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Hybrid Hearing Using Zoom for Government RE: Plan Confirmation.
(Doc ## 1981 to 1983, 2078, 2079, 2084, 2109 to 2114, 2129 to
2133, 2135, 2136 to 2138, 2162, 2166, 2185, 2188, 2195 to 2197,
2208 to 2210, 2214, 2215, 2218, 2219, 2222, 2223, 2227, 2228,
2229, 2231 to 2240, 2242, 2250, 2254, 2259 to 2267)

Hybrid Hearing Using Zoom for Government RE: Debtor's Motion
for Entry of an Order Approving the Settlement Agreement by and
among the Debtors and the Serranos. (Doc## 2184, 1766)

Status Conference RE: Debtors Motion for an Order Authorizing
Them to (I) Enter Into Umbrella Agreements and Related
Documents, and (II) Assume Amended Aircraft Lease Agreements.
Doc# 2267)

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P R O C E E D I N G S

THE COURT: Good morning, everyone. I'm sorry for the delay. We thought we had this all worked out, but best laid plans.

Go ahead, Mr. Fleck.

MR. FLECK: May it please the Court? Evan Fleck of Milbank LLP on behalf of debtors.

Let me start, Your Honor, by expressing our sincere appreciation to Your Honor, to the courtroom staff, to the deputies, everybody involved in making today happen. And obviously, it's an extremely significant day for these debtors as we hope to make our final approach towards emergence.

We, obviously, had significant amount of planning to get to today, including by Your Honor's staff. And we certainly appreciate the efforts that were made to be here in person. It makes it all the more real for us. Many of us haven't actually seen the other person in the courtroom in an in-person setting, that haven't seen Your Honor for quite some time. So it's great to be here. Like I said at the first-day hearing which obviously was telephonic that we look forward to hopefully being here at Bowling Green in person at some point. I didn't realize it was going to take until the end of the cases.

I also -- maybe we should have predicted that after eighteen months of Zoom and telephonic hearings the day we

1 decided to come in person would be a nor'easter in the area. A
2 little envious of the people who are on the phone and on Zoom.
3 But again, we're thrilled to be here.

4 There are some particularly significant folks that I
5 want to make mention of their presence, some of whom flew in on
6 redeyes to be here. This is an extremely serious process for
7 the debtor. They take every aspect of Your Honor's proceedings
8 and process very seriously. And it was important for them to
9 be here.

10 So there are a number of the members of the senior
11 management team that I'd like to identify in the courtroom.
12 And they're behind me, obviously, socially distanced. Now,
13 I'll recognized first, to Your Honor's left in the gallery, Mr.
14 Rohit Phillip, the debtors' CFO. To his side is Adrian
15 Neuhauser, the president and CEO of the debtors and is also one
16 of our declarants today.

17 If I can see behind me properly, Mr. Richard Galindo
18 who is the general counsel of the debtors. Behind Mr. Galindo
19 is Ms. Lucy Avila who is the vice president, corporate finance
20 and treasurer of the debtors. And that makes up the management
21 team who's in the courtroom today.

22 I'll just also note one other declarant for today, Ms.
23 Ginger Hughes from Seabury. And certain of her colleagues are
24 also in the courtroom today.

25 I want to be clear, Your Honor, though that we're --

1 there are just a few of us here that make up the team. And
2 I'll make mention of them again later. But it's really -- in
3 addition to those folks here, the Avianca team in Bogota,
4 elsewhere, some who are in our office participating in the
5 overflow room that you've been good enough to make available,
6 they've been active participants in this process and helped us
7 to achieve what is really remarkable, a nearly fully consensual
8 confirmation process for these debtors.

9 Your Honor noted more than a year ago in connection
10 with our debtor-in-possession financing relief that it was one
11 of the most complex packages of financing that Your Honor had
12 seen. I think that view was shared by many of us. And that
13 was also a fully consensual process. All of the work that's
14 gone in to achieve these cases could have happened with a lot
15 of loose ends.

16 This team in particular wanted to make sure we could
17 achieve consensus. We made that commitment to Your Honor back
18 on -- well, I think it was the day after Mother's Day that we
19 had our first-day hearing over the phone that we would do
20 everything possible to try to achieve consensus in the cases
21 that we knew would be complicated, particularly given the
22 multijurisdictional aspects of the cases. And I'm proud of
23 what the team had achieved to bring that before the Court.

24 In addition to myself, Your Honor, some of my
25 colleagues will be taking the podium to address the Court. And

1 I'll just for purposes of the record make mention of Mr.
2 Satterfield who's at the table with me, Mr. Bray who is just
3 behind him, Mr. Schak, and as well Mr. Renenger, my litigation
4 partner, who may have occasion to participate today. Again,
5 other colleagues are working hard, working hard late in the
6 evening yesterday to get us here.

7 So, Your Honor, in terms of how we would propose to
8 proceed but obviously we'd defer to Your Honor's preferences,
9 we have a couple of matters on the agenda that have come up
10 before the confirmation proceedings. So we would propose to
11 take those up first. We did file a further amended agenda this
12 morning at docket number 3277.

13 And what we propose to do, again, with the Court's
14 permission would be to first take up the Serrano settlement
15 motion which is contested. Then we'd like to take up the
16 matter that relates to ECAs (ph.) and the finance issue. It's
17 not on for hearing today for ultimate adjudication, but we did
18 want to bring the report in an orderly matter to try to work to
19 achieve through consensus of the parties. But we'd like to
20 just give Your Honor some familiarity with how it fits into the
21 broader puzzle and then take direction from the Court through
22 the scheduling. We would like to have the matter heard at the
23 Court's earliest convenience, but it need not be addressed
24 today. We know that it was filed on very short notice.

25 And following that, we would propose to move into the

1 confirmation with -- including the presentation materials that
2 Your Honor has. And then we'll take up the case in chief.

3 THE COURT: Go ahead, Mr. Fleck.

4 MR. FLECK: Thank you, Your Honor.

5 So at this point, I'll cede the podium to Mr. Schak
6 who will take up the Serrano motion.

7 THE COURT: Thank you.

8 MR. SCHAK: Good morning, Your Honor. Benjamin Schak
9 of Milbank for the debtors.

10 THE COURT: Thank you.

11 MR. SCHAK: Your Honor, as Mr. Fleck mentioned --
12 sorry, I'm still getting the hang of being in person again.

13 THE COURT: So am I.

14 MR. SCHAK: As Mr. Fleck mentioned, the first matter
15 on the agenda is the Serrano settlement related to the
16 subsidiary known as SAI or Servicios Aeroportuarios Integrados.
17 And it was filed at docket 2184.

18 Your Honor, SAI is a ground handling business which
19 means that they basically help move luggage around the airport.
20 This was an independent enterprise that Avianca bought a ninety
21 percent stake in back in late 2017. After further
22 consideration, new management and per the Court, Avianca thinks
23 that ground handling is not a core part of its business. And
24 Avianca has been in discussion with regarding the motion around
25 a potential sale to a third party.

1 Your Honor, one of the I would say obstacles in the
2 way of the value maximizing sale to the third party of the SAI
3 equity is that there's a shareholders agreement in place right
4 now with the ten percent owners, the Serrano siblings, Mr.
5 Serrano, Ms. Serrano. Most importantly, under that
6 shareholders agreement, Avianca can't not drag along the
7 Serranos with a sale. And the purchaser might potentially be
8 burdened by a (indiscernible) that the Serranos enjoy under the
9 shareholders' agreement.

10 So the history here during the case, Your Honor, is
11 that earlier this year where Avianca filed a notice of
12 rejection of that burdensome shareholder agreement. As Mr.
13 Fleck mentioned, we have continually sought a consensus in this
14 case. And so that filing had effective jumpstarting
15 negotiations with the Serranos.

16 Happily for everyone I think, those negotiations ended
17 up in consensual settlement here which is embodied in the
18 motion. The key terms are a reduction of the amount that put
19 options so that the price will now be roughly 3.8 million
20 dollars rather than 4.8 million.

21 Avianca now has the ability to drag the Serranos to
22 force them to sell their ten percent interest for the 3.8
23 million dollars if and when Avianca decides to sell that -- if
24 and when Avianca decides to sell its ninety percent interest.
25 And there's also some other terms such as the breakdown of any

1 indemnification liabilities and an agreement that SAI will
2 distribute its unpaid dividends both to the Serranos and under
3 the plan also to the rest of the Avianca entities.

4 Your Honor, this settlement is not the largest piece
5 of the puzzle here. There's important steps for the debtors to
6 clear the cloud over their investment in SAI and be able to
7 market and sell that business at the most advantageous price in
8 the future. There are no objections to document 2184, the
9 Serrano settlement motion. So I would respectfully request
10 that the Court grant the SAI settlement.

11 THE COURT: Thank you, Mr. Schak.

12 Does anybody else wish to be heard? All right. The
13 Court has reviewed the settlement. Obviously, there have been
14 no objections filed to it. The settlement is approved.

15 MR. SCHAK: Thank you, Your Honor.

16 THE COURT: Thank you very much, Mr. Schak.

17 MR. SCHAK: I'll cede now to Mr. Bray.

18 THE COURT: Okay. Thank you.

19 MR. BRAY: Good morning, Your Honor. Gregory Bray,
20 Milbank LLP.

21 THE COURT: Good morning.

22 MR. BRAY: Thank you for setting this for a status
23 conference today. We apologize for the timing. It was
24 unavoidable. There have been a number of parties literally
25 working around the clock for the last few days to be at this

1 deal (indiscernible).

2 As Mr. Fleck said, our request of the Court today is
3 to set a motion for hearing as soon as the Court is comfortable
4 doing so. It is a large -- it involves twenty-seven claims in
5 our fleet, a significant number and is an important part of the
6 company's --

7 THE COURT: It's permissible while you're at the
8 podium if you want to remove your mask. If you want to leave
9 it on, you can leave it on as well. But anybody who's at the
10 podium can remove their mask.

11 MR. BRAY: I can do that. Yeah. Thank you.

12 So if it pleases the Court, I'll just give you a
13 little context here with respect to the relief we're
14 requesting. As I said, this motion involves twenty-seven
15 planes in our fleet. And the planes have been financed in a
16 relatively complex structure. Essentially, each plane though
17 is owned by an SPB. Avianca leases each plane from the SPB.

18 The current financing parties, prepetition parties, we
19 refer to them as ECA finance parties. And I'm pleased to
20 announce to the Court that we have an agree in principle with
21 ECA finance parties to settle the claims and pay them off and
22 that we expect to finalize that agreement as literally I hope
23 today or tomorrow and then very shortly thereafter file it with
24 the Court, a settlement motion to approve that agreement.
25 That's a significant accomplish for us to get the debt size and

1 fleet and the number of planes involved in the size of the
2 claims which are about 500 million dollars.

3 So, Your Honor, the motion itself, the relief we
4 request in the motion, is essentially for authority for the
5 debtors to enter into what we call umbrella agreements and
6 related documents that the goal is that the counterparties of
7 those motions will essentially provide the company with a
8 substantial portion of liquidity which will offset essentially
9 settlement with the ECA finance parties. In essence, what will
10 happen -- and I'm greatly simplifying the transaction. But
11 essentially, the SPBs that own these aircraft will be sold to
12 the two counterparties: Castlelake, FTAI. And then they
13 essentially are purchasing them and then pay Avianca the funds
14 for the purchase.

15 Then Avianca will then continue to lease the planes
16 through the existing restructure. So we're essentially
17 preserving the structure. And again, I'm speaking in
18 generalities, but essentially refinancing out the transactions.
19 That is not a literal statement but a general one.

20 And part of the -- we'd also request is we're asking
21 the Court to approve the assumption of the amended leases as
22 part of this transaction to maintain continuity in the
23 corporate structure. That is, in essence, what relief we
24 request to the motion. It is a high priority for the company.

25 THE COURT: Let me ask a question because a set of a

1 papers was --

2 MR. BRAY: Yes.

3 THE COURT: -- delivered to me this morning.

4 MR. BRAY: Yes.

5 THE COURT: But not everything is signed and agreed at
6 this point?

7 MR. BRAY: No. We have a signed -- we have signed
8 binding agreements from counterparties. And that's one of the
9 reasons for the urgency of the company, Your Honor. That's
10 contingent upon this Court's approval.

11 THE COURT: Okay.

12 MR. BRAY: It's very important. And we know that our
13 parties in the agreement are legally bound.

14 THE COURT: All right. So I only have the briefest
15 opportunity to look at the papers. Serve it with a notice of
16 presentment that a deadline of 5 p.m. next Tuesday, November
17 2nd and a hearing date and time if necessary of November 3rd at
18 11 o'clock.

19 MR. BRAY: Very well, Your Honor.

20 THE COURT: All right. I wasn't -- when the request
21 came in yesterday to go forward with the matter today when the
22 papers hadn't even been filed yet, I wasn't prepared to do
23 that. So there have been numerous other lease assumptions that
24 have gone forward. I think all have been uncontested at this
25 point. So as I say, Tuesday the 2nd at 5 p.m. for notice of

1 presentment. And if necessary, we'll go forward on the 3rd at
2 11 o'clock. We'll do that by Zoom, Zoom for Government, not
3 live. I have hearings at 10 and at 2 on the 3rd, but we'll do
4 this at 11 at necessary. If there are no objections, it's
5 likely the order will be entered and the hearing canceled.

6 MR. BRAY: Thank you, Your Honor.

7 THE COURT: All right. Thank you very much.

8 MR. FLECK: For the record, once again, Your Honor,
9 Evan Fleck for the debtors.

10 Before I begin walking through the brief presentation,
11 I just want to handle a couple of important housekeeping
12 matters, if I may. And that is requesting the Court to admit
13 into evidence certain declarations that have been filed in
14 today's evidentiary record.

15 First, Your Honor, as I noted in the introductions, is
16 the declaration of Adrian Neuhauser, the president and CEO of
17 Avianca Holding S.A.. That's at docket number 2263. The
18 second, Your Honor --

19 THE COURT: Let's take them one at a time. Just give
20 me a second, Mr. Fleck.

21 All right. So attached to the agenda for today as
22 Exhibit A is the defendant's -- the debtors', excuse me --
23 debtors' witness and exhibit list. And I'm looking at page 2
24 at -- near the bottom of the page. And it has the list. It
25 shows the description and the exhibit number. So the first one

1 is the Neuhauser declaration, 2263. Are there any objections?

2 All right. The Neuhauser declaration is admitted in
3 evidence.

4 MR. LENIHAN: Your Honor --

5 MR. FLECK: Excuse me, Your Honor. Someone in --

6 THE COURT: I'm sorry. Come on up to the microphone,
7 if you would, please.

8 MR. LENIHAN: Good morning, Your Honor. My name is
9 Glen Lenihan with Oved & Oved.

10 THE COURT: I'm sorry. You have to speak a little
11 louder.

12 MR. LENIHAN: Good morning, Your Honor. My name is
13 Glen Lenihan with Oved & Oved. We represent the creditors Udi
14 Baruch Guindi, David Baruch, Shoshana Baruch, Habib Mann, Golan
15 LP, and Isaak Baruch. We're holders of certain of -- what's
16 been called the 2023 notes.

17 And just with respect to Neuhauser declaration and
18 also the declaration that presumably they'll put in next of Ms.
19 Hughes, we just wanted to lay objections that that -- with
20 respect to the declarations that much of the language in there
21 is deliberately vague and broad. And we would like the
22 opportunity to cross-examine the --

23 THE COURT: Well, that's a different issue whether you
24 cross-examine or not. But --

25 MR. LENIHAN: I just wanted to preserve our rights as

1 going forward. Thank you, Your Honor.

2 THE COURT: Are you objecting to the admission of the
3 declaration in evidence? Yes or no?

4 MR. LENIHAN: No, Your Honor.

5 THE COURT: All right. The Neuhauser declaration, ECF
6 2263, is in evidence.

7 (Neuhauser declaration was hereby received into evidence
8 as Debtor's Exhibit, as of this date.)

9 THE COURT: And we'll go through the list. And you
10 can offer them. Then I'll rule. They are subject to cross --
11 the witnesses are subject to cross-examination

12 Go ahead, Mr. Fleck.

13 MR. FLECK: Thank you, Your Honor.

14 The next declaration that we seek to have admitted is
15 docket number 2262, declaration of Ginger Hughes in support of
16 confirmation of the joint Chapter 11 plan of Avianca Holdings
17 S.A. and its affiliated debtors.

18 THE COURT: Are there any objections to the Ginger
19 Hughes declaration? Hearing none, the Hughes declaration is
20 admitted in evidence.

21 (Hughes declaration was hereby received into evidence as
22 Debtor's Exhibit, as of this date.)

23 MR. FLECK: Thank you, Your Honor.

24 Lastly, the declaration of -- rather, it's a voting
25 certification at docket number 2239, certification of P. Joseph

1 Morrow, IV with respect to tabulation and votes on the joint
2 Chapter 11 plan for Aviana Holdings S.A. and its affiliate
3 debtors.

4 THE COURT: Are there any objection to admitting the
5 Morrow declaration, ECF 2239, in evidence? Hearing none, it's
6 admitted in evidence.

7 (Morrow declaration was hereby received into evidence as
8 Debtor's Exhibit, as of this date.)

9 MR. FLECK: Thank you, Your Honor. And each of
10 parties is either here in the courtroom and also, in the case
11 of Mr. Morrow, on Zoom and available, Your Honor.

12 THE COURT: Okay. All right.

13 MR. FLECK: As Your Honor is aware, we did provide a
14 copy of -- your chambers a copy of the dec that is not on the
15 screen. Hopefully everybody who's participating remotely is
16 able to see this.

17 Your Honor, we thought it important to help to bring
18 to context for this hearing today where these debtors came
19 from. We've achieved remarkable success in these cases. But
20 this outcome was far from known at the time these cases began.
21 I think Your Honor noted on a number of occasions that there
22 were quite reasonable concerns as to where these cases would be
23 and if we find ourselves at this level of consensus to
24 successful reorganization.

25 I think the team -- the team that's here from Avianca

1 has shown how resilient they are and how resilient the airline
2 is. Even before we started today, many of them started to help
3 to try to address the technological issues in the courtroom.

4 THE COURT: For those of you who -- maybe this was
5 explained before. We did the dry run last week. All the
6 technology worked perfectly. If it can go wrong, I guess it
7 will. But we're making the best of it.

8 Go ahead, Mr. Fleck.

9 MR. FLECK: Understood, Your Honor.

10 So we want to put in context -- I know that time is
11 somewhat short because people are on vacation, so I don't want
12 to belabor the point. So we'll move through this relatively
13 quickly. But hopefully it'll be a useful tool as well as we
14 move into the confirmation standards and the very few
15 objections and the nonobjection that was received from the
16 Office of the United States Trustee which we'll take up in due
17 course.

18 Before the commencement of these cases, Your Honor,
19 the debtors first of all had been subject to Chapter 11
20 proceedings before Judge Cropper (ph.) and then subsequently
21 were on a path towards a restructuring out of court. They had
22 identified a number of the key issues and objectives that
23 needed to be addressed that went right in the gamut from issues
24 with respect to litigations, default, with respect to the
25 shareholder vote, from United Airlines and other operational

1 issues that the company had addressed. But in fact, as of
2 February 2020, the Avianca plan was -- Avianca plan was
3 working. It was ahead of its financial goals. And the
4 unsecured bonds of the company that actually recovered to par.

5 The impact of COVID-19 and the pandemic on, frankly,
6 all of us -- but significantly important for today's purposes
7 this airline was (indiscernible). The management team, under
8 the supervision of the board, took steps immediately to try to
9 address what was happening to the company whose business was
10 literally suspended and grounded. Some of those steps included
11 radical measures to control costs to spending debt and lease
12 payments, furloughing employees, and reducing wages, obviously
13 decisions that were very painful for the management team to
14 make as well as for the individuals who were affected by that
15 most directly and their families.

16 So we came into the Chapter 11 cases, obviously, in
17 May of 2020 with a cash position that was below what is
18 appropriate for a business at this type. And as we mentioned
19 earlier, it was only when we were able to secure a complicated
20 debtor-in-possession financing with the company's liquidity
21 position was shored up and ultimately led us through these
22 Chapter 11 cases through effectively the financing of the DIP
23 and the conversion of the exit financing.

24 As I noted, and Your Honor became aware very early on
25 in our first-day hearing, the time I was in my basement on my

1 phone talking to you, presenting that initial presentation from
2 the debtors, the airline was grounded literally. Both of
3 Avianca key markets, El Salvador and Colombia, had closed the
4 airspace to commercial passenger flights. There was nothing
5 the airline could do about that, notwithstanding their best
6 efforts.

7 Passenger flying has now fortunately recommenced with
8 Colombia and Central American markets reopening. I don't think
9 we're on a (indiscernible) path at this point; Mr. Neuhauser's
10 team will certainly tell you that. But there's cause for
11 optimism.

12 The one -- the one sort of outperformer during the
13 pandemic in terms of the airline was the cargo performance.
14 And we've talked about that a number of times. And we've
15 reflected here, the cargo fleet and the (indiscernible)
16 opportunities were that the company seized upon really to put
17 the company on solid financial footing while there were
18 significant uncertainties.

19 We've talk a lot in my updates to the Court and in
20 other pleadings before the Court about the key goals that were
21 both in terms of the restructuring goals as well as the
22 business objectives to get the company where we are today in
23 emergence. Obviously, there's significant overlap in those.
24 I'll just touch upon them. All of them have (indiscernible)
25 because, with the exception of confirmation we hope will come

1 today, we have achieved -- we've achieved what we set out to
2 achieve. When I say "we," I really mean, obviously, the
3 company through the work of the management team and the
4 employees. Again, we achieved or we have -- we're very
5 comfortable with respect to the targets going forward.

6 So labor, we've had extremely strong support. We've
7 very proud of that. Avianca has significantly reduced the
8 payroll expenses and has new agreements with its labor pool.
9 In addition, obviously, we haven't spent a lot of time and used
10 a lot of court time with respect to the fleet. A lot of that
11 was as a result of the very hard work of the team at Seabury.
12 We understood the circumstances where the airline and the
13 industry found itself during these cases.

14 You'll recall that we reached power-by-the-hour
15 agreements early on in the cases. Those really kept us in a --
16 in a good footing with those relationships while we worked to
17 negotiate long term transactions with a lot of the lessors.
18 The airline has substantially reduced its overall fleet cost,
19 has increased flexibility, which is of key importance, and also
20 has introduced over 300 other cost-savings initiatives. And
21 noted here, Your Honor, is that the key metric of cost per
22 available seat kilometer has been reduced or will be reduced by
23 2023 we estimate by forty-one percent which is really
24 remarkable.

25 Just a look here at some of the people that actually

1 worked at the airline and the business around us again and what
2 we're working for.

3 One of the other goals, Your Honor, is obviously to
4 restructure the secured debt, to establish collateral. I think
5 that's known to the Court at this point both with respect to
6 the tranche A DIP and the tranche B which ultimately has now
7 formed the basis for a conversion to the equity of the
8 reorganized debtors. Having the access to that facility and
9 Your Honor's understanding of the imperatives of that facility
10 is really key for these debtors.

11 In addition the work we were doing here, and in some
12 large measure aided by what Your Honor approved in this Court,
13 the debtors were able to overhaul their business plan. There
14 were deep strategic efforts of the work of a lot of advisors
15 that were done and then redone and then reworked again because,
16 obviously, the environment was dynamic, to say the least. And
17 the debtors had to react and respond to that which they have
18 done. There is now a focus on leisure travel which I think is
19 consistent with what the airline is expecting in the industry.
20 Avianca has added more direct routes, reduced its
21 (indiscernible), unbundled products, increased cabin capacity,
22 and also we've noted a couple of the others here. It's still
23 providing Wi-Fi service for select profitable routes. The
24 airline is also going to maintain its profitable cargo and its
25 loyalty business which is LifeMiles which is not a debtor in

1 these cases.

2 Your Honor may have also taken note of some changes
3 that the airline has put in place with respect to the network
4 and the (indiscernible) plan. There's an increase in the
5 destinations, a dramatic increase in the routes, as well as an
6 increase in the routes per city. There are a number of
7 exciting new locations. I have thought about adding pictures
8 of some sort of beach destinations on here. I thought you
9 might be envious of that with the -- particularly with today's
10 rain. So I'd pass that aside. But there's a lot of energy and
11 enthusiasm around this business plan and what the debtors are
12 expecting to put in place in the near term.

13 I think we've also talked about the DIP-to-exit which
14 was key to helping us to get here today and to take advantage
15 of favorable conditions of the market at the right time to
16 reduce costs, overall expenses on the company in terms of the
17 financing expenses to position us well for this exit today.

18 Your Honor has also become aware, including through
19 the ECCA motion which we took out at the disclosure statement
20 hearing, of the conversion of the 900 million-plus in tranche B
21 loans into equity. We also made the requests of the tranche B
22 lenders and the market to provide new equity. And that was
23 met -- that request indeed was met by the tranche B lenders.
24 We'll talk about this in a moment, the different opposition in
25 terms of which of the tranche B lenders are providing that.

1 But reportedly, for purposes of today including feasibility and
2 the like, we -- the full 200 million dollars in new money is
3 coming in to the debtors in connection with the effectiveness
4 of the plan.

5 Your Honor also became aware perhaps too much as the
6 chairman of the USAVflow matter, but the resolution of that
7 matter on terms that were advantageous, we believe, to all the
8 parties that -- particularly from our vantage point the debtors
9 will also be important going forward. And we didn't spend as
10 much time in the courtroom fortunately on the Grupo Aval
11 matters, but those were resolved, obviously, and subject to
12 documentation at this point.

13 So as I noted, where we are today is, obviously, we're
14 looking to secure confirmation of our plan. We've developed a
15 plan that has received importantly the support of all key
16 constituencies in the case, including the unsecured creditors'
17 committee which has been a true partner, both to the advisors
18 to the committee as well as the members throughout this
19 process, challenging us to do better, a number of key junctures
20 and inflection points. And I think -- I hope that they would
21 agree that we met those challenges as well. And also,
22 obviously, by the support of a number of other key
23 constituencies, including the tranche A and the tranche B
24 lenders.

