

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 19-34508
SANCHEZ ENERGY .
CORPORATION, et al, . Chapter 11
Debtors. . 515 Rusk Avenue
Houston, TX 77002
Friday, December 6, 2019
9:30 a.m.
.

TRANSCRIPT OF EMERGENCY MOTION
BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Jackson Walker, LLP
BY: ELIZABETH C. FREEMAN, ESQ.
1401 McKinney Street, Suite 1900
Houston, TX 77010
(713) 752-4200

Akin Gump
BY: MARTY L. BRIMMAGE, JR., ESQ.
LAURA P. WARRICK, ESQ.
2300 N. Field Street, Suite 1800
Dallas, TX 75201-2481
(214) 969-2885

Akin Gump
BY: IRA DIZENGOFF, ESQ.
One Bryan Park
New York City, NY 10036-6745
(212) 872-1000

APPEARANCES CONTINUED.

Audio Operator: L. Howard, ECR

Transcription Company: Access Transcripts, LLC
10110 Youngwood Lane
Fishers, IN 46038
(855) 873-2223
www.accesstranscripts.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

APPEARANCES (Continued):

For the Debtors:

Akin Gump
BY: ROXANNE TIZRAVESH, ESQ.
1111 Louisiana Street, 44th Floor
Houston, TX 77002-5200
(713) 220-5800

Akin Gump
BY: JAMES SAVIN, ESQ.
2001 K Street, NW
Washington, DC 20006
(202) 887-4417

For the Ad Hoc Group
of Secured Notes and
First Lien Lenders:

Morrison & Foerster, LLP
By: DENNIS JENKINS, ESQ.
BRETT H. MILLER, ESQ.
250 West 55th Street
New York, NY 10019-9601
(212) 468-8000

Foley & Lardner
By: JOHN P. MELKO, ESQ.
1000 Louisiana Street, Suite 2000
Houston, TX 77002-2099
(713) 276-5727

For the Ad Hoc Group of
Unsecured Noteholders:

Quinn Emanuel, et al.
BY: BENJAMIN I. FINESTONE, ESQ.
ZACHARY RUSSELL, ESQ.
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000

Quinn Emanuel, et al.
BY: PATRICIA BARON TOMASCO, ESQ.
CHRISTOPHER D. PORTER, ESQ.
711 Louisiana Street, Suite 500
Houston, TX 77002
(713) 221-7227

For the Specialty
Committee of the Board
of Directors of Sanchez
Energy Corporation:

Ropes & Gray
By: ANDREW G. DEVORE, ESQ.
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600
(617) 951-7000



APPEARANCES (Continued):

For the Official
Committee of Unsecured
Creditors:

Milbank Tweed Hadley & McCloy
BY: EVAN FLECK, ESQ.
ANDREW M. LEBLANC, ESQ.
AARON L. RENENGER, ESQ.
1850 K. Street NW, Suite 1100
Washington, DC 20006
(212) 530-5000

Locke Lord, et al.
BY: PHILIP G. EISENBERG, ESQ.
SIMON RICHARD MAYER, ESQ.
ERIC BOYLAN, ESQ.
600 Travis, Suite 2800
Houston, TX 77002
(713) 226-1304

For Royal Bank of
Canada:

Thompson & Knight
By: TYE HANCOCK, ESQ.
811 Main Street, Suite 250
Houston, TX 77002
(713) 951-5880

For Gavilan
Resources, LLC:

Weil Gotshal, et al.
By: GARRETT A. FAIL, ESQ.
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

Weil Gotshal, et al.
By: ALFREDO R. PEREZ, ESQ.
700 Louisiana, Suite 1700
Houston, TX 77002
(713) 546-5040

For the United States
Trustee:

Office of the United States Trustee
BY: DIANE LIVINGSTONE, ESQ.
STEPHEN DOUGLAS STATHAM, ESQ.
515 Rusk, Suite 3516
Houston, TX 77002
(713) 718-4650



APPEARANCES (Continued):

For GSO Capital
Partners LP and Certain
Affiliates:

Porter Hedges LLP
BY: JOHN F. HIGGINS, IV
1000 Main Street, Suite 3600
Houston, TX 77002-6336
(713) 226-6648

Paul Weiss, et al.
BY: SEAN ANTHONY MITCHELL, ESQ.
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3740



I N D E X
12/6/19

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------------------	----------------------	---------------------	------------------------	-----------------------

FOR THE DEBTORS

Mohsin Meghji	47	92	100	--
Adam Zylman	104	183	230	--
Eugene Davis	235	255	--	--

OPENING STATEMENTS

PAGE

Mr. Brimmage for the Debtors	15
Mr. Devore for the Special Committee	28
Mr. Finestone for Unsecured Noteholders Ad Hoc Group	36
Mr. Leblanc for Official Committee of Unsecured Creditors	41

EXHIBITS

ADMITTED

Debtors' Exhibits 2 through 47	10
Debtors' Exhibits 50 through 54	10
Ad Hoc Group's Exhibits 3 through 11	10
Unsecured Creditors' Committee's Exhibits 4 through 15	11



1 (Proceedings commence at 9:31 a.m.)

2 THE CLERK: All rise.

3 THE COURT: Good morning. Please be seated.

4 All right. We are here in Sanchez Energy
5 Corporation. It's 19-34508. We're going to get started. You
6 know we're going to have some interruptions this morning, and
7 we're going to work late today if we need to. So let's go
8 ahead and take appearances, if we could, and then we'll move
9 right into the case.

10 MS. FREEMAN: Good morning, Your Honor.

11 THE COURT: Good morning, Ms. Freeman.

12 MS. FREEMAN: Elizabeth Freeman of Jackson Walker on
13 behalf of the debtor.

14 THE COURT: Good morning.

15 MS. FREEMAN: Joining me today from the law firm of
16 Akin Gump, we have Ira Dizengoff, James Savin, Jason Rubin,
17 Laura Warrick, Roxanne Tizravesh, and Marty Brimmage.

18 THE COURT: Thank you.

19 Mr. Eisenberg.

20 MR. EISENBERG: Good morning, Your Honor. On behalf
21 of the Official Committee of Unsecured Creditors for the
22 Sanchez Energy bankruptcy. With me today from the Milbank
23 firms is Mr. Andrew Leblanc, Mr. Evan Fleck, Mr. Aaron
24 Renenger, and I'm Phillip Eisenberg with Locke Lord, and with
25 me is Simon Mayer and Eric Boylan.



1 THE COURT: Thank you.

2 MR. EISENBERG: Thank you, Your Honor.

3 MR. DEVORE: Good morning, Your Honor. Andrew Devore
4 from Ropes & Gray on behalf of the Special Committee of the
5 Board of Directors of Sanchez Energy Corporation.

6 THE COURT: Good morning.

7 MS. LIVINGSTONE: Your Honor, Diane Livingstone on
8 behalf of the United States Trustee, and Steve Statham will be
9 joining me as soon as he is out of other courtrooms on other
10 matters. Thank you.

11 THE COURT: Thank you.

12 MR. HIGGINS: Morning, Your Honor. John Higgins,
13 Porter Hedges, on behalf of GSO Capital Partners, LP, and with
14 me in the courtroom today is Mr. Sean Mitchell from the Paul
15 Weiss firm.

16 THE COURT: Thank you.

17 MR. DAVIDSON: Good morning, Your Honor. Tad
18 Davidson from Hunton Andrews Kurth for Sanchez Midstream
19 Partners, LP.

20 THE COURT: Good morning.

21 MR. FINESTONE: Good morning, Your Honor. Ben
22 Finestone, Patty Tomasco, Chris Porter, Zach Russell from the
23 firm Quinn Emanuel on behalf of the Ad Hoc Group of Unsecured
24 Noteholders.

25 THE COURT: Thank you.



1 MR. JENKINS: Thank you, Your Honor. Dennis Jenkins
2 and Brett Miller from Morris & Foerster on behalf of the Ad Hoc
3 Group of Secured Noteholders, and we're joined in the courtroom
4 by our local counsel, John Melko from Foley Gardere.

5 THE COURT: Thank you.

6 MR. PEREZ: Good morning, Your Honor. Alfredo Perez
7 and Garrett Fail from Weil Gotshal on behalf of Gavilan
8 Resources.

9 THE COURT: Thank you.

10 MR. HANCOCK: Your Honor, Tye Hancock with Thompson &
11 Knight on behalf of Royal Bank of Canada.

12 THE COURT: Thank you.

13 All right. Who's -- how did you want to proceed?
14 Are you going to make an opening statement or proceed right
15 into the evidence?

16 MR. BRIMMAGE: Good morning, Your Honor. We'd like
17 to approach the Court regarding pre-admitted or pre-agreed-to
18 admission of exhibits and address that.

19 THE COURT: All right.

20 MR. BRIMMAGE: And then I would like to give a short
21 opening statement, Your Honor, and then obviously give other
22 parties the opportunity to do the same and then jump right into
23 evidence.

24 THE COURT: Thank you.

25 MR. BRIMMAGE: Roxanne Tizravesh will be approaching



1 the Court regarding the exhibits, and I think we have agreement
2 on the ones that she's going to announce.

3 THE COURT: Thank you. Good morning.

4 MS. TIZRAVESH: Good morning, Your Honor. Roxanne
5 Tizravesh from Akin Gump on behalf of the debtors.

6 Mr. Brimmage is correct. The parties have conferred,
7 discussed the admissibility and objections of all parties'
8 exhibits. I'm happy to report the parties are in agreement on
9 the majority of the exhibits and the admissibility. If the
10 Court agrees, I can read into the record the parties'
11 respective exhibits which the parties agree should be admitted.

12 THE COURT: All right. Which list are you going to
13 start with?

14 MS. TIZRAVESH: I will start with Docket 663, the Ad
15 Hoc Group's exhibits.

16 THE COURT: All right.

17 MS. TIZRAVESH: The parties are in agreement on the
18 admission of Exhibits 3 to 11.

19 THE COURT: Does anyone object to the admission of 3
20 through 11 of the debtors' exhibits?

21 MS. TIZRAVESH: The Ad Hoc Group's exhibits.

22 THE COURT: I'm sorry, the Ad Hocs, yeah. All right.
23 They are admitted. The balance of the exhibits can be offered
24 if appropriate during the course of the hearing, and we'll
25 determine their admissibility at that time.



1 (Ad Hoc Group's Exhibits 3 through 11 admitted into
2 evidence)

3 MS. TIZRAVESH: Okay. And then I will move to
4 Docket 664, the UCC's exhibits.

5 THE COURT: Six -- I don't have that list. I've only
6 got two books; I've got debtors' and I've got Ad Hoc
7 Unsecured's.

8 MR. LEBLANC: Do the debtors'.

9 MS. TIZRAVESH: Okay. I'll move on to the debtors.
10 It's Docket 665.

11 THE COURT: Okay.

12 MS. TIZRAVESH: The parties are in agreement on
13 Exhibits 2 to 47.

14 THE COURT: All right.

15 MS. TIZRAVESH: And 50 to 54.

16 THE COURT: Is there any objection to admission of
17 Debtors' 2 through 47 and 50 through 54? All right. They are
18 all admitted. The balance of the exhibits can be offered
19 during the course of the hearing, and we'll determine their
20 admissibility at that time.

21 (Debtors' Exhibits 2 through 47 and 50 through 54 admitted
22 into evidence)

23 MR. LEBLANC: May I approach, Your Honor?

24 THE COURT: Yes, sir. Thank you.

25 (Court and clerk confer)



1 MS. TIZRAVESH: And the parties are in agreement on
2 Exhibits 4 to 15 on Docket 664, the UCC's exhibits.

3 THE COURT: Any objection to 4 through 15 of the UCC
4 exhibits? All right. 4 through 15 are admitted, and the
5 balance of those can also be offered during the course of the
6 hearing. We'll determine their admissibility at that time.

7 (Unsecured Creditors Committee Exhibits 4 through 15
8 admitted into evidence)

9 MS. TIZRAVESH: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. LEBLANC: Your Honor, two housekeeping matters.
12 One is there is an issue -- we filed --

13 THE COURT: I know you but she doesn't.

14 MR. LEBLANC: I'm sorry, Andrew Leblanc and Milbank
15 on behalf of the Official Committee.

16 THE COURT: Thank you.

17 MR. LEBLANC: We filed our objection partially under
18 seal in light of information contained in Paragraph 9. We have
19 the letter that is referenced in that paragraph here in court.
20 Happy to hand it up for Your Honor to review. We don't believe
21 that information should be confidential. It will arise during
22 the course of the proceedings. The debtors have told us that
23 they intend to ask Your Honor to clear the courtroom and cut
24 the lines when that arises. The problem is there's really no
25 way -- it's hard for me to think of a way around that, you



1 know, using code words or things like that because of the topic
2 that's contained therein, and so I wanted to raise that at the
3 outset. I just don't know how we're going to deal with that.
4 I can avoid obviously talking about it in opening. That's easy
5 enough, but it's going to be much harder as we go throughout
6 the day.

7 And then the second housekeeping issue is we would
8 like to invoke the rule on sequestration of witnesses under 615
9 and ask that those witnesses be excluded while other witnesses
10 are testifying.

11 THE COURT: All right. With respect to the document,
12 let's wait until the first time it's needed, and at that point
13 we'll have to deal with whether it ought to be confidential or
14 not, or sealed or not sealed.

15 With respect to the invocation of the rule on
16 sequestration, that's a nondiscretionary rule, so we need to
17 figure out who all we have here --

18 MR. LEBLANC: Yes.

19 THE COURT: -- and get them on forward. So will each
20 party identify their witnesses, identify who your corporate
21 representatives are, and your expert witnesses, and that will
22 then leave over the fact witnesses, I think, who are going to
23 be excluded.

24 MR. LEBLANC: Yes.

25 THE COURT: So we'll start with you.



1 MR. LEBLANC: We don't have any witnesses, Your
2 Honor. The three witnesses that are going to testify are all
3 debtor witnesses.

4 THE COURT: All right.

5 MR. BRIMMAGE: Your Honor, Marty Brimmage here on
6 behalf of the debtors. We have three witnesses today.
7 Mr. Mo Meghji, who is the proposed CRO candidate; Mr. Adam
8 Zylman, who is one of the independent directors; Mr. Gene
9 Davis, Gene Davis is the chair of the Special Committee, and we
10 would designate him as our corporate representative.

11 THE COURT: All right. Mr. Meghji and Mr. Zylman,
12 would you come forward, please. Good morning, gentlemen.

13 MR. MEGHJI: Good morning.

14 MR. ZYLMAN: Good morning.

15 THE COURT: Would each of you raise your right hand.

16 MOHSIN MEGHJI, DEBTORS' WITNESS, SWORN

17 ADAM ZYLMAN, DEBTORS' WITNESS, SWORN

18 THE COURT: All right. Thank you. You're each sworn
19 in as witnesses under the Federal Rule of Evidence. You are
20 not allowed to listen to the testimony of any other party nor
21 are you allowed to discuss this matter from this point forward
22 until we reach a -- the end of the evidence. You can't talk to
23 counsel about it, can't talk to each other about it, can't talk
24 to witnesses about it. If you'll want separate rooms, we can
25 give you separate rooms so you're not tempted to talk, or



1 you're more than welcome to just go get some coffee and they'll
2 call your cell phone when you want to come up. Tell me what
3 you all would like to do.

4 MR. BRIMMAGE: Your Honor, just for clarification,
5 this is Mr. Zylman's first time. That's once the evidence
6 starts. Is that correct? When witnesses are put on, that's
7 when they must be excused. And maybe explain to Mr. Zylman he
8 can speak to attorneys. He just can't speak about the case or
9 testimony or anything like that.

10 THE COURT: He can speak to you about getting coffee
11 for him --

12 MR. BRIMMAGE: Right, yes.

13 THE COURT: -- but nothing substantive, but I think
14 that's correct. They get to stay for opening statements.
15 Thank you. Do you all have any other questions?

16 MR. ZYLMAN: No.

17 MR. MEGHJI: No, sir.

18 THE COURT: All right. Thank you. Sorry to be
19 inconvenient on you all, but I assume everybody knows how to
20 reach you all by cell phone, right? So there's a conference
21 room just out to the right with some fairly comfortable chairs.
22 Their wi-fi connection is on the bulletin board also just to
23 the right if you need a wi-fi connection. Just make yourselves
24 comfortable.

25 MR. ZYLMAN: Thank you.



1 THE COURT: And there are no witnesses by the -- by
2 your clients, right?

3 MR. FINESTONE: That's right, Your Honor.

4 THE COURT: So that's it. We just have the three.
5 All right. Mr. Brimmage.

6 OPENING STATEMENT ON BEHALF OF THE DEBTORS

7 MR. BRIMMAGE: Good morning again, Your Honor. Get
8 this set up. As the Court knows, we're here on the debtors'
9 CRO motion. The issue for the Court today is whether or not
10 the debtors' business judgment should be sustained, not whether
11 the Court or the creditors or the objecting creditors' judgment
12 would do something different, and not whether it's perfect
13 judgment, but whether the debtors, in their due deliberations,
14 exercised their reasonable business judgment in selecting
15 Mr. Meghji as the CRO that it wants this Court to approve.

16 I submit this, Your Honor: Once you hear from
17 Mr. Meghji, hear about who he is and his incredible experience,
18 I think you will see immediately that the Special Committee's
19 decision -- and this was the Special Committee's decision, and
20 I'll talk about that in a minute -- was nothing but a sound
21 exercise of reasonable business judgment. I think the Court
22 will be hard-pressed to even come up with in its mind an
23 individual that's more qualified and has more experience with
24 the exact type of issues that we're dealing with in this case,
25 including the obvious very contentious stakeholders, the need



1 for independence, having significant experience in contentious,
2 complex 11 -- Chapter 11 cases as a CRO, having significant
3 experience with dealing with affiliated third-party
4 transactions as a CRO, and then the need for a strong
5 reputation as a consensus builder as a CRO. All those are
6 going to be undisputed, and I think you're going to hear
7 little, if no attach on Mr. Meghji regarding those
8 qualifications. Your Honor, all the facts really necessary to
9 decide this issue are frankly undisputed. They're -- no one's
10 going to question them, and we'll talk about them in a minute.

11 Your Honor, the law is pretty clear, too. Granting a
12 CR motion -- CRO motion like this where the debtors exercise --
13 or in this case a Special Committee exercised its business
14 judgment is really not as profound a legal issue for this
15 Court. What is profound is what the objecting creditors are
16 asking you to do. They're asking you to turn reasonable
17 judgment on its head and to stand for the proposition that if
18 objecting creditors want to dictate a single sole individual as
19 the CRO, that somehow the debtors, the Special Committee, are
20 somehow obligated to select that single sole person that the
21 objecting creditors want. Your Honor, we think that that is
22 just simply not the law, and we think the Court should find
23 accordingly.

24 Now, what happens when the facts and the law don't go
25 in your favor? You do what we've seen the objectors -- the



1 objecting creditors do. You start slinging a lot of mud and
2 you start slandering a lot of people. Because as we all know,
3 you can kind of put whatever you want in a legal pleading and
4 you kind of get a free shot, right? Nobody gets to call you on
5 it. You can impugn the integrity of debtors and debtor
6 representatives. You can impugn the integrity of their
7 attorneys like Akin, who by the way, as a reminder, the Court
8 approved our retention without objection. You can impugn the
9 integrity of the other Special Committee counsel like Ropes,
10 which we've seen. And you can impugn the integrity of the two
11 independent directors. You can call them names. You can call
12 them "Yes Men." You can bring up stuff from the past, but
13 without focusing on what happened in this case, what happened
14 with this decision that led to the decision from Mo Meghji.

15 Now, the bottom line, Your Honor, is that after
16 agreeing that a CRO would be appropriate, the objecting
17 creditors -- and after agreeing to all the material terms on
18 the scope because there's been a lot of time -- and I'll walk
19 through the timeline in a minute -- all the issues regarding
20 the scope of a CRO, which was in the original order, the
21 objecting creditors have decided, because their sole candidate
22 that they wanted to put forward didn't get selected, somehow
23 now a CRO shouldn't be approved by the Court. Your Honor, we
24 think that that is simply just not appropriate. We think the
25 evidence will show that the CRO candidate put up by the



1 objecting creditors is simply not qualified, not for this case,
2 not at all.

3 Some undisputed facts: Right after the DIP hearing
4 where the Court denied -- without prejudice, I might add -- the
5 debtors' DIP, shortly thereafter -- that was somewhere in the
6 late December timeframe -- shortly thereafter, the 1Ls began
7 negotiating with the debtors and the other creditor
8 constituents regarding another DIP. One of the things that the
9 1Ls came up with was we think a CRO should be put in place.
10 And the debtors, through the Special Committee, jumped on board
11 with that. SO did the other creditors, all the other
12 creditors, all the other stakeholder groups. That created two
13 issues. One, what's the scope of the CRO? And two, who's
14 going to be the CRO?

15 Well, the parties worked diligently over several
16 weeks and finally came to an agreement on the scope -- all the
17 material terms on the scope. Then it became how are we going
18 to get to the identification of who it is? Let me get to the
19 identification in a minute, but I want to just highlight we had
20 a hearing with you last Wednesday, I believe, a status
21 conference regarding the examiner motion. And you let us all
22 know on the court -- on the call some concerns you had about
23 the scope of the CRO. And after that, the debtors, through the
24 Special Committee and its advisors and others, worked
25 diligently to try to address the issues that the Court



1 identified as concerns. And as you know, Your Honor, on
2 December the 3rd, we filed an expanded scope. I don't know if
3 the Court has had a chance to look at that, but --

4 THE COURT: I read it.

5 MR. BRIMMAGE: Okay. So you know the issues that we
6 addressed. And one of the things, you know, I would love to
7 know is did we address the issues that the Court was concerned
8 about or are there remaining issues? Because we stand ready to
9 address the issues that the Court was concerned about. We
10 thought when we did those various things that gave Mr. Meghji
11 more independence and more authority, we were addressing the
12 types of things the Court was speaking of.

13 THE COURT: Well, there's no question that you
14 addressed the issues I raised. Don't forget that the answer
15 says it was too late, and so I don't have context for that.
16 That's what today's about.

17 MR. BRIMMAGE: Yeah. I'm not sure I understand how
18 it could be too late. The Court hasn't approved the CRO or
19 approved the scope of the CRO.

20 THE COURT: Well, I think that, at least the way that
21 I'm reading their position, and I may be reading it wrong, is
22 that if it's a question of independence and you start off
23 non-independent, can you convert that into a true level of
24 independence. Or is it too late to do that? I don't know that
25 answer because I don't know the background.



1 MR. BRIMMAGE: Right.

2 THE COURT: And I'm trying not to walk in being
3 biased as to the background. I was reading, when I made my
4 comments, objectively what the contract said.

5 MR. BRIMMAGE: Right.

6 THE COURT: But it seems to me -- and I don't know if
7 they have objections to the scope at this point -- they may or
8 may not -- or whether the objection is whether it's possible to
9 cure a problem that once was there. And I need to hear that.

10 MR. BRIMMAGE: Okay.

11 THE COURT: But I -- if the question is did you
12 ignore what I mentioned on the phone, you didn't.

13 MR. BRIMMAGE: Okay.

14 THE COURT: You addressed what I mentioned on the
15 phone. As to whether it's curable, I think that's most of what
16 today is about.

17 MR. BRIMMAGE: We'll start with we addressed it. Let
18 me talk about the identification of the CRO candidate. What
19 the evidence will show is that the Special Committee started
20 with its advisors with a -- I'll call it a brainstorming --
21 that's my word -- session about who are the potential pool of
22 people that might be appropriate for this. That was ultimately
23 narrowed down for a variety of reasons -- relationships with
24 some of the people involved, whether they be advisors or
25 directors -- to eight to ten people. From there it was further



1 narrowed down by people that either had a conflict or were
2 simply not interested. And what it ended up was the Special
3 Committee had three candidates.

4 At the same time, the objecting creditors were
5 running their process along with the 11s, and they came up with
6 a individual candidate. They didn't provided a list of
7 candidates. They provided a single candidate. And so what you
8 will hear is the evidence is the Special Committee put those
9 four people together and off they went through the selection
10 process.

11 What you will hear, the undisputed testimony, is they
12 interviewed the four. And I will preview for the Court right
13 now Mr. Davis was not at Mr. Meghji's interview. He was --
14 they were all by phone call. He was not there. He did -- it's
15 unclear. I think he called Mr. Meghji or Mr. Meghji called him
16 before the interview. And everyone knew when it was set up
17 that Mr. Davis would not be at that interview.

18 They have a little bit of past dealings. Mr. Davis
19 is very well aware of Mr. Meghji's reputation as a CRO and what
20 his experience is. So they had a conversation before the
21 interview, but it was not on that. Otherwise, both of the
22 Special Committee members were on the interviews.

23 After the interviews, they talked about who they
24 liked. Then they invited the CEO of the company, which is
25 Mr. Tony Sanchez, to speak with the four candidates. What you



1 will hear the testimony -- undisputed testimony is both of the
2 Special Committee members through the CRO is going to be a
3 senior officer in the company, and as a senior officer, they
4 thought as a matter of courtesy it was appropriate for the CEO
5 to at least speak with these four candidates.

6 What I think Mr. Davis will testify to is he's been
7 involved in the selection of CROs many times, both being
8 selected as a CRO and selecting a CRO as an independent board
9 member, and he is not aware of one situation where that
10 courtesy has not been granted to the CEO of a company.

11 So they let Mr. Tony Sanchez speak with the four
12 candidates and then they invited him to their Special Committee
13 meeting. The undisputed evidence, he spoke to them for between
14 five and ten minutes about his thoughts on pros and cons about
15 the four candidates. Mr. Davis doesn't recall that he had any
16 favorites. Mr. Zylman recalls that he had two favorites. But
17 what the undisputed evidence is is that whatever Mr. Sanchez
18 said in that five or ten minutes, once they started
19 deliberating, they did not rely on it or use it or whatever.
20 What you will hear from each of them is their independent
21 reasons why they ultimately decided Mo was the best candidate.

22 But there's more. Of the four candidates, Mr. Zylman
23 liked Mo the best and another individual second. Mr. Davis
24 liked Mo the best and a separate other individual second. And
25 so they deliberated and worked through that and ultimately came



1 to the decision of not the two -- not the two that Mr. Davis
2 thought were the top but the two actually that Mr. Zylman
3 thought were the top, Mr. Meghji and another one, and those are
4 the two that they put forth to the creditors committees -- the
5 creditors committee and the ad hoc group.

6 I believe somewhere along this line, it's a little
7 unclear to me, the 1Ls decided to support Mo, but I don't think
8 it has happened quite yet. But once they put those forward to
9 the objecting creditors in this proceeding, the objecting
10 creditors came back and said -- I think they interviewed them.
11 In fact, I know they interviewed them.

12 You'll hear Mr. Meghji talk about some of the
13 questions he was asked in that interview, 15 people in the room
14 up in New York, and the type of questions that were asked. And
15 I think the types of questions, Your Honor, will give the Court
16 some flavor of what the objecting creditors were looking for,
17 and what they were looking for was not experience and
18 qualifications. They were looking for prejudged, ready to take
19 action, which Mr. Meghji didn't have.

20 And so after that interview process, the objecting
21 creditors came back and said neither one of your candidates are
22 acceptable. We have to have our sole candidate that we put up.
23 It's that or it's nothing. The Special Committee went back
24 into deliberations and decided that just isn't going to work,
25 and I'll talk about why in just a second. And so after that, I



1 think after some other deliberations, they decided that they
2 wanted to go with Mo Meghji, and that's what they've done.

3 Here's what you will hear about the qualifications
4 and experience comparisons between Mo Meghji and the objecting
5 creditors' candidates. And what you will hear is it wasn't
6 even a close call. It's not like these candidates are so close
7 that you give the nudge to who the objecting creditors want
8 just because they want it.

9 When it comes to CRO experience, Mr. Meghji has
10 roughly a dozen in very complicated Chapter 11 cases, including
11 just most recently Sears. The other candidate that the
12 objecting creditors wanted had one. Affiliated party
13 transaction experience as a CRO, the other candidate, zero that
14 he could articulate. So his one didn't include that.

15 Mr. Meghji, many, several, not the least of which,
16 most recently, was Sears. I bring that up because in Sears --
17 I think this is fairly -- everybody knows this, but Eddie
18 Lampert was the Chairman of the Board, the CEO, the largest
19 stakeholder -- or shareholder, I'm sorry, the largest debtor
20 and the buyer in bankruptcy, wore many, many hats.

21 Mr. Meghji did all the right things. We know a
22 little bit about that, Your Honor, because Akin Gump was the
23 unsecured creditors committee in that case, and I can tell the
24 Court we didn't like anything Mr. Meghji did during almost the
25 entirety of the case. We were opposite him, and we didn't like



1 it. But what he was able to do at the end of the day was get a
2 consensual plan, including with the UCC agreeing to that
3 consensual plan. You might have thought that not possible, I
4 thought that wasn't possible, but it happened.

5 And that leads me to the consensus builder reputation
6 that he has. He has that unbelievably. Everyone you talk to
7 who's interacted with him -- and you will see it from him on
8 the stand -- he knows how to deal with difficult situations, he
9 knows how to deal with difficult people, he knows how to get to
10 resolution, and he knows how to problem solve and get on board.

11 The other side, the other candidate, what was the
12 feedback that the Special Committee members and its advisors
13 got regarding him? Difficult to deal with, bull in a china
14 shop, so we've got that.

15 Last but not least, I think something that's near and
16 dear to your heart, independence. Mo Meghji is not tied to any
17 of the parties here or the counsel or the advisors. He
18 obviously has worked with some over the course of the years,
19 but he's been opposite many. He hasn't -- I'm not sure if he's
20 ever heard of the Sanchezes, but he doesn't -- hasn't met them
21 before his introduction to Tony Sanchez by phone. He has no
22 affiliations or relationships. He is truly independent and has
23 been.

24 So when you're talking about doing what the creditors
25 want, the objecting creditors, I think you have to balance how



1 close of a call was this and how much extra credit do you give
2 the candidate just because the objecting creditors want it.
3 Keep in mind, Your Honor, they were on board with the CRO.
4 They were on board with the prior scope. So it's just a matter
5 of identity now.

6 Let me just talk quickly about the independence of
7 the Special Committee because, unfortunately, you know, again,
8 we're dealing with people's livelihood and their reputation,
9 and unfortunately in courts some people think you just get to
10 take a free shot at people. I think you're going to hear a lot
11 today about Mr. Davis that has absolutely nothing to do with
12 this case, the facts of this case as a Special Committee
13 member, much less the CRO process.

14 And you're going to hear me object and say, Your
15 Honor, it's not relevant and it's kind of inappropriate. We
16 don't let people take free shots at people just for fun and
17 gamesmanship. That should not happen, but I suspect it's going
18 to happen today. These inflammatory allegations are simply not
19 warranted and they're not related to the facts of this case.

20 Let me address some of them. Mr. Davis is an
21 extremely experienced and qualified independent director. He's
22 got lots of experience, has been reaffirmed over and over
23 again.

24 MR. FINESTONE: Your Honor, I'm not sure it's
25 appropriate, if he's going to reserve the objection, that this



1 subject matter is irrelevant for him to present opening
2 statement on it. Maybe we should take up the relevance issue
3 now or --

4 THE COURT: I don't understand what the objection to
5 him going into this is.

6 MR. FINESTONE: I object to him giving opening
7 statement about evidence that he plans on objecting to
8 subsequently on relevance grounds. I think --

9 THE COURT: Are you going to object to him in his
10 opening referring to the evidence that he intends to introduce?

11 MR. BRIMMAGE: I am. If it's stuff that's out of
12 bounds, I am. I'm not going over anything. I'm not going to
13 open the door to something --

14 THE COURT: I'm not going to let you defend Mr. Davis
15 against charges if you're going to object in -- I would let you
16 do this in opening, but not if you're going to object to his
17 making an opening that attacks Mr. Davis. So it's just -- you
18 can't have it both ways on that. And I think probably it's
19 best to wait and see how we rule.

20 MR. BRIMMAGE: Fair enough, Your Honor. That's fair
21 enough. Your Honor, let me end with where I began, and that is
22 I think you will find at the end of the day that the Special
23 Committee is independent. It has acted independent throughout
24 the course of this case. It has certainly acted independent
25 and with its own business judgment regarding the CRO process,



1 along with its advisors. It's engaged very competent,
2 qualified advisors, save and except maybe Akin, and it's
3 followed their advice, along with their own independent
4 judgment. And so we think, Your Honor, that the Court should
5 uphold the business judgment of the Special Committee. We
6 think the law and the facts support that, and we look forward
7 to presenting our case to the Court.

8 THE COURT: Thank you.

9 MR. BRIMMAGE: I want to turn it over, if I could, to
10 Mr. Devore, who on behalf of Ropes & Gray and also on behalf of
11 the Special Committee wants to address a few issues separate
12 and apart from the issues that Akin deals with.

13 THE COURT: So, Mr. Devore, do you know about how
14 long you're going to be?

15 MR. DEVORE: Five minutes, maybe.

16 THE COURT: Okay. We'll hear Mr. Devore and then
17 we'll take our break so I can call my 10 and 10:15 cases.

18 OPENING STATEMENT ON BEHALF OF THE SPECIAL COMMITTEE

19 MR. DEVORE: Thank you, Your Honor. Good morning.
20 Andrew Devore from Ropes & Gray for the Special Committee of
21 the Board of Directors of Sanchez Energy Corporation. The
22 extent of related party transactions has obviously been a
23 lightning rod in these cases, including with respect to the CRO
24 motion. And it seems that at every turn, including the
25 objections to the CRO, the objectors, and particularly Ad Hoc



1 Group, seek to poison the well with respect to future decisions
2 that the Special Committee may make regarding related party
3 transactions. So I want to start briefly with where the
4 Special Committee's investigation has been and where it is
5 going, particularly in conjunction with the CRO as proposed in
6 the debtors' motion.

