
15 and access to information rights in favor of the committee,
16 formalized in the order on the understanding that, of
17 course, we as debtors would be sharing information and
18 providing general access to the committee in any event.

19 With those changes, those key changes, believe we
20 have the Committee's support; happy to say that we do.
21 Also, have the support of the parties I mentioned earlier,
22 all of whom filed statements in support earlier. That
23 leaves US Bank, the indenture trustee for all but one of the
24 Debtors unsecured notes issuances.

25 THE COURT: Well, before we turn to US Bank, what

1 is the dispute with the Committee?

2 MR. WEILAND: Your Honor, this is whether or not
3 the adequate protection liens and claims of the seconds --

4 THE COURT: That's the issue -- it's not a
5 separate --

6 MR. WEILAND: No, no, that's the only -- no, no,
7 that's the one point of disagreement.

8 THE COURT: And as it's currently drafted they
9 don't attach?

10 MR. WEILAND: That's correct, Your Honor.

11 THE COURT: Okay. That's separate and apart from
12 the reservation of rights?

13 MR. WEILAND: Embodied in the order with respect
14 to Unity lease, yes, Your Honor. I think at this point all
15 parties reserve rights on how the Unity situation may
16 evolve.

17 THE COURT: So, it's not really a dispute. I
18 mean, it's in the order.

19 MR. WEILAND: Yes, that's correct.

20 THE COURT: All right, okay.

21 MR. WEILAND: The only point of disagreement is
22 the second lien adequate protection which we hope to resolve
23 after today. But it doesn't prevent entry of the order of
24 today.

25 THE COURT: But the Committee can say no and then

1 it's not -- then what happens? If the Committee has their
2 meeting tomorrow and says, no, we really don't want to grant
3 an adequate protection lien on the holding assets, whatever
4 they are --

5 MR. WEILAND: In that event, Your Honor, I think
6 the order would stand under the first lien, second lien,
7 intercreditor agreement. I think the second liens would
8 have the right to request that adequate protection from Your
9 Honor.

10 THE COURT: At a separate hearing?

11 MR. WEILAND: Yes.

12 THE COURT: Okay. All right, fine. Got it.

13 MR. WEILAND: Okay, with that, Your Honor, the US
14 Bank objection. We believe that a number --

15 THE COURT: I'm sorry to interrupt again. I would
16 be more comfortable with that approach. I'm not quite sure
17 why the Committee would change its mind, but it's a little
18 odd to just do it on a phone call without any notice to
19 anyone else.

20 MR. WEILAND: Well, Your Honor, I think we would--

21 THE COURT: And it may affect how I look at the US
22 Bank objection.

23 MR. WEILAND: Understood, Your Honor. I think
24 what we would propose is that should we reach agreement with
25 the Committee on this and the second liens, we would notice

1 an amended order and we'd be happy to come back to Your
2 Honor if necessary. But I think the only dispute on this
3 point other than the US Bank objection, and I think if you
4 overrule the US Bank objection that really only leaves the
5 three parts.

6 THE COURT: The important point is the notice.
7 The important point is the notice, so that's fine.

8 MR. WEILAND: We would certainly submit it on the
9 docket for -- under notice, Your Honor.

10 THE COURT: Okay.

11 MR. WEILAND: Your Honor, with that, the US Bank
12 objection, the final objection raises a number of different
13 points. I do think that through discussions with the
14 Committee and other parties, we've actually addressed the
15 number of grounds that form the basis of the US Bank
16 objection. First, US Bank argues that the final order
17 should include language that says that the DIP agent is a
18 defined term, permitted lease hold mortgagee under the Unity
19 master lease. That is included. That's in the footnote 10,
20 reservation of rights regarding the Unity lease that I
21 mentioned earlier.

22 Second, US Bank argues that prepetition adequate
23 protection claims should be calculated based on the
24 respective diminutions of value of the collateral securing
25 each of the respective prepetition secured parties. I think

1 they were concerned that the wording in the interim order
2 could give everyone the same adequate protection claim and
3 thereby create some duplication. That was never the intent.
4 I think we've clarified the language in Paragraph 15 of
5 final order to make clear that any prepetition secured party
6 is entitled only to adequate protection on its own interests
7 diminution in the collateral.

8 THE COURT: Its own diminution.

9 MR. WEILAND: Exactly, Your Honor.

10 THE COURT: Right.

11 MR. WEILAND: Third, US Bank did object to the
12 waiver of marshalling. I think that the new Paragraph 10D
13 language that we added, that I just walked through, should
14 address that issue. That really leaves only a few other
15 grounds remaining. First, US Bank argues that granting
16 liens and super priority claims, on unencumbered assets is
17 inappropriate. That includes, most significantly, liens and
18 507(b) claims against the holdings entity, which was not an
19 obligor on the prepetition debt. We think here, given that
20 the unencumbered assets that could be looked to really are
21 at holdings. Although it is only a holding company, the
22 rest of the unencumbered assets lie at regulated entities
23 that cannot be obligated on -- on the debt obligations or
24 grant security interests in their assets without creating
25 regulatory issues. Holdings is really the only place for

1 effective, unencumbered adequate protection.

2 Further, Your Honor, what we've agreed with the
3 DIP lenders and all the parties is that there will be a
4 significant amount of obligor cash, subsidiary cash, that
5 will have to go up to holdings to fund payments of rent
6 under the Unity lease. And given that that cash is the cash
7 collateral of the prepetition secured parties, we think it's
8 only appropriate that they do get adequate protection that
9 extends to the holdings level.

10 THE COURT: This is all subject to the discussion
11 we just had about the order saying that they don't have a
12 ruling on holdings.

13 MR. WEILAND: That's right, Your Honor, for the
14 second liens. No one disputes that the first liens, under
15 the current order, are -- we are proposing to grant them
16 adequate protection at the holdings level.

17 THE COURT: Okay. I mean, you may be phrasing
18 this argument in a way that the US Bank objection doesn't
19 accept, but I don't understand -- I agree with you that it's
20 perfectly appropriate to grant adequate protection lien on
21 unencumbered assets. I mean that's the whole point of
22 adequate protection. So, I don't have a problem with that
23 legal proposition.

24 MR. WEILAND: I think I wholeheartedly agree, Your
25 Honor. I think the US Bank objection says none of the

1 adequate protection, first lien or second lien, should
2 extend to the unencumbered holdings box.

3 THE COURT: But I think that's more -- not of law,
4 but as a matter of a view that the Unity transaction and
5 holdings relationship to it should be just dealt with in the
6 future, as opposed to just a legal argument that you can't
7 grant a protection lien on an unencumbered asset. But I'll
8 hear from them on that point.

9 MR. WEILAND: I'm sure they will have something to
10 say on that. I think our view is that under the facts of
11 this case, given the fact that the rest of the assets, at
12 least at the entities that can be obligors, have been
13 granted by and large.

14 THE COURT: In any event, there's now a full
15 reservation of rights on what the transaction is and how it
16 can be dealt with.

17 MR. WEILAND: That's correct, Your Honor, and how
18 it may be characterized in the future. Your Honor, US
19 Bank's second argument can also be dispensed with, the US
20 Bank argues that a waiver of the equities of the case
21 exception under section 552(b) is inappropriate. We think
22 it's appropriate here just like in many other cases as part
23 of the package deal under which the prepetition secured
24 parties consented to our use of their cash collateral and
25 our priming them with an additional billion dollars of debt,

1 and really shouldn't be an obstacle to getting the DIP here
2 approved.

3 THE COURT: They don't want to pay twice.

4 MR. WEILAND: That is correct, Your Honor.

5 THE COURT: Okay.

6 MR. WEILAND: US Bank also objected to the consent
7 fee approved under the interim order. As I mentioned, the
8 consent fee was an important part in obtaining the consent
9 of the prepetition first liens -- they're not pressing that.
10 Okay, thank you.

11 THE COURT: I'm sorry, can you just say for the
12 record? I saw your lips move but I don't think it picked up
13 on the transcript.

14 MR. WHITMORE: Good, I assume, afternoon, Your
15 Honor, at this point. Clark Whitmore appearing from the law
16 firm of Maslon LLP for US Bank National Association as the
17 unsecured notes trustee. Just for the record, we are
18 pressing two continuing objections at this point: equities
19 of the case and no adequate protection super priority claims
20 against holdings.

21 THE COURT: So, you're not pursuing an objection
22 on the consent fee or the other matters that were raised,
23 only those two?

24 MR. WHITMORE: That is correct, Your Honor. And
25 that's really in recognition of the progress made by the

1 Committee as part of the approved deal.

2 THE COURT: Okay.

3 MR. WHITMORE: Thank you.

4 MR. WEILAND: Your Honor, in that case, I think
5 the other grounds that form the basis of the objection, can
6 be dispensed with because US Bank isn't prosecuting those.
7 I think the two grounds that remain ought to be overruled
8 for the reasons I just walked through as part of the overall
9 DIP.

10 THE COURT: Before we get to that, I'm not sure I
11 picked up on this in the interim hearing. I don't
12 understand why it's an event of default for exclusivity to
13 be terminated if the plan proponent is proposing to continue
14 the DIP loan and under the plan, pay it off in full.

15 MR. WEILAND: Well, Your Honor, I think that the
16 reasons for that are probably tied up in a lot of the credit
17 calculus that the DIP lenders did, but I think from my view,
18 the DIP lenders lent into the Debtor's business and the
19 Debtor's chapter 11 case, including the Debtor's right to,
20 the exclusive right to control what plan gets filed and
21 prosecuted. I think it would be a pretty big change in the
22 makeup of the case and the dynamics should exclusivity be
23 terminated. And I think that's why you see a similar
24 default in many, many DIPs. We would certainly be happy
25 with fewer events of default, Your Honor, but that's the

1 package that we negotiated with the lenders.

2 THE COURT: To have the right to accelerate a DIP
3 loan because the Committee, for example, would be proposing
4 a plan that would not allocate -- not saying your plan would
5 do this -- 20 percent of the equity to insider managers, but
6 otherwise be perfectly the same economically for the DIP
7 lenders? I mean, I understand, like a MAC on something like
8 exclusivity, but it really does change the dynamics of the
9 case in ways that potentially are not good.

10 MR. WEILAND: Well, I certainly see your point,
11 Your Honor. I think the loss of exclusivity would change
12 the dynamics of the case, maybe in ways that aren't good.
13 It doesn't --

14 THE COURT: But it could be good too, yeah, just
15 to give --

16 MR. WEILAND: And I like to think -- maybe I'm
17 naïve, but I'd like to think if it changes the dynamics in
18 ways that are good the DIP lenders wouldn't call that
19 default. There's something that says --

20 THE COURT: Well, they might call it and say we
21 want another \$20 million fee.

22 MR. WEILAND: Well, speculation, Your Honor. But
23 I do think -- one moment, Your Honor. Excuse me. Your
24 Honor, two points, one which Mr. Hessler just reminded me
25 of: Should there be a default the order does provide for a

1 five-business-day period where we can come into Court, and I
2 think we would be seeking the DIP in place by whatever means
3 available. The other point that I --

4 THE COURT: But I thought the order - I'll take
5 that five days as just to convince me that there hasn't been
6 a default.

7 MR. WEILAND: Or to seek nonconsensual use of
8 cash, Your Honor, but that's correct too. The other point
9 that I would make is that the DIP has been fully and, in
10 fact, oversubscribed, which helps support the low interest
11 rate that we've secured. It was solicited and subscribed on
12 the basis of the credit agreement that was filed. Now,
13 obviously, the credit agreement was always going to be
14 trumped by whatever final order was entered, but I just
15 point that out as well.

16 THE COURT: I can't imagine any DIP lender saying
17 that a provision that says that, that adds the phrase, "Or
18 termination of exclusivity jeopardizes payment of the DIP."

19 MR. WEILAND: If I can consult with the DIP
20 lenders' counsel, Your Honor, I'm sure we could work
21 something to that effect out.

22 THE COURT: Okay. Fine. So, then you want to
23 turn to the other two -- the two remaining objections?

24 MR. WEILAND: I think that's it, Your Honor. The
25 two objections, I understand US Bank to be prosecuting here

1 are two that I addressed, the equities of the case --

2 THE COURT: The 552 equities of the case and ...

3 MR. WEILAND: Adequate protection extending to the
4 holdings level.

5 THE COURT: Right. Okay.

6 MR. WEILAND: That's correct, Your Honor. I think
7 I've said my piece on that if --

8 THE COURT: For the first lien debt?

9 MR. WEILAND: Well, for the first lien debt and
10 the second, to the extent the Committee further agrees.

11 THE COURT: Okay.

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

13 MR. WHITMORE: Good afternoon again, Your Honor.

14 Clark Whitmore from Maslon LLP appearing on behalf of US
15 Bank. US Bank serves as indenture trustee under five
16 indentures that are identified in our limited objection.
17 That limited objection was filed before the Committee deal
18 was done. We want to acknowledge and appreciate the efforts
19 of the Debtor and the Committee to make some improvements to
20 the deal. I think on the margins there has been some
21 improvements. We have had to sort of pick and choose, given
22 the dynamics of this hearing to what's important to our
23 holders and to US Bank. And we, our pressing -- because we
24 think it's a matter of, very much a matter of importance,
25 the equities of the case, exception to 552, there is a

1 waiver in paragraph 10D that is a broad waiver for all the
2 prepetition secured creditors and all of their secured
3 claims. We would like that provision removed and, in fact,
4 replaced with a provision that says that the equities of the
5 case are, under 552, are not being waived.

6 I know that it is relatively commonplace and
7 people will point out as a matter of thinking fast and
8 thinking slow. Thinking fast, well, you know, this is the
9 kind of thing we see given and it's in the Kirkland form of
10 order, so, maybe it's not so bad. We would invite the
11 Court, in this presentation, to think slowly about this, as
12 I know you do within the meaning of that Court. And that
13 is, that there are special reasons here why there could be a
14 problem under 552. As the Court knows, 552(b) provides that
15 if a prepetition security agreement extends to the property
16 of the Debtor acquired before the case, and proceeds,
17 products, offspring and profits of such property, the such
18 security agreement interest extends to the proceeds,
19 products, offspring or profits acquired by the estate after
20 the commencement of the case to the extent provided by the
21 agreement and applicable non-bankruptcy law, except to the
22 extent that the Court, after notice of hearing, based upon
23 the equities of the case, orders otherwise.