25 We have achieved acceptance of the plan by all voting

1 classes. Obviously, we'll get into the voting standards and
2 how we satisfied them and confirmation standards rather in a
3 couple of minutes. I think we wanted to highlight for the
4 Court as well the dramatic change that we have effected to the
5 capital structure. And we expect to realize from this business
6 coming out of bankruptcy by the comparison from 2019, the
7 pre-petition period to post-petition -- sorry, post-effective
8 date of 2021, later on -- later on this year both in terms of a
9 dramatic reduction in the debtors' debt and then an increase
10 significantly of the cash position of the debtors.

11 At this point, Your Honor, before I -- before we move
12 to the plan, description of the plan and then into the case in
13 chief, I do want to note -- sometimes people feel like this is
14 a bit overdone. And I don't want to belabor the point. I said
15 it a couple times, talked about consensus. But I do want to
16 emphasize that in addition to the company which is noted here
17 at the top -- and that includes the independent directors which
18 really probably are the most independent of a group of
19 directors in a situation that could have gone in a different
20 way in other cases to the management team employees' efforts to
21 get us here today, I noted as well the creditors' committee,
22 the official committee and their original members listed here.
23 There's been one resignation recently. But tremendous work by
24 that group and partnership as I noted.

25 The DIP lenders as well, both the original DIP lenders

1 as well as the new DIP lenders, also embarked on this
2 partnership with the debtors. In the case of the tranche B
3 lenders subordinating debt -- again, at a time -- I think for
4 us to bring ourselves back to a point in time where it felt
5 like there was so much risk, (indiscernible) thinking, that
6 kind of stuff, and believing in the future of this airline.
7 And those parties did that -- obviously, they view their
8 economic interest. But it was certainly not a foregone
9 conclusion that it would work out as well as the transaction
10 did and seamlessly.

11 The airline doesn't operate in a vacuum. In addition
12 to parties that were in this Chapter 11 case, other key
13 stakeholders understood and took a pragmatic approach towards
14 these debtors and noted a few of them here, customers, vendors.
15 And I would be remiss if I didn't make special mention of
16 United Airlines which -- and the other members of the Star
17 Alliance, but United Airlines in particular as a tranche B
18 lender as well as having entered into further revised
19 agreements that have now been filed in the docket that we'll
20 talk about in a moment for our continued partnership with
21 United Airlines as well as certain key accommodations that
22 United had made at the request of the debtors to allow us to
23 emerge as quickly as possible.

24 We've had some favorable news even yesterday from DOJ
25 in terms of approvals for the transactions. And we have a

1 couple of steps further. But United has responded to the
2 request from the debtors to put us in a position to be able to
3 emerge as soon as we are ready and to make certain
4 modifications to the transactions if that's required in order
5 to get us to an exit as quickly as possible which is what we
6 believe is in the interest of the debtors and the stakeholders.

7 Lastly, obviously, this is an airline and so our
8 aircraft lessors and counterparties were key to getting us to
9 this stage of the process. So thank-yous all around. We're
10 not quite there yet. But I'd like now, Your Honor, with the
11 Court's permission, unless you have any questions with me to
12 move to an overview of the Chapter 11 plan. And as you can see
13 here, we'll go over the confirmation standards and then talk
14 about the objections. There are only a few. But we'll also
15 give Your Honor an update with respect to the objections that
16 have been adjourned or otherwise resolved.

17 THE COURT: That's fine. I think when we get to your
18 side about structuring change, I'll have questions. But I will
19 wait until then.

20 MR. FLECK: Thank you, Your Honor.

21 MR. SCHAK: Good morning again, Your Honor. Again,
22 for the record, Benjamin Schak of Milbank for the debtors.

23 Your Honor, over the next few minutes, I'd like to
24 take the opportunity to just talk over what the plan is
25 proposing to do from a very high sort of cruising altitude

1 level here. And certainly, along the way, I'd love the
2 opportunity to answer any questions Your Honor has, including
3 once we get to the side about the structural modifications
4 here.

5 Your Honor, the first slide here is probably the most
6 important fact about what the plan is doing which is that it's
7 getting rid of a massive amount of funded debt. The bar on the
8 left-hand side here shows, Your Honor, roughly what the capital
9 structure is as we stand here today. So there is a large
10 amount of DIP loans plus a large amount of pre-petition debt
11 which is classified as unsecured under the plan.

12 What the plan will do is three major, major
13 transformations, Your Honor. First, as Your Honor is aware
14 from the DIP to exit structure that was approved roughly a
15 month or two ago, the dip tranche A will convert into long-term
16 exit notes. Those are seven-year exit notes which are a key
17 factor into our belief that the plan is feasible and will put
18 Avianca in a strong footing in the long term.

19 The second major point, Your Honor, is that the
20 roughly 837 million dollars of tranche B DIP loans will be
21 converted into roughly seventy-seven percent of the organized
22 equity, complete equitization. And that, along with the new
23 money coming in from the tranche B lenders in the amount of 200
24 million which will convert into twenty-one percent of the
25 equity, is another major point and way in which the claim will

1 set Avianca on the right footing.

2 The third point here, Your Honor, is that the
3 remaining unsecured funds, remaining 2023 funds, and the other
4 unsecured claims which are largely projection damages pertain
5 to rejected aircraft leases, those will convert also into
6 equity, approximately two percent primary equity and
7 approximately -- warrants for approximately five percent of
8 reorganized equity.

9 The only footnote on that, Your Honor, is that some of
10 those claimants have elected to receive a cash substitute based
11 on the equivalence of the securities package being equivalent
12 to thirty-six million dollars. And there's also, of course,
13 the convenience class, Your Honor, so that relatively small
14 nonnoteholder claims will receive simply one percent cash.

15 So turning to the next slide, Your Honor, Mr.
16 Satterfield will address the objections that pertain to Sub-con
17 later. And I won't go into argument here. I just wanted to
18 show Your Honor this rather simplified view of the
19 organizational chart which demonstrates what exactly we're
20 doing with substantive consolidation. I think here the three
21 points, Your Honor, to note are that the two boxes on the right
22 side of this chart, one of them is SAI which is the ground
23 handling company I discussed earlier that has its own
24 independent operations, independent capital structure. And it
25 is treated as a separate entity on the plan -- under the plan.

1 It is not consolidated.

2 Likewise, AeroUnion, which is another independently
3 managed independent capital structure entity, it provides cargo
4 services and is a Mexican entity. That's another one that we
5 believe is appropriately not consolidated.

6 Everything else on this chart, Your Honor, that you
7 see is consolidated. And that basically covers the Avianca
8 brand. So the Avianca passenger flights, for instance, are
9 distributed among the Aerovias del Contintente entity which is
10 kind of in the middle, Avianca Ecuador, Avianca Costa Rica,
11 Taca, Aviateca, and Islena as well. Avianca Cargo sits at the
12 cargo entity on that chart. And the Avianca loyalty program,
13 LifeMiles, is kind of there on the upper left.

14 So those are the entities, Your Honor. Basically the
15 Avianca brand are the entities that are being consolidated.

16 THE COURT: Will those entities continue to exist
17 post-exit?

18 MR. SCHAK: Yes, Your Honor. All the entities on this
19 chart except for the top-level holding company, which we'll get
20 to in a couple slides, will continue to exist and will be
21 arranged in the same way. The consolidation -- substantive
22 consolidation is part of the global plan and settlement that we
23 as fiduciary and unsecured creditors' committee has fiduciary
24 and all the other parties thought it was appropriate that they
25 consolidated.

1 THE COURT: Not all the parties.

2 UNIDENTIFIED SPEAKER: Yes.

3 THE COURT: Go ahead.

4 MR. SCHAK: Correct, Your Honor, of course.

5 And I think -- we did file the complete org chart as
6 part of the disclosure statement, but this is perhaps a more
7 digestible chart to flip back to when we get to argument on the
8 substantive consolidation.

9 For the major unsecured classes, Your Honor, there are
10 a lot of them in the plan, but it basically boils down to this:
11 The large unsecured creditors and all of the noteholders fit
12 into class 11 which is the general unsecured Avianca claims.
13 That's the class that has the election between the securities
14 package that can be warrants or the thirty-six million. And
15 there was in the plan a provision for distribution if it's
16 contingent on acceptance by that class. We're obviously very
17 happy that all of the voting classes voted to accept. So the
18 distribution of that class, Your Honor, will include that
19 incremental distribution which is figured into those 2.5 and
20 five percent and thirty-six-million-dollar figures there.

21 Convenience class, smaller, nonnoteholders, one
22 percent in cash. And then the three entities that are not
23 substantively consolidated, SAI, AeroUnion -- and Avifreight is
24 essentially an intermediate holding company for AeroUnion. I'm
25 not aware of actually any creditors who sit there. But those

1 are entities where no creditors nor the equity holders for that
2 matter are (indiscernible).

3 For secured classes, this has not been a major part of
4 what we've discussed with Your Honor before, but I did want to
5 cover it just for the sake of completeness. The engine loan
6 claims, which is a facility from Kassib (ph.), on that one the
7 amount is going to be the same. But we've agreed to extend the
8 maturity to 2028 and reduce the amortization schedule.

9 Similarly, the Citi Bank-led secured RCF -- the maturity is an
10 extension to December of 2022. That's a facility that's
11 secured by spare parts and various other pieces of collateral.

12 The USAV and Grupo Aval claims, those are the --
13 largely the credit card securitization facilities that Your
14 Honor I think is somewhat familiar with. And those will be
15 treated consistent with the respective settlement agreements.

16 And finally, there's a class for a cargo receivable
17 facility that sits at AeroUnion. And that will be unimpaired
18 just like all other creditors at AeroUnion.

19 And then we get to the structural changes. On the
20 left-hand side is the current structure where there is a
21 holding company, Avianca Holdings S.A., about which is a
22 Panamanian company. That's the Panamanian flag there which is
23 held by existing equity holders of course. And then it has, as
24 the previous chart showed, set of direct subsidiaries and
25 indirect subsidiaries sitting below it.

1 The post-emergence structure will really not involve
2 Avianca Holdings S.A. In place of Avianca Holdings S.A. will
3 be a new entity sometimes referred to as reorganized AVH,
4 sometimes referred to as -- I think its official title is going
5 to be Avianca Group International Ltd. which is going to be
6 organized in the UK. That's a brand new entity. It's not on
7 any existing org chart. But it's the entity that's going to be
8 the top-level holding company for Avianca Business going
9 forward.

10 So that's the entity that will actually issue
11 securities to the tranche B lenders and to the general
12 unsecured creditors who have elected into the equity. And then
13 through a series of rather complicated steps that are
14 advantageous from a tax perspective I'm told, the direct
15 subsidiaries and the indirect subsidiaries will migrate over to
16 the new top-level holding company. The result on the middle
17 part of this chart here will be that Avianca Holdings S.A. will
18 still exist as a legal entity in Panama, but it will not have
19 any value in it. And so the tranche B lenders and the general
20 unsecured creditors who are receiving value from this plan will
21 not really have anything to do with Avianca Holdings S.A.
22 It'll simply be left behind in Panama.

23 I'm happy to pause there to address any questions,
24 Your Honor.

25 THE COURT: So at the disclosure statement hearing, I

1 raised questions and we had discussion about the timing of the
2 plan's supplement. And because I was told, well, it's
3 complicated, we need more time, I required some additional
4 things to go on the disclosure statement but basically exceeded
5 to the request to give more time before the plan supplement was
6 filed.

7 So the disclosure statement itself, which is at ECF
8 2138, on page 57 and 58, has a section 3, restructuring
9 transactions that barely touched on what was really
10 contemplated. And when the plan supplement -- there were two
11 notices of filing a plan supplement, two different pieces to
12 it. But they -- ECF 2185, Exhibit A, notice to plan
13 supplement, description of restructuring transactions and
14 transaction steps, it essentially goes on for ten pages with
15 some block diagrams. And I have to say, it really seemed
16 material to me that post-emergence the top-level company is
17 going to be this new UK organized Avianca Group International
18 Ltd.

19 In reviewing the steps that are contemplated to get to
20 that point, it goes on for pages with -- till you get to step
21 21.2. There was no explanation in the disclosure statement
22 about how this new structure came about, what was contemplated
23 and what were the reasons for the new top-level company being
24 the UK entity. No discussion about -- and one of the things
25 that I did require in addition to the disclosure statement was

1 on the required administrative approvals that were required.
2 And I have no clue whether getting the requisite approvals in
3 Colombia and other countries are going to be complicated by the
4 fact that the new structure that's contemplated has a UK entity
5 at the top.

6 And let me ask a rather specific question first. The
7 first filed case here was Avianca Inc., 20-11132, the New York
8 Corporation, place of business in Miami. Is it going to
9 continue to exist?

10 MR. SCHAK: It will continue.

11 THE COURT: Where is that going to be at on an
12 organization chart?

13 MR. SCHAK: It will continue to exist exactly where it
14 is in the current organizational chart, except of it's under
15 Avianca Holdings S.A. now, it will instead be under Avianca
16 Group International Ltd.

17 THE COURT: So what I tried to -- and I can't say that
18 I fully comprehend all of the steps created post-exit. I
19 wondered whether the structure was the result of negotiations
20 between the debtor and probably the tranche A and tranche B
21 lenders about -- well, what happens if there has to be a
22 restructuring case number 3 and that what really was
23 contemplated here was a UK top-level company because there were
24 discussions and negotiations about possibility of a scheme of
25 arrangements or part 26A plan, restructure in the UK?

1 So my very specific question is, did the negotiations
2 about the new proposed structuring include discussions about
3 further restructuring through a UK either scheme of arrangement
4 or part 26A? Because the structure also included release of
5 guarantees which is possible in the UK but maybe not elsewhere.
6 So I want to know whether there were discussions in
7 negotiations. Tell me how this new structure came about.

8 MR. SCHAK: Your Honor, I'm happy to speak to that.
9 This was, in fact, Your Honor, very much a debtor-led process
10 to identify the appropriate new jurisdiction or the -- for the
11 top-level Avianca business. We certainly did that in
12 consultation with the tranche B lenders as the plan sponsor and
13 with the Official Committee of Unsecured Creditors. And we did
14 look like -- we did look at a number of jurisdictions, Your
15 Honor.

16 To address your question head-on, further
17 restructuring was not what was driving this at all, Your Honor.
18 We think that this is the restructuring plan that is going to
19 put Avianca on a path for success for restructuring in the
20 future.

21 What was really driving this, Your Honor, was to get
22 the company over to a jurisdiction that, 1, we're very
23 confident will respect this Court's orders and give respect to
24 this restructuring plan that we're doing right now; and 2, a
25 jurisdiction that the people analyzing tax issues thought works

1 from a tax perspective or the business as a whole. Those are
2 the main two driving issues, Your Honor, and really not driven
3 by future restructuring considerations.

4 THE COURT: And are there plans to seek recognition --
5 assuming that the plan is confirmed here, what, if any, steps
6 do the debtors intend to seek recognition and enforcement of a
7 confirmed Chapter 11 plan?

8 MR. SCHAK: That would take place, if it takes place,
9 in the United Kingdom, Your Honor. They do have a recognition
10 redeem, as Your Honor well knows, similar to Chapter 15. I
11 don't believe we've made the call yet whether we need to seek
12 that. It depends in some part, you know, what we're facing
13 coming out of the restructuring. But if there is a recognition
14 proceeding that needs to be done, we feel as confident in the
15 UK as we are anywhere that we can gain that recognition and
16 give effect to this Court's orders in the United Kingdom.

17 THE COURT: Do the debtors need to seek recognition
18 and enforcement in Colombia?

19 MR. SCHAK: No. From earlier -- very early in this
20 case, Your Honor, we made the decision not to file a
21 recognition proceeding in Colombia. The debtors, of course,
22 stay close to their regulators, both corporate regulators,
23 aviation regulators of all stripes, including in Colombia, and
24 continue to think that that's the case. And by the way, the
25 regulators have been supportive of this restructuring. And as

1 you expect, the Colombia -- the Colombian government wants
2 their nation's largest airlines to continue to be healthy and
3 to succeed into the future.

4 THE COURT: Should the disclosure statement have
5 included a discussion of the intention to establish the
6 top-level company in the UK and the reasons for that?

7 MR. SCHAK: I think, Your Honor, the disclosure
8 statement -- we did try to put in --

9 THE COURT: Well, that -- I pointed -- the only thing
10 I found in the disclosure statement is page 57 and 58 where --
11 I think Mr. Fleck wants to show you something else.

12 MR. SCHAK: Your Honor, that's right. But page 57
13 notes that the debtors might seek to reincorporate or
14 reorganize certain of the debtors under the laws of
15 jurisdictions other than the laws under which such debtors are
16 currently incorporated.

17 And then, you know, at the -- at the plan supplement
18 stage, we did file -- and I acknowledge, Your Honor, it's
19 perhaps a long and difficult document. But at the end of it --

20 THE COURT: The 2,215 pages with a short piece showing
21 the block diagrams and explaining the new top-level company in
22 the UK, I didn't read every page of the 2,215. But I did scan
23 it and did find what I'm asking about. It's buried in there.

24 MR. SCHAK: Your Honor, I think we did disclose it. I
25 think we also worked very constructively with our partners in

1 this case and the committee and the tranche B lenders and the
2 tranche A lenders for that matter to explain the reasons that
3 we thought the UK was an appropriate place to go.

4 But the other comment that I'd make, Your Honor, is
5 that the disclosure statement did set forth alternatives to
6 what would happen if this restructuring did not go forward.

7 THE COURT: Well, I understand that. But I'm troubled
8 that it didn't -- it, obviously, was something that didn't
9 spring upon you or the Court when the disclosure statement was
10 filed. A lot of work had to go into that proposed structure,
11 none of which was revealed in the disclosure statement even in
12 a summary fashion. So I'm not happy about that.

13 MR. FLECK: If I may, Your Honor.

14 THE COURT: He's doing just fine, Mr. Fleck.

15 MR. FLECK: For the record, Evan Fleck for the
16 debtors. When the judge isn't happy, then I'll -- that's my
17 normal (indiscernible).

18 Let me just -- we appreciate your concerns, Your
19 Honor. I'll just -- this may be obvious, but I think it's
20 important, given the audience, the participants in the hearing.

21 There was nothing held back in terms of the
22 disclosure. At the time that the disclosure statement --

23 THE COURT: Never told me about it.

24 MR. FLECK: At the time the disclosure statement was
25 filed, no determinations had been made. And it was our view

1 that -- at the time to put out a bunch of different options in
2 terms of potential jurisdictions --

3 THE COURT: Whoever is speaking not in the courtroom
4 needs to mute their line.

5 Go ahead, Mr. Fleck.

6 MR. FLECK: To have done that at that point in time
7 would in fact have not advanced the disclosure and helped
8 creditors to make a decision. I think above all, from our
9 perspective, and I think I feel confident that the perspective
10 is also shared by the other key parties in the case that are
11 here and can speak to this should it be helpful to the Court,
12 that the steps that are being taken in terms of the corporation
13 reorganization are in furtherance of creditor interest. They
14 are not -- although I understand your concern, obviously from
15 the Court, an effort to plan for or be strategic with respect
16 to any restructuring that could come in the future. That is
17 not the case.

18 THE COURT: Well, it's no secret that the scheme of
19 arrangement or part 26A doesn't apply the absolute priority
20 rule and allows equity to retain its interest even over the
21 negative vote of a class of unsecured creditors for example
22 which is problematic here.

23 So there are important things about choosing the UK as
24 the jurisdiction for the top-level company in the event of a
25 future restructuring, none of which is laid out. I mean, I

1 just -- as I started reviewing -- trying to understand the
2 structure going back to a disclosure statement, seeing not
3 informative language that was included there, it raised
4 questions in my mind, Mr. Fleck.

5 MR. FLECK: No, we understand, Your Honor, and
6 appreciate that. If we could go back and have had more
7 information at the time, we would have provided that. Your
8 Honor hopefully has come to know that these debtors and the
9 professionals, including our firm, has gone above and beyond to
10 provide as much disclosure as possible. And the information we
11 had put in the disclosure statement at that time was the best
12 available information we had. We think the structure that's
13 been --

14 THE COURT: Are you telling me at the time of the
15 disclosure statement the planning for the new corporate
16 structure with a UK entity at the top had not progressed to the
17 point where you had that structure in mind?

18 MR. FLECK: It had not progressed to the point where
19 we had a structure that we could put in the disclosure
20 statement. There were discussions which were not -- as Mr.
21 Schak said were not motivated by any of the concerns that Your
22 Honor raised. They were motivated principally by the -- by
23 what Mr. Schak identified, including tax reasons and a
24 beneficial structure and enforceable one (indiscernible), a
25 beneficial structure in a go-forward business.

1 THE COURT: And we have witnesses --

2 MR. FLECK: Your Honor, we could provide evidence. It
3 should be helpful to the Court.

4 THE COURT: I think let's move on.

5 MR. FLECK: Thank you.

6 MR. SCHAK: Your Honor, I believe my -- Andrew Schak
7 again for the record.

8 Your Honor, my last slide here is on the most recent
9 modifications to the plan which principally have to do with the
10 United Airlines agreements that Your Honor is seeing in this
11 case.

12 Very early, Your Honor, in this case United and
13 Avianca entered into an omnibus amendment to their commercial
14 arrangements. By that, I mean things like coach sharing,
15 frequent flyer mile sharing, those sorts of arrangements.

16 Just yesterday, Your Honor, Avianca and United got to
17 an agreement on -- and a second omnibus amendment to those
18 commercial arrangements which is intended to strengthen the
19 alliance and give the two airlines an opportunity to build that
20 alliance over the next -- over the next four years.

21 Your Honor, the term -- the key terms here -- this
22 isn't filing, but it's more to address three bullet points
23 perhaps. Avianca and United will extend their alliance to
24 September 2025. There was previously a ten-year extension that
25 have been agreed. And United has agreed to waive that ten-year

1 extension while Avianca will pay United thirty-five-million-
2 dollar amount which was basically the same amount that was
3 specified in the first omnibus amendment in case Avianca
4 decided to back out of the ten-year extension.

5 And finally, Avianca, United, and Copa which is
6 another airline with the alliance based in Panama will engage
7 in discussions regarding further amendments to their own joint
8 business agreement over the next two-year period.

9 Your Honor, this is an agreement that has been filed
10 in the plan supplement yesterday morning, almost as soon as the
11 ink was dry on the signature for the agreement. And we hope
12 it's something that will strengthen the alliance over the
13 coming several years.

14 The component here, Your Honor, that goes along with
15 that is amendment to the equity contribution and commitment
16 agreement that Your Honor approved about a month ago. On this,
17 Your Honor, United has decided to assign its roughly
18 forty-three-million-dollar new money commitment to the other
19 tranche B lenders to serve them at the other tranche B lenders,
20 I should say. And that, Your Honor, has the effect actually of
21 getting that 42.6 million dollars to the debtors sooner than it
22 otherwise would have.

23 As Your Honor might recall, United's contribution was
24 going to be structured as putting airplanes into a trust and
25 then selling those airplanes over the course of about a year.

1 That's no longer going to be the case. The debtors are simply
2 going to get that forty-three million dollars upon merchants.

3 United will still convert the tranche B DIP loans into
4 equity, roughly sixteen percent. And to make sure that the
5 debtors are able to emerge as promptly as possible following
6 confirmation, if antitrust approvals have not been obtained by
7 November 11th, United will instead receive some form of
8 alternative consideration such as equity warrants for
9 convertible instrument.

10 Well, I'll pause there in case Your Honor has any
11 questions.

12 THE COURT: I don't.

13 MR. SCHAK: And then the one -- the last point I'd
14 like to address, Your Honor, simply because some of the
15 stakeholders -- oh. United's counsel would like to have a
16 word. Pardon me.

17 MR. BURKE: Good morning, Your Honor. Michael Burke,
18 Sidley Austin, for United Airlines. And I'm sorry to interrupt
19 for just a second.

20 But obviously, this was just a slide for presentation
21 purposes with very limited bullets and what have you. The
22 agreements have been filed, obviously, as planned supplements.
23 And essentially, I'm coming up here saying the agreements
24 control, obviously not the minimal bullets that were presented.

25 THE COURT: Thank you.

1 MR. BURKE: Thank you.

2 MR. FLECK: Your Honor, I was very proud of my
3 bullets. And I'm disappointed to hear that Mr. Burke doesn't
4 think that -- I have to say, I've never seen an order that said
5 the bullets before.

6 MR. SCHAK: Your Honor, the one last comment I'll make
7 just in response to some discussions we had with stakeholders,
8 particularly aircraft lessors, stakeholders, has to do with
9 internal distributions out of the plan. Your Honor, the plan
10 does provide for interim distributions. And there probably
11 will be one or more of those during the case for emergence.

12 I want to say, Your Honor, that the debtors are going
13 to manage that process conservatively so that recipients of
14 early distributions do not receive greater distributions than
15 recipients of later distributions. It is possible that not all
16 proofs of claim will have been filed until some point next
17 calendar year because the debtors will have a window after
18 emergence to make a decision to assume or reject certain
19 aircraft.

20 We do understand, Your Honor, there are some
21 yet-to-be-filed claims out there at the moment in interim
22 distribution. We will have to take those potential claims into
23 account in calculating the appropriate distributions. So I can
24 say that, Your Honor, if the debtors do decide to make interim
25 distribution before all of the unsecured claims have been

1 filed, then we will engage in good faith with potential
2 claimants to ensure that any material potential rejection
3 claims are appropriately factored into that calculation.
4 That's all I have to say on that, Your Honor.

5 THE COURT: Thank you, Mr. Schak.

6 MR. SCHAK: And I'll now turn it over to Mr.
7 Satterfield.

8 THE COURT: Okay.

9 MR. SATTERFIELD: Good afternoon, Your Honor. Kyle
10 Satterfield of Milbank LLP on behalf of the debtors. A little
11 bit more choreography.

12 But as my colleagues have expressed, it is a big
13 privilege to be here in person today. I thought this day would
14 never come. So thank you to you and your staff.