7 But first, briefly, I'd like to start with where the
8 Special Committee's investigation has been. Now, there have
9 been a lot of allegations tossed around concerning related
10 party transactions, and those allegations have been taken very
11 seriously by the Special Committee.

12 The Special Committee understood early on in this
13 process that an honest, objective investigation of related
14 party transactions was going to be a predicate to a successful
15 Chapter 11 case. And the Special Committee, with Ropes & Gray,
16 conducted an extensive investigation of all related party
17 transactions, including each and every transaction that the
18 creditor objectors have raised countless times in their
19 pleadings.

20 And as we have noted in previous filings, we
21 conducted 25 interviews, analyzed millions of documents, and
22 produced a 100-page, single-spaced report to our Special
23 Committee, an unbiased report that the Special Committee
24 reviewed, and which we have subsequently provided to the
25 Unsecured Creditors Committee.



1 Now, as to where the investigation process currently
2 stands, two points to make at a high level. First, the Special
3 Committee is in the process of working to address potential
4 estate litigation claims against related parties. And the
5 Special Committee is preparing to litigate claims, if
6 necessary. That process is ongoing and will continue in due
7 course and an appropriate manner.

8 THE COURT: I don't know what you just said. You
9 said -- are you telling me that they have decided that they're
10 either going to reach a settlement or litigate, or have you
11 told me they haven't yet decided whether there is a claim that
12 they are going to bring?

13 MR. DEVORE: Without getting into much detail, which
14 I don't think is appropriate in open court, the Special
15 Committee has decided to move forward with making demands and
16 is prepared to litigate if necessary.

17 THE COURT: Okay. Thank you.

18 MR. DEVORE: And, second, we have been working with
19 the Official Creditors Committee in their own investigation of
20 related party transactions. As Your Honor is aware, we've
21 provided the Official Committee of Unsecured Creditors with an
22 unredacted copy of our investigation report. Since that time,
23 the debtors have substantially completed production of all the
24 documents that we reviewed that are non-privileged for the
25 Official Committee to review. We have already had one lengthy



1 meeting with the Creditors Committee to help them get up to
2 speed on the investigation.

3 And as we have previously communicated with the
4 Unsecured Creditors Committee, to the extent that they may have
5 different views after they've had a chance to look at all of
6 the issues, that we look forward to a dialogue to reconcile any
7 differences of opinion. We think we have it right, but we're
8 not moving forward with blinders on.

9 So that is where the process currently stands, and
10 now to where the process is headed with the CRO as proposed by
11 the debtors' motion. As proposed in the motion and the revised
12 order, the CRO will have full access to Ropes & Gray, full
13 access to our report, full access to the underlying information
14 that we've analyzed. The CRO will have the ability to request
15 Ropes & Gray and the Special Committee to conduct further
16 investigations or revisit completed investigations.

17 Now, I'm virtually certain that it would never get to
18 this, but if the Special Committee refuses to conduct those
19 investigations or revisit those investigations, there's
20 whistleblower rights, pretty extraordinary provisions that I
21 frankly have never seen in any CRO retention application.

22 And looking even further ahead, the CRO will be
23 involved in how potential claims are addressed. The CRO will
24 be working with the Special Committee and Ropes & Gray going
25 forward. And as a backstop, the order provides that if -- that



1 the CRO has at least five days before any settlement or release
2 could be provided where the CRO can exercise its whistle blower
3 rights. That's how the Special Committee investigation's
4 process is to work going forward with the CRO.

5 Now, the last point I want to address in opening,
6 Your Honor, is the personal unjustified attacks that have been
7 levied against the Special Committee members. Mr. Brimmage
8 touched on this briefly, and I will do so briefly. With
9 nothing more than innuendo, the objectors attacked the
10 professional credibility and integrity of the members of the
11 Special Committee and seek to have Your Honor believe that the
12 Special Committee members are conflicted, incompetent, or both.

13 Now, we are confident that after Your Honor hears
14 from Mr. Zylman and Mr. Davis, that Your Honor will reject
15 those baseless attacks and see two hardworking, independent
16 fiduciaries that day in and day out seek to exercise their
17 fiduciary duties to the best of their abilities even when, as
18 here, doing the necessary thing, doing the right thing,
19 subjects them to personal attack, that is precisely the type of
20 fiduciary that Mr. Davis and Mr. Zylman are and that the
21 evidence will show, and those are the types of fiduciaries that
22 this Court should endorse.

23 THE COURT: Thank you.

24 MR. DEVORE: Thank you, Your Honor.

25 THE COURT: So this is a bit unpredictable, but I



1 would ask you to return at 10:30.

2 (Recess taken at 10:08 a.m.)

3 (Proceedings resumed at 10:41 a.m.)

4 THE COURT: Please be seated. All right. Let's
5 continue with openings. Go ahead. Just getting the microphone
6 ready for Mr. Jenkins.

7 MR. JENKINS: Your Honor, do we need a court reporter
8 or we're good?

9 THE COURT: Pardon me?

10 MR. JENKINS: Do we need a court reporter or are we
11 good?

12 THE COURT: No, we do need a court reporter.

13 So just in terms of our schedule for today, as you
14 know, I'm going to have one more interruption and then we'll be
15 good for the rest of the day. But rather than bring you all
16 back for a 15-minute increment, I'm inclined to adjourn at
17 about 11:13 because I've got to be downstairs at 11:15. And
18 then we'll resume at 1:45 and we'll work until we're done at
19 that point. Is that going to work for everybody? Okay.

20 Mr. Jenkins, go ahead, please.

21 OPENING STATEMENT FOR THE AD HOC GROUP OF SECURED NOTES

22 MR. JENKINS: Thank you, Your Honor. Again,
23 Dennis Jenkins of Morrison & Foerster, Your Honor, on behalf of
24 the Secured Notes Ad Hoc Group. As a reminder, Your Honor, our
25 clients hold the vast majority of the more than 500 million of



1 senior secured notes, and we are also DIP lenders in this case,
2 Your Honor, just as a reminder. We are operating under an
3 interim order, but our clients have funded \$50 million of DIP
4 financing in this case.

5 So that -- we do have a lot at stake here, Your
6 Honor. And as a result, Your Honor, and as all of the
7 pleadings reference, in September our group proposed -- if I
8 dare say demanded -- that the debtors appoint a CRO in this
9 case. And we started working with the debtors, with the Ad Hoc
10 Group of Unsecured Noteholders, with the UCC on the scope of
11 that CRO's services and tasks that he would provide in this
12 case.

13 We spent extensive time, obviously, working on that
14 scope because, as Your Honor has heard, we then interviewed
15 candidates and needed to know what that scope would be before
16 we went off to interview candidates.

17 The creditor parties then interviewed a number of
18 candidates, as has been disclosed and the evidence will show.
19 And the creditor parties proposed a single candidate back to
20 the debtors that was acceptable to all of us. The Secured
21 Ad Hoc Group at the time, although we did not interview
22 Mr. Meghji, the Secured Ad Hoc Group did have on its short list
23 Mr. Meghji. We did not include him as a part of those
24 interviews, in part because we had some concerns about
25 Mr. Meghji's availability at the time. But at the time, he was



1 on our list of potential candidates.

2 As Your Honor has heard, Mr. Meghji was eventually
3 approved by the Debtor and proposed to the various creditor
4 groups. And we then, as creditor groups, did our interview
5 again of Mr. Meghji, discussed his issues about availability,
6 and for us, as an Ad Hoc Group of Secured Noteholders, we
7 became satisfied and resolved those concerns and did report to
8 the debtors that Mr. Meghji would be acceptable; that he had
9 the requisite skills and independence for this job.

10 Was the process perfect, Your Honor? No. But after
11 the debtors proposed Mr. Meghji, we did tell the debtors that
12 he would be acceptable to us. And although the process wasn't
13 perfect, we think some of the best evidence that it was
14 sufficient here is the form of order where it sits today.
15 There's been a lot of work since September, weeks and weeks and
16 now months of work, on getting in a CRO. This case needs a
17 CRO. It will help this case move forward. And we would ask
18 Your Honor, after hearing all the evidence today, that you
19 approve the appointment of Mr. Meghji as CRO to allow these
20 cases to move forward.

21 THE COURT: Thank you.

22 MR. JENKINS: Thank you.

23 THE COURT: Any other advocates of approval today?
24 All right.

25 Mr. Finestone.



1 OPENING STATEMENT FOR UNSECURED NOTEHOLDERS AC HOC GROUP

2 MR. FINESTONE: Thank you, Your Honor. Ben Finestone
3 for the Ad Hoc Group of Unsecured Noteholders from the firm
4 Quinn Emmanuel. Your Honor, I'm going to be brief because the
5 last thing that I think that anyone gets in this courtroom is a
6 free shot. I think that -- I'm not even sure pleadings matter
7 much in this courtroom. I think the evidence matters, and
8 that's what's going to control the analysis and the outcome
9 today. I'm going to highlight --

10 THE COURT: Well, thank you, Mr. Finestone.

11 MR. FINESTONE: I mean it so much that --

12 THE COURT: Well, no --

13 MR. FINESTONE: -- even if it comes off as --

14 THE COURT: But no, then you can sit down, right?

15 MR. FINESTONE: -- belts and suspenders, and you have
16 to make sure. So I'm just going to highlight three things,
17 Your Honor. There are two and maybe three objective rules of
18 process that I think my clients agree with Mr. Davis, the Chair
19 of the Special Committee, objective, without application to
20 this case, Your Honor. And I think he will testify in
21 agreement to these rules today.

22 Rule number one, especially when it relates to
23 matters of investigation, you can't use conflicted counsel.
24 Rule number two, Your Honor, it is inappropriate -- absolutely
25 inappropriate is what Mr. Davis will testify to today, to



1 solicit the input of an outsider to the company, to solicit the
2 input of a competitor to the company, to solicit the input of
3 an adversary to the company, to solicit the input of a
4 counterparty to the company with respect to who the company
5 should choose to act adverse to said subject of my last three,
6 four sentences. Absolutely inappropriate. He would never do
7 it.

8 He broke both those rules, Your Honor. Broke those
9 objective rules. I don't think he's got a subjective excuse to
10 Rule Number 1. Candidly, I don't think he knows which counsel
11 was conflicted when and with respect to which parties. So
12 maybe he did that one unintentionally, but he did it.

13 He broke Rule Number 2 also, and he's got excuses for
14 breaking Rule Number 2. And the two excused you will hear -- I
15 put them in two buckets, Your Honor. Bucket number one is
16 standard operating procedure/don't want to get my CEO's nose
17 out of joint. And that may have some value in the context -- a
18 regular context. CEO has been running company successfully.
19 Operations start to fail. Company now needs restructuring of
20 the right side of its balance sheet. Bring in a CRO to sit
21 next to CEO and deal with the creditors, do what the CEO has no
22 experience, doesn't know what to do.

23 In that instance, Board Member, talk to your CEO,
24 totally fine. Ask your CEO who would you like sitting next to
25 you and teaching you about the ways of the world that Judge



1 Isgur and Judge Jones deal with all the time. It makes sense
2 to maximize the value of the company, to make sure your CEO's
3 nose does not get out of joint, and that's standard operating
4 procedure. I will accept that from Mr. Davis, that in that
5 context, that's standard operating procedure.

6 In this case where the CEO that he's talking about is
7 adverse to the company in a plurality of ways, and that's the
8 very purpose why we're looking for the CRO, it is per se not
9 standard operating procedure to solicit his input. And it
10 shows that the Special Committee -- if the Special Committee
11 thinks that it was in a standard operating situation, well,
12 then that Special Committee was either absentee, out to lunch,
13 or decided not to care. I don't know. But that excuse signals
14 to me the process was broken.

15 He's got a second excuse. I said there was a second
16 bucket. The second excuse, Your Honor, is that -- and this one
17 acknowledges that the CEO is adverse on the topic of this
18 investigation. The second excuse is, well, we were looking for
19 someone who would procure the voluntary cooperation of the
20 subjects of the investigation, the subjects of the adversity.
21 We didn't want bull in china shop like all the creditors
22 suggested.

23 Your Honor, at least that one shows that he
24 understands what's actually going on here, but voluntary
25 cooperation, this -- adversity is a zero-sum game, and you



1 don't call up your adversary -- you don't call up your
2 adversary and say, which litigator would you like me to hire to
3 be adverse to you? What would you be most comfortable with?
4 What would make the process most pleasant for you? That's
5 inconsistent with an unflinching duty to maximize the value of
6 the estate, so we reject that second excuse, too.

7 I haven't spoken about the pre-petition process at
8 all. It's very relevant, Your Honor. We'll deal with that when
9 it comes up in the evidence. But on those two abject failures
10 of post-petition CRO search and process, I think the motion
11 should be denied.

12 I mentioned a third rule, Your Honor. I don't know
13 whether Mr. Davis agrees with me on the third rule. The third
14 rule I take from Foster Mortgage, and I take it from just
15 general principles of trust beneficiary law, which is that
16 you're working for your beneficiaries and you need to carefully
17 consider their view. Doesn't have to be controlling, but you
18 need to carefully consider it.

19 And I can tell you the fact -- as Mr. Jenkins just
20 confirmed, the fact that all three creditors twice, after
21 repeated process, unanimously agreed on someone, is an
22 objective fact of such strength and such quality that it was
23 the right choice.

24 Your Honor knows from the record in this case that my
25 clients and Mr. Jenkins' clients, we're not friends. We



1 opposed their DIP. We thought they grabbed into the estate
2 bucket far too deeply in a situation where the company didn't
3 need money. From day one I've elicited evidence about
4 significant lien challenges against Mr. Jenkins' clients.
5 We're not friends.

6 It's difficult in most Chapter 11 cases to let -- to
7 achieve creditor consensus. We try it in every case because
8 that is the goal, and it's the power offset of a debtor with
9 exclusivity and a debtor with the powers that Congress gives it
10 in the first instance, and we usually fail.

11 We've achieved it twice here. It's a serious
12 powerful sign that the choice that we, the secureds and the
13 statutory committee, came up with the right choice. Mr. Davis
14 will tell you from the beginning, when he was hired a year ago,
15 he did not think equity was the fulcrum security. So it's all
16 about creditors. They rejected it, Your Honor. I think they
17 break process rule number three.

18 My last point, and then I'm standing down, is with
19 respect to -- we all know, Your Honor, all of my process points
20 are premised upon the fact of adversity between the debtors and
21 SNMP, the debtors and Sanchez Oil & Gas, otherwise referred to
22 as SOG, and the debtors and their executive officers, given
23 some of the compensation transactions.

24 Whatever mag -- and that's why, when this was process
25 was happening and we took our depositions, we thought it was so



1 inappropriate to solicit the input of one of the targets of the
2 investigation, inherently wrong. Whatever magnitude that
3 wrongness was, that we thought it was at the time when we were
4 taking the depositions, let's call it a five out of -- for
5 illustration, I'm going to say let's call it a three out of
6 ten, because we have some sense of how important it is to fix
7 the midstream issue and how important it is to get value back
8 from Sanchez Oil & Gas, how important it is that there's an
9 \$18 million receivable owed to the estate that no one has given
10 any consideration to.

11 We didn't know it when we were deposing the Special
12 Committee. This is the fact that -- I'm not going to air it
13 out publicly, but this is the fact that Your Honor will see in
14 this letter. It turns the magnitude of the conflict up to ten.
15 It puts it off the scale. And it was sure confirmation that if
16 it was wrong, three out of ten to consult with a CEO of our
17 debtor, who also Mr. Davis will concede calls the shot at SNMP.
18 If it was wrong three out of ten, it was wrong ten out of ten,
19 and we just didn't know it, and that's the fact that is for now
20 being held private, Your Honor. Thank you.

21 THE COURT: Thank you.

22 Any other opponents? Mr. LeBlanc.

23 OPENING STATEMENT FOR OFFICIAL COMMITTEE OF UNSECURED CREDITORS

24 MR. LEBLANC: Good morning, Your Honor. Andrew
25 LeBlanc, Milbank, on behalf of the Official Committee. I'll be



1 very brief. I just want to highlight one point, Your Honor. I
2 think there -- it has been said at this podium by the debtors
3 and by us, by everybody, frankly, that what we need here is
4 someone who can build consensus. And to that point, I cannot
5 emphasize enough what Mr. Finestone just said.

6 The creditors reached consensus with respect to the
7 individual who should be appointed to this position. That was
8 presented to the debtors and their Special Committee. And I
9 want to make sure this factual element is clear because
10 Mr. Brimmage said he didn't know -- he didn't recall when the
11 first lien lenders changed their mind. Let me tell you what
12 the facts are, Your Honor, and you'll hear this through the
13 evidence.

14 The Special Committee proposed -- after their
15 process, proposed two people to the creditors, who were not the
16 person that was identified by the creditors. The creditors
17 interviewed those two people, including Mr. Meghji, and the
18 creditors unanimously, including the secured creditors, went
19 back to the debtors and said we still want our candidate. After
20 that process, the debtors then chose Mr. Meghji. And so if the
21 goal here were to find consensus among the stakeholders with
22 economic interests in this estate, the debtors have already
23 failed.

24 And, Your Honor, one of the primary purposes of the
25 depositions that we took was to figure out in this process --



1 which Mr. Finestone talked about the flaws that are inherent in
2 that process, but in this process, what consideration did you
3 give, Special Committee, to the fact that the candidate
4 suggested by the creditors was unanimous, that there was
5 consensus around that?

6 The answer that we got was shocking to me, to the
7 point that I literally asked the same variation of a question
8 21 times in a row because I couldn't get an answer to it --

9 MR. BRIMMAGE: Your Honor, I'm going to object at
10 this point. He's trying to bring in a deposition that's not in
11 evidence. And what he did or didn't do during that, whether it
12 plays out on the stand, we'll all get to see. But this is a
13 backdoor way of trying to get in deposition testimony or
14 questions or involuntary responses, I'm not sure, but I think
15 it's inappropriate and we would object.

16 MR. LEBLANC: Your Honor, I didn't stand up when he
17 was talking about what the evidence was going to show. Trust
18 me, I'll ask the witness these questions. And if I don't, he
19 can say it at closing, that I didn't prove up what I said in
20 opening. I'm fine with that.

21 THE COURT: I'm going to sustain the objection to the
22 extent that you're mentioning the depositions themselves
23 because they are not likely to come into evidence. But if you
24 want to simply tell me what's going to happen on the stand,
25 that's fine.



1 MR. LEBLANC: Okay. Your Honor, the witness -- what
2 the evidence will show today is that the Special Committee, at
3 least through Mr. Zylman, didn't give any consideration to the
4 interests of the creditors whatsoever, none. We think that is
5 wrong. We think that is a flawed process. There are other
6 elements of the process that are clearly flawed.

7 We do believe a heightened standard has to apply to
8 this, and the fact that this Special Committee went through a
9 process, that the only purpose of the creditors unanimously
10 proposing somebody was that that person got themselves an
11 interview. That was it.

12 THE COURT: You said a heightened standard. I just
13 want to make sure I'm following what you're telling me. I
14 believed coming in today that it was, in fact, a business
15 judgment standard. It may be that the business judgment is
16 fatally flawed if it did not take into account the requirements
17 of law. But you're telling me there's a heightened standard,
18 and that would be different than just using a business judgment
19 standard, and I want to know what you mean.

20 MR. LEBLANC: Yes, Your Honor. We briefed this,
21 actually, in our papers. We cited to two Delaware decisions.
22 I'll have them by the time we're closing, but we cited to two
23 Delaware decisions that we believe, because of the involvement
24 of the insiders in the process, that it requires Your Honor to
25 consider the entire fairness of the transaction.



1 And I don't think that -- it does in our view change
2 the analysis, because under either a business judgment standard
3 or an entire fairness analysis standard, the failure to
4 consider the interests of the creditors is fatal to that
5 process. The involvement of the insider in the process is
6 fatal to that process. And so I don't think it matters, Your
7 Honor, but certainly this is an issue that we raised in our
8 papers and we do believe the heightened standard --

9 THE COURT: But I think that assumes that the
10 insiders are part of the decision -- are the decision makers,
11 right? Not just that somebody asks them a question.

12 MR. LEBLANC: I think there -- I have two responses
13 to that, Your Honor. They injected the decision make -- the
14 insiders into this process, the counter -- the adversaries into
15 the process to have interviews and to give their own report.

16 Now, we also sought the deposition of Mr. Sanchez.
17 That was the subject of the quick telephonic hearing. To be
18 clear, Your Honor, so there's no doubt about this, we did not
19 withdraw our request to depose him. We simply agreed we would
20 not compel his testimony, his deposition. We did not withdraw
21 it. We think it's still appropriate. We told you that on
22 Tuesday, Your Honor, so we did not withdraw it. They objected
23 to it and would not present him for deposition.

24 Now, the answer, Your Honor -- the second point is
25 the full board here did actually approve this selection. The



1 record is clear there's a unanimous written consent that was
2 presented to the full board to approve the recommendation of
3 the Special Committee.

4 Now, part of the reason we asked to invoke the rule
5 is that the two witnesses will give you inconsistent testimony
6 on that issue. They will give you inconsistent testimony about
7 why that was done. But that, in fact, happened, and while it
8 may not be the case that the full board approved the
9 recommendation of the Special Committee; that clearly, in our
10 view -- and then that full board, of course, includes many
11 members of the Sanchez family. So we do think that entire
12 fairness applies to this requested transaction. But again we
13 believe it fails under any test for the reasons that
14 Mr. Finestone and the seven other reasons that we've
15 articulated.

16 Your Honor, we look forward to presenting the
17 evidence because I think, obviously, that's what you have to
18 base your decision on.

19 THE COURT: Thank you, Mr. LeBlanc.

20 MR. LEBLANC: Thank you, Your Honor.

21 THE COURT: All right. Does that conclude all the
22 opening statements?

23 Mr. Brimmage, we've got about 15 minutes.

24 MR. BRIMMAGE: Your Honor, Ms. Warrick is going to
25 present Mr. Meghji.



1 THE COURT: Thank you. Ms. Warrick.

2 All right. So the rule is now invoked. I need to
3 ask Mr. Meghji to come forward. Mr. Zylman, you need to excuse
4 yourself.

5 (Pause)

6 THE COURT: Good morning.

7 THE WITNESS: Good morning.

8 THE COURT: Yeah, I think we already swore you in, so
9 you're in good shape. Thank you. So I'm going to abruptly end
10 at 11:13. That's a very hard stop for me because I've got to
11 give my talk at 11:15.

12 MS. WARRICK: Okay. That sounds good. We will
13 likely go longer than that, but we'll pick up.

14 THE COURT: Absolutely. I'm just telling you --

15 MS. WARRICK: Okay.

16 THE COURT: -- I'm walking out then.

17 MS. WARRICK: Sounds good.

18 MOHSIN MEGHJI, DEBTORS' WITNESS, PREVIOUSLY SWORN

19 DIRECT EXAMINATION

20 BY MS. WARRICK:

21 Q All right. Good morning. Will you please introduce
22 yourself to the Court?

23 A Good morning. My name is Mohsin Meghji and I'm the
24 managing partner of M-III Partners.

25 Q Mr. Meghji, why are you here today?



1 A I'm here because I've been proposed as Chief Restructuring
2 Officer of Sanchez Energy by the debtors.

3 Q Did you sign a declaration in connection with your
4 retention as CRO?

5 A I did.

6 Q There's a notebook in front of you that is labeled
7 Debtors' Exhibits. Will you flip in that notebook to Tab 2?

8 A Yes.

9 Q This has been pre-admitted into evidence. Is that the
10 declaration that you signed in connection with your retention?

11 A It is.

12 Q Okay. Did you review your declaration again before this
13 hearing?

14 A I did.

15 Q Has anything changed since you signed it?

16 A No. Not to my knowledge.

17 Q Has the scope of your engagement changed?

18 A The scope of my engagement has changed over the past
19 week/ten days, since December 3rd.

20 Q And have you spent any time at the company since you
21 signed the engagement letter?

22 A I have.

23 Q Or, sorry, since you signed your declaration?

24 A Yes. I spent a couple days, sort of the week prior to
25 Thanksgiving, and then I was at the company yesterday. And



1 I've also been in contact with company folks by telephone over
2 the past couple of weeks.

3 Q We'll come back and discuss those more a little bit later.
4 But first I just wanted to talk about your background. Can you
5 explain to the Court what your educational background is?

6 A Yes. My educational background, I did an undergraduate
7 degree at York University in Toronto. Thereafter, I became a
8 chartered accountant qualified in the United Kingdom and
9 Canada. And then I've also done a chartered insolvency
10 practitioner and certified turnaround practitioner in the U.S.

11 Q Do you hold any professional certifications or have you
12 held any in the past?

13 A I -- I have. I'm not sure that they're all still active,
14 but I was a chartered accountant in -- in the UK and Canada.

15 Q How many years of experience do you have working in the
16 restructuring field?

17 A A little over 25.

18 Q Have all of -- has all of that time been at M-III
19 Partners?

20 A No. I started working at a firm called Arthur Andersen,
21 which is where I worked in the audit and accounting department
22 for four years or so. And then I spent about eight years in
23 the restructuring group initially in Toronto, and then I moved
24 to New York towards the end of 1998. After a couple years in
25 New York, a partner of mine and I started a firm called



1 Loughlin Meghji + Company, which we ran from 2002 to 2011
2 together. I left for a couple years and took a corporate
3 management job at a company called Springleaf Financial. And
4 then, in late 2015, I started M-III Partners.

5 Q And can you explain what M-III Partners is?

6 A So M-III Partners' primary business today is working on --
7 as a restructuring advisor either for companies as a Financial
8 Advisor/Restructuring Advisor or Chief Restructuring Officer,
9 or for creditor roots in -- in restructuring situations.

10 We've also done a couple of other things. In 2016, we had
11 raised a special-purpose acquisition corp which was for
12 investment purposes, so we had done kind of a specific
13 investment transaction.

14 Q And what title do you hold at M-III?

15 A I'm the Managing Partner.

16 Q And you mentioned a second ago your experience in the
17 restructuring field. Does that include acting as Chief
18 Restructuring Officer?

19 A Yes.

20 Q Can you describe some of the engagements in which you've
21 acted as the Chief Restructuring Officer?

22 A Yes. It's probably somewhere 10 to 12 engagements, but
23 names that come to mind going back is Covanta Energy, which is
24 a waste energy company; Medical Staffing Network; Pappas
25 Telecasting. More recently I've been Chief Restructuring

1 Officer of Barneys and Sears Holdings, Real Alloy. I can't
2 remember a few others, but there's a few others.

3 Q And you said about 10 to 12. Is that correct?

4 A Yes.

5 Q Did any of those engagements involve related party
6 transactions?

7 A Yeah, many -- many of them did in -- in different forms.
8 You know, Capmark Financial Group, which I did mention earlier,
9 was another one where there were significant sort of
10 inter-creditor issues and cost allocation issues. Sears
11 Holdings more recently was the one where there was kind of the
12 highest concern about related parties because the Chairman of
13 the Board, the CEO, Mr. Eddie Lampert, was also the largest
14 shareholder, the largest creditor/debtor holder in a variety of
15 ways. And at the outset of the Chapter 11 filing, when I
16 became Chief Restructuring Officer, he had also made clear that
17 he fully intended to buy the company, so that created a huge
18 amount of kind of related-party issues.

19 Q And have you reviewed the objection that the Ad Hoc Group
20 filed in connection with your appointment?

21 A I did.

22 Q Did you review the portion of that objection that
23 references your engagement with -- in the Sears case?

24 A I believe so.

25 Q What did you think about the statements and the objection

1 about the Sears engagement?

2 A So I'll -- if I recall, there was a couple of statements
3 around -- one relating to why I'd recommended and supported the
4 sale to Mr. Lampert; and, two, that it was sort of
5 administratively insolvent; and, three, that we were now taking
6 as the estate an adverse position and litigating to collect
7 some of the uncollected funds from the sale of the company from
8 ESL.

9 My reaction to that is for anybody who's done any retail
10 restructurings in this recent cycle, administrative insolvency
11 is a major risk in almost every retail case, so I thought it
12 was kind of a little bit of an uninformed sort of perspective.
13 But it is what it is, and as far as sort of my -- my
14 performance and perspective on that, I think frankly being open
15 to taking an adverse position, which we did because we felt
16 that the buyer was not living up to the obligation under the
17 APA, is clear evidence that we were happy to do whatever it
18 took as fiduciaries of the estate.

19 Q And had -- did you have any prior relationship with Eddie
20 Lampert prior to the Sears bankruptcy filing?

21 A So I had -- my firm, you know, I started my firm in late
22 2015. And sometime in I think it was April or May of '16, I
23 had been introduced to Mr. Lampert and he had hired a small
24 team from my firm -- well, under my supervision. So we had
25 worked with the management team for Sears and him for close to

1 two and a half years before the bankruptcy.

2 Q And given that preexisting relationship, were you always
3 aligned with Mr. Lampert in the case?

4 A In the Chapter 11 case?

5 Q And afterwards as well.

6 A Clearly not. We're -- we're litigating with him now. We
7 also had to engage in some pretty tough negotiations for the
8 sale process, which was under court supervision and, by the
9 way, under serious objection from your partners at Akin Gump as
10 counsel for the Creditors Committee, which was violently
11 opposed to doing that. But we managed to work through that and
12 -- and ensure that the stakeholders who had significant
13 concerns about my ability to navigate those conflicts, there
14 was a -- there was an independent Special Committee of the
15 Board at Sears who I reported to, and under their supervision,
16 I think all the right things were done.

17 Q Turning back more generally to your CRO engagements, did
18 any of those engagements involve conflict between stakeholder
19 groups, between the debtors and the creditors?

20 A You know, by -- by its very nature, Chapter 11 involves
21 some degree of conflict, maybe not to the extent that there is
22 in this case, but there's always some degree of conflict
23 between the debtors and creditors because creditors are --
24 generally the creditors are unhappy at not being able to
25 recover all that they're owed. So yeah, that's kind of a

1 common part of the -- the role in the business.

2 Q When you're navigating those conflicts, what do you find
3 to be some of your most effective tools?

4 A So I look to two principles that I kind of try to live by
5 is, one, be fact driven and as objective as I can be under the
6 circumstances and try to maintain that sort of role in amongst
7 all the stakeholders. Sometimes it can be difficult to do, but
8 I think with discipline you can do that. And then I think the
9 second principle that I try to live by is transparency. So
10 sharing information to the fullest extent helps kind of
11 alleviate concerns or anger or frustration that people have had
12 around why the situation has become what it has.

13 Q Would you describe yourself as a consensus builder?

14 A Listen, I like to think so. Where possible, it's always
15 better to do things to consensus. Sometimes it's not, and I'm
16 not shy about having to litigate if we have to.

17 THE COURT: All right. I'm going to take a break.

18 (Recess taken at 11:12 a.m.)

19 (Proceedings resumed at 1:44 p.m.)

20 THE COURT: All right. Mr. Meghji, if you'll retake
21 the witness stand, please. For the record, we're going to
22 return to the Sanchez Energy matter. The last thing that I
23 have that we did is he testified that he thinks of himself as a
24 consensus builder and then I took my break.

25 MS. WARRICK: Correct. Thank you.



1 THE COURT: Thank you.

2 BY MS. WARRICK:

3 Q Welcome back, Mr. Meghji. So as the judge just stated, we
4 left off talking about whether you were a consensus builder. I
5 think we also talked before the break about the dynamics of the
6 Sears case. Were you able to build consensus in that case?

7 A Ultimately, we were able to do that, but I -- I think the
8 characterization of me as a consensus builder is fine, and
9 that's sometimes what you need to do to get work done. But
10 ultimately, sort of any time I take on a role, I view my job as
11 getting -- delivering results. In the case of companies in
12 Chapter 11 where I'm a CRO, it's figuring out what the volume
13 maximizing outcome is and getting the stakeholders together to
14 do that. So that involves a combination of sort of carrot and
15 stick sometimes, pushing people, so using all of those tools
16 and pushing the stakeholders. I would view myself as having
17 had a track record over a long period of time of being able to
18 kind of get results and build consensus in a case.

19 Q And in Sears, did you have a consensual plan of
20 reorganization?

21 A Yes, we do.

22 Q Okay. We also talked right before the break, I think you
23 identified the importance of being facts driven and being
24 transparent. Do you recall that testimony?

25 A Yes.



1 Q Okay. Why do you think those attributes are important for
2 somebody stepping into the role of CRO?

3 A Because frequently, as -- as in this case, but frequently
4 in Chapter 11 cases, you have different kinds of kind of
5 stakeholders with different temperaments, different
6 frustrations, because usually people have lost money at some
7 level. And so being able to kind of convey to people that I'm
8 going to do my job as sort of a new person coming in, which is
9 generally the case, and let the current facts and situation
10 drive the outcome usually is a better strategy than coming in
11 and sort of having a fixed point of view and trying to get
12 people to you.

13 Q I want to talk about some of the services you've
14 historically provided in connection with your past positions as
15 CRO. When you've previously worked as a CRO, have you
16 developed and implemented business plans?