24 The purpose of the equities of the case exception
25 to 552(b) is to avoid a windfall to an otherwise under

1 secured, secured creditor who, through the fortuity of the
2 bankruptcy case and the actions of the bankruptcy code upon
3 the business, would enjoy some windfall that they don't
4 deserve. So, this is a reservation of rights for the Court
5 really, to make sure, for you to make sure that when the
6 time comes, and there are buckets of value, or there's a
7 dispute, about to what extent should proceeds of a
8 prepetition security interest extend into the post-petition
9 assets of the estate.

10 The Courts there, after notice of the hearing and
11 the secured creditors will have full opportunity to make
12 sure that it comes out right. Now, in light of the fact
13 that it is often done, I wanted to focus on the reasons why
14 it's especially inappropriate to grant the waiver here. And
15 to do that, it's important for the Court to understand, to
16 make a distinction between the debtor's real property and
17 the debtor's personal property.

18 Importantly, the prepetition secured creditors
19 here do not have a lien on their unique, critically
20 important, critically specialized real estate that is used
21 every day the debtor's business to produce the revenue that
22 this company produces. Much of the most critical real
23 property of the obligated debtors -- there are some
24 regulated debtors who weren't involved, but the obligated
25 debtors that are essential to the business were sold in 2015

1 to a REIT in order for some refinancing, but in order for
2 some value to go out to equity holders. So, this REIT was
3 set up and --

4 THE COURT: That's the Unity transaction?

5 MR. WHITMORE: That's the Unity lease. So, this
6 REIT became the owner of this property that's deeply
7 insinuated into the Debtor's business, that generates the
8 revenues, including 66,000 miles of fiber optic cable,
9 235,000 miles of copper underground, their telephone poll
10 agreements and easements; all of the real property that's
11 necessary to have the footprint, for the setup debtors to be
12 able to deliver the goods, you know, the services that they
13 sell.

14 So, this case is very, very unique because --
15 then, of course, the real property was leased back to
16 holdings, who is a non-obligor -- not an obligor on our
17 notes, and not an obligor on the prepetition secured claims,
18 but just sort of a parent entity sitting out there that is
19 the tenants under this master lease. And then there's a
20 less clear, sort of mysterious set of rights that may or may
21 not flow down to the actual debtor subsidiaries that
22 originally owned this equipment and that are using it every
23 day in order to produce the money that they filter up to
24 holdings to make the payments.

25 So, it's a very unusual situation here because of

1 the importance of these real estate assets and the rights
2 that the secured creditors have. The secured parties, the
3 prepetition security agreements don't cover the lease.
4 There's no lease hold mortgage on it. And there are no
5 underlying mortgages and real estate grants on the Debtor
6 subsidiaries who gave up their property. In fact, if you
7 look at the security agreement that was done in 2015 at the
8 same time, it contains a representation that the obligated
9 debtors didn't have more than \$10 million for real estate.
10 And I think that's presumably true today.

11 So, their lien is on personal property. It's on
12 all of the things you would expect these debtors to have
13 granted, which includes accounts and chattel paper and
14 deposit accounts and documents and equipment and general
15 intangibles, instruments, inventory, investment property,
16 proceeds. And then there's intellectual property and equity
17 pledges, of course.

18 So, why is this important from a position of 552
19 and equities of the case? Well, as it was mentioned, there
20 are \$653 million a year going to pay rent, okay. If, in
21 these cases, for example, there's a negotiation under 365
22 and there's successful reduction -- let's just say, for
23 example, Unity agrees, well, I won't charge you rent for a
24 year. Well, that \$653 million of concession is something
25 that would drop right down to the bottom line and produce

1 money and these various other personal property categories
2 that would fall, or could fall, within the scope of 552, and
3 we think should be subject to the equities of the case
4 exception to allow the Court, to reserve for the Court, the
5 ability to allocate on that issue. And I would point out
6 that there's no reason to believe at this point that the
7 secured lenders, particularly the second lien lenders, are
8 over secured. There's no --

9 THE COURT: Can I just ... that doesn't seem like
10 a normal 552 argument. The rent would be cash collateral,
11 right? The money, because it's generated by the accounts?

12 MR. WHITMORE: So, yes.

13 THE COURT: So, they'd just be getting their cash
14 collateral back. I don't ... normally, 552, it's not used
15 that often, but if it's used, it's where the Debtor expends
16 free cash to enhance the collateral, like the -- you know,
17 funding a factory. But your -- the fact that you're
18 describing is just the opposite of that. It's using
19 collateral to enhance the value of unencumbered assets.

20 MR. WHITMORE: Okay. Well, Your Honor, let's look
21 at it this way. If, at the beginning of the case -- let's
22 just say, for example, the second lien of holders are under
23 secured. Perhaps they're under secured because they only
24 have lien in half of a widget making machine that produces
25 widgets, and perhaps they're under secured for -- but just

1 on the values. And so the question becomes, you know, if
2 during the case, through the fortuity of the bankruptcy
3 case, the Debtors or the Committee takes some action to
4 improve the economics or the relationship of the debtors to
5 the real estate that causes the debtors to make more money,
6 the under secured creditor would get a windfall because they
7 would have gone from under secured through 552 to catching
8 up and getting back to where they were.

9 THE COURT: Isn't that actually properly viewed
10 through the lens of Rash? You just determined the value of
11 the collateral under the Supreme Court case law. And Delta,
12 you know, the circuit case. I mean it just depends on when
13 you're valuing the collateral and what it's being used for.
14 That doesn't seem to me a 552 issue.

15 MR. WHITMORE: Well, I beg to differ in the sense
16 that --

17 THE COURT: Are there any cases that have applied
18 552 in that context where what you're talking about is not
19 the use of unencumbered assets to enhance the value, but
20 just the mere fact that the value is increased?

21 MR. WHITMORE: That's exactly what I'm talking
22 about. I'm sorry, Your Honor. They are using the
23 unencumbered property.

24 THE COURT: No, but not to increase the value. It
25 increases because it just simply increases.

1 MR. WHITMORE: Well, that's not (indiscernible)
2 correct. There's encumbered personal property and there's
3 unencumbered real estate. A dollar gets created when the
4 combination of that unencumbered real estate and their
5 personal property assets are used to produce that dollar of
6 value. So, this is the 552 situation where --

7 THE COURT: It really isn't. They're not using
8 the collateral -- they're not enhancing the value of the
9 collateral with unencumbered assets in the fact pattern
10 you're describing to me. It just... they exist together.
11 They're valued as they're valued. And it seems to me if you
12 have the reservation of rights on the Unity transaction, any
13 settlement of that would be subject to my approval and if,
14 in fact, it unduly benefits one side or the other, you know,
15 it'll be open to question.

16 MR. WHITMORE: Well, on that point, Your Honor, we
17 don't really think that we have the reservation of rights
18 that perhaps has been described to Your Honor.

19 THE COURT: Okay.

20 MR. WHITMORE: And that would be helpful. If you
21 look at Paragraph 10, it provides that the DIP lender is a
22 lease hold mortgagee on the Unity lease and that the
23 granting of that doesn't prejudice the rights of any of the
24 parties to attack that transaction. I think what would be
25 helpful, and address the concerns somewhat here, is a

1 broader preservation of all of the parties rights with
2 respect to the Unity lease transaction in general.

3 THE COURT: How are they otherwise affected by
4 this?

5 MR. WHITMORE: Well, I mean they're trying to
6 grant rights in the Unity lease all over the place.

7 THE COURT: Where?

8 MR. WHITMORE: There's an effort today to get the
9 second liens --

10 THE COURT: No. That's not the order that I'm
11 being asked to approve today.

12 MR. WHITMORE: Well, that's true, that's true.

13 THE COURT: Clearly, 552(b) should not be waived
14 lightly, but it seems to me that this is not the type of
15 situation where there's a 552(b) issue overhanging the case
16 that would offset that normal argument which is that, look,
17 we're already paying by being primed, we're already paying
18 by paying the cost of the case, including the payment of the
19 administrative expenses through the budget and the carve out
20 and the like, so we don't want to be hit again with that.
21 But this doesn't seem to me -- I mean, I am not aware of any
22 cases that would impose a 552(b) equities of the case
23 exception in the fact pattern you've described. They've
24 all, I think, involved situations where free assets were
25 spent to enhance the value of collateral, like to build a

1 factory, for example, that was half built.

2 MR. WHITMORE: Well, I think, if you look at the
3 Race Cap case, for example, which was decided based upon the
4 goodwill of the company not being proceeds as opposed to
5 equities of the case situation there. The equities of the
6 case had been waived but the Court decided that the goodwill
7 of the company didn't constitute the proceeds. But that
8 case would have been much better decided under an equities
9 of the case analysis. So, if I could just go back one more
10 time to make sure that I'm not missing something here.

11 THE COURT: Okay.

12 MR. WHITMORE: We have unencumbered real estate.

13 THE COURT: Which is just sitting there, right?

14 MR. WHITMORE: That's the Debtor's --we have
15 unencumbered real estate and we have the Debtor's legal
16 rights against the Unity lease. The legal rights against
17 the Unity lease, under 365, or perhaps to recharacterize it,
18 so that this real property comes back to the Debtors, to
19 take some other actions to get a better relationship to that
20 real estate. So, that combination of unencumbered property
21 and the efforts of the debtors through the application of
22 bankruptcy, together would potentially create an enhancement
23 to the under secured position of one of the secured lenders.

24 THE COURT: How would it? The lien still wouldn't
25 attach to that property.

1 MR. WHITMORE: Well, this is how it would work:
2 If the lease -- let's say the lease goes, the payment is
3 reduced from \$653 million, down to \$300 million, and as a
4 result of threats of rejection and other actions taken by
5 the debtors as a function of their rights against
6 unencumbered property. So, the Debtors engage in a
7 negotiation with the Committee and Unity says okay, I'll
8 reduce the rent that you need for these critically essential
9 unencumbered property. And as a result of that, that \$353.5
10 million drops right down to becoming assets that are
11 produced by the combination of the unencumbered and
12 encumbered assets. And we're not saying that it doesn't
13 belong to the secured lenders today. We just saying that
14 it's foreseeable and predictable that there will be issues
15 down the road in this case, about how best -- you brought up
16 yourself how there might be a settlement and you could, in
17 connection with the settlement, decide what was fair. You
18 want to reserve one of the right you have, which is a right
19 that's yours under the equities of the case, to make that
20 decision when those proceeds are created, to make the
21 decision about, are those proceeds really subject to 552?

22 THE COURT: A, they're not proceeds. And B, I
23 think the 552(b) exception is much more narrow and I think
24 you're positing the situation where other right would be
25 waived in addition to waiving the 552(b), which in fact,

1 aren't. So, I'm going to overrule this objection.

2 MR. WHITMORE: Okay. So, secondly, Your Honor, I
3 would like to focus on the granting of adequate protection
4 liens super priority claims against holdings. And Your
5 Honor was absolutely correct when you made the comment
6 earlier that we're not arguing that unencumbered property is
7 not a fair target for adequate protection liens, and so
8 forth. What we're arguing about is really the dynamics of
9 the case and a reservation of sort of a -- you know, the
10 Unity lease is in the operating room of this bankruptcy case
11 and we are concerned that granting unclear diminution,
12 adequate protection liens to secured creditors would
13 potentially interfere with the ability of the Committee and
14 the Debtors to figure out how to approach that legally and
15 to take some legal action when all of a sudden they can't
16 turn around and say, well, in addition to the DIP lender,
17 all these other people are saying we're violating their
18 adequate protection lien rights, that may or may not exist,
19 and we'll have to spend \$6 million litigating whether or not
20 there's been any diminution, to figure out if there's even a
21 lien in the first place.

22 So, this really relates to the preservation of
23 appropriate dynamics of the case with respect to a non-
24 obligated party. This real estate they own is not leined up
25 already and this party is not an obligor. It is a creature

1 of the master lease transaction, of the spinoff transaction,
2 of the Unity transaction. And it may be the object of it.
3 It may have a big conflict of interest with the other
4 debtors in the case and there may be some actions that need
5 to be taken. So, granting, early in the case, a bunch of
6 mortgages and liens that are unclear, you know, effectively
7 may just give veto power.

8 THE COURT: I don't understand, why do you say
9 they're -- what is unclear about them?

10 MR. WHITMORE: Whether or not there's any real
11 dollars associated with the diminution.

12 THE COURT: Well, that's to be decided later if it
13 ever comes up. It may not be, it may never come up. It
14 usually doesn't.

15 MR. WHITMORE: Well, but at the time you're trying
16 to do something in connection with holdings in the case,
17 let's say two or three months from now, there is some
18 strategy that was being pursued by the Debtors or the
19 Committee or other parties to get value out of the Unity
20 lease transaction. It could complicate and interfere with
21 that for other parties to be granted adequate protection
22 liens when they don't need them. They're already getting,
23 they're already spreading their collateral. They're picking
24 up the real estate on all of their existing obligors.

25 THE COURT: You just told me that was \$10 million.

1 MR. WHITMORE: Well, but it may be \$10 million or
2 it may be that that real estate that they owned back in 2015
3 they never really sold.

4 THE COURT: That's right. Say that again?

5 MR. WHITMORE: Well, the -- if that lease was
6 recharacterized or --

7 THE COURT: But that's the if. Okay, but then
8 that's -- I'm having a hard time following what you're
9 trying to convince me of here. It doesn't ... the lien is
10 only covering diminution in their collateral value.

11 MR. WHITMORE: That's true.

12 THE COURT: So, yes, that may be hard to measure.
13 It's hard for them to measure too. They would have to
14 litigate that too. But I don't see how it complicates
15 anything. It seems to me to kick an issue down the road. I
16 mean, I suppose if there was some sort of plan that modified
17 the Unity relationship, the DIP lenders and the first lien
18 holders would have to decide whether their diminution claim
19 was so large that they would really take the side of the
20 Unity end of that transaction or the other side. But other
21 than that, but other than that, I mean that's what
22 everyone's going to be deciding anyway.

23 MR. WHITMORE: It just gives them leverage in, you
24 know, if there are negotiations it gives them leverage. I
25 mean we have a prepetition group that's exactly the consent

1 fee of millions of dollars.

2 THE COURT: But it's only leverage as to
3 diminution.

4 MR. WHITMORE: Well, no, the mere --

5 THE COURT: And hopefully this company is going to
6 actually grow as opposed to diminish. In fact, that was
7 the, I think, what you were trying to convince me of with
8 the 552(b) argument.

