

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No. 19-22312-rdd

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5 In the Matter of:

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7 WINDSTREAM HOLDINGS, INC.,

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9 Debtor.

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12 United States Bankruptcy Court  
13 300 Quarropas Street, Room 248  
14 White Plains, NY 10601

15

16 October 22, 2020

17 10:07 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN



1 HEARING re Application for Final Decree / Notice of  
2 Presentment of Reorganized Debtors' Motion for Entry of a  
3 Final Decree Closing the Chapter 11 Cases filed by Stephen  
4 Hessler on behalf of Windstream Holdings, Inc. (ECF #2544)

5

6 HEARING re Objection to Motion of Reorganized Debtors For  
7 Entry Of A Final Decree Closing The Chapter 11 Cases 2544  
8 filed by J. Christopher Shore on behalf of US Bank National  
9 Association (ECF #2566)

10

11 HEARING re Response / Reply in Support of Reorganized  
12 Debtors Motion for Entry of a Final Decree Closing the  
13 Chapter 11 Cases (related document(s)2544, 2566) (ECF #1603)

14

15 HEARING re Debtors' Ninth Omnibus Objection to Equity  
16 Interest Claims, Insufficient Documentation Claims, Late-  
17 Filed Claims, No Liability Claims, Substantively Duplicate  
18 Claims, Claims to be Modified, and Wrong Debtor Claim  
19 filed by Stephen Hessler on behalf of Windstream Holdings,  
20 Inc. (ECF #2528)

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1 HEARING re Response [Maricopa County Treasurers Response In  
2 Opposition To Debtors Ninth Omnibus Objection To Equity  
3 Interest Claims, Insufficient Documentation Claims, Late-  
4 Filed Claims, No Liability Claims, Substantively  
5 Duplicate Claims, Claims To Be Modified, And Wrong Debtor  
6 Claim] (related document(s)2528) (ECF #2564)

7

8 HEARING re Response to Motion (related document(s)2528)  
9 filed by Devin Lawton Palmer on behalf of Saetec, Inc. (ECF  
10 #2571)

11

12 HEARING re Notice of Filing of Plan Supplement filed by  
13 Stephen Hessler on behalf of Windstream Holdings, Inc. (ECF  
14 #1973)

15

16 HEARING re Limited Objection and Reservation of Rights of  
17 NG-KIH Design Build LLC, as Agent, to Debtors' Assumed  
18 Executory Contract and Unexpired Lease List Filed as Exhibit  
19 A to the Plan Supplement [Doc. No. 1973] filed by Stephen L.  
20 Yonaty on behalf of NG-KIH Design Build LLC. (ECF #2099)

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1 HEARING re Objection and Reservation of Rights to Debtors'  
2 Proposed Cure Amounts for Assumption of Certain Executory  
3 Contracts Under the Plan (related document(s)2201) filed by  
4 Jeffrey A. Marks on behalf of Cincinnati Bell, Inc.  
5 and/or certain of its subsidiaries and affiliates (ECF  
6 #2607)

7  
8 HEARING re Notice of Hearing / Notice of Fourth Interim Fee  
9 Hearing (related document(s)2399, 2401, 2391, 2396, 2393,  
10 2392, 2397, 2402, 2390, 2410, 2438, 2398) Fourth Interim and  
11 Final Fee Application of Kirkland & Ellis LLP and Kirkland &  
12 Ellis International LLP, Attorneys for the Debtors and  
13 Debtors in Possession, period: 2/25/2019 to 6/26/2020, fee:  
14 \$42,092,119.5, expenses: \$2,510,299.14 (ECF #2438)

15  
16 HEARING re FOURTH INTERIM AND FINAL FEE APPLICATION OF  
17 KATTEN MUCHIN ROSENMAN LLP, CONFLICTS COUNSEL FOR WINDSTREAM  
18 HOLDINGS, INC., ET AL., FOR THE (I) FOURTH INTERIM FEE  
19 PERIOD FROM MARCH 1, 2020 THROUGH AND INCLUDING JUNE 26,  
20 2020 AND (II) THE TOTAL FEE PERIOD FROM FEBRUARY 25, 2019  
21 THROUGH AND INCLUDING JUNE 26, 2020.(related document(s)369)  
22 filed by Steven J. Reisman (ECF #2393)

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1 HEARING re Fourth Interim and Final Application of Alvarez &  
2 Marsal North America, LLC as Financial Advisors for the  
3 Debtors, for Allowance of Compensation for Professional  
4 Services Rendered and Reimbursement of Expenses, period:  
5 2/25/2019 to 6/26/2020, fee:\$27,699,451.0, expenses:  
6 \$892,056.24 (ECF #2396)

7  
8 HEARING re Fourth Interim Fee Application of KPMG LLP as Tax  
9 Consultants to the Debtors for Allowance of Compensation  
10 for Services Rendered and Reimbursement of Expenses for the  
11 Period: 3/1/2020 to 6/26/2020, fee:\$2,566,785.00,  
12 expenses: \$44.24 (ECF #2397)

13  
14 HEARING re Fourth Interim Fee Application of PJT Partners LP  
15 as Investment Banker to the Debtors for Allowance of  
16 Compensation and Reimbursement of Out-of-Pocket Expenses  
17 Incurred for the Period: 3/1/2020 to 6/26/2020, fee:  
18 \$966,666.67, expenses: \$5,101.28 (ECF #2398)

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1 HEARING re Fourth Interim and Final Fee Application of  
2 PricewaterhouseCoopers LLP, Independent Auditor and  
3 Accounting Provider to the Debtors and Debtors in  
4 Possession, for Compensation for Services and Reimbursement  
5 of Expenses Incurred During the Period: 2/25/2019 to  
6 6/26/2020, fee: \$7,659,745.30, expenses: \$175,010.86 (ECF  
7 #2399)