17 A Yes. In most cases, when I'm CRO, we will either build,
18 define, or develop kind of the company's business plan and
19 ultimately use that to sort of get the stakeholders to either
20 buy in or sort of negotiate that business plan to get to a
21 conclusion.

22 Q Have you developed and implemented turnaround strategies?

23 A Yes.

24 Q Do you have any examples of that?

25 A Yeah. I mean, basically I'd characterize it in general



1 terms again. Most businesses where we're taking on a -- an
2 operational or a CRO role involves, you know, identifying what
3 parts of the business are profitable and viable, what parts of
4 the business are not profitable. So at Sears, for instance,
5 we, you know, fairly quickly -- the company had 700 stores when
6 we filed. When we merged, it had 425 stores, so we closed a
7 lot of stores.

8 Another example I'll give you, Real Alloy, which is an
9 aluminum manufacturing company. We closed some plants. We did
10 some customer pruning that were unprofitable customers. So
11 those kinds of strategies we've applied to -- I don't want to
12 sort of name too many examples, but hopefully that gives you an
13 idea.

14 Q Have you planned and implemented financial and operator --
15 operational restructurings?

16 A Yes. The next step from developing, you know, once a
17 business plan for a company is done, then you really have to
18 kind of work with the stakeholders to figure out what the
19 go-forward capital structure is, and that usually involves some
20 restructuring of the debt.

21 Q Okay. In connection with these engagements, have you done
22 financial modeling?

23 A Yes. I -- my -- my personal modeling skills are, you
24 know, a little stale, but usually we have sort of either
25 company personnel or my colleagues or other advisors will put

1 models together to help drive the -- kind of the restructuring.

2 Q Have you managed negotiations with stakeholders?

3 A Yes.

4 Q Have you had -- have you been able to stabilize business
5 operations?

6 A Yeah. It's a key -- key piece of the role.

7 Q And in the instances in which you have served as CRO, have
8 you improved in managed liquidity?

9 A Yes.

10 Q Have you ever directed investigations into related party
11 transactions?

12 A Yes. More -- and again, in that instance, I've served on
13 several boards as a -- an independent director or on special
14 committees. A couple of recent examples were I was on the
15 board of Toys R Us, where we undertook as a special committee
16 at the holding company level, we undertook an investigation of
17 any sort of potential improprieties that might have led to cash
18 being pulled out by the equity sponsors, et cetera.
19 Ultimately, in that case, there was no sort of causes of
20 action, so -- and the creditor constituencies understood that
21 after we laid out what had happened.

22 Another recent case where I was on the board was a company
23 called Shopko, another retailer, where the sponsor, Sun
24 Capital, had taken out a dividend recap within sort of three
25 years of the Chapter 11 filing. And in that case we conducted



1 an investigation and reached a settlement with the sponsor
2 which was ultimately approved by the bankruptcy court for
3 \$15 million.

4 Q Have you navigated conflicts of interest among debtor and
5 creditor groups?

6 A Yes.

7 Q Turning back to your retention as Chief Restructuring
8 Officer in this case, did you sign an engagement letter in
9 connection -- setting forth the terms and conditions of your
10 engagement?

11 A Yes.

12 Q If you'll flip in your notebook to Exhibit -- to Tab 3,
13 this is Debtors' Exhibit 3 which has been pre-admitted. Is
14 this a copy of your engagement letter?

15 A That it is.

16 Q Okay. What types of services will you and your firm,
17 M-III Partners, provide in the course of your engagement here?

18 A So I'm -- I'm not going to read out everything that's
19 here, but in general, if I'm -- I'll look at the scope of
20 services which is the -- Paragraph 1. It talks about kind of
21 oversight and directions on issues related to Sanchez Oil and
22 Gas, the SOG, which is the services agreement between --
23 between Sanchez Energy, the debtors, and SOG, to look at that
24 because there's conflicts of interest between management and
25 SOG, management of the debtors and SOG.



1 The midstream contract, again where SNMP and SN -- Sanchez
2 Energy have potential conflict issues, so those are two key
3 areas that I was asked to focus on. And I think beyond that,
4 other matters that come up relative to issues that create
5 conflict between the debtors and other related parties.

6 So one other thing that's happened since then, actually,
7 since my retention, the Special Committee has asked me to take
8 a look at the business plan that management had presented to
9 them, which was about ten days ago. And because the business
10 plan issues are highly interrelated with potential negotiation
11 with SNMP, so we're -- we're in the process of doing that. And
12 if I am -- if my appointment is confirmed, then I will continue
13 to do that.

14 Q Will you have oversight and direction over any potential
15 settlements with some of those parties that you just mentioned
16 like SOG and SNMP?

17 A I believe I have the -- the Special Committee has their
18 oversight for that, but I have the right to review it and raise
19 any objections if I have any.

20 Q In the course of your engagement, to whom will you report?

21 A To the Special Committee of the Board.

22 Q And just kind of talking briefly about the Special
23 Committee, you mentioned that you have -- is it correct that
24 you have already interacted with the Special Committee to some
25 extent in this case?

1 A Correct.

2 Q Okay. Have you been on calls with the Special Committee?

3 A Yes. I've been on at least one call. It might have been
4 two, but I think one or two calls in the last sort of two
5 weeks, ten days.

6 Q Okay. What are your observations about how the Special
7 Committee operates?

8 A I -- I don't know that I kind of have a view -- a
9 conclusive view on how it operates. It's too early to tell.

10 Q Okay. And I realize I left off one important item
11 potentially of your -- the scope of your engagement. Will you
12 help to develop Chapter 11 plan disclosure statement or motion
13 to dismiss or convert the debtors' bankruptcy cases?

14 A Generally, I've done that most times I've been CRO.

15 Q Okay. And will you perform any other services that might
16 be agreed upon between you and the Special Committee?

17 A Yes.

18 Q All right. Okay. So you mentioned earlier that you will
19 report to the Special Committee. Is it your understanding that
20 the original terms of your engagement provided that you would
21 report to both the Special Committee and to the full Board at
22 times?

23 A Correct.

24 Q And has that since changed?

25 A Yes.



1 Q Do you have an understanding as to why that change was
2 made?

3 A My understanding was that it's a combination of comments
4 from the stakeholders as well as guidance from the judge that
5 led to some of those changes.

6 Q Okay. And you mentioned -- we mentioned -- we talked
7 earlier about how you have oversight into any settlements with
8 related parties. Do you have the authority to direct further
9 investigation into any claims that might be subject to such a
10 settlement?

11 A I believe I have the authority to go to the Special
12 Committee and ask for that to be looked at, yes.

13 Q What happens if you go to the Special Committee and they
14 decline to investigate?

15 A If I feel it's important material, and if I have the
16 ability, to come to court and report that.

17 Q Is that a new addition to the scope of your engagement?

18 A Yes.

19 Q Okay. And if the Special Committee does investigate and
20 authorizes a settlement, can they seek court approval of that
21 settlement without your sign-off?

22 A I'm -- I believe they're required to give me five business
23 days' notice before they do that.

24 Q Is that waiting period another new addition to the scope
25 of your engagement?



1 A Yes.

2 Q We talked a second ago about whistleblower protections.
3 What do those protections permit you to do?

4 A The way I see it is essentially raise my hand anytime I
5 see an issue that's material and that hurts the value of the
6 debtors.

7 Q Does that include if you see conflicts or you perceive
8 that there are conflicts between you and the Board in the event
9 that a matter might be brought before the full Board?

10 A Yes.

11 Q All right. Does that include conflicts between you and
12 the Special Committee?

13 A Absolutely.

14 Q Would you hesitate to exercise your whistleblower rights
15 if you determined that the situation called for it?

16 A I don't think so.

17 Q Can you retain outside counsel if you decide that that is
18 appropriate?

19 A Yes. I had asked -- in the context of some of the changes
20 last week, the one addition I had asked for was the ability to
21 retain my own counsel if that became necessary, particularly
22 given some of these sort of allegations. And sort of -- I felt
23 that that would be something that would be helpful to me in
24 terms of asserting my independence.

25 Q And is -- is it your understanding that that is included



1 in the revised form of the CRO order?

2 A Yes.

3 Q Is it your opinion that the scope of your engagement is
4 broad enough to allow you to conduct an independent process?

5 A I believe so, particularly with the ability to raise
6 issues, and my expectations -- my expectation is the -- the
7 Special Committee will deal in good faith with anything I
8 raise. But with the protection of my being able to come to the
9 Court or discuss this with creditors, I feel I can execute on
10 this.

11 Q What effect, if any, has the change in CRO scope had on
12 your abilities to perform your duties as CRO?

13 A I think it's been helpful. It certainly asserted my
14 independence -- will allow me to assert my independence better.

15 Q Okay. Let's back up a little and talk about how this
16 engagement came to be. When did you first hear that a CRO
17 might be brought into this -- onto the debtors or into this
18 proceeding?

19 A So the first I heard about, frankly, Sanchez Energy,
20 because I hadn't really focused -- I wasn't aware of the
21 company, it was the last week of September. Might have been
22 somewhere around the 26th/27th of September, when I got a call
23 from one of the advisors to the Unsecured Creditors Committee
24 who asked -- asked if I was busy and available to look at
25 something, take on a new role. I said I was busy, but I was

1 expecting to finish -- kind of a couple things I was working on
2 were coming to an end, so I expected to have time, although the
3 exact timing needed to be determined. And -- and then he
4 proceeded to tell me that there was likely going to be a CRO
5 appointed in this case and that I should reach out to some of
6 the creditor constituencies if I had an interest.

7 Q Who was that advisor to the -- financial advisor to the
8 committee that you spoke to?

9 A It was Leon Schlesinger from Jefferies.

10 Q And did you know Mr. Schlesinger prior to that call?

11 A Yes.

12 Q Okay. After that conversation, did you talk to the other
13 creditor constituencies?

14 A Yeah. So I reached out to -- I did some sort of work
15 around who the stakeholders were and reached out to Brent
16 Buckley at Benefit Street, who I understood was one of the
17 larger holders and was sort of driving the Ad Hoc Committee.
18 And I also reached -- we also -- one of my partners reached out
19 to Nate Van Duzer at Fidelity. And I reached out to Morrison &
20 Foerster, who we had previously worked with, for an
21 introduction to the lawyers involved in this case.

22 Q So you mentioned first talking with Mr. Buckley with
23 Benefit Street. What do you recall about that discussion?

24 A So that discussion was in early October, the 1st or 2nd of
25 October. I called him -- I knew Mr. Buckley from a while ago,

1 although I hadn't seen him for a number of years, and asked him
2 if we could come up and meet him -- his office is pretty close
3 to ours -- and he said sure. So we actually -- one of my
4 partners, Colin Adams and I, went up later in the day and spent
5 about 45 minutes chatting with him, talked about what we had
6 done since I started M-III. And he said, "Great, I'll -- I'll
7 pass your interest on. There's a process that the various
8 creditor groups are running to do that."

9 Q And you also mentioned talking with Adam Van Duzer.

10 A Nate Van Duzer.

11 Q Sorry, Nate Van Duzer. What do you recall about that
12 conversation?

13 A Again, it was a telephone call that was right around the
14 same time, that first week of October. And I think it was
15 simply -- Nate wasn't familiar. He and I didn't know each
16 other. But Colin Adams and he had worked on something, so it
17 was really just familiarizing him on our experience, what we
18 did, what kinds of roles we'd taken. I think he sort of knew
19 who I was and I knew Fidelity, so it was just sort of talking
20 about what we would do, how we would approach it, et cetera.

21 Q And then you also mentioned talking with counsel at
22 Morrison & Foerster.

23 A Yes.

24 Q Is there anything that you recall about that conversation?

25 A No. it was sort of similar -- similar conversation, just

1 getting a sense of where the process was, et cetera, et cetera,
2 and just expressing our interest.

3 Q Okay. So at various points you talked with individuals
4 associated with the Committee, the Ad Hoc Group, and First Lien
5 Lenders about the CRO position, correct?

6 A Correct.

7 Q When were you first approached or when did you first talk
8 with the debtors about the CRO position?

9 A So I think it was -- I'd looked up these dates last night.
10 I think it was on or around October 10th that I called -- got
11 an email from Mr. Dizengoff. So it was a week or so after my
12 conversations with the creditor groups, and he asked if I had
13 availability and interest to take on a potential CRO role or
14 whether I was too busy. And I -- so I got back to him and said
15 while I was busy, I expected a couple of things were ending
16 during the month of October, and depending on timing, if it was
17 sort of in the November timeframe, I could take that on.

18 Q Did you have any additional conversations with any of the
19 creditor groups after Mr. Dizengoff reached out to you?

20 A Yes. I actually -- I had assumed, based on the prior
21 conversations, that he -- Mr. Dizengoff was reaching out to me
22 because -- mistakenly, but because the creditors had sort of
23 provided a list of people for them to talk to. And so I called
24 Mr. Schlesinger to let him know that Ira had -- had contacted
25 me. And Mr. Schlesinger thought it was odd because I was not

1 sort of on the list or the candidate that the creditors had
2 selected. So I said, "Look, it looks like the debtors have
3 sort of independently approached me," and we sort of left it at
4 that.

5 Q And so did you have any understanding of why you weren't
6 included on the UCC's list?

7 A I think what -- what he told me was that there was
8 concerns around some of the creditors, around how busy I was
9 and whether I could take this on. But I -- you know, which I
10 said, this is odd, because I've been doing this a long time and
11 I know my schedule and no one's ever accused me of taking a job
12 on and not doing it. But I sort of left it at that. There was
13 nothing else to do.

14 Q So would you say that the -- the concerns about your
15 availability were valid?

16 A That was the impression that was given to me.

17 Q Would you say that they had a right to be concerned about
18 your availability?

19 A No.

20 Q Did you also talk about your availability with
21 Mr. Dizengoff?

22 A Well, so actually, when he called, when we spoke for the
23 first time, the one thing he was absolutely very clear about
24 was that it had to be me and it was -- he stressed the fact
25 that it wouldn't be acceptable to him or the debtors if it was

1 somebody else from my firm. So I -- and -- and I assured him
2 that I could do it.

3 Q At some point did you have an interview with the Special
4 Committee?

5 A Yes.

6 Q Approximately when was that?

7 A So again I think that was a call that -- again, my
8 recollection, around October 16th.

9 Q Who was present at that meeting?

10 A It was Adam Zylman, and I think there was a representative
11 -- I don't know for certain but it felt like there was -- the
12 only person who spoke on the other side of the phone was Adam.
13 But there were representatives from Moelis Alvarez, and I'm
14 pretty sure there was an Akin person on the phone as well.

15 Q What do you recall about that interview with the Special
16 Committee?

17 A So that was the discussion with Mr. Zylman.

18 Q Uh-huh.

19 A And he asked -- it was sort of two categories of questions
20 he asked me were first around a fairly kind of lengthy
21 checklist of questions around whether my relationships with
22 everybody on the debtors' side -- so the Sanchez family, the
23 Sanchez group of companies, individual board members, Special
24 Committee members, Akin Gump, Moelis Alvarez, and also all the
25 company advisors -- and walked through that, so we talked

1 through that. And then similarly whether I had had any
2 relationships or conflicts from the creditors side.

3 Q Did you talk about anything else in that interview?

4 A Other than that, the second category of questions were
5 what I -- I don't remember the details of the questions, but it
6 was sort of roughly around scenarios. So if you had a
7 situation like this, how would you react? But it was a series
8 of questions around that.

9 Q Did you discuss your experience in the E&P sector?

10 A He asked about my experience in the E&P sector and I told
11 him that while I had not been involved in it from a
12 restructuring perspective, I had raised some money in 2016,
13 some capital in a SPAC vehicle, a special purpose acquisition
14 corp. And in the 2016/'17 time frame, after kind of the last
15 time oil prices collapsed, we had spent a lot of time looking
16 at potential investments in the space and gotten close to or at
17 least had an interest in doing something, one Gulf of Mexico
18 company called Taos Energy and another kind of all fuel
19 services company, but ultimately neither of those sort of went
20 anywhere.

21 Q Did you do due diligence in connection with your work on
22 the SPAC?

23 A Yes.

24 Q Did you know Mr. Zylman before you sat down or before you
25 talked with him before the interview?



1 A No.

2 Q Did you ever talk with the other member of the Special
3 Committee, Mr. Davis?

4 A Yes. I spoke to Mr. Davis. It was probably a day or two
5 before the call. Once the call got scheduled, I called him and
6 he said he would not be on the -- he would -- he wasn't sure
7 whether he was going to be on the call whenever it was
8 scheduled, but -- but his view was, listen, we're looking for a
9 CRO and I know who you are. He and I had sort of -- while we
10 haven't sort of worked together, we've interacted in a few
11 instances previously, so he was familiar with who I was.

12 Q What are some of those instances in which you've worked or
13 interacted?

14 A So three instances where I've been either a CRO or an
15 advisor to companies going through Chapter 11. And Mr. Davis,
16 at the conclusion of that process, has come in and been
17 involved in the reorganized company boards. The first one was
18 Capmark Financial Group, which I worked on for two years. I
19 was the Chief Restructuring Officer and really drove a lot of
20 that restructuring. At the end of that process, Gene was
21 selected to be chairman of the reorganized company. And so we
22 spent some time kind of getting him familiar with the business
23 plan for the new company. I negotiated the management
24 contractors for the management team that were going to be
25 working for them, so it was sort of in that context.



1 About two years ago, there was a company called Remington,
2 the gun company, which we had advised the senior lenders on.
3 And again, as part of that process, we did some work on
4 assessing the business plans, the management teams. And when
5 the new board was appointed, of which Mr. Davis was a member
6 of, we took them through our thoughts on that. So that was
7 sort of another one. And then more recently, although I
8 haven't interacted with him much on this, he's on the board of
9 the liquidating trust for Sears. So again there's been, you
10 know, some indirect, and that hasn't sort of been fully
11 functional yet.

12 Q Okay. So you mentioned you had the phone call with
13 Mr. Davis. You knew him before. What do you recall about that
14 discussion?

15 A The discussion -- I was simply trying to sort of get a
16 sense from him on what was involved, what his expectations
17 were, and he said, "Look, we're looking for a CRO. I think
18 you'd be a good candidate, so -- but I may or may not be on the
19 committee called when we interview you. But since I know who
20 you are and kind of what you can do, don't worry about that."

21 Q Do you recall discussing your availability with Mr. Davis
22 to serve as CRO in this case?

23 A I'm -- I'm pretty sure he had asked me whether I was
24 available. Look, everybody -- everybody that I had a
25 discussion with on this, both the creditor and sort of company

1 side, at one point or the other asked for my availability. So
2 I'm not -- I don't specifically recall what that was, but I
3 think he said, "It's going to be -- you can't put a big team on
4 it. You're going to have to spend a lot of time on it." So it
5 was pretty clear to me that I would need to personally spend a
6 lot of time on it.

7 Q After your Special Committee interview, did you speak with
8 anyone else from the debtors?

9 A No. I may have spoken to Mr. Dizengoff at some point and
10 he said, look, to see where the process kind of stood a couple
11 times, but that was it.

12 Q Uh-huh. Did u speak with anyone that -- in the management
13 team of the debtors?

14 A Oh, yes. So that -- you know, that interview was on the
15 -- on the 16th. And I think on the 21st/22nd, I got an email
16 from Mr. Rubin, I think, asking if I could jump on a call with
17 Tony Sanchez and have a discussion, which I did.

18 Q Did you have an understanding as to why Mr. Sanchez was
19 speaking with you?

20 A No. I mean, nobody gave me a specific reason.

21 Q In your experience, being retained for CRO positions, did
22 you find it unusual to talk with Mr. Sanchez?

23 A No. Look, to be -- to be fair, I didn't have the
24 perspective I do today of how much of a food fight this whole
25 process, excuse me, is, but at the time, when -- when he

1 reached out and asked me that, it didn't seem kind of out of
2 the ordinary.

3 Q And just so the record's clear, who is Mr. Sanchez?

4 A He's the CEO of Sanchez Energy.

5 Q Do -- what general recollections do you have about that
6 conversation?

7 A He asked about my background, what I had done, et cetera,
8 so we talked about that. And I commented to him at the time
9 that it was surprising to me even then that there was this sort
10 of fairly wide trust gap between the creditor constituencies
11 and the debtors, just to sort of see what his reaction was.
12 And he said, look, people have lost money and they're
13 frustrated. And we're looking for help to help sort of
14 mitigate that because the focus is to try and restructure the
15 company and get it out of bankruptcy, and it was an expensive
16 process, et cetera.

17 Q Do you recall talking about your plans as CRO if you were
18 retained?

19 A Simply that, you know, he asked me how -- how I'd approach
20 this and, you know, I basically told him, look, I'd come in as
21 I described earlier, that you can't really go and do a plan of
22 reorganization without your creditors' support. And so one way
23 or the other, the debtors are going to have to figure out a way
24 to get their creditors to engage with them and support and sort
25 of, if I can help to get some of that dialogue going, that



1 would be necessary. I -- I said the contentiousness that
2 exists will obviously need to be reduced at a minimum or
3 eliminated.

4 Q Did you talk about how you might help that contentious
5 situation?

6 A Yeah. Again, I think as I've talked to you about my
7 approach, I laid that out for Tony as well, which was to say,
8 look, everything's got to be sort of as objectively fact-driven
9 and information-driven as possible. And the other way would be
10 there seems to be lots of questions around what's happened,
11 what's not happened, so some transparency around all of those
12 issues would be critical.

13 Q How long did your conversation last approximately?

14 A I think, you know, it was supposed to be a 30-minute
15 discussion, and my recollection, it probably ran five, seven
16 minutes over, so 35 to 40 minutes.

17 Q Did you have any further discussions or interviews with
18 the creditor groups after talking with the Special Committee?

19 A So that was the 21st and the SOG -- and then I was asked
20 -- Mr. Dizengoff called me and asked me to reach out to
21 somebody at Milbank or maybe -- I forget who it was. Maybe
22 somebody from Milbank called and said that they wanted to do an
23 interview. So I think on or around the 29th of October, I met
24 what seemed like all the different representatives, all the
25 creditor groups at Milbank for an hour.

1 Q Okay. So you said --

2 THE COURT: You said at Milbank and then I missed the
3 next words.

4 THE WITNESS: Sorry. Milbank, for an hour.

5 THE COURT: For an hour. Thank you.

6 BY MS. WARRICK:

7 Q At Milbank's offices in New York?

8 A Yes.

9 Q Who -- do you recall -- you said creditor groups were
10 present. Do you recall individuals who were there?

11 A So my -- I didn't know every single individual. My
12 understanding was that it was legal and financial professionals
13 as well as a couple of holders. I know Brent Buckley was
14 there, Leon Schlesinger was there, Milbank was there, and there
15 was -- there was attorneys and financial advisors from the Ad
16 Hoc Group, the UCC, and the Secured Group. My guess is there
17 was probably 15 people in the room and a bunch more on the
18 phone.

19 Q What do you recall about the questions you received at
20 that interview?

21 A Just that there was a lot of anger and frustration amongst
22 the creditor group. And, you know, they, again, in the hour or
23 so that we were together, the first part of it was them asking
24 about my background, what situations I'd been in. But it was
25 very much -- the tone was very much like have you sort of had



1 to take on a client or take aggressive action against your
2 client and do you have the backbone to go do that. Have you
3 had to go to court to run and sort of whistleblow on bad
4 things? And generally my response was, look, you have issues
5 in all restructuring Chapter 11 cases. And one way or the
6 other, sometimes with my urging, sometimes with some, you know,
7 yelling and screaming, and sometimes it's sort of getting
8 people on board, you find a way to get people to good outcomes.
9 But I had -- you know, I hadn't to date needed to run to court
10 and, you know, sort of report that way.

11 Q Do you recall anything else about that interview at
12 Milbank?

13 A No. Just it -- just that it was, you know, people wanted
14 to make sure that you could -- that whoever the CRO was, was
15 not going to -- was really going to go and be ready to, you
16 know, do whatever it took to get to the bottom of things and
17 then -- and so that was one. And the second was just that
18 people were very angry.

19 Q After that interview, did you have conversations -- any
20 further conversations with representatives of the creditor
21 groups?

22 A I had a -- I had a call a few days later from
23 Mr. Schlesinger, who I guess at that point, the Committee and
24 the Ad Hocs were trying to decide who to support or whether to
25 support one of the debtors' candidates. And he called and

1 said, there's a couple of questions I need to ask you because
2 one of the -- one of the committee members has asked and I'm
3 having a call with him later today. I don't recall exactly
4 what the topic was specifically, but he asked me for a couple
5 of examples. I gave them to him on things I had worked on.
6 And later in the day, I sort of checked in with him and he
7 said, "Yeah, you addressed my questions. That was fine."

8 Q Okay. Do -- were you left with any impressions about kind
9 of where your retention stood following those creditor
10 discussions?

11 A My impression, and -- and I got some additional feedback
12 -- my impression was that the UCC at that point was open to my
13 retention. The Ad Hoc Group absolutely wasn't, and there was
14 sort of dialogue, or at least some members of the UCC were.
15 But again that was just my impression.

16 Q At some point during this process, did you or M-III
17 perform a conflicts check?

18 A Yes.

19 Q Okay. So I want to talk for a few minutes about conflicts
20 or potential conflicts here. Do you personally have any
21 connections to the Sanchez family?

22 A No.

23 Q Have you -- you've never worked with them or for them
24 before?

25 A Nope. I didn't know them before I heard from -- before

1 this sort of recent dialogue.

2 Q Does M-III Partners have any sort of connections to the
3 Sanchez family?

4 A No.

5 Q And do either of you or M-III Partners have any
6 connections to any of these related parties that we've talked
7 about such as SOG or SNMP?

8 A No.

9 Q Do you personally have any connections to the Sanchez
10 Energy Board of Directors?

11 A No.

12 Q Members of the Board of Directors? Does M-III have any
13 connections to members of the Board of Directors?

14 A No. And just let me -- let me -- to the previous
15 question.

16 Q Uh-huh.

17 A As we've spoken about, I know Gene Davis is on the board
18 of Sanchez Energy. I knew him.

19 Q Uh-huh.

20 A And over the last ten years, we've sort of interacted and
21 been sort of -- as colleagues in the general restructuring
22 industry, but that would be it.

23 Q Okay. Do you have any connections -- do you have any
24 other connections to Mr. Zylman?

25 A No.

1 Q What about your connections with Akin Gump? Do you have
2 any and what are they?

3 A So my -- my -- I have not ever worked with Akin Gump, at
4 least that I can recall, but they were aggressively on the
5 other side of me as UCC counsel on Sears. So we spent a lot of
6 time the last year dealing with each other.

7 Q So you were adverse to Akin Gump in your last position?

8 A Correct.

9 Q Can you think of anything that would indicate a lack of
10 independence on your part or on the part of M-III in connection
11 with this retention?

12 A No.

13 Q We mentioned at kind of the outset of these questions that
14 M-III performed a formal conflicts check. Is that right?

15 A Correct.

16 Q And what were the results of that conflicts check?

17 A We don't believe there are any conflicts.

18 Q Do you feel like the terms of your engagement will allow
19 you to maintain your independence?

20 A Yes.

21 Q I want to talk briefly about compensation. That M-III
22 will receive --

23 THE COURT: Before we go there -- before we go there.

24 MS. WARRICK: Pardon. Yes.

25 THE COURT: Do you think your original terms would

1 have allowed you to maintain your independence?

2 THE WITNESS: I think that the original terms, which
3 were very focused on a couple of specifically conflicted areas
4 -- my expectation was that over time that would need to be
5 expanded.

6 THE COURT: So do you think that the original terms
7 did not give you sufficient independence?

8 THE WITNESS: No. It wasn't -- look, the -- my
9 perception of independence is really my own mind and judgment.
10 So how I would approach -- so I view that as really the scope
11 of services. And I had, in my mind, absolutely no constraints
12 around being able to look at the SOG contracts or the midstream
13 contracts and approach those in a -- from an independent
14 perspective. I think what's -- what the changes have done is
15 allowed -- sort of essentially broadened the scope.

16 THE COURT: But at least I read it to say that if the
17 Board had said no, you would have been obliged to not look. Is
18 that -- was that what you thought you were signing up for? I'm
19 just trying to understand -- this letter appears to be one
20 drafted by you, not by them, and so I'm trying to figure out
21 how those provisions came into being.

22 THE WITNESS: Well, we -- no, I think -- I think we
23 talked about that. And the discussion, and I believe it was
24 with Mr. Rubin, because I had asked about these -- the scope
25 paragraphs, what I had been told by the debtors had been

1 carefully -- ended up with the letter as negotiated as between
2 the senior -- the first lien lenders and the debtors, and
3 that's what they wanted me to start with. And if there were
4 other changes required, then -- then we could -- I could talk
5 to the Special Committee about that.

6 THE COURT: Thank you.

7 BY MS. WARRICK:

8 Q And one additional question on that. Do you -- is it your
9 understanding if there were whistleblower protections in the
10 original scope of the CRO order?

11 A Yes, I believe there were.

12 Q Okay. So going back to compensation, is M-III's fee and
13 expense structure contained in the engagement letter that's
14 before the Court?

15 A Yes.

16 Q Are the fees and expenses that you'll be charging in
17 connection with your engagement consistent with arrangements
18 that M-III has entered into in similar circumstances?

19 A Yes.

20 Q Is it your understanding that M-III will file fee
21 statements with the Court?

22 A Yes.

23 Q How regularly will you do that?

24 A Monthly.

25 Q Okay. Since signing your engagement letter, have you done



1 anything to start your work as CRO?

2 A Yes. As I -- I think we -- we touched on this a little
3 bit. I attended -- did a couple visits -- a couple days' worth
4 of visits at the company just to familiarize myself with the
5 business, et cetera, the week prior to Thanksgiving. And then
6 I was at the company yesterday as well.

7 Q And have you been involved in phone calls or email
8 communications about the company?

9 A I have.

10 Q Have you been working on an updated business plan?

11 A Yes. What -- what I've done there was there was a
12 business plan presented to the Special Committee, I think, sort
13 of early the week of Thanksgiving. And the Special Committee
14 asked me to take a look at it -- look at that because they
15 expected me to provide that. I in turn reached out to Moelis
16 and Alvarez & Marsal to ask them to start doing some work, and
17 specifically to do the work from the perspective of -- well,
18 management may want certain things. I wanted their firms'
19 independent views addressed to me on what they thought with
20 respect to the business plan assumptions.

21 Q Have you started to familiarize yourself with the related
22 party issues in this case?

23 A A little bit, in relation to specifically the midstream
24 contract, I had a meeting with Sanchez Energy's head of
25 marketing yesterday and a couple members of the FP&A team,



1 really just to start understanding how many different midstream
2 contracts there were. What --- so I'm at the early stages of
3 -- of doing that.

4 Q Okay.

5 A I requested the Ropes & Gray report but that hasn't been
6 provided to me yet.

7 Q Do you understand whether or not you'll receive a copy of
8 the Ropes & Gray report if you're formally retained?

9 A My understanding is that if -- if my retention is
10 approved, it will be given to me then.

11 Q Okay. And so it sounds like you've dedicated a good bit
12 of time already to this engagement. Do you believe you have
13 the capacity necessary to continue your work going forward?

14 A So in part to allay the concerns around, you know, am I
15 available? That's one of the reasons I -- even though there's
16 a risk that I may not be paid for it, I decided that it would
17 be -- and -- and I think the second -- secondary reason is
18 really that it appears that there are some discussions about
19 when business plans were going to be provided, et cetera, et
20 cetera. So what my view was, even if I got approved today,
21 starting this on Monday, with the Christmas holidays coming up,
22 would make it pretty tight.

23 Q And I wanted to ask a couple more questions about scope
24 and then we can wrap up here. Did with -- talking about the
25 original scope of your retention, did you understand that that

1 had been negotiated and agreed to by the creditors?

2 A My impression was that it had been agreed to and
3 negotiated with at least the first lien lenders.

4 Q And did you know whether the unsecureds or the ad hoc -- I
5 mean the committee or the ad hoc group had been involved in
6 that?

7 A Not specifically.

8 MR. FINESTONE: Objection. Leading.

9 MS. WARRICK: Okay.

10 THE COURT: Sustained.

11 BY MS. WARRICK:

12 Q And have you -- in any other situation in which you've
13 served as a CRO, have you seen the scope of your engagement
14 enlarged after you have started your job?

15 A Yes.

16 Q What are some of those other situations?

17 A Well, generally -- I'm trying to think about what specific
18 examples I could think of where it wasn't necessarily kind of a
19 document of scope, but in general, the way our engagement
20 letters are usually drafted -- this one's sort of a little bit
21 unusual -- is that you would have fairly boilerplate things
22 around business plans, models, kind of restructuring plans, and
23 that would be kind of a catch-all around other services that
24 were to be agreed upon either with the board or the special
25 committee or whoever the sort of the governing authority was.

1 And in most if not all cases -- for instance, I'll give
2 you an example. When I worked on Covanta Energy, one of the
3 concerns the -- this is going back a long time -- one of the
4 big concerns the creditors -- the secured creditors -- had in
5 that case, and the committee, was that the company's cost
6 structure was too high. So we -- and they'd been having a
7 battle with management for a year before that when I am
8 reducing that, until it was agreed that my team and I would
9 take a look at that. We took charge of that and we then were
10 able to get -- really build a significant cost reduction plan
11 and get all the creditor constituencies and management on
12 board.