9 MR. WHITMORE: So, I guess what we're talking
10 about is the dynamics of the case. Is it really appropriate
11 to -- under the rubric of adequate protection claims, even
12 though it's only for the diminution, is it really
13 appropriate to allow the prepetition secured parties to have
14 a say as a lease-hold mortgagee of holdings rights about
15 what happens in that transaction? And they can use that
16 leverage or that power to slow things down or to stop
17 things, however, they choose in the case. And you know,
18 they didn't --

19 THE COURT: Well, it's only as a party of interest
20 objecting to a settlement. That's not a tremendous amount
21 of leverage.

22 MR. WHITMORE: You don't get to a settlement if
23 the debtors conclude that they can't proceed with a certain
24 strategy without prepetition secured lenders dealing with
25 their adequate protection claims.

1 THE COURT: It seems to remote to me.

2 MR. WHITMORE: Okay.

3 THE COURT: Particularly when we're talking about
4 DIP lenders and first lien lenders.

5 MR. WHITMORE: Yes, and that does bring up the
6 question -- on the second lien lenders, our objection would
7 have included the second lien lenders if they were included,
8 and we would reserve any rights if there's going to be an
9 extension of existing order in that respect. Thank you.

10 THE COURT: Okay, so I'm going to overrule that
11 objection as well.

12 MR. WEILAND: Thank you, Your Honor. I think with
13 that, that's really the balance of the DIP presentation. I
14 think we have --

15 THE COURT: Someone's standing up behind you.

16 MR. WEILAND: I have a couple of point to talk to
17 Mr. Graulich about but maybe he'll talk to all of us about
18 that.

19 THE COURT: All right.

20 MR. GRAULICH: Good afternoon, Your Honor.
21 Timothy Graulich of Davis Polk on behalf of Citibank as DIP
22 agent. Just a few brief comments, observations. The first
23 is that there's been repeated reference to footnote 10,
24 which as far as I know, it's footnote 9. So, if people are
25 referring to a footnote 10, there's a version of the DIP

1 order that I haven't seen and if folks could get me a copy
2 of that to make sure that there haven't been additional
3 changes.

4 But at least what we've filed on the docket on
5 Friday and what has been circulated -- and this is the
6 footnote that talks about the Unity lease.

7 THE COURT: The Unity footnote. Right. Okay.

8 MR. GRAULICH: So, okay.

9 THE COURT: Actually, mine is 10.

10 MR. GRAULICH: Yours is 10? Okay, so we'll get to
11 the bottom of that.

12 THE COURT: I think it's the same language,
13 though.

14 MR. GRAULICH: No, I just want to make sure that
15 there's nothing additional happening in the order, but --

16 THE COURT: Okay.

17 MR. GRAULICH: -- we'll --

18 THE COURT: Clearly, that --

19 MR. WEILAND: Your Honor, I think it's just a
20 redlining issue.

21 THE COURT: Okay.

22 MR. GRAULICH: But -- okay. The second point is,
23 this has been a very fluid situation. The issue with
24 respect to the second liens and the Committee sort of came
25 to our attention moments before it came to your attention.

1 The proposed solution here is something that I need to
2 discuss with Citibank because I understand that we're
3 probably going to be asked to fund, notwithstanding the fact
4 that there'll be potentially -- assuming, if without
5 assuming facts not in evidence, if an order is entered,
6 there's going to be an expectation that we fund with an
7 expectation that the order may be amended shortly
8 thereafter.

9 I believe under 364(e), we shouldn't have an issue
10 with that, but it is something --

11 THE COURT: Well --

12 MR. GRAULICH: -- that is unusual and that I would
13 need to discuss.

14 THE COURT: Well, let me ask you, was Citi
15 comfortable with the seconds getting a lien on the holding
16 collateral?

17 MR. GRAULICH: It is nothing that has been
18 discussed with them. As their counsel, I would not
19 recommend that they should have an issue with that.

20 THE COURT: All right. Well, that's -- I just
21 wanted to -- okay. But as far as 364(e) is concerned, you
22 can rely on the order.

23 MR. GRAULICH: Exactly. So just to sort of go
24 back in time a little bit, this has been a somewhat unusual
25 set of financings in the fact that in the interim order, we

1 funded on an oral ruling from Your Honor --

2 THE COURT: Right.

3 MR. GRAULICH: -- on a terms sheet, so there's
4 been normal flexibility that you see in cases and there's
5 the sort of extraordinary gymnastics we've done in this case
6 which is --

7 THE COURT: Right.

8 MR. GRAULICH: -- fine, but just like I haven't
9 buffed and advised the client to lend on an oral ruling, I
10 also haven't often advised them with respect to advancing
11 \$500 million on an order that potentially is going to be
12 changed, albeit in a way that should not affect them. So I
13 do --

14 THE COURT: Okay.

15 MR. GRAULICH: -- just need to confirm that the
16 Debtors' proposed resolution here is acceptable and just
17 like to note that we would not anticipate other than this
18 one cabined issue that people are going to be seeking to
19 revisit the adequate protection under the DIP order. If
20 folks need to change or amend adequate protection on a
21 prospective basis, that should be a separate matter.

22 THE COURT: Okay.

23 MR. GRAULICH: And then lastly, Your Honor, to
24 address the question about the covenant that you raise with
25 --

1 THE COURT: Right.

2 MR. GRAULICH: -- with counsel. Just a few points
3 on that. One is, we do submit that this is a fairly
4 standard provision. Counsel has filed a reply to the U.S.
5 Bank objection that cited a number of cases in which this
6 type of a covenant was present. I will say that just a very
7 brief review of the docket in the Southern District, a
8 couple name that probably are familiar to Your Honor, for
9 example, like J&B, Tops Holding, Sears --

10 THE COURT: Well, I know those two, no one raised
11 the issue. I doubt they did in the other ones, either.

12 MR. GRAULICH: That may well be correct. I'm just
13 talking about from a lender's expectation at this point. We
14 do have a fully syndicated deal. I'm not going to be here
15 and represent to you that somebody only made the decision to
16 fund because of this provision, but there is a mechanical
17 administrative issue at this point of going back to the
18 syndicate with an amendment to the credit agreement.

19 THE COURT: Well, it could be dealt with in the
20 order with the five days provision.

21 MR. GRAULICH: In the sense of, that within five--

22 THE COURT: I'm not exactly sure, because I
23 haven't looked at it, whether that order says that the only
24 point the Debtors can raise is whether there's been a
25 default.

1 MR. GRAULICH: That is my -- yes, and also that
2 they can come in and seek the nonconsensual use of cash
3 collateral.

4 THE COURT: Okay.

5 MR. GRAULICH: So --

6 THE COURT: All right, well, that may be enough.
7 That may be enough for me.

8 MR. GRAULICH: Okay.

9 THE COURT: I'm just giving people a heads up that
10 I would have a real problem if (indiscernible) default were
11 called based on an exclusivity order that made perfect
12 sense.

13 MR. GRAULICH: And, Your Honor, again, sometimes
14 the past is not prologue, but the DIP lenders have acted --

15 THE COURT: They've been perfectly -- well,
16 actually more. They've gone above and beyond in this case,
17 so I doubt they would do anything --

18 MR. GRAULICH: So I would not anticipate that
19 behavior --

20 THE COURT: -- precipitous.

21 MR. GRAULICH: -- to change.

22 THE COURT: Right. Okay.

23 MR. GRAULICH: Thank you, Your Honor.

24 THE COURT: Okay. So I guess the short answer is,
25 I will grant the DIP motion as modified. You don't need to

1 modify anything in the DIP agreement about the exclusivity
2 covenant. I think people have a heads up on how I would
3 treat such a default, if the Debtors objected.

4 MR. WEILAND: I think so, Your Honor.

5 THE COURT: Okay.

6 MR. WEILAND: So with that, Your Honor, I'd submit
7 the DIP for approval. I do think we will submit an order
8 once we confirm maybe a little bit of language with the
9 Committee and the seconds on the one point and then I think
10 we would submit, hopefully, an amended order very soon after
11 we can have some further discussions once the Committee call
12 is confirmed.

13 THE COURT: Okay.

14 MR. WEILAND: Thank you, Your Honor.

15 THE COURT: Okay. Very well.

16 MR. LUZE: Your Honor, Jack Luze from Kirkland and
17 Ellis on behalf of the Debtors. That brings us to Agenda
18 Item 3. If Your Honor -- please the Court to proceed, it is
19 our second contested matter. Mr. Rukavina is here. We
20 conferred with him yesterday and prior to the hearing today
21 and I think we're in agreement; although, Mr. Rukavina can
22 certainly speak up.

23 We have a witness here, Mr. Grossi from Alvarez
24 and Marsal, who's prepared to testify in support of the
25 relief sought in the motion and we are proposed to get into

1 the testimony and save argument for after the conclusion of
2 the testimony.

3 THE COURT: Okay. All right.

4 MR. RUKAVINA: Your Honor, Davor Rukavina for GLM
5 DFW. I generally agree with that. I do, however, have an
6 objection based on due process to proceeding. The Court
7 might think I'm putting the cart before the horse, but one
8 of our objections is that we do not know, nor have we been
9 provided the list of critical vendors nor their amounts, so
10 I'm being asked to cross examine a witness and I'm being
11 asked to participate in an evidentiary hearing without
12 adequate advanced information.

13 And that just may be how this has to proceed, but
14 I want to preserve my objection for the record and really,
15 in response, you hear two things. In response, you hear,
16 well, that identity of our vendors might give our
17 competitors business advantage information. That can be
18 remedied through sealing certain process, but also they
19 filed a list of creditors.

20 They're going to file a schedule, so I don't think
21 that argument carries much water. And the other argument is
22 that Your Honor has entered four orders before where Your
23 Honor has basically put all that under seal and in camera
24 and those are the Aegean Marine case, the Avaya case, BCBG
25 Max, and Hawker Beechcraft. Judge, I have looked at all

1 four of those matters. The motion, the proposed order, and
2 the interim order do not contain anything like that. The
3 final orders did.

4 The final orders did say that all of this is going
5 to be under seal and confidential, so I don't know how the
6 motion proceeded to come to that, but no creditor objected
7 to that because it wasn't an issue, so I would, for the
8 record, state that we should not proceed on an evidentiary
9 hearing today without that information being provided, but
10 again, the Court might find that that's putting the cart
11 before the horse because that's a substantive objection.

12 MR. LUZE: Your Honor, I'd address the argument
13 briefly. I think that it's probably something best dealt
14 with more wholly in the argument following the evidence, but
15 --

16 THE COURT: Well, is your witness going to discuss
17 specific vendors?

18 MR. LUZE: No.

19 THE COURT: Okay, so it should be dealt with in
20 the argument.

21 MR. LUZE: Okay. Absolutely, Your Honor.

22 THE COURT: Okay. All right, so is the mic on
23 over there? All right, so if you could call your witness
24 and he can move that bench a little towards me. It's kind
25 of stuck by the wall there. Yeah.

1 MR. HOWELL: Good afternoon, Your Honor. Rush
2 Howell from Kirkland and Ellis, proposed counsel to the
3 Debtors. We'll call our first and only witness on this
4 matter which is Mr. Nick Grossi from Alvarez and Marsal.

5 THE COURT: Okay. If you can come up here. Okay,
6 would you raise your right hand, please? Do you swear or
7 affirm to tell the truth, the whole truth, and nothing but
8 the truth, so help you God?

9 MR. GROSSI: I do.

10 THE COURT: And would you spell your name for the
11 record?

12 MR. GROSSI: G-R-O-S-S-I, Grossi.

13 THE COURT: Okay. Okay, you can go ahead.

14 DIRECT EXAMINATION OF NICHOLAS GROSSI

15 BY MR. HOWELL:

16 Q All right, good. So we got you at the kids' table over
17 there and ready to go.

18 A Yeah. Okay.

19 Q Mr. Grossi, by whom are you employed?

20 A I'm employed by Alvarez and Marsal.

21 Q And what is your position with Alvarez and Marsal?

22 A I'm a managing director.

23 Q How long have you been with Alvarez and Marsal?

24 A I've been with A&M for just shy of 13 years.

25 Q And could you describe briefly for the Court the

1 different positions that you've held with A&M since you got
2 there 13 years ago until today and the difference in roles
3 and responsibilities in those positions?

4 A Sure. So I started at A&M as an analyst and over the
5 course of the past decade, I've worked in various different
6 industries with many different companies, mostly focused on
7 debtor side advisory, company side advisory as well. As an
8 analyst at A&M, your primary responsibilities are really
9 developing disparate parts of models or financial analyses.
10 You're not necessarily responsible for a workstream.

11 As your career progresses, you continue to develop
12 your tool kit, gain more client experience, gain more
13 Chapter 11 and bankruptcy experience. You start to take on
14 more of a leadership role. At A&M for directors, we really
15 view directors as folks who not necessarily run a model or
16 run an analysis but more run the workstream and take a
17 leadership role in that.

18 And then as a managing director, you're obviously
19 taking a leadership role in the workstream, but you're also
20 providing guidance to the team, allocating resources, and
21 making sure that things are getting done in the manner in
22 which they should be.

23 Q Can you give just a couple examples of the types of
24 workstreams that a director or managing director would
25 preside over?

1 A Sure. I can speak specifically to Windstream. Our
2 mandate on Windstream was really to ensure a smooth
3 transition into Chapter 11 and by ensuring the smooth
4 transition into Chapter 11, it really hit on a few main
5 topics and that was reviewing motions for first day.

6 It's developing 13 new cash flows -- near-term,
7 long-term budgets, cash flow forecasts. Making sure that
8 the company has processes in place, working with the
9 accounting team to split pre- and post-petition invoices.
10 Make sure that things we can pay get paid in a timely
11 manner. The things that we shouldn't pay, don't get paid.
12 Myself and my team, we (indiscernible) the schedules and
13 statements. We do bankruptcy reporting. Those are all
14 activities that a director or a managing director would be
15 responsible for.

16 Q Would the creation of the critical vendor list be
17 deemed a workstream?

18 A Absolutely. Yes.

19 Q Now, when you hired into A&M 13 years ago, what group
20 did you hire into?

21 A I was in the restructuring group.

22 Q Have you been in the restructuring group all 13 years?

23 A I have.

24 Q And around how many total engagements have you worked
25 on during that period?

1 A About 20.

2 Q And on those engagements, how many times have you
3 previously worked on putting together a critical vendor
4 list?

5 A I've led the process at least a handful of times and
6 I've been involved in the process probably another handful.

7 THE COURT: I'm sorry, probably what?

8 MR. GROSSI: Another handful.

9 THE COURT: Okay.

10 Q Turning now to the specific Windstream matter, when was
11 Alvarez and Marsal engaged in this case?

12 A Alvarez and Marsal was engaged on February 21st.

13 Q When did you, personally, begin working with the
14 Debtors in this case?

15 A February 21st.

16 Q And I think you already described for the judge a bunch
17 of the work that you've been doing. Where have you been
18 located that you're doing that work?