8  
9 HEARING re Second and Final Fee Application of Altman  
10 Vilandrie & Company as Telecom Services Consultants for  
11 Allowance of Compensation and Reimbursement of Out-of-Pocket  
12 Expenses Incurred for the Period: 4/16/2020 to 6/26/2020,  
13 fee: \$1,262,196.00, expenses: \$7,589.00 (ECF #2410)

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15 HEARING re Third and Final Application of Solomon Edwards  
16 Group, LLC as Bankruptcy Accounting Consultant for the  
17 Debtors, for Allowance of Compensation for Professional  
18 Services Rendered and Reimbursement of Actual and  
19 Necessary Expenses, period: 6/1/2019 to 6/26/2020, fee:  
20 \$2,960,547.78, expenses: \$245,294.45 (ECF #2401)

21  
22 HEARING re Fourth Interim Application of Morrison & Foerster  
23 LLP as Counsel for the Official Committee of Unsecured  
24 Creditors for Compensation and Reimbursement of Expenses  
25 Incurred for the Period March 1, 2020 through June 30, 2020)

1 for Morrison & Foerster LLP, Creditor Comm. Aty, period:  
2 3/1/2020 to 6/30/2020, fee:\$3,617,700.50, expenses:  
3 \$135,334.99 filed by Morrison & Foerster LLP (ECF #2390)

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5 HEARING re Fourth Interim Application of AlixPartners, LLP,  
6 Financial Advisor to the Official Committee of Unsecured  
7 Creditors for Allowance of Compensation for Services  
8 Rendered and for Reimbursement of Expenses Incurred  
9 for the Period March 1, 2020 through June 30, 2020 for  
10 AlixPartners, LLP, Other Professional, period: 3/1/2020  
11 to 6/30/2020, fee: \$755,156.00, expenses: \$0.00 (ECF #2391)

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13 HEARING re Fourth Interim Application of Perella Weinberg  
14 Partners LP for Allowance of Compensation for Services  
15 Rendered and for Reimbursement of Expenses as Investment  
16 Banker for the Official Committee of Unsecured Creditors for  
17 the Period from March 1, 2020 through June 30, 2020) for  
18 Perella Weinberg Partners LP, Other Professional, period:  
19 3/1/2020 to 6/30/2020, fee: \$900,000.00, expenses: \$1,490.88  
20 (ECF #2392)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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19 BY: CHRISTOPHER SHORE (TELEPHONICALLY)

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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Drain. We're here in In Re Windstream Holdings, Inc., et al, for a regularly scheduled omnibus hearing. This is a completely telephonic hearing. You should state your name and your client the first time that you speak. It's probably a good idea to do that thereafter, just to make sure the court reporter can put together your voice with your name.

There's one authorized recording of this hearing. It's taken by Court Solutions. If you want to order a transcript, you should contact our clerk's office to arrange for the production of one. Court Solutions provides a copy of the recording on a daily basis to the clerk's office.

Obviously, you should keep yourself on mute unless you're speaking, and then unmute yourself.

So with that introduction, I have the agenda for today's omnibus hearing provided by counsel for the Debtors. I'm happy to go down that agenda, unless counsel wants to make any introductory remarks before return to the matters on the agenda.

MR. WEILAND: Thank you, Your Honor. This is Brad Weiland, of Kirkland & Ellis, for the Windstream Debtors. I think our agenda, which we amended yesterday, lays out everything that we have to get done. This is an omnibus hearing, but we do have a number of matters on the agenda,

1 and I'm happy to proceed that way.

2 With me today are my partners, Steve Hessler and  
3 Jack Luze. We're also joined by our colleagues, Mr. Spencer  
4 Caldwell-McMillan and Ms. Jenna Stupar, who will be handling  
5 a couple matters as well. But if Your Honor doesn't have  
6 any preliminary questions, I will cede the microphone to Mr.  
7 Luze, who will be taking the first matter, and that's the  
8 motion for a final decree closing certain of the cases.

9 THE COURT: Okay. Very well.

10 MR. WEILAND: Thank you, Your Honor.

11 MR. LUZE: Your Honor, this is Jack Luze, from  
12 Kirkland & Ellis, on behalf of the Debtors. Taking up  
13 Agenda Item Number 1, Your Honor, the Debtors' motion for a  
14 final decree closing all of the Chapter 11 cases except for  
15 one. Your Honor, I'll be fairly brief.

16 The legal standard is set forth in our initial  
17 motion and also in our reply. The courts generally consider  
18 six factors when determining whether the requirements of  
19 Code Section 350 and Bankruptcy Rule 3022 are satisfied. I  
20 don't think there's a dispute over five of the six factors.  
21 Your Honor's confirmation order, and in addition the order  
22 approving the Unity settlement, are final orders.  
23 Substantially all distributions have been made under the  
24 plan. Where there are classes of creditors that have not  
25 received a distribution because claims are still being

1 reconciled, the company has funded reserves.

2           The company has emerged, and the successor  
3 entities have assumed the business and are running the  
4 business. And payments have either been made or have  
5 commenced with respect to claims under the plan.  
6 Substantially all of the distributions by value and dollar  
7 amount have already been made and were made on the effective  
8 date of the plan.

9           There are some matters that are still open, in  
10 particular some claims matters that will continue to be  
11 reconciled over a period of time. The company proposes to  
12 leave one case open to act essentially in the same manner as  
13 the jointly administered docket has served over the past  
14 year and a half, Your Honor, to be the place where the  
15 Debtors can file pleadings with respect to the ongoing  
16 reconciliation process. And any party, not just parties to  
17 the ongoing claims process, can quickly and efficiently be  
18 heard by the Court, if there is a reason to do so.

19           Ultimately, Your Honor, as the case law  
20 recognizes, the step of closing cases and entering a final  
21 decree is administrative in nature. It's not meant to  
22 prejudice anybody's rights. It does not alter the  
23 jurisdiction -- the entry of the final decree in and of  
24 itself does not alter the jurisdiction of the appellate  
25 courts with respect to the pending appeal. And one case

1 will be left open, as I said, so that parties can quickly  
2 and efficiently have access to the Court, should the need  
3 arise.