15 As previewed by Mr. Fleck, holdings of claims entitled
16 to vote on the plan overwhelmingly voted to accept the plan as
17 displayed in the chart here until ninety-nine percent in
18 amounts of all claims to cast votes in the plan, whether to
19 accept the plan. In terms of what that translates into in
20 terms of dollar amount, holders of 3.645 billion dollars of
21 claims voted to accept the plan. We're very proud of that
22 fact. That includes acceptances of the plan by (indiscernible)
23 classes entitled to vote on the plan. As you can see on the
24 chart, 100 percent in both amount and number of claims in
25 classes 3, 4, and 7 voted to accept the plan.

1 With respect to class 11, that's general unsecured
2 Avianca claims, clearly 98.7 percent in amount. And that's
3 over 3.4 billion dollars of general unsecured claims. And over
4 ninety-two percent in number voted to accept the plan.

5 Similarly, class 15 at the bottom of the chart, which
6 is the convenience class, accepted the plan similarly in
7 substantial numbers. Thus, Your Honor, each and every impaired
8 class entitled to vote on the plan with respect to the Avianca
9 debtors voted to accept the plan. And with respect to the
10 other debtors, the unconsolidated debtors that were discussed
11 before, all classes and claims in interest are unimpaired other
12 than (indiscernible). And therefore, those plans -- the plan
13 expected those debtors (indiscernible).

14 Moving now to other confirmation standards, Your
15 Honor, the plan is also feasible pursuant to Section
16 1129(a)(11) of the Bankruptcy Code. As set forth in Mr.
17 Neuhauser's declaration and as demonstrated by the financial
18 projections and as Exhibit D to the disclosure statement, the
19 debtors expect to begin generating positive EBITDA next fiscal
20 year. And EBITDA is projected to materially increase on a
21 year-for-year basis thereafter. Then proof financial
22 performance is projected to resolve the net income of
23 thirty-two million dollars in fiscal year 2023 which is
24 projected to scale to 447 million dollars by the end of the
25 projection period which is fiscal year 2028.

1 And pursuant to the financial projections,
2 unrestricted cash is at least 800 million dollars at all times
3 during the projection period. Thus, the debtors will have the
4 ability to make all payments and distributions required under
5 the plan. And the plan is otherwise feasible pursuant to the
6 standards set forth in Section 1129(a)(11) of the Bankruptcy
7 Code.

8 Your Honor, the debtors also submit that the plan
9 satisfies all of the other applicable requirements of the
10 Bankruptcy Code set forth in Section 1129, as set forth in our
11 confirmation brief which was filed at docket number 2261.

12 Additionally, Your Honor, the debtors made certain
13 modifications to the plan following the commencement of
14 solicitation. We filed a cumulative redline of those changes.
15 That was filed at docket number 2260 for the record. And that
16 redline begins on page 137 of that document. Your Honor would
17 characterize those modifications largely as clarifying changes
18 and technical changes. And none of the changes adversely
19 change the treatment of any holder of claims or interests
20 pursuant to bankruptcy rule 3019.

21 Further, Your Honor, the debtors filed a proposed
22 confirmation order, the initial version of which was attached
23 to our confirmation brief as Exhibit E. And again, that was at
24 docket number 2261. Last night the debtors filed a revised
25 version of the confirmation order with very minor revisions,

1 significant but minor. That was filed at docket number 2272,
2 along with a redline for (indiscernible).

3 Your Honor, turning now to the objections that were
4 filed, of the nearly 80,000 parties that received notice of the
5 plan and confirmation order, the confirmation hearing in this
6 case, only eight parties filed timely objections to
7 confirmation of the plan as well as a handful of parties that
8 filed contract-related objections. And they're summarized on
9 this chart, Your Honor. Five of those eight objections were
10 filed by what we refer to as the Burlingame parties. As the
11 Court knows, Mr. Lakin (ph.) filed pro se objection on behalf
12 of Burlingame. The Court struck that objection. And then it
13 was subsequently filed in substantively identical form by five
14 different parties, again, by Burlingame who has retained
15 counsel.

16 There's also an objection from --

17 THE COURT: You would agree that parties that file
18 those objections hold 2023 notes?

19 MR. SATTERFIELD: So, Your Honor, counsel has
20 represented to us that counsel represents each of those
21 parties. So because the substance of those objections are
22 essentially the same and Burlingame has refiled --

23 THE COURT: Did you agree that any of those parties
24 actually own 2023 notes?

25 MR. SATTERFIELD: One second, Your Honor. We do, Your

1 Honor.

2 THE COURT: Okay. Go ahead.

3 MR. SATTERFIELD: The next group of parties is the
4 Baruch parties. They are also holders of 2023 notes that filed
5 a separate objection. And just quickly, it -- I'll address the
6 substance of those objections next.

7 El Salvador filed an objection on the dockets in the
8 short objection. I think our response is set forth in our
9 objection chart that was annexed to the confirmation brief.
10 The substantive of that objection is that El Salvador asserts
11 that it has a tax claim. Our response is that the plan
12 provides for the appropriate treatment of tax plans under the
13 Bankruptcy Code, despite the fact that I believe we may just do
14 that claim, that that could be taken up at a later date.

15 With respect -- taking these a little bit out of
16 order, the Texas Comptroller, Your Honor, we're pleased to --

17 THE COURT: I take it you would agree that El
18 Salvador's tax claim, if there is one, would not be prejudice
19 by confirmation of the plan?

20 MR. SATTERFIELD: That's correct, Your Honor. The
21 plan provides for the appropriate treatment of taxes and to the
22 extent that they have them.

23 We're happy -- we're pleased to report that the Texas
24 Comptroller's objection we resolved with inclusion of a
25 language in the confirmation order, the proposed confirmation

1 order. There were also a number of, as I said, contract
2 counterparties who filed objections who had contracts. Those
3 objections have either been resolved or will be adjourned to a
4 further hearing before the Court. And I think one important
5 note, it's not an objection, the U.S. Trustee filed a statement
6 in this case. It essentially reiterated its position with
7 respect to the third-party releases that were covered at the
8 disclosure statement hearing, but that is not in sustenance an
9 objection to confirmation.

10 THE COURT: Do you agree that the U.S. Trustee
11 preserves its right to challenge the opt-in versus opt-out in
12 the ballot even if the plan is confirmed at this point?

13 MR. SATTERFIELD: We believe that that issue has been
14 settled by the Court. And we submit that --

15 THE COURT: Well, I wrote an opinion and I ruled on
16 it. But if I confirm that -- they filed the statement. I read
17 it. I read it as an objection to confirmation without
18 reiterating an entire arguments that this Court previously
19 ruled on. Do you agree that if I confirm the plan, the U.S.
20 Trustee's right to appeal on that issue is preserved?

21 MR. SATTERFIELD: I don't think we understood the
22 statement that the U.S. Trustee submitted as an objection to
23 the opt-out issue. I would assume they have appeal rights with
24 respect to your opinion. But with respect to the disclosure
25 statement, that piece of it --

1 THE COURT: I don't plan on writing another opinion
2 about whether opt-in or opt-out. I addressed it at the
3 disclosure statement hearing.

4 MR. SATTERFIELD: That's correct, Your Honor.

5 THE COURT: Okay.

6 MR. SATTERFIELD: And I believe the U.S. Trustee
7 explicitly reserved its rights with respect to the extent that
8 we try to oppose nonconsensual releases which we are not doing.

9 THE COURT: Go ahead.

10 MR. SATTERFIELD: Also, one further objection that one
11 of my colleagues informed me was filed this morning prior to
12 the start of the hearing. Rolls-Royce has filed a cure
13 objection similarly to the other objections that were -- the
14 contract-related objections that were filed. That will be
15 adjourned in a similar manner and go handle that at a later
16 date as to that.

17 THE COURT: The Rolls-Royce objection is filed as ECF
18 docket 2279. It was filed this morning. I have the docket
19 open in front of me.

20 MR. SATTERFIELD: Thank you, Your Honor.

21 Your Honor, now turning to the substance of the
22 noteholder objections and for purposes of this discussion I'll
23 speak of that as a group, I think there's an assortment of
24 arguments that have -- that have been placed, that have been
25 asserted by the parties in the objections. I think for

1 purposes of this discussion, I think they get placed in three
2 categories. First, there would be inapplicable arguments
3 related to Section 1129(b). Quite simply, Your Honor, all of
4 the arguments relating to the fair and equitable and unfair
5 discrimination test in Section 1129(b) are inapplicable because
6 those tests only apply to impaired classes that have not
7 accepted the plan.

8 As I stated previously, and as demonstrated in our
9 chart and in the voting certification, class 11 in which the
10 2023 notes claims are classified overwhelmingly voted to accept
11 the plan. And further -- and also as set forth in the voting
12 certification, even if those 2023 notes claims were separately
13 classified in a class of their own, that class of 2023 notes
14 claims would have voted to accept the plan. Nearly eighty-
15 eight percent in number of 2023 notes claims. Those who
16 accepted the plan in 77.5 percent in amount. Thus, the debtors
17 submit that the 1129(b) arguments relating to the fair and
18 equitable standard and unfair discrimination standard are
19 inapplicable in these cases.

20 The second category of objections challenges the
21 classification and, in effect, the unsecured nature of the 2023
22 notes claims. Your Honor, 2023 notes claims are unsecured and,
23 thus, properly classified in class 11. And the analysis here
24 is quite simple. The 2023 notes were secured by a lien on what
25 we're now referring to as the shared collateral.

1 THE COURT: It was shared as part of the approval of
2 the DIP loan.

3 MR. SATTERFIELD: That's right.

4 THE COURT: It was not shared pre-petition.

5 MR. SATTERFIELD: That's right. So the DIP loan
6 refers to it as the shared collateral. That's what you're
7 referring to it as.

8 Pursuant to paragraph 6 of the final DIP order, that
9 lien of the 2023 noteholders was primed by the DIP facility
10 which, thus, as a senior lien on the shared collateral. And
11 pursuant to paragraph 28 of the final DIP order, DIP facility
12 claims must be satisfied first by recourse to the shared
13 collateral. Thus, if DIP facility claims exceed value of the
14 shared collateral, the 2023 notes claims are, by definition,
15 unsecured.

16 As demonstrated by the debtors' competitive marketing
17 process and as set forth in Mr. Neuhauser's declaration, the
18 value of the shared collateral is less than the amount of the
19 DIP facility claims. The value of the shared collateral is not
20 adequate to satisfy the DIP facility claims in full.

21 Just a few notes on that marketing process.
22 (Indiscernible) contacted over 125 potentially interested
23 parties, many of whom were already familiar with the debtors'
24 business and thirty-five of whom accessed the virtual data room
25 after initial contact. The marketing process was overseen by

1 the independent equity committee at the board. And the
2 debtors' management team, including Mr. Neuhauser, participated
3 in focused, diligent sessions with interested parties.

4 THE COURT: Let me ask you some questions.

5 MR. SATTERFIELD: Certainly.

6 THE COURT: So I'll call it the Burlingame objectors,
7 but I'm including all of those that have made the similar
8 arguments. I take it none of them are so-called consenting
9 noteholders who executed the RSA; is that correct?

10 MR. SATTERFIELD: That's right, Your Honor.

11 THE COURT: Okay. Who is the indenture trustee for
12 the 2023 notes?

13 MR. SATTERFIELD: It's WSFS, Your Honor.

14 THE COURT: And is there a separate collateral agent?

15 MR. SATTERFIELD: I don't believe so, Your Honor.

16 THE COURT: Did the indenture include a requisite
17 lender's direction? In other words, frequently the indenture
18 sets a percentage of noteholders who can give a direction to
19 the indenture trustee or the collateral trustee type certain
20 action. I don't -- we looked for the indenture. We can't find
21 the -- it doesn't -- if it was filed as an exhibit, we can't
22 find it. And so I was looking to -- I wanted to know whether
23 there was a requisite lenders provision in the indenture
24 because the RSA included a direction to the collateral agent I
25 think with respect to the approval of the DIP. Can you tell

1 me, am I right or wrong?

2 MR. SATTERFIELD: That's right, Your Honor. And that
3 direction was with the requisite creditors.

4 THE COURT: Do you know what the percentage for the
5 requisite lenders was?

6 MR. SATTERFIELD: It's 50.1 percent, Your Honor.

7 THE COURT: And the consenting noteholders, did that
8 encompass more than 50.1 percent of the 2023 noteholder?

9 MR. SATTERFIELD: That's correct.

10 THE COURT: And so the RSA included a provision with
11 the support of the requisite lenders directing the collateral
12 agent of the 2023 notes to approve the priming?

13 MR. SATTERFIELD: That's correct.

14 THE COURT: Okay.

15 MR. SATTERFIELD: So that the shared collateral could
16 be used --

17 THE COURT: Because there was no objection to the
18 priming that was filed.

19 MR. SATTERFIELD: That's correct.

20 THE COURT: And were there any provisions for adequate
21 protection for the 2023 noteholders in connection with -- that
22 are in agreement to the priming?

23 MR. SATTERFIELD: There were, Your Honor.

24 THE COURT: And what was the adequate protection that
25 was provided?

1 MR. SATTERFIELD: I believe that various payments were
2 made to WSFS, the indenture trustee, with that pool of adequate
3 protection payments. Fees and expenses were satisfied and
4 that -- and as the plan provides, there's still cash left over
5 after -- I believe there is right now, to the extent there
6 still is cash that's left over after fees and expenses are
7 satisfied that cash would be distributed pro rata to holders of
8 the 2023 notes.

9 THE COURT: From -- there were no -- correct me if I'm
10 wrong. I don't remember any objections to the final DIP order
11 that permitted the priming of the security interest of the 2023
12 noteholders with respect to a shared collateral.

13 MR. SATTERFIELD: I believe that's right, Your Honor.

14 THE COURT: All right. All right. Go ahead.

15 MR. SATTERFIELD: So, Your Honor, you were speaking
16 about the marketing process as being evidence of the value of
17 his shared collateral. The market evidence which this Court
18 and others have found to be the best indicator of value
19 indicates that the equity valuation of the debtors, which
20 invariably must include valuation of the shared collateral
21 itself, does not exceed the amount of DIP facility claims. And
22 therefore, the 2023 notes are unsecured.

23 THE COURT: Well, they filed the objections, one of
24 which included this issue about -- they assert that the debtor
25 failed to establish that the 2023 noteholders had no value in

1 the shared collateral. Who has the burden of proof?

2 MR. SATTERFIELD: We do, Your Honor.

3 THE COURT: You don't. You really think you do?

4 MR. SATTERFIELD: If you're telling me --

5 THE COURT: Did you look at the case law, Mr. -- did
6 you look at -- did anybody look at the case law in this
7 circuit? Not in this circuit. But look at Heritage Highgate,
8 679 F.3d at 132, 140 (3d Cir. 2012), holding that, "The
9 ultimate burden of persuasion is upon the creditor to
10 demonstrate by a preponderance of the evidence both the extent
11 of its lien and the value of the collateral securing its
12 claim."

13 I so held in case *In re Scneijder*, 407 B.R. 46, page
14 55 (Bankr. S.D.N.Y. 2009).

15 The Third Circuit in *Heritage Highgate* quoted from
16 case *In re Robertson*, 135 B.R. 350 at 352 (Bankr. E.D. Ark.
17 1992). And there are other cases as well. I believe the case
18 law places the burden on the creditor, not the debtor, to show
19 the value of the collateral. And the objections included no
20 evidence to show that there was value.

21 You put in evidence that you believe support the
22 market test you believe supports the view that the
23 collateral -- that the 2023 noteholders' subordinated interest
24 in the shared collateral has no value because it wasn't enough
25 to cover the DIP.

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

2 THE COURT: If you know of a case to the contrary in
3 this circuit, please tell me. But --

4 MR. SATTERFIELD: I will take your word for it, Your
5 Honor. I appreciate it.

6 Your Honor, on a practical level, despite the noise
7 raised by these objections, these valuation-related objections
8 (indiscernible) to the fallout of an investment decision.
9 Holders of 2023 notes claims were put on notice that the liens
10 on the -- what we now refer to as the shared collateral will be
11 primed by the DIP. They were also given the option to roll up
12 a portion of their notes into the DIP facility, including the
13 option to do so while contributing no new money. It was a free
14 option.

15 Noteholders that chose not to elect that option made
16 an investment decision, a bet that unsecured recoveries would
17 be better than the economics of exercising that free option to
18 roll up their notes into the DIP, a wrong -- they made a bad
19 bet. And now the objecting noteholders are launching what
20 amounts to a belated collateral attack on the final DIP order
21 that, as you know, was not objected to at the time.

22 THE COURT: Are you going to deal with the other
23 objections they asserted?

24 MR. SATTERFIELD: I'm sorry, Your Honor?

25 THE COURT: Are you going to deal with the other

1 objections they asserted? They also claim that it was a breach
2 of the RSA. Were they parties to the RSA?

3 MR. SATTERFIELD: They were not, Your Honor.

4 THE COURT: Do they have standing to object to a
5 contract they weren't a party to?

6 MR. SATTERFIELD: They do not. Similarly with the
7 DIP --

8 THE COURT: They claim there was a breach of fiduciary
9 duty. Is there any fiduciary duty owed by the debtors to
10 creditors?

11 MR. SATTERFIELD: There is not. Similarly, with the
12 DIP, they assert that we violated the DIP credit agreement,
13 that, as we just stated, they didn't roll up into the DIP
14 credit agreement. So they're not parties to the DIP credit
15 agreement and don't have standing to raise those issues.

16 THE COURT: What's the governing law of the 2023
17 notes?

18 UNIDENTIFIED SPEAKER: New York.

19 MR. SATTERFIELD: New York law.

20 Your Honor, finally, the third category of objections
21 are those relating to substantive consolidation of the Avianca
22 debtors.

23 Your Honor, the objecting noteholders take alternating
24 positions on Sub-con. At certain points the objecting
25 noteholders argue that Sub-con is inappropriate. At other

1 times they want more of it.

2 The debtors have made their case for the Sub-con, the
3 Avianca debtors, in our papers, Your Honor. And the evidence
4 supporting those are contained in Ms. Hughes' declaration.

5 As Mr. Schak touched on earlier, the operations of the
6 Avianca debtors are complex since (indiscernible). They hold
7 themselves out as collectively Avianca, under the Avianca
8 brand. Creditors generally view them as Avianca, the Avianca
9 brand, on a consolidated basis. And there are numerous
10 cross-entity guarantees.

11 The Avianca debtors also share headquarters as well as
12 directors and officers. Avianca Holdings, which is the TopCo,
13 capitalizers the other Avianca debtors as necessary through
14 intercompany loans. And the employees at the Avianca debtors
15 perform work for all of the debtors, regardless of the entity
16 status.

17 Second and importantly, Your Honor, sub-con of the
18 Avianca Debtors is supported by the creditors' committee. And
19 sub-con is -- of the Avianca Debtors is an important part of
20 the global plan settlement. Without the global plan
21 settlement, including the Sub-con the Avianca debtors, the
22 supporting tranche B DIP lenders may be unwilling to exercise
23 their DIP claims or contribute additional capital as currently
24 contemplated by the plan. Given that all recoveries in this
25 case for unsecured creditors are carve-outs of the tranche B

1 DIP lenders' collateral, this would have a detrimental impact
2 on the unsecured recoveries. Therefore, we believe that
3 sub-con the Avianca debtors is, in fact, in the best interest
4 of general unsecured creditors.

5 Lastly, Your Honor, sub-con of the other debtors, the
6 unconsolidated debtors is not appropriate, despite the
7 noteholder objectors' alternate pleas for more of the sub-con.
8 All three of the entities have separate operations. They are
9 not marketed under the Avianca umbrella. And creditors
10 generally don't understand them in the marketplace as being
11 part of them. They also have separate accounting and treasury
12 systems that the Avianca debtors can't get access.

13 Your Honor, subject to any further questions of the
14 Court, this sub-con arguments, as well as all of the arguments
15 raised by the objecting noteholders, we believe they're red
16 herrings. The plans received tremendous support from the
17 debtors -- across the debtors' capital structuring. And we're
18 proud of that support. We believe that the plan is a singular
19 achievement for the debtors. It's in the best interest of all
20 stakeholders and satisfies the confirmation requirements of the
21 Bankruptcy Code. We submit that it should be (indiscernible).
22 Thank you, Your Honor.

23 THE COURT: All right. Is there anything else of the
24 debtor before we get into evidence? Is there anything else
25 that the debtors want to raise, Mr. Fleck, Mr. Satterfield?

1 MR. FLECK: No, Your Honor. Obviously, there may
2 be -- there may be arguments to make in closing or of similar,
3 but not at this point. Nothing further.

4 THE COURT: Sure. All right. Does the committee want
5 to be heard? What I'm going to is I'll hear from any of the
6 proponents of confirmation now. Then what we'll do is take a
7 recess. We'll talk about how long and try to keep it
8 relatively short. And what I would like for those objectors --
9 I want to find out who they wish to cross-examine. And they
10 are entitled to cross-examine the declarants with evidence
11 that's been put in. And I would like you to try and agree on
12 the order in which that will occur. All right?

13 And before they begin very -- typically, the direct
14 has come in evidence already. And so witnesses will be
15 tendered for cross-examination. I'll permit the objectors to
16 make an opening statement before they then proceed with the
17 cross-examination. Obviously, they can do a redirect as well.
18 But I'll hear now from any other proponents of confirmation.
19 Then we'll take the recess. And I do want you to try and just
20 work out in order how many witnesses you want to examine, what
21 order you're going to do it in.

22 And we'll take -- I'm not going out in the rain. So
23 there are places close by that you can go if you want to get a
24 sandwich or something. But I'd like to keep it really short.

25 THE COURT: Mr. Miller, do you want to --

1 MR. FLECK: May I just -- administrative matter, Your
2 Honor. Sorry. With the one party counsel spoke earlier,
3 obviously they're here in the courtroom, I guess we'll
4 coordinate by phone with Mr. --

5 THE COURT: You can leave the connection open so you
6 can -- there are people --

7 MR. FLECK: Okay.

8 THE COURT: -- a lot of people on Zoom.

9 MR. FLECK: Okay. Well, we can do that or I think we
10 have his phone number from that --

11 THE COURT: Okay.

12 MR. FLECK: -- Mr. Shenfield's phone number on the
13 pleadings. And maybe we'll reach out to him at the --

14 THE COURT: Okay. All right.

15 MR. FLECK: Thank you.

16 THE COURT: Mr. Miller?

17 MR. FLECK: Sorry.

18 MR. MILLER: Thank you, Your Honor. Brett Miller,
19 Willkie Farr & Gallagher, on behalf of the Official Committee
20 of Unsecured Creditors in this case.

21 Your Honor, at docket number 2265 we filed the joinder
22 and stated in support of confirmation.

23 Further, we echo the comments made by Mr. Fleck
24 regarding Your Honor, your staff, the Court, the building,
25 getting --

1 THE COURT: Everything worked perfectly last week.

2 MR. MILLER: You know, it's Murphy's Law. It always
3 does.

4 But briefly, this was a case where the committee was
5 very involved. And it doesn't necessarily show up in the
6 docket in terms of pleadings filed. Most things in this case
7 were done in the background, behind the scenes. When you
8 consider that the debtors completely overhauled their business
9 plan, their fleet plan, their network, labor deals, those were
10 done consensually. The committee was included in those
11 discussions, weekly calls, sometimes daily calls to resolves
12 these things. I think the most litigious part of the case was
13 USAVflow adversary which thankfully came to a favorable
14 conclusion. And we spared, Your Honor, airing any other dirty
15 laundry during the case.

16 We did have some knockdown, drag-out fights with the
17 tranche B lenders and the debtors in terms of the plan. But
18 the committee does support the plan. The committee was
19 actively involved in this structure of the plan. The U.S.
20 Trustee has mentioned the deathtrap provision as being
21 possibly -- I forget the exact word in the pleading, but let's
22 call it obnoxious.

23 But to the extent that we, the committee, restructured
24 it to -- what we'd like to call love-trap in terms of it
25 incentivized creditors to vote in favor, it worked. More than

1 ninety percent of the creditors voted in favor. Maybe eight
2 percent I think was (indiscernible).

3 So we are where we are. We think the objections as
4 just walked through by the debtor should be overruled. The one
5 that is most I guess relevant to the creditors' committee is
6 the sub-con objection. Besides the Augie/Restivo decision,
7 there's also the Republic Airlines decision. Mr. Goran and I
8 were counsel to that creditors' committee before Judge Lane.
9 We went through it in that case. I think that's very
10 informative. And I think the purposes of this case, the same
11 law applies and the same fact and facts are very similar. And
12 I don't think that leads to any different results. So I'm not
13 exactly sure where the bondholders are going with that
14 objection.

15 So on that point, we would say that the Court
16 certainly should find in favor of the debtors and overrule that
17 objection because the plans satisfies all the requirements of
18 1129 and does not violate any law with regard to the way that
19 it -- the entities were subsequently resolved. That's it, Your
20 Honor.

21 THE COURT: Okay. Thank you.

22 Anybody else who is a proponent of the plan wish to be
23 heard? All right.

24 So at least one objector's counsel is in court. Any
25 other counsel in the courtroom representing an objector? I

1 know there are people who were I believe on Zoom. I just want
2 to get a sense as to how many people are going to be
3 cross-examining.

4 Is there anybody on Zoom that is going to wish to
5 cross-examine any of the declarants? All right. We'll take a
6 break.

7 Mr. Fleck, see if you can figure out how many
8 people want to do the cross-examination and each witness, the
9 order, okay?

10 MR. FLECK: Yes.

11 THE COURT: And let's take a break until 1:30.

12 (Recess from 12:46 p.m., until 1:33 p.m.)

13 THE COURT: Good afternoon, Mr. Fleck.

14 MR. FLECK: Good afternoon, Your Honor. People are
15 filing back in.

16 THE COURT: Right.

17 MR. FLECK: So we took the opportunity at the break to
18 confer with the two objecting parties. We understand that both
19 parties wish to make an opening statement. And if they would
20 like to -- one of the parties, the Baruch parties wish to
21 cross-examine Mr. Neuhauser, and both parties wish to have a
22 cross-examination of Ms. Hughes, so we'll proceed with that.