19 A We're primarily located with the client, so we've been
20 spending our time in Little Rock, Arkansas.

21 Q Around how much of your work time are you dedicating to
22 the Debtors right now?

23 A Almost all of it. Ninety-nine percent of my time is
24 spent dedicated to Windstream.

25 Q And of that time that you're spending with the Debtors,

1 how much has been dedicated to addressing vendor issues?

2 A Sure. I'd say, early on in the process for the first
3 few weeks that we filed, 75 to 80 percent of my time was
4 spent on vendor and supply chain related issues. I'd like
5 to think that sitting here today, we're in a good position
6 with our vendor base. Haven't had any meaningful supply
7 chain issues or continuity of supply issues, so I've been
8 spending less time today than I have been earlier.

9 Q Who else have you been working with on these vendor
10 issues?

11 A So we're supported by a team of A&M professionals.
12 There's three senior resources from A&M who sit on the team.
13 We also have the support of a -- what we call a vendor
14 resolution group and this vendor resolution group is very
15 important because it's not just A&M. It's composed of folks
16 from operations and supply chain as well. And the vendor
17 resolution group has an additional 12 people who sit on it.
18 One is the head of supply chains. There's two senior
19 directors in supply chain and there's various other people
20 who are in procurement supply chain group.

21 Q Okay. Now, I'm going to talk about the process that
22 the Debtors us to come up with a critical vendor list, okay?
23 Were you involved in that process?

24 A I was.

25 Q And what was your and Alvarez's role in putting

1 together a critical vendor list?

2 A So we validated the company's assertion of their
3 critical vendor list.

4 Q I'm sorry, I didn't catch the last part.

5 A We validated the company's assertion of their critical
6 vendor list.

7 Q And so what was it that you went and validated?

8 A Sure. So this is a very complex, very large case, so
9 we really started with what was on the balance sheet. We
10 looked at accounts payable --

11 MR. RUKAVINA: Your Honor, at this time, I would
12 object to the word we. The question was, what did you do,
13 how did you evaluate. The witness has to speak from
14 personal knowledge.

15 THE COURT: Okay. speaking from your personal
16 knowledge, you can answer that question.

17 A Sure. So I started with the balance sheet and looked
18 at the payables that the company had on its books and
19 records as of the petition date. I had also looked at any
20 other accrued liabilities that may be due and liable at the
21 petition date. This is a very large, complex company, so
22 there's 15,000 vendors that make up the liabilities which
23 are around \$400 million at the time that we had filed.

24 The process to validate the critical vendor list
25 was really to start at that point. And then not necessarily

1 saying who's a critical vendor, but starting from the
2 approach of saying what tools do we have to potentially deal
3 with some of these other issues through the bankruptcy. And
4 we looked at our vendors -- I looked at our vendors who had
5 contracts and the vendors who had executory contracts, a
6 large subset of the vendors that we filed had executory
7 contracts and we well that we could compel performance to
8 those vendors.

9 We looked at our group of vendors with liabilities
10 at the petition date and said, who can asset a lien, who has
11 a 503(b)(9) claim. If you had a contract, you had a lien,
12 you had a 503(b)(9) claim, all those issues were put to the
13 side so we had other tools at our disposal to deal with
14 those issues throughout the bankruptcy. So then we're left
15 with what's left over, and that was hundreds of vendors and
16 this is, again, where this vendor resolution group came in a
17 very important manner.

18 This wasn't A&M in a vacuum making their
19 determination who was critical. It was working hand-in-
20 glove with the company's chief procurement officer, the
21 senior folks who are in the procurement group. This group
22 was very broad, touched many different components of the
23 organization. And really working with that group to ask a
24 few questions. Is the vendor critical, and what does that
25 mean?

1 Q So what criteria did you use to address that question
2 of, is the vendor critical?

3 A Sure. So if that vendor were to cease providing
4 service or to stop shipping product, would that cause
5 disruption to the business and would that disruption cause
6 irreparable harm. Could that vendor be resourced? Is there
7 an alternative where we could go out and find an alternative
8 for that vendor?

9 The questions that we had to ask ourselves for
10 vendors who provide product and provide a service, how
11 specific is this? Is it something that has been certified,
12 and it's a lengthy certification process to get the
13 equipment? You can't go out quickly and make those
14 determinations. Those were all things that we took into
15 account and really looking at contracts. Can they disrupt
16 the business and can we resource this?

17 Q Now, you testified you've worked on other projects
18 where you put together a critical vendor list. Was the
19 process that you used here similar to what you had used in
20 your other case?

21 A Absolutely. This is a process that I, myself, have
22 used many times in the past and yeah. It was something that
23 we've used, for sure.

24 Q How robust would you describe that process is?

25 A Well, I'll try to give the Court a sense just for the

1 process that we undertook. I feel that it's very robust,
2 really looking at all liabilities and including a broad
3 range of people at the company who are closest to our vendor
4 relationships to help formulate decisions.

5 Q Now, once you finish that first exercise where you
6 create the critical vendor list, do you just pay all of
7 those critical vendors in full at that point?

8 A No, absolutely not. The real purpose of that critical
9 vendor list is a sizing analysis, and that's something that
10 we wanted to ensure that we have the appropriate flexibility
11 to operate the business as we're in Chapter 11. By no means
12 is that list the guarantee of payment.

13 Q So what do you do, then, once you have the critical
14 vendor list and somewhat elevates or raises the issue of a
15 vendor where you have to address whether or not they should
16 get paid out of funds available for critical vendors?

17 A Every discussion is an individual discussion based on
18 that particular vendor situation. Our vendor resolution
19 group meets every day. We have a very formalized
20 communication process where vendor issues, in particular,
21 get escalated and bubbled up through this process. Every
22 vendor, whether they're on a sizing analysis or not, we view
23 through the same lens and it's doing that initial analysis.
24 Do they have a contract? Can they disrupt our business?
25 Can we resource them?

1 Q Now that process you just described, that kind of case-
2 by-case analysis of particular vendors, is that a similar
3 process that you've used in the other cases where you worked
4 on vendor issues?

5 A Absolutely, yes.

6 Q How much is the company requesting to have available to
7 pay critical vendors?

8 A The critical vendor bucket was \$81 million.

9 THE COURT: I'm sorry?

10 MR. GROSSI: \$81 million.

11 Q And how much have you disbursed so far?

12 A Through last week, we've disbursed \$6.7 million.

13 THE COURT: I'm --

14 MR. GROSSI: 6.7.

15 Q What concerns, if any, do you have if the company does
16 not receive the relief it seeks in this motion?

17 A I would be very concerned. The critical vendor relief
18 is very important to us, and it's important from the
19 perspective that it gives us flexibility. It gives us
20 flexibility to deal with vendors who may be irrational and
21 they attempt to do harm to the business. It is very
22 important that we have the right tools in place to operate
23 the business.

24 Q You have concerns about the ability for the business to
25 operate absent access to critical vendor funds?

1 A Absolutely.

2 Q Now, have you told the vendors on the critical vendor
3 list that they're on that list?

4 A No.

5 Q Why not?

6 A So there's a couple things. I've never, in 13 years,
7 published a list or articulated to a vendor that they were
8 on a list. Telling a vendor that they're on a list deprives
9 us of any leverage that the company may have in a
10 negotiation with that vendor, number one. Number two, if
11 you were to publish that list, my concern is that you would
12 have what was essentially a run on the bank.

13 We've received relief for critical vendor dollars
14 of \$81 million. If that list were made public, I can almost
15 assure you that you would have most vendors on that list
16 very quickly calling a company and demanding payment that's
17 on that list. That would be a massive working capital
18 impact. It would also disrupt the business, so I would not
19 recommend sharing those.

20 Q Have you provided that list to anyone in this case?

21 A Yes. So the Unsecured Creditor Committee had requested
22 the list. The United States Trustee had requested the list.
23 We have provided it. In both scenarios, we've discussed
24 with constituents how that list was developed.

25 Q To your knowledge, did either the Official Committee of

1 Unsecured Creditors or the U.S. Trustee express any concerns
2 about that list or the process used to create that list?

3 A No, not to my knowledge.

4 Q I want to specifically talk just for a few moments to
5 end here, about GLM, the objector here. Are you familiar
6 that they are a vendor of Windstream?

7 A Yes, I am.

8 Q Were you involved in the process to determine if GLM is
9 a critical vendor?

10 A I was.

11 Q Did the company, with Alvarez's assistance, deem GLM to
12 be a critical vendor?

13 A No.

14 Q Why not?

15 A So GLM is a vendor who has a contract. GLM and the
16 company had agreed that that was an executory contract. GLM
17 refused to provide service post-petition. The company was
18 forced to investigate the opportunity to resource, which the
19 company was able to do very quickly with really no
20 incremental cost in doing so.

21 Q Well, has there been any disruption -- material
22 disruption associated with replacing GLM?

23 A No, there has not.

24 MR. HOWELL: No further questions, Your Honor.

25 THE COURT: Okay. Any cross?

1 CROSS EXAMINATION OF NICHOLAS GROSSI

2 BY MR. RUKAVINA:

3 Q So you were hired February 21, and you filed the motion
4 with the first day affidavit February 25th, correct?

5 A That's correct.

6 Q In four days' time, you were able to go through 16,000
7 vendors and determine which were potentially critical or
8 not, correct?

9 MR. HOWELL: Object to form. Mischaracterizes his
10 prior testimony.

11 MR. RUKAVINA: I'll rephrase it.

12 Q Are you aware that on the first day declaration, chief
13 executive officer identified 263 critical vendors and that
14 that was filed on February 25th of this year?

15 A I am aware of that.

16 Q Did you participate with the chief executive officer
17 narrowing the field down from 16,000 to 263?

18 A I did.

19 Q So how were you able to, in four days' time with all
20 the rest that's going on, go through 16,000 vendors and
21 analyze for criticality?

22 A Yeah, it's a good question. So the company had
23 established the initial critical vendor list and to your
24 point, had very little time to do so. We had validated that
25 list. The completion of validating that list was not

1 completed by the time that that was filed. It had started
2 and it had continued, but that list was not fully validated
3 by A&M when it was filed.

4 Q So when was the validation process completed?

5 A The Thursday or Friday after we filed. We filed on a
6 Monday --

7 Q So within 10 days of you being hired, you had validated
8 the company's list?

9 A For sure.

10 Q Gone through the 16,000 vendors?

11 A Absolutely.

12 Q Okay. And the judge probably won't let me ask for
13 particulars about any critical vendor, but as of today, how
14 many critical vendors have been paid?

15 A We've paid, I believe, 12 critical vendors to date.

16 THE COURT: I'm sorry?

17 MR. GROSSI: Twelve critical vendors to date,
18 we've paid.

19 THE COURT: Okay.

20 Q So do I understand that the reason why it went down
21 from 263 to 12 is, one, validation and two, using economic
22 leverage to basically negotiate better terms for the
23 company?

24 A I'm not sure I understand the question from 263 to 12.

25 Q Let me ask you -- let me just, then, ask you to take

1 the Court from the process of 263 to 12 as of today.

2 A Sure. So when we deal with critical vendor issues as
3 they arise. And we've been very pragmatic in negotiation,
4 negotiating with our critical vendors. By no means do I
5 attempt to sit here and imply that there will be 12 vendors
6 who receive payment through our first day motions.

7 That's simply not the case. We generally have
8 good relationships with our vendors. They have continued to
9 work with us through this process. I fully anticipate using
10 our critical vendor funds. Just so happens today, through
11 the first five weeks of the case -- I view it as a positive
12 -- we've only spent \$6.7 million amongst 12 vendors.

13 Q What is your best estimate at the end of the day as to
14 how many critical vendors there will be and approximately
15 how much the company will end up paying them, understanding
16 that it's an estimate and obviously no one knows for sure?

17 A Sure. So we had subsequently validated the company's
18 list and I feel, based on what I know today, there's really
19 no difference in the estimate from what was determined back
20 on February 25th.

21 Q Okay. So pretty much all of the 263 identified by the
22 company have been validated?

23 A All of the --

24 Q Let me -- maybe I'm misunderstanding. When the chief
25 executive officer filed his declaration listing 263 vendors,

1 you had not validated that number yet, had you?

2 A We were in the process of validating that.

3 Q Understand. So at the end of the validation process,
4 did all 263 get validates by Alvarez as legitimate critical
5 vendors?

6 A Sure. Through our process, there were a handful that
7 came off; there were a handful that went on. But we fully
8 believe that the company did a good job in developing that
9 analysis and we feel that the critical vendor amount that
10 was sized is the appropriate amount and that was determined
11 through that validation process.

12 Q Okay. So maybe not 263, but maybe in the neighborhood
13 of 250, 240, somewhere around there?

14 A I think you'll see that there's probably 260 vendors
15 that --

16 Q So --

17 A -- fell into that category.

18 Q So there will be upwards of \$80 million or \$81 million
19 at the end of the day?

20 A I believe so.

21 Q Okay. And in the meantime, you're trying to use the
22 economic leverage from the potential of being treated as a
23 critical vendor or not to better the terms that these
24 vendors provide to the company, correct?

25 A So anytime that we spend critical vendor dollars, we

1 are asking in consideration for the same trade terms that we
2 had before this process had started. So we are absolutely
3 asking our vendors to treat us as they did before, if
4 they're to receive any funds due to critical vendor
5 allotment.

6 Q Okay. Any other negotiation tools that you might use
7 to try to maybe get them to say, we don't need full payment
8 right now?

9 A Not specifically.

10 Q So the extent of your testimony as to whatever economic
11 negotiations you'll have are, we just want the same or even
12 better terms, repayment terms as we had prepetition?

13 MR. HOWELL: Objection. Again, mischaracterizes
14 prior testimony.

15 MR. RUKAVINA: Well, that's what he testified to.
16 I'm just asking is that the only thing or is the process
17 broader than that one.