13 Q Okay. So wrapping up here, I just want to ask you a few
14 final questions. First of all, is it your belief that M-III is
15 eligible for retention by the debtors in this case?

16 A Yes.

17 Q And is it your belief that you're well suited to serve as
18 the chief restructuring officer for the debtors?

19 A I will do my utmost to make this case successful, yes.

20 Q And why would you say that you will do what you can to
21 make this case successful?

22 A I'll do everything in my power and I -- given my
23 experience I think I can do it.

24 MS. WARRICK: All right. I'll pass the witness.

25 THE COURT: Thank you. Any further questions from



1 any proponents of the retention?

2 All right. Who's going to take the lead for the
3 opponents?

4 MR. FINESTONE: I think we need to clear the
5 courtroom or discuss with the court in camera.

6 THE COURT: Let me see the document.

7 MR. FINESTONE: It's more of a concept. I don't need
8 to show him the document. Can I approach, Your Honor?

9 THE COURT: So the question is whether this can be
10 discussed publicly or whether it needs to be discussed under
11 seal. Is that the question that we're going to raise?

12 MR. FINESTONE: It's his assertion of the
13 confidentiality.

14 THE COURT: I just want to know what question we're
15 going to answer --

16 MR. FINESTONE: Yes.

17 THE COURT: -- and then I want to read the letter,
18 but is the question whether it can be discussed in public or
19 must be discussed only in private?

20 MR. BRIMMAGE: It might be both, Your Honor. This
21 letter was produced under professional eyes only, under the
22 confidentiality agreement and order in this case. We think
23 that it should not -- certainly not be disclosed in public at
24 all. And I can go into the reasons for that, but I don't
25 really want to characterize the letter or do anything else.



1 THE COURT: I'm not asking you to. So are you
2 arguing that it -- it's not admissible for some reason or only
3 that's it not admissible without appropriate restrictions?

4 MR. BRIMMAGE: Well, I think, number one, it's not
5 relevant, so let me start there.

6 THE COURT: Okay.

7 MR. BRIMMAGE: But to the extent the Court finds it's
8 relevant and it should consider whether it should come in, then
9 we would ask that it be under seal -- strictly under seal.

10 THE COURT: I just wanted to understand what the
11 discussion was going to be, so that I could read the letter in
12 that context.

13 MR. BRIMMAGE: Yes. Fair enough.

14 THE COURT: So give me a minute and I'll read it.

15 MR. FINESTONE: Your Honor, one more preliminary
16 comment before Your Honor reads the letter. It's not the
17 letter that I would be pressing to have admitted or even shared
18 with anyone publicly. It is the -- it is the leading fact in
19 the letter.

20 THE COURT: Let me --

21 MR. LEBLANC: And, Your Honor. I mean, it may also
22 be helpful -- just this is what we -- was redacted. It's the
23 same topic that was redacted in our pleadings, so Your Honor's
24 seen that in an unredacted version. That's the fact that I
25 think both of us want to use with witnesses. That proposal has

1 been made for lack of a better word.

2 THE COURT: Thank you.

3 MR. BRIMMAGE: Your Honor, I think that's enough
4 that's been said. I don't know why that comment was made, but
5 that's enough that's been said by counsel.

6 THE COURT: Let me read it.

7 (Pause)

8 THE COURT: All right. I'm going to listen to
9 argument on what to do about this in Judge Jones' courtroom.
10 So everybody can stay here. People can stay on the phone.
11 We're going to go over there. Let me get -- I need the ERO to
12 go set up in there because it's not set up, and then I'll
13 listen to the argument in there.

14 Is there a dispute over gets to participate in that
15 argument, in terms of who ought to be in the room and not in
16 the room for that argument?

17 MR. BRIMMAGE: Your Honor, may I have one second?
18 Your Honor, I believe it would be appropriate for obviously the
19 debtors, the 11s, the unsecureds represented by Mr. Finestone,
20 and the UCC.

21 THE COURT: Is there anyone that believes --

22 MR. BRIMMAGE: Probably anybody else --

23 THE COURT: -- that they are entitled to participate
24 in this hearing? Mr. Higgins?

25 MR. HIGGINS: Your Honor, we've also signed the



1 protective order.

2 THE COURT: I can't -- you'll need to come up.

3 MR. HIGGINS: I'm sorry, Your Honor. John Higgins,
4 for the record. We've also signed the protective order.

5 MR. BRIMMAGE: Your Honor, even if certain
6 individuals have signed the protective order, they likely,
7 unless I identified them, do not have a copy of this. It was
8 produced professional eyes only to just certain limited
9 parties. And we would --

10 MR. HIGGINS: We are professionals that are party to
11 that agreement, Your Honor. We're not suggesting that we share
12 with our clients absent further consent from the debtor and/or
13 relief from this Court.

14 THE COURT: Who's your client?

15 MR. HIGGINS: GSO. Capital Partners, Your Honor.

16 THE COURT: Okay. Mr. Hancock.

17 MR. HANCOCK: Your Honor, Tye Hancock for the World
18 Bank of Canada. We're in the same boat -- parties to the
19 protective order. Any attorneys eyes only provisions of that
20 order would apply to Thompson Knight, so we would expect to
21 participate as well.

22 THE COURT: Is there anyone else that believes they
23 should be allowed to participate in that hearing? All right.
24 I'm going to allow the other two to participate as well, and
25 order that they keep it attorneys eyes only. I don't think



1 this will take very long.

2 (Court and clerk confer)

3 THE COURT: Okay. We'll reconvene at five till three
4 in Judge Jones's courtroom under seal with only those attorneys
5 that have been identified. Parties can stay here or not,
6 whatever you want to do. But we'll reconvene over there.

7 Okay. Thank you.

8 (Recess taken at 2:40 p.m.)

9 (Proceedings resumed at 3:10 p.m.)

10 THE COURT: Please be seated. So it was --

11 MR. LEBLANC: Your Honor, it looks like Mr. Brimmage
12 has been delayed for a second. If you wouldn't mind waiting
13 for him.

14 THE COURT: It was such an uneventful sealed hearing
15 that I'm going to instruct the clerk simply to make a docket
16 entry that between approximately 2:55 and 3:05 the Court
17 conducted a sealed hearing. And there won't be other minutes
18 concerning the sealed portion of the hearing. They're just not
19 needed. Anybody that's interested can go, if they're entitled
20 to, learn about it from the transcript; and if they're not
21 entitled to, not learn about it. I wouldn't waste a whole lot
22 of time trying to learn about it, though. Let's wait for
23 Mr. Brimmage and then we'll get started.

24 All right. Let's proceed.

25 MR. FINESTONE: Ben Finestone, Quinn Emanuel, for the



1 Ad Hoc Group of Unsecured Noteholders.

2 CROSS-EXAMINATION

3 BY MR. FINESTONE:

4 Q Good afternoon, Mr. Meghji.

5 A Good afternoon.

6 Q Mr. Meghji, do you remember during your direct testimony
7 when you testified that the debtors had indicated to you that
8 this role really had to be you as an individual?

9 A Yes.

10 Q And, Mr. Meghji, you're not -- you don't consider yourself
11 an E&P expert, do you?

12 A I don't, but on -- on my team I had negotiated to have
13 available to me an E&P expert who I'm familiar with who's an
14 ex-CEO of an energy company. So that's part of the engagement
15 letter that I've negotiated. And subject to the Special
16 Committee's approval, I can use that if and when I need to.

17 Q Okay. Let's come back to -- let's come back to the --
18 this second individual who may do some work subject to the
19 Special Committee's approval. For now, I'm just asking
20 questions about you, Mr. Meghji.

21 A Sure.

22 Q You don't -- you're not an E&P expert, correct?

23 A I think I've testified to my experience in E&P. So, no,
24 I'm not an expert in E&P.

25 Q And more specifically than that, you're not an expert on

1 midstream companies within the E&P space, are you?

2 A No.

3 Q You have no experience valuing midstream companies, do
4 you?

5 A No. I've not done so.

6 Q You've no experience in -- you've no experience valuing
7 companies whose primary assets are gathering or pipeline
8 assets, correct?

9 A Valuation experience?

10 Q No. My question is much more specific than that, sir.
11 You have no experience valuing companies whose primary assets
12 are gathering or pipeline or other midstream assets.

13 A I don't.

14 Q You have no experience negotiating the purchase or the
15 sale of midstream companies, do you, sir?

16 A No. I'm not a banker.

17 Q Irrespective of banker or not, you have no experience?

18 A No.

19 Q You have no experience valuing upstream E&P companies such
20 as the debtors', correct?

21 A Not valuing upstream companies, no.

22 Q Okay. Separate from valuing, sir, you have no experience
23 negotiating the purchase and sale of upstream E&P companies,
24 correct?

25 THE COURT: Gentlemen, I appreciate that y'all are

1 trying to tone everything down, but you probably need to tone
2 it up a little bit more so that we can all hear.

3 BY MR. FINESTONE:

4 Q I'll restate that last question, Mr. Meghji.

5 You have no experience negotiating the purchase or sale of
6 upstream E&P companies such as the debtors-in-possession,
7 correct?

8 A I think as I testified earlier in the context of my SPAC,
9 I had worked on -- as chairman of the SPAC, looked at several
10 term sheets and negotiated several rounds of agreements
11 relative to a couple of companies in the space; Talos Energy,
12 for instance. But, in general, I would say it's not much more
13 than that.

14 Q Yeah. And that limited experience didn't concern any oil
15 and gas assets in the Eagle Ford, did it?

16 A No.

17 Q And, Mr. Meghji, just to put a button on it, you have no
18 experience negotiating the consolidation of upstream and
19 midstream companies, correct?

20 A No.

21 Q You do understand, Mr. Meghji, that there are certain
22 officers of this company who do have significant experience
23 with such strategic transactions, don't you?

24 A Certain officers of which company? I'm sorry.

25 Q The company of the debtors-in-possession, of Sanchez

1 Energy Corp. Let me withdraw the question.

2 You understand, Mr. Meghji, that Tony Sanchez, III, has
3 significant experience negotiating strategic transactions
4 between upstream E&P companies and midstream companies?

5 A I assume so. I believe he's done that in the past, but I
6 have not sort of inquired about -- deeply about his -- what
7 he's done in the past.

8 Q Well, you've made yourself slightly familiar at least on
9 background as to the history of the related party transactions
10 between the debtors and their affiliates, correct?

11 A Yes.

12 Q And you understand that Tony Sanchez, III, was involved in
13 negotiating all of those transactions, correct?

14 A Yes.

15 Q You understand that Tony Sanchez, III, is on the board on
16 Sanchez Midstream Partners?

17 A I believe so.

18 Q You understand, sir, that Tony Sanchez, III -- you
19 understand that the Special Committee has testified that for
20 all intents and purposes he calls the shots at Sanchez
21 Midstream Partners?

22 MS. WARRICK: Objection. Calls for speculation.
23 It's argumentative.

24 MR. FINESTONE: I do not know when --

25 THE COURT: Wait, wait, wait. Hold on. I don't see



1 how it is, given the wording of the question. So tell me why
2 it's either one of those two.

3 MS. WARRICK: He's referring to a deposition that's
4 not in the record in his question.

5 THE COURT: I'm going to overrule the objection. And
6 I don't think that it fits. He can -- he isn't referring to
7 the deposition. He's asking a question. Go ahead.

8 THE WITNESS: Can you please repeat the question?

9 BY MR. FINESTONE:

10 Q You understand, sir, that the Special Committee --
11 Mr. Davis, the chair of the Special Committee, is of the view
12 that Tony Sanchez, III, for all intents and purposes call the
13 shots at SNMP?

14 A I've not read Mr. Davis's deposition so I -- if you say
15 so.

16 Q Mr. Meghji, you have no experience in exploring
17 alternatives to existing midstream relationships, do you?

18 A Past experience, no.

19 Q You don't any idea of other pipeline companies in Dimmit
20 County, for example, do you?

21 A No.

22 Q You don't have any idea of other pipeline companies in any
23 counties in the Eagle Ford, do you?

24 A Not that I've -- no.

25 Q You've never considered, Mr. Meghji, as a business matter,

1 the concept of overbuilding an existing midstream system, have
2 you?

3 A Of overbuilding a midstream company, no. I've not done --
4 planned to do that.

5 Q You don't even understand the concept of overbuilding a
6 midstream system, do you?

7 A I am not -- I'm not familiar with that.

8 Q You don't have any views on the appropriate rate for water
9 disposal, do you?

10 A Actually, we looked a water filtration company as an
11 investment, but I've not specifically looked at water disposal
12 rates.

13 Q Currently in the Eagle Ford, you have no view as to the
14 appropriate rate for water disposal, do you?

15 A No.

16 Q You don't know if it's customary to charge for water
17 disposal, do you?

18 A Actually, I understand it is customary to charge for water
19 disposal, but I don't know what the specifics are in the Eagle
20 Ford.

21 Q You don't know, given where gas prices are today, whether
22 this debtor should be paying fractionation fees, for example,
23 do you?

24 A No.

25 Q You don't know if it's more favorable in the market to be

1 flaring gas instead of continuing to ship through the SNMP
2 gathering system, do you?

3 A No.

4 Q Mr. Meghji, in connection with Sears, it's true, is it not
5 that you testified in support of a sale transaction of
6 substantially all the Debtors assets to Eddie Lampert's
7 investment vehicle?

8 A Yes.

9 Q And it's true -- I think you testified earlier -- that the
10 Statutory Creditors Committee objected to that sale, correct?

11 A Yes.

12 Q It wasn't the case, sir, that all of the -- you had some
13 creditor support in connection with that transaction, correct?

14 A Yes.

15 Q The DIP lender supported it, correct?

16 A Yes.

17 Q Now you didn't -- it's not that you went forward with that
18 sale notwithstanding the fact that all of the creditor bodies
19 in the case objected to it, correct?

20 A The unsecured creditors objected to it.

21 Q Question's a little bit different. Let me ask you a more
22 general question, sir. If appointed CRO, you wouldn't seek to
23 ignore the wishes of the entire creditor body of these estates,
24 would you?

25 A No. I would not.



1 Q You understand, Mr. Meghji, that -- you testified a little
2 bit about the fact that if appointed you were going to report
3 on the issues within your scope to the Special Committee. Do
4 you remember that?

5 A Yes.

6 Q But you don't have any understanding, do you, sir, as to
7 what matters the Special Committee has to in turn report to the
8 entire board of Sanchez Energy, do you?

9 A I have not reviewed that.

10 Q Yeah. For example, sir, you have no idea whether or not
11 the Special Committee has the authority to approve of a Chapter
12 11 plan in these cases without the approval of the balance of
13 the Sanchez Energy board, correct?

14 A Not specifically, I don't know that.

15 Q And you also -- you interviewed exclusively with the --
16 well, let me take a step back. That phone call that you had
17 with Mr. Zylman, the chair of the Special Committee, he wasn't
18 on that phone call, wasn't he?

19 A Mr. Davis?

20 Q Correct.

21 A He was not on that call.

22 Q And you don't why he couldn't make the call, right?

23 A I don't.

24 Q You understand, sir, that the Special Committee did
25 ultimately decide, obviously, Mr. Meghji, to move forward with

1 you as a CRO candidate, correct?

2 A Yes.

3 Q But you understand, do you not, that the -- ultimately,
4 the Special Committee only recommended that amount to the
5 entire Sanchez Energy board and the Sanchez Energy board had to
6 approve of your retention, correct?

7 A I don't know specifically kind of what went on behind the
8 scenes.

9 Q You don't know one way or the other, right?

10 A I don't.

11 MR. FINESTONE: Nothing further, Your Honor.

12 THE COURT: Thank you.

13 MR. LEBLANC: Your Honor, I don't have any questions
14 of this witness.

15 THE COURT: Thank you. Any follow-ups?

16 REDIRECT EXAMINATION

17 BY MS. WARRICK:

18 Q All right. Just a few follow-up questions. Mr. Meghji,
19 you were asked a series of questions about whether you had done
20 evaluation work in this energy sector.

21 A Correct.

22 Q Are you being asked to do valuation work in this case?

23 A No.

24 Q And again, you were asked about your prior experience in
25 the E&P industry and in the midstream services industries and

1 whatnot. We have your answers. You mentioned, though, you
2 have somebody else on your team who is working with you on this
3 matter. Is that correct?

4 A Correct.

5 Q Okay. And describe for the Court the experience of that
6 individual.

7 A So I have a director of on my team, John Boffi, who's on
8 the -- was in the court -- who had spent -- he's assisting me
9 with this engagement on a full-time basis. He worked for six
10 years at First Reserve, which is an energy private equity firm.
11 And, in addition to that, I have the ability, subject to the
12 Special Committee's consent, to bring in my E&P expert if and
13 when I deem necessary.

14 Q So do you feel that you have the resources to work in this
15 sector, this E&P space?

16 A I do.

17 Q And are you aware of the company's audit committee?

18 A I assume there's an -- I don't know what the composition
19 of the audit committee is, specifically.

20 Q Are you aware the audit committee has its own counsel?

21 A I was not aware of that.

22 Q And are you aware of the audit committee's involvement in
23 negotiating contracts and agreements?

24 MR. FINESTONE: Objection.

25 THE WITNESS: No.



1 MR. FINESTONE: Leading, Your Honor.

2 THE COURT: I don't know if it's leading, but he
3 doesn't know, so it doesn't matter.

4 MS. WARRICK: Nothing further. Pass the witness.
5 Thank you.

6 THE COURT: Will you have, if you're retained as CRO,
7 any daily operational authority?

8 THE WITNESS: In relation to operating the company?

9 THE COURT: Yes.

10 THE WITNESS: I believe -- no, I don't think so. I
11 think my focus will be around how to sort of move the
12 restructuring process forward. Dealing with all the conflict
13 issues.

14 THE COURT: So -- who will be running the company on
15 a day-to-day basis?

16 THE WITNESS: My understanding is that the management
17 team that's there will be running it, subject to me -- my
18 involvement on any conflict-related issues as between the
19 related parties and Sanchez Energy.

20 THE COURT: Okay. Thank you. You can go ahead and
21 step down.

22 THE WITNESS: Thank you.

23 (Witness excused)

24 THE COURT: Who's going to be our next witness?

25 MR. BRIMMAGE: Your Honor, the Debtors would like to



1 call Adam Zylman to the stand, please.

2 THE COURT: All right. Could we ask Mr. Zylman to
3 come in? Mr. Meghji, I need to ask you to go ahead and leave.

4 MR. LEBLANC: Your Honor. Your Honor, Andrew Leblanc
5 of Milbank. We don't need -- we don't need Mr. Meghji subject
6 to recall, so if -- I think that would excuse him from the 615
7 sequestration if --

8 THE COURT: That's up to the parties. If the parties
9 are happy leaving him here, that's fine.

10 MR. LEBLANC: We're fine. The two of us are fine --
11 the two of us being us and the -- UCC and the Ad Hoc Group are
12 fine with it.

13 THE COURT: Is there anyone that wants the rule to
14 continue to be applied to Mr. Meghji? Is the Debtor planning
15 to recall Mr. Meghji for any reason?

16 MR. BRIMMAGE: I'm consulting, Your Honor.

17 THE COURT: If he stays he can't be recalled, so.

18 MR. BRIMMAGE: Understood, Your Honor. One second.

19 (Counsel confer)

20 THE COURT: Come on forward, Mr. Zylman. You remain
21 under oath from earlier today.

22 MR. BRIMMAGE: Your Honor, until we figure this out,
23 we'll have Mr. Meghji step outside and we'll pick it up then.

24 THE COURT: It's up to you. Yeah. Up to you.

25 MR. BRIMMAGE: Your Honor, I think Mr. Meghji has



1 already excused himself for now.

2 THE COURT: Thank you.

3 MR. BRIMMAGE: Sorry for the confusion, Mr. Zylman.

4 THE WITNESS: Not a problem.

5 ADAM ZYLMAN, DEBTORS' WITNESS, PREVIOUSLY SWORN

6 DIRECT EXAMINATION

7 BY MR. BRIMMAGE:

8 Q Would you please introduce yourself to the Court?

9 A I'm Adam Curtis Zylman.

10 Q Have you testified in court before?

11 A I have not.

12 Q Have you ever been deposed before?

13 A Monday this week was my first time.

14 Q Okay. Congratulations.

15 A Thank you. Week of firsts.

16 Q Can you tell the Court what your role is with the debtors?

17 A I am an independent director and a member of the Special
18 Committee.

19 Q Okay. I want to go over a little bit of your background
20 so the Court can get a little of idea about who you are. Can
21 you tell us where you went to school and what your other
22 educational background is.

23 A Of course. I went to Rice University and had a major in
24 economics and managerial studies, double major.

25 Q Okay. Did you do anything else while you were in college?



1 A Played football on scholarship.

2 Q Okay. How long did it take you to graduate?

3 A Three years.

4 Q What position do you play?

5 A Insider linebacker.

6 Q Oh, I won't make any comments. Can you briefly describe
7 your work history once you graduated from college and kind of
8 build us up to where you are today?

9 A Sure. Out of undergrad, I went to work at Merrill Lynch
10 in their global energy and power group. Did that for seven
11 years. Was promoted a couple of times -- associate vice
12 president. I did not go back to business school. I made a
13 lateral move into private equity in 2003 with a firm called SCF
14 Partners. I spent six years there, and then in 2009 I resigned
15 and co-formed a private holding company where I'm the President
16 and CEO called Sunland Capital.

17 Q What does Sunland Capital do?

18 A Sunland Capital was established in '09 to buy, build with
19 the intent to hold a portfolio of operating businesses, energy,
20 industrial, and infrastructure service companies, primarily.

21 Q And you're the one that formed it?

22 A I co-formed it with my business partner. Yes, sir.

23 Q Can you tell us what your job is, what your role is, at
24 Sunland Park -- Capital -- excuse me.

25 A So I'm the President and CEO of Sunland Capital, the



1 holding company. I serve as the CEO of each of the four
2 operating companies as well, but I generally have a president
3 or a general manager that runs the day-to-day operations of
4 those businesses in the geography where they're headquartered.

5 Q Can you briefly describe each of the four companies to the
6 Court, please --

7 A Sure.

8 Q -- and what they do.

9 A Sure. So in the Permian Basin, the Delaware Basin,
10 primarily, we have the fluid handling services business called
11 Lobo Trucking. We own a conductor drilling business that
12 operates throughout the Rockies and Mid-Continent called Pete
13 Martin Drilling. We own a specialized dredging services
14 business called Javeler Marine Services that operates out of a
15 facility south of Lafayette in Louisiana. And then we own a
16 non-destructive excavation or a hydrovac business that operates
17 in East Houston called Delta Daylighting.

18 Q What is -- I heard the description, but what does Delta
19 Daylighting do?

20 A So non-destructive excavation is effectively using
21 high-pressure water to disturb soil, and then a high-pressure
22 vacuum to vacuum that slurry into the refuse bin on the truck,
23 to non-destructively expose pipeline infrastructure or fiber
24 optic cable or electrical lines.

25 Q Okay. Do you have any specializations at your work at

1 Sunland?

2 A In terms of specializations, I mean, like I said, I'm the
3 one that came up with the idea, convinced a wealthy
4 entrepreneur to back me as my partner. We have had a great
5 partnership. I've sourced the transactions. I've structured
6 the deals, closed the transactions, developed the management
7 teams, built the businesses, restructured the businesses
8 organizationally in 2015 and '16, during the last energy
9 industry downturn. And I really wear a lot of hats in the
10 small business -- the holding company is two individuals,
11 myself and an accountant, basically, although we've now hired
12 another accountant.

13 Q What are your future plans for Sunland Capital?

14 A So I sold my interests in the business back to the company
15 about a year ago, a little over a year ago, for cash plus a
16 two-year earn-out, and transitioning out at the end of this
17 calendar year. I've started a new entity called Gray Owl
18 Partners which will be my holding company, my personal holding
19 company, and effectively have two subsidiaries or affiliated
20 entities called Gray Owl Capital and Gray Owl Advisors, Capital
21 being an investment entity to do exactly what Sunland Capital
22 has done for the last ten and a half years. And Gray Owl
23 Advisors is an idea to go and leverage my 15 to 20 years of
24 experience working with multiple businesses simultaneously,
25 with hopes of finding orphaned businesses owned by private



1 equity funds where I can get equity exposure to value creation
2 rather than charging sort of an hourly fee like a typical
3 advisory business might do.

4 Q When you say "orphaned" companies, what does that mean?

5 A In my mind it's a business that's maybe in an old fund
6 that's at or beyond its originally agreed-upon fund life. It's
7 sort of stuck, no prospects for exit, and the private equity
8 firm team likely doesn't want to spend time or energy focused
9 on that business. They want to go invest capital in the most
10 recent fund which will move their LP and their financial
11 needles more meaningfully. But basically go and try and create
12 value in that orphaned business, take a piece of the upside of
13 the value that's created hopefully so they have very little
14 downside and a lot of upside --

15 Q All right.

16 A -- in terms of the current owner.

17 Q I want to transition to how it came to be that you got on
18 the Special Committee. Why don't you start with this. How did
19 the opportunity to get on the Special Committee come up?

20 A I was approached by Tony Sanchez, III, to consider the
21 opportunity of being a second member of two independent
22 directors that would be added simultaneously with the view that
23 a Special Committee was also to be created.

24 Q Approximately when was that?

25 A It would have been late summer or early fall of last year,

1 2018.

2 Q And how do you know Mr. Tony Sanchez?

3 A I've known Tony for several years now. We run in very
4 similar social circles, a number of mutual friends. I've never
5 worked with him professionally, before joining his board
6 obviously, but we also belong to an educational and
7 professional organization called Young Presidents Organization.

8 Q Okay. When he brought this up, what did you think about
9 the opportunity to become a director?

10 A Well, I've been a director on several private boards in
11 the past, especially during my time in private equity, but have
12 not had an opportunity to be on a public board, so I was
13 excited about the opportunity. It had been more difficult to
14 find those opportunities than I was anticipating.

15 I will say I made a kind of offhand comment in my
16 deposition, which in reading it was -- was a poor choice of
17 words. I want to apologize for that offhand comment if it
18 offended the Court or anybody else.

19 But I also felt like the Special Committee opportunity
20 would be, you know, very intellectually stimulating for sure,
21 but also could create incremental opportunities for me in my,
22 you know, future career as well.

23 Q Can you tell the board about your -- not the board. Can
24 you tell the Court about your private board experience?

25 A Sure. It is very common for a private equity fund to have



1 a couple of professionals at the fund level working on the
2 portfolio companies. And generally those professionals will
3 also serve on the formal board of the business, oftentimes will
4 bring in independents as well. So I've served on several of
5 the SCF boards while I was there; and then was sort of an
6 observer, if you will, on some of the other ones where I wasn't
7 formally on the board.

8 Q Okay. Do you feel like you have an understanding of what
9 a board member does?

10 A I understand the fiduciary responsibilities of a board
11 member very well. I take them very seriously.

12 Q Can you describe those to the Court, your understanding of
13 those?

14 A Sure. The duty of loyalty and the duty of care. In
15 simple terms, it's the interests of the business or the estate
16 ahead of your personal interests, and do your diligence, pay
17 attention, read the material, and make thoughtful decisions
18 when you make decisions.

19 Q Okay.

20 A Layman's terms, I realize, but that's how I think about
21 it.

22 Q You're not a lawyer, right?

23 A I am not a lawyer.

24 Q All right. So let's go back to the process that you
25 underwent to join the Special Committee. Can you describe for

1 the Court what that process was?

2 A Sure. We set up a meeting. Tony asked me to come
3 downtown and spend some time with him, and then also with his
4 father. We had what I'll call a lengthy discussion, initially
5 with Tony, then with Tony and his father. Tony left for a
6 while. He came back. Out of that, I think I made a good
7 impression.

8 It was followed up with some phone call interviews with
9 several of the other board members. Whether that was two or
10 three, I don't recall exactly, but it was several. And then
11 ultimately was offered the opportunity to join the board in
12 conjunction with the other individual who they were
13 interviewing. They were interviewing -- I know a couple of
14 individuals. I don't know the other. Ultimately Gene Davis
15 was the second member of the committee and joined the same time
16 as I did.

17 Q When you were meeting with the Sanchezes, can you
18 generally describe the topics of conversation that they asked
19 you about?

20 A There was a lot of discussion about my background. You
21 know, I think my impression was they had a restructuring expert
22 in mind, Gene or somebody like Gene, and they wanted somebody
23 to complement that individual as part of the Special Committee,
24 somebody who had more industry experience, maybe more
25 transactional experience, had maybe a little more operational

1 experience, somebody that would be different than what I would
2 call the "process expert" of the restructuring process.

3 So a lot of discussion around the seven years of
4 investment banking, all the M&A transactions that I executed; a
5 lot of discussion about my time in private equity doing those
6 transactions, working with the businesses; and then,
7 importantly, the operational experience running multiple
8 businesses at Sunland Capital simultaneously.

9 Q Now, I believe you previously testified that you hadn't
10 done any -- or hadn't worked with Tony Sanchez. Do I recall
11 that correctly?

12 A Prior to joining his board, we had never worked together
13 professionally.

14 Q Had you worked with any -- Mr. Sanchez, Tony Sanchez, or
15 any Sanchez-related entities prior to joining this board?

16 A I have not. One of our operating companies did a little
17 bit of work for Sanchez back in the 2014 and '15 time frame.
18 That was actually one of the questions that I received during
19 my deposition. I wasn't 100 percent certain of the answer, so
20 I went back and pulled the data.

21 And Delta Daylighting, the hydrovac business, we started
22 that business in '14, they did a little over \$20,000 of revenue
23 for Sanchez down in South Texas in 2014, and a little under
24 \$200,000 of revenue in 2015. I think I had said it was less
25 than 100- in '15. But I did no work for or generated any

1 revenue from Sanchez in 2016, 2017, 2018 or in 2019.

2 Q Okay. And other than Delta Daylighting, none of the other
3 companies that you're in any way affiliated with have done any
4 other prior work with any Sanchez or Sanchez-related entity?

5 A That is correct.

6 Q Were you aware that you would be joining the board as an
7 independent and disinterested director?

8 A Yes.

9 Q What does that mean to you?

10 A To me, independence means you have no obligations, prior
11 affiliation or loyalty to the company or to the existing
12 management team of a business.

13 Q And what did you understand, as an independent director,
14 your role would be?

15 A As an independent, my understanding was that very shortly
16 after joining the board, along with the other individual, that
17 we would be forming a Special Committee with the initial
18 mandate of evaluating strategic alternatives, including a
19 potential restructuring of the balance sheet.

20 Q Okay. And was a Special Committee ultimately formed?

21 A Yes. The dates, I'm sure we can refer to the minutes, but
22 it was late October when I joined the board, if I recall
23 correctly. And I believe it was in early November, within a
24 week to ten days, that we formed the Special Committee.

25 Q Okay.

1 THE COURT: What year are we in?

2 THE WITNESS: This is 2018, sir.

3 THE COURT: Thank you.

4 BY MR. BRIMMAGE:

5 Q November 2018 is -- that's your --

6 A Again, we can look at the minutes, but my recollection is
7 late October of '18 --

8 Q Okay.

9 A -- we both joined the board simultaneously. A week to ten
10 days later, we formed the Special Committee.

11 Q And just when you say "we," you're referring to who?

12 A Gene Davis and I are the two members of the Special
13 Committee.

14 Q Okay.

15 A He being the chair and me being the member.

16 Q All right. Talk to me a little bit about Gene Davis. Had
17 you met him? Did you know him before this Special Committee
18 assignment came up?

19 A No. I had never met Gene Davis, never heard Gene Davis's
20 name. I met him I believe it was before the first Sanchez
21 board meeting when we joined the board.

22 Q Okay. Did you have any role in him being selected to the
23 Special Committee?

24 A I did not.

25 Q Okay. What is your role as a member of the Special



1 Committee, I guess, through the course of November 2018 to
2 today?

3 A Well, initially when we joined the board, there was an
4 immediate decision to start having weekly meetings. And I
5 would say for the last 13 months, we've had at least one
6 meeting a week, and really more than one meeting a week on
7 average, formal meetings.

8 The early days of those meetings was spent focused on
9 starting to develop a business plan. We had a long fairway
10 ahead of us, at least at that time in terms of liquidity, and
11 the thought was given that we had, you know, time to be
12 thoughtful about this. Let's really spend some time and energy
13 developing a good, thorough business plan.

14 Unfortunately, in the fourth quarter of 2018, commodity
15 prices deteriorated pretty meaningfully and very quickly, and
16 so we pivoted in late 2018 and began to focus in parallel with
17 the business plan on challenging management to aggressively
18 begin cutting costs, which they did. So that was sort of a
19 dual mandate.

20 Q Okay.

21 A May I continue?

22 Q Yes, please do.

23 A So as we went into 2019 now, or sometime in late 2018,
24 there was a view that the Special Committee should proactively
25 commission an investigation of the affiliated entity



1 transactions and any potential conflicts of interest, and so
2 that was added to the Special Committee's mandate.

3 As we went into 2019, the Special Committee also was
4 challenged with reviewing and ultimately approving a revised
5 compensation program for the executive management team. And
6 then as we went through this most recent process, the CRO
7 process has been a big -- a big focus of the Special Committee.