23 THE COURT: Okay.

24 MR. FLECK: I wanted to note, Your Honor, one other
25 item -- well, two other items.

1 One is a party in the case whose objection has been
2 resolved has asked me to make a representation on the record
3 which we propose to do after just to make sure the record is
4 clean for them and the matters are being adjourned to a
5 subsequent hearing.

6 And I did want to, if I may, Your Honor, during the
7 break we took the opportunity to review the final DIP order
8 just so that we can have a little more clarity for purposes of
9 the record as to what it says in response to Your Honor's
10 questions.

11 I think we answered them, I hope, to Your Honor's
12 satisfaction, but I just thought it might be helpful, both for
13 the record and also for the objecting parties that we know
14 exactly what Your Honor's order provided. And this is docket
15 number 1031 which was filed -- rather, entered on October the
16 5th of 2020. And what the order does, among other things, is
17 make abundantly clear that the trustee, WSFS, which was
18 actually the party with authority, it was the collateral
19 trustee as well in response to Your Honor's question pursuant
20 to New York law-governed documents had express authority, and
21 Your Honor made findings to the effect that WSFS did have
22 authority to, in fact, take a direction from a majority of the
23 noteholders who were the relevant party that had interest in
24 the collateral and were able to direct the trustee. They
25 directed the trustee, and they also agreed that they would not

1 be entitled to adequate protection solely with one limited
2 exception that Mr. Satterfield spoke to and that was a piece of
3 adequate protection in the form of power-by-the-hour payments.

4 And if I may, Your Honor, I'll just be just very brief
5 just to point Your Honor to those specific provisions because
6 they --

7 THE COURT: Well, let me turn to the order, okay.
8 Just bear with me a second. I have the document open.

9 MR. FLECK: Okay.

10 THE COURT: All right. I have ECF docket number 1031,
11 an order dated October 5, 2020 open.

12 MR. FLECK: Great.

13 THE COURT: Go ahead.

14 MR. FLECK: So I'm looking at page 7 of 67, and that's
15 paragraph (e)(iv). The paragraph is entitled "Collateral
16 sharing agreement".

17 THE COURT: Yes.

18 MR. FLECK: And it concludes with the -- in relevant
19 part, "The existing notes trustee" -- that's WSFS -- "is the
20 applicable authorized representative as defined therein and has
21 sole authority to act or refrain from acting with respect to
22 the shared collateral including sole authority to consent to
23 the incurrence of priming liens on the shared collateral and
24 the nonapplicable authorized representatives, and the
25 noncontrolling secured parties may not contest or object to

1 such actions".

2 With respect to the direction, Your Honor, you can
3 find the relevant language of your order on page 10 of 67.
4 It's paragraph (f) like Frank.

5 THE COURT: Just a second. Hold on. Okay. Yes.

6 MR. FLECK: F like Frank, (iii), six lines down,
7 "WSFS, in its capacity as the applicable authorized
8 representative on behalf of all first lien secured parties, and
9 at the direction of the existing noteholders holding a majority
10 of the existing notes obligations, has consented to the priming
11 of all liens on the shared collateral" and then it continues.
12 So that speaks to the direction. Obviously, the identity of
13 the parties.

14 And then lastly, as I referred to a moment ago, on
15 page 50 of 67 --

16 THE COURT: Let me get there. Hold on.

17 All right. I'm there.

18 MR. FLECK: Thank you, Your Honor. It's paragraph 34
19 entitled "Certain adequate protection provisions". And the
20 second line picking up from the word "none of the first lien
21 secured parties shall have any claim or right against any
22 debtor or rising out of or related to adequate protection
23 including for the avoidance of doubt on account of the priming
24 of any liens in respect to the shared collateral pursuant to
25 Sections 361, 362, 363, 364, 503(d), or 507 of the Bankruptcy

1 Code or otherwise".

2 Just wanted to bring those provisions --

3 THE COURT: Thank you.

4 MR. FLECK: -- to the Court's attention. And with
5 that we'll, obviously, follow your direction, but presumably
6 lead to the opening statements of those parties.

7 THE COURT: Well, yes. We'll hear the opening
8 statements now.

9 Are both parties who want to give opening statements
10 in the courtroom or one by Zoom?

11 MR. FLECK: No, Your Honor. Mr. -- the Baruch
12 parties' counsel is here, and Mr. Shenfield is on Zoom.

13 THE COURT: Okay.

14 MR. SHENFIELD: Your Honor?

15 THE COURT: Well, we'll hear counsel in the courtroom
16 first, and then, Mr. Shenfield, I'll let you speak then, okay?

17 MR. SHENFIELD: Okay. Your Honor, Mr. Blake (sic) is
18 going to be speaking for the objectors.

19 THE COURT: No, he's not.

20 MR. SHENFIELD: Well, Your Honor, I represent the --
21 Mr. Meier, William B. Meier, David Kang and Im Jo Degerman.
22 And Mr. Kim who is one of the objectors would then be appearing
23 pro se. And I was brought in only less than two weeks ago on
24 this matter. I've had very limited time to get up to speed on
25 this case, and I would ask the Court to allow as my

1 representation is Burlingame Investment Partners and for Mr.
2 William Meier and David Kang to adopt Mr. Kim's pro se opening
3 statement.

4 THE COURT: Let me raise the question then, because I
5 haven't seen any evidence that Mr. Kim is the owner of a 2023
6 note. He's provided no proof with any of his objections. His
7 initial objection was stricken. He filed another pro se
8 objection, but he's provided no evidence that he is a holder.

9 When I asked counsel this morning whether they agreed
10 that any of the objectors were holders, the answer was yes, and
11 so I'm going to hear the substantive objective.

12 And as to you, Mr. Shenfield, are you admitted pro hac
13 in this court or admitted to the bar in this court?

14 MR. SHENFIELD: I am -- I am admitted to the bar in
15 the State of California and in the Northern District of
16 California. I'm not admitted, that I'm aware of, that I had to
17 get admitted specially to this court.

18 THE COURT: Well, you had to get admitted pro hac vice
19 to be able to appear in the case. I believe the order that I
20 struck Mr. Kim's initial objection specifically had indicated
21 that it had to be a member of the bar of this court or a member
22 appearing pro hac vice, and you've done neither. You don't
23 satisfy either of those.

24 That order was clear and the procedure for getting
25 admitted pro hac vice is also clear, and you've not done that.

1 But Mr. Kim -- well, let me ask counsel. Hold on. Let me hear
2 from debtor's counsel. Go ahead.

3 MR. RENENGER: Your Honor, may it please the Court,
4 Aaron Renenger --

5 THE COURT: Yes, Mr. Renenger.

6 MR. RENENGER: -- of Milbank LLP on behalf of the
7 debtors.

8 I just want to point out that the objection filed at
9 docket number 2218 by Mr. Shenfield was the preliminary
10 objection of Burlingame Investment Partners LP, various other
11 entities, including the Blake W. Kim Rollover IRA. That
12 corresponds with Mr. Shenfield. He's held himself out in that
13 court representing Mr. Kim and not just Burlingame. So we just
14 want to note that for the record. We would object to Mr. Kim
15 appearing pro se for that reason.

16 THE COURT: All right. Thank you, Mr. Renenger.

17 Mr. Shenfield, I will permit you to argue provided
18 that within seven days from today you file your application and
19 pay the fee to be admitted pro hac vice.

20 The order I entered striking Mr. Kim's objection made
21 clear that I would hear from lawyers who were members of the
22 bar of this court or who appeared pro hac vice. So obviously,
23 you didn't bother reading the order, or you didn't bother
24 following it. I'll permit you to argue provided -- and you've
25 appeared for Mr. Kim's IRA -- I'll permit you to argue

1 provided, I'm going to give you seven days from today to file
2 your application, pay the fee, and get admitted. I'll take
3 your representation you're a member of the bar in good standing
4 in California, which would entitle you to appear pro hac vice,
5 but I just don't -- I'm not going to allow you -- you should
6 have been on notice about this.

7 MR. SHENFIELD: Can I make -- take a moment to speak
8 with Mr. Kim, Your Honor?

9 THE COURT: Take all the time you want because I'm
10 going to hear from other counsel while you're doing that.

11 MR. SHENFIELD: Okay. Thank you, Your Honor.

12 THE COURT: Go ahead. Why don't you --

13 MR. LENIHAN: Thank you, Your Honor. Again, my name
14 is Glen Lenihan with Oved & Oved LLP for creditors Udi Baruch
15 Guindi, David Baruch, Shoshana Baruch, Habib Mann, Golan LP,
16 and Isaak Baruch.

17 THE COURT: Go ahead.

18 MR. LENIHAN: Your Honor, we believe that the plan is
19 fatally defective for three separate but related reasons and
20 that it mandates that the Court reject the plan.

21 The first issue is that the 2023 noteholders are
22 improperly classified as unsecured creditors. The disclosure
23 statement said in absolutely conclusory terms that as a result
24 of the DIP roll-up and the fact that the DIP lenders would be
25 paid first it serves no value from the shared collateral to

1 allow for any recovery for the 2023 noteholders. And that is
2 on page 46, page 55, and 261 of the disclosure statement at
3 docket 2138. That's footnote 11.

4 As a result of the DIP roll-up and the DIP marshaling
5 provision, no value with respect to the shared collateral will
6 be available to satisfy the 2023 note claims after the DIP
7 facility claims are satisfied, thereby rendering the 2023
8 notes, as well as any other indebtedness secured by the shared
9 collateral on equal footing with the 2023 notes, effectively
10 unsecured pursuant to 506(a).

11 THE COURT: Now, Mr. Lenihan, you were here in the
12 courtroom when I asked the question of debtors' counsel as to
13 who has the burden, and I pointed everyone to the Third
14 Circuit's decision in Heritage Highgate, 679 F.3d 132 at page
15 140, Third Circuit 2012. I read the quote from it. "The
16 ultimate burden of persuasion is upon the creditor to
17 demonstrate by a preponderance of the evidence both the extent
18 of its lien and the value of the collateral security as
19 claimed". And that's quoting In re Robertson, 135 B.R. 350 at
20 352, (Bankr.E.D.Ark.1992).

21 I so held in In re Sneijder, S-N-E-I-J-D-E-R, 407 B.R.
22 46 at page 55, (Bankr. S.D.N.Y. 2009). You've not offered --
23 the objection provided no evidence that the 2023 noteholders
24 had -- that there was any value for them in the collateral.

25 MR. LENIHAN: So Your Honor, I would respond to that

1 in two separate ways.

2 THE COURT: Okay.

3 MR. LENIHAN: First In re Heritage, the prior page, at
4 139, the Third Circuit held, "We now hold that a burden
5 shifting framework controls valuations of collateral to decide
6 the extent to which claims are secured pursuant to 506(a)".

7 THE COURT: And that burden shifting framework
8 provides that once the amount and extent of the secured claim
9 has been set, the burden shifts to a debtor seeking to use,
10 sell, lease, or otherwise encumber the lender's collateral
11 under Sections 363 or 364 of the Code to prove that the secured
12 creditor's interest will be adequately protected.

13 So the burden initially is on the creditor to
14 establish it does have value, and then that shifting framework
15 puts the burden on the debtor to show that they're adequately
16 protected. You haven't gotten over the first level of that.

17 MR. LENIHAN: Your Honor, with all due respect, the
18 Third Circuit --

19 THE COURT: What about in this district? What about
20 like -- did you look at my Sneijder decision?

21 MR. LENIHAN: Your Sneijder decision as well as the --
22 another 2013 decision I don't remember off the top of my head,
23 Your Honor. I apologize for not recalling the name. But in
24 both of those, you did cite to Heritage, or in the 2013
25 decision you cited to Heritage --

1 THE COURT: And what about -- there's also in this
2 district, Wilmington Trust -- actually, it's the district court
3 decision -- Wilmington Trust v. AMR Corp., In re AMR Corp, 490
4 B.R. 470 at 477 and 78, (S.D.N.Y. 2013) holding that "The
5 creditor seeking adequate protection need only establish the
6 validity, priority, or extent of its interest in the collateral
7 while the debtor bears the initial burden of proof on the issue
8 of adequate protection".

9 So if you established there was value, then the debtor
10 would have to show adequate protection, but you haven't gotten
11 there. The law in this district is that you have the burden
12 and you've not put forward any evidence. In fact, while the
13 debtor didn't have the burden, they nevertheless came forward
14 with evidence that supports their argument that there was no
15 value for the 2023 noteholders.

16 MR. LENIHAN: Your Honor, if I may, just a couple
17 things.

18 The Third Circuit in Heritage did say that the
19 circumstances will dictate the assignment of the burden of
20 proof on the question of value. And here, the creditors, the
21 2023 noteholders, have effectively no way to demonstrate the
22 value of the aircrafts and the intellectual property that
23 comprised what became the shared collateral. But even putting
24 that aside just for a moment, the problem is not so much one of
25 whether who has the proof or who has not the proof, the

1 disclosure statement came out and affirmatively said there is
2 no value.

3 THE COURT: Look, this is a confirmation hearing --

4 MR. LENIHAN: Yeah.

5 THE COURT: -- and now is the time that there needs
6 to be evidence. The debtor has come forward with the evidence
7 to support their position, which they didn't have the burden
8 for in my view, was the market test.

9 MR. LENIHAN: So Your Honor --

10 THE COURT: And in terms of valuation, cases are
11 fairly legion that the market test is the best method for
12 valuation. You haven't come forward with any evidence of
13 value.

14 MR. LENIHAN: Your Honor, where I'm going with this is
15 twofold, but I can speak to the evidence of valuation that they
16 put forth, but the point I wanted to make first is when
17 everyone voted on this plan, they voted on this plan based on
18 the disclosure statement that said there is no value. And in
19 the same disclosure statement, it said to the Class 11 of the
20 unsecured creditors if you vote to approve and the class
21 approves, you get a forty percent kick. Instead of only
22 getting one percent, you get 1.4 percent. So there was
23 incentive to go along and approve this plan, and there was
24 disincentive to object, especially on the plain face of the
25 disclosure statement it said there is no value. So anyone who

1 received this plan that was a noteholder --

2 THE COURT: Okay. I have your argument. Go on to
3 your next argument.

4 MR. LENIHAN: With respect to the -- with respect to
5 the evidence that they're putting forward about the value, Your
6 Honor, Mr. Neuhauser's affidavit is clear that he says I
7 believe the amount of the DIP facility claims exceeds the value
8 of the shared collateral. Nowhere does it say the shared
9 collateral is X or approximately X. Rather, they talk about a
10 process for soliciting equity investments as demonstrating that
11 this small tranche of collateral is insufficient. But an
12 equity investment is going to be based on a number of other
13 things other than the value of the aircrafts. It has to look
14 towards what cash flow's going to be in the future, it has to
15 look towards what they projected EBITDA to be, it has to take
16 into account the demand destruction for travel that's occurred
17 because of the COVID-19 pandemic, especially for business
18 travel and leisure travel as well. It takes into account a
19 whole host of things. And someone not wanting to invest in an
20 airline while they're still -- especially in this period, April
21 through June --

22 THE COURT: Mr. Lenihan, go on to point 2.

23 MR. LENIHAN: Thank you, Your Honor.

24 Point 2 relates to the substantive consolidation. And
25 even if they have met their burden of showing that there should

1 be some form of substantive consolidation where they propose
2 thirty-seven out of forty of the debtors being substantively
3 consolidated, they leave out three of the other creditors, and
4 especially with one of them.

5 THE COURT: I'm sorry. Three of the other debtors?

6 MR. LENIHAN: Excuse me, Your Honor. Yes, thank you.
7 Three of other debtors.

8 They say that the reason that there are these thirty-
9 seven separate entities is the separate corporate existence of
10 many of the Avianca debtors was driven primarily by local
11 regulatory requirements. So they set up different companies to
12 meet local regulatory requirements.

13 The only reason that they give that Avifreight should
14 not be part of this, should not be part of the substantive
15 consolidation is because that they say that Avifreight was
16 established with the sole purpose of complying with Mexican
17 regulatory requirements. That's the exact reason they give why
18 all of the other debtors should be substantively consolidated,
19 yet they hold out this other debtor that --

20 THE COURT: But they go on to argue that the books and
21 records of those three entities are separate, they have
22 separate -- it was the Hughes' declaration. Let me see if it I
23 have in front of me.

24 MR. LENIHAN: It's docket 22 --

25 THE COURT: Yeah, I have it. The Ginger Hughes

1 declaration.

2 MR. LENIHAN: Your Honor, with all --

3 THE COURT: Just hang on a second.

4 MR. LENIHAN: Yes.

5 THE COURT: It's paragraphs 23 to 28 of her
6 declaration which was admitted in evidence this morning. It
7 goes through each of those three separate debtors that are not
8 included in the substantive consolidation.

9 MR. LENIHAN: Your Honor, with all due respect, 26 is
10 the only one that deals with Avifreight, and it says it
11 maintains separate operations, but it doesn't say it maintains
12 separate accounting and treasury. It doesn't say anything of
13 the other ones for SAI in paragraph 24 and Aero Union in 25 go
14 on to talk about how they have a distinct management team,
15 separate operational and financial systems, separate
16 headquarters, separate treasury and accounting systems. All it
17 says for Avifreight is that it was established for the sole
18 purpose of complying with extrajudicial regulations.

19 Your Honor, we would submit that it does not -- that
20 it seems that they are being purposely excluded for reasons
21 that I don't know, but why those -- this company is being
22 excluded, and its equity holders are unimpaired while creditors
23 that went into this bankruptcy proceeding as secured creditors
24 are now being reduced to unsecured creditors and getting a
25 literal penny on the dollar, why the Avifreight equity holders

1 should be made whole is a question that is not answered in any
2 of these papers. They had the full opportunity to explain
3 exactly why. They could have said that they have -- they're
4 not part of consolidated financial statements. They could have
5 said that they don't -- they're not part of a tax group. They
6 could have shared they had their own employees. They could
7 have said everything that they said for Aero Union and SAI.
8 They don't say for Avifreight. And it's entirely unclear to me
9 why it should be excluded, and why it's equity holders are
10 unimpaired.

11 THE COURT: So your argument now is limited as to
12 Avifreight?

13 MR. LENIHAN: Well, I would like to -- I'm reserving
14 rights on cross-examination.

15 THE COURT: Oh, absolutely. I'm not taking away your
16 right to cross-examine.

17 MR. LENIHAN: But I -- thank you, Your Honor. But
18 without going -- without having the benefit of the cross-
19 examination, the most jarring thing that stands out from this
20 affidavit is the limited information about Avifreight --

21 THE COURT: All right. What's your third point?

22 MR. LENIHAN: Well, it went in -- I really did the two
23 of them at the same time. It said Avifreight's equity holders
24 are getting a full recovery, and that would violate the
25 absolute priority rule.

1 THE COURT: Okay. Anything else you want to add then?

2 MR. LENIHAN: No. Thank you.

3 THE COURT: All right. Thank you.

4 All right, Mr. Shenfield, are you going to argue?

5 MR. SHENFIELD: Your Honor, I would reiterate my
6 request that since Mr. Kim did file his statement on a pro se
7 basis for himself, that he be allowed to speak and that I be
8 allowed to simply notify the Court that we adopt his argument,
9 because he is speaking pro se.

10 THE COURT: Well, does he own the 2023 note, yes or
11 no?

12 MR. SHENFIELD: Yes, he does, Your Honor, and we --
13 the debtors' counsel last week sent us requests for production
14 of documents and we responded to those over the weekend and
15 produced evidence that Mr. Blake Kim is an owner of the 2023
16 notes. And I believe early on in the hearing they acknowledged
17 that he is an owner along with the other parties.

18 THE COURT: No, they did not. They did not. I'll ask
19 again. Did debtors' counsel acknowledge that Mr. Blake (sic)
20 is an owner of a 2023 note?

21 MR. RENENGER: Your Honor, Aaron Renenger on behalf of
22 the debtors.

23 We did receive statements from Mr. Kim showing that as
24 of last month he was an owner of 2023 notes.

25 THE COURT: All right. On that basis, I will permit

1 Mr. Kim to argue.

2 Mr. Shenfield, you signed papers and filed in this
3 court. I expect that within a week from today, you will apply
4 to appear pro hac vice and file -- and pay your fee for having
5 done so. You filed papers, even though you're not admitted to
6 practice in this court.

7 Mr. Kim, go ahead.

8 MR. KIM: Yes, Your Honor. This is Blake Kim.

9 Well, Your Honor, we are here today because according
10 to the debtors, our senior secured debt has become general
11 unsecured claim. And as a result of a few shell games I will
12 state, Your Honor, in the process, there is -- (indiscernible)
13 in many coats, Your Honor, and I laid out first that they broke
14 out absolute priority rule, that's 1129, by reducing the
15 recovery of senior secured class while providing a hundred
16 percent recovery to the unsecured equity classes and equity as
17 well.

18 Second, Your Honor, the debtors have reached multiple
19 agreements that were on the various documents.

20 And third, the debtors have performed illegal
21 (indiscernible) they say by reducing the recovery of 2023
22 noteholders. And I have gone through my calculations on assets
23 and liabilities that the debtors have produced, and I have
24 stated on my objection what those are.

25 Fourth, Your Honor, the debtors did not perform a fair

1 evaluation for a secured class. Those (indiscernible) 0506.
2 Now, debtors have produced what the equity value is from the
3 perspective of, I guess, what they were trying to raise for
4 exit financing, and they say that is 800 million dollars in
5 equity. However, Your Honor, if it applies (indiscernible)
6 what is essential, because that is the amount that the company
7 would -- an acquirer would pay. And with that value, they have
8 to do, like, a waterfall analysis to determine what is the
9 (indiscernible) of our positions.

10 Fifth, Your Honor, the debtors perform -- argue
11 substantive consolidation breaching the meaning of substantive
12 consolidation, Your Honor. I have my own reasons why I believe
13 that they are excluding that, and I have submitted -- which
14 actually did not go through -- was the SAI SAS's report on
15 their financials.

16 Basically, their assets and EBITDA has grown 728
17 percent in the two years since they were acquired, Your Honor.
18 They were acquired in October of 2017. In those two years they
19 have grown 728 percent. And I believe they are -- all the
20 equity parameter of stakeholders and, perhaps, (indiscernible)
21 which they (indiscernible), Your Honor. So those equity are
22 probably in those collateral, Your Honor.

23 So to this (indiscernible), it would be a very
24 difficult process, I believe. That's why I believe they are
25 excluded.

1 And sixth, Your Honor, the debtors have performed
2 substantive consolidation to disparate creditors. They have
3 very different asset/liability profiles. And thus breaking
4 Code 1122, and that is extremely -- extreme prejudice against
5 2023 noteholders, Your Honor.

6 More, the debtors of 2023 notes are essentially the
7 holding company and they're very valuable assets of the holding
8 company and are equity. However, the debtors do not even
9 calculate what the equity values are. As you can see on their
10 filed dockets on assets and liabilities, they did not announce
11 (indiscernible) to determine value, but that is the greatest
12 value for a holding company.

13 So going back to 1122, Your Honor, they're talking
14 about that if we are a general unsecured creditor that we are
15 being fairly treated but that is not so, Your Honor. Because
16 again, our assets are much more valuable than other GUCs', Your
17 Honor.

18 So that is my opening statement, Your Honor. And
19 again, going back to absolute priority rule, Your Honor, there
20 were a lot of documents that stated that we were protected in
21 some sense. One was we were the RFP. Not RFP. Sorry, Your
22 Honor. It was basically a note sent to the noteholders by the
23 (indiscernible) of noteholders. And on the second page of that
24 which is part of my Exhibit A they state that we were
25 (indiscernible) collateral of the underlying secured -- the

1 2023 notes, but junior to Tranche A and Tranche B. All of
2 their state -- that kind of statement, now, they're saying we
3 have no collateral (indiscernible). So they had made those
4 kind of statements, Your Honor.

5 And then on docket 964 which I also stated on my
6 objection, they talk about that they were stipulating the
7 priority and validity of our notes, Your Honor.

8 And then lastly --

9 THE COURT: But not as to value. They haven't
10 contested the validity or priority, but the issue is what's the
11 value of the shared collateral.

12 MR. KIM: Yes, Your Honor. Yes.

13 So even on the third, which I wanted to mention which
14 was the revised DIP agreement, they state that -- even they go
15 far as they will protect, you know, whatever the value, I
16 guess, of 2023 note is. And I don't have the exact statement,
17 and I didn't pull up that language, but that gave us security
18 that we are basically a get out of jail free card despite the
19 company being in dire straits at the beginning, and I felt that
20 as the company recovered from COVID-19 that all the valuations
21 will go up.

22 And even on the DIP presentation that the debtors were
23 presenting to you, all of us back in 2020 they showed that we
24 had an ample value of collateral besides -- we covered all the
25 DIP finance. And in fact, I believe, we had almost a billion

1 dollars in equity. So that gave me a comfort that we just need
2 to wait, wait this out. Don't sell out now, Your Honor.

3 And so -- and sure enough, the debtors have really
4 improved, as far as the financials go since then. And Colombia
5 is one of the greatest recovering countries in Latin America
6 based on vaccination rates, Your Honor.

7 And -- so a lot of those numbers are showing that the
8 debtors are doing quite well, however, the numbers that the
9 debtors are presenting in this Chapter 11 have stopped on
10 March. They have not gave us any semblance of valuation
11 afterwards, only the fact that the entity's worth 800 million.
12 But again, Your Honor, we have to (indiscernible) to
13 (indiscernible) identified that not an equity matter, and they
14 have not done so.

15 THE COURT: Anything else, Mr. Kim?

16 MR. KIM: So -- yes, Your Honor.

17 And they talk about waiving the equitable marshaling
18 which I do not know until, you know, disclosure statement was
19 presented and they said that for that reason we are an
20 unsecured class. Basically, we have gave our collateral by
21 waiving that right.

22 The debtors never stated about those things, Your
23 Honor. And I say a lot of their contracts were like a contract
24 written by Dr. Jekyll and Mr. Hyde, because some part of the
25 contract were very benign to us. But then we didn't know about

1 the equitable marshaling, waiving the equitable marshaling
2 because that was the one that really is now biting us in the
3 back. They have submitted those things.