4 We cited some examples in our papers, Your Honor,  
5 of instances where cases have been closed, notwithstanding  
6 some disputes pending, claims process pending, even appeals  
7 pending, that we think show support for the concept that the  
8 legal standard is satisfied here, notwithstanding the fact  
9 that there are certain matters left to be dealt with.

10 We do not think it is appropriate that the cases  
11 all be automatically reopened in the event that there is  
12 some sort of remand from the District Court or a higher  
13 appellate court. Should the need arise, U.S. Bank would  
14 have the ability to file a motion on appropriate notice to  
15 have the cases reopened. It could be, depending on the  
16 nature of the remand, that the single case that is being  
17 left open would be sufficient for the Court to consider  
18 whatever issues, if they're narrower issues, are on remand,  
19 and handle the briefing that way.

20 Ultimately, Your Honor, there is a significant  
21 administrative burden to keeping the cases open for a long  
22 period of time it would take to ultimately complete the  
23 claims reconciliation process. And there's really no need  
24 for it. The plan has been consummated and the ancillary  
25 matters with respect to the claims process don't warrant in

1 and of themselves keeping 205 cases open. And should the  
2 need arise, if there is a reversal or remand in connection  
3 with the appeals, we can consider whether reopening is  
4 appropriate at a future date.

5 So with that, Your Honor, we would respectfully  
6 submit that the applicable standard is satisfied. And  
7 unless Your Honor has any questions, I would cede the  
8 microphone to counsel to U.S. Bank.

9 THE COURT: Okay.

10 MR. SHORE: Good morning, Your Honor. Chris  
11 Shore, from White & Case, on behalf of U.S. Bank. I'll be  
12 brief as well. Let me clarify at the outset, U.S. Bank has  
13 no objection to the Debtors stopping paying the U.S. Trustee  
14 fees of \$2.6 million per quarter. Never have. We told the  
15 Debtors that when we first started talking about how to  
16 resolve this issue.

17 In fact, I think all of our Debtor clients would  
18 welcome a precedential opinion. Under Section 350 and Rule  
19 3022, the cases don't have to stay open while confirmation  
20 orders work through two levels of appeal, and that they can  
21 be treated as fully administered, and that they can be  
22 treated as fully administered. Right now, there is no  
23 precedent for that proposition, as evidenced by citations to  
24 unpublished orders.

25 The question that I think is framed by the

1 pleadings is whether Factor 1 in the Advisory Committee  
2 notes, the confirmation order has become final, means that  
3 the Debtors say in their reply that the Court has entered a  
4 confirmation order and order is final for purposes of  
5 Section 158, or whether it means that the confirmation order  
6 has been entered, has not been appealed, and all times to  
7 appeal have passed, which is a more colloquial view of the  
8 word final. So I guess that's the issue that's teed up.

9 U.S. Bank has only really had two concerns. One,  
10 we didn't want closure to affect the status quo of the  
11 pending appeal. We asked the Debtors to stipulate that.  
12 Based on the reply, it seems -- and Mr. Luze's comments  
13 today -- it seems like the Debtors are in agreement that  
14 nothing about the closing of the cases is intended to or  
15 will affect the pending appeals. Great.

16 And two, we didn't want to have to come back and  
17 move to open the cases again if the confirmation order is  
18 reversed or modified on appeal. We did propose a self-  
19 effectuating opening that the order would spell out that any  
20 reversal or modification would be cause, if the cases were  
21 to be reopened.

22 I don't understand what the utility is of placing  
23 it upon U.S. Bank, or even upon the Debtors, to have to move  
24 on notice and get everybody together to reopen the cases if  
25 a mandate is issued that requires this Court to do something

1 in the cases.

2 So unless Your Honor has any questions, I have  
3 nothing further.

4 THE COURT: Okay. Thank you. Mr. Luze, let me  
5 just confirm on the first point that -- or the first concern  
6 that Mr. Shore addressed, mainly that the closing of these  
7 cases, with the exception of Windstream Financing's case,  
8 wouldn't affect the status of the appeal. Is it the case?  
9 Did the Debtors agree with that?

10 MR. LUZE: Yes, Your Honor.

11 THE COURT: Okay. So, for example, they would not  
12 argue to the District Court, or if U.S. Bank continued to  
13 appeal all the way up, that the closing doesn't add another  
14 layer of mootness, correct?

15 MR. LUZE: That's correct, Your Honor.

16 THE COURT: And secondly, that they would not  
17 argue to the appellate courts that the appellant  
18 jurisdiction somehow lapsed, or that notwithstanding that it  
19 didn't lapse, they should not exercise their continuing  
20 jurisdiction because of the closure?

21 MR. LUZE: That's correct, Your Honor. Whatever,  
22 you know, mootness arguments and the like that would be  
23 raised in the appeal are based on facts that already exist  
24 today. The administrative act of entering a final decree  
25 and closing the cases is not meant as a sort of gotcha to

1 that effect. It just it would not be raised as an  
2 additional reason that an appeal is moot or an argument to  
3 that effect, or that the District Court is divested of  
4 jurisdiction. It's solely related to the administration of  
5 these cases and, as we've said, to avoid the ongoing  
6 administrative burden.

7 THE COURT: Okay. I don't think there would be a  
8 lapse of jurisdiction or that there would be a determination  
9 for the appellate courts, since they're exercising appellate  
10 jurisdiction, not original jurisdiction, as to the nature of  
11 or their discretion to exercise that jurisdiction.

12 And what I'm thinking of there is the rule  
13 addressed some time ago by the Seventh Circuit in Chapman v.  
14 Currie Motors, Inc., 65 F.3d 78 (7th Cir. 1995), a hearing  
15 en bank denied 1996 U.S. App. LEXIS 549 (7th Cir. 1996),  
16 that while jurisdiction wouldn't end after the dismissal of  
17 the bankruptcy case, the Court would then still have to  
18 consider whether it should in its discretion exercise that  
19 jurisdiction.