8 Q Okay. I want to talk about that in detail in a minute --

9 A Understood.

10 Q -- but let me go back a little bit. You said you had been
11 having weekly meetings, correct?

12 A We have, at least once a week, formal meetings.

13 Q Who participates and/or attends at the Special Committee
14 weekly meetings?

15 A In all of the Special Committee meetings, it would be Gene
16 and myself. Generally speaking, there are representatives from
17 all of advisors. And unless we're in executive session, you
18 know, frequently the company is on those calls as well.

19 Q Okay.

20 THE COURT: Frequently the who is on the calls?

21 THE WITNESS: The company management team is on the
22 calls as well.

23 BY MR. BRIMMAGE:

24 Q If you're in executive session, who all is on the
25 meetings?

1 A It would be all of the above, other than the company
2 managers.

3 Q Okay. And when you say "advisors," can you identify who
4 the different advisors are that join these meetings?

5 A Sure. You know, we have Moelis, A&M, Akin Gump, those are
6 the three kind of primary advisors that have been involved in
7 all of these discussions, in all the meetings for the last over
8 a year now.

9 Q Okay. Anything else you can think of regarding the scope
10 of what the Special Committee has tackled in the year and a
11 month, other than what you've already testified to?

12 A I guess what I'd say is, you know, we've met at least once
13 a week, if not more than once a week, formally. We've had a
14 number of impromptu or unofficial meetings, conferences, phone
15 calls, I would say at least one to one, if not more than one to
16 one. Quite a bit of that. That's more scope than it is
17 specifics, but it's been very involved and very time consuming
18 for sure.

19 Q How would you describe the authority of the Special
20 Committee? What is it charged with doing?

21 A Well, I mean, in this situation, initially we were charged
22 with leading the process towards a potential strategic
23 transaction or restructuring of the business. And as I
24 mentioned, we've been charged with investigating and
25 persecuting appropriate affiliated entity or conflict of

1 interest type transactions. We've been charged with the CRO
2 and all the things that I had mentioned earlier.

3 Over the course of the last year, we've spent significant
4 time developing the business plan, with hopes of using that as
5 we worked towards some sort of restructuring agreement.
6 Unfortunately, commodity prices continue to move back and
7 forth, and so that business plan is being revised and updated
8 once again, as you all are I'm sure aware. It fell off for
9 sure. And the restructuring officer project that we've been
10 focusing on here of late, you know, has been a significant
11 focus and consumption of time.

12 Q Who's in charge of refreshing or revising that business
13 plan today?

14 A Today, Mo has been charged with doing that and redoing
15 that process.

16 Q Okay. I want to turn your attention to the amount of time
17 you've devoted to serving on the Special Committee. I believe
18 you've already talked about the weekly meetings that the
19 Special Committee has, correct?

20 A Correct.

21 Q Okay. And would you say you've had weekly meetings every
22 week since you started, or have you skipped weeks, do you know?

23 A If we've skipped a week, it's been very few weeks, and
24 more than made up by weeks where we had multiple meetings. I
25 can't think of a specific week when we skipped one, but that's

1 not to say we haven't. I think we've tried to be very diligent
2 to meet at least once a week to get an update. Even when Gene
3 is overseas or -- I remember calling in from Argentina on a
4 trip with my son to make a weekly call.

5 Q Okay. All right. And on the weekly meetings, have you
6 made all the weekly meetings?

7 A Every single one.

8 Q Has Mr. Davis made all the weekly meetings?

9 A Every single one.

10 Q Now other than the weekly meetings, what other types of
11 meetings do you all have?

12 A Well, we've had an number of offline conversations around
13 the business plan or around, you know, various documents that
14 have been reviewed or that are being drafted up. You know,
15 certainly a visit with the company about the business
16 occasionally. That goes without saying. So it's any number of
17 things.

18 Q Okay. Do you have an estimate of the number of weekly
19 meetings and not-weekly meetings, a rough estimate, that you
20 have participated in since the Special Committee was formed?

21 A Well, as I said, you know, my opinion is that we've met
22 more than once a week on average for the last 13 months; so
23 that would be 50 to 60-something times over the last 13 months.
24 I would say that for every official meeting, we've had an
25 unofficial conference call, visit, lunch, whatever, that looks

1 like at least one to one, if not potentially as many as two to
2 one, over the course of the last 13 months.

3 Q Okay. Adding that up, it's, in your mind, what kind of --

4 A 125, plus or minus 25, meetings.

5 Q Okay. Fair enough. Fair enough. Now, of all the
6 meetings that you just identified, have you attended all of
7 them?

8 A I have.

9 Q Has Mr. Davis attended all of them?

10 A He has attended all of the meetings. I can think of only
11 one -- I can think of only one process where he wasn't
12 involved, and that was the interview of Mo.

13 Q Mr. Meghji?

14 A Mr. Meghji. Yes, sir.

15 Q Let me make sure I understand. Of all the meetings and
16 interviews and discussions and whatever that you all have had,
17 it's the best of your recollection that Mr. Davis has only
18 missed the one, and that was the interview with Mo Meghji?

19 A I mean, again, I'm sure he's had some offline
20 conversations with advisors on a one-off basis; but the
21 committee is two people, and the committee, you know, needs the
22 two people to be able to convene.

23 Q In addition to the meetings that you spoke about, do you
24 have separate meetings with Ropes & Gray?

25 A We do.

1 Q What are the purpose of those meetings?

2 A So as I mentioned earlier, shortly after the Special
3 Committee was formed, there was a desire to engage independent
4 counsel to develop a report, to do an investigation, there were
5 so many affiliated entity situations. Certainly it's been a
6 big focus of a lot of people in this room. And so we felt like
7 it was the duty of the Special Committee to proactively dig
8 into any and all of those matters. We engaged Ropes & Gray to
9 lead that process and very quickly started having update calls
10 with them as well.

11 We would -- generally for a chunk of this year, we would
12 have the Special Committee kind of update call with the
13 advisors and the company. It would conclude. And then shortly
14 thereafter, we would convene a call with Ropes & Gray to review
15 and receive information or an update on how they were making
16 progress with respect to that investigation.

17 Q Now on the calls or meetings with Ropes & Gray, was Akin
18 in attendance?

19 A No.

20 Q What about any member of management?

21 A No.

22 Q What about any board of director, other than you and
23 Mr. Davis?

24 A No.

25 Q Is it your testimony that both you and Mr. Davis were at

1 each and every meeting with Ropes & Gray that you just
2 identified?

3 A I can't think of a specific meeting with Ropes & Gray
4 where we were not both either physically or by telephone
5 together. I can think of maybe one situation where Ropes &
6 Gray gave us separate updates because I was on vacation. And
7 so I called -- they called me later on on the same day or the
8 next day. But, by and large, yes, we were both on all of those
9 calls.

10 Q Okay. Now I want to talk about the meetings that you have
11 that are not weekly. What kind of topics are discussed or
12 covered, and what's the purpose of the non-weekly meetings?

13 A So over time, that's changed. You know, over the course
14 of the last 13 months, there's certainly been periods of
15 discussion around the business plan, updates with respect to
16 various orders that are being drafted or that have been
17 submitted here of late. It could be discussions around the CRO
18 process, the interviews, deliberation about the candidates that
19 we interviewed. There was a lot of discussion earlier in the
20 year where we were tasked with executive comp programs. So it
21 could be any number of things related to the scope of the
22 responsibilities that we've assumed.

23 Q Did you all have meetings to discuss the timing of the
24 filing of the petition in this bankruptcy?

25 A We did.



1 Q Okay. Did you have meetings to talk about DIP financing?

2 A We did.

3 Q Has DIP financing been a small or large issue or topic for
4 the Special Committee?

5 A It's been a big topic. It's been a very big topic,
6 especially --

7 Q Could you describe that for the Court?

8 A -- especially as it's been delayed and has created, you
9 know, incremental requirements as part of securing the DIP
10 financing. It's become, you know, a big topic obviously.

11 Q Okay. What about business issues, are those topics at the
12 non-weekly meetings?

13 A Business issues with respect to the actual operations of
14 the company?

15 Q Yeah.

16 A You know, I think those are occasional discussions for
17 sure. I mean, we're watching what's going on with the business
18 and how it's performing relative to budget. And certainly the
19 industry environment has been fluid over the last 13 months,
20 both positive and negative.

21 Q Have you all addressed costs at these meetings?

22 A Absolutely. And we --

23 Q Can you describe it for the Court?

24 A -- we continue to do so. I mentioned earlier that in the
25 Q4 of 2018 time frame, as they were developing the original



1 business plan, commodity prices started to deteriorate; and in
2 parallel then, we challenged them with starting to cut costs.
3 And there was a meaningful cost reduction initiate inclusive of
4 a pretty significant head count reduction that took place in
5 the early part of this year.

6 And so, you know, during some of those weekly meetings,
7 especially over the first couple of quarters of this year,
8 that was part of the update was where are we in terms of our
9 cost-cutting initiatives relative to what we had said we were
10 going to do when we developed the budget.

11 Q Okay. Talk to me about -- well, let me ask this. Is the
12 preparation for the weekly meeting and the preparation for a
13 non-weekly meeting, are they the same or are they different?

14 A I'd say the preparation for any of the discussions that
15 we'd have, whether formal or informal, are different. You
16 know, there are situations where there might not be, you know,
17 a significant amount of material that's provided in advance of
18 a meeting, and it's really an update that's more verbal in
19 nature.

20 There are other situations where there's a meaningful
21 amount of information provided in advance of the meeting, and
22 so it takes significantly more time to go through that than the
23 actual meeting takes. An example would be the Ropes & Gray
24 report for the Special Committee in terms of the investigation
25 into the affiliated entity transactions and any potential



1 conflicts of interest. I believe that was an 185-page report.
2 That was a meaningful consumer of weekend time to review that
3 material.

4 Q Okay. Do you always review the materials you're given
5 prior to a meeting if you're given materials before the
6 meeting?

7 A Always.

8 Q Why is that?

9 A I feel like it's my fiduciary responsibility, and I take
10 that very seriously.

11 Q Okay. During these meetings, is there active discussion
12 between you and the other Special Committee member?

13 A Absolutely. I think Gene and I have a very healthy
14 dialog, you know, and have developed I believe a mutual respect
15 over the course of the last 13 years -- or 13 months, excuse
16 me.

17 Q Do you all task your advisors, any of the ones you
18 mentioned, with issues that you need them to look at and advise
19 you on?

20 A Absolutely.

21 Q How often does that happen?

22 A Frequently, for sure. I think we are -- it would feel
23 like every meeting, out of the meeting, there is a deliverable
24 or a request from one of our advisors to do something or to
25 look at something or to provide us with something. Gene, as

1 the chair of the committee, does a very good job of sort of
2 driving the meeting through the agenda and allocating
3 responsibilities, setting expectations.

4 And then, importantly, we always set the -- generally
5 always set the date and time of the next meeting before we hang
6 up from the meeting the week before.

7 Q Okay. What kinds of things get delegated, the
8 deliverables, during those meetings?

9 A I mean, you know, when we were doing the restructuring
10 discussions, it was any number of the work scopes of what had
11 been going on for the last several months. Earlier in the
12 process, there was a lot of delegation around the business plan
13 to the company management team.

14 So, again, in every situation it's different. But it
15 might be to -- in the CRO process, to the advisors, to help us
16 develop a list of candidates. Again, it's any number of
17 things, just depending upon what the need of the committee is
18 and what the goals are going out of -- coming out of a meeting.

19 Q Okay. I want to talk to you about the prior business
20 plan, not the one that's being worked on now. Was the Special
21 Committee presented with the prior business plan at some point
22 in time?

23 A Yes.

24 Q And did the Special Committee adopt it as it was?

25 A Yeah, I mean, my recollection is that we adopted that back

1 early last year as part of the budget for the business --

2 THE COURT: Early this year?

3 THE WITNESS: Sorry. Early in 2019. Yes, sir,
4 Your Honor.

5 THE COURT: Thank you.

6 BY MR. BRIMMAGE:

7 Q My question is did you adopt the business plan, the first
8 iteration that you got it, exactly as you got it; or did the
9 Special Committee have comments, changes or anything of the
10 like?

11 A No, I think we probed and asked questions and challenged,
12 and it was an iterative process, like I said, in parallel
13 with the commodity price deterioration, you know, and the
14 cost-cutting initiatives that were already recommended. It was
15 definitely an iterative process. It took several months, if I
16 recall correctly.

17 Q Okay. I want to talk to you about the type of information
18 that the Special Committee is provided prior to these meetings.
19 Can you just outline for the Court the type of information
20 you're provided and from who?

21 A So, again, in each one of these different work scopes, it
22 would be different information and it would likely come from a
23 different individual. For the business planning process early
24 days, there were presentations that might be provided by the
25 company. It might be provided by Moelis. Liquidity forecasts



1 with cost-cutting initiatives with tracking of those cost-
2 cutting initiatives, production forecasts, a lot of detail.

3 As we shifted later in the year and it became apparent
4 that there was restructuring that was going to take place, you
5 know, counsel, Akin would prepare weekly updates in terms of
6 the various work scopes and progress that was being made in
7 preparation for a potential filing. That was provided weekly.

8 You know, as we've gone through the process here post
9 filing, every week, you know, we've been provided with either a
10 verbal or a written update in terms of where we are with our
11 vendors, where we are with, you know, kind of key milestone
12 dates, whether that be, you know, the final version and things
13 of that nature. But it's been a very thorough and thoughtful
14 process for sure.

15 Q Both pre-petition and post-petition of the filing of the
16 bankruptcy, did the Special Committee receive updates from its
17 advisors regarding negotiations or the lack of negotiations
18 with the other stakeholders?

19 A We did, yeah. Generally, Akin will provide an update on
20 where we were with -- you know, approaching some of the
21 stakeholders in the business, trying to initially aid dialogue,
22 you know, sort of the challenges we had pre-petition around
23 some -- some of those areas.

24 And then post-petition, you know, as we've tried to make
25 progress and build consensus amongst all the parties; and



1 again, some of the frustrations that we've had in terms of
2 being able to really spend time and energy moving forward,
3 instead of arguing about things on the side.

4 Q Like a CRO?

5 A Like a CRO.

6 Q How much time do you devote to preparing for each meeting,
7 as opposed to attending each meeting?

8 A As I mentioned earlier, each meeting is different, and
9 really it's driven based upon the material that's provided. I
10 would be willing to say for every hour that we spend in
11 meeting, there's at least an hour of prep, if not more, one to
12 two hours of prep in advance of a one-hour meeting, on average.
13 And again, it's driven based upon the material that's provided
14 in advance of the meeting and the time that it requires to not
15 only digest that, but then reflect on it and develop your views
16 about what you've been provided.

17 Q Okay. Anything else about the meetings, or preparation
18 for the meetings, that you'd like to testify to that I haven't
19 asked you the question about?

20 A I can't think of anything other than, you know, I would
21 just say this is my first public board role. This is my first
22 restructuring situation. I have not taken it lightly. And,
23 you know, I feel like it's my -- it's my responsibility to read
24 all of the material, to be thoughtful about the decisions we
25 make, and I have taken that to heart.

1 Q I want to shift gears on you a little bit. You previously
2 testified that the Special Committee engaged Ropes & Gray. Do
3 you recall that?

4 A Correct.

5 Q And just to summarize again, what did you engage
6 Ropes & Gray for?

7 A So we engaged Ropes & Gray to investigate the affiliated
8 entity transactions, as well as any other potential conflicts
9 of interest with management over the board of Sanchez.

10 Q Okay. Was Akin Gump involved in those investigations, or
11 the report, or the meetings?

12 A No. It was -- it was driven by Ropes & Gray.

13 Q Was anybody in management involved in that investigation
14 or the report or so on?

15 A Not at all. No, sir.

16 Q What about the board of directors, other than you and
17 Mr. Davis?

18 A They were not, no.

19 Q Okay. Now, clearly, the Special Committee has been
20 working with Akin Gump on other issues, correct?

21 A Correct.

22 Q Can you describe for the Court what issues that the
23 Special Committee works with Akin Gump on?

24 A As I think about it -- and, again, I'm not a restructuring
25 expert, but Akin Gump has taken the lead in the restructuring

1 process. In all elements of the restructuring process, they've
2 been integral in guiding the company and assisting us through
3 the process; preparing for the process, and then as we've gone
4 into post-petition, trying to work through the process.

5 Q Do you recall reading -- or did you read, let me ask that
6 -- the Akin Gump retention application?

7 A I'd have to see the document to remember whether I've
8 reviewed that or not. It's been a while.

9 MR. BRIMMAGE: Your Honor, may I approach and hand
10 the witness a copy, and he can tell us?

11 THE COURT: Yes, sir.

12 MR. LEBLANC: Your Honor, I would have thought that
13 if they were going to use a document on direct that it would
14 have been on their exhibit list, and it's -- this document is
15 not. So I would object for that reason.

16 MR. BRIMMAGE: Your Honor, we are certainly not going
17 to admit it. We're asking him if he recalls it, and we're
18 going to refresh his recollection, if he -- if it can be
19 refreshed. And if it can't, we're not.

20 THE COURT: I'm going to overrule. But if we get
21 deeper, make it again.

22 Go ahead.

23 MR. BRIMMAGE: Your Honor, may I approach?

24 THE COURT: Yes, sir.

25 BY MR. BRIMMAGE:



1 Q Mr. Zylman, if you'll just look at the document I handed
2 you and just tell us whether or not you have read that before,
3 or you recall reading it before?

4 A If it was emailed to me, I am highly confident that I
5 would have read it; but in this limited amount of time, I can't
6 say for sure one way or the other without having a chance to
7 read it.

8 Q Fair enough. Independent question. Do you recall --
9 well, do you know whether or not Akin has waiver letters that
10 are associated with its engagement or retention in this case?

11 A I don't recall.

12 Q Okay. Fair enough. Do you have any view, one way or
13 another, whether or not Akin's advice to the Special Committee
14 on restructuring matters presents any sort of conflict?

15 MR. LEBLANC: Objection, Your Honor. Calls for a
16 legal conclusion.

17 THE COURT: As worded, I'm going to sustain the
18 objection and let you reword it.

19 MR. BRIMMAGE: Okay.

20 BY MR. BRIMMAGE:

21 Q Mr. Zylman, do you have any view one way or another if
22 it's appropriate or inappropriate for Akin Gump to advise the
23 Special Committee on restructuring matters?

24 MR. LEBLANC: Same objection, Your Honor.

25 THE COURT: Overruled.



1 THE WITNESS: I feel like it's appropriate. My
2 opinion is that Akin has done a very thorough and thoughtful
3 job working for the company in preparation for this process,
4 and as we've gone through the process. As it relates to
5 restructuring matters and the Special Committee, I think that
6 it would be efficient for Akin to be involved in that as well.

7 BY MR. BRIMMAGE:

8 Q Let me ask you -- I want to transition to the CRO
9 selection process, really the point we're here for today. Can
10 you estimate for the Court approximately how much time you
11 spent as a Special Committee member on the CRO selection
12 process?

13 A The selection process and then all of the --

14 Q The whole thing.

15 A Yeah. Golly.

16 Q Meetings, interviews, the whole thing?

17 A 75 plus hours, easily.

18 Q All right. And have you been involved in the
19 determination of the scope of the CRO?

20 A I have been. The Special Committee, with counsel, has
21 reviewed that, developed the original scope. And then, as it
22 has iterated here of late, we've certainly been reviewing and
23 approving the sort of revisions that have gone back and forth,
24 as well as the most recent draft.

25 Q Did the Special Committee approve of the original scope of



1 the CRO?

2 A We did.

3 Q Did the Special Committee -- was it advised one way or
4 another whether or not other constituents or stakeholders were
5 in agreement with that scope?

6 A My recollection is that we had reached agreement with all
7 -- with stakeholders for the -- the creditors for sure, yes.

8 Q Have you been involved in the -- what we have now termed
9 the expanded scope?

10 A I have, over the last couple of weeks, been involved in
11 that, yes.

12 Q Okay. All right. When did you first hear of the idea of
13 a CRO?

14 A The CRO -- really the topic came up when the -- it became
15 a condition to securing the DIP. I think that was the first
16 time that it was really raised as an issue and became a big
17 item of focus for sure.

18 Q Let me kind of set the time frame. When you say a
19 condition of the DIP, where in the process of this
20 reorganization did that occur?

21 A My -- yeah --

22 Q Was there an event that led to that?

23 A If I recall correctly, in the -- what would have been the
24 second hearing around the DIP, would have been maybe in
25 September sometime kind of time frame, that the DIP lenders --

1 and I think they might have even mentioned it earlier in the
2 opening statements, they made it a requirement to not just
3 getting the interim DIP, but getting the DIP finalized, and
4 having access to the full DIP.

5 Q To the best of your knowledge, whose idea was this?

6 A To the best of my knowledge, it was the idea of the 1Ls.

7 Q Why do you think they proposed the idea?

8 MR. LEBLANC: Objection, Your Honor. Calls for
9 speculation.

10 THE COURT: Sustained.

11 BY MR. BRIMMAGE:

12 Q Did anyone ever tell you why the idea of a CRO was
13 proposed?

14 THE COURT: This is a -- hold on. This is a yes or
15 no question. That's it. So he can answer it yes or no, but he
16 can't say what they told him.

17 MR. LEBLANC: I'll just stand.

18 THE COURT: So did anyone ever tell you why?

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 BY MR. BRIMMAGE:

22 Q Was it one of your advisors or someone in the company, or
23 someone outside the company?

24 A Advisors.

25 Q Okay. What did you think of the proposed idea?



1 A Well, I mean, it's a condition to the DIP. The DIP is
2 critically necessary for the business. So it's a very good
3 idea.

4 Q All right. Any other thoughts on that?

5 A You know, from my perspective, this business has a very
6 complex operational and organizational structure, and a very
7 complicated accounting structure, and there are a lot of
8 stakeholders involved.

9 With respect to the affiliated entity transactions and the
10 contracts around that, and the complexity of those, you know, I
11 feel like having someone as an executive in the business,
12 really developing a good understanding of some of the detail in
13 those relationships and in those contracts, and being able to
14 advise the committee, will be very additive. You know, my view
15 is that having that individual as CRO also driving the -- that
16 will advise the business planning process, you know, especially
17 today, where we are today on that, I think that will -- that
18 will be extremely helpful as well.

19 Q Had you had any experience with a CRO prior to this issue
20 coming up in this case?

21 A I had not, no.

22 Q First time around?

23 A First time around.

24 Q All right.

25 THE COURT: If it makes you feel any better, this is

1 my first time for this kind as well.

2 MR. BRIMMAGE: It does make us feel better, Your
3 Honor.

4 BY MR. BRIMMAGE:

5 Q In addition to the 11s recommending it -- and I believe
6 you testified you thought it was a good idea, did -- were you
7 advised one way or another whether or not the other creditor
8 constituents were interested in the company having a CRO?

9 THE COURT: Again, this is a yes or no question.

10 THE WITNESS: Yes.

11 BY MR. BRIMMAGE:

12 Q And were you advised by one of your advisors or someone
13 outside the company?

14 A Advisors.

15 Q Okay. Have you told us all the reasons you think a CRO
16 would be a good idea?

17 A Yes.

18 Q Okay. Standing here today, who does the CRO report to, if
19 approved?

20 A The C --

21 THE COURT: I didn't hear your answer. I'm sorry.

22 THE WITNESS: The CRO reports to the Special
23 Committee.

24 BY MR. BRIMMAGE:

25 Q And what is the CRO's role in these cases, to the best of



1 your recollection?

2 A So originally the CRO job scope or role was meant to focus
3 on the affiliated entity transactions, first and foremost, and
4 that being the SOG and SNMP relationships and contracts.
5 Additionally, the CRO was scoped with assisting and developing
6 the business plan, and ultimately working towards a
7 restructuring agreement.

8 As you alluded to earlier, you know, here of late, that
9 scope has expanded pretty significantly. And as of today, I
10 would say that the incremental sort of scope of that
11 responsibility includes the ability to request the Special
12 Committee to investigate -- to reinvestigate matters that had
13 already been investigated in terms of affiliated entity
14 transactions or potential conflicts of interest.

15 The CRO has what I've heard people refer to as
16 "whistleblower rights," pretty expanded whistleblower rights.
17 The CRO has the ability to retain its own counsel, or -- his or
18 her own counsel. And the -- I'm sure there's one or two other
19 items, but those are kind of the ones that come to mind right
20 now.

21 Q Okay. Was the Special Committee involved in approving the
22 expanded scope?

23 A Absolutely. We've seen every iteration of that back and
24 forth.

25 Q How did that process work, if you could tell us?



1 A In terms of the --

2 Q The expanded scope process and then finalization.

3 A Sure. So my understanding is, you know, that there was an
4 agreement on the scope of the CRO in terms of their
5 responsibilities. And then we went through the interview
6 process, which I'm sure we'll come back to, a week or two ago,
7 in conjunction with, I believe the feedback from the Court with
8 respect to some of the limitations in that scope, as well as an
9 ongoing sort of dialogue between the advisors that there was an
10 agreement there would be an expansion of the scope.

11 Again, I believe it was meant to address some of the
12 concerns of the Court, but I believe it was also meant to
13 constructively move things forward with all of the stakeholders
14 as well.

15 Q And the process for you approving that, how would you get
16 updates regarding what the status of the expanded scope was?

17 A So, in addition to the weekly update call, obviously,
18 there has been a significant amount of email traffic in the
19 last couple of weeks around the different sort of revised
20 versions of these draft documents. And, you know, obviously
21 redlines of the incremental changes have been very helpful in
22 that regard.

23 Q Okay. Who would provide you and Mr. Davis, as Special
24 Committee, with the expanded scope iterations?

25 A Akin.



1 Q Do you recall about how many iterations there were?

2 A I would -- I would say several, maybe five to ten. But --
3 I mean, it's been a lot.

4 Q Did you read every one?

5 A Every one.

6 Q Did you have meetings or calls to discuss any questions,
7 comments or whatever?

8 A Certainly in our weekly calls we would discuss any updates
9 at that point in time. If -- I can't speak for the other
10 committee member in terms of whether he had phone calls. You
11 know, if I had questions, I would call someone or email them.
12 But generally I understood what was going on, I understood the
13 changes that were being made.

14 Q And the changes were approved by the Special Committee?

15 A That is correct.

16 Q To your knowledge, was management involved in the
17 iterations of the expanded CRO scope?

18 A No.

19 Q I think you've gone through this, but I just want to make
20 sure. We've talked about what the expanded scope is today,
21 right?

22 A Yes.

23 Q Is there anything else that you want to talk about the
24 expanded scope today? I think you covered it, but I want to
25 give you the opportunity to say something if you --



1 MR. LEBLANC: Objection, Your Honor. Calls for a
2 narrative.

3 THE COURT: Sustained.

4 BY MR. BRIMMAGE:

5 Q Anything else regarding this expanded scope today that we
6 haven't discussed already?

7 THE COURT: I already sustained the objection.
8 That's --

9 MR. BRIMMAGE: Okay.

10 BY MR. BRIMMAGE:

11 Q Regarding the affiliated party transactions, to the extent
12 that the CRO makes recommendations to the Special Committee,
13 which legal counsel does the Special Committee consult with on
14 those issues?

15 A That would be Ropes & Gray.

16 Q And why is that?

17 A Ropes & Gray has been engaged by the Special Committee to
18 represent the Special Committee in evaluating those potential
19 transactions and those -- well, those transactions.

20 Q Okay. Let's talk about the process of what ultimately led
21 to Mr. Meghji, if we could.

22 A Sure.

23 Q Do you have an understanding of who has the authority to
24 select the CRO on behalf of the debtors?

25 A The Special Committee has the right to select the CRO on



1 behalf of the debtors, subject to final approval by the board
2 of directors of the company, and subject to final approval of
3 the Court.

4 Q Okay. When you say final approval of the board of
5 directors of the company, did that actually happen?

6 A There was a formal approval by the Special Committee,
7 which was followed up by a written consent approval by the
8 board, which was viewed, in my mind, as sort of a formality,
9 because to -- as I understand it, to add an executive officer
10 to the company, it actually needed to be approved by the full
11 board of the company.

12 Q Okay. You've got kind of a thick notebook there to your
13 left that says "Debtors' Witness and Exhibit List."

14 A Yes, sir.

15 Q Can you turn to Tab 17 for me, please.

16 A Yes, sir.

17 Q Do you recognize -- that's been pre-admitted. Do you
18 recognize that document?

19 A Yes.

20 Q Can you tell the Court what it is?

21 A This is the unanimous written consent of the Special
22 Committee of the board approving Mo as the Chief Restructuring
23 Officer.

24 Q And if you'll turn to Tab 16, please. It's also been
25 pre-admitted. Do you recognize that document?

1 A Yeah. This is the unanimous written consent of the
2 meeting of the full board.

3 Q Okay. If we can go back here, it has board signature
4 pages. Do you see those?

5 A I do.

6 Q Okay. And I count ten board members. Is that right?

7 A Correct.

8 Q Okay. You and Mr. Davis are two of them, right?

9 A Correct.

10 Q All right. Do you know how many of the other eight
11 members are related to the Sanchez family?

12 A There are two Sanchez family members on the board.

13 Q Okay. The other six are not related to the Sanchezes?

14 A Correct.

15 Q Excuse me, Mr. Zylman. Let me ask you this. Does the
16 debtors' management group have authority to select the CRO?

17 A No.

18 MR. LEBLANC: Objection, Your Honor. Calls for a
19 legal conclusion. Lack of foundation.

20 THE COURT: I'm going to get this question reworded,
21 but I want to know what the Special Committee's belief is,
22 whether it's legally accurate or not. So I think it does need
23 to be reworded slightly, but his opinion of the authority of
24 the Special Committee is important, whether or not accurate.
25 And I'm in no way implying that you don't know. I'm just

1 trying to rule on this correctly. So then don't take that the
2 wrong way.

3 But what I want to know is what -- what do he and
4 what do Mr. Davis think the Special Committee's authority is?
5 You know, could they fire Mr. Meghji? Who could fire Mr.
6 Meghji? Can they hire Mr. Meghji? Who can hire Mr. Meghji?
7 And I want to know what their views are on that. I don't -- I
8 haven't read the documents enough to know what the accurate
9 answers are. So I'm interested in their understanding as they
10 go through daily activities or weekly activities in this, who
11 they think holds that power.

12 BY MR. BRIMMAGE:

13 Q Let me back up and kind of restart and go forward, because
14 I want to address the Court's issues as well. You previously
15 testified that it's the authority of the Special Committee to
16 select the CRO, correct?

17 A Correct.

18 Q Is that the sole -- in your understanding, is that the
19 sole purview of the Special Committee, or are others involved?

20 A In terms of selecting who the CRO is, or who we would
21 recommend to the Court?

22 Q Correct.

23 A It's the Special Committee's responsibility.

24 Q All right. Do you have an understanding of whether or not
25 management -- it's their responsibility or they have the



1 authority, one way or another?

2 A Management does not have the authority or -- and it is not
3 their responsibility.

4 Q Okay. What about anyone else at the company, including
5 the Sanchezes?

6 A No.

7 Q Okay. So --

8 THE COURT: What about the board?

9 THE WITNESS: My understanding is that it was a
10 formality of the organizational documents of the company, that
11 for an executive officer to be appointed to the company, the
12 board had to approve that. That was my understanding.

13 THE COURT: So if the board had said no -- let's say
14 that you'd picked -- I don't remember his name, the candidate
15 that the creditors had named. If the Special Committee had
16 picked that person, and the board said no, would that person
17 have been hired or not hired?

18 THE WITNESS: I guess in this context, formally -- if
19 the board did not approve that individual, that they would not
20 have been hired by the company at that point.

21 THE COURT: Okay. So now let's assume we approve
22 Mr. Meghji. Can the board vote to terminate him or his
23 company?

24 THE WITNESS: I'm not a lawyer, Your Honor, but my
25 understanding is -- you know, as we've gone through some of



1 these iterations, the CRO is now going to report only to the
2 Special Committee. So again, I'm not a lawyer, but to me,
3 then, the Special Committee has the right to terminate that
4 individual.

5 THE COURT: Would the board also have the right?

6 THE WITNESS: That's a good question.

7 THE COURT: If it's one you haven't thought through,
8 that's fine. I'm not looking to put you on the spot. I'm
9 trying to figure out where everybody's head is on these things.

10 THE WITNESS: Right. I mean --

11 THE COURT: What do you think is best for the company
12 in this regard?

13 THE WITNESS: You know, Your Honor, I've spent a
14 significant amount of personal time interviewing the
15 candidates --

16 THE COURT: No. I don't mean which candidate is
17 best, I mean in terms of the delegation of power between the
18 Special Committee and the board. Not just on the CRO. Let's
19 assume that the CRO comes in and says, here's the bankruptcy
20 plan that ought to be proposed. And the Special Committee
21 says, yep, we want to do that. And the board says, nope, we
22 don't want to do that. What is best for the company in terms
23 of what should be the go-ahead -- the go-forward control of
24 those kinds of decisions by the company?

25 THE WITNESS: Your Honor, my view is -- and certainly

1 not to grab power, but my view is that an independent body of
2 individuals is the right body of individuals to help guide this
3 company through this process.

4 THE COURT: So let's -- we have eight board members
5 that are independent of the Sanchezes. Six of them are not on
6 the Special Committee.

7 THE WITNESS: Correct.

8 THE COURT: So let's just assume for a minute that --
9 well, how should the company best make decisions? Is it that
10 the Special Committee needs to be vested with the sole and
11 exclusive authority to propose a plan? Or should it go to the
12 full board? What is best for the estate?