18 THE COURT: I think he already answered that, but
19 --

20 MR. RUKAVINA: Okay. I'll move on.

21 Q Now sir, Mr. Grossi, which vendors -- critical vendors
22 did you personally talk to? Let me ask differently. Did
23 you personally talk to any critical vendor?

24 A I have.

25 Q Okay. How many?

1 A Probably six.

2 Q So for 257 of them, you have not spoken to them?

3 A That's correct.

4 Q Okay. Now I'm going to ask the question and then the
5 judge will make a ruling. What are the six that you spoke
6 to, the names.

7 MR. HOWELL: Objection, Your Honor, two bases.
8 Both relevance and 403. I don't think -- for the reasons
9 that we've articulated in our motion and Mr. Grossi's
10 already testified to, I think disclosure of any of these
11 vendors in this proceeding is prejudicial to the company,
12 hurts our leverage in negotiation and operating going
13 forward. Also don't think it's relevant to the bases for
14 the objection.

15 MR. RUKAVINA: Well, Your Honor, relevance is --
16 that's why were here today. Who is a critical vendor? And
17 --

18 THE COURT: I'm going to sustain the objection.

19 MR. RUKAVINA: Thank you.

20 Q How many lien claims --

21 THE COURT: It's obvious to me that someone who
22 wants to be a critical vendor is trying to harm this company
23 by getting it to disclose information that is detrimental to
24 the company and of no use whatsoever to the objectant.

25 Q How many of the lien claims --

1 THE COURT: Who has taken a strategy to violate
2 the automatic stay and cut itself off from the potential of
3 having its executory contract being assumed and its defaults
4 cured.

5 MR. RUKAVINA: Well, on that point, Your Honor.

6 Q Mr. Grossi, you said that GLM refused to provide post-
7 petition services. What post-petition services did GLM
8 refuse to provide?

9 A So --

10 Q Well first of all, what services does GLM provide to
11 the Debtors?

12 A Sure. So it's my understanding that GLM is essentially
13 an aggregator for our waste hauling services. The company
14 has hundreds of sites that require trash removal. GLM helps
15 coordinate those services.

16 Q What services has GLM refused to provide post-petition?

17 A So we have heard from folks in the field, trash wasn't
18 being picked up. We've had dumpsters that were no longer at
19 locations. We have the ability, as I'm sure you know, many
20 of these accounts are actually in Windstream's name versus
21 being in GLM's name. GLM essentially acts as a passthrough,
22 so we pay GLM; GLM then pays the haulers. We've paid GLM
23 for post-petition services. We've heard from haulers that
24 they had not been paid and we had trash building up that was
25 uncollected.

1 Q Are you aware that where third-party vendors stopped
2 picking up trash, GLM did everything they could to try to
3 get them to come out there and pick up trash?

4 A I'm sorry. Can you repeat the question?

5 Q Yes. Are you aware that in many instances where third-
6 party vendors like Waste Management, Republic, where they
7 refused to pick up trash, that GLM has done everything it
8 could including threatening the automatic stay, et cetera,
9 to try to get them to go out there and pick up trash?

10 A I don't know what GLM has done.

11 Q Okay. Isn't it a fact, sir, that you know that it's
12 just a matter of GLM doesn't have \$200,000 to pay the third-
13 party vendors at this time?

14 A I have no --

15 MR. HOWELL: Object to foundation.

16 Q So again, what post-petition service --

17 THE COURT: No -- he answered. He didn't know or
18 you know, so...

19 Q So what post-petition services has GLM refused to
20 provide?

21 A The fact that we have trash building up.

22 Q But GLM is not a waste hauler, is it, sir?

23 A Well, but we pay GLM for post-petition services and
24 they're obligated to pass that on, per the arrangement to
25 the third-party haulers. And we have access to view the

1 accounts to see if those funds have been passed on to third-
2 party haulers, and based on our analysis they haven't.

3 That, to me, isn't providing post-petition services.

4 Q What about if the fact that you don't pay GLM means
5 that GLM doesn't have the money to pay the vendors on
6 account of prepetition services? Wouldn't that change the
7 calculus?

8 MR. HOWELL: Objection. No foundation. Calls for
9 speculating.

10 MR. RUKAVINA: Your Honor has stated that my
11 client --

12 THE COURT: This is just legal argument at this
13 point.

14 MR. RUKAVINA: But Your Honor has stated that my
15 client violated the automatic stay based on --

16 THE COURT: We have the facts out there. You can
17 argue whether it has or hasn't, but that's a legal point.

18 Q Okay. I don't remember if I asked, how many lien
19 claimants did you talk to personally?

20 A Only one lien claimant.

21 Q And how many 503(b)(9) claimants did you talk to
22 personally?

23 A No 503(b) --

24 Q I'm sorry?

25 A No 503(b)(9) claimants.

1 Q What analysis did you undertake as to potential
2 avoidability of lien claimants' liens?

3 A I have not performed any analysis.

4 Q What analysis --

5 A Any time that we have paid or used funds to pay a
6 lienholder, we've consulted with counsel to determine
7 whether it was a valid lien and it could fall under
8 (indiscernible).

9 Q Okay. So there is an analysis being undertaken about
10 the avoidance or potential avoidance of liens?

11 A I don't know.

12 Q Okay. What analysis have you undertaken to review the
13 merits of the 503(b)(9) claims?

14 A Sure. So if a vendor asserts 503(b)(9), we validate
15 the 503(b)(9). It's not very complex. It's understanding
16 when product was shipped and when it was received and when
17 title of the goods changes hands, so before spending any
18 funds from the 503(b)(9) bucket, we would (indiscernible)
19 analysis.

20 Q And what analysis have you undertaken, if any, to
21 review whether any of the critical vendors are subject to
22 avoidance actions on account of prepetition transfer?

23 A I have not.

24 Q Do you know whether that has been done by Alvarez or
25 the Debtors?

1 A I am not aware.

2 Q Okay. Can you say here, sir, that of all of the 263
3 vendors that each of them has or will refuse to provide
4 services or goods post-petition without payment in full of
5 its prepetition claim?

6 A Can you repeat the question, please?

7 Q Yes, sir. Can you state, sir, today under oath, that
8 all 263 critical vendors have or will refuse to provide
9 services or goods post-petition without the full payment of
10 their prepetition debt?

11 MR. HOWELL: Object to foundation.

12 (Indiscernible) answer what all of those are going to do,
13 Your Honor.

14 THE COURT: I'm sorry, I didn't hear the last
15 part. Object to foundation.

16 MR. HOWELL: He doesn't have knowledge of what all
17 of those vendors are going to do.

18 THE COURT: That's -- I really didn't understand
19 the purpose of the question.

20 MR. RUKAVINA: Well, Your Honor, it goes to the
21 factors identified by the caselaw as to what --

22 THE COURT: No, it doesn't. You don't get the
23 point. The reason they've only paid 12 to date is because
24 they haven't asked. He's only going to deal with them if
25 they do ask. You want them to pay a blank check for the

1 full amount. So I'm going to sustain the objection,
2 basically, on ground of relevance and legal acuity.

3 Q Can you state, sir, or do you believe that all the 263
4 critical vendors are irreplaceable, i.e., there's no other
5 alternative to the Debtor without paying them in full on
6 their prepetition debt?

7 MR. HOWELL: Same objection, Your Honor.

8 THE COURT: Can you say it again? I'm so sorry.

9 MR. RUKAVINA: Yes, Your Honor.

10 Q Can you state that you believe that for all 263
11 critical vendors there is no other cover or replacement
12 vendor -- I forget the term you used before -- that you
13 would have available if those vendors discontinued services?

14 THE COURT: And the objection is?

15 MR. HOWELL: Multiple grounds. First, again, I
16 think it's just a Trojan horse for a legal argument
17 (indiscernible). Secondly, I don't think it's relevant.
18 Third, he's again asking him to talk about what every vendor
19 is going to do, which is inconsistent with the prior
20 testimony that they handle this on a case-by-case basis.
21 And so I don't think the question is proper.

22 THE COURT: Well, in response to that question, do
23 you have anything more to add to your prior testimony?

24 MR. GROSSI: I do not.

25 THE COURT: Okay. I think it's been asked and

1 answered.

2 Q One more question on a similar basis. For all 263
3 potential critical vendors, can you say that the failure to
4 pay the prepetition debt will lead to irreparable injury to
5 the estate?

6 A I can't say that with certainty. As I said earlier,
7 they're all independent decisions.

8 Q For the 12 critical vendors that you spoken to, did all
9 of them threaten to discontinue post-petition services and
10 goods without immediate payments of the full prepetition
11 debt?

12 A To my knowledge, they have all utilized their leverage
13 in providing product or service.

14 Q So did --

15 A I don't know if their demand was immediate payment.

16 Q Did they threaten to discontinue post-petition services
17 or goods, any of the 12 or all of the 12?

18 MR. HOWELL: Objection. Asked and answered.
19 Unfairly prejudicial.

20 THE COURT: Well, do you have anything to -- I
21 mean, I think you're trying to make a distinction between a
22 formal demand and your belief that they had leverage to
23 stop. Do you have anything to add to your prior testimony?

24 MR. GROSSI: Well, the point I was trying to make
25 is that the question as posed, asks immediate payment. And

1 our vendors have largely worked with us and if we've used
2 critical vendor dollars, it was after a reconciliation of
3 prepetition liabilities and understanding what those amounts
4 were. So that's what I would add to the...

5 THE COURT: Okay.

6 Q Have any or all of those 12 -- strike that. For those
7 12 that you reviewed and that had been deemed critical
8 vendors, was there an alternative that was available as far
9 as sourcing their goods or services if those vendors stopped
10 providing goods or services post-petition?

11 A No.

12 Q There was no alternative or no analysis was done?

13 A Can you repeat the question?

14 Q Yes. Was there an alternative source to those critical
15 vendors for provision of goods or services?

16 A There was no alternate source.

17 Q So all of them, you had to pay them to keep going post-
18 petition because there was no alternative source of goods or
19 supplies -- or services?

20 A Yes.

21 Q Okay. And for those 12 critical vendors, would the
22 failure to provide goods or services have caused irreparable
23 injury to the estate?

24 A Yes.

25 Q But you can't tell me what goods or services those 12

1 provided?

2 MR. HOWELL: Objection. (Indiscernible)

3 instructed not to, not that he cannot.

4 MR. RUKAVINA: I apologize. The Court has

5 instructed that that's not a legitimate question.

6 Q Has an analysis been undertaken of whether any of the
7 263 potential critical vendors are also customers of any
8 other party in interest in this case or their professionals
9 or are insiders of the Debtors? In other words, that there
10 are any links or relationships between them and any other
11 party in this case?

12 A I mean, there are no professionals. There are no
13 insiders on the critical vendor list. I don't -- to answer
14 the question of a relationship --

15 Q I'm just asking --

16 A I don't know how to answer that question.

17 Q I'm just asking, have you ever taken an analysis as to
18 whether any of the critical vendors is, for example, an
19 affiliate of an officer, director, or -- I'm sorry, or an
20 insider of the Debtor?

21 A Yes. To my knowledge, there are no insiders or those
22 types of relationships amongst our critical vendors.

23 Q And did you undertake an analysis as to whether any of
24 those 263 critical vendors would have the same professionals
25 as involved in this case, maybe?

1 A I have no idea.

2 MR. RUKAVINA: Thank you, Your Honor.

3 THE COURT: Okay. You may step down.

4 MR. HESSLER: I have no redirect. May I actually
5 ask one question before I go to closing arguments?

6 THE COURT: All right, sorry, please get back on
7 the stand please.

8 MR. HESSLER: No, I'm sorry, I just wanted to ask
9 Your Honor --

10 THE COURT: Oh, I thought I had a question for the
11 witness.

12 MR. HESSLER: No, I had a question for the Court.
13 I have a time sensitive issue, which is Mr. Tony Thomas, the
14 Debtor's CEO is here, he's the first-day declarant. There's
15 no -- we're going to ask if he can be excused so he can
16 catch a flight for some time sensitive --

17 THE COURT: Okay.

18 MR. HESSLER: The rest of -- his testimony's not
19 being requested here, and the rest of the motions after this
20 are unopposed, so is the Court okay with excusing Mr. Thomas
21 to leave?

22 THE COURT: You don't have questions of him?

23 MR. RUKAVINA: No, Your Honor.

24 THE COURT: Yeah, he can be excused.

25 MR. LUZE: Your Honor, I'll be brief. So just

1 taking a step back, the legal standard, because I think it's
2 important backdrop for the broader question, the default
3 position under the Bankruptcy Code is that there's a
4 petition date, and there's a universe of pre-petition
5 claims, and as a general matter, pre-petition claims are
6 paid pursuant to a plan of reorganization.

7 The jurisprudence around vendor relief granted in
8 large, complex Chapter 11 cases has been mostly a practical
9 acknowledgement of the fact that a little flexibly at the
10 outside is helpful to avoid a circumstance where there's
11 nothing left to reorganize by the time we get to
12 confirmation. And these findings are rooted in Section
13 363(b), which is a business judgment standard, and Section
14 105(a), which is often referred to as the doctrine of
15 necessity, which basically asks the question, is payment
16 necessary to the reorganization? Irrespective of which
17 standard Your Honor applies, we meet it here.

18 Focusing specifically on critical vendor relief,
19 we discuss lienholders and 503(b)(9) in the papers as well.
20 Critical vendor relief, we're not asking today to go out and
21 pay someone specific. We're asking for a bucket of relief.
22 We explained in the papers, and Mr. Grossi's testimony of
23 the extensive analysis and process we came to underlying our
24 request for this relief. We don't take it lightly, nor do
25 we take lightly our obligations to satisfy the various

1 criteria that we said we would in the motion. And in the
2 motion, we listed ten.

3 I think it really boils down to three core
4 considerations. One is, do we need the vendor? Two is, can
5 we compel performance, usually under an executory contract?
6 And three, is there a viable alternative? Here, I mean,
7 there is a contract in place with GLM. There is a viable
8 alternative, in fact, we've already signed up a viable
9 alternative, and as Mr. Grossi testified, there's been no
10 material disruption as a result of signing up for that
11 alternative.

12 So it seems the question we're here to answer
13 today is not really, is this vendor relief appropriate under
14 the Bankruptcy Code? Because I think it falls well within
15 what the Bankruptcy Code would allow, and also well within
16 precedent, and large Chapter 11 cases that are very similar
17 in size and complexity to this case, if not similar
18 operationally. And the short answer is no, the Debtors
19 exercised their business judgment to not pay GLM's
20 prepetition claim. GLM refused to continue to operate in
21 accordance with their contract post-petition.