20 A, I think that doesn't apply where the  
21 jurisdiction is at the appellate level. But B, more  
22 importantly, whether I'm right or wrong on that, the Debtors  
23 are not going to argue to the appellate courts that they  
24 shouldn't exercise any continuing jurisdiction on any  
25 grounds based on the dismissal. So I think the record's

1 clear on that point.

2 Okay. Unless anyone has anything more to say on  
3 this, I'll give you my ruling at this point. The Debtors in  
4 these jointly administered cases have sought an order from  
5 the Court closing all but one of the cases under Section  
6 350(a) of the Bankruptcy Code, which provides that a court  
7 shall close a Chapter 11 case when it is determined that the  
8 estate, that is, the estate of the debtor in the case, is  
9 fully administered. That's the language, "fully  
10 administered."

11 Section 350 then goes on to state in Subsection  
12 (b) that a case may be reopened in the court in which such  
13 case was closed to administer assets to accord relief to the  
14 debtor or for other cause.

15 The Bankruptcy Code does not define the term  
16 "fully administered", nor does Bankruptcy Rule 3022, which  
17 also addresses the closing of bankruptcy cases or local  
18 Bankruptcy Rule 3022-1. However, for a long time, courts  
19 have, in determining the meaning of Section 350(a)'s use of  
20 the term "fully administered", taken guidance from a series  
21 of nonexclusive factors set forth in the Advisory Committee  
22 notes to Rule 3022. Namely, whether the order confirming  
23 the plan has become final; whether deposits required by the  
24 plan have been distributed; whether the property proposed by  
25 the plan to be transferred has been transferred; whether the

1 debtor or the successor of the debtor under the plan has  
2 assumed the business or the management of the property dealt  
3 with by the plan; whether payments under the plan have  
4 commenced; and whether all motions, contested matters and  
5 adversary proceedings have been finally resolved.

6 Notwithstanding that comment, the courts also  
7 recognized, in keeping with the comment, that while they are  
8 probative, none is dispositive or required. Rather, they  
9 provide guidance, along with any other relevant factors in  
10 determining whether an estate has been fully administered,  
11 which the court should decide on a case-by-case basis. See,  
12 for example, *In Re Federated Department Stores, Inc.*, 43  
13 *Fed. Appx.* 820, 822 (6th Cir. 2002); and *In Re Union Home*  
14 *and Industries, Inc.*, 375 B.R. 912, 918 (B.A.P. 10th Cir.  
15 2007); as well as *In Re Avaya Inc.*, 2020 U.S. Dist. LEXIS,  
16 76330 (S.D.N.Y. Apr. 30, 2020) at Pages 5-7; and *In Re*  
17 *Clinton Nurseries, Inc.*, 202 Bankr. Lexis 567, (Bankr. D.  
18 Conn. Mar. 6, 2020) at Pages 7-9, and the cases cited  
19 therein.

20 In each of those two cases, and in numerous other  
21 cases upon which they cite, and which have dealt this issue,  
22 the facts were such that at least one of the factors laid  
23 out in the Advisory Committee notes was present to argue  
24 against the Court finding that the case was fully  
25 administered.

1 For example, in Avaya, there was pending  
2 litigation before the Court, the Bankruptcy Court, that is,  
3 and in Clinton Nurseries, there was as well, as well as an  
4 appeal of an earlier decision, although not the decision on  
5 the confirmation order. Those courts, as well as the court  
6 in In Re Fibermark, Inc., 369 B.R. 761, 767 (Bankr. D. Vt.  
7 2007), have also noted that the closure of a Chapter 11 case  
8 under Section 350(a) is merely an administrative task, or  
9 essentially an administrative task, a docket entry  
10 reflecting the conclusion of the case for recordkeeping  
11 purposes.

12 In Re Avaya Inc., 2020 U.S. Dist. LEXIS, 76330 at  
13 page 4, and In Re Clinton Nurseries, 202 Bankr. LEXIS, 567  
14 at page 7-8, which also recognizes that those pages that the  
15 Rule is intended to give bankruptcy courts flexibility in  
16 determining whether an estate is fully administered, given  
17 the use of the word administered and the role of bankruptcy  
18 courts in administering the case and the estate before it.

19 The case law consistent with that focus of the  
20 state is clear that bankruptcy jurisdiction is not lost  
21 based upon the closing of the case. It's well established  
22 that a bankruptcy court may try adversary proceedings and  
23 contested matters before and after entry of a final decree  
24 and that if it had jurisdiction, and that jurisdiction was  
25 properly reserved under the plan, that jurisdiction

1 continues, including in respect of issues that would require  
2 reopening of the case. Again, see *In Re Fibermark Inc.*, 369  
3 B.R. 766-67 (Bankr. D. Vt), and *In Re MBF Inspection*  
4 *Services*, 609 B.R. 889, 894-95 9 (Bankr. D. NM 2019) and the  
5 cases cited therein, including *In Re Menk, M-E-N-K*, 241 B.R.  
6 896, 913 (B.A.P. 9th Cir. 1999)

7 Indeed, a number of courts have held that for a  
8 core jurisdiction, one does not even need to reopen the case  
9 for the court to hear a matter involving its court  
10 jurisdiction, such as a violation of the discharge.

11 These issues had less significance until fairly  
12 recently, and the Debtors, like the debtor in the *Avaya*  
13 *case*, are quite candid about their reason for seeking to  
14 close most of their Chapter 11 cases. Relatively recently,  
15 in 2019, the amount of fees charged by the United States  
16 Trustee under 28 USC Section 1930(a) dramatically increased.  
17 Indeed, the increase was over 733 percent in large cases  
18 like these, leading to courts' consideration of far more  
19 motions to close cases that had previously applied when the  
20 fees in post-confirmation cases were relatively small. See  
21 *Jeremy Williams, "Unexpected Bills: Navigating the Current*  
22 *U.S. Trustee Landscape"*, 39-6 "ABI Journal", 14 June 2020.