13 THE WITNESS: Well, the -- the fiduciary
14 responsibility of the Special Committee as well as the board is
15 to maximize the value of the estate. Everybody should be
16 aligned in that regard.

17 THE COURT: But it turns out you all vote
18 differently. Who wins? Who should win, in order to maximize?
19 And I don't want to put ourselves three months down the road
20 when there is a disagreement, because what's going to matter is
21 today, what the perception is of how the decision gets made.

22 THE WITNESS: Right.

23 THE COURT: So on a go-forward basis, you're one
24 board member on the Special Committee, you're one board member
25 on the board.



1 THE WITNESS: Correct.

2 THE COURT: What, in your view, is the best way to
3 run this company for major decisions like what the bankruptcy
4 plan ought to be?

5 THE WITNESS: My opinion is that the individuals that
6 have the experience in that space, and that have spent their
7 time and energy going through the very detailed process, should
8 drive that decision and should have that authority. And that
9 would be the Special Committee.

10 THE COURT: To the exclusion of the board?

11 THE WITNESS: If you're asking me right now, without
12 having a chance to think about it -- and again, I'm not a
13 lawyer, but I feel like --

14 THE COURT: I'm not asking you right now who has the
15 authority. I'm asking you what's best for the company.

16 THE WITNESS: I feel like the people who are spending
17 the time on the project, and understand the situations -- and
18 it's very complicated obviously, as well as the individuals
19 that have the experience in this space, are the right ones to
20 make the right decision -- the best decisions for the estate.

21 THE COURT: And that would be you and Mr. Davis?

22 THE WITNESS: In my opinion, yes, sir. That would be
23 me and Mr. Davis.

24 THE COURT: And if the rest of the board believes to
25 the contrary, you believe their views should be disregarded --



1 should be rejected, I should say, as to who will actually have
2 control?

3 THE WITNESS: Again, I'm not a lawyer, Your Honor,
4 but --

5 THE COURT: Yeah, this is not a law question.

6 THE WITNESS: Yeah.

7 THE COURT: I can do what I want. This is a "what's
8 best" question.

9 THE WITNESS: Right.

10 THE COURT: So what's best, you think, is turning the
11 reins of the company, for all major decisions, over to you and
12 Mr. Davis.

13 THE WITNESS: As it relates to the restructuring
14 process, we're the ones who understand the process the best.

15 THE COURT: So yes.

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you.

18 Go ahead.

19 MR. BRIMMAGE: Let me see where I am. All right.
20 Let's go back and talk about the process of selecting a CRO. I
21 want to start, if you could -- Your Honor, may I interrupt real
22 quick? Mr. Meghji will be happy to know that we've determined
23 that we no longer need him, and we respectfully request the
24 Court excuse him from the proceedings today, so he can get
25 home.

1 THE COURT: Any objection to excusing Mr. Meghji?

2 MR. LEBLANC: No.

3 UNIDENTIFIED: No.

4 THE COURT: Thank you. He's excused.

5 MR. BRIMMAGE: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. BRIMMAGE: What I'd like to -- we're going to get
8 it this time. You ready?

9 THE COURT: Okay.

10 BY MR. BRIMMAGE:

11 Q Mr. Zylman, can you describe for the Court, to start with,
12 just kind of big, overall picture, how the process worked? And
13 then I want to walk you through each of the steps in detail.
14 But I want to kind of give an overview, and then we'll -- so if
15 you could do that for me, please.

16 A Okay. So in parallel with the discussion and negotiation
17 of the ultimate scope of the CRO, initial scope of the CRO
18 role, the Committee went through a process with its advisors of
19 developing -- a "brainstorming session" is the term that I've
20 heard you use. But basically, you know, develop a list of
21 candidates for consideration. My understanding is at the same
22 time, the advisors to the creditors were developing their list
23 of potential CRO candidates as well. There was likely -- and I
24 understand at least some overlap with Mo in particular.

25 There was a filtering that took place on both sides, and



1 ultimately there were four candidates that were interviewed,
2 one who was put forth by the advisors to the creditors, and
3 three that worked through the process that the Special
4 Committee went through. All four were interviewed. We felt
5 very strongly that we had two of the four that were very viable
6 candidates, very different profiles. One that I -- what I'll
7 refer to as a process expert, that would be Mo; one that was
8 more of an industry expert that had a really interesting legal
9 and financial background, and that was Rob Walls.

10 Q All right.

11 A So I can keep going if you like.

12 Q Just wrap it up there.

13 A Yeah.

14 Q I'm going to start talking to you about those kind of
15 individual steps.

16 A Each step, yeah. So we, through our advisors, proposed
17 those two individuals to the advisors of the creditors, with a
18 preference for Mr. Meghji. We understand that they were
19 interviewed by the advisors through the creditors. Ultimately,
20 we received feedback that the creditors, through their
21 advisors, preferred their initial candidate.

22 We deliberated further, and ultimately determined that the
23 vast chasm of difference between their candidate and Mr. Meghji
24 in terms of capabilities, experience, and skill set, we felt
25 very strongly that Mr. Meghji was the right candidate. And so

1 we, once again, went back with our two candidates, with a
2 strong preference for Mr. Meghji. And as I recall, very
3 quickly, the 1Ls expressed support for Mr. Meghji, who are also
4 the DIP lenders as well. So that's probably a little more
5 long-winded than you wanted, but --

6 Q No, that's perfect. Let's walk through this. When the
7 initial, my word, "brainstorming" of names came up, did you
8 offer any names?

9 A I did not offer any names.

10 Q Why not?

11 A I am not -- as I've said, not a restructuring expert, and
12 this is not the world that I have lived in for the last 25
13 years.

14 Q Do you know if the advisors provided names?

15 A I understand they provided names, yes.

16 Q Akin.

17 A I'm assuming so, but I don't know specific names by
18 advisor, but --

19 Q Right. I understand.

20 A Moelis, A&M, and Akin.

21 Q Okay.

22 A And as I understand it, I didn't -- I don't recall Gene
23 specifically providing names, but I understand that he might
24 have provided some names as well.

25 Q Okay. Do you know how many brainstorming names that

1 produced, the initial --

2 A I don't know the initial list. I know that it was large.

3 Q Okay.

4 A But by the time we started talking about it in earnest, it
5 was six or eight names, I think, at that point in time.

6 Q All right. Now, take us from the six or eight names.

7 What happened with the six or eight names? What were the
8 deliberations, and what happened next?

9 A So initially there was a filtering, if you will, around
10 conflicts, as well as interest in potentially getting involved
11 in the transaction. And of those names, three made it through
12 that process in terms of not having a conflict, being able to,
13 or expressing interest in the project. And so we had three
14 names, you know, that had filtered through our process.

15 Q Okay. And then a fourth name got added, right?

16 A A fourth name was provided by the advisors to the
17 creditors, correct.

18 Q Okay. All right. How did you find out about the fourth
19 name?

20 A It was during one of our -- I believe one of our update
21 calls that Akin had suggested that that was a name that was put
22 forth, and that we would be well-advised to listen to the voice
23 of our stakeholders obviously, and involve that individual in
24 the process.

25 Q Okay. Now, up until where we are right now, we've got

1 four names. Do you know if Mr. Tony Sanchez provided any names
2 or played a role in reducing the names down to these four?

3 A No, it was done by the committee and the advisors.

4 Q What about any other members of management?

5 A No.

6 Q What about anybody on the board of directors?

7 A No. Other than Gene and myself, obviously on the
8 committee, no.

9 Q Okay. With the advice of your advisors?

10 A Correct.

11 Q Okay. Now, do you know -- do you have an understanding of
12 why Mr. Sanchez or other management didn't play a role in
13 coming up with this CRO candidate list?

14 A It was the scope of the Special Committee to -- you know,
15 to develop a view on the right candidate and to recommend that
16 candidate. It would be a bit inappropriate for -- if the part
17 of the Special Committee mandate to the CRO is to investigate
18 some of those affiliated entity transactions, it would be a
19 little inappropriate to have some of those affiliated entity
20 managers involved in the discussion or in the decision-making
21 process.

22 Q All right. Once you had it down to the four candidates,
23 what was the process after that?

24 A So we had the four candidates, and we very quickly
25 received the biographical information, résumés, other

1 information about them or about the firms that they had formed
2 or that they were working within, and then quickly set up
3 interviews with all four of the candidates.

4 Q Tell me about the interview process. Who led the
5 interviews?

6 A So I took the lead on conducting the interviews.

7 Q And why is that?

8 A It was an opportunity for me to play a role and to
9 contribute to the overall project. It didn't require
10 restructuring expertise. And so I took it upon myself to
11 scratch out a handful of questions that I thought would be
12 relevant to what we were looking for in terms of the job scope
13 of the CRO and the experiences that I thought would be helpful
14 for the CRO to have in advance of the first interview. And had
15 a brief call with our advisors to kind of go through that, just
16 to make sure that I knew exactly what we were looking for and
17 to get any input from those advisors on those topics we might
18 want to cover in the interviews.

19 Q How long did you spend on each interview?

20 A So they were scheduled for an hour, and I remember that
21 because we had two that were back to back. And I would say,
22 you know, all but one were 45 to 55-minute calls. There was
23 only one that I had to kind of keep pushing along, and then
24 ultimately cut it off, unfortunately, but --

25 Q Okay. What kind of questions did you ask during these

1 interviews?

2 A So we started off with asking -- and I don't remember all
3 of the questions, but I'll hit the high ones. We started off
4 with, you know, "Are you familiar with the situation?" We
5 asked questions around potential conflicts or anything other
6 than a casual business relationship with the various parties
7 that are involved, and there's obviously a lot of parties
8 involved in this situation.

9 Very quickly then we went into, you know, "Have you ever
10 been a chief restructuring officer before? If so, can you
11 describe some of those situations?" Right. If -- "As a CRO,
12 have you dealt with affiliated entity transactions or potential
13 conflicts of interest?"

14 I believe we asked about, "Have you ever, as part of a
15 Special Committee, otherwise a CRO, commissioned an
16 investigation into affiliated entity transactions?" I asked
17 about the -- whether they had industry experience in the energy
18 space. We asked each of them if they had thought about what
19 their compensation structure might look like.

20 And importantly, we asked each of them -- or I asked each
21 of them, you know, "If you were selected for the role, do you
22 have the time and are you individually willing to allocate that
23 time to the project because we're looking for an individual.
24 We're not looking for a team of people."

25 Q Okay. Now, this list of questions, was it on a piece of



1 paper?

2 A A little scratch piece of paper. Yes, sir.

3 Q Okay. What did you do with this scratch piece of paper
4 when the interviews were completed?

5 A So I used it to sort of guide the discussion, obviously,
6 with each of the interviews. I felt like it would be helpful
7 for myself, for Gene, and for the advisors to have kind of a
8 common set of themes that we covered. Once we had our
9 deliberation and had made our decision, it was no longer
10 necessary, and I discarded it.

11 Q Okay.

12 A It was no longer useful.

13 Q What role did Mr. Davis play in the interviews?

14 A So Mr. Meghji's interview, Gene had a conflict, and so he
15 was not on that first interview. In the interviews, he -- in
16 my deposition I think I said he just said, "Thank you for your
17 time," at the end. He did not say much during the interviews.
18 He was very thoughtful in letting me run the interviews. He
19 listened, obviously, as did our advisors.

20 But I do recall, you know, since my deposition, you
21 know, at the end of each of the interviews, he had a two- or
22 three-minute little speech that he would do, effectively saying
23 that, "Just so you have your eyes wide open, this is a, you
24 know, complicated situation. It's likely going to be
25 contentious. There's a lot of different parties involved with

1 different agendas. And just be eyes wide open that this could
2 be a very complicated and contentious process."

3 Q Okay. Anything else about the interviews that we haven't
4 already spoken about?

5 MR. LEBLANC: Objection.

6 THE COURT: Sustained.

7 BY MR. BRIMMAGE:

8 Q Did Mr. Davis say anything else at the end of the
9 interview, other than what you've already testified to?

10 A No, sir. Not that I recall.

11 Q I want to go back. You've mentioned a couple times now
12 that Mr. Davis was not on Mr. Meghji's interview. Do you
13 recall that?

14 A Correct.

15 Q Now, let me ask you, did that concern you that Mr. Davis
16 wasn't on that interview call?

17 A It did not.

18 Q Can you explain why?

19 A My impression was that Gene had -- being in the
20 restructuring sort of world, had, you know, a lot of
21 familiarity with Mr. Meghji, and he really had a lot of respect
22 for Mr. Meghji. You know, I don't believe they've ever worked
23 directly with each other on any of the projects that they've
24 both worked on, but it felt like Gene had held him in very high
25 regard.

1 Q Do you know one way or another whether or not Mr. Davis
2 and Mr. Meghji spoke about the CRO process before or after the
3 interview?

4 A My understanding is that Mr. Meghji and Gene did speak at
5 some point in time, either prior to or after our interview.

6 Q Okay. Did you -- were you -- did you have an opinion, one
7 way or another, whether you thought it was important that
8 Mr. Davis follow up with a different interview with Mr. Meghji?

9 A I didn't feel like that was my place to tell him what he
10 needed to do to get comfortable or uncomfortable with
11 Mr. Meghji's capabilities and his background.

12 Q Did you ever give Mr. Davis a recounting of your interview
13 with Mr. Meghji?

14 A So maybe fast-forward through the four interviews --

15 Q Okay.

16 A -- in our first, sort of, you know, conference call to
17 deliberate and -- or I should say really just begin discussing
18 what we observed from the different calls, because we didn't
19 debrief after each one of the interviews. So that was a Monday
20 morning, and so as part of that, you know, each of us had a
21 chance to sort of share some of our thoughts about the
22 candidates. And that was a chance for me to share sort of my
23 thoughts about Mr. Meghji and how he handled his interview.

24 Q Before you shared your thoughts but after you completed
25 all four interviews, did you have any initial thoughts

1 regarding what you thought about the candidates or who you
2 thought might be the best candidate?

3 A Yes, of course.

4 Q Can you tell the Court what that -- what those thoughts
5 were?

6 A Absolutely. I felt very strongly about Mr. Meghji as a
7 high-caliber candidate, just given the number of CRO
8 experiences that he had had, most recently Sears, given several
9 of those, you know, were situations where there were -- again,
10 Sears in particular recently -- situations that had
11 affiliated-entity transactions and very complicated structures.

12 My understanding in that process there was a lot of
13 disparate views, so he -- you know, he was forced to build
14 consensus amongst a lot of different parties with different
15 agendas. And you know, given the affiliated entity
16 transactions here, I just felt like he was -- you know,
17 somebody earlier used a scale of three to ten. And Mo was a
18 ten. He had all of the skills. He had all of the background.
19 And most recently, the Sears project had a lot of elements that
20 seemed similar to this. So I was very -- I was Mo, number one,
21 for sure. I felt like in terms of process-type person, he was
22 a great choice.

23 In terms of the -- my other, sort of, strong candidate
24 would be Rob Walls. I felt like he was, you know, a very
25 different background. He had more of the industry background.

1 He had a legal background. He had a financial background,
2 private equity. He had been involved in a very extensive and
3 complicated process, you know, but he didn't have the depth of
4 experience that Mo had. So I felt like he would be another
5 alternative but a very different alternative.

6 Q Okay. When you began your deliberations, did
7 Mr. Davis -- after you deliberated, did Mr. Davis identify who
8 he thought his top two were?

9 MR. LEBLANC: Objection, Your Honor. Calls for
10 hearsay. Mr. Davis will be here testifying shortly, or at some
11 point.

12 THE COURT: I'm going to overrule. This only calls
13 for a yes or no answer, and -- but I don't want you saying who
14 he identified. Did he identify his top candidates?

15 MR. ZYLMAN: Yes, sir. He did.

16 THE COURT: Thank you.

17 BY MR. BRIMMAGE:

18 Q Were you all in agreement in your top two?

19 THE COURT: Now I'm going to -- no.

20 MR. BRIMMAGE: No?

21 THE COURT: No. I mean, that asks who his top two
22 are.

23 MR. LEBLANC: I'm not even going to object,
24 Your Honor. It's fine. I just want to move this along. Fine.

25 THE COURT: Okay. If you're not going to object,

1 that's fine. I was just trying to -- go ahead. Were you all
2 in agreement?

3 MR. ZYLMAN: No, sir. We were not.

4 THE COURT: Okay.

5 BY MR. BRIMMAGE:

6 Q Okay. Were you in agreement with your top one?

7 A Yes, I would say we were definitely in agreement with our
8 Top One.

9 Q Okay.

10 A But we were not in agreement with the Number Two.

11 Q Okay. Now, after you interviewed the candidates, did the
12 Special Committee decide to take another step and let someone
13 else speak to the four candidates?

14 A We did.

15 Q Can you tell the Court what the Special Committee
16 discussed and decided?

17 A There was discussion, and I believe Gene had a reference
18 to that. You know, it was customary and was in good form to
19 allow the CEO or the senior management team to visit as a
20 courtesy with the individual who was, you know, potentially
21 going to be inserted into their business as the CRO. So we had
22 a discussion about, you know, giving Tony Sanchez the ability,
23 as a courtesy, to visit with those four individuals before we
24 made our decision.

25 Q Okay. Do you recall when you all made that decision, the

1 Special Committee?

2 A That would have been on the Monday morning after the
3 weekend where we had two calls on Sunday. I think we had a
4 call on Wednesday and Friday the week before. So it would have
5 been -- I don't recall the date, but it was on a Monday
6 morning.

7 Q Okay. Did any other members of management get the
8 opportunity to speak to the four candidates?

9 A Not that I'm aware of. No, sir.

10 Q What about board members?

11 A No.

12 Q Okay. And who was involved in those discussions with
13 Mr. Tony Sanchez and the four candidates?

14 A To my knowledge, it was just Tony telephonically visiting
15 with each of those four individuals.

16 Q Okay. Do you know if any advisors were on the call?

17 A Not that I'm aware of. No, sir.

18 Q Okay. Do you know if any stakeholders were involved in
19 this?

20 A No, sir.

21 Q Okay. So this is a Monday. Do you know that -- whether,
22 in fact, Mr. Tony Sanchez had those conversations with the four
23 candidates?

24 A My understanding is that he was able to have all four of
25 those conversations during the course of the day on Monday,



1 which surprised me that it was -- that he put those together so
2 quickly.

3 Q Okay. Now, after Mr. Sanchez spoke with the four
4 candidates, what was the Special Committee's next step?

5 A So we set up a follow-up meeting on Tuesday morning to
6 continue our deliberations and discussion about the four
7 candidates. As a courtesy, we asked Tony to participate in the
8 initial portion of that call, so that he could share his
9 thoughts regarding the strengths and the weaknesses of the four
10 candidates that he had visited with the day before.

11 Q Okay. And did he attend that call and provide that
12 update?

13 A He did attend the initial five to ten minutes of the call,
14 and then he signed off, so that we could continue our
15 discussions about what we thought about the candidates.

16 Q Can you tell the Court about what Mr. Sanchez said about
17 his -- well, his reporting to the Special Committee?

18 A I don't remember all the detail of the conversation. I
19 remember him sharing, you know, some thoughts around the
20 strengths and the weaknesses of the four candidates, but I
21 don't remember all the detail of the comments that he made.

22 Q Did he tell you or the -- did he tell the Special
23 Committee who to select?

24 A No.

25 Q Did he indicate he could the Special Committee who to

1 select?

2 A By no means, no.

3 Q All right. Based on what he provided the Special
4 Committee, did you have some kind of understanding or how did
5 you interpret what he said with -- regarding the candidates?

6 A So my impression was that there were two candidates that
7 he felt were, you know, highly qualified and had, you know,
8 extensive backgrounds, again, in different ways. And that
9 there were two candidates that he felt were less qualified and
10 had less applicable skills. That was my impression, but again,
11 he didn't explicitly say. He just -- based on his comments, I
12 felt like he was leaning towards two and away from two.

13 Q Okay. And who were the two that you thought he might be
14 leaning towards?

15 A I felt like both Mo and Rob Walls were the two that he was
16 favorably inclined towards.

17 Q Okay. Now, after he reported to you for the five to ten
18 minutes, what happened then?

19 A So we asked him to sign off, and then the Special
20 Committee continued the dialogue with our advisors.

21 Q And what -- how did that end? How did those deliberations
22 end that day?

23 A So we actually didn't make a decision, as I recall, at
24 that meeting. I think we continued to talk about, you know,
25 some of Gene's observations, some of my observations. We

1 weren't in a position to make a decision at that point in time,
2 and we agreed to reconvene I think a couple days later.

3 Q Okay. So a couple days later, did you meet again?

4 A We did.

5 Q And did you all continue deliberations?

6 A We did.

7 Q What resulted from those deliberations?

8 A Ultimately, the committee agreed that we would put forth
9 both Mo as well as Rob Walls for consideration to the advisors
10 of the creditors as the CRO candidate.

11 Q Okay. Now, you're a two-person committee, right?

12 A Correct.

13 Q How do decisions have to be made?

14 A A unanimous vote.

15 Q Okay. And so the two that you ultimately decided to put
16 forward to the committees, are those the same two that
17 Mr. Davis had as his top two originally?

18 A They are not.

19 Q Okay. Is one of them the same that he had?

20 A Yes, sir.

21 Q And who is the one?

22 A Mo.

23 Q Okay. How did you go about, in your own mind, assessing
24 the four candidates?

25 A So the first thing that I did was I reviewed the written

1 information that was available. I thought that was helpful to
2 give some context to some of their experiences. But I spent a
3 lot of time on the interview listening to what they had to say.
4 And to me, you know, we needed somebody who had been a CRO
5 multiple times, that had that experience. We needed somebody
6 who had dealt with complicated organizational structures and
7 legal structures. We needed somebody who had dealt with
8 affiliated entity transactions and potential conflicts of
9 interest. And we needed somebody who had been able to bring
10 consensus among a lot of disparate views in some of these
11 situations.

12 And so, as I thought about the four candidates, that's why
13 I felt very strongly about Mo. You know, during the interview
14 process I put a lot of weight on how people handled it, how
15 efficient they were, what they said, what their background was.
16 And he was -- like I said, he was very efficient. So I put a
17 lot of weight on the interview as well as the material, but for
18 me, the interview process was critically important.

19 Q Okay. Did anybody influence your determination of how you
20 assessed the four candidates that you just described?

21 A Absolutely not.

22 Q You and you alone.

23 A Me and me alone.

24 Q Not even Mr. Davis.

25 A Correct.



1 Q Okay. When you and Mr. Davis then deliberated, you kind
2 of identified how you assessed the candidates and what you
3 thought were important. When you all deliberated the
4 candidates, what did you collectively discuss regarding the
5 traits, qualities, and experiences that were important?

6 A I would say that Gene's view of the important elements of
7 the CRO were very similar to mine. He certainly seemed to
8 spend more time thinking about and focused on the
9 consensus-building element. You know, I think he had different
10 market data points about some of the candidates that he was
11 leaning on. But I think both of us agreed that we needed
12 somebody that had been a CRO multiple times; that understood
13 how to deal as the CRO with affiliated entity transactions;
14 that as a CRO had dealt with, you know, potential conflicts of
15 interest and investigation into those matters; and importantly,
16 somebody who was going to be able to take a lot of disparate
17 stakeholder views and build a consensus, so that we can
18 ultimately develop a restructuring agreement that everybody
19 gets onboard with.

20 Q What, if any, information did you and Mr. Davis discuss
21 regarding what Tony Sanchez told you guys about the four
22 candidates?

23 A I think after he hung up, we had a very brief discussion
24 about some of his comments, but then very quickly moved on to
25 our observations and our thoughts.



1 Q Okay. Did either one of you discuss doing what you
2 thought Tony Sanchez wanted to be done?

3 A Not at all.

4 Q In any way?

5 A Not at all.

6 Q Okay. Was oil and gas experience important to you in
7 determining who the CRO was?

8 A For me, it was a nice-to-have but not a have-to-have. And
9 again, I felt like in this situation, we need a restructuring
10 expert. The company has plenty of oil and gas experts in the
11 management team, even beyond the Sanchez family. And so having
12 somebody who had that sort of process experience, rather than
13 the oil and gas experience, was the most important thing.

14 Q Now, remind me what day this was.

15 A So this would have been on the -- maybe the Thursday that
16 we made the final decision to move forward with those two.

17 Q Okay. So you took a vote, made the final decision to put
18 up the two candidates that you already testified to, correct?

19 A Yes, sir.

20 Q What happened after that?

21 A So those two candidates were interviewed by the advisors
22 to the creditors as part of the next step in the process, as I
23 understand it.

24 Q Okay. And do you know what happened after that?

25 A My recollection is that we received feedback that the



1 advisors to the creditors were still recommending their
2 candidate.

3 Q What actions did the Special Committee take upon hearing
4 that?

5 A So a lot of discussion was had after that feedback. We
6 felt like we needed to listen to the voice of our stakeholders
7 for sure, but we felt like the difference in capabilities and
8 skill set were so dramatically different that, you know, it
9 would be improper for us to ignore a super highly-skilled and
10 qualified candidate, you know, in exchange for somebody who
11 was, in our view, just dramatically less qualified and
12 experienced.

13 And so we ultimately decided that we would, once again,
14 propose the same two candidates, Mo and Rob, but with again a
15 preference for Mo, to the advisors to the creditors. And we're
16 very happy to hear that the 1Ls were very quickly supportive of
17 Mo after that second discussion.

18 Q Let me just ask you to clarify. You said you thought it
19 would be "improper." Can you help the Court understand what
20 you mean by improper?

21 A So this is maybe a little bit of some of the opening
22 remarks too from Counsel to the committee. There was -- in my
23 dep, there was a lot of discussion around, you know, putting
24 weight or giving some additional credit to a candidate that was
25 put forth by the stakeholders. And you know, in that dialogue,

1 you know, there was a lot of the same questions over and over
2 again. And I think that we were talking past each other, so I
3 want to clarify that if I can.

4 When we received the name from the creditors' advisors,
5 you know, we took it seriously. We felt like this is somebody
6 who, you know, through their advisors, some portion of the
7 stakeholders, you know, had put forth. And so we -- you know,
8 again, in listening to those stakeholders, we put that
9 candidate in the mix with the other three that we had. At that
10 point in time, we thoughtfully and thoroughly evaluated all
11 four of those candidates, you know, on a common ground and in a
12 common light to develop a view of their true skills and
13 capabilities.

14 You know, after the evaluation took place, then it was,
15 you know, debate and decision, and only at that point in time,
16 at least in my mind, you know, do you give some incremental
17 weight to a stakeholder recommendation, once you develop a view
18 of somebody's real capabilities and skills. And so, you know,
19 where I'm going with this is, you know, we felt like -- I felt
20 like Mo was, by far and away, the strongest candidate of all of
21 them.

22 We felt like -- or I felt like the candidate that was put
23 forth from the advisors to the creditors was dramatically
24 inferior. And you know, even if you were to give some
25 incremental benefit or some incremental credit to that



1 individual, it didn't make sense. Again, it's -- there was the
2 comment made earlier about a ten versus a three. You can't
3 give some incremental credit to the three and make it anywhere
4 near the ten. So we went with the ten.

5 And we felt like in exercising our independent business
6 judgment, which is what we're meant to do, in maximizing the
7 overall value of the estate, for the long run, making the
8 decision of picking Mo was the right decision. And it would
9 have been great to have made a decision to pick the candidate
10 that was put forth by the advisors to the creditors. If he had
11 been an eight-and-a-half or a nine, maybe we would have gone
12 with that and given some deference to that.

13 And I avoided being specific about articulating sort of
14 weight to that individual because I didn't want to get into an
15 argument about, "Well, what if he was a six?" And ultimately,
16 the way that I would describe it is Mo is so vastly superior
17 that he was the right candidate for us to select.

18 Q Do you think, given your charge as a Special Committee
19 member, it would have been okay or appropriate to select the
20 objecting creditor's candidate?

21 A I do not believe that would have been appropriate or
22 correct. It would have been easier. It would have avoided all
23 of these processes and all of this time and energy and money,
24 but it would not have been the right long-term decision to
25 maximize the value of this business -- excuse me, of this

1 estate.

2 Q Can you summarize for us why this Special Committee
3 told -- went back and told the creditors that, you know, "Here
4 are the two candidates again, but we have a preference for Mo"?

5 A Yes.

6 Q Why did the Special Committee have a preference for Mo?
7 What was it about him?

8 A I think -- I've gone through some of this. You know, I
9 think our view was that a process person was more appropriate
10 than an industry expert, although we felt like the industry
11 expert that we chose, you know, had some really good skills
12 that would be constructive here. But we really felt like it
13 would -- it needed to be a process person that had experience
14 doing what this individual is going to be asked to do, in the
15 context of these complicated sort of corporate structures, in
16 the context of having to deal with these affiliated entity
17 transactions. And again, you know, to me, Mo checks those
18 boxes multiple times each.

19 Q Did you have any thoughts whether or not Mr. Meghji was
20 independent from the parties involved?

21 A My view is that he was completely independent, yes.

22 Q What do you base that on?

23 A In having our discussions in the interviews, you know, we
24 went through all the various parties that were involved in both
25 sides of this situation. And while certainly many of the



1 individuals we visited with had these business dealings, Mo had
2 no, sort of, close affiliation with any of the individuals or
3 the organizations or firms that were involved here. And
4 importantly, he had no background whatsoever with respect to
5 the stakeholders or with respect to the management team of the
6 company. He was completely independent, at least in my view.

7 Q Okay. Do you have a thought, one way or another,
8 regarding whether Mr. Meghji will be able to ultimately work
9 with the two objecting creditors in this hearing today?

10 MR. LEBLANC: Objection, Your Honor. Calls for
11 speculation.

12 THE COURT: Oh, I think that's part of the decision
13 that they're charged with making, is in their judgment who is
14 going to work best with creditors. So I think it's part of
15 his -- what he has to discuss. I'm overruling.

16 THE WITNESS: So my understanding is that in Sears,
17 there were a lot of different parties involved.

18 THE COURT: No. Re-ask the question.

19 THE WITNESS: Sorry.

20 MR. BRIMMAGE: I'm sorry, Your Honor.

21 THE COURT: Yeah. Your question was you -- views
22 about how it's going to work, and I don't want to turn that
23 into a hearsay answer.

24 THE WITNESS: Okay.

25 MR. BRIMMAGE: I understand.

1 THE COURT: Yeah.

2 BY MR. BRIMMAGE:

3 Q Let me ask it again, if I can remember what it is.

4 Do you have --

5 THE COURT: You asked him whether he had views
6 whether Mr. Meghji would be able to work with the dissenting
7 creditors.

8 BY MR. BRIMMAGE:

9 Q Yes. Do you have views on that?

10 A My impression, based upon the feedback that I have
11 received related to Mr. Meghji's experience doing that with
12 different parties, is that he would, yes.

13 Q Okay. Any other reasons?

14 A My understanding is that some of the creditors and/or
15 their advisors, as part of their development of a list of
16 candidates, reached out to Mr. Meghji. I don't know exactly
17 which ones, but I took that as a very affirmative indication of
18 their view of him and the level of respect that they had for
19 him to reach out to him.

20 Q In doing your due diligence, were you advised by your
21 advisors or anyone else, in your own due diligence, regarding
22 any successes Mr. Meghji has had regarding dealing with parties
23 at odds during a bankruptcy case?

24 A So I know in the Sears case --

25 MR. LEBLANC: Objection, Your Honor. Hearsay.



1 THE COURT: Sustained.

2 BY MR. BRIMMAGE:

3 Q What happened after you proposed the two candidates and
4 said you prefer Mr. Meghji? What happened after that?

5 A The second time?

6 Q Correct.

7 A So the second time, we received feedback from the 11s that
8 they were receptive to him and were onboard, and we were
9 optimistic that the other creditors would fall in line as well
10 but did not.

11 Q Okay. Do you understand whether or not Mr. Meghji has
12 begun work?

13 A Yes, he has.

14 Q And do you -- what do you understand he's been doing?

15 A So very shortly after engaging him, I know he was on the
16 ground initially, you know, just getting familiar with the
17 business and the people. My understanding is that, you know,
18 very quickly he started to dig into those affiliated entity
19 transactions with SOG and SNMP. And certainly, in the last
20 couple of weeks, has now been charged with really spearheading
21 the business planning process. And so I think, you know, he is
22 certainly drinking from the proverbial firehouse right now.

23 My understanding is that, assuming that he is ultimately
24 approved by the Court, that he would then add to that list a
25 review of the Ropes & Gray investigation as well. But I don't



1 believe he's received that report yet. So I think right now
2 it's business planning, as well as getting familiar with the
3 SOG and the SNMP contracts and those relationships.

4 Q I want the Court to get an understanding from you the
5 status of the business planning process now. Who is
6 responsible for the business plan now?

7 A Mo is responsible for the business plan now.

8 Q And who does he make a recommendation to regarding the
9 business plan?

10 A He makes a recommendation to the Special Committee.

11 Q All right. Are the Sanchezes involved with Mr. Meghji
12 regarding coming up with the business plan?

13 A No, they are not.

14 Q How do you know that?

15 A A couple of weeks ago we had a conference call where it
16 was discussed and agreed that they would recuse themselves from
17 that planning process.

18 Q Okay. I want to now quickly talk about why you didn't
19 select the objecting creditors' candidate. Can you summarize
20 for us the reasons why the Special Committee -- well, let me
21 back up. Let's talk about you first. The reasons why you
22 didn't select or have at the top of your list the objecting
23 creditors' candidate.