22 The Debtor was -- forced their hand to go out and
23 replace GLM. There could have been perhaps an easier way
24 out, just to pay the claim, but that's not what the Debtors
25 committed to do under the interim order that Your Honor

1 signed, and the form of final order that we've submitted to
2 the Court. And this is really rooted in the fact that the
3 Debtors take serious their obligation to grow the size of
4 the pay, to maximize value for the entire estate, not
5 maximize the slice of the pie that any one creditor is
6 getting here.

7 And while we're sympathetic to the hardship
8 described in the motion, that in and of itself is not
9 determinative. The focus is on what's best for this
10 company's business, and for these reasons and the reasons
11 described in the motion that we apply to every vendor that
12 picks up the phone, and calls the company, calls one of the
13 advisors, payment of GLM is inappropriate here. For the
14 reasons we've described and supported by Mr. Grossi's
15 testimony, we think the broader relief requested in the
16 motion is appropriate as well.

17 THE COURT: Okay.

18 MR. RUKAVINA: The question today is not is GLM a
19 critical vendor? That's not why I'm here. There are 610
20 locations. At 72 percent of them, the Debtor has a direct
21 relationship with a third-party trash hauler. That's where
22 the Debtor has been replacing those vendors, because the
23 Debtor hasn't paid them. That's not an executory obligation
24 of GLM. For 28 percent that it is GLM that we're
25 responsible for, my client's principals are selling houses

1 to pay -- I'm here for free. If you think I'm getting paid
2 a lot of money, I'm not. I'm going to ask for my airfare.
3 I put GLM through its own Chapter 11 case three years ago,
4 and I barely got them out.

5 So whatever the Court decides, the Court should
6 not think that this is a leverage move. If I wanted
7 leverage, I would have filed an objection to everyone's
8 retention, or done something (indiscernible) like that.
9 This is a targeted issue, that my clients and other vendors
10 are being treated unequally. Now, I haven't argued --

11 THE COURT: Your client is a party to an executory
12 contract, right?

13 MR. RUKAVINA: Yes.

14 THE COURT: So its remedy is to come to the
15 Bankruptcy Court and seek an expedited determination as to
16 whether the contract should be assumed or rejected. Until
17 then, it needs to perform.

18 MR. RUKAVINA: It is, Your Honor, it is.

19 THE COURT: It has not sought that relief. It has
20 not sought the relief that's provided in the Bankruptcy
21 Code. So I don't shed any tears for your client. And it's
22 represented by someone who apparent has taken it through its
23 own Bankruptcy Code, so it knows the rules.

24 MR. RUKAVINA: And we are performing post-
25 petition, Your Honor. The Debtor has said that they're not

1 going --

2 THE COURT: All right, I have testimony to the
3 contrary, and you in your questioning has suggested that the
4 Debtor, that your client is not performing because it's not
5 been paid?

6 MR. RUKAVINA: And that's not true, that's not
7 correct, Your Honor.

8 THE COURT: All right, fine.

9 MR. RUKAVINA: If we need to have a hearing on
10 that, we'll be happy to present our evidence. The only
11 place where my client has not performed is because it
12 doesn't have \$180,000 to pay the Debtors.

13 THE COURT: But this is not a question of equal
14 treatment, all right?

15 MR. RUKAVINA: It's a question of dis-equal
16 treatment.

17 THE COURT: Because the parties have different
18 rights. So yes, it is dis-equal, because their rights are
19 different. One party is a party to an executory contract.
20 There are other parties that have rights under 503(b)(9).
21 There are other parties that simply provide their services
22 on a day-to-day basis, perhaps under purchase orders. There
23 are other parties who have liens. To jumble them all
24 together and say they all have to be treated the same is
25 just putting blinders on, because they are in fact

1 different.

2 MR. RUKAVINA: Your Honor, we don't know that, we
3 know that all, one of the --

4 THE COURT: I'm responding to your statement,
5 which is that your client is being treated differently.
6 Yes, it is. Because it is different. It's a party to an
7 executory contract. So let's move on to your next argument.
8 That one carries no weight with me.

9 MR. RUKAVINA: Okay, then the next argument is
10 that the Court should not be allowing the Debtors to make
11 the decision as to who's a critical vendor or not. The
12 Court should be making that decision, even if it's in
13 chambers, based on evidence that's subject to cross-
14 examination. To allow the Debtors to make that
15 determination, Your Honor, is no different than telling the
16 Debtors that they can pay their lawyers based on the 330
17 factors.

18 That's what the Court has done. The Court has set
19 forth eight factors, only one of which is executory
20 contract, and said, Debtors, you use these factors to decide
21 who to pay as a critical vendor or not. That is, with due
22 respect, Your Honor, the traditional role, and not the
23 Debtor's role. That's the second argument. And the third
24 argument is both the evidence you record her today and the
25 relief requested does not comply with the narrow exceptions

1 under the doctrine of necessity.

2 Note that I have not argued that there is no
3 doctrine of necessity. Note that I haven't argued that an
4 exception should be made for large cases, and note that I
5 haven't argued that you better object, or you're going to
6 lose. I get all that. That's all fair, that's all fine.
7 But here we are objecting, even if we're the only one. And
8 here, the evidentiary record is incomplete to prove that but
9 for the payment of those 12, or the next hypothetical 251,
10 that they will discontinue services.

11 THE COURT: But doesn't your argument presuppose
12 that the patient dies on the operating table before you
13 learn the answer to the question?

14 MR. RUKAVINA: It does not, Your Honor.

15 THE COURT: Okay, so how would you prove it?
16 Other than saying, I sincerely believe that in fact, they
17 have this leverage?

18 MR. RUKAVINA: I would, if I was the Debtor, I
19 would do what I've done in many other cases. Never under
20 seal, but I'll come, if I needed to, under seal to the Court
21 on emergency basis, and I'd say, "Creditor ABC is critical,
22 because they're a foreign vendor of transatlantic pipeline,
23 they cannot be replaced. Creditor ABC has said you must pay
24 my prepetition amount, and Your Honor, we did not have an
25 alternative. The Debtor, the patient will die if we don't

1 pay that creditor." That's how the Court should proceed, I
2 would respectfully submit, as opposed to --

3 THE COURT: With 269 separate hearings?

4 MR. RUKAVINA: No, doesn't have to be that.

5 THE COURT: While it's being asserted that we're
6 at the point where they're actually making the demand, and
7 you cannot negotiate with them in advance?

8 MR. RUKAVINA: But they could have come to you on
9 day one, and said these 263, even if it's under seal. They
10 could have done that on an evidentiary basis, and
11 (indiscernible) --

12 THE COURT: You're making two different points.
13 You're making the sealing point, but you're also saying that
14 the testimony today is insufficient. I'm asking you, what
15 testimony would suffice, where you wouldn't run a material
16 risk that by the time you completed that specific
17 evidentiary hearing, which is triggered, I believe, by your
18 belief that you need to show that they're walking that day,
19 that the Debtor wouldn't expire? How, practically, would
20 you do that?

21 MR. RUKAVINA: Your Honor, the same that you have
22 on this case and other cases, handled matters on a 24-hour
23 notice.

24 THE COURT: Right, uh huh. And that's when
25 they're backing up the trucks and taking the equipment away,

1 or refusing to provide the access to the customers who want
2 to watch the NCAA tournament?

3 And I am to break, and the Debtors are to break
4 each time, without having actually dealt with their vendors,
5 who they have a long-term relationship, and create an
6 adversary hearing with evidence regarding the process, and
7 with them making the threat? That's what you want to have
8 happen? And you want to publish the list, so they all know
9 they'll be paid right away? What is the effect on the cash
10 flow of this company if that happens?

11 MR. RUKAVINA: Well, for the first question, I'm
12 not suggesting that it has to be as strong a standard as you
13 better pay me now, or I'm shutting off services tomorrow.

14 THE COURT: So what standard do you think it is?

15 MR. RUKAVINA: Well, I think what still
16 identified, that it's going to hinder the reorganization and
17 cause irreparable injury.

18 THE COURT: All right, I have testimony to that
19 effect right now. So what evidence do you want, and how do
20 you believe it should be brought?

21 MR. RUKAVINA: The ceiling issue is a separate
22 issue. That is really what I think prompts our concern,
23 because we don't know who these vendors are. If I could
24 know who they are, it might very well be perfectly fine.

25 THE COURT: If every vendor knew it, every vendor

1 could object, and immediately you would have the run on the
2 bank.

3 MR. RUKAVINA: I disagree with that, Your Honor.
4 Respectfully, I disagree.

5 THE COURT: You disagree that if they saw
6 themselves on the list, they wouldn't immediately ask for
7 the money?

8 MR. RUKAVINA: But they shouldn't be on the list
9 then, because they're not critical. I don't know how to
10 answer that question.

11 THE COURT: The Debtor has only paid 12 people.
12 We're 60 days into the case. Just the benefit of that cash
13 flow is extremely material. Do you not accept that?

14 MR. RUKAVINA: Your Honor, I do accept that.

15 THE COURT: All right, so --

16 MR. RUKAVINA: I do not --

17 THE COURT: So why would you want to have every
18 vendor have access to that information? Every vendor who
19 wants to object. And why wouldn't they spend the \$5000 to
20 object, to determine it, so that then they could get the
21 money right away?

22 MR. RUKAVINA: I don't know how to answer that
23 question, except to point out that Chapter 11 is a delicate
24 (indiscernible) of differing leverages.

25 THE COURT: All right, you don't have an answer to

1 my question.

2 MR. RUKAVINA: I don't have an answer to that.

3 THE COURT: No, you don't. Because there isn't
4 one. Because the Courts have worked this out through bitter
5 experience, and through common sense.

6 MR. RUKAVINA: With due respect, Your Honor, what
7 the Debtors are asking for is that the exception swallow the
8 rule.

9 THE COURT: All right, well I do not believe that,
10 because there is a -- there is an evidentiary record here.
11 It shows the process that the Debtors go through with
12 supervision by the creditors' committee, who does not have a
13 parochial axe to grind like individual vendors do.

14 MR. RUKAVINA: Thank you, Your Honor.

15 THE COURT: These are the very questions that I
16 started asking of Debtors ten years ago, and that's how this
17 process got developed. That was from bitter experience in
18 practice, and in earlier cases, where cases literally died
19 because judges didn't believe they had this authority,
20 notwithstanding Section 363(b), which was perfectly clear to
21 Judge Easterbrook, who cited 363(b) in K-Mart, but left it
22 up to the Courts to adopt a proper evidentiary framework for
23 making the determination, which I believe exists here.

24 If you decided it your way, A, you would be paying
25 far more people with far more disruption, and reach the same

1 result, I believe, that you're reaching here. If a Debtor
2 misuses this process, the creditors' committee and the U.S.
3 Trustee will point it out. This is a parochial narrow
4 objection, couched as if it's being brought on behalf of all
5 vendors, and it just isn't.

6 And if I granted this, we would be back to the old
7 days of having to disclose information that precludes
8 Debtors who actually do have good working relationships with
9 their vendors managing that situation, and creating the type
10 of disruption that this rule is intended to prevent. And
11 363(b), which allows Debtors to spend money to provide a net
12 benefit to their estate in their business judgment, as
13 reviewed by the Court, and the Court can review the process
14 to determine that, is sufficient, particularly where the
15 alternative kills the process, and kills the relief that
16 Courts see fit to grant, which is to protect the Debtor's
17 business for all constituents.

18 MR. RUKAVINA: Can I sit down, Your Honor?

19 THE COURT: Yes, I'm going to deny the objection,
20 and grant the motion.

21 MR. LUZE: Thank you, Your Honor. We submitted a
22 revised form of order on the docket, I think Your Honor has
23 reviewed all of the redlines. There's been no further
24 changes, we'll submit it as part of the package of --

25 THE COURT: Yes, I'll grant the relief. Based on

1 the evidentiary record before me, the process that the
2 Debtors have adopted here, which has been adopted in
3 numerous cases over the last 15 years at least, and is being
4 implemented here by sophisticated parties who understand the
5 legal and business issues clearly supports the determination
6 that I am making that the flexibility that the Debtors have
7 to make these payments is critical to their ongoing
8 operations and success, in a case where they have a
9 relatively narrow budget, where cash management is
10 important, leaving them their judgment, as overseen by the
11 official committee of unsecured creditors, to make payments
12 only where absolutely needed, and to preserve their leverage
13 in doing so, so that their identification of who is critical
14 does not become public, to ensure an immediate run on the
15 bank is not only authorized, but a proper exercise of
16 judgment here.

17 MR. LUZE: Thank you, Your Honor. That gets us
18 through the contested portion of the agenda, Your Honor.
19 I'm conscious of the fact that we have 22 more items on the
20 agenda --

21 THE COURT: Well, I also have a 400-matter docket
22 tomorrow in this very courtroom, but of course I could break
23 for 264 hearings on it in camera on these matters. You
24 could look at my schedule for the next three months, sir,
25 and you will see that there is absolutely no time for that.

1 go ahead.

2 MR. LUZE: Understood, Your Honor. So, starting
3 at Agenda Item Number 4, Items 4 through 12 are final orders
4 on motions that were granted on an interim basis at the
5 first-day hearing. I know Your Honor commented that you
6 reviewed the redlines submitted at the end of last week.
7 I'm happy to go through each agenda item in as much detail
8 as Your Honor would like. Otherwise I would submit that
9 none are contested, and to the extent that there were any
10 formal objections filed, including with respect to cash
11 management and utilities, that they been resolved among the
12 parties.

13 THE COURT: Well, the only one I don't have a
14 redline on, I think, is the utilities order.

15 MR. LUZE: Yes, we filed that late yesterday
16 evening, I can grab it right now, Your Honor.

17 THE COURT: Okay. And I want to make sure that
18 there's no one who has an objection to the utilities motion
19 at this point?

20 MS. MACRON: Good afternoon, Your Honor, my name
21 is Marilyn Macron, from Marilyn Macron PC, we represented US
22 Pacific Corp. We have come to a settlement agreement with
23 the Debtor late last night. I have not been able to
24 formally put a written withdrawal, objection in, but we do
25 withdraw our objection.