23 In weighing the factors that courts have applied  
24 consistent with the Advisory Committee note to Rule 3022 of  
25 the Bankruptcy Rules, I conclude that the cases here are, or

1 the estates here, are indeed fully administered for purposes  
2 of Section 350(a) of the Bankruptcy Code. There's really no  
3 objection to that assertion by the Debtors, which is well  
4 supported by the uncontested facts, which they have alleged  
5 in the motion, most of which I can clearly take judicial  
6 notice of.

7 I will leave the first factor to discuss last,  
8 i.e. whether the order confirming the plan has become final.  
9 The remaining factors, except for the last, all pertain.  
10 The deposits required to be made by the plan, that is, any  
11 escrows or reserves, have been funded.

12 The property proposed by the plan to be  
13 transferred has been transferred. The settlement with Unity  
14 has gone into effect. And the Debtor or their successors  
15 have assumed the business and the management of the property  
16 dealt with by the plan, other than what the plan  
17 contemplated to transfer. And payments under the plan have  
18 commenced. Indeed, the plan has been substantially  
19 consummated.

20 There are a few pending contested matters,  
21 primarily claim objections, that the Court will have to  
22 decide. But as far as administering the Debtors' estate,  
23 the plan clearly provides for treatment of those claims,  
24 however they are decided. And again, my jurisdiction to  
25 decide those matters, as well as any appellate court's

1 jurisdiction or any court (indiscernible) withdrawal of the  
2 reference, would continue, as noted in the authorities I  
3 have already cited. See also D.A. Elya Construction Corp.  
4 v. Damon Morey, M-O-R-E-Y, LLP, 2013 U.S. Dist. LEXIS 45931  
5 at pages 28-29 (W.D.N.Y Mar. 29, 2013), where the Court  
6 stated, "Even though the bankruptcy case may be dismissed or  
7 closed, the bankruptcy court retains jurisdiction to  
8 interpret and enforce its own orders, and with respect to  
9 matters pending before it before the closure of the case."

10 That leaves the first factor stated in the  
11 Advisory Committee notes, i.e. whether the order conforming  
12 the plan has become final. The drafters of the rule did  
13 not define what they meant by the order becoming final. And  
14 further, as I've noted, none of these factors is  
15 dispositive. One could read that term is stating that the  
16 order simply is a final order in the sense that it has not  
17 been stayed, and therefore, can be enforced or relied upon,  
18 as the Debtors have in closing the transactions contemplated  
19 to be closed under the plan.

20 On the other hand, one can apply the definition  
21 that one often sees in a Chapter 11 plan, including this  
22 plan, which is that it is an order no longer subject to  
23 appeal, petition for certiorari reconsideration rehearing,  
24 et cetera., i.e., the ultimate disposition of the order  
25 itself is still pending. That's relevant here because there

1 is an appeal of the confirmation order that is pending,  
2 albeit that it is not stayed. There has been no stay of the  
3 order (indiscernible) to obtain.

4 In focusing on the administrative purpose of the  
5 section and its use of the term, estate being fully  
6 administered, it appears to me that the former  
7 interpretation, i.e., that the order is final and not  
8 stayed, as opposed to the order being final but nevertheless  
9 subject to appeal, is the proper one.

10 There is no administration of the estate affected  
11 currently by the status of the appeal. And obviously, here,  
12 the consequences of keeping these cases open, given the  
13 dramatic increase in U.S. Trustee fees, are serious, as  
14 noted by Judge Nathan in the Avaya opinion that I have  
15 previously cited.

16 I recognize that there is one case on point that  
17 implicitly disagrees with my interpretation of the word  
18 "final" in the Advisory Committee notes, namely 00:48:48 In  
19 Re SLI Inc., 2005 B.R. LEXIS 1322, (Bankr. D. Del. June 24,  
20 2005), where Judge Walter Shapiro, sitting by designation in  
21 the District of Delaware, concluded that while the pendency  
22 of a preference action before the Bankruptcy Court would not  
23 preclude the closure of the cases, the pendency of an  
24 appeal, albeit that the appeal was not stayed -- I'm sorry --  
25 - that the confirmation order was not stayed, would

1 preclude, under the facts of that case, the closing of the  
2 cases.

3 Judge Shapiro noted at Page 6, "The administration  
4 of the bankruptcy case itself is not really implicated by  
5 the preference action, and thus, it's pendency provides no  
6 basis for keeping these cases open." Nevertheless, he  
7 concluded at Pages 6-9 that the pendency of the appeal did  
8 implicate the administration of the case itself because, in  
9 his view, the heart of a Chapter 11 case is the proposal,  
10 approval and confirmation of a plan. I certainly agree with  
11 that opinion, that the heart of the case is the proposal,  
12 approval and confirmation of a plan.

13 But here, as there, the plan was confirmed and the  
14 administration of the case is not affected by the pending  
15 appeal, just as it is not affected by the pending contested  
16 matters here, the claim objections, or the pending  
17 preference action there.

18 Moreover, in balancing the fact that an interested  
19 party would have to reopen the case if it were closed, if  
20 there was an appeal that resulted in a remand or further  
21 action in response to the appellate ruling by the Bankruptcy  
22 Court, the Court in SLI noted that the cost at that time of  
23 keeping the cases open in terms of U.S. Trustee fees, an  
24 estimated \$5,000 per quarter instead of the \$250,000 times  
25 multiple Debtors currently in place, simply did not argue

1 for placing the burden on anyone to reopen the case.