24 A Sure. To me, that individual had one CRO experience;
25 whereas, Mr. Meghji had, you know, 10 to 12. Importantly, and

1 certainly as importantly, when I asked the question of, "Have
2 you been the CRO in a situation where there were affiliated
3 entity transactions or potential conflicts of interest, and how
4 did you handle those?" he did not have a situation that he
5 could reference. And certainly, that's at the core of what the
6 original scope of the CRO's, you know, responsibilities were.

7 So those were two things that, to me, if you have four
8 candidates, and you have two process and you have two that are
9 more industry, you know, the best of the two in each of those
10 two silos, and that's what we did. So I felt like the
11 creditors' candidate didn't have the CRO experience, didn't
12 have the affiliated entity transaction experience as a CRO, and
13 you know, that was -- I mentioned it earlier, his interview was
14 the one that I kept having to speed along, and ultimately, you
15 know, kind of cut off at the hour. He was inefficient in his
16 use of our time and his time. He was long-winded. He didn't
17 answer the questions efficiently. He went off on tangents.
18 And I was very concerned, given the complexity of what's going
19 on, given the number of work scopes that would be going on
20 simultaneously, that he would be ineffective handling multiple
21 work scopes simultaneously just given how inefficient he was in
22 his responses.

23 Q Do you recall how many CRO experiences he had?

24 A I recall one that he referenced.

25 Q Okay. In your interview or otherwise, did you identify

1 whether or not he had experience in the exploration and
2 production area?

3 A I asked that question of all of the candidates, yes.

4 Q And did he?

5 A He had none.

6 Q Did he have experience valuing companies regarding E&P
7 assets?

8 A He had none.

9 Q What about experience valuing midstream assets?

10 A None that I can recall. No, sir.

11 Q What about experience regarding purchase and sale of
12 midstream assets?

13 A None that I can recall.

14 Q All right. What about experience regarding purchase and
15 sale of any oil and gas assets?

16 A My recollection was that he professed that he did not have
17 oil and gas industry expertise or experience.

18 Q Did he have any -- or did he indicate he had any
19 experience valuing upstream companies?

20 A No.

21 Q What about downstream companies?

22 A I didn't ask that question.

23 Q Okay. Did he indicate he had any experience negotiating
24 oil and gas asset transactions?

25 A He did not.



1 Q Did he indicate he had any experience in the Eagle Ford
2 Shale?

3 A No.

4 Q Did he indicate he had any experience exploring
5 alternatives regarding pipeline companies?

6 A Not that I can recall, no.

7 Q Okay. Anywhere?

8 A No.

9 Q What about the Eagle Ford Shale?

10 A No.

11 Q Okay. Did he indicate he had experience regarding what
12 the base or what the rate was for water disposal?

13 A No, he did not.

14 Q Okay. Did he indicate what -- that he had experience
15 regarding the right for water disposal in the Eagle Ford Shale?

16 A No.

17 Q Okay. What about whether or not -- did he indicate
18 whether or not he had experience regarding whether or not it's
19 customary to charge for water disposal?

20 A No.

21 Q Okay.

22 A Again, he professed that he had no oil and gas industry
23 experience.

24 Q Did he indicate whether or not he had experience with gas
25 prices?



1 A No.

2 Q If he -- did he indicate whether or not he had experience
3 whether or not this company should be paying for frack fees?

4 A No.

5 Q Why is it important -- or scratch that, Your Honor.

6 Is it important, in your mind, for the company to get a
7 CRO approved by the Court and onboard and going?

8 A Yes.

9 Q Can you tell the Court why?

10 A Well, first of all, it's a condition to the DIP, and the
11 company needs the DIP. The liquidity fairway is not nearly as
12 long as it was several months ago, obviously; so the DIP
13 financing is critical, and that's a big component of this. To
14 me, the other point is, you know, as part of figuring out how
15 we get to a restructuring agreement, we have to have a business
16 plan. And you know, given recent events, you know, we need an
17 individual in the company driving that process.

18 You know, compound that with the fact that a big component
19 of developing that business plan is developing a view how to
20 handle the contrast between the affiliated entities and the
21 complexity of that, and having an individual in the company
22 working through that, making recommendations to the Special
23 Committee will then result in, you know, impacting the business
24 plan.

25 So I think we've got to get a -- my view is we've wasted a

1 lot of time and energy, and we still have the same goal, just
2 have a shorter fairway ahead of us to reach -- you know, to get
3 to where we need to get. And I think it's critically important
4 to have somebody in the company, you know, now.

5 Q Thank you.

6 MR. BRIMMAGE: Your Honor, I'll pass the witness.

7 THE COURT: Thank you. Any questions from any
8 proponents?

9 Who is going to take the lead on the opponents?

10 MR. LEBLANC: I am, Your Honor. I don't know what
11 the Court's preference is, given the time, if you want to take
12 a break, or you want us to just start ahead or --

13 THE COURT: Do you want to take a break?

14 MR. LEBLANC: I wouldn't mind a short break, Your
15 Honor.

16 THE COURT: Would a ten-minute break work?

17 MR. LEBLANC: That's perfectly fine.

18 THE COURT: We'll see you all at 5:25. Thank you.

19 THE BAILIFF: All rise.

20 (Recess taken at 5:16 p.m.)

21 (Proceedings resumed at 5:26 p.m.)

22 THE CLERK: All rise.

23 THE COURT: Please be seated. Whenever you're ready.

24 MR. LEBLANC: I'd be happy to proceed, but
25 Mr. Brimmage is not here, Your Honor. So I think he'd probably



1 be happier if I did not.

2 THE COURT: I think we'll wait for him. Thank you.

3 All right. Let's go ahead.

4 MR. LEBLANC: Can I proceed, Your Honor? I'm sorry.

5 THE COURT: Pardon?

6 MR. LEBLANC: May I proceed?

7 THE COURT: Yes, sir. Thank you.

8 CROSS-EXAMINATION

9 BY MR. LEBLANC:

10 Q Mr. Zylman, Andrew Leblanc, Milbank, on behalf of the
11 Committee. My outline literally says, "good morning." But
12 good evening, Mr. Zylman.

13 A Good evening.

14 Q We met at your deposition on Monday, correct?

15 A Yes, sir.

16 Q I want to start where you started with your Counsel, and
17 just talk a little bit for more detail about your background.

18 Let's start with your time at SCF Partners. That was
19 a -- that's the private equity fund you described, right?

20 A That is correct.

21 Q And you were employed there from 2003 to 2009. Is that
22 correct?

23 A That is correct.

24 Q And so from 2009 forward, you've been with Sunland
25 Capital, right?



1 A I co-formed Sunland Capital April of 2009.

2 Q Okay. Now, SCF was a private equity company, correct?

3 A Private equity fund. Yes, sir.

4 Q Yeah. And that fund -- you told me at your deposition
5 that the average investment size was a little around -- around
6 \$100 million initially. Is that right?

7 A No, you asked me the size of the funds, and you asked me
8 how many portfolio companies we would typically have in the
9 fund, not the typical transaction size.

10 Q Okay. So I asked you at your deposition that -- I said,
11 "The portfolio companies were assets of less than \$100 million
12 value on average. Is that right?" Do you recall that?

13 A Yes, and I believe my response was initially they were
14 smaller, but over time many of them would be aggregated and put
15 a public company management team on top of them --

16 Q Okay.

17 A -- and take them public.

18 Q All right. I'm just going to ask you to just focus on my
19 question.

20 So, at least initially, the size of the -- the SCF
21 portfolio, you bought assets that had around \$100 million in
22 value. That's what you told me, right?

23 A I didn't tell you that, but --

24 Q All right.

25 A We had \$1 to \$2 million under management.

1 THE COURT: No. No.

2 MR. LEBLANC: Thank you, Your Honor.

3 THE COURT: I don't -- you can't start by asking him
4 what he said at the deposition anyway. And then that's what's
5 causing this confusion to answer. Just ask him the question.

6 MR. LEBLANC: I'm just -- I'm -- Your Honor, I'm
7 mindful of the time, and I'm just trying to move this along.

8 BY MR. LEBLANC:

9 Q Let's talk about Sunland Capital. Let's just move to that
10 period. So the last -- over the last ten years, while at
11 Sunland Capital, you've managed -- have held a series of
12 assets, up to four of them at this time, operating companies,
13 correct?

14 A We have four operating businesses today. Yes, sir.

15 Q And those operating businesses are in the 10 to \$15
16 million value, correct?

17 A The aggregate of the transaction value to those businesses
18 together was in the sort of 10 to \$15 million range, yes.

19 Q Right. And in fact, that's the reason you founded Sunland
20 Capital was to invest in companies that were too small for
21 private equity funds to invest in, correct?

22 A Correct. A less efficient market.

23 Q Just, again, try to answer my question. The reason you
24 founded Sunland Capital was to invest in companies that were
25 too small for private equity funds to invest in, right?



1 A One of the reasons, yes.

2 Q And so the four companies that you described earlier that
3 you serve as the CEO of, those are companies with a value in
4 the range of 10 to \$15 million, correct?

5 A Not necessarily today.

6 Q Okay. But at the time you acquired them, they were
7 companies of a value of 10 to \$15 million, right?

8 A Correct.

9 Q Now, with respect to those companies, you have the title
10 of CEO, but you have people who actually do the day-to-day
11 operations at those with the title of president or general
12 manager, correct?

13 A Correct.

14 Q And you told your Counsel on direct, you had no public
15 company experience, public company board experience prior to
16 your appointment to this board, correct?

17 A That is correct.

18 Q And you also -- in your career, you had never had any
19 experience with a Chapter 11 bankruptcy case, correct?

20 A That is correct.

21 Q So that includes -- at Merrill Lynch, you didn't work on
22 any Chapter 11s, right?

23 A That is correct.

24 Q At SCF, you didn't have any portfolio companies that went
25 through a Chapter 11 case.

1 A Thankfully, no.

2 Q Right. And at Sunland Capital, you've had no exposure to
3 Chapter 11 either, correct?

4 A No, sir. Thankfully, no.

5 Q Now, one of the -- and so you would agree, would you not,
6 that you are new to the bankruptcy world, right?

7 A Absolutely.

8 Q Now, in fact, you understand the term "insolvency" to
9 be -- to mean that a company has no cash and no liquidity and
10 no longer means to operate, right?

11 A Correct, yeah. They can't pay their bills, they're done.
12 Insolvent.

13 Q Right. And so your understanding, at least as of Monday,
14 was that you don't believe that Sanchez is insolvent because of
15 that -- using that definition, right?

16 A That is correct.

17 Q And the reason for that is because they have cash, right?

18 A They can pay their bills. Yes, sir.

19 Q All right. Now, you talked in some detail about the
20 decision -- your joining the Sanchez board with your Counsel.
21 I just want to explore a couple of things of that. Now, I
22 understand correctly, the first time you were approached was by
23 Tony Sanchez, right?

24 A That is correct.

25 Q The only two people you interviewed in person with to join

1 this board were Tony Sanchez and his father, correct?

2 A Those are the only two in-person interviews. Yes, sir.

3 Q Right. And you under -- you knew Mr. Sanchez -- you said
4 on direct, you guys run in the same social circles. Is that
5 right?

6 A Correct.

7 Q You've seen each other at a few dinner parties.

8 A Correct.

9 Q You've seen each other at some educational events.

10 A Correct.

11 Q And you've traveled on some organizational events before,
12 right? That --

13 A On retreats. Yes, sir.

14 Q Right. But other than that -- and let's go back. You
15 talked with your Counsel about the work that you had
16 done -- the work that one of your -- your companies that are
17 held by Sunland Capital had done with the Sanchez family. You
18 recall that?

19 A Correct.

20 Q And you clarified some of the answers you gave at your
21 deposition with respect to how much revenue was earned from
22 those.

23 A Yes, sir.

24 Q But you weren't involved in those transactions at all.

25 A No. That service is a field-level service. It's

1 typically field callout, field performed in South Texas.

2 Q Okay. And when you met with the Sanchezes about
3 potentially joining the board, you also talked with them about
4 their desire to have -- to form a Special Committee, right?

5 A Correct. And that was a component of the role, yes.

6 Q Right. And you understood that you were being interviewed
7 at that time to join not just the full board, but also a
8 Special Committee of the board.

9 A Correct.

10 Q And that Special Committee of the board you knew was
11 focused on restructuring efforts, right?

12 A Strategic alternatives, including a potential
13 restructuring, yes.

14 Q And you thought this would be -- I think you told your
15 Counsel on direct, you thought this would be a good opportunity
16 to check a box and serve on a private company, right?

17 A To serve on a public company board. Yes, sir.

18 Q I'm sorry. A public company, yes.

19 A I felt like it's difficult to get the first one, and
20 obviously the second one's easier if you have that experience
21 already.

22 Q Right. Now, your compensation was just given to you. You
23 didn't negotiate your compensation, right?

24 A That is correct.

25 Q And you're paid about \$15,000 a month.

1 A I think it's \$175,000 annual retainer currently, after
2 being adjusted earlier this year.

3 Q Okay. In addition to that, you're paid meeting fees for
4 every meeting that you attend, right?

5 A Correct.

6 Q So for each of those that you described, a weekly plus
7 meetings, you're paid either \$1,000 for a telephonic meeting or
8 \$1,500 for an in-person meeting. Is that correct?

9 A Correct.

10 Q Now, I want to talk about the role of the Special
11 Committee. You went through this in great detail with your
12 Counsel, so I'm not going to -- I'm going to try to do this
13 quickly. But as you said, when you first were approached about
14 this, the idea was to evaluate potential strategic
15 alternatives, including a potential restructuring, right?

16 A Yes, sir.

17 Q That was the original mandate of the board, of the Special
18 Committee, correct?

19 A That's my recollection. Yes, sir.

20 Q And you talked about with your Counsel that that mandate
21 has now expanded, correct?

22 A The Special Committee has been given significantly more
23 responsibilities, yes.

24 Q All right. And the Special Committee has been in place
25 for 13 months.

1 A Correct.

2 Q Over that 13 months, among the things that you have done
3 include approving in May, the executive compensation package,
4 correct?

5 A Correct.

6 Q And so it was the -- you know that there are disputes
7 about that executive compensation package in this case, right?

8 A I understand that that's one of the many disputes in this
9 case.

10 Q Right. And that was -- that particular issue was
11 something that the Special Committee approved, right?

12 A We were the final approval in that process, after having
13 received reports from numerous experts.

14 MR. LEBLANC: Move to strike everything after --

15 THE COURT: Sustained.

16 MR. LEBLANC: Thank you, Your Honor.

17 BY MR. LEBLANC:

18 Q And so it was the Special Committee that approved under
19 that plan an up-front bonus to Mr. Sanchez, Jr., the chairman
20 of the board, of \$1.35 million.

21 A I'm sure your numbers are correct, yes.

22 Q And it was the Special Committee --

23 MR. BRIMMAGE: Your Honor, at this point I'm going to
24 have to object. I don't understand the relevance of this to
25 the CRO motion at all. So I'm going to object on that basis.

1 MR. LEBLANC: Your Honor, I --

2 THE COURT: Overruled. I'm overruling the objection.

3 MR. LEBLANC: Okay. Thank you, Your Honor.

4 THE COURT: I understand the relevance.

5 MR. LEBLANC: Thank you.

6 BY MR. LEBLANC:

7 Q And it was the Special Committee that approved in the
8 compensation package at -- a bonus for Mr. Sanchez, Jr., the
9 chairman of the board, of up to \$6.3 million. Is that right?

10 A I don't have that document in front of me, but I --

11 Q But does that number sound right to you?

12 A That sounds probably right, yes.

13 Q And it was the Special Committee that approved, on behalf
14 of the company, the severance packages that were approved as
15 part of that same executive compensation plan, right?

16 A It was a comprehensive plan. Yes, sir.

17 Q And that severance package that was put in place at that
18 time includes a lump-sum cash payment up to two times the
19 annual basis salary for the executives.

20 A Again, I haven't read that document in several months, so
21 I'd have to refer back to it, but I'm sure you're speaking
22 accurately.

23 Q Okay. And I understand also correctly that the Special
24 Committee, in the last 13 months, has been given the mandate to
25 deal with the inter-company conflict issues, correct?



1 A That's the -- yes, the source of the Ropes & Gray
2 investigation. Is that what you're referring to?

3 Q Well, there's two different things. I want to separate
4 them. There's the investigation of potential causes of action,
5 right? That's the Ropes & Gray investigation, right?

6 A Right.

7 Q But the Special Committee also has a mandate to deal with
8 the inter-company transactions, correct?

9 A Correct, yeah.

10 Q Now, so it is on the Special Committee's watch that SNMP
11 twice in 2019 raised their -- the rates that they charge to
12 Sanchez Energy, correct?

13 A I can't speak to that. I don't have the detail on that.

14 Q Okay. But -- so you don't know one way or the other on
15 that?

16 A I haven't been educated on that information.

17 Q And are you familiar at all with the dispute with respect
18 to seismic data?

19 A From some of the documents that I've read, yes, I'm
20 familiar with it.

21 Q Okay. And so you're aware that Sanchez Energy has paid
22 for the procurement of all seismic data since you've been a
23 member of the Special Committee, right?

24 A I can't speak to that. I don't have that detail.

25 Q And you're aware that SOG claims that they own that

1 seismic data that Sanchez Energy has paid for.

2 A My understanding is that's the dispute.

3 Q Okay. And that issue between SOG on the one hand and
4 Sanchez Energy as the Special Committee -- I'm sorry. That
5 dispute between SOG and Sanchez Energy, that's within the
6 purview of the Special Committee because of the conflict issue
7 there, right?

8 A I'm sure that's one of the number of things that we'll be
9 evaluating at some point.

10 Q Now -- and I want to make sure that I'm clear on this. As
11 you understand it, board approval is required for any plan of
12 reorganization that's proposed by the company. Is that right?

13 A That's my understanding, yes.

14 Q Now, in the 13 months -- now, in addition to serving on
15 the Special Committee, you also serve on the full board of
16 Sanchez Energy, correct?

17 A Correct.

18 Q And in the 13 months on which you've served on that full
19 board, you've never once dissented from a vote of the Sanchez
20 board, correct?

21 A That is correct.

22 Q Now -- all right. Let's turn to the CRO topic, and I
23 think you talked about this with your counsel on direct, but
24 you first became aware of the idea of appointing a CRO when it
25 became a condition to the debtor-in-possession financing,

1 correct?

2 A That is correct.

3 Q So the -- prior to that time, the Special Committee had
4 never thought about appointing a CRO, correct?

5 A I don't believe we discussed a CRO prior to that.

6 Q And so you had not -- you never thought to appoint an
7 independent person to management prior to that point in time
8 when it was demanded by your creditors, correct?

9 A That is correct.

10 Q Now, Mr. Sanchez, Tony Sanchez III, the CEO of the
11 debtors, for a long time, he saw no need for a CRO, correct?

12 A That is correct.

13 Q Now, your belief, though, is that by the time he
14 interviewed the four candidates, and we'll talk about that in
15 some detail, by that time he had acquiesced that a CRO was
16 necessary?

17 A That's what I said in my deposition, yes.

18 Q And you believe that to be true, right?

19 A I think at that point he didn't realize that it was a
20 condition to getting the DIP done, as did the Special
21 Committee.

22 Q Okay. All right. And again, I'll do this at a somewhat
23 summary level because you did cover a lot of this with your
24 counsel, but the first step in your process was creating a list
25 to choose from, correct?

1 A Correct.

2 Q And you told -- I think you told your counsel that you got
3 input from Akin Gump, Alvarez & Marsal, and Moelis, right?

4 A Correct.

5 Q And you didn't solicit any input from Ropes & Gray, right?

6 A Correct.

7 Q Now, I think you said on direct that Mr. Davis -- you
8 understood Mr. Davis suggested candidates?

9 A That's my understanding.

10 Q Okay. But as of the time of your deposition, you were
11 unaware of him suggesting candidates at the time of your
12 deposition, right?

13 A I didn't remember him doing that, no.

14 Q And that -- and you told me in the deposition that he did
15 not to your -- you had no recollection of him doing that.

16 MR. BRIMMAGE: Your Honor, I'll object to the
17 improper use of a deposition transcript or deposition
18 references. If he wants to ask some questions and he doesn't
19 answer it consistently, he can use it then, but this is
20 inappropriate reference to the deposition.

21 THE COURT: To -- which question contains the
22 inappropriate reference?

23 MR. BRIMMAGE: The one that says, "I asked you in
24 your deposition, didn't I?"

25 THE COURT: And you hadn't remembered that you said

1 something -- he basically said, at your deposition, you said
2 that he had not. So I think that's appropriate impeachment.
3 I'm going to overrule the -- unless I'm missing -- unless
4 there's a different question you're objecting to.

5 MR. BRIMMAGE: Your Honor, impeachment is he asks him
6 the same question and he gives a different answer. He didn't
7 ask him that question in his deposition. I defy him to find
8 it. He's improperly using the deposition to bolster his
9 questions, and I think that's inappropriate.

10 THE COURT: It is if that's what he's doing, but I
11 understood the question to be different. Let's roll it back.
12 Let's start over. I heard differently.

13 MR. LEBLANC: Your Honor, I'm not sure that I can
14 roll it back. I thought he actually understood the question
15 quite well, but --

16 THE COURT: I do too. So did Mr. --

17 MR. LEBLANC: And I think this is --

18 THE COURT: Yeah.

19 MR. LEBLANC: -- eerily similar --

20 THE COURT: Hold on.

21 MR. LEBLANC: -- to the DIP hearing and the issues we
22 had there with respect to the deposition.

23 THE COURT: Yeah. Did Mr. Davis recommend any CROs?

24 THE WITNESS: When I gave my deposition, I --

25 THE COURT: No, no, no.

1 THE WITNESS: But my understanding is --

2 THE COURT: That's what your -- this is what your
3 lawyer is objecting to. So just answer that question.

4 THE WITNESS: My understanding they did.

5 THE COURT: Did Mr. Davis recommend -- yes, they did.
6 Now, go ahead.

7 MR. LEBLANC: Okay.

8 THE COURT: If you want to impeach on that, that's
9 fine.

10 MR. LEBLANC: Sure.

11 BY MR. LEBLANC:

12 Q At the time of your deposition, you didn't know if
13 Mr. Davis had suggested any names. Isn't that right?

14 A At the time of my deposition, I didn't recall whether he
15 had, no.

16 Q Right. And you were never on a call in which he suggested
17 -- you don't remember ever being on a call in which he
18 suggested any names, right?

19 A As I said earlier, I don't remember him suggesting some
20 names.

21 Q Okay. All right. Now, let's talk about the interview
22 process a little bit. As I understand it, you talked about
23 this with your counsel on direct, you created a list of
24 questions.

25 A I jotted down some questions. Yes, sir.



1 Q Okay. And you told -- you said that there is about 12 of
2 those questions. Is that right?

3 A That was what I told you in my deposition that I estimated
4 the number of questions to be.

5 Q And you wrote them down on a piece of paper, correct?

6 A I jotted them down.

7 Q And you did that in consultation with Akin Gump, right?

8 A I did them individually, and then I asked for any
9 additional thoughts that Akin Gump or Moelis had -- excuse me,
10 Akin Gump or A&M had regarding appropriate questions given what
11 we were looking for in our CRO.

12 Q Okay. Did you ask the CRO candidates in that list of
13 questions whether they knew the rate for water disposition?

14 A No. I did not.

15 Q Did you ask them what they knew about fracking fees?

16 A No.

17 Q Did you ask them in those questions what they knew about
18 valuing upstream assets?

19 A Nope.

20 Q Midstream?

21 A The question was, do you have ore and gas industry
22 experience --

23 Q Okay.

24 A -- and if so, can you explain it?

25 Q And you asked a -- you testified that you asked a

1 consistent set of questions to each of the witnesses, right?

2 A I certainly attempted to. Yes, sir.

3 Q Right. Now, just to be clear, that -- the piece of paper
4 that you wrote those questions on, you also jotted some notes
5 as you talked to the candidates, correct?

6 A Yeah. If something jumped out at me, occasionally I would
7 jot down something. Yes.

8 Q And you discarded that piece of paper with the notes on it
9 as well, correct?

10 A Once we made the decision on who we were going to
11 recommend as the CRO, I felt there was no need to retain it.

12 Q In fact, you try not to create handwritten notes,
13 generally, right?

14 A Generally, I try not to create handwritten notes. Yes.

15 Q You have been instructed by your counsel to preserve
16 documents in this case, right?

17 A Yes, I have.

18 Q And you did, but you didn't preserve that document, right?

19 A That predates that request to preserve documents.

20 Q Okay. So you -- prior to -- when were you instructed by
21 your counsel to preserve documents?

22 A I'd have to go back and look at the email traffic, but we
23 got an email about retaining documents related to the CRO
24 process.

25 Q And this is a bit of a digression, but you have not

1 provided to your counsel for production to the committee or the
2 other objective parties any documents in this case, right?

3 A As I mentioned earlier and on my deposition, all of the
4 communications I've had related to the CRO process have been in
5 conjunction with -- and copied with counsel. Akin Gump has a
6 record of all email traffic that I've had related to these
7 matters.

8 Q So you've never had an email just separately with Gene
9 Davis, right?

10 A Correct.

11 Q You've never had an email separately with any of the
12 candidates for CRO?

13 A Correct.

14 Q And it's your testimony you've never had an email
15 separately with any of the members of management?

16 A For any of the CRO matters, no, I can't think of any.

17 Q Okay. And you -- but you didn't do any search in your
18 emails. You were just confident that you didn't have any that
19 weren't copied with Akin.

20 A When I joined this board, I knew that someday I would
21 likely be in a position like this, and so I tried to be
22 extremely thoughtful about how I handled myself. My view is
23 handwritten notes on final documents, scratchpad notes, and
24 unnecessary emails are inappropriate in the context of a
25 (indiscernible) company and in the context of litigation and

1 bankruptcy. So I've been extremely cautious in how I've
2 handled communication of any kind of sort.

3 Q All right. At your -- well, let me withdraw that. You
4 were able to recall seven of the questions that you asked. Is
5 that right?

6 A Whatever the number was that I said, yes.

7 Q Okay. So the other five that you asked, you just don't
8 recall at this time, right?

9 A Or I was high in the number that I have estimated the
10 number of questions to be.

11 Q Now, you testified on direct that -- and I think you
12 actually referenced your own deposition and said that you had
13 said something in your deposition about what Mr. Davis said at
14 these interviews. Do you recall that?

15 A Correct.

16 Q So you said in your deposition that you didn't recall
17 Mr. Davis saying anything at those meetings, right?

18 A That's right. I didn't remember that.

19 Q And you -- in fact, you said -- if you said anything, you
20 would have said thank you for your time, right?

21 A Correct. That's what I said.

22 Q And you learned from Monday that Mr. Davis gave testimony
23 that was inconsistent with that at his deposition, right?

24 A No. Actually, I -- you know, again, I've thought about
25 that deposition and the three hours that we spent a lot for the



1 last few days, especially at 2:30 in the morning, and trying to
2 think of anything that I said incorrectly, and I've attempted
3 today to clarify a couple of things, like the Delta revenue for
4 Sanchez back in 2015, and at 2:30 in the morning I thought
5 about Gene concluding those calls by giving each of the four
6 candidates what I would consider fair warning that this is
7 going to get messy, for lack of a better term, and I wanted to
8 communicate that today.

9 Q So nobody told you at any point in time subsequent to your
10 deposition that Mr. Davis had given inconsistent testimony on
11 that topic?

12 A Nor did anybody ask me to go back and look for the Delta
13 revenue from 2015. I'm trying to do my part to make this as
14 constructive as possible.

15 Q Now, you don't have any professional contacts that have
16 any affiliate -- or any contact with the four candidates that
17 the Special Committee interviewed, right?

18 A I do not.

19 Q So the diligence that you conducted were reviewing their
20 resumes and conducting the interview, right?

21 A Correct.

22 Q And in your deliberations Mr. Davis voiced some data
23 points that he had obtained with respect to some of the
24 candidates, but didn't give you any more detail about that?

25 A Correct.

1 Q And you didn't ask for any more details from Mr. Davis on
2 his data points about the four candidates, right?

3 A Correct.

4 Q Now, with respect to, and we'll talk about this more
5 later, but with respect to the creditor's recommended
6 candidate, you didn't get any feedback at all from Akin Gump,
7 right?

8 A I don't recall them providing feedback regarding his
9 background or experience, but that doesn't mean it didn't
10 happen.

11 Q Okay. You have no recollection of them providing feedback
12 on that?

13 A Again, we've had a lot of meetings, we've had a lot of
14 phone calls, and it's been, you know, 13 months, but I don't
15 recall the specifics of that, but it doesn't mean it didn't
16 happen.

17 Q Now, did I understand on direct you said it would be
18 inappropriate to have one of the managers of the counterparty
19 that the CRO investigating meet with the candidates?

20 A I don't think that's what I said.

21 Q Okay. You did have Mr. Sanchez, Tony Sanchez, talk to
22 each of the candidates that you guys had interviewed for CRO,
23 correct?

24 A We let Tony Sanchez as a courtesy visit with all four of
25 the candidates.

1 Q Okay. That -- so the suggestion of that was not your
2 idea, that was Mr. Davis's, right?

3 A Mr. Davis was the one who suggested that that was ordinary
4 course and in good form.

5 Q And --

6 A It's not dissimilar from how I handle --

7 Q You've answered --

8 A -- some of my business, but --

9 Q You've answered my question, sir. Now, at the time
10 Mr. Sanchez interviewed those individuals, he was involved in
11 the business planning process, right?

12 A I wouldn't call them interviews, but when he visited with
13 those candidates he was still involved in the business planning
14 process.

15 Q Okay. You wouldn't -- you said you wouldn't call them
16 interviews, right?

17 A I would say that he visited with those individuals. We
18 interviewed them.

19 Q You don't know at all what Mr. Sanchez said to those
20 individuals, do you?

21 A I wasn't on the calls, no.

22 Q Okay. You don't know of anybody else being on those calls
23 with those four individuals, right?

24 A Not that I'm aware of.

25 Q And other than the five- to ten-minute recap that you

1 testified to earlier, you -- Mr. Sanchez didn't tell you
2 anything about those calls, right?

3 A That's correct.

4 Q Now, you said just a moment ago that Mr. Sanchez at the
5 time was involved in the business planning process, and that
6 has changed, correct?

7 A Yes.

8 Q And Mr. Sanchez today is not involved in the business
9 planning process, right?

10 A Correct.

11 Q And subsequent to this whole process there was -- a
12 related party made a -- gave an indication of interest to the
13 company, correct?

14 A That's my understanding, yes.

15 Q Okay. And -- but at the time that you conducted those
16 interviews, you were -- that you conducted your interviews and
17 suggested Mr. Sanchez meet with the candidates, visit with the
18 candidates, you were unaware that a related party was going to
19 be making a -- giving an indication of interest, correct?

20 A Correct.

21 Q You don't know if Mr. Sanchez talked with those parties
22 about any indications of interest, right?

23 A I wasn't on those calls, sir.

24 Q And I think this was clear, but your -- what you said on
25 direct, was your interpretation of what Mr. Sanchez said in

1 those five to ten minutes, were -- was that he supported
2 Mr. Meghji and Mr. Walls. Is that correct?

3 A What I said was I felt like he was favorably inclined
4 towards Mr. Meghji and Mr. Walls and that he was less favorably
5 inclined towards the other two.

6 Q And those, at the time, were the same two candidates that
7 you were supportive of, correct?

8 A That -- Rob and Noah were the two that I was supportive
9 of, yes. And I inferred that had he felt the same way.

10 Q And, in fact, the committee -- the Special Committee
11 ultimately recommended those -- the very two people that
12 Mr. Sanchez was favorably inclined toward, correct?

13 A That is correct.

14 Q Now, you don't recall the name even of the third person
15 that you interviewed, other than the candidate's choice -- the
16 creditor's choice, right?

17 A Sorry. Say that again?

18 Q You don't remember the name of the third person you
19 interviewed?

20 A Yeah, John Ray.

21 Q The -- okay. You remembered the name of -- let me step
22 back. You testified on direct that you and Mr. Davis had
23 disagreed about who your second choice was, right?

24 A Correct. Yeah. The gentleman from Oklahoma.

25 Q Right. You don't even remember his name, right?

1 A I didn't remember it on Monday, and I haven't gone back to
2 look what it was.

3 Q Okay.

4 A I didn't feel it was relevant.

5 Q That's not one of the things that woke you up at 2:30 in
6 the morning?

7 A No. That's not an incorrect answer. It's just not
8 knowing a name.

9 Q Okay. Now, I want to make sure that the process is clear.
10 You received -- you the Special Committee, received, and we'll
11 talk about this in a second, you received from the advisors to
12 the creditors, the name of their preferred candidate, John Ray,
13 right?

14 A We received from the advisors to the creditors a name,
15 yes.

16 Q And you knew at the time you received it that it was
17 supported by the first lienholders, the unsecured committee,
18 and the ad hoc committee, correct?

19 A We talked about this on Monday. I know that that was the
20 name that was provided by the advisors to the lenders.

21 Q Correct.

22 A I don't know who supported and who didn't.

23 Q Well, you don't -- and we talked about this on Monday, you
24 don't think that the advisors to the creditors gave you a name
25 of somebody that was not supported by their clients, right?

1 A I don't know. All I know is that we got a name from the
2 advisors to the creditors to consider.

3 Q Right. And when you say the creditors, I know there's --
4 that Mr. Brimmage has used the word "objecting creditors." It
5 was all three of the organized creditor committees, correct?