4 So in one sense, they were putting our guards down and
5 then biting us later with this clause that they put in which I
6 feel is circumventing absolute priority rule. And again, the
7 tenor of bankruptcy court is ignore, Your Honor. And they are
8 saying again we're worthless. And I think that should be taken
9 a deep look at because DIP financing has been used in the last
10 couple of years drastically because of, you know, where we are,
11 with COVID. And I'm sure, you know, some of this is going to
12 be taken a deeper look at, because obviously the debtors are
13 using that to circumvent the tenor of bankruptcy protocols.

14 I think that's about it for me, Your Honor.

15 THE COURT: Thank you, Mr. Kim.

16 MR. KIM: Thank you, Your Honor.

17 THE COURT: Mr. Lenihan, you've already addressed the
18 Court. Go ahead.

19 MR. LENIHAN: Oh, I'm sorry. I thought we were moving
20 on to the cross-examination.

21 THE COURT: Oh, we are. Okay. I thought you wanted
22 to say something else before we called him.

23 MR. LENIHAN: No.

24 THE COURT: Did you agree on the order of witnesses?

25 MR. RENENGER: We did, Your Honor. Mr. Neuhauser will

1 go first --

2 THE COURT: Okay.

3 MR. RENENGER: -- and then we'll cross-examine.

4 THE COURT: Mr. Neuhauser if you would come on up to
5 the witness stand?

6 Excuse me, Mr. Lenihan, I just didn't understand
7 what --

8 MR. LENIHAN: No, Your Honor. It's not a problem at
9 all.

10 MR. NEUHAUSER: Your Honor, (indiscernible)?

11 THE COURT: Yeah. It's right up there.

12 MR. NEUHAUSER: Oh, I didn't --

13 THE COURT: Right there. And if you'll stand and
14 raise your right hand, you'll be administered the oath, okay?

15 (Witness sworn)

16 THE COURT: Please have a seat. You can take your
17 mask off if you want to.

18 And his direct testimony is already in evidence, and
19 the witness is sworn. Mr. Lenihan, please proceed with cross-
20 examination.

21 MR. LENIHAN: Thank you, Your Honor. And thank you
22 Mr. Neuhauser.

23 THE WITNESS: Thank you.

24 CROSS-EXAMINATION

25 BY MR. LENIHAN:

1 Q. In your declaration, you state that you were a managing
2 director of Credit Suisse from 2016 to 2019. Can you just very
3 briefly tell me what your duties and responsibilities were in
4 that role?

5 A. Sure. Most of my career has been in investment banking.
6 A combination of focused on general Latin American banking, and
7 aviation-specific banking. When I -- when I took the role at
8 Credit Suisse, the role at Credit Suisse was a dual role. I
9 was in charge of their (indiscernible) office, so I was the
10 generalist coverage officer for investment banking, i.e.,
11 capital raising, M&A, et cetera activities in (indiscernible).
12 And I also took leadership and coverage of Latin American
13 Airlines.

14 Q. Thank you. And it says since July 2019 until about April
15 2021, you were the chief financial officer of Avianca. What
16 entities specifically were you the CFO of from July 2019 to
17 April of 2021?

18 A. I was hired in the dual contract by Avianca Holdings and
19 by Avianca Colombia.

20 Q. Were you employed by any other companies during that time?

21 A. I was not.

22 Q. Were you an officer at any other companies during that
23 time?

24 A. I believe I was.

25 Q. What other companies were you an officer of?

1 A. I do not know.

2 Q. Are any of those companies that you were an officer of
3 debtors in today's proceedings?

4 A. Avianca Holdings is, as is Avianca Colombia.

5 Q. Any of the other ones?

6 A. I assume there are, yes.

7 Q. Do you know if you were an officer for all forty of the
8 debtors?

9 A. I do not.

10 Q. And presently, since April 2021, you are the chief
11 executive officer of Avianca Holdings S.A. Are you the chief
12 executive officer of any other of the debtor entities?

13 A. My contract again replicates my role in both Avianca
14 Holdings and Avianca Colombia.

15 Q. So you're not aware of whether you're the CEO of any of
16 the other debtor entities --

17 A. I am not.

18 Q. -- other than those two?

19 A. I am not.

20 Q. Are you aware of whether there are any debtor entities
21 that you are not the CEO of?

22 A. I am not.

23 Q. So to the best of your knowledge, you don't know if you're
24 the CEO of all of them or only two of them?

25 A. That's correct. I know that I'm the CEO of the holding

1 company and therefore can direct the subsidiaries.

2 Q. In your declaration, you state that you understand the
3 plans, classification scheme, generally tracks the debtor's
4 pre-petition capital structure. What did you mean by the pre-
5 petition capital structure?

6 A. I mean the capital structure of Avianca Holdings, i.e.,
7 its consolidated obligations, its consolidated equity and debt.

8 Q. And that's true for all the forty debtors?

9 A. I'm not sure I understand the question.

10 Q. You state that the scheme generally tracks the debtors,
11 plural, the defined term debtors, pre-petition capital
12 structure. I'm asking if you understand that to be true for
13 all forty of the debtor entities?

14 A. I believe so.

15 Q. Is there any debtor entity that you're not sure that's
16 true for?

17 A. I'm not sure where your question's going. Again, my
18 testimony is from a consolidated standpoint, and from a
19 consolidated standpoint I believe it tracks.

20 Q. So when you say consolidated, do you mean that all forty
21 of the debtor entities they're consolidated financials or
22 something else?

23 A. They're consolidated financials.

24 Q. And that's true for all forty of the debtor entities?

25 A. That's true for Avianca Holdings.

1 Q. Is it true for all forty of the debtor entities?

2 A. Individually? I don't know.

3 Q. Are all forty of the debtors on the same consolidated
4 financial statements?

5 A. All forty of the debtors -- all forty of the debtors, I
6 believe so.

7 Q. You also state in your declaration that you believe "the
8 plan divides the applicable claims and interest in the classes
9 based on the underlying instruments and/or liabilities giving
10 rise to such claims and interests". Do you believe that's true
11 for the 2023 notes as well?

12 A. I do.

13 Q. And it's your testimony that you believe the 2023 notes
14 are unsecured?

15 A. It is.

16 Q. At presently, that is?

17 A. Yes.

18 THE COURT: Mr. Lenihan, can you just hold on for a
19 minute because Mr. Neuhauser's video is not up on the screen
20 and Deanna, we may need somebody from IT to fix that. I don't
21 know why there's a camera that focuses on the witness stand,
22 but he is not on the screen. If you just hold on.

23 THE WITNESS: Sure.

24 THE COURT: Okay?

25 THE WITNESS: Yep.

1 THE COURT: See if we can get this fixed. Everybody
2 just stay in place and --

3 THE CLERK: (Indiscernible).

4 THE COURT: Everybody just stay in place.

5 (Pause)

6 THE WITNESS: Thank you, Your Honor.

7 Q. And --

8 UNIDENTIFIED SPEAKER: Let me cut in?

9 THE COURT: No, please. Mr. Lenihan's proceeding with
10 his questioning. Go ahead.

11 Q. Mr. Neuhauser, I just want to confirm that as you set
12 forth in your declaration you're familiar with all the debtors'
13 day-to-day operations, financial affairs, business affairs, and
14 books and records, correct?

15 A. I am.

16 Q. Mr. Neuhauser, you state in your declaration that you
17 believe that the amount of the DIP facility exceeds the value
18 of the shared collateral.

19 A. I do.

20 Q. What is the value of the shared collateral today?

21 A. We haven't appraised it.

22 Q. Can you give me an approximate number?

23 A. Probably not, but it's less than what the DIP facility is
24 worth, because as we stated in our document, we were unable to
25 raise financing to that amount.

1 Q. You stated specifically that you were seeking equity
2 investments; is that correct?

3 THE COURT: What paragraph are you looking at?

4 MR. LENIHAN: I'm sorry. Paragraph 11.

5 THE COURT: Thank you.

6 MR. LENIHAN: It's paragraph 11 of docket 2263.

7 THE COURT: That's fine. I'm there. Go ahead.

8 Q. You state specifically that you were soliciting equity
9 investments, correct?

10 A. We were soliciting both, yes.

11 Q. Both being what -- what's the other thing?

12 A. Government financing and equity.

13 Q. I didn't hear you. I'm sorry.

14 A. Government financing of the (indiscernible) and equity.

15 Q. Did you reference the debt refinancing in your
16 declaration?

17 A. I don't know.

18 Q. I can represent to you it's not here.

19 A. Right.

20 Q. Is there a reason that wasn't represented?

21 A. I don't know.

22 MR. RENENGER: Your Honor?

23 THE COURT: Mr. Renenger?

24 MR. RENENGER: Just, it might be helpful to give the
25 witness a copy of the declaration when you ask these questions

1 about --

2 THE COURT: Do you have an extra copy, Mr. Renenger?

3 MR. RENENGER: I do have one here.

4 THE WITNESS: That'd be good.

5 THE COURT: Mr. Renenger's got it in his hand.

6 Go ahead, Mr. Lenihan.

7 MR. RENENGER: May I approach, Your Honor?

8 THE COURT: Yeah. Please. Go ahead.

9 THE WITNESS: Thanks so much.

10 THE COURT: So on page 5 of 19.

11 A. Oh, that's correct.

12 THE COURT: I think if you push the microphone a
13 little bit further away.

14 THE WITNESS: Thank you. Okay.

15 Q. So you have the declaration in front of you, Mr.
16 Neuhauser?

17 A. I do.

18 Q. Looking at paragraph 11 on page 5?

19 A. I'm there.

20 Q. Okay. Great. So would you agree that soliciting an
21 equity investment that potential investors are looking at far
22 more than just the book value or the market value of the assets
23 owned by the company?

24 A. I would.

25 Q. And you would agree that they would be looking to what the

1 company would generate in returns on a forward-looking basis,
2 correct?

3 A. Correct.

4 Q. And as far as you understand, the COVID-19 pandemic still
5 exists, has not been eradicated, correct?

6 A. Correct.

7 Q. Wouldn't you agree that the COVID-19 pandemic has had
8 appreciable changes in the habits of customer fliers such as
9 Avianca's customers?

10 A. I would.

11 Q. Including business people and leisure travelers?

12 A. Yes.

13 Q. And that would be something that an equity investor would
14 look to in determining whether or not they wanted to make an
15 investment; is that correct?

16 A. Yes.

17 Q. So could it be that the demand instruction for travel, for
18 airfare specifically, is so great that it would obviate
19 whatever the value of the shared collateral is in terms of
20 looking for an equity investment?

21 A. Well, if I can answer that, I think generally things are
22 worth what people are willing to pay for them. So it could be,
23 but then I would argue that the value of the shared collateral
24 is what's determined in the market test. So you're right.

25 And, yes.

1 Q. So you didn't go out and try and sell the shared
2 collateral or try to find someone to buy an interest only in
3 the shared collateral, correct?

4 A. Well, the shared collateral is a large portion of our
5 operating assets. So I'm not sure it's separable.

6 Q. What do you understand the shared collateral to be?

7 A. The shared collateral in the case of -- in the case of --

8 Q. The 2023 notes?

9 A. -- of the 2023 notes is a set of aircraft and some
10 receivables.

11 Q. You understand it's receivables and not intellectual
12 property rights?

13 A. And the intellectual -- there's a small set of receivables
14 and there's the IP, correct.

15 Q. So would you agree then that just because an equity
16 investment failed to yield the financing alternative, that that
17 doesn't show that the shared collateral today is worth less
18 than the DIP facility claims?

19 A. No.

20 Q. Well, you just said you agreed with me that an equity
21 investor's going to be looking at a whole litany of things in
22 deciding to make an investment. And it could even be an
23 attractive investment that doesn't give them the return that
24 they need internally, and that could be a reason why they
25 wouldn't -- that it wouldn't become an equity investor; is that

1 correct?

2 A. Yes.

3 Q. So just because something's not going to give an internal
4 rate of return that's sufficient to induce someone to invest in
5 this equity, how does that, then, translate into a claim that
6 the shared value -- the value of the shared collateral is less
7 than the DIP facility claims?

8 A. It's very hard for me to imagine that intellectual
9 property that essentially ties to our brands and used aircraft
10 that essentially we are the last operators for are going to
11 have greater value as nonoperating assets than operating
12 assets.

13 Q. Has greater value than nonoperating assets. But they're
14 airplanes, correct?

15 A. There's airplanes and there's intellectual property,
16 correct.

17 Q. Just sticking with the airplanes for a moment, how many
18 airplanes represent the shared collateral?

19 A. I don't recall.

20 Q. What's the status of those airplanes at the moment?

21 A. Some of them are in use, some of them are not.

22 Q. Why are -- the ones that are not in use, why are they not
23 in use?

24 A. I cannot give you an extensive list, but if you look at
25 our fleet today, we've taken a -- broadly, and I can't speak to

1 the ones that are specifically in the shared collateral --
2 we've taken out aircraft because they're inefficient, we've
3 taken out aircraft because they have upcoming maintenance
4 events that we have not decided to expend the maintenance on,
5 we've taken out aircraft because they don't meet
6 (indiscernible) fleet requirements.

7 Q. And how many aircrafts have you taken out of operation?

8 A. Well, we started -- we went into -- into this process with
9 about 120 narrow bodies, 23 wide bodies. We're going to emerge
10 with ninety-eight and twelve. And within the ninety-eight
11 narrow bodies, we're going to have significant rotation. So
12 I'm going to guess it's about fifty or sixty.

13 Q. When you say significant rotation, can you explain what
14 that means?

15 A. Yes. We've rejected aircraft and we've replaced them with
16 others.

17 Q. What do you do with the rejected aircraft?

18 A. Well, we generally return them to the creditors.

19 Q. So despite the fact that you don't know how many aircraft
20 actually comprise the shared collateral, and despite the fact
21 that the sole basis for determining that the DIP facility
22 claims exceed the value of the shared collaterals that people
23 didn't want to invest in your companies, you believe that you
24 can state with certainty that the value of the DIP facility --
25 the amount of DIP facility claims exceeds the value of the

1 shared collateral?

2 A. I do.

3 MR. LENIHAN: I have no further questions at this
4 time.

5 THE COURT: Thank you very much, Mr. Lenihan.

6 Anybody else wish to cross-examine Mr. Neuhauser?

7 Mr. Kim, did you wish to cross-examine Mr. Neuhauser?

8 MR. KIM: No, sir.

9 THE COURT: All right. Thank you.

10 Mr. Renenger, redirect?

11 MR. RENENGER: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. RENENGER:

14 Q. Good afternoon, Mr. Neuhauser.

15 A. Hi, Mr. Renenger.

16 Q. Mr. Neuhauser, can you describe the purpose of the
17 marketing process the debtors undertook to seek to refinance
18 the DIP facility?

19 A. Sure. So and I'm going to back in history, I think, a
20 little bit, because I think it's relevant.

21 When we -- when we -- when we filed the company back in
22 May of last year, we had very little cash, right. Something
23 like 480 million, if I recall correctly, and no access to
24 financing. All of our assets had been pledged in the prior
25 restructuring we had done in 2019 out of court. And so the

1 biggest challenge we faced was really raising the cash that we
2 needed to survive through this process. And we actually spent
3 the vast majority of the six months that led us to finally
4 raising a DIP in October on that, and I'll remind you, you
5 know, we -- we basically had to restructure most of our capital
6 structure, right. So we had to reach agreement with a group
7 that had provided a convertible -- a set of convertible notes
8 and bonds prior to December to agree and to subordinate
9 themselves and release the collateral and put up more money.

10 We had to reach agreement with an ad hoc group of 2023
11 noteholders that ultimately allowed us to put that collateral
12 into the structure.

13 And even so, when we went to market, and we went to market
14 with a very solid syndicate of top-notch banks, we were unable
15 to reach the amounts we needed to put together a DIP, right.
16 And -- and -- and -- and the issue there as -- as, you know,
17 I'll attest is -- was again, collateral.

18 In fact, when we -- when we announced we had reached a
19 structure for a DIP, it was only with 380-something-million
20 dollars of support from the Colombian government that we were
21 able to achieve it. Subsequent to that, that created momentum
22 which allowed us to reduce the support from the Colombian
23 government to slightly over 200 million. And then finally with
24 the similar loan that we received from the government, we were
25 able to overcome a judicial block that occurred in -- in -- in

1 Colombia that didn't allow the government to fund and finally
2 bridge the last 200-odd million.

3 So ultimately, the -- the DIP structure came through with
4 a lot of difficulty and at a very challenging time, right. So
5 as we then moved forward, the biggest challenge that we foresaw
6 to emergence was really refinancing the DIP.

7 So when we went to market and we asked Seabury to go to
8 market for us, there were two parts, right. One was to carry
9 out as -- as -- as broad and -- and -- and comprehensive a
10 marketing effort as we could to ensure that we had properly
11 priced the equity, and that if we exercised the conversion that
12 would be the best possible alternative for us and that we
13 weren't simply exercising the conversion blindly.

14 And the second which was a little bit of -- of a -- of a
15 shadow exercise and -- and again, I'll take the point that it
16 isn't highlighted here -- was to then also seek refinancing
17 of -- of the -- of the A DIP, and how we turned the A DIP into
18 something more permanent.

19 In fact, we were -- we were successful in -- in the first
20 but not in the second, right, as a result of that -- that
21 process. We were able to -- to negotiate a -- a refinancing of
22 our DIP, right, into a DIP to exit that we then executed. And
23 I think that was summarized by Mr. Fleck at the beginning that
24 allows us to now have permanent financing going forward. But
25 we were unfortunately not able to -- to refinance the equity on

1 terms that would be better than exercising the conversion.

2 Q. Do you believe it was necessary to refinance the DIP in
3 order to emerge?

4 A. I do.

5 Q. And why is that?

6 A. Because we would have -- because the DIP has superpriority
7 and we do not have sufficient cash to pay it back.

8 Q. Okay. So Mr. Lenihan asked you some questions with
9 respect to your views on value. Why do you believe that the
10 marketing process supports your conclusion that there's no
11 value to the shared collateral --

12 THE COURT: No value for the 2023 noteholders'
13 interest in the shared collateral.

14 MR. RENENGER: Thank you, Your Honor, for that
15 clarification.

16 A. Thank you. Well, let me -- the 2023 noteholders' interest
17 was pooled with the rest of the collateral rights. So that
18 shared collateral then became part of a broader collateral pool
19 which became the DIP pool. So I think taking it back from
20 that, the question is -- the question you asked which is why do
21 we believe there's no residual collateral, and the answer is
22 simply that we were unable to find better terms to refinance
23 than we have now, and so therefore we were unable to pay back
24 the DIP B other than through conversion.

25 Q. Okay.

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

2 THE COURT: All right.

3 There's somebody on Zoom, Carlos Manuel Nino Espirito.
4 He's raised his hand several times and I'll give him a chance
5 to address the Court --

6 MR. ESPIRITO: Thank you.

7 THE COURT: -- Mr. Lenihan, before I give you more
8 question. Go ahead.

9 MR. ESPIRITO: Thank you, Mr. Glenn. I am
10 (indiscernible) own attorney. My name is (indiscernible)
11 Espirito. I work in Avianca Peru. I am (indiscernible) -- I
12 am (indiscernible) aircraft. I am (indiscernible) -- I have to
13 (indiscernible) for me (indiscernible) by me. Please I make my
14 picture (indiscernible). Please (indiscernible). Thank you
15 Mr. Glenn.

16 THE COURT: All right, Mr. Espirito. Thank you.

17 Mr. Lenihan, did you have further questions?

18 MR. LENIHAN: Yes.

19 THE COURT: Yeah, go ahead.

20 MR. LENIHAN: Thank you.

21 THE COURT: Please. If you go back to the podium so
22 we can turn the microphone on.

23 MR. LENIHAN: Yes.

24 THE COURT: Thank you.

25 RECROSS-EXAMINATION

1 BY MR. LENIHAN:

2 Q. Mr. Neuhauser, on redirect you testified about seeking
3 debt refinancing. Was that solely for the A DIP or also for
4 the B DIP?

5 A. We tried to make it as expensive as possible. In fact, we
6 tried increasing the amount the debt by 300 million dollars.
7 We were unsuccessful.

8 Q. When you say you tried to increase the amount of debt by
9 300 million, is that the total of the DIP facility claim or
10 just one tranche or another tranche?

11 A. It was the A tranche, the senior tranche. We were trying
12 to raise more debt.

13 Q. So is it your testimony then that you were seeking debt
14 300 million dollars more than what exists, and because you
15 couldn't get debt 300 million dollars in excess of what was
16 already out there that that shows that the shared collateral is
17 not -- does not have enough value to exceed the present DIP
18 facility claims?

19 A. My testimony is that we were unable to raise just a
20 mere -- we actually raised 160 million dollars more than what
21 existed. So just a mere 140 million dollars more that's the
22 debt we were unable to raise, and we were unable to raise
23 alternative sources whether it be equity or some other
24 structure to refinance the DIP B after an extensive marketing
25 process. That's my testimony.

1 Q. So your testimony was that you were able to get more debt
2 in excess of the A DIP; is that correct?

3 A. We were able to, as has been disclosed, increase the A DIP
4 in refinancing by 100 and, I believe, 40 million dollars.

5 Q. And that's your testimony then that that exceeds the --
6 that -- excuse me.

7 MR. LENIHAN: Strike that.

8 Q. That the value -- the amount of the DIP facility claims
9 exceeds the shared collateral because you were able to go to
10 market and get 140 million dollars more debt?

11 A. No. You'll recall that the DIP facility claims are not
12 only the DIP A but also the DIP B. So the question -- the
13 question's a little different which is can we refinance the
14 entire DIP against the collateral. And the answer is we were
15 unable to do so. We were able to raise a little bit more
16 senior debt, and we were unable to raise equity or an
17 alternative to equity on better terms than what we had.

18 Q. And when you were trying to raise the -- refinance the B
19 DIP, were you doing that at the same time? Were you trying to
20 refinance both tranches or were you doing that separately?

21 A. We were having concurrent discussions.

22 Q. So you were trying everything?

23 A. Yes we were.

24 Q. And it's your test -- and what time period was this?

25 A. It was -- we refinanced the -- we refinanced the -- we

1 ended it about three months ago, so this was probably, you
2 know, in a period that was probably started six months ago.

3 Q. Is this the same April to July 2021 period that you
4 were -- you testified to --

5 A. That sounds about right. Yep.

6 Q. And in so doing that, what was being offered as collateral
7 to the new lenders, the refinancing lenders?

8 A. The same package that -- that secured the DIP before that.

9 Q. Anything else?

10 A. Not that I recall. We don't have much else that's in
11 place.

12 MR. LENIHAN: No further questions, Your Honor.

13 THE COURT: All right. Thank you, Mr. Lenihan.

14 Mr. Renenger, do you have any other questions?

15 MR. RENENGER: No more questions, Your Honor.

16 THE COURT: All right. You're excused, Mr. Neuhauser.

17 MR. KIM: Your Honor --

18 THE COURT: Thank you very much for your testimony.

19 MR. NEUHAUSER: Thanks very much.

20 THE COURT: And --

21 MR. KIM: May I ask a question, Your Honor?

22 THE COURT: Sorry. All right. Go ahead. Mr. Kim?

23 MR. KIM: Yes, Your Honor.

24 THE COURT: Mr. Kim has a question. Go ahead, Mr.

25 Kim.

1 CROSS-EXAMINATION

2 BY MR. KIM:

3 Q. Mr. Neuhauser, when you guys came up with the DIP and when
4 you guys put in the waiver of equitable marshaling, what was
5 your intentions for that, Mr. Neuhauser?

6 MR. RENENGER: Your Honor, I'll object that that's
7 beyond the scope of the redirect.

8 THE COURT: Sustained.

9 Any other questions, Mr. Kim?

10 MR. KIM: Not right now, sir.

11 THE COURT: Thank you very much, Mr. Kim.

12 All right. Mr. Neuhauser, you're excused.

13 MR. NEUHAUSER: Thanks.

14 THE COURT: Okay.

15 MR. LENIHAN: Your Honor, we'd like to call Ms. Ginger
16 Hughes.

17 THE COURT: Yes. Okay.

18 MR. LENIHAN: And for the record, her declaration is
19 2262.

20 THE COURT: All right. If you would come on up to the
21 witness stand and you'll be sworn, Ms. Hughes. Please stand
22 and raise your right hand, and you'll be sworn. You have to
23 stand.

24 MS. HUGHES: Oh.

25 THE COURT: You okay? Sorry. Go ahead.

1 (Witness sworn)

2 THE COURT: All right. Please have a seat.

3 Just make sure you're close enough to the microphone
4 so we can pick up your voice.

5 THE WITNESS: Okay.

6 THE COURT: And the direct testimony is already in
7 evidence.

8 Mr. Lenihan, go ahead.

9 MR. LENIHAN: Thank you very much.

10 CROSS-EXAMINATION

11 BY MR. LENIHAN:

12 Q. Good afternoon, Ms. Hughes. Thank you for your time.

13 In your affidavit, you -- excuse me -- in your declaration
14 you stated you're the managing director and a partner of
15 Seabury International Corporate Finance and its affiliate
16 Seabury Securities LLC. Can you tell me just briefly what
17 Seabury does?

18 A. Sure. So the two entities that are there were sort of the
19 ones that I'm a managing director and partner of are an
20 aviation-focused investment bank and advisory firm. We've got,
21 was it is, thirty years, I believe, close to thirty -- twenty-
22 five, thirty years of history with a substantial number of
23 aviation transactions all around the world and quite a few
24 bankruptcies because unfortunately that's what happens in this
25 industry.

1 Q. And what specifically has Seabury's relationship been to
2 this bankruptcy?

3 A. Sure. So we were hired specifically in the case as the
4 investment banker and financial advisor to Avianca. We did
5 have a previous relationship with the debtors. We were the
6 banker and advisor during the 2019 restructuring. I
7 specifically led the fleet restructuring in 2019, as well as
8 participated in what we refer to as the stakeholder loan which
9 was the 375-million-dollar convert.