2 To me, again, fundamentally because this is a  
3 purely administrative matter, the Debtors have confirmed  
4 further that the closing of these cases will not in any way  
5 affect the appeal that is pending, I respectfully disagree  
6 with the SLI opinion, and conclude that under the facts of  
7 this case, and under the purpose of Section 350(a), the  
8 cases should be closed at this time.

9 If the appeal results in a remand or the need for  
10 this Court take some other action, it would appear to me  
11 clear that barring a very unusual remand, the case affected  
12 by the appellate ruling would be properly reopened with  
13 little to no contest, and for a relatively modest fee, which  
14 the Court has the ability to waive, and which I would be  
15 inclined to waive if there was a clear remand simply  
16 reversing my confirmation order and providing a direction  
17 with regard to each of these to be closed cases.

18 I agree with Judge Nathan that the fact that a  
19 large fee would need to be paid while these cases remain  
20 open should not be cited, and to its credit. U.S. Bank does  
21 not make this argument, unlike the objector in the Avaya  
22 case, as support for the notion that the fee is a proper  
23 inducement for a debtor to settle outstanding claims. 2020  
24 U.S. Dist. LEXIS 76330 at Page 8.

25 Rather, in exercising my discretion and focusing

1 on what, if anything, needs to be administered in respect of  
2 these estates at this time and in the foreseeable future,  
3 including in the event of a reversal and/or remand, in light  
4 of the pending appeals, it appears to me that these estates  
5 are substantially administered -- or fully administered, and  
6 that the motion should be granted.

7 I think the record is clear that that will not  
8 affect the appeal. I'm sure that U.S. Bank's counsel will  
9 quote the discussion during oral argument on that point, if  
10 the Debtors somehow renege on that undertaking, which I  
11 don't expect them to do, of course, and in addition, on my  
12 ruling.

13 Moreover, I think the parties have quite clear  
14 guidance from me that unless a remand or other instruction  
15 to me raises any issue of interpretation or complexity,  
16 reopening these closed cases to the extent necessary to deal  
17 with such a remand should be an equally simple  
18 administrative act.

19 So I'll look for that order. You don't need to  
20 formally settle it, but you should provide a copy to Mr.  
21 Shore, as counsel for U.S. Bank, as well as to the U.S.  
22 Trustee, when you email it to chambers so we can make sure  
23 it's consistent with my ruling and what has been proposed.

24 MR. LUZE: Your Honor, Jack Luze, from Kirkland &  
25 Ellis, on behalf of the Debtors. We will do that and get it

1 submitted to chambers later today.

2 THE COURT: Okay. Very well.

3 MR. SHORE: And Your Honor, this is Chris Shore,  
4 from White & Case. May I be excused?

5 THE COURT: Yes, certainly. And can anyone else -  
6 -

7 MR. SHORE: Thank you, Your Honor.

8 THE COURT: -- (indiscernible) for that matter?

9 MR. LUZE: With that, Your Honor, I would pass the  
10 microphone over to Mr. Caldwell-McMillan, who will handle  
11 the claims matter that's on the agenda --

12 THE COURT: Okay.

13 MR. LUZE: -- at Agenda Item Number 2.

14 THE COURT: All right. Very well.

15 MR. CALDWELL-MCMILLAN: Thank you, Your Honor.

16 Spencer Caldwell-McMillan, from Kirkland & Ellis, for the  
17 Reorganized Debtors. Next on the agenda is Item Number 2,  
18 which is the Debtors' ninth omnibus claims objection.

19 The Debtors, as part of that, provide customized  
20 individualized notice to the holder of the 109 claim, and  
21 that certificate of service is at 2541, Docket Number 2541.

22 As part of this objection, the Debtors received  
23 two formal responses to the Debtors' objection and a number  
24 of informal responses. The Debtors have continued all  
25 matters that are associated with those responses and are

1 moving forward with the objection on an uncontested basis.

2 THE COURT: Okay. So the Maricopa County  
3 Treasurer's response is continued? That claim is not  
4 withdrawn at this point?

5 MR. CALDWELL-MCMILLAN: It's continued with  
6 respect to that claim, yes. So we remove that claim from  
7 the order and submitted the schedule.

8 THE COURT: Okay. Very well. All right, does  
9 anyone have anything to say on the ninth omnibus claims  
10 objection? Okay. I will grant the objection, as modified  
11 by the proposed order, which grants the objection, or would  
12 grant the objection only insofar as the objection is  
13 unopposed. I do that because having reviewed the objection,  
14 I conclude that the objection successfully overcame any  
15 presumption of the validity of the claims at issue, for the  
16 reasons stated in the objection. And the claimants, but not  
17 responding to the objection, have not carried their burden  
18 of proof.

19 So you can email that order to chambers for entry  
20 with the exhibit, obviously, the schedule.

21 MR. CALDWELL-MCMILLAN: Thank you, Your Honor. We  
22 will do that. So I will turn the matter over to the next  
23 item on the agenda, and I will pass the baton to Ms. Stupar  
24 --

25 THE COURT: Okay.

1 MR. CALDWELL-MCMILLAN: -- to handle that item.

2 THE COURT: Okay. Ms. Stupar, are you on mute?

3 MS. STUPAR: Can you hear me now, Your Honor?

4 THE COURT: Yes, I can now. Thank you.

5 MS. STUPAR: Okay. Sorry about that.

6 THE COURT: That's fine.

7 MS. STUPAR: This is Jenna Stupar, on behalf of  
8 the Reorganized Debtors. I'll be taking Agenda Item Number  
9 3, which is a limited objection and reservation of rights of  
10 NG-KIH Design Build LLC, as agent to Debtors' assumed  
11 executory contract and unexpired lease lift.

12 This is a limited cure objection related to a  
13 contract between Windstream and the Commonwealth of  
14 Kentucky. The claimant here is the Commonwealth agent under  
15 the contract. I think I can be really brief. The parties  
16 are trying to work out a settlement right now which will  
17 resolve the claim as well as the cure objection.