1 THE COURT: Okay, because I saw your objection
2 that came in, and I wasn't sure whether it was a resolution
3 of it.

4 MS. MACRON: There was, Your Honor. I thank you.

5 THE COURT: Is there any -- so I'm looking over
6 your shoulder at the Debtor's counsel.

7 MS. MACRON: (indiscernible), Your Honor.

8 THE COURT: As far as the proposed order is
9 concerned, the procedures I approved contemplate giving
10 flexibility to the Debtor to deal with individual utilities.
11 And I'm assuming that what you've done, including with your
12 last objection?

13 MR. LUZE: With a couple dozen or so utility
14 providers.

15 THE COURT: Are there any other changes to the
16 utilities order beyond that, as far as the account and
17 anything like that?

18 MR. LUZE: So I can hand up a redline, Your Honor.

19 THE COURT: Why don't you do that?

20 MR. LUZE: It's just one paragraph, if I may
21 approach?

22 THE COURT: Okay.

23 MR. LUZE: Back in front of the microphone. So
24 it's new Paragraph 7, Your Honor. As Your Honor just
25 described, we feel like there's flexibility to sort of deal

1 with utilities providers on an individual basis. Some of
2 the utilities providers that we've been in discussions with
3 just wanted confirmation in the order.

4 THE COURT: Okay, so that's the only change.

5 MR. LUZE: That's the only change, Your Honor.

6 THE COURT: All right, so otherwise you have the
7 same procedures?

8 MR. LUZE: No, Your Honor.

9 THE COURT: You mean yes.

10 MR. LUZE: Oh, we have not -- we have not changed
11 them.

12 THE COURT: Otherwise you have the same
13 procedures.

14 MR. LUZE: We have the same procedures, yes.

15 THE COURT: All right, that's fine. I will grant
16 the utilities motion as revised.

17 MR. LUZE: And I assume the same goes for the rest
18 of Agenda Items 4 through 12 --

19 THE COURT: Correct.

20 MR. LUZE: Which are final orders.

21 THE COURT: Correct, I've reviewed each of those
22 orders. They reflect, in some cases, comments from the
23 committee, I'm assuming?

24 MR. LUZE: Yes, Your Honor.

25 THE COURT: And in a couple of places, comments

1 from other parties. And based on the interim hearings
2 record, and the fact that there are no pending objections,
3 I'll grant each of those motions.

4 MR. LUZE: Thank you, Your Honor. That brings us
5 up to 13, which is just -- it's our second SOFAs and
6 schedules motion. It's not technically a final order, but
7 it's akin to the order we requested at the first-day
8 hearing.

9 THE COURT: Right.

10 MR. LUZE: We're just asking for 30 more days.
11 We've discussed with the committee and the U.S. Trustee,
12 both have confirmed their sign-off. We expect to be able to
13 meet our proposed extended deadline.

14 THE COURT: Okay, I will grant the motion based on
15 that representation.

16 MR. LUZE: Thank you, Your Honor. That brings us
17 up to Agenda Item 14, which I will hand off to my colleague,
18 Ms. Smith.

19 THE COURT: Okay, good afternoon.

20 MS. SMITH: Good afternoon, Trudy Smith from
21 Kirkland & Ellis on behalf of Windstream. I will pick up
22 with Agenda Item Number 14, as my colleague just indicated.
23 So I'll be very quick moving through this motion,
24 considering that it's uncontested.

25 The Debtors are simply seeking to modify the

1 automatic stay. They want to continue to pursue the multi-
2 district litigation that's pending in the Fifth Circuit.
3 The Debtors did receive informal comments, which we have
4 implemented into the revised order. So if Your Honor
5 doesn't have any further questions, we'll rest on our
6 motion.

7 THE COURT: Okay, does anyone have anything to say
8 on this motion, the MDL stay motion? All right, I've
9 reviewed it and their proposed order, and I'll grant the
10 motion as per that order.

11 MS. SMITH: Thank you, Your Honor. Next on the
12 agenda is Item Number 15. This is the Debtor's first
13 omnibus lease rejection motion. The Debtors are seeking to
14 reject 29 leases that also includes the subleases nunc pro
15 tunc to the petition date, as well as abandoned certainly
16 personal property items that remain on the premises.

17 The Debtors did receive three formal objections.
18 The Debtors resolved one of these objections prior to the
19 hearing. However, the other two objections were continuing
20 to work with the contract counterparties, and we will simply
21 just provide a stipulated order once we have resolved these.
22 So as you would see in the revised schedule that we filed,
23 we removed the leases that are being continued to a later
24 date.

25 THE COURT: Okay, does any -- do any other

1 objectors want to be heard on this, or are you comfortable
2 with having seen the schedule? Okay. All right, I will
3 grant the motion as modified. Essentially the relief I'm
4 granting is unopposed at this point, because the two extant
5 objections will be dealt with later.

6 MS. SMITH: Exactly, Your Honor.

7 THE COURT: Okay.

8 MS. SMITH: Next on the agenda is Item Number 16.

9 This is the Debtor's motion to establish procedures to
10 reject and assume executory contracts and unexpired leases.
11 This is really just to streamline the process. The Debtors
12 have thousands of contracts in their portfolio. So here,
13 it's just a matter of administrative convenience as well as
14 efficiency, to get it done through a more cohesive process.

15 The Debtors did receive one formal objection,
16 which the Debtors did resolve via an acknowledgement letter
17 that's been effectuated through the order that we've filed
18 that has amended language in there. We did also get
19 informal comments from the committee, and that's also
20 reflected in the revised order. So if Your Honor doesn't
21 have any questions with respect to the motion, we
22 respectfully request that it be answered -- entered.

23 THE COURT: Okay, I did have a question on this.

24 MS. SMITH: Sure.

25 THE COURT: If you look at the revised order, it

1 provides that that if there's no objection, the leases on
2 the notice will be deemed rejected as of the rejection date
3 that's laid out on the notice, and that the abandoned
4 property will be deemed abandoned. Are you going to be
5 following that up with an order? Because I'm concerned that
6 this deeming language leaves the record a little unclear.

7 MS. SMITH: Well, we will be giving the
8 counterparties notice of the property that we intend to
9 abandon on the premises, and so to the extent that they take
10 issue with either the rejection or the abandonment, they do
11 have an opportunity (indiscernible) hearing --

12 THE COURT: No, I understand that. But that I'm
13 asking you is, after the notice period expires, let's say
14 you file the -- you send out rejection notice A, and maybe
15 you'll do 10 of these, or 20 of these during the case --

16 MS. SMITH: Yeah.

17 THE COURT: They'll have up to 100 leases on it.
18 Are you going to then submit to the Court an order saying or
19 reciting, along with a certificate of no objection, that the
20 following leases -- that the notice went out on the
21 following leases, there's no objection, and they're deemed -
22 - and they're rejected?

23 MS. SMITH: Yes, Your Honor, we can effectively
24 send an order.

25 THE COURT: Okay, I think you need to do that. I

1 don't think you should rely on this order to say that
2 they're deemed rejected. I think you need a -- and you can
3 put in the abandonment language in the same order.

4 MS. SMITH: Sure, we will do that.

5 THE COURT: Okay, okay. So with that
6 clarification, I'll grant this relief.

7 MS. SMITH: Thank you, Your Honor. With that, I
8 will turn the podium over to Mr. Petrie.

9 THE COURT: Okay.

10 MR. PETRIE: Good afternoon, Your Honor. Francis
11 Petrie of Kirkland on behalf of the Debtors. Next up is
12 Agenda Item Number 17, the de minimis asset sales motion.
13 Through this motion, the Debtors seek to implement
14 procedures to see some de minimis assets as well as govern
15 abandonment of assets of little value to the estates.

16 The estate garnered two objections, one of which
17 has been formerly withdrawn, the other that has been
18 resolved through additional language. We filed a revised
19 proposed order last night. Unless Your Honor has any
20 questions?

21 THE COURT: I'm not sure I saw the one that was
22 filed last night. I have the blackline from the binders,
23 which I did have a couple of questions on.

24 MR. PETRIE: Sure, would you like me -- may I
25 approach with the --

1 THE COURT: Yes. Okay. Yeah, no, this is the
2 version I had, except as to -- yeah, this is the version I
3 had.

4 MR. PETRIE: Okay.

5 THE COURT: So if you look at the order here, the
6 first group of assets are those less than or equal to three
7 million, except for the Midwest Debtors, where the cap is
8 1.5 million. Unlike the second group, which is covered in
9 2b, this language just refers to 363(b) and doesn't have the
10 paragraph in it that's in 2b, that says this is free and
11 clear of liens. So I -- if that's what you want, that's
12 fine, but didn't that's what you want.

13 MR. PETRIE: No, we'd like to reincorporate the
14 free and clear language.

15 THE COURT: All right, so I think you're going to
16 need to do that, but also need to provide the 14 days'
17 notice to all parties known to asserted interest or lien in
18 the property. In other words, that would enable them to say
19 no, we want to bid on the 363(k), we want to object under
20 363(f), et cetera.

21 MR. PETRIE: Exclusively to parties asserting
22 liens?

23 THE COURT: Well, depends on how you define liens.
24 It's who asserted interest in the property, property
25 interest in the property.

1 MR. PETRIE: We can make those amendments, and
2 then --

3 THE COURT: Okay, and I would refer to 363(b) and
4 (f), and I would also refer to 363 -- I'm sorry, and then
5 separately have the notice provision that you also have in
6 (b), and add that little Paragraph 2 that you have in (b),
7 to this -- oh, you know what, you do have it free and clear.
8 I totally missed it. But it should be along the lines of
9 what you have in (b), which is subject to the procedures set
10 forth herein, for both 1 and 2, as far as the 14 days to --
11 you don't have to give notice to all the other folks, just
12 those who have an interest in the property.

13 MR. PETRIE: Okay.

14 THE COURT: A lien interest.

15 MR. PETRIE: Thank you, Your Honor. We'll make
16 those changes.

17 THE COURT: Okay, and then in b, at the bottom --

18 MR. PETRIE: Yes.

19 THE COURT: In III, four lines from the bottom,
20 Liens should be capitalized. And if you go to the next
21 page, vi, rather than -- I think you need to -- when you say
22 any objections, just say they should be made as provided in
23 the case management procedures order. And then it says
24 after receipt of the abandonment notice, but it's really
25 after receipt of the transaction notice.

1 And then if you go to 5, Page 5, Paragraph 3a,
2 it's the same comment about notice to the lienholders, or
3 the interest holders, in a -- as well as the landlord, to
4 the extent there is a landlord. And in (b)(ii), it should
5 read to the landlord as well, you should add the landlord.
6 And then (b)(iii), again it's -- the objection should be
7 filed as per the case management procedures order.

8 And then when you go to Page 6, Paragraph 4, the
9 reference to sales is too narrow, it should be sales and
10 other transfers. And then in 6, in the third line, where it
11 says with the same validity, extent and priority, just add
12 the clause "and subject to the same defenses".

13 MR. PETRIE: Okay.

14 THE COURT: As Mr. Klee reminded us this morning,
15 defenses are important. Okay, but with those changes, I'll
16 grant the motion.

17 MR. PETRIE: Thank you, Your Honor. We'll make
18 those changes, and submit a revised form to chambers.

19 THE COURT: Okay. Great.

20 MR. PETRIE: So next up is Agenda Item Number 18,
21 I believe, which is Docket Number 183, the Debtor's de
22 minimis claims motion, seeking to implement similar
23 procedures for compromising settlement of certain disputes
24 that arise in the Debtor's business.

25 THE COURT: Right.

1 MR. PETRIE: We circulated parties in interest,
2 we've received no objections, and we've amended the
3 language, incorporating their comments.

4 THE COURT: Okay. On this one, I would -- I'm not
5 sure you absolutely need this, but I don't want someone
6 arguing about it later. In 2a, which says no settlement
7 would be effective unless it is executed by an authorized
8 representative, have the Debtors add, comma, subject to the
9 other terms of this order.

10 And then on the next page, in (c)(ii), towards the
11 bottom, it says any known affected creditors, I would put
12 the word directly in there, any known creditor directly
13 affected by the settlement. And then this phrase, including
14 counsel to any creditor asserting a lien on the relevant de
15 minimis assets, I think that should come out, I think that's
16 from a different form.

17 And then on the next page, IV, again, this -- the
18 objection procedure should be just as per the case
19 management order. And then V, right below there, in the
20 second to last line, where it says without notice, I would
21 say without further notice, because you have given notice
22 already.

23 Let's just look at -- yeah, VI, right below there,
24 that I'm concerned about is it says the execution of the
25 settlement shall not proceed. It's quite possible that

1 someone has actually assigned it, so I think you want to
2 make it clear that the settlement will not be effective,
3 except upon. Because there are a fair number of cases where
4 the non-Debtor parties to a settlement allege, well, the
5 Debtor's bound. And the case law is no, but this might
6 suggest otherwise.

7 MR. PETRIE: Okay, thank you very much for those,
8 Your Honor.

9 THE COURT: With those changes, I'll grant the
10 motion.

11 MR. PETRIE: Excellent, thank you, Your Honor.

12 THE COURT: Okay.

13 MR. PETRIE: On to Agenda Number 19, the Debtor's
14 motion for establishing procedures for interim compensation.
15 This motion received no comments or objections, and these
16 are the procedures that are typically approved in this
17 jurisdiction.

18 THE COURT: Right, that's -- my conclusion after
19 reviewing it also, does anyone have anything to say on this
20 motion? All right, I'll grant the motion.

21 MR. PETRIE: Thank you, Your Honor. I now turn
22 the podium over to my colleague, Mr. Hessler.

23 THE COURT: Okay.

24 MR. HESSLER: Your Honor, Item 20 on the agenda is
25 the motion to retain Kirkland & Ellis as Debtor's counsel.

1 No objections were filed. No changes were requested of the
2 order. As I'm the declarant, happy to answer any questions
3 you may have on that front or (indiscernible) --

4 THE COURT: No, I don't have any questions, and
5 I'll grant the application.

6 MR. HESSLER: Thank you, Your Honor.

7 MR. WEILAND: Hi again, Your Honor. I will take
8 us through the last few items on the agenda here, and I do
9 want to say thank you for all the time today. Item 21 is
10 the retention application of as Conflicts Counsel to the
11 Debtors. I believe you're aware that Katten's serving as
12 Conflicts Counsel here, since I know they spent a number of
13 hours before Your Honor yesterday.

14 THE COURT: Right.

15 MR. WEILAND: But like the Kirkland application,
16 we have received no objections or informal comments to this
17 application, and we ask for it to be approved.