10 Q. Thank you. You state in your declaration that Seabury
11 prepared a liquidation analysis that was annexed as exhibits --

12 THE COURT: Wait, hold on a second.

13 Mr. Renenger, do you have an extra copy of --

14 MR. RENENGER: I do, Your Honor.

15 THE COURT: -- of the declaration? If you'd bring it
16 up, that would be helpful. Okay?

17 THE WITNESS: Thank you.

18 THE COURT: Thank you, Mr. Renenger.

19 Go ahead, Mr. Lenihan.

20 THE WITNESS: Glad I brought my glasses.

21 Q. You state in your declaration on paragraph 12 that Seabury
22 prepared a liquidation analysis that was annexed as Exhibit C
23 to the disclosure statement. Is that correct?

24 A. Yes, it is.

25 Q. What was your involvement in preparing that liquidation

1 analysis, if any?

2 A. So two of the individuals at my direction which included
3 both the company and my team at Seabury prepared the
4 liquidation analysis.

5 Q. And did you review it?

6 A. I did.

7 Q. Are you familiar with it?

8 A. I am familiar, yes.

9 Q. What entities does the liquidation analysis cover?

10 A. It covers all of the debtors in these cases on a
11 collective basis.

12 Q. On a collective basis?

13 A. Right.

14 Q. And how does the information that under -- underpins this
15 analysis put together?

16 A. I'm sorry, I don't understand the question.

17 Q. Sure. So let me strike that and try again.

18 You go through -- the liquidation analysis goes through
19 certain assets, like cash and cash equivalent requested --
20 restricted cash, short term investments, account receivables,
21 et cetera, et cetera. How is the information of those assets
22 compiled?

23 A. So the starting point at the analysis is the company's
24 balance sheet. And just to choose a marker in time because you
25 have to have a marker in time when you're dealing with assets

1 of a business, it was, I believe, the March 31st, if I'm not
2 mistaken, of 2021, that balance sheet. That -- that's, I would
3 say, is a process of identifying the assets themselves, not
4 necessarily their value. And -- but as far as to identify the
5 kind of -- the set of assets that existed.

6 Q. So the set of assets, and you say in paragraph 13 of your
7 declaration that it's based on the unaudited book values as of
8 March 31st, 2021. So excellent memory. And you said it was
9 the company's balance sheet. Is that a consolidated balance
10 sheet?

11 A. It was.

12 Q. And is that on behalf of all forty debtors?

13 A. Of Avianca Holdings, correct. It was actually -- Avianca
14 Holdings, and in this case it includes the debtors, it includes
15 the debtors' equity interest and nondebtors.

16 Q. Okay. Does it also include the assets of S -- what's been
17 referred to as SAI?

18 A. [Sigh], correct.

19 Q. {Sigh}, excuse me.

20 A. (Indiscernible).

21 Q. Aero Union?

22 A. And Aero Union.

23 Q. Apologies for my butchering the language.

24 A. No. We're all --

25 Q. And also Avifreight?

1 A. Avifreight as well.

2 Q. So those are all -- so the company's books and records, at
3 least as of March 20th, 2021 had consolidated financial
4 statements for all forty of these entities, correct?

5 A. And so there are books and records we can -- on what we
6 call a general ledger in the accounting world for -- but yeah,
7 this is the consolidated which generally is an amalgamation of
8 books and records of all of the underlying companies.

9 Q. Okay. So all of the underlying companies including Aero
10 Union and Avifreight and SAI had their assets and liabilities
11 together on these same consolidated financial statements?

12 A. Correct.

13 Q. Now, in paragraph 18 of your affidavit which is on page 6,
14 you state that the Avianca debtors which are all the debtors
15 except Aero Union, Avifreight, and SAI have operated in a
16 consolidated manner. And then you state that the separate
17 corporate existence of many of the Avianca debtors was driven
18 primarily by local regulatory requirements; is that correct?

19 A. That is correct.

20 Q. And then in paragraph 26 of your affidavit on page 9 in
21 discussing Aero Freight -- Avifreight, excuse me -- you said
22 because air carriers certify -- certificated in Mexico are
23 subject to Mexican regulatory requirements including foreign
24 ownership restrictions, Avifreight was established with the
25 sole purpose of complying with those regulations.

1 If it was established with the sole purpose of complying
2 with regulatory -- local regulatory requirements, how is that
3 different from the other Avianca debtors?

4 A. So we -- I did use the vague reference, regulations, but
5 they're very different regulations. When you're talking with
6 respect to operating entities, like, airlines, for example,
7 airlines are certificated. They're certificated under the
8 regulations of particular aviation authorities, and those
9 aviation authorities in most cases, if not all cases, are
10 individual country. So the subcon debtors, or the Avianca
11 debtors, are under those regulated entities with respect to the
12 certification of air carriers and what we think of in the
13 United States as the FAA and the Department of Transportation.

14 With respect to Avifreight, it's a different regulation,
15 and it's with respect to the foreign ownership specifically.

16 Q. Now, with respect to what you define as the Avianca
17 debtors, and talking about the local regulatory requirements,
18 the operating airlines for Avianca, what countries have
19 regulatory purview over them?

20 A. The -- well, it's quite a few.

21 With respect to the certificated air carriers there's what
22 Mr. Neuhauser referred to as Avianca Colombia, also referred to
23 as Aerovias, that's in Colombia. There's another entity in
24 Colombia, Regional Express. I'm just picking out a few of the
25 countries.

1 Q. Let me rephrase my question if I wasn't clear. I'm sorry.
2 Which countries do the operating airlines operate under and
3 such that they are under the purview of their local version of
4 the FAA? You said Colombia, I believe Costa Rica --

5 A. Colombia, Costa Rica, and El Salvador, Ecuador, and
6 probably Guatemala. I believe so. I'm not -- I'm not a
7 hundred percent sure. I -- those are the -- some of the larger
8 ones.

9 Q. Okay. So five or six; is that correct, then?

10 A. At least, correct.

11 Q. That's South American and Central American countries?

12 A. Correct.

13 Q. So why is Avifreight specifically excepted from that,
14 solely because it's under the regulatory purview of Mexico?

15 A. Well, Avifreight is a holding company. Avifreight has no
16 operations. Avifreight, it holds voting and nonvoting shares
17 and receives dividends. It's -- it's -- it's -- it's a
18 nonentity.

19 Q. Why, in paragraph 26, do you say, "because air carriers
20 certificated in Mexico are subject to Mexican regulatory
21 requirements, Avifreight was established with the sole purpose
22 of complying with those regulations"?

23 A. Because it was.

24 Q. What does the fact that air carriers certificated in
25 Mexico have to do with Avifreight --

1 A. Um-hum.

2 Q. -- complying with the local regulations if Avifreight's
3 not an airline?

4 A. Avifreight -- Avifreight is not an airline. AeroUnion,
5 that is the sole asset holder --

6 THE COURT: We need to mute the lines of anybody who's
7 not speaking.

8 Deanna, I don't know whether you can do that.

9 Go ahead, Mr. Lenihan.

10 MR. LENIHAN: I apologize, can --

11 THE COURTROOM DEPUTY: (Indiscernible) --

12 THE WITNESS: Who is Maria Marquez (ph.)?

13 THE COURT: Hang on.

14 THE COURTROOM DEPUTY: Judge, I can mute everyone if
15 you give me one second --

16 THE COURT: Yeah. Please mute everybody, Deanna.

17 Thank you.

18 THE COURTROOM DEPUTY: -- and then I'll have to
19 unmute. Okay.

20 THE COURT: That's my courtroom deputy.

21 THE WITNESS: Okay.

22 THE COURT: Hold on until --

23 MR. LENIHAN: I think she said they were --

24 THE COURT: All right.

25 MR. LENIHAN: -- she had muted everyone.

1 A. Okay. So -- so AeroUnion --

2 THE COURT: Let me just -- so we have a clear record,
3 go ahead and ask your question again, and --

4 THE WITNESS: Okay.

5 THE COURT: -- we'll get a clear transcript.

6 MR. LENIHAN: Sure.

7 BY MR. LENIHAN:

8 Q. So in paragraph 26 of your declaration, you state,
9 "Because air carriers certificated in Mexico are subject to
10 Mexican regulatory requirements, Avifreight was established
11 with the sole purpose of complying with those regulations."

12 A. Correct.

13 Q. What regulations was Avifreight established --

14 THE COURTROOM DEPUTY: I'm sorry?

15 Q. -- in Mexico to comply with?

16 THE COURTROOM DEPUTY: Can you hear me?

17 THE COURT: Yes, Deanna. Hold on. You got everybody
18 muted, right?

19 UNIDENTIFIED SPEAKER: I think she muted her call.

20 THE WITNESS: I think she muted herself.

21 THE COURT: Now I'm muted, too.

22 THE COURTROOM DEPUTY: (Indiscernible).

23 THE COURT: Okay. Now I'm muted, too.

24 THE COURTROOM DEPUTY: You're unmuted.

25 THE COURT: Hold on.

1 THE COURTROOM DEPUTY: Bear in mind, I can -- I have
2 to -- it mutes everyone, so we won't be doing that.

3 THE COURT: No. That's okay. Deanna, I'm unmuted
4 now. Everybody else is muted, I think.

5 Go ahead, Mr. Lenihan.

6 MR. LENIHAN: Sure.

7 Q. So Ms. Hughes, in paragraph 26 of your affidavit, do you
8 say, "Because aircraft carriers certificated in Mexico are
9 subject to Mexican regulatory requirements, Avifreight was
10 established with the sole purpose of complying with those
11 regulations." What regulations was Avifreight established in
12 Mexico to comply with?

13 A. So Avifreight's sole purpose -- so it is an intermediate
14 holding company. Its sole asset is shares of AeroUnion.
15 AeroUnion is a Mexican certificated air carrier, and so
16 Avifreight serves as the entity that holds both nonvoting --
17 nonvoting shares of AeroUnion to comply with the foreign
18 ownership requirements of Mexican certificated air carriers.

19 Q. And who owns Avifreight?

20 A. Avifreight is owned partially by Tampa Cargo, which is one
21 of the debtors, and there are a -- a few minority shareholders.

22 Q. Do you know offhand what percentage Tampa Cargo owns?

23 A. So it's -- it's -- it's a bit complex if -- if you kind of
24 pull it all the way through the economic ownership structure.
25 Tampa Cargo owns ninety-two percent of AeroUnion, but it does

1 vary on voting and nonvoting.

2 Q. Owns ninety-two percent of AeroUnion or of Avifreight?

3 A. Well, Tampa through Avifreight --

4 Q. Um-hum.

5 A. So Tampa owns twenty-five percent direct of -- of
6 AeroUnion, and then it owns -- I can't remember the exact
7 percentage. I'd have to get out -- see the org chart. But it
8 owns a piece of Avifreight, and then Avifreight owns -- and
9 this is economic I'm speaking to, not the -- not the governance
10 but the other seventy-five percent of AeroUnion. And then,
11 they're -- so Avifreight has Tampa as a shareholder and
12 minority shareholders.

13 Q. And is that why Avianca's -- generally speaking, their
14 consolidated financials include these other three companies?

15 A. Correct.

16 Q. Because Avianca has substantial, if not a hundred percent,
17 ownership interest in them?

18 A. They -- they -- they --

19 Q. Directly or indirect?

20 A. -- they have a controlling share hold, yes.

21 THE COURT: Hold on.

22 Deanna, we've got to solve this problem.

23 (Off-the-record conversation)

24 (Pause)

25 THE WITNESS: Are we good?

1 THE COURT: Go ahead, Mr. Lenihan.

2 MR. LENIHAN: Thank you.

3 Q. Ms. Hughes, going back to your declaration, paragraph 18,
4 you have a list of bullet points, and you state that the
5 Avianca debtors have a centralized cash management system. Are
6 all of the Avianca debtors part of that cash management system?

7 A. It -- it -- let me just make sure. Avianca debtors, if I
8 recall correctly, excludes --

9 Q. Excludes the --

10 A. -- AeroUnion, Avifreight, and SAI.

11 Q. Correct.

12 A. Then, correct. Yes, they are.

13 Q. And you write, in bullet point 2, page 7, Avianca Holdings
14 provides intercompany loans and other advance capitalization to
15 the other Avianca debtors as necessary. Are those loans
16 documented? Are they journaled?

17 A. They are.

18 Q. And so they're recorded?

19 A. Yes.

20 Q. And do the Avianca debtors provide any loans or capital or
21 other kind of financing to the three accepted debtors?

22 A. They did provide initial capital, certainly, but they --
23 nominal, if any, intercompany loans, and it has been quite a
24 while since (indiscernible).

25 Q. Well, except that the three -- can I call them the

1 unconsolidated debtors --

2 A. That's correct.

3 Q. -- and you understand I mean SAI, AeroUnion, and
4 Avifreight?

5 A. Right.

6 Q. Did the unconsolidated debtors participate in the DIP
7 financing in this proceeding?

8 A. I believe so.

9 Q. And how is the financing apportioned to those three
10 entities?

11 A. I don't believe any of those entities used any of the
12 benefits of the -- they -- they haven't had any intercompany --
13 the -- the DIP financing went in at HoldCo, and these entities
14 have not taken any loans, so -- you know, from -- from the DIP.

15 Q. You write, in the third bullet point on page 7, which is
16 still paragraph 18 --

17 A. Um-hum.

18 Q. -- the Avianca dentors (sic) share many of the same
19 officers, directors, and shareholders. How many of the Avianca
20 debtors have their own distinct officers?

21 A. Well, so many of them have distinct governance, with
22 respect to the requirements of -- of -- of the -- the laws in
23 which the countries were -- were organized. But with respect
24 to kind -- what I would think of at all -- well, Americans
25 would think it was officers that run the company and kind of

1 made management decisions. The Avianca debtors are -- are
2 excluding the unconsolidateds, are -- are all run by one
3 management team.

4 THE COURT: Let me make sure I understand your answer.
5 Are the three unconsolidated debtors managed or governed by
6 those same people?

7 THE WITNESS: No, they are not.

8 Q. So going back to what you testified to just a bit ago was
9 that all forty of these entities are on the same consolidated
10 financial statements, correct?

11 A. That is correct.

12 Q. Can you explain to me what the difficulty is, then, or why
13 it's so easy to disentangle the assets and liabilities of the
14 unconsolidated debtors from the Avianca debtors?

15 A. Sure. So the unconsolidated debtors maintain their own
16 books and records. So by nature, they have their own general
17 ledger. They have their own accounting staff. They -- they
18 produce their own financial statements. I think of them
19 akin -- if you think of -- many companies have controlling
20 stakes in a company that they do consolidate into their
21 financial statements, but they have a fifty-one percent -- so
22 they receive -- I think shows my age, but a fax that says,
23 here's my financial statements, you can add them in a
24 spreadsheet to create your consolidated financial statements.
25 But the books and records are completely separate. They do

1 create, in a spreadsheet, a set of consolidated financial
2 statements for the holding company, but they're not a
3 integrated books and records.

4 Q. So you used a reference or an example where a holding
5 company or an entity has a fifty-one percent share in a
6 different company. Here, the holding company, directly or
7 indirectly, has upwards of ninety percent interest in the
8 unconsolidated debtors, correct?

9 A. Correct.

10 Q. And we've also gone through your testimony that for the
11 Avianca debtors, when they provided loans or other financing,
12 that was booked in accordant -- well, I didn't say that,
13 actually. Would it be in accordance with GAAP or the
14 applicable -- or the equivalence of GAAP accounting?

15 A. It would be International Financial Reporting Standards.

16 Q. And that's true for all forty of the debtors?

17 A. Well, the -- the holding company financial statements have
18 to be produced in international IFRS, which is the
19 International Financial Reporting Standards. I am not positive
20 of the requirements for each of the individual debtors from a
21 financial statement -- local regulatory purposes. I -- I -- I
22 am an accountant many years back in my head. So in some cases,
23 there are countries that do require a local GAAP for their
24 local, you know, kind of regulatory reporting. But as far as
25 the financial statements that, you know, from a holding

1 company -- holding company perspective, they would all be under
2 IFRS.

3 Q. And getting back to the books and records for a second,
4 you said the unconsolidated debtors have their own books and
5 records. Is that correct?

6 A. Correct.

7 Q. Is that three sets of books and records or fewer?

8 A. I believe it's three sets. I -- yeah, I mean, they're --
9 they're separate. I mean, SAI completely separate from
10 AeroUnion. They're in completely different businesses.
11 Different management teams. So there's no functional way that
12 they could be the same.

13 Q. And AeroUnion and Avifreight?

14 A. AeroUnion and Avi- -- I mean, Avifreight is -- again, it's
15 just a holding company.

16 Q. Um-hum.

17 A. So its books and records are -- are a spreadsheet at best.

18 Q. And going back to the Avianca debtors, how many sets of
19 books and records are there for those thirty-seven entities?

20 A. But -- so I think you have to go into the -- what is a
21 definition of a book and a -- books and records.

22 Q. That's a fair --

23 A. There is a general ledger.

24 Q. So the general ledger, there are thirty-seven general
25 ledgers or fewer?

1 A. There are subledgers of the same general ledger.

2 Q. So they're all separately accounted for, the transactions?

3 A. To the best you can separate them, there is an attempt to
4 create subledgers as -- as best you can of an -- an enterprise
5 that's completely integrated.

6 Q. What are the struggles in -- let me take a step back. So
7 you got a journal, and then you have subjournals on it for the
8 thirty-seven, or I guess maybe the thirty-six, Avianca debtors
9 from Avianca Holdings down. What are the troubles -- can you
10 articulate what the troubles are in segregating them such that
11 each transaction is appropriately booked for whatever entity it
12 applies to?

13 A. Yeah. So -- I said I began my career as an auditor of
14 airlines straight out of school. I've seen the financial
15 statements and worked in general ledgers of airlines all around
16 the globe. I'll say -- I'll tell you I've never seen one this
17 complex as Avianca Holdings by a longshot. It -- it --
18 there -- there is -- you know, you have to have -- for some of
19 these, you know, local countries if you have a company
20 registered in one country and another, you have to attempt to,
21 you know, show the -- show the books and records of one
22 company, but if you went to try and kind of separate the whole,
23 you're inherently going to run into lots of issues because of
24 how complex the operations are.

25 Q. And why does that --

1 A. Integrated, actually, is probably a better word than
2 complex.

3 Q. And why does that not apply to Avifreight and its interest
4 in AeroUnion?

5 A. So like I said, Avifreight's just an intermediate HoldCo,
6 so it's very simple. So I mean, that one's kind of
7 straightforward. AeroUnion, its business is run completely
8 separate. So when you think about an airline, you think -- and
9 we think -- we -- we use the reference "airline" when we think
10 of Avianca as a whole, but it's really airlines, kind of in a
11 sense.

12 An airline is -- is basically its network. Its network is
13 where it flies, when it flies, and you can think about it from
14 a customer proposition perspective. All of that is -- in the
15 case of the passenger airlines, Tampa Cargo, that are what
16 we're call the Avianca debtors -- is all one managed,
17 integrated network. One airline might fly this flight or that
18 flight because of regulatory purposes, but the customer
19 proposition is all the same.

20 Q. In paragraph 27 of your declaration, you state that
21 creditors of the Avianca debtors, including the 2023
22 noteholders, are not materially impacted by the exclusion of
23 what we've called the unconsolidated debtors.

24 A. Um-hum.

25 Q. You say none of the unconsolidated debtors are guarantors

1 of the 2023 notes. How many of the Avianca debtors are
2 guarantors of the 2023 notes?

3 A. I don't know the specific number, but all of the operating
4 carriers as well as Avianca Holdings are guarantors of them.
5 So -- which is -- which, when we say that reference, it's
6 basically everybody that has claims other than the exceptions.

7 Q. So in paragraph 19, your first bullet point, you identify
8 nine of the debtors that are guarantors of the 2023 notes; is
9 that correct?

10 A. I'm sorry. Which paragraph?

11 Q. Paragraph 19, the first bullet point.

12 A. Yes.

13 Q. You identified nine of the debtors that are guarantors of
14 the 2023 notes.

15 A. Correct.

16 Q. So that means that twenty-eight of the debtors are not
17 guarantors -- I'm sorry, my math is wrong there. Excuse me.
18 Thirty-one of the debtors are not -- no, I was right the first
19 time. Twenty-eight of the Avianca debtors are not guarantors
20 of the 2023 notes; is that correct?

21 A. That is correct.

22 Q. Okay. So the fact that the unconsolidated debtors are not
23 guarantors of the 2023 note really doesn't differentiate them
24 all that much from the vast majority of the Avianca debtors,
25 correct?

1 A. I'm sorry. Say that again?

2 Q. Sure. The mere fact that the unconsolidated debtors are
3 not guarantors of the 2023 notes doesn't really put them in a
4 different position than the vast majority of the Avianca
5 debtors; is that correct?

6 A. That fact, specifically, you are correct.

7 Q. All right. And then you said that the residual value of
8 the Avianca debtors are augmenting the recoveries of the
9 creditors, including the 2023 noteholders. Because Avianca
10 debtors is a ninety-percent shareholder in SAI and has a
11 ninety-two-percent beneficial interest in AeroUnion. How does
12 being the largest shareholder presently do anything to help the
13 2023 noteholders?

14 A. Well, so the value of the stock that is in the plan to be
15 provided to the -- all the unsecured creditors contemplates the
16 ownership of these two entities.

17 Q. But these three entities -- the unconsolidated debtors.

18 A. Yes.

19 Q. Have they been kicking up any dividends or distributions
20 or anything like that to their owners?

21 A. On a post-petition basis, I am uncertain because they're
22 debtors, so I'm not sure what's happening on a dividend basis.
23 But specifically, AeroUnion has been highly profitable and
24 would be sending dividends up to the parent, you know, if and
25 when that the, you know, ability to do so and not -- when they

1 were not a debtor anymore.

2 So -- but at a minimum, their cash balance falls directly
3 into the cash balance of Avianca Holdings. And as you know,
4 when you're looking at valuation of a company, cash balance is
5 a direct, you know, dollar-for-dollar benefit to them.

6 Q. So I need to understand that a little, and I apologize.

7 A. Um-hum.

8 Q. The cash balance of the unconsolidated debtors --

9 A. Um-hum.

10 Q. -- goes directly to the Avianca debtors?

11 A. It -- it -- it -- it's not -- you can't go into the bank
12 account and go pull it out. But if you take -- when we --
13 those consolidated financial statements --

14 Q. Um-hum.

15 A. -- are the sum of the parts.

16 Q. Okay.

17 A. And you know, one of those has -- if it has, you know,
18 twenty-five, thirty million dollars in cash, that twenty-five,
19 thirty million dollars in cash is on the balance sheet of
20 the whole -- you know, the -- the consolidated financial
21 statements of Avianca Holdings, and therefore the value of
22 Avianca Holdings is thirty million better because of that
23 unconsolidated entity --

24 Q. Because all --

25 A. -- or that consolidated entity.

1 Q. -- all forty of the debtors are on the same consolidated
2 financial statements.

3 A. I -- I've already said that before. Correct.

4 MR. LENIHAN: No further questions at this time, Your
5 Honor, thank you.

6 THE COURT: Thank you.

7 Mr. Kim, did you have any questions?

8 You have to unmute.

9 MR. KIM: Yes. Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. KIM:

12 Q. Ms. Hughes, you say that three unconsolidated entities had
13 separate management. I looked at SAI more in detail. Like,
14 normally, there is one general manager for 600 employee
15 company. How many people manage SAI?

16 A. I do not know.

17 Q. Also, for the board of directors, Mr. Neuhauser, the COA,
18 is listed. What does Mr. Neuhauser do in this capacity?

19 A. I'm sorry. I can't -- I -- I can't hear you.

20 Q. I'm sorry. On the list of board of directors for SAI, Mr.
21 Neuhauser of the CEO is listed. What does he do for SAI in
22 this capacity?

23 A. He is a member of the board of directors. I mean, as the
24 controlling shareholder of SAI, the -- the -- the holding
25 company, Avianca Holdings, has governance rights to designate

1 board members.

2 Q. Okay. Is he paid for his services?

3 A. I do not know.

4 Q. Okay. Another question, Ms. Hughes. You indicated that
5 objectors have three equity interests -- they have three
6 entities. Sorry. Equity interests in three entities. How did
7 you determine that?

8 A. I'm -- I -- I'm sorry. Can you repeat the question and
9 get closer to the mic? I'm struggling to hear you.

10 Q. Sorry. Maybe my Zoom is not good. You indicated that the
11 objectors have equity interests in three entities -- I guess
12 the holding company is what you meant, in your testimony. And
13 how is -- my question is, how did you determine that?

14 A. How did I determine that they have equity interest in the
15 entities?

16 Q. Sorry. You said, like, a ninety-two percent, ninety-three
17 percent. The three entities that were unconsolidated, you said
18 that the holding company owns these percentages. And my
19 question is, how did you determine those percentages?

20 A. So I was provided an organizational chart. Actually, back
21 in 2019 is the first instance when I was working with the
22 company that shows the ownership percentages of the -- you
23 know, if -- typical org chart of a company that shows the
24 percentage ownerships of one company, and then, you know, in
25 the waterfall of companies. And -- and that's -- that's --

1 those are the percentages that are on that chart.

2 Q. All right. And you indicated that 2023 noteholders are
3 beneficiaries of all of these entities, and then you describe
4 that we receive cash. I believe you're referring to dividend
5 payments, also from these three entities. Do you know how much
6 (indiscernible) have been receiving from these three
7 unconsolidated entities?

8 THE COURT: Mr. Renenger?

9 MR. RENENGER: Yeah, I'm going to object as a
10 mischaracterization of the testimony.

11 THE COURT: Do you understand the question?

12 THE WITNESS: I think I know where he's headed with
13 the question. I mean, it -- it -- it -- it's very straight
14 forward.

15 THE COURT: Go ahead and answer it.

16 A. I mean. Yeah. If you own ninety percent of something,
17 you own ninety percent of something. Whether that is received
18 dividends as a result of that ninety-percent ownership, or
19 whether the entity, you know, ultimately over time is sold or
20 otherwise, you know, the value of its operations, the value of
21 the entity, goes to the owners of the entity.