18 While we're optimistic that we can get a deal  
19 done, we also think it's beneficial to dual track our  
20 settlement talks with litigation to ensure an efficient  
21 resolution either way. So to that end, we plan to work out  
22 a joint scheduling order with opposing counsel, and will  
23 provide that to the Court once it's agreed.

24 We hope to have this issue either fully resolved  
25 or teed up for the November or December omnibus hearing.

1 THE COURT: Okay. Do I have someone on for the  
2 claimant, which an agent for the Kentucky Communications  
3 Network Authority? No?

4 MS. STUPAR: You should. I see him in the virtual  
5 courtroom. He may be having the mute/unmute issue that I  
6 had a moment ago.

7 THE COURT: Okay. Is that Mr. Kennedy?

8 MR. POWELL: This is Tyler Powell.

9 THE COURT: Oh, okay.

10 MR. POWELL: I believe I'm unmuted now -- from  
11 Frost, Brown, Todd, representing the claimant, which it's  
12 easier to refer to it as Kentucky Wire. That's the name of  
13 the project that's being built.

14 THE COURT: Okay.

15 MR. POWELL: I think that's correct --

16 THE COURT: All right.

17 MR. POWELL: -- the Debtors' presentation.

18 THE COURT: All right. So is the issue here just  
19 simply what the cure amount is?

20 MS. STUPAR: From the Debtors' perspective it's  
21 yes, there are two issues. One is what the cure amount is,  
22 correct. And then the other is -- the cure amount relates  
23 to some self-performed work that was done under the  
24 contract. And so the other issue that the Debtors want to  
25 look at and resolve is whether adequate notice was provided

1 for that work under the contract. So those are the two  
2 issues.

3 THE COURT: Okay. All right. Well, I think you  
4 probably know I have a standard form of pretrial order. It  
5 normally is applied to adversary proceedings, but it can be  
6 applied to contested matters as well. You can use that form  
7 and mark it up if you want to add other things to it. But  
8 you'll see that form of order tracks off of a discovery  
9 cutoff date and requires a pretrial conference before the  
10 actual trial, and provides that the trial will be structured  
11 such that direct testimony will be taken by affidavit or  
12 sworn declaration of witnesses under the parties' control,  
13 with that witness or those witnesses to be there in person  
14 for cross-examination and redirect.

15 It also provides for the parties to meet and  
16 confer and use their best efforts to agree on the  
17 admissibility of as many exhibits as they can, and to  
18 provide a joint admitted exhibit book, or agreed admitted  
19 exhibit book, to chambers a week before the trial, the same  
20 day that they would be providing the witness declaration.

21 If we go to trial, in all likelihood it would be  
22 on Zoom or some other virtual platform like that. And you  
23 can look at the procedures that I have put in place in other  
24 contested matters in this case, if you want to focus on  
25 preparing for such a trial. Although I take both parties at

1 their word that they're also going to be working during this  
2 period to see if they can settle the matter.

3 MS. STUPAR: That's right, Your Honor.

4 THE COURT: If you are close to a settlement, I'm  
5 amenable to extending the discovery cutoff date so that the  
6 parties don't spend more money in discovery, in light of  
7 where they are in the settlement discussions. So while that  
8 is an important date, it's not carved in stone if settlement  
9 discussions are proceeding.

10 So I would ask you to take a look at that form of  
11 pretrial order, mark it up, not only to reflect a discovery  
12 cutoff date, but also a date for a final pretrial conference  
13 that Ms. Lee in the clerk's office will give you once you  
14 tell her when discovery is supposed to be done. But also if  
15 there is any other feature that you want to build in that  
16 doesn't dramatically change the form of the order. And it's  
17 fine for you to build in some time for settlement  
18 discussions or not. I leave that up to you. So I'll look  
19 for that order.

20 MS. STUPAR: Okay. Understood and very  
21 appreciated, Your Honor.

22 THE COURT: Okay.

23 MS. STUPAR: That does it for me, so I will cede  
24 the virtual podium here.

25 THE COURT: Okay. Very well.

1 MR. WEILAND: Hello, again, Your Honor. It's Brad  
2 Weiland, of Kirkland & Ellis. The next several matters on  
3 our agenda today are the interim and final fee applications  
4 for both the Debtors and Creditors' Committee professionals.  
5 I know Mr. Marinuzzi is here to speak for the Creditors'  
6 Committee. But as to the Debtors' applications, Your Honor,  
7 I would propose to take those together, since there are no  
8 pending objections to any single fee application.

9 THE COURT: Okay. All right. Let me ask you  
10 first, have there been any further developments on them from  
11 the proposed order that was submitted that laid out the  
12 specific amounts for each professional?

13 MR. WEILAND: No, Your Honor. There have not been  
14 any changes to the fee amounts or other developments since  
15 we submitted an order.

16 THE COURT: Okay. So no adjustments in light of  
17 any discussions that didn't rise to the level of an  
18 objection?

19 MR. WEILAND: No, Your Honor. Nothing since the  
20 applications were filed. Some of the applications,  
21 including our Kirkland application, reflects voluntary  
22 reductions and other changes, but nothing since the  
23 documents were filed.

24 THE COURT: Okay. Very well. Does the U.S.  
25 Trustee have anything to say on these applications, that is

1 for the Debtors' professionals?

2 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg,  
3 for the U.S. Trustee's office. There is no objection.

4 THE COURT: Okay. Very well. I had one question,  
5 and it probably reflects my technological ignorance. The  
6 Altman Vilandrie application has a \$5,000 expense listed for  
7 "Google images". I'm not sure what that is. I don't if you  
8 have anyone on the phone from them.

9 THE COURT: Your Honor, I believe we have someone  
10 listening in, although I don't think they have a live line.  
11 My understanding of Altman's work is that they are a  
12 telecommunications network consultant. My understanding of  
13 anything related to Google images relates to understanding  
14 the geography and layout of the network. But I don't have  
15 more specifics than that. Happy to get into contact with  
16 someone from Altman, who again, I believe is listening in  
17 but doesn't have a live line and can give you any additional  
18 information or detail on that \$5,000 line item.