18 THE COURT: Okay, I've reviewed it, and I don't
19 have any questions on it.

20 MR. WEILAND: Thank you, Your Honor.

21 THE COURT: So I'll grant the application.

22 MR. WEILAND: Thank you. The next application is
23 the application to retain PJT Partners as the Debtor's
24 investment banker.

25 THE COURT: Right.

1 MR. WEILAND: For this application, Your Honor, we
2 did get comments first from the United States Trustee to the
3 indemnity language in the order --

4 THE COURT: Right.

5 MR. WEILAND: And that's been updated. There were
6 further discussions between the committee, and the company,
7 and PJT regarding the fee structure, and we filed a second
8 amended revised proposed form of order last night,
9 reflecting the resolution of the Committee's concerns there.

10 THE COURT: Okay, again, I'm not sure I got that,
11 although I think I did, because I got the other one that was
12 filed last night on the de minimis assets. But what is the
13 resolution with PJT and the Committee?

14 MR. WEILAND: So the Committee negotiated with the
15 company and PJT, and all agreed on two changes to the fee
16 structure and the order.

17 THE COURT: Okay.

18 MR. WEILAND: Number one, the original engagement
19 letter has proposed that PJT's transaction fee would include
20 50 basis points for any negotiated rent reduction.

21 THE COURT: Right.

22 MR. WEILAND: The Committee suggested, and the
23 company and PJT agreed that that would also include a 25-
24 basis points fee for any lease concession that was not a
25 pure rent reduction. So if there's other value that comes

1 out of those negotiations, maybe not as a pure cash flow
2 benefit the way the rent reduction would be, but if there is
3 another or better transaction to be negotiated, that the
4 incentive be there to negotiate for that as well. The other
5 change, Your Honor, for --

6 THE COURT: But that's a different percentage?

7 MR. WEILAND: It is. It's 25 basis points instead
8 of 50, (indiscernible) recognition of the --

9 THE COURT: But the Committee was satisfied that
10 that got PJT out of a potential conflict situation? I think
11 that was your reason or expanding it, right?

12 MR. MARINUZZI: Your Honor, actually the reason
13 was as follows: (indiscernible) unity is very important
14 here, and we talked about the master lease between Holdings
15 and Unity. We don't know what we don't know, but we've
16 heard a lot of discussion about consideration that might be
17 offered to settle claims, and we haven't even identified the
18 claims as of yet.

19 THE COURT: Right.

20 MR. MARINUZZI: What we wanted to do was create a
21 situation where PJT was incentivized to be creative, and the
22 consideration of it was received, because for example,
23 equity and unity might be worth more than a dollar-for-
24 dollar lease reduction. And the language that is proposed
25 in the original engagement letter compensated them for lease

1 reductions but didn't compensate them for any other
2 consideration.

3 THE COURT: Right, that was why I asked my
4 question? Are you satisfied now --

5 MR. MARINUZZI: We are satisfied --

6 THE COURT: That they are going to be
7 appropriately incentivized to look for other ways to get
8 value, even though the fee is a little bit lower.

9 MR. MARINUZZI: They'll be incentivized, we're
10 certain of that.

11 THE COURT: Okay, all right. Okay.

12 MR. MARINUZZI: Thank you.

13 MR. WEILAND: Your Honor, I do have the redline
14 that was filed with the most recent changes, if you'd like
15 those.

16 THE COURT: Just skip to the other change, it's
17 fine.

18 MR. WEILAND: The only other change, Your Honor,
19 the Committee who suggested, and all the other parties
20 agreed, to an aggregate \$35 million cap on the PJT fee.

21 THE COURT: And they had presaged both of those
22 points in their response.

23 MR. WEILAND: Yes.

24 THE COURT: So that's fine.

25 MR. WEILAND: No further changes other than those

1 two, Your Honor.

2 THE COURT: Okay, I will grant the application. I
3 had one, actually one comment on the order. It's just, I
4 want to clear up the ambiguity here. In Paragraph 11, it
5 says -- well, you know what, never mind, it's just a
6 deletion, never mind.

7 MR. WEILAND: Okay, Your Honor?

8 THE COURT: Yeah, it's deleting the entire cap on
9 their indemnity, which is fine. The cap on their exposure,
10 that is. So I will grant the application as modified, and
11 enter the order as modified.

12 MR. WEILAND: Okay, thank you, Your Honor. That
13 takes us to Item 23, the Alvarez & Marsal retention
14 application. As you heard from Mr. Grossi today, Alvarez is
15 serving as a financial advisor for the Debtors. Like the
16 PJT application, we received informal comments from the
17 United States Trustee, which have been incorporated into a
18 revised order that was filed last week. No other comments
19 or objections to this.

20 THE COURT: I have reviewed this one as well, and
21 will grant the application and enter the modified, or the
22 redlined version of the order.

23 MR. WEILAND: Thank you very much, Your Honor.
24 Item 24 is the PricewaterhouseCoopers auditor application.

25 THE COURT: Right.

1 MR. WEILAND: No comments or changes to this from
2 the version filed at Docket Number 191.

3 THE COURT: Right, I didn't have any issues with
4 this, and we'll grant that application.

5 MR. WEILAND: Thank you, Your Honor. Matter 25 is
6 the Kurtzman Carson application under 327(a) for services
7 other than the services approved on the first day.

8 THE COURT: Right.

9 MR. WEILAND: This one also received no formal or
10 informal objection or comment.

11 THE COURT: Right, I will grant this application
12 based on my review of it. I didn't have any issues with it.

13 MR. WEILAND: Thank you, Your Honor. And the last
14 item on the agenda is the motion to retain and compensate
15 ordinary course professionals proposing a \$2 million case
16 cap on ordinary course professionals, and \$125,000 a month
17 trailing three-month cap.

18 THE COURT: Right.

19 MR. WEILAND: This one, in discussion with U.S.
20 Trustee, and the Creditors Committee, we did make a few
21 changes. Those are reflected in a revised proposed form of
22 order that was filed.

23 THE COURT: Right, and I agree with all of those
24 changes, and will grant the application, the motion.

25 MR. WEILAND: Thank you, Your Honor. And that

1 takes us through what I know is a long agenda today.

2 THE COURT: Or actually, I'm sorry. Having said
3 that, again on Page 3, where the noticed parties have their
4 objection deadline, the filing and service of those
5 objections should be done as per the case management order.

6 MR. WEILAND: We'll include that reference, Your
7 Honor.

8 THE COURT: Which includes sending copies to
9 chambers and the like.

10 MR. WEILAND: Yes, Your Honor.

11 THE COURT: Okay, so which of these orders should
12 be emailed to chambers? There are parties, I know, that you
13 need to share them with in advance. The Debtors and other
14 parties can act in reliance on my rulings in the meantime,
15 such as with regard to cash collateral use. You don't need
16 to formally settle any of the orders. All right.

17 MR. WEILAND: Thank you, Your Honor. We will
18 share them with parties that should see them and get them
19 submitted as soon as possible.

20 THE COURT: Okay, very well, thank you.

21 MR. WEILAND: Thank you very much for the time
22 today.

23 THE COURT: Thank you, thanks.

24 (Whereupon these proceedings were concluded at 2:12 PM)
25

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

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

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Fill in this information to identify the case:

Debtor Windstream Services, LLC

United States Bankruptcy Court for the: Southern District of New York
(State)

Case number 19-22400

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>GLM DFW, Inc.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>GLM DFW, Inc.</u> <u>c/o Munsch Hardt Kopf and Harr, P.C.</u> <u>500 N. Akard St., Ste. 3800</u> <u>Dallas, TX 75201</u> Contact phone _____ Contact email <u>tberghman@munsch.com</u>	Where should payments to the creditor be sent? (if different) <u>GLM DFW, Inc.</u> <u>PO Box 797944</u> <u>Dallas, TX 75379</u> Contact phone _____ Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

EXHIBIT "B"



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6.	Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _
7.	How much is the claim? \$ <u>168288.21</u>	Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8.	What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Services performed, trash and recycling cost containment charges</u>	
9.	Is all or part of the claim secured? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature or property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable	
10.	Is this claim based on a lease? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____	
11.	Is this claim subject to a right of setoff? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____	



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No☐ Yes. Check all that apply:☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.☐ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 03/28/2019
MM / DD / YYYY

/s/Mary Galvan
Signature

Print the name of the person who is completing and signing this claim:

Name Mary Galvan
First name Middle name Last name

Title President

Company GLM DFW, Inc.

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____

Email _____



For phone assistance: Domestic (877) 759-8815 | International (424) 236-7262

Debtor: 19-22400 - Windstream Services, LLC District: Southern District of New York, White Plains Division		
Creditor: GLM DFW, Inc. c/o Munsch Hardt Kopf and Harr, P.C. 500 N. Akard St., Ste. 3800 Dallas, TX, 75201 Phone: Phone 2: Fax: Email: tberghman@munsch.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Creditor	
Disbursement/Notice Parties: GLM DFW, Inc. PO Box 797944 Dallas, TX, 75379 Phone: Phone 2: Fax: E-mail: DISBURSEMENT ADDRESS		
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Services performed, trash and recycling cost containment charges	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 168288.21	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Mary Galvan on 28-Mar-2019 2:15:27 p.m. Pacific Time Title: President Company: GLM DFW, Inc.		

Fill in this information to identify the case:

Debtor Windstream Services, LLC

United States Bankruptcy Court for the: Southern District of New York

Case number 19-22400

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim**1. Who is the current creditor?**GLM DFW, Inc.

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?☒ No☐ Yes. From whom? _____**3. Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?GLM DFW, Inc.

Name

500 N. Akard St., Ste. 3800 c/o TDB

Number Street

Dallas

TX

75201

City

State

ZIP Code

Contact phone (214) 855-7554Contact email tberghman@munsch.com**Where should payments to the creditor be sent? (if different)**GLM DFW, Inc.

Name

PO Box 797944

Number Street

Dallas

TX

75379

City

State

ZIP Code

Contact phone _____

Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):
_____**4. Does this claim amend one already filed?**☒ No☐ Yes. Claim number on court claims registry (if known) _____Filed on _____
MM / DD / YYYY**5. Do you know if anyone else has filed a proof of claim for this claim?**☒ No☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 168,288.21 Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.

Services performed, trash and recycling cost containment charges

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No☐ Yes. Check one:☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.☐ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 03/27/2019
MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name Mary Galvan
First name Middle name Last name

Title President

Company GLM DFW, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 13601 Preston Rd, Suite 400
Number Street

Dallas TX 75240
City State ZIP Code

Contact phone _____ Email _____



REMIT PAYMENT TO:

**GLM DFW, INC.
P.O. BOX 797944
DALLAS, TX 75379**

INVOICE

BILLING CODE :	CID00110227	BILL TO:
INVOICE # :	NV-WC012-03272019	Windstream Communications
INVOICE DATE :	03/27/2019	P.O. Box 18313
DUE DATE :	03/27/2019	Little Rock, AR 72227

SERVICE PERIOD: 01/16/19 - 02/25/19
Pre-Petition Services Rendered

TRASH AND RECYCLING COST CONTAINMENT CHARGES for Management Consultant Services performed for Windstream Communications:

<u>Windstream January - PART B 2019 Pre-Petition Invoice Total</u>	\$	48,696.92
<u>Windstream February - PART A 2019 Pre-Petition Invoice Total</u>	\$	106,515.35
<u>Windstream February - PART B 2019 Pre-Petition Invoice Total</u>	\$	73,205.39
 <u>Original Amount Due</u>	 \$	 221,834.06

<u>Windstream January - PART B 2019 Post Petition Invoice Total</u>	\$	(4,275.40)
<u>Windstream February - PART A 2019 Post Petition Invoice Total</u>	\$	(10,155.52)
<u>Windstream February - PART B 2019 Post Petition Invoice Total</u>	\$	(39,114.93)

<u>Total Amount Due</u>	<u>Total Due</u>	\$ 168,288.21
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Thank you for your business. Please remit payment upon receipt.

I thank you for your business. Please remit payment upon receipt.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

WINDSTREAM HOLDINGS, INC., et al.,

Debtors.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

APPELLANT GLM DFW, INC.'S STATEMENT OF THE ISSUES ON APPEAL

COMES NOW GLM DFW, Inc. ("GLM"), the appellant pursuant to that certain *Notice of Appeal* filed on May 2, 2019 at docket no. 463, and files this its *Appellant's Statement of the Issues on Appeal*, as follows:

With respect to the entry by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") of its *Final Order Authorizing the Debtors to Pay Certain Prepetition Claims of (I) Critical Vendors, (II) Lien Claimants, and (III) Section 503(B)(9) Claimants In the Ordinary Course of Business On a Postpetition Basis* [docket no. 377] (the "Order"), entered upon the motion of Windstream Holdings, Inc. and its affiliated debtors and debtors-in-possession (the "Debtors"):

- (i) did the Bankruptcy Court err in allowing the Debtors to decide who was a critical vendor, lien claimant, or 503(b)(9) claimant, as opposed to the Bankruptcy Court deciding the same itself upon hearing, evidence, and argument, the foregoing representing an impermissible delegation by the Bankruptcy Court of its judicial function and violating GLM's due process rights;
- (ii) did the Bankruptcy Court err in keeping confidential and under seal, including from GLM, the identities of those creditors who were determined by the Debtors to be a critical vendor, lien claimant, or 503(b)(9) claimant and paid as such by

the Debtors, the foregoing violating GLM's due process rights and being against the Bankruptcy Code and Bankruptcy Rules; and

- (iii) did the Bankruptcy Court err by imposing an incorrect standard or no standard in the Order, as a matter of law, for who qualifies as a critical vendor.

RESPECTFULLY SUBMITTED this 2d day of May, 2019.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina
Davor Rukavina
Texas Bar No. 24030781
Admitted *Pro Hac Vice*
Thomas D. Berghman
Texas Bar No. 24082683
Admitted *Pro Hac Vice*
500 N. Akard Street, Suite 3800
Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584
E-mail: drukavina@munsch.com
tberghman@munsch.com

COUNSEL FOR GLM DFW, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 2d day of May, 2019, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof and that, additionally, he caused true and correct copies of this document to be served by U.S. first class mail, postage prepaid, on the following:

Kirkland & Ellis LLP
Attn.: Stephen E. Hessler, P.C.
601 Lexington Avenue
New York, N.Y. 10022

Office of The United States Trustee
Attn.: Paul K. Schwartzberg and Serene Nakano
U.S. Federal Office Building
201 Varick Street, Suite 1006
New York, N.Y. 10014

By: /s/ Davor Rukavina
Davor Rukavina