22 Q. Yes. That is correct. Okay. You indicate that
23 liquidation analysis is performed correctly. Do you think
24 liquidation analysis is appropriate to determine the property
25 of secured creditors?

1 A. I'm -- I -- I -- I -- really struggling to hear you.

2 THE COURT: I'm having trouble understanding you, as
3 well, Mr. Kim. Go ahead and ask your question again.

4 MR. KIM: Sorry, Your Honor.

5 Q. My question is, Ms. Hughes, you indicate that liquidation
6 analysis is performed correctly. Do you believe liquidation
7 analysis is appropriate when determining the recovery value of
8 secured creditors?

9 A. Well, I mean, in a liquidation analysis, you -- you look
10 at the value of the collateral with respect to the secured
11 creditors, which we did, and assign the value of recovery based
12 on an assessment of the underlying collateral value.

13 Q. And are you familiar with Code 506 -- Bankruptcy Code 506?

14 A. I -- I'm certainly familiar with certain elements of the
15 Code. I would have to look at the Code specifically in 506 to
16 be able to tell you whether that specific reference I'm
17 familiar with.

18 Q. Okay. Well, 506 says that the secured creditor's value
19 should be determined based on how the plan is going to be
20 utilized. So given that, do you still believe that liquidation
21 analysis is appropriate for secured creditors?

22 A. Well, I mean, a liquidation analysis is -- is the -- is
23 a -- a look at the alternative to the plaintiff reorganization
24 as presented. The liquidation analysis is -- is a look at a
25 Chapter 7 alternative, in which case -- I mean, I've been

1 through a lot of airline cases, and they're usually pretty easy
2 liquidation analysis from a -- from a -- a standpoint in the
3 sense that the -- the value of an airline as a liquidated basis
4 is worth typically less than zero. It's very hard to have
5 value out of an airline on a liquidated basis.

6 Q. Sorry. In a liquidation analysis, we have a stark
7 valuation difference from a (indiscernible) valuation. And I
8 agree with you on that, Ms. Hughes.

9 THE COURT: Mr. Kim, you can ask questions, but you're
10 not to testify. So ask your questions, okay?

11 MR. KIM: I'm sorry, sir. Okay. No more questions on
12 this.

13 THE COURT: Thank you very much, Mr. Kim.

14 Mr. Renenger?

15 MR. RENENGER: Thank you, Your Honor. Once again,
16 Aaron Renenger, on behalf of the debtors.

17 REDIRECT EXAMINATION

18 BY MR. RENENGER:

19 Q. Good afternoon, Ms. Hughes.

20 A. Good afternoon, Mr. Renenger.

21 Q. Ms. Hughes, in the context of your work for Avianca, were
22 you asked to undertake an exercise to evaluate the propriety of
23 sub-con?

24 A. Yes, I was.

25 Q. Okay. And were you asked to achieve a certain outcome

1 with respect to that analysis?

2 A. Absolutely not.

3 Q. Okay. And well, what was the ultimate conclusion in
4 terms of which entities -- let me just ask it differently. Try
5 not to ask a leading question, but it's hard in your
6 declaration. You concluded that thirty-seven of the entities
7 are appropriate to subcon --

8 A. Um-hum.

9 Q. -- correct?

10 A. Correct.

11 Q. Okay. Would it be difficult to disentangle the assets and
12 liabilities of those thirty-seven entities?

13 A. Absolutely.

14 Q. Okay. And why is that?

15 THE COURT: Explain to me why. Oh -- same question.

16 A. So there's a couple of reasons why it would be next to
17 impossible. So -- so if you just start very simply with the
18 value of an entity, and again, I go back to, you know, the
19 value of an airline is directly correlated to its network -- to
20 its customer proposition. If you just think of it, when you
21 buy a ticket, you know, are you more willing to pay a little
22 bit more for the airline that has the flight at the right time,
23 on the right day, that wants -- gets you where you want to go
24 at the time. And -- and what you think, and then you know, the
25 next four buying decisions -- if you want to buy on -- you

1 know, you think you -- generally, the loyalty to an airline is
2 are they going to get you at the next destination when you want
3 to go at the right time on the right day. And so that breadth
4 of network has a direct correlation to value, so if -- if you
5 start to take this networked -- you know -- set of airlines and
6 companies and separate them, you -- you diminish the value
7 almost immediately. I mean, the sum of the parts is much
8 greater than -- than the individual parts.

9 Q. Okay. Now, same question with respect to the three
10 entities that were not consolidated.

11 A. Um-hum.

12 Q. Would it be difficult to disentangle those entities?

13 A. No.

14 Q. Okay. And why not?

15 A. Very simply -- very simple. So AeroUnion runs its own
16 business and manages its own books and -- I'll take you through
17 each one of them individually.

18 AeroUnion runs its own business, has its own set of books
19 and records, has its own set of customers. They -- they --
20 they run an independent business.

21 Avifreight, as I've said, is nothing other than an
22 intermediate holding company, whose sole purpose it is to hold
23 voting and nonvoting shares, and if there's any dividends they
24 would receive dividends, but from AeroUnion. So it's -- it --
25 it's very simply segregated on that basis.

1 And in SAI, again, you know, it was an acquired entity.

2 It is run and maintained completely separate and has a
3 management team that's separate and books and records that are
4 separate. It's actually quite easy -- I mean, it's already
5 separate. It's not hard to separate. It already is separate.

6 Q. Okay. And you spoke a little bit in your declaration
7 about the fact that for the thirty-seven Avianca debtors, that
8 the company holds those debtors out as all part of the Avianca
9 network; is that correct?

10 A. That is correct.

11 Q. Okay. Is that true with respect to the three entities
12 that are -- that are not proposed to be subsequently
13 consolidated?

14 A. No.

15 Q. Okay. How does Avianca market those entities relative to
16 the rest of Avianca?

17 A. I'm sure there's references to them being, you know --
18 they're not -- they're not wholly owned in the case of
19 AeroUnions. I'm sure they're marketed in some materials as,
20 you know, an Avianca company, in the sense that they are, you
21 know, consolidated into the entity. But from a customer
22 proposition perspective, they're quite separate. I mean, you
23 know, SAI's primary customer is Avianca, but -- but that's
24 not -- you know, they're not marketing themselves to Avianca as
25 Avianca controlled because Avianca's their customer.

1 Q. And do you have any understanding of -- can you talk to us
2 now about how Avianca holds itself out? Give me an
3 understanding of how the market views any of the three entities
4 that we're talking about that are not proposed to be
5 consolidated.

6 A. I do. In fact, specifically with one of the few creditors
7 of AeroUnion. I got on the phone with -- I was -- with -- it
8 was LAWA -- Los Angeles Airport. Los Angeles Air -- something.
9 LAWA. And to -- to have a conversation with them about their
10 claim and about the continuing operations of AeroUnion as part
11 of my advisors to the -- all the debtors. And they wouldn't
12 refuse to speak to me. You know, they -- because they're like,
13 this is Avianca. You're talking to me about AeroUnion.
14 You're -- you're Avianca's advisor. And I had to explain to
15 them and actually had to come back to counsel and have counsel
16 call them and show them how I actually was advising, you know,
17 both of them as debtors because they -- in their mind, they
18 were completely separate.

19 Q. Thank you. Turning to Avifreight briefly, does it have
20 any creditors to your knowledge?

21 A. No.

22 Q. Does it have any operations to your knowledge?

23 A. No.

24 MR. RENENGER: No more questions, Your Honor.

25 THE COURT: Thank you very much, Mr. Renenger.

1 Any additional questions?

2 Mr. Lenihan, please, step to the microphone.

3 RE-CROSS-EXAMINATION

4 BY MR. LENIHAN:

5 Q. Ms. Hughes, you testified on redirect that it would be
6 difficult to untangle the assets and the liabilities of the
7 Avianca debtors because the sum of their parts is greater than
8 anything individually; is that correct?

9 A. Correct.

10 Q. Is there any other reason that it would be difficult to
11 untangle their assets and liabilities?

12 A. Quite a few. I mean, with respect to the liabilities, I
13 mean, they're very integrated in the sense that -- take every
14 aircraft. Very large fleet of aircraft, those aircraft are
15 the -- the original lease or loan tends to be with the
16 certificated and regulated operating carrier, but they're
17 guaranteed by the other debtors. So you know, where does all
18 of that sit at the end of the day? It's very complex. You
19 know, even with respect to liabilities, they do a -- quite a
20 bit of contracting, that they do a -- not just aircraft, but
21 where they cross -- cross debtor. Take a catering contract,
22 for example. They -- they issue it in one catering contract
23 that serves all of the passenger airline and cargo airline --
24 well, even though you cater for the crew on a charter airline
25 so that they can, you know, have what they need. Those are all

1 in kind of one integrated, you know, contract. So where do --
2 where do you put all of these things at the end of the day?

3 Q. When you say one integrated contract, do you mean there's
4 multiple parties -- multiple of the Avianca debtors are party
5 to the same contract?

6 A. Correct.

7 Q. And you made reference to guarantees, right, and those
8 guarantees are documented. There's paper that shows those
9 guarantees exist, correct?

10 A. That is correct.

11 Q. So all of these liabilities that you're referring to are
12 documented, and you testified earlier already that the company
13 maintains -- the company maintains its books and records and
14 that if there's intercompany debts, that they are journaled as
15 appropriate. So I'm having a hard time seeing, when you have
16 all of that, why you can't pull the thread on them and take
17 them apart?

18 A. Well, it's -- I can tell you, for thirty years, I've been
19 working in the finance departments of airlines and in --
20 starting back in an auditing, and I -- I -- yeah, conceivably,
21 could you? Would it take five, ten years? You know, there's a
22 practicality element to -- to that, that is -- I -- I -- I -- I
23 mean, I can't even fathom how long it would take, with my --
24 you know, based on my experience and knowing the way the -- the
25 airlines operate.

1 Q. Their books and records and their consolidated financial
2 statements are going to break out who's guaranteed what,
3 correct?

4 A. Well, the -- you'd have to -- the financial statements
5 probably have disclosure with respect to the guarantees. I'm
6 not sure every guarantee. It may just be the -- some of the
7 more material ones. But you'd probably have to go through
8 every document.

9 Q. In paragraph 19, you broke out guarantors for several --
10 the Grupo TACA settlement agreement, the USA V settlement
11 agreement, the 2023 secured notes, and others. Was that
12 difficult to do?

13 A. Well, with respect to those specific financings, it was
14 fairly straightforward, but if you look at the -- one, two,
15 three, fourth -- fifth bullet down, that's all of the aircraft
16 financings.

17 THE COURT: Identify which one that one is.

18 THE WITNESS: So it says, Avianca Holdings, Grupo TACA
19 Holdings Limited. TACA and Aerovias guarantee nearly all
20 aircraft financings and collectively account for over seventy-
21 five percent of the estimated consolidated unsecured claims.

22 Q. Are they jointly and severally liable on those guarantees?

23 A. Yes.

24 Q. So is it that difficult then to apportion that out?

25 They've all potentially face a hundred percent liability,

1 correct?

2 A. They are where the claims reside. I mean, I -- portioning
3 them out, again, it comes full circle back to who -- what they
4 could be valuing any of these individual entities at that
5 individually can't operate at anywhere near their value
6 separately that they do together.

7 Q. Specifically, and we're sticking with the liabilities
8 here, and you brought this up, that these three entities
9 guarantee nearly all the aircraft financing. And you testified
10 that they do so jointly and severally.

11 So they each are individually liable from one hundred
12 percent of that debt, and I'm struggling to see why that's so
13 difficult, then, to break apart, when they're all just
14 responsible on a guarantee basis for one hundred percent of the
15 debt.

16 A. That's one piece of how you would separate a books and
17 records. I mean, like I said, this could take -- I -- I've
18 been doing this for a very long time, and I can't imagine how
19 it would be done, and it would take millions of dollars and
20 years to accomplish.

21 Q. Well, I'm just going off of your declaration, which is
22 your direct testimony in this and the debtor's burden of proof
23 that substantial substantive consolidation is appropriate. So
24 based on your testimony here, everything we're going through,
25 I'm struggling to see why guarantees that --

1 THE COURT: Leave the editorial comments out and just
2 ask questions.

3 MR. LENIHAN: Yes, Your Honor.

4 Q. Going to the assets for a moment of the --

5 A. Um-hum.

6 Q. -- Avianca debtors, are those difficult to parse apart?

7 A. Some assets are -- are -- are relatively easy. Some
8 others are a little more difficult.

9 Q. Which ones are a little more difficult?

10 A. So if you get to those aircraft financings, for example.
11 You know, we -- you'd have to follow the aircraft financing and
12 follow the debtors to track those through. You know, cash,
13 obviously is straightforward. Cash in the bank is -- whatever
14 cash is in the account of whatever debtor they're in. You got
15 spare parts that -- that are used across a network, again. So
16 they're used pretty -- you know, fairly broadly. And then you
17 get into, you know, some of the intangibles. And I'm not a --
18 you know, I'm -- I'm not a valuation expert when it comes to
19 some of those -- those items, but I do believe -- I mean --
20 I -- it would be -- it wouldn't be simple. Let me just put it
21 that way.

22 Q. For the intangibles, like the intellectual property for
23 example, couldn't you just look to who owns those marks --
24 those rights?

25 A. Possibly, but again, you're probably going to get to who

1 owns them in what country and what country -- what mark is
2 valuable at what level at what country. Airlines are
3 ridiculously complex, and -- and if you want to track through,
4 you know, value of things like that, you're going to end up in
5 a -- a very complicated, long, drawn-out exercise that quite
6 frankly I don't understand the point of it at the end of the
7 day.

8 MR. LENIHAN: No further questions, Your Honor.

9 THE COURT: Thank you very much, Mr. Lenihan. Mr.
10 Lenihan, any further examination?

11 MR. LENIHAN: No further redirect from me, Your Honor.

12 THE COURT: All right.

13 You're excused.

14 MR. KIM: I have a question, Your Honor. I have a
15 question, Your Honor.

16 THE COURT: Ask your question, Mr. Kim.

17 RE-CROSS-EXAMINATION

18 BY MR. KIM:

19 Q. Okay. So Ms. Hughes, you say something that consolidation
20 is appropriate because the difficulty in disentangling the
21 other consolidated networks, correct?

22 A. Yes. And can you get closer to the mic next time?

23 Q. Okay. And that seems to be the most important factor,
24 whether if to determine to consolidate or not, correct?

25 A. I --

1 THE COURT: Mr. Lenihan?

2 MR. LENIHAN: Yeah, I guess that sound like an
3 editorial comment. I'm not sure I understood the question, Mr.
4 Kim.

5 THE COURT: Did you have an objection as to -- can you
6 answer the question?

7 THE WITNESS: I -- I don't understand what the
8 question was.

9 THE COURT: Ask another question, Mr. Kim.

10 Q. So my question, Ms. Hughes, is do you believe difficulty
11 of disentangling is the main reason why something to
12 consolidate them should happen for the debtors?

13 A. No. I think there are a number of reasons that have been
14 articulated both in my testimony and in -- in other --
15 regarding -- I mean, it -- it -- it -- it -- it's the -- it --
16 there are a number of reasons. That is a very good one.

17 Q. All right. Are you familiar with the (indiscernible) that
18 what is appropriate for determining substantive
19 consolidation --

20 THE COURT: We're not going to have legal questions,
21 Mr. Kim.

22 MR. KIM: Thank you, Your Honor.

23 THE COURT: The witness is not testifying as a lawyer.
24 If you have any other questions, go ahead.

25 MR. KIM: That's it for now, sir.

1 THE COURT: Thank you very much.

2 Mr. Renenger?

3 MR. RENENGER: Nothing further, Your Honor.

4 THE COURT: All right. You're excused. Thank you
5 very much.

6 MS. HUGHES: Thank you.

7 THE COURT: Are there any other witnesses? Do the
8 objectors wish to call any witnesses?

9 MR. LENIHAN: No, Your Honor. (Indiscernible).

10 THE COURT: Mr. Lenihan, I'm not sure whether the
11 sound system picked it up. Mr. Lenihan indicated that he had
12 no witnesses that he wished to call.

13 All right. Is there anybody else -- any of the other
14 objectors who wish to call any witnesses in support of their
15 objections?

16 All right. Hearing none, Mr. Renenger, do the debtors
17 rest?

18 MR. RENENGER: Yes, Your Honor.

19 THE COURT: Do the objectors rest? Mr. Lenihan? You
20 can say it from there if you want.

21 MR. LENIHAN: I take it Your Honor's not taking
22 closing statements?

23 THE COURT: Oh, I am, but this is -- I'm turning to
24 the evidence. Do you rest?

25 MR. LENIHAN: Yes. No, we rest. Thank you, Your

1 Honor.

2 THE COURT: All right. Mr. Kim, do you rest in terms
3 of evidence? I'll give you a chance to argue.

4 MR. KIM: Yes, Your Honor.

5 THE COURT: All right. All right. All parties have
6 rested. Let's hear a closing argument.

7 Who's going to argue for the debtors?

8 MR. FLECK: I will, Your Honor.

9 THE COURT: Okay, Mr. Fleck.

10 MR. FLECK: And for the record, Evan Fleck, on behalf
11 of the debtors. Your Honor, it's been a long day, and we
12 appreciate the Court's patience with the presentation of all
13 parties. I think it's been helpful. It's been helpful in a
14 number of respects. I think that the debtors have made their
15 case-in-chief with respect to confirmation.

16 As it pertains to the objections that remain, I think
17 it's fairly straightforward, Your Honor. And we obviously
18 respect the fact that some of the -- some of the parties are
19 not -- at least one of them is not a bankruptcy practitioner.
20 But the conclusion that we think is compelled by the evidence
21 and the law is that the objections be overruled. It's really
22 comes down to two issues that we have, I think, before the
23 Court. One is whether or not the issue with respect -- whether
24 they've made their case with respect to the collateral and
25 whether or not they have a secured interest in that collateral.

1 THE COURT: Let me ask you this. Without regard to
2 who had the burden with respect to the valuation of the
3 collateral, explain to me what the evidence in the record shows
4 with respect to whether the 2023 noteholders had a residual
5 value in their lien. What is the evidence? So the evidence
6 that you put in was the testimony regarding the marketing
7 effort. So if you would lay out why you believe that
8 establishes that there is no collateral value remaining for the
9 2023 noteholders with respect to the shared collateral.

10 MR. FLECK: Sure. Happy to do that, Your Honor.

11 I think the evidence is uncontroverted, and I'll put
12 aside the burden issues, and obviously, we're the only party
13 that put forth evidence. And the evidence is clear with Mr. --

14 THE COURT: Hold on just a second. Why phone is
15 ringing -- let me stop this.

16 Go ahead. Sorry.

17 MR. FLECK: No problem, Your Honor. Of course.

18 Mr. Neuhauser's testimony, obviously, from our vantage
19 point, was clear. I think there was some colloquy that
20 suggested it may not have been clear, but hopefully it was to
21 the Court. There was a marketing process. It was robust.
22 We've talked about that in front of the Court on numerous
23 occasions before. It was run by the debtors' management. It
24 was run by Seabury, and Mr. Luth led that effort on behalf of
25 Seabury.

1 It was also -- it was overseen by the independent
2 equity committee, the board. The effort was to search for all
3 options, and I think Mr. Lenihan actually --

4 THE COURT: Equity and debt.

5 MR. FLECK: Equity and debt. Importantly. I was
6 going to get there, Your Honor, but thank you for leading us
7 there.

8 I think Mr. Lenihan may have been confused about that.
9 Not a criticism, just a recognition, that -- maybe because of
10 some language in the declaration -- that we were solely focused
11 on equity. He also seemed to criticize when Mr. Neuhauser
12 spoke to the fact that we looked at everything. And that's
13 exactly what we did, and that's the point of it. That's what a
14 debtor is supposed to do. In fact, that's what we committed to
15 Your Honor at the time that the DIP was initially approved in
16 connection with the option of conversion.

17 What we said to Your Honor at the time, and I think it
18 was impactful for purposes of your entry of the order,
19 ultimately, on the DIP, was that we were going to look for
20 other options. We were going to look for debt options. We
21 were going to look for equity options. We had an incremental
22 need for equity. We were going to scour the market.

23 And that's what we did. It took time, much to the
24 frustration of the tranche B lenders. It took time because we
25 said this was going to be a robust process. This process was

1 going to be second to none. And the process was intended to
2 find a different alternative. An alternative where another
3 party or set of parties would come forward, not with one
4 approach but any approach that would have allowed these debtors
5 to have found a solution other than converting the tranche B
6 DIP effectively.

7 And if we could have found any other source of
8 liquidity, whether that be debt, equity, combination, some
9 other instrument, that would have been taken to the independent
10 equity committee. There was not another option. That's
11 uncontroverted. And what that means is that there was not
12 enough --

13 THE COURT: The testimony that you did raise some
14 additional debt.

15 MR. FLECK: Right. Your Honor, we did raise -- we
16 did raise incremental debt that came before the Court in
17 connection with the tranche A refinancing, but that was not
18 enough because that was incremental 140 million --

19 THE COURT: And was there collateral backing that?
20 The incremental debt?

21 MR. FLECK: It's the same -- it's the same collateral
22 package that we're talking about.

23 THE COURT: And does that take priority over the 2023
24 noteholders?

25 MR. FLECK: It does -- it --

1 THE COURT: In other words, is it the same shared
2 collateral?

3 MR. FLECK: It's the same arrangement with respect to
4 the collateral and the same hierarchy that was set out in the
5 DIP order controls, with respect to that financing. And so
6 Your Honor, from the debtor's perspective, and I think it's
7 uncontroverted -- well, sorry. This --

8 THE COURT: That was on -- the addition amount that
9 was raised was how much?

10 MR. FLECK: I believe the testimony was approximately
11 140 million. I'm sure someone'll correct me -- yeah, I'm being
12 told still approximately 140 million. We can put the number
13 into evidence before the hearing concludes.

14 But the time, Your Honor, to have complained with
15 respect to the treatment of the noteholders was at the DIP
16 hearing more than a year ago, as Your Honor noted, in
17 connection with the disclosure statement. The debtors
18 didn't --

19 THE COURT: Well, the DIP hearing and the DIP order
20 preserved -- I'll refer to it as a junior interest -- of the
21 2023 noteholders in the shared collateral. That's a fair
22 statement, isn't it?

23 I mean --

24 MR. FLECK: That's right, Your Honor. Right, if --

25 THE COURT: -- there was no determination made at the

1 time of the DIP --

2 MR. FLECK: That's fair.

3 THE COURT: -- the DIP was their goal, that there was
4 no value. They subordinated their interest on the shared
5 collateral to the DIP lenders.

6 MR. FLECK: Correct, Your Honor.

7 THE COURT: Okay.

8 MR. FLECK: But I guess my point was that to the
9 extent noteholders, including Mr. Kim and the similarly
10 situated parties, had an issue, they could have -- they could
11 have -- in fact, should have -- brought the issue before the
12 Court at the time. But at bottom, Your Honor, the debtors had
13 a contract with --

14 THE COURT: Well, the collateral agent had the
15 exclusive right to -- as far as the actual term.

16 MR. FLECK: Well, that's where I'm -- that's where I'm
17 going, Your Honor. The debtors had a contract with the WSFS,
18 the indenture trustee, and the collateral trustee. And that
19 contract contained a lot of provisions. Mr. Kim pejoratively
20 called it Dr. Jekyll and Mr. Hyde. We'll put that aside. But
21 it's a contract that these investors -- and they are
22 sophisticated investors -- made a decision to put themselves
23 subject to the provisions of those agreements. And it's not in
24 dispute that those agreements allowed the trustee, the parties
25 who had the authority on a direction of more than a majority,

1 and it's not in dispute that they had that direction to do
2 exactly what was done in connection with those transactions.
3 They are actually trying to relitigate those issues.

4 They are, in addition, as Your Honor notes, saying,
5 well, something must have gone awry because the debtors find
6 themselves saying that we're unsecured, and you're right, there
7 was no determination at the time of the DIP hearing, and it's
8 fair that these other parties were not under the ten. They are
9 not at Seabury. They were not involved in the marketing
10 process. But there were other parties. There were other
11 fiduciaries, like the creditors' committee.

12 So not only did Jefferies -- not only did Seabury run
13 a process under the supervision of the independent equity
14 committee, Jefferies, on behalf of the creditors' committee,
15 was looking over their shoulder. And it wasn't just some
16 academic exercise. That was very important to the ultimate
17 recovery and outcome for unsecured creditors. They were
18 statutorily charged, and still are, with maximizing the value
19 of unsecured creditor recoveries.

20 So they made sure that Mr. Luth and his team were
21 looking under every rock and scouring every opportunity and
22 avenue. And the reality is that there was not another
23 availability to take out the DIP. And it's important. I think
24 it might perhaps -- we lose sight of the fact that the moment
25 in time when we had to run this process wasn't just random.

1 The debtors were obligated to deal with a DIP that was approved
2 by the Court. It had a maturity. And as a result, Mr. Lenihan
3 makes a fair point, that maybe the market changes. It does.
4 Hopefully it improves.

5 But there's a moment in time when the debtors had to
6 act. They acted. It was open and notorious for all parties
7 that we were engaged in a process. I gave updates to the Court
8 that we were running that process, and the results are now
9 manifest of that process. And there is not -- and there was
10 not -- and it remains the case that for purposes of their
11 argument, there is not value sufficient to render them having
12 any collateral interest -- any residual interest from the
13 collateral on account of their notes.

14 So now comes a new argument. We didn't hear it at the
15 time of the disclosure statement. And we say, well, we're not
16 happy with substantive consolidation. We don't like it. And I
17 think Ms. Hughes' point, it really should resonate. The debtor
18 didn't have an agenda, and doesn't either today with respect to
19 substantive consolidation. Why would we? There is no insider.
20 There's nobody at the top of any of these entities -- at the
21 three entities that are not being consolidated, where creditors
22 are being unimpaired and a recovery's going to equity. In
23 fact, that was the point of her testimony, that the value with
24 respect to those three entities that are not being consolidated
25 actually flow back into the structure. So I think her point

1 was -- her testimony's her testimony -- but the point and why
2 it's relevant is that the creditors here who are complaining
3 about the substantive consolidation are not really harmed by it
4 in that the vast majority of the value really comes back or
5 could conceivably come back into the enterprise.