19 THE COURT: Right. Okay. I mean, I get it's an  
20 expense, so it has to be a reasonable and necessary expense,  
21 not a markup and not overhead. So what I will do -- it's  
22 not worth holding up this hearing over. I've reviewed the  
23 other applications. I've familiar with the work of some of  
24 the parties, some of the applicants directly, primarily the  
25 law firms, and those who have appeared in the case on the

1 financial advisor side. Other parties, other applicants,  
2 are more in the nature of business consultants.

3 Based on my review and the lack of an objection,  
4 after due notice to sophisticated parties, primarily those  
5 who will be the major shareholders and creditors going  
6 forward, I will grant the applications in the amounts  
7 sought. The one caveat is, when you submit the order, I  
8 would like an explanation of this Google images expense,  
9 which is on for -- it's an entry for June 25, 2020 -- and/or  
10 just deleting it. You know, obviously, if it's deleted it's  
11 not an issue. If it's still sought, someone should explain  
12 to me what it is.

13 MR. WEILAND: Happy to do that, Your Honor, and  
14 handle it in that way. As for that explanation, if an email  
15 with the --

16 THE COURT: An email is enough.

17 MR. WEILAND: -- submission of order is  
18 sufficient?

19 THE COURT: Yes, that's fine. And you can copy  
20 Mr. Schwartzberg on the email.

21 MR. WEILAND: Okay. We will absolutely do that,  
22 Your Honor. Thank you.

23 THE COURT: Okay. And that leaves the Creditors'  
24 Committee's professionals.

25 MR. WEILAND: That's right, Your Honor. So I'll

1 let Mr. Marinuzzi take the phone line.

2 MR. MARINUZZI: Good morning, Your Honor. Lorenzo  
3 Marinuzzi, Morrison & Foerster, on behalf of the Creditors'  
4 Committee.

5 THE COURT: Good morning.

6 MR. MARINUZZI: The Committee's professionals  
7 submitted applications for the period March 1st through June  
8 30th. As with the Debtors' applications, no objections were  
9 filed. And there were no modifications to the amounts  
10 requested in the order as presented by the Debtors on behalf  
11 of the Committee and the Debtors.

12 THE COURT: Okay.

13 MR. MARINUZZI: Unless the Court has questions?

14 THE COURT: Well, the only question I had -- and  
15 maybe I just overlooked this -- the Committee's final fee  
16 application in respect of Morrison & Foerster, did that  
17 reflect the agreement related to the dismissal of the appeal  
18 of the plan confirmation order?

19 MR. MARINUZZI: Your Honor, as it's filed, it  
20 doesn't. What we intend to do is when we present an invoice  
21 after allowance of the application, which is standard in  
22 this case, to the company, we will reduce our invoice by  
23 \$175,000. So the company gets the benefit of half of the  
24 savings promised by the Committee professionals.

25 When we're back in Court for our final fee

1 applications, which covers the period from July 1st through  
2 the effective date, for the Committee professionals, at that  
3 point when Perella Weinberg submits its application,  
4 assuming it's approved by the Court, they will similarly  
5 reduce the amount of the invoice they sent to the company  
6 for payment of their fee by \$175,000.

7 THE COURT: Okay. Can you -- let me -- I'll come  
8 back to that in a second. Does anyone have anything further  
9 to say on the Committee professionals fee applications?  
10 Okay. I will grant each of them, obviously, on an interim  
11 basis, based on my review and the lack of an objection.

12 Are you going to submit a separate order from the  
13 Debtors' order, Mr. Marinuzzi?

14 MR. MARINUZZI: No, Your Honor. I think the order  
15 that was submitted by the Debtors reflects the Committee  
16 professional amounts as well.

17 THE COURT: Okay. Well, let me go back to the  
18 Debtors' counsel. Did you email that order already to  
19 chambers?

20 MR. WEILAND: I believe we did, Your Honor. But  
21 we will, obviously, resubmit --

22 THE COURT: I think --

23 MR. WEILAND: -- with the explanation you  
24 requested.

25 THE COURT: Yeah, I was contemplating that you'd

1 resubmit it.

2 MR. WEILAND: Yes.

3 THE COURT: And then I would also ask you to put a  
4 footnote in the chart by the Morrison & Foerster column for  
5 to be paid that would say in the footnote, to be reduced by  
6 -- what was it, \$175,000, I thought?

7 MR. MARINUZZI: That's correct, Your Honor.

8 THE COURT: In light of the prior settlement. I  
9 don't think we need one for Perella Weinberg, because that  
10 will be with the final one.

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

12 THE COURT: Okay. All right. And then you can  
13 just copy, obviously, Mr. Marinuzzi on that, as well as Mr.  
14 Schwartzberg, as I said before.

15 MR. WEILAND: Of course, Your Honor.

16 MR. MARINUZZI: Thank you, Your Honor.

17 THE COURT: Okay. Anything else for today on  
18 Windstream?

19 MR. WEILAND: Not from the Debtors, Your Honor.  
20 There are a number of matters that have been continued,  
21 including the claims that Mr. Caldwell-McMillan mentioned  
22 earlier. But nothing more going forward today.

23 THE COURT: Okay. Very well. Thank you. So I'll  
24 look for those two orders, well three orders. Excuse me.  
25 The fee order, the ninth omnibus claim order, and the case

1 closing order.

2 MR. WEILAND: Yes, Your Honor. And thank you very  
3 much for the time.

4 THE COURT: Okay. Thank you.

5 MAN: Thank you, Your Honor.

6 THE COURT: Okay.

7 (Whereupon these proceedings were concluded at  
8 0:00 PM)

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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

Digitally signed by Sonya Ledanski Hyde  
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Date: October 23, 2020

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