6 But more importantly --

7 THE COURT: Well, it's a big difference if a secured
8 creditor gets the value or they're unsecured and they share pro
9 rata with all other unsecured creditors.

10 MR. FLECK: I'm sorry, Your Honor. I couldn't hear
11 the beginning.

12 THE COURT: There's a big difference between whether
13 any residual value goes to the secured creditors or they share
14 pro rata with all unsecured creditors.

15 MR. FLECK: Right, Your Honor. I think the math would
16 suggest that even if those three entities were consolidated, I
17 think the point is that the recoveries to those creditors would
18 not be meaningfully improved. But --

19 THE COURT: Where's the evidence of -- where is the
20 evidence of that? That's in the declaration?

21 MR. FLECK: There's a statement to that effect in Ms.
22 Hughes' declaration.

23 THE COURT: Okay.

24 MR. FLECK: Yeah. But I think the context is
25 important, that the debtors -- against a backdrop of many

1 airline cases that pursue and have pursued and have been
2 approved by courts in this district and elsewhere substantive
3 consolidation settlements, which this is.

4 The debtors' embarked on an exercise to see if that
5 was appropriate and where it was appropriate. There were no
6 preconceived agendas. There were no notions that one outcome
7 would be better or not for the debtors. There's no evidence to
8 suggest that there was. We called balls and strikes. Ms.
9 Hughes has testimony to that effect. She ran a process with a
10 team of individuals to determine what the right --

11 THE COURT: May I ask you this, Mr. Fleck?

12 MR. FLECK: -- and fair answer was.

13 THE COURT: In your brief, you make the statement that
14 substantive consolidation was part of global settlement, and
15 you just referenced that there are other cases where that's
16 done. I didn't see any citations to authority where
17 substantive consolidation was approved as part of a global
18 settlement as you referred to. Is there? I may have missed
19 something.

20 MR. FLECK: Well, I believe we -- well, we certainly
21 cited cases where there were global settlements of substantive
22 consolidation. Northwest Airlines is one of them that Ms.
23 Hughes --

24 THE COURT: I have the brief here. I may have missed
25 it, but if somebody would point me to that.

1 MR. FLECK: I think I -- we'll pull the citation, Your
2 Honor.

3 THE COURT: Okay. That's fine. Go ahead with your
4 argument.

5 MR. FLECK: Okay. I think the last point, Your Honor,
6 on substantive consolidation, which I think is a bit of a red
7 herring, but on the merits of it, I think our -- ultimately,
8 the debtors' fiduciary duty was to figure out what's the right
9 answer -- and by that I mean, where is the Augie/Restivo
10 standard satisfied? And we determined, to the best of our
11 abilities, that only thirty-seven of the forty entities is the
12 standard satisfied.

13 We presented the evidence of our findings to the
14 creditors' committees advisors. They endorsed that conclusion.
15 We can't get there. We don't think the facts support the case
16 for the other three. The objectors haven't made a case that
17 the facts are there. They don't like the plan. They don't
18 like the outcome. They may not like these debtors. But the
19 reality, Judge, is that's not a winning argument for them.

20 The winning argument is that the facts of the law
21 support it for certain debtors, not for the others. Those are
22 the ones that we're promoting. That's the plan that was put
23 out to creditors. It was open and notorious and on disclosure
24 statement. People endorsed it, not just by a little bit, by
25 overwhelming majorities of all the creditor classes who are

1 affected.

2 So we heard the arguments of the objectors. We
3 respectfully disagree with them and would ask Your Honor that
4 those objections be overruled.

5 And I think Mr. Renenger's giving me a citation.

6 Your Honor, I'm on the brief, page 36 --

7 THE COURT: Let me get there. Hold on a second.

8 Okay.

9 MR. FLECK: It's paragraph 36 -- sorry, page 36,
10 paragraph 86.

11 THE COURT: Okay.

12 MR. FLECK: There's a string cite, Northwest Airlines.
13 Judge Roberts' case is one of them. If your precise
14 question -- I fear it may have been -- is in which of those
15 cases where substantive consolidation was approved, was it
16 approved as a settlement? I can tell you that that is the case
17 with respect to Northwest Airlines because I had direct
18 involvement in that.

19 Mr. Miller, I think, is itching to tell us about some
20 of his cases.

21 THE COURT: So let me just say that when I look at
22 paragraph 86, and let's put aside Republic Airway Holdings for
23 the moment. Whenever I see citations to an order, it always
24 raises the question whether it was contested and whether the
25 court resolved a contested issue or whether it was consensual.

1 So when I look at AMR, Delta, Pinnacle, Frontier, the
2 citations are to orders. And I don't know whether I've had the
3 opportunity to make this comment in this case or not, but
4 whenever I see a string cite of orders entered in cases with no
5 reference to a transcript or a decision, I can't tell whether
6 it was entirely consensual resolution of an issue or not.

7 Obviously, if all parties agree and an order is
8 entered, that there are no objections, that's maybe entitled to
9 some weight but not when the issue is contest. Okay. I did
10 not go and read Republic Airways, both the bankruptcy court and
11 the district court decisions. Those are only where you cite
12 court decisions. I don't know whether the court actually
13 addressed the substance of it.

14 MR. FLECK: Yes, Your Honor. In Republic, it was
15 contested, and it was addressed by the court -- that issue
16 specifically.

17 THE COURT: Who was the judge in Republic?

18 MR. FLECK: Judge Lane.

19 THE COURT: Okay. Okay. Go ahead.

20 MR. FLECK: I have nothing further, Your Honor. I'm
21 happy to respond to any questions.

22 THE COURT: Just give me a second, okay.

23 Thank you.

24 MR. FLECK: Thank you, Your Honor.

25 THE COURT: If there are any of the other proponents

1 want to be heard before -- Mr. Miller, do you want to be heard
2 before I hear the objectors?

3 MR. MILLER: Your Honor, Brett Miller, Willkie Farr &
4 Gallagher, on behalf of the Official Committee of Unsecured
5 Creditors. Having represented the creditors' committees in
6 Republic, in Northwest, and in Pinnacle, both in this district
7 as well as at least a half a dozen others, the reason why
8 you're seeing orders and not case cites is because they were
9 consensual other than Republic, where before, Judge Lane wanted
10 the aircraft parties who had a guarantee at the parent, and its
11 subsidiary did try to upset the negotiated substantive
12 consolidation, and for very much the same reasons. Actually, I
13 think that Ms. Hughes and Mr. Luth were the advisors to
14 Republic.

15 MS. HUGHES: Correct.

16 UNIDENTIFIED SPEAKER: That's correct.

17 MR. MILLER: That's what I thought. And we had a very
18 similar type of hearing going through the accounting and the
19 way that the books and records are kept. And Judge Lane found
20 in favor of substantive consolidation and confirmed plan was
21 confirmed on appeal.

22 So having lived through it a couple other times, I am
23 advising the committee through the process where we negotiated
24 the substantive consolidation here. I think that it is legally
25 defensible and in fact the right way to go here, and so we'd

1 support confirmation.

2 THE COURT: All right. Do you want to address at all
3 the issue of the collateral value -- the shared collateral?

4 MR. MILLER: Well, Your Honor, I think we're dealing
5 with DIP issues in a confirmation hearing, which is a little
6 awkward. Certainly --

7 THE COURT: Well, yes and no because the DIP order did
8 not resolve the issue of whether there was residual value for
9 the 2023 noteholders. It resolved the priming fight. And
10 don't you agree it didn't resolve the issue of the value of the
11 collateral?

12 MR. MILLER: It didn't, but what I can say -- and I
13 don't want to go into negotiations with the debtors of the
14 tranche B lenders, but at a certain point in time, there was
15 zero value for unsecured creditors, which meant there was zero
16 value for residual secured creditors. And as Jefferies was the
17 financial advisor of the banker for the creditors' committee,
18 Jefferies did not only regularly communicate with Seabury but
19 actually tried to shake trees and look under rocks for its own
20 version of financing because the only way to get value to
21 unsecured creditors actually would have benefitted Mr. Kim and
22 the Baruchs in finding more value and showing that that
23 collateral was worth something, more than the existing DIP, but
24 it wasn't. It never appeared, and we negotiated the best case
25 we had, and that's why we have the recovery we have. And I

1 think it creeps over into the 2023 notes residual value from
2 the shared collateral being zero.

3 THE COURT: Thank you, Mr. Miller.

4 All right. Mr. Lenihan?

5 MR. LENIHAN: Your Honor is obviously familiar with
6 the standard for substantive consolidation. And it's no mere
7 instrument of procedural convenience. Just because you want to
8 do it does not mean it's appropriate. It's effectively
9 treating these entities as alter egos, which is not what the
10 creditors signed up for.

11 The testimony elicited today said that all thirty-
12 seven of them have their own books and records, that they
13 observe legal formalities, that they have their own -- that
14 there were officers appointed to them, that they comply with
15 the local requirements for governance, and that any time there
16 was a transfer between one and the other, it was booked
17 appropriately in the company receivables and in the company
18 payables and in the company loan and whatever it is.

19 They haven't had the standing to do that, and just
20 because they want to do it doesn't mean it's appropriate for
21 the Court to allow them to do it when it's not consensual, when
22 the 2023 noteholders -- the nonconsenting 2023 noteholders are
23 going to receive pennies on the dollar.

24 So we don't believe that they've met that standard,
25 but if they have met the standard, we also then -- and I

1 realize this is an alternative argument, but that's exactly
2 what it is. They haven't met the -- they shouldn't be allowed
3 to exclude the three profitable companies, the three companies
4 that have assets that could be used to increase the share
5 that's given to everyone, that's made available for all of the
6 impaired classes including the nonconsenting 2023 noteholders.
7 We don't believe that there's a legal basis for them to do
8 that.

9 Turning to the other issue of the collateral, the
10 debtors made the affirmative representation in the disclosure
11 statement that there's no value in the collateral to the 2023
12 noteholders.

13 THE COURT: They expressed their opinion there's no
14 value. And today is the confirmation hearing. You objected to
15 confirmation. The only evidence with respect to whether
16 there's residual value was put in by the debtors. You cross-
17 examined it, but you offered no evidence to the contrary.

18 MR. LENIHAN: Your Honor, respectfully, where I was
19 going with that is they made that representation in the
20 disclosure statement. The noteholders presumably relied on it
21 when they voted to approve the plan.

22 THE COURT: Nonsense. Come on. You objected
23 specifically on that ground. Now is the time when you had to
24 come forward with evidence. The only evidence that's been
25 offered with respect to whether there's residual value is the

1 evidence that the debtors' witnesses offered, both in
2 declarations and in cross-examination and redirect. That's the
3 only evidence I have before me.

4 MR. LENIHAN: Your Honor --

5 THE COURT: And I have to decide whether based on the
6 evidence before me somebody has established -- I don't think
7 the burden is going to make a difference in the end, because
8 I'm not weighing evidence that the objectors put in versus
9 evidence that the debtors put in.

10 The only evidence that's been put in on value is from
11 the debtors' witnesses. Yes, you've cross-examined, but that's
12 the sum total of the evidence. And I have to conclude based on
13 that evidence whether it's been established that there's any
14 residual value to the 2023 noteholders with respect to the
15 shared collateral. Is that a fair statement?

16 MR. LENIHAN: Your Honor, respectfully, I would
17 disagree with that somewhat in so that I would just said that
18 the Third Circuit in in re Heritage said the circumstances
19 depend on whose burden (indiscernible).

20 THE COURT: The only evidence before me is the
21 evidence that the debtors have put in. It isn't a question --
22 I'm not weighing what you've put in versus what they've put in.
23 The only evidence is from the witnesses that they sponsored,
24 you cross-examined. That's the body of evidence which I have
25 to determine whether or not any residual value for the shared

1 collateral benefitting the 2023 noteholders. Isn't that
2 correct?

3 MR. LENIHAN: Your Honor, what I would say to you
4 that -- is that putting aside whose burden it was, if my
5 interpretation is correct that based on the Third Circuit's
6 holding that it should be their burden in the first instance if
7 not solely their burden, I would submit they did not meet their
8 burden such that it did not pass to me, because I do not
9 believe that their only direct -- and on direct they put in an
10 affidavit saying I believe that the amount of the DIP facility
11 claims exceed the value in shared collateral and that's based
12 on the solicitation of equity investments.

13 THE COURT: There was examination of the witness, both
14 cross and redirect. I have a body of evidence and have to
15 conclude based on the evidence whether the evidence supports a
16 conclusion that there is or is not residual value for the
17 shared collateral to benefit the 2023 noteholders. Correct?

18 MR. LENIHAN: And I understand Your Honor's
19 position --

20 THE COURT: Well, is it correct or not? What's wrong
21 with what I just said? You offered no evidence. The only
22 evidence is what's been -- what's come in today in the
23 declarations, cross-examination, redirect examination.

24 MR. LENIHAN: Your Honor, I don't believe they've met
25 their burden. That is my position. I understand we didn't put

1 in any evidence. If --

2 THE COURT: All right. I got your point.

3 MR. LENIHAN: Thank you, Your Honor. I don't mean to
4 belabor that but I just for the record was getting my point
5 across. I said what I had to say about substantive
6 consolidation, so I thank you for hearing us (indiscernible)
7 today.

8 THE COURT: All right.

9 Mr. Kim, do you wish to make a closing statement? You
10 need to unmute.

11 MR. KIM: Sorry, Your Honor. Yes, sir, this is Blake
12 Kim, Your Honor. So first and foremost, Your Honor, we had
13 questioned (indiscernible) Your Honor ruled whether they were
14 circumvented by doing what the debtors did. And we believe
15 they did, Your Honor. And they basically put in, waiving the
16 equitable marshaling is the key reason why of shared collateral
17 (indiscernible).

18 THE COURT: So you agree -- you agree that because of
19 the equitable marshaling that's foreclosed by the DIP order
20 that there's no residual value for the shared collateral.
21 That's what you're agreeing to now, correct?

22 MR. KIM: Your Honor, I can kind of fathom it could be
23 because I don't know the valuation. I mean, first of all, I
24 would say we'd have to do a fair valuation, like an insider
25 valuation to determine that. But outside of that, their

1 comment or their argument is that because of the equitable
2 marshaling they want to attack all collateral, which is shared
3 collateral first, not equitably (indiscernible).

4 THE COURT: That's what the DIP order provides. You
5 didn't object to it, and in fact, the collateral agent was the
6 one with the authority to act on -- either the indenture
7 trustee or the collateral agent had the contractual authority
8 to act on behalf of the 2023 noteholders. They didn't object.
9 But you didn't come forward and object. No one did.

10 And the order got entered, and you're complaining now.
11 You didn't appeal it. No one did. You're trying to
12 collaterally attack an order that was entered with the approval
13 of the collateral agent with respect to dividing up any
14 proceeds from the shared collateral -- first goes to pay off
15 the DIP and only if there's residual value is it there for the
16 2023 noteholders.

17 You don't like the order that was entered. The
18 collateral agent didn't object to it. There was a direction by
19 the requisite lenders to the collateral agent to do that, and
20 there was no appeal of the DIP order. No objections, no
21 appeal, that's the reality. You may not like it now, but it's
22 a little late in the day to be raising that issue.

23 MR. KIM: Well, I understand, Your Honor, where we are
24 now because we lost that. But the way they went about doing
25 it, the process it seems is circumventing the ADR which they

1 could do over and over again. For people like me, who I would
2 say is layman, I didn't know what equitable marshaling was
3 until the disclosure statement came out saying that we are
4 worthless because of that. Now (indiscernible) --

5 THE COURT: I don't think they're saying it's because
6 of equitable marshaling that it's worthless. They're saying
7 that the DIP order provided the waterfall for any proceeds from
8 the collateral first to pay off the DIP and only then the
9 residual value to the 2023 noteholders. It's straightforward.

10 MR. KIM: But that's exactly the equitable -- that's
11 exactly the equitable marshaling, Your Honor. They're
12 basically saying they would pay off first from the shared
13 collateral the DIP. That's the meaning of equitable
14 marshaling, Your Honor, which is what they're saying.

15 THE COURT: Any other points you want to make, Mr.
16 Kim?

17 MR. KIM: So, Your Honor, and also they talked about
18 they performed the market tests. And market tests in my mind
19 was more in terms of equity, not the full debt of the company,
20 which includes all the other debts, not just of the DIP loan.
21 It has to be all the debt (indiscernible).

22 And apart from that, they had to do a waterfall
23 analysis where they calculate a forecast of the cash flow, et
24 cetera, and discounted cash flow analysis, et cetera. That is
25 another alternative to doing market tests. If you're going to

1 do market test, they have to do the whole thing, not just a
2 component of it and say here it is.

3 And that's my second argument, that they have not done
4 exhaustive market tests. They've only done a component, Your
5 Honor, equity as well as maybe the DIP. But there's a lot more
6 to that than for the enterprise value calculation, and they
7 have not been waiting for the cash. Cash was not calculated
8 after March. None of their valuations go further than March of
9 2021. So the point, Your Honor, is that -- yeah, so that is
10 our second argument. And Your Honor, the debtors did not point
11 out -- okay sorry, I'm going to rephrase that.

12 As far as the substantive consolidation, Your Honor --
13 Your Honor, (indiscernible) say substantive consolidation is
14 (indiscernible) and citing disentangling the DIP from the
15 (indiscernible).

16 Your Honor, the (indiscernible) for all those points
17 is that substantive consolidation should be done sparingly,
18 only under very narrowly defined circumstances. To that end,
19 the bankruptcy court can exercise its discretion to produce
20 fair and just results. And to that end, they mean that a party
21 will not prevail as substance may not be made to form, that
22 technical considerations will not prevent substantial justice
23 from being done.

24 My opinion of substantive consolidation, Your Honor,
25 even if Your Honor in general looks at the facts, those assets

1 have a lot greater value because substantial asset of the
2 debtor, which is the holding company, is the equities of the
3 subsidiaries. None of that was calculated. And it has a lot
4 of cash, as Ms. Hughes just said because the (indiscernible)
5 payments accumulate into that cash, Your Honor, cash of the
6 holding company. So to fork over three billion dollars of
7 (indiscernible) consolidated into one bucket that predominantly
8 which is none of ours, which is none of our debt, is wholly
9 unfair, Your Honor.

10 THE COURT: All right. Thank you very much, Mr. Kim.

11 Does anybody else wish to be heard?

12 MR. KIM: So Your Honor, lastly--

13 THE COURT: I'm sorry, Mr. Kim?

14 MR. KIM: -- I wanted to say that recently
15 (indiscernible) PLC have decided to subclass basically the GUC
16 for this reason, Your Honor. To be fair and equitable, they
17 have a subclass within the GUC, Your Honor. And that seems to
18 be the way to be equitable.

19 THE COURT: All right. Does anybody else wish to be
20 heard? Okay. Is that a no? You're undecided?

21 MR. SCHAK: Your Honor, this is Benjamin Schak. I
22 just have a statement that at some point to read into the
23 record regarding a completely different objection. I'm happy
24 to let this one get resolved first though.

25 THE COURT: No, go ahead and read in the statement.

1 MR. SCHAK: This pertains to the Oracle objection at
2 2232, Your Honor. The corporate pricing agreement which was
3 the subject of that objection I just wanted to reiterate on
4 behalf of the debtors that that's a pricing agreement for
5 airline tickets that has nothing to do with Oracle's IT. We're
6 currently looking for the originals. It's apparently some are
7 in Germany, the contract, and when we find it, we'll send it to
8 Oracle, but in the meantime Oracle's rights we've agreed to
9 reserve.

10 Oracle's rights to file rejection damage claims on
11 contracts we've rejected, we agree are preserved under the
12 plan. And there's a support renewal agreement which the
13 debtors consider themselves bound by because it's a post-petition
14 contract, even though it's not on the list of assumed pre-
15 petition contracts.

16 And there's a new-look license that we put on the
17 assumed contract just yesterday, and we are working to resolve
18 the cure issue with Oracle, which we've agreed to adjourn to a
19 future date. Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Schak.

21 MR. SCHAK: Sorry for interrupting the flow.

22 THE COURT: You haven't disrupted the flow.

23 Mr. Fleck, any reply to what we've heard from Mr.
24 Lenihan or Mr. Kim?

25 MR. FLECK: No, Your Honor.

1 THE COURT: All right. All of this has remained a bit
2 of a moving target. At 1:24 a.m. today an additional plan
3 supplement was filed, which I have not looked at, other than
4 seeing there is one on the docket. I have no idea what's in
5 there. I don't know what, if any, effect it has on anything
6 that I have been asked to confirm.

7 What I am going to require is this. I'm going to give
8 the debtors and the objectors a chance to file proposed
9 findings of fact and conclusions of law by -- just give me a
10 second, and I'll tell you when and the time -- by Thursday at 5
11 o'clock.

12 The proposed findings of fact and conclusions of law
13 should be limited to the issues raised by the objections. The
14 Burlingame objectors in the written objections included grounds
15 for the objection other than what they argued today. I think
16 I've already addressed a few of those during the hearing today,
17 but I'd like all of the grounds that are stated in the
18 objections addressed in proposed findings and conclusions.

19 I think I already -- for example -- well, bear with me
20 a second. For example, there was no response in the debtors'
21 reply to the issue of the breach of the RSA agreement. I mean,
22 I addressed it briefly this morning.

23 The breach of fiduciary duty, New York law is the
24 governing law of the 2023 notes, and I didn't get the citations
25 this morning, but it's well settled in New York State law,

1 which is the governing law that the debtor-creditor
2 relationship does not give rise to a fiduciary duty.

3 But I do want the proposed findings and conclusions to
4 address the issues raised in the objections. Obviously, with
5 respect to the factual issues, it's as to the residual value of
6 the shared -- the residual value of any of the shared
7 collateral.

8 With respect to substantive consolidation, we heard
9 the evidence and arguments about it, I have not read Judge
10 Lines' Republic Airways decision or the district court's
11 decision affirming it, but I will certainly do that. But I don't
12 want to prolong this, so Thursday at 5 is the deadline for
13 proposed findings of facts and conclusions of law.

14 In the meantime, I'm going to review -- I don't
15 guarantee I'll be able to read every page of the plan
16 supplement, but it's been a moving target including what was
17 filed at 1:30 -- 1:24 this morning.

18 Are there any further proposed amendments to the
19 confirmation order, Mr. Fleck? I know you filed it, but there
20 were some issues that were raised today, some reservation of
21 rights. I think that the confirmation order -- the
22 confirmation order to the extent you put on the record today
23 reserving rights with respect to assumption and cure, I would
24 like it in the written order. So can you also do any further
25 changes to that by Thursday at 5? Do you want more time? I

1 know you want to get this resolved.

2 MR. FLECK: That's fine, Your Honor. Thursday at 5 is
3 fine. There aren't that many changes to the order. We're
4 happy to do that. Though with everything you just said of
5 course, I just want to be clear. We did not respond to the
6 allegation with respect to breach of duty in the filed exhibits
7 (indiscernible) from chambers that indicated they wouldn't be
8 considered by the Court if they weren't filed in the docket.
9 They were not filed on the docket so far as I'm aware, so
10 that's why --

11 THE COURT: Well, it was in the -- after I struck the
12 first objection, there were -- they just parroted the prior
13 objections. I thought the same grounds were asserted all over
14 again.

15 MR. FLECK: We'll address in the findings of fact and
16 conclusions of law each argument. And we will also supplement
17 the proposed confirmation order for matters that have come up
18 subsequent to the last filing including anything today.

19 THE COURT: Can you give me a preview of what's in the
20 latest plan supplement?

21 MR. FLECK: Yeah, so there have been a number of
22 agreements that are really organizational documents and similar
23 agreements for the proposed reorg entities. So last night's
24 agreement was the amendment to the (indiscernible) at 1 in the
25 morning that we spoke to here in court because really the

1 part --

2 THE COURT: Forgive me for not having read it yet.

3 MR. FLECK: Understood of course, Your Honor, but
4 there were some changes to a prior version of that document.
5 Among other things but principally it now allows for the other
6 security that Mr. Schak and I spoke to, that United may be
7 taking to allow for emergence if there would otherwise have
8 been a regulatory delay.

9 There are some other changes, fee reimbursement and
10 the like. In our view that creditors other than the parties
11 who are directly a party to those agreements. And I think the
12 Court would agree, but I'll make the statement in any event,
13 that out of an abundance of caution we have gone ahead and
14 filed a number of documents that in other cases perhaps would
15 not form plan supplement documents. But just so that there's
16 as much transparency with respect to these debtors on
17 emergence. So that's the document that was filed. A number of
18 people in the courtroom on Zoom would like for it to have been
19 done earlier, myself included. But --

20 THE COURT: I can't fault anyone. The amount of --
21 the effort that's gone into all phases of this case has been
22 really incredible, so I'm really not trying to be critical
23 about it. Just something that's filed, I'll have to see it.

24 MR. FLECK: We understand, Your Honor. Thank you.

25 THE COURT: All right. Just to that the record is

1 clear, because Mr. Kim is in California, when I set the
2 deadline of Thursday at 5, it's New York time. All right.
3 Anything else for today?

4 MR. KIM: Just one thing, Your Honor. So the filing
5 that you're talking about, when you say a filing by 5 o'clock
6 your time?

7 THE COURT: Yes, 5 o'clock Thursday.

8 MR. KIM: Okay, because I did file exhibits, and it
9 didn't get loaded somehow, I understand, Your Honor.

10 THE COURT: I saw your exhibits and some -- I don't
11 know whether I saw it from ECF or another way. I saw the
12 exhibits that you filed, Mr. Kim. Okay. But just so we're
13 clear, the deadline is New York time Thursday at 5 p.m.,
14 proposed findings of fact, conclusions of law, not new evidence
15 only proposed findings of fact and conclusions of law.
16 Everybody rested today, so the evidence is closed at this
17 point. All right, we are adjourned. Thank you very much,
18 everybody.

19 IN UNISON: Thank you, Your Honor.

20 (Whereupon these proceedings were concluded at 4:06 PM)

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

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Date: October 27, 2021

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