6 A At that time, correct.

7 Q All right. So it included the secured lenders and the
8 unsecured lenders, right?

9 A That's my understanding. Yes, sir.

10 Q And then subsequent to your process -- you put Mr. Ray in
11 your process, you interviewed the four candidates, and then you
12 came up with your recommendation of either Mr. Meghji or
13 Mr. Walls, correct?

14 A That is correct.

15 Q And the response from the creditors, all of the creditors,
16 to the second -- to this instance where you delivered your
17 names, was to say, we still want John Ray, right?

18 A That was their first response. Yes, sir.

19 Q Right. And that was the first response of the secured
20 creditors and the unsecured creditors, correct?

21 A That was the -- that was the feedback we received from the
22 advisors to the creditors. Correct.

23 Q And again, the creditors meaning the secured lenders and
24 the unsecured lenders, correct?

25 A That's my assumption. Yes, sir.

1 Q Now, ultimately, when you got to the point of deciding to
2 go with Mr. Meghji, after the creditors had said they still
3 wanted John Ray, you talked about this with your counsel, the
4 Special Committee selected Mr. Meghji and made a recommendation
5 to the board to do so, correct?

6 A Correct.

7 Q And then you looked at this document with your counsel,
8 but the board is the one that actually appointed him to that
9 position, correct?

10 A Correct.

11 Q And it was -- you testified that -- well, let me withdraw
12 that. The recommendation by the Special Committee and having
13 the full board approve this appointment, in your opinion,
14 that's not a mistake, right?

15 A My understanding is that was the way that the corporate
16 documents and the organizational documents required that
17 appointment of an executive officer was to be appointed by the
18 full board.

19 Q It wasn't a drafting error, right?

20 A That's my understanding.

21 Q And do you know of any reason why the full board couldn't
22 have delegated to the Special Committee the ability to select
23 and appoint that executive officer?

24 A Again, the ultimate governing body of the company is the
25 board. Despite the dialogue we had earlier, the ultimate

1 governing body of the company is the board. So if
2 organizational documents require that the board approve the
3 executive officer appointments, that's the organizational
4 structure of the business, right?

5 Q But do you know of any reason why the board couldn't have
6 delegated that authority to the Special Committee?

7 A I can't answer that. I don't know the answer to that.

8 Q But --

9 THE COURT: Can you hold on just a second? I
10 understand we're having a problem with the phone system. Hold
11 on. So if you're on the phone, it looks like it's working, but
12 I'm going to go ahead and disconnect and redial this so we have
13 a good connection and let people dial back in. We already have
14 eight people that have dialed back in. So it looks like that
15 worked. Hopefully that works. Let's go ahead.

16 MR. LEBLANC: Okay. May I proceed, Your Honor.

17 THE COURT: Yes, sir.

18 MR. LEBLANC: I didn't know if you wanted to wait for
19 others to dial in.

20 THE COURT: We're up to 28 people. I think that's --
21 that means people are getting back in.

22 BY MR. LEBLANC:

23 Q Now, in connection with you talked about the changing
24 scope and your constant review of that, that change in the
25 scope began when the Court made comments last Wednesday,

1 correct?

2 A My recollection is that out of that Wednesday discussion,
3 and I believe there were also discussions going on amongst the
4 advisors about how to move forward constructively, it was
5 determined that there needed to be more independence and
6 authority for the CRO, and so revisions started to be made,
7 yes.

8 Q All right. And those revisions were within the scope and
9 the order that is being presented to the Court, right?

10 A They were expansions of the order that I believe is being
11 presented to the Court, yes.

12 Q Right. And among those changes were taking away any
13 reporting to the full board, right?

14 A I believe that's in the most recent version, that the CRO
15 will report directly to, and only to, the Special Committee.

16 Q And to your knowledge there's been no changes to the
17 organizational documents proposed in the last week, right?

18 A That's my understanding.

19 Q Now, I want to talk about Mr. Ray. You said that one
20 reason you didn't recommend Mr. Ray was because you believed
21 he'd only had one CRO experience, right?

22 A That's correct.

23 Q Now, you are aware, because you reviewed Mr. Ray's resume,
24 right?

25 A I have in the past, yes.



1 Q You were aware that he was the principal officer of Nortel
2 during its bankruptcy?

3 A I know that he had several other roles in different
4 restructuring situations, yes.

5 Q When you say several other roles, he had roles in other
6 restructurings that didn't have the title "CRO." Is that what
7 you mean?

8 A That -- where he had some other responsibilities. Yes,
9 sir.

10 Q Okay. And were you aware that Akin Gump was counsel to
11 the creditor's committee in Nortel?

12 A It seems like I've heard that in the past, yes. I don't
13 remember the details of it, but that strikes a chord, yes.

14 Q All right. And were you aware that all creditors of
15 Mr. Ray's estate were paid in full in Nortel?

16 A I'm not. No, sir.

17 Q Were you aware that the issue in dispute in Nortel was a
18 dispute between related parties in the U.S. and the rest of the
19 world?

20 A I'm not, no.

21 Q And you were aware that Mr. Ray was a CRO in the Overseas
22 Shipping case, right?

23 A That's the one I believe he referenced in the interview.
24 Yes, sir.

25 Q And you were aware that Akin Gump was counsel to the

1 committee in that case, right?

2 A I don't recall that. No, sir.

3 Q Were you aware that creditors were paid in full in that
4 case, including default interest?

5 A I'm not -- I don't remember the specifics of that either.
6 No, sir.

7 Q Were you aware that Mr. Ray was the CEO of Enron post its
8 bankruptcy?

9 A Yes. I do remember that on his resume. Yes.

10 Q And he had various capacities for Fruit of the Loom when
11 it went through bankruptcy?

12 A Okay.

13 Q Now, prior to your involvement in this Special Committee,
14 had you ever heard of the phrase chief restructuring officer?
15 CRO?

16 A I can't say that I was familiar with that term. No, sir.

17 Q Okay. And so, to be clear, you didn't credit these other
18 engagements by Mr. Ray because they didn't have the title
19 "CRO." You said he only had one CRO role, right?

20 A That's one of the elements in how I used -- one of the
21 elements I used in evaluating his experience and his
22 capabilities was the number of times he had the CRO role, yes.
23 That was one of them.

24 Q All right. And the second reason you gave was you thought
25 he was inefficient in his time because he went over, or you had

1 to cut him off at one hour, right?

2 A I don't know whether that was the second, but that was one
3 of the other reasons. I felt like he was very inefficient in
4 his use of time.

5 Q Do you know your direct testimony was estimated to be 45
6 minutes today? Did you know that?

7 MR. BRIMMAGE: Your Honor, I'll object.

8 THE WITNESS: I don't know if that's good or bad.

9 MR. BRIMMAGE: Lack of foundation, and I'm not sure
10 what the relevance is.

11 THE COURT: He's making a joke. Let's go on.

12 MR. LEBLANC: And --

13 MR. BRIMMAGE: I didn't hear the laughter from your
14 tone.

15 MR. LEBLANC: Maybe it wasn't a good joke, Your
16 Honor, but --

17 THE COURT: I wasn't being critical of the joke. I
18 was just -- I'm not diverting a whole lot of time to this
19 fight. So let's go on.

20 BY MR. LEBLANC:

21 Q The other interviews you testified lasted between 45 and
22 55 minutes, right?

23 A That's my recollection.

24 Q Do you know how long Mr. Meghji was scheduled to talk to
25 Mr. Sanchez?



1 A I do not know.

2 Q Do you know that that -- he went 10 to 15 minutes over the
3 time that he was scheduled to talk with Mr. Sanchez?

4 A Again, I don't know anything about those calls.

5 Q And again, we talked about this earlier, but Mr. Davis,
6 you recall, had done some -- had some data points about
7 Mr. Ray, but you didn't ask for or get any detail about those,
8 right?

9 A No.

10 Q And no one else raised any concerns about John Ray,
11 correct?

12 A Again, I don't recall the specifics of the positives and
13 negatives that were communicated by counsel I don't have
14 anything specific that I can put forth right now.

15 Q You don't remember Akin saying anything about John Ray,
16 right?

17 A Like I said, I don't remember that. It doesn't mean it
18 didn't happen, but I don't have specifics that I can offer up
19 to the Court.

20 Q And you don't remember Moelis raising any concerns about
21 Mr. Ray?

22 A Again, I don't have anything that I can offer up.

23 Q You don't remember Alvarez & Marsal mentioning anything
24 about Mr. Ray?

25 A Same answer.

1 Q Did you even ask Ropes & Gray if they had any thoughts
2 about Mr. Ray?

3 A I don't recall at this point in time.

4 Q All right. Now, I want to talk about -- in your direct
5 testimony, you referred to things that I had said in my direct
6 -- in my opening statement, and that was with respect to the
7 weight that you gave the fact that Mr. Ray was the unanimous
8 choice of the creditors, at least the advisors to the
9 creditors, and you didn't give -- you didn't give any weight to
10 that, and when you went to -- when you actually evaluated the
11 four candidates, you didn't give any weight to that fact, did
12 you?

13 A As I said multiple times, when we evaluated the
14 candidates, we put them on equal footing. We looked at them
15 under the same microscope. We made what we thought was, you
16 know, a fair evaluation of their skills, their capabilities,
17 their backgrounds, and this is how I thought about it.

18 Once I had visited with all those candidates and had
19 developed a view of those skills and capabilities, at that
20 point in time, upon reflecting and then ranking, that's when I
21 would ascribe some amount of value or some benefit, as I
22 alluded to earlier, to somebody who had come from the
23 stakeholders.

24 We talked past each other for longer than we both
25 cared to trying to get to that, but my point is I looked at

1 them equally and then once I had developed a view of a ranking
2 or the skill or the capabilities, at that point in time we
3 listened to the voice of the stakeholders, but it was such a
4 big difference in terms of the background, the skills, the
5 interview process.

6 There was no amount of incremental little benefit to
7 try and appease the stakeholders that would have made them even
8 equivalent. And so it was just too wide of a chasm to try and
9 cross.

10 Q All right. Let's break that down. You and I did talk
11 about this at great length. I think I asked the question 20
12 times and you --

13 MR. BRIMMAGE: Your Honor, I'll object. It lacks
14 foundation and I think it's an inappropriate comment. If
15 there's a question there, we'd like to hear it, but his
16 recitation of what he said or what he didn't say, in his depo
17 he said 40 times. So he's prone to exaggeration and I would
18 object.

19 MR. LEBLANC: I object to that statement, Your Honor.

20 THE COURT: I'm going to let him finish his question
21 and then let you object to it.

22 Don't answer until your lawyer has a chance to
23 object.

24 THE WITNESS: Okay.

25 THE COURT: Go ahead.



1 BY MR. LEBLANC:

2 Q I asked a question or a question similar to that around 20
3 times in the deposition where you gave an answer similar to the
4 one you gave, that you gave equal footing to each of them,
5 right?

6 MR. BRIMMAGE: Your Honor, I'll object. It's
7 inappropriate use of the deposition as well.

8 THE COURT: It does sound consistent with what he
9 just said.

10 MR. BRIMMAGE: It does.

11 THE COURT: Is there some inconsistency?

12 MR. LEBLANC: I'm sorry, Your Honor?

13 THE COURT: Is there an inconsistency? That sounds
14 consistent.

15 MR. LEBLANC: I wasn't suggesting it was, Your Honor.

16 THE COURT: Then I'm going to sustain the objection.
17 I don't see how you can use the depo to prove consistency.
18 It's for impeachment, I thought.

19 MR. LEBLANC: Well, okay. I -- it -- I -- that's
20 fine. We dealt with this -- at the DIP hearing, we had the
21 same debate, and I thought Your Honor had found those questions
22 to be fine. But it's fine. It's just a predicate for
23 literally what's coming next.

24 THE COURT: I don't remember that interchange, and
25 I'm trying to be consistent. I'm surprised that I did that,



1 but --

2 MR. LEBLANC: Your Honor, we pulled out the Code and
3 looked at the rule, I think it's 613, which -- in which it says
4 I don't have to actually show them the deposition to ask them a
5 question about the deposition.

6 THE COURT: Yeah, but I thought that --

7 MR. LEBLANC: That was the issue.

8 THE COURT: -- it had to be -- I thought it had to be
9 some variance from the large testimony.

10 MR. LEBLANC: It -- for the purposes of impeachment,
11 if I'm then going to ask Your Honor to conclude that the
12 witness gave inconsistent testimony under oath --

13 THE COURT: Right.

14 MR. LEBLANC: -- I'm not doing that. I'm literally
15 just asking cross-examination questions and I'm not looking for
16 the jury instruction of impeachment.

17 THE COURT: Let me read 613.

18 MR. LEBLANC: Sure. I think it's 613.

19 (Counsel confer)

20 THE COURT: Right. This says you don't have to show
21 it to them unless it's your question, but that wasn't the
22 objection.

23 MR. LEBLANC: It was, Your Honor. We -- I said,
24 didn't I ask you this at your deposition? The objection came
25 from the debtors, you have to show it to him.

1 THE COURT: No, no, no, that wasn't this objection.
2 This objection was that's consistent testimony. I --

3 MR. LEBLANC: Right. And I'm -- again, I'm -- but
4 I'm -- and I'm saying, Your Honor, I'm not trying to impeach,
5 and I can use -- I can ask the question that way without --
6 when I'm not trying to impeach a witness. But, Your Honor,
7 this is much ado about nothing. I think he's given me the
8 testimony that --

9 THE COURT: Okay.

10 MR. LEBLANC: We went around and around on this
11 point, in any event.

12 THE COURT: Thank you.

13 BY MR. LEBLANC:

14 Q We then took at break at the deposition, correct?

15 A You asked if we could take a break, yes.

16 Q Right. And you visited with your counsel for 20 minutes,
17 correct?

18 A I don't know how long it was. You said why don't you take
19 -- why don't we take a break so you can visit with your
20 counsel.

21 Q Right. And you came back and then you gave me answers at
22 your deposition that said you would have given it a little bit
23 of weight, correct?

24 MR. BRIMMAGE: Your Honor, I'll object again. I'm
25 not sure -- he hasn't established that he's got an inconsistent

1 statement. He's referring to the deposition and the process of
2 the deposition. I think it's improper bolstering along with --
3 I'm not sure if it's -- I don't know what he's doing with it
4 quite -- I think the reference to the deposition is
5 inappropriate. If he wants to ask some questions, get
6 inconsistent answers, and then try to impeach him, fine. But
7 this is -- I don't know what this is.

8 THE COURT: Overruled. That question as asked is
9 impeachment testimony and we'll let the witness answer it. I
10 don't know what his answer will be.

11 MR. LEBLANC: Sure.

12 THE WITNESS: So what's your question?

13 MR. LEBLANC: Sure. After --

14 THE COURT: He's saying after -- his question was
15 after you conferred with your counsel, did you at least
16 slightly change your testimony?

17 THE WITNESS: I -- I didn't. I -- I feel like I
18 clarified -- I feel like for 20 questions or however many
19 questions there was, we were talking past each other. You were
20 asking me, and I felt like you were inferring that we
21 discounted the candidate that was put forth by the advisors.
22 And I asked that question, and you said, no. And that's when I
23 clarified that, look, at -- at this point in time, I -- I feel
24 like we evaluate -- or I evaluated each of them on equal
25 footing.

1 Had it been a close call, the credit -- the extra
2 little bit of credit that we would have given to the -- to the
3 creditors or the advisors to the creditors' candidate, had that
4 been a close call and could we have had a consensual
5 arrangement, then it would have been great. We would have been
6 elated to have -- to avoid all of this and to have done that.
7 But it was such a -- such a disparate experience and such a
8 disparate view of those two individuals that there was no
9 amount of little bit of credit that we could give. That -- I
10 said something like that.

11 BY MR. LEBLANC:

12 Q Okay. So at best, then, you would have given Mr. Ray a
13 little bit of credit, in your words, if it were a close call,
14 right?

15 A What I'm saying is we would have listened to the
16 stakeholders and taken that into consideration. And one of the
17 things we would have considered is the fact that that was the
18 name that came from the advisors to the stakeholders.

19 Q Right. And you said you would have done that, but you, in
20 fact, didn't do that here, correct?

21 A No, you're not -- you're not -- you're not understanding
22 what I'm saying. I'm saying that even with a little bit of
23 incremental credit, it was such a far and away a different
24 situation with Mr. Meghji that it wouldn't have offset it.
25 That was my three-to-ten example that I gave earlier.

1 Q All right.

2 A I'm -- I'm being consistent.

3 Q Okay. In the answers you gave before the break in the
4 deposition, you didn't say you gave a little bit of credit to
5 it, right?

6 A In the -- say that question again.

7 Q In the answers you gave me to the question of what credit
8 did you give -- what weight did you give to the creditors'
9 preference, you didn't tell me you gave it a little bit of
10 credit, right?

11 MR. BRIMMAGE: Your Honor, I'm going to object. I
12 think this is improper impeachment and I think it's bolstering
13 with the deposition transcript or the deposition experience.
14 I've never seen this before. I would object and -- I think
15 this is improper.

16 THE COURT: I'm going to go out on a limb and
17 describe to you that I think that my view of the law on this is
18 different than the underlying assumption of the questions. And
19 with that, I'll ask you to tailor your questions better or
20 persuade me that the view of the law on this is wrong. I think
21 it will be useful for the hearing. So unless you object, I'm
22 going to do that.

23 MR. LEBLANC: No, Your Honor, of course not.

24 THE COURT: The objecting party's point of view seems
25 to be that the debtor was required to consider the one nominee



1 made by the creditors with weight in favor of that person as
2 opposed to what I believe the Fifth Circuit has ruled, actually
3 in a different situation, in a compromise situation, but I
4 think the principle still applies, which is you should take
5 into account the reasonable views of the creditors. That
6 reasonable view doesn't necessarily mean weight. The creditors
7 nominated somebody. They interviewed him. They then came back
8 and said, we don't like him, we like these two; what do you
9 think of these two? And you said no to those two.

10 There's no magic formula here. But if what they did
11 was took your candidate and interviewed him on a heads-up basis
12 because you had nominated him;, came back to you with two more
13 people and said, we like these guys better. This is ultimately
14 a debtor decision. And so I don't think that there is any
15 requirement that they weight the person heavily because the
16 creditors did it. It might be smart -- different question --
17 but I don't think it's a requirement in the law. The
18 requirement was -- is that they give reasonable deference those
19 views; A, I believe it's uncontested, interviewed him solely
20 because he was nominated by the committee -- or by the
21 creditors. Came back to you with two other names, you all said
22 no.

23 Now, maybe that's not reasonable deference, but I'm
24 not getting that anything in the law says that these guys get a
25 special weight because of that other than the fact it may be a

1 smart thing to do. And I do get that it may be a smart thing
2 to do, which is sort of -- but that's a different argument from
3 the weighting argument.

4 MR. LEBLANC: It is, Your Honor. Your Honor,
5 obviously, we do -- I respectfully disagree.

6 THE COURT: No, go --

7 MR. LEBLANC: I think that --

8 THE COURT: That's what I'm saying, is because I want
9 to -- there's no point in us going back and forth.

10 MR. LEBLANC: -- In re Foster, Fifth Circuit
11 decision --

12 THE COURT: Right. Which is a --

13 MR. LEBLANC: And honestly, this is irrelevant --

14 THE COURT: -- 9019 case.

15 MR. LEBLANC: It is -- no, no, I was -- I have that
16 in my argument outline. That's clearly a 9019 --

17 THE COURT: Correct.

18 MR. LEBLANC: -- different question. But I think in
19 many respects --

20 THE COURT: The concept is the same.

21 MR. LEBLANC: -- very instructive and, in fact,
22 probably a situation where I think the standard to approve a
23 settlement under 9019 is probably even lower than the business
24 judgment standard, or here, I think entire fairness. So I do
25 -- I -- Your Honor, I disagree with how to interpret that. The

1 paramount -- what those cases talk about is the paramount
2 interest of creditors with due regard to their views, their
3 reasonable views.

4 THE COURT: Correct.

5 MR. LEBLANC: And so I -- Your Honor, I do think -- I
6 think it becomes a question of how do you extrapolate that to
7 this. And I think the fact that the creditors here were
8 unanimous in their view in a case in which creditors have not
9 been unanimous on anything, in which this side of the table has
10 been warring with the first liens with respect to their DIP,
11 and the creditors came together for -- to reach a consensus on
12 this. I do think that is afforded some deference. And the
13 notion that the effect of that in -- under Foster is to simply
14 put him on the list and treat him equally. I think that's -- I
15 will argue to you at the end, Your Honor, that's a mistake.

16 THE COURT: I think that your argument goes to the
17 wisdom of the decision but --

18 MR. LEBLANC: It certainly goes to that.

19 THE COURT: Yeah.

20 MR. LEBLANC: There's no question. I think your --
21 that's fine, Your Honor. I think we have -- I think the point
22 is there and we'll -- we can argue because --

23 THE COURT: Yeah, I'm not sure that this detail is --

24 MR. LEBLANC: I think Your Honor -- if Your Honor,
25 understands that they didn't give --

1 THE COURT: I --

2 MR. LEBLANC: -- any particular weight to it --

3 THE COURT: I picked up a few times before when he
4 was testifying that he said, you know, if we'd given them a
5 small nudge, it still wouldn't have mattered. His testimony is
6 we interviewed him on a heads-up basis; he was a three, this
7 guy was a ten. Well, I'm not sure what I'm supposed to do with
8 that other than -- unless you can show me that he was a nine or
9 an eight or a seven. I mean --

10 MR. LEBLANC: And, Your Honor, we'll obviously argue
11 other points from the testimony and we -- you still have to
12 hear from another witness, but I do think -- I will submit,
13 Your Honor, we will argue to you that the correct way to apply
14 Foster in the situation is to give more deference than what the
15 debtors did here with respect to the creditors' choice. And
16 we'll argue it.

17 THE COURT: And that's fine. I just -- I wanted to
18 -- I thought it was helpful to at least give you that view.

19 MR. LEBLANC: That's fine.

20 THE COURT: I also -- well, I'm giving you something
21 that I am concerned about what you're doing. If the debtors
22 haven't picked up on it, I'm not inclined to appoint any CRO if
23 it's a meaningless appointment. And I'm not convinced right
24 now, as things sit here today, that the Special Committee is
25 the sole entity that will be in charge of the critical matters

1 in the case. And appointing a CRO that -- whose decisions
2 might be subject to review by someone else, or his
3 recommendations might be subject to review by someone else,
4 other than the Special Committee, so far today seems like a
5 meaningless exercise to me.

6 So maybe everybody ought to think about whether I
7 ought to require that the Special Committee have the authority
8 to make all of these decisions without any interference or
9 consultation with the board. Maybe the debtor needs to do that
10 and maybe you all need to take that. So I'm just telling you
11 all some thoughts at 6:22 at night. You've seen me do this
12 before.

13 MR. LEBLANC: No, I have, Your Honor, and it's always
14 helpful. Your Honor, I think, actually, with that discussion,
15 I think I will conclude my questioning of the witness.

16 THE COURT: I wasn't trying to cut you off.

17 MR. LEBLANC: I -- Your Honor, I'm -- it's been an
18 extremely long day.

19 THE COURT: No, my 6:22 comment was not meant to cut
20 you off. You go right ahead. I want to hear what you want to
21 put on. That particular interchange I thought wasn't going to
22 be very productive because of my different view of the law.

23 MR. LEBLANC: Fair, Your Honor. Let me just confer
24 with my colleagues one second.

25 THE COURT: That's fine, but take your time.

1 (Counsel confer)

2 MR. LEBLANC: I don't have -- I'll conclude my
3 examination there, Your Honor.

4 MR. FINESTONE: I have no questions for this witness.

5 THE COURT: Thank you. Any redirect?

6 MR. BRIMMAGE: Your Honor, possibly a few.

7 (Counsel confer)

8 REDIRECT EXAMINATION

9 BY MR. BRIMMAGE:

10 Q Mr. Zylman, I just want to hit some quick things, if I
11 could.

12 A Okay.

13 Q When you were talking about comp approval, did the Special
14 Committee have advisors or consultants they used?

15 A We did.

16 Q Can you just describe who those were?

17 A Candidly, the -- the names of the comp advisor escapes me
18 right now, but we had -- we had an independent advisor helping
19 us with that and -- and the company had an advisor that was
20 helping them. I believe the company's counsel -- or the
21 company's advisor was -- was Longnecker and Associates, if I
22 recall correctly. And I'm drawing a blank on who we were using
23 at that point in time, but it's been a few months.

24 Q Mr. LeBlanc's questions, a couple times he said "all
25 creditors." Do you remember that reference?

1 A Correct.

2 Q Okay. Is it your understanding that the ad hoc group of
3 unsecured noteholders represent all the ad hoc group's group of
4 unsecured noteholders or a group of them?

5 A My understanding is it's a group of them.

6 Q Okay. The unsecured creditors committee has certain
7 people on the committee, right, but there are other unsecured
8 creditors that are not on the committee.

9 A That is correct.

10 Q All right. There are employees that are not on any of
11 these objecting creditor groups. Is that right?

12 A That is correct.

13 Q There are vendors that are not on these objecting creditor
14 groups?

15 MR. LEBLANC: Objection. Leading.

16 THE COURT: Sustained.

17 BY MR. BRIMMAGE:

18 Q Are there other entities or persons that are not involved
19 in the objecting creditor groups?

20 A There are numerous other stakeholders.

21 Q Okay. In your opinion or in your view, who is your duty
22 to as an independent director?

23 A My duty is to the estate and to maximize the value of the
24 estate.

25 Q And is it your belief -- do you have a belief whether or

1 not you've done that in the CRO selection process?

2 A Absolutely.

3 MR. BRIMMAGE: Your Honor, I'll pass the witness.

4 THE COURT: Thank you. Any follow-up?

5 MR. BRIMMAGE: Maybe I won't, Your Honor. I'm sorry.

6 (Witness excused)

7 THE COURT: Oh, okay. Are you going to call anymore
8 witnesses?

9 MR. BRIMMAGE: Yes, Your Honor. We have Mr. Davis
10 that we want to call.

11 THE COURT: What's he going to add to the process?

12 MR. BRIMMAGE: Well, I'm not sure that he's going to
13 add much because we went into it pretty lengthy. What I was
14 going to ask the Court is if we could take a break right now
15 and have all parties be able to talk, given the comments that
16 the Court has provided. I don't know if they could be
17 productive, but I'm optimistic they could be productive,
18 because I like it when the Court gives us guidance. I -- we
19 took our message loud and clear a little earlier and we'd like
20 an opportunity to talk about it and maybe we can avoid the rest
21 of this.

22 MR. FINESTONE: You're not going to like what I'm
23 going to say, Your Honor. I see -- I'm sensitive to the time,
24 and if we need to come back, we need to come back. But
25 Mr. Davis is one of our witnesses as well. The -- our argument



1 today is not just limited on what our view is, the breakdown in
2 the CRO process, but the breakdown in -- even if Your Honor's
3 proposal about the Special Committee being firm and
4 independent, we think it's called into question by facts that
5 we will elicit from the process of the Special Committee.

6 THE COURT: Well, I'm not stopping people from
7 calling Mr. Davis. I just didn't want to duplicate what we
8 already heard.

9 MR. FINESTONE: So that's an additional --

10 THE COURT: And I'm --

11 MR. FINESTONE: Yeah. I mean, he's the chair and he
12 -- if we want to consider the Special Committee and all of the
13 Special Committee's actions, the other half of the pre-petition
14 backdrop that Mr. Brimmage walked through the witnesses
15 through, then we're going to put on Mr. Davis. And we don't
16 have to do it tonight obviously.

17 THE COURT: I'm not stopping Mr. Brimmage from
18 calling him. I'm not stopping you from calling him. I just --
19 this is pretty complete in terms of what we heard. There's no
20 point in putting on -- it was complete and it was from a
21 credible witness both. That's why I'm saying let's not
22 duplicate something. But there may be different things that
23 Mr. Davis has to say from either side, but I do think that the
24 witness -- that I just -- don't mean to speak of you in the
25 third party -- he's a credible guy. Right?



1 MR. BRIMMAGE: Yes.

2 THE COURT: People are challenging his experience and
3 stuff like that, different question. He was up here, he was
4 trying to tell me the truth, and I know that. As to what we do
5 with that, it's a different issue. So I'm going to leave it up
6 to you as to who you call next. You want to break, I'll give
7 you a break.

8 MR. BRIMMAGE: Thank you.

9 THE COURT: If y'all want to come back another day,
10 we'll come back another day. If y'all want to stay tonight,
11 we'll stay tonight. So y'all can all talk about all of that
12 stuff.

13 MR. BRIMMAGE: Let us take a break and we'll talk
14 amongst ourselves. Thank you.

15 THE COURT: Okay. I'll see you at 25 till 7.
16 Actually, no, it's a little later than that. I'll see you at
17 20 till 7.

18 MR. BRIMMAGE: 20 till? Thank you, Your Honor.

19 THE CLERK: All rise.

20 (Recess taken at 6:27 p.m.)

21 (Proceedings resumed at 6:41 p.m.)

22 THE CLERK: All rise.

23 THE COURT: Please be seated.

24 Mr. Brimmage, do you want to try and proceed tonight,
25 or what would you like to do?



1 MR. BRIMMAGE: Your Honor, I think we are prepared to
2 proceed tonight.

3 THE COURT: Thank you.

4 MR. BRIMMAGE: Thank you, Your Honor, for the time.

5 THE COURT: Sure.

6 MR. BRIMMAGE: The -- next, the debtors would call
7 Mr. Gene Davis.

8 THE COURT: Good afternoon. Would you raise your
9 hand, please, sir?

10 EUGENE DAVIS, DEBTORS' WITNESS, SWORN

11 MR. BRIMMAGE: Can we get Mr. Davis a bottle of
12 water?

13 THE COURT: I thought you were going to give him that
14 bottle after you took a drink out of it.

15 MR. BRIMMAGE: No, no, no. I'm going to give him a
16 fresh one, Your Honor.

17 THE WITNESS: This is a gift from my four-year-old
18 grandson. Water's got nothing to do with it.

19 MR. BRIMMAGE: You don't want abs?

20 THE WITNESS: I don't want abs, no.

21 DIRECT EXAMINATION

22 BY MR. BRIMMAGE:

23 Q Mr. Davis, would you please introduce yourself to the
24 Court?

25 A Certainly. My name is Eugene I. Davis, and I'm the



1 chairman of the restructuring committee, or the Special
2 Committee at Sanchez.

3 Q And what is your role as the chairman of the Special
4 Committee?

5 A This is to pursue the delegation of authority that was
6 created in our charter when the committee was -- was created.
7 It included a number of things, including exploring strategic
8 alternatives to the company's eventual financial problems,
9 considering restructuring, supervising management's creation of
10 a business plan that reflected market realities, directing the
11 -- the advisors with regard to engagement with the company's
12 various stakeholders in the hopes of getting some kind of a
13 consensual arrangement.

14 Q Okay.

15 A Basically, to -- to run the process.

16 Q Thank you. Can you quickly summarize your educational
17 background for the Court, please?

18 A Certainly. I have a bachelor's degree in International
19 Politics from Columbia College of Columbia University. I have
20 a Masters of International Affairs with a specialty in
21 international law and organization from the School of
22 International Affairs at Columbia. And I have a Juris Doctor
23 degree from Columbia University. I'm also six courses short of
24 my MBA at Columbia Business School, and I'm a dissertation
25 defense short of my Ph.D. from Columbia Graduate School of Arts

1 and Sciences.

2 Q You mentioned you have a J.D. Are you a practicing
3 attorney?

4 A I haven't practiced actively since July 7th, 1992.

5 Q Okay. All right. Very specific. Where are you employed
6 now?

7 A I'm self-employed.

8 Q Okay. What's the name of the company?

9 A Well, when I -- when I do trustee-type work, I use an LLC
10 called Pirinate Consulting. But for director work, it has to
11 be a human being, so it's just me.

12 Q Okay. What is Pirinate Consulting? What's it set up to
13 do?

14 A It -- well, it's an LLC that I use when I do fiduciary
15 work other than director work. And -- and in the past, in the
16 old days, I used to be a chief restructuring officer, so that
17 would be the entity that would be hired.

18 Q Please tell the Court how you came to be on the Special
19 Committee.

20 A Sometime -- sometime around the time that the US Open
21 tennis tournament was happening New York in 2018 I got a call
22 from Mr. Dizengoff suggesting I might want to come into New
23 York and meet with Tony Sanchez, who was there with his wife
24 for the tournament; that Akin was going to represent the
25 company, that there was not an immediate restructuring need,

1 but the company saw it coming, and there was a chance for a
2 more orderly process than the sort of thing I'm involved in.

3 So I came into New York, met with Mr. Sanchez in Akin's
4 offices. I think we hit it off all right, and then he told me
5 the next thing I'd have to do is -- is come to Houston, meet
6 the chairman of the board, his father, and meet the other board
7 members, meet the management.

8 During that conversation, he also asked me what I thought
9 of Kirkland and Ellis, which at that time was also representing
10 the firm. And as it happened, the lawyer he asked me about,
11 Steve Hessler, was also somebody I do a fair amount of work
12 with. And I found out afterwards that Steve had recommended me
13 as well, so --

14 Q So let me make sure I understand. At the time you were
15 contacted, had the company decided who its debtor counsel would
16 be at that time?

17 A It was a bizarre situation. They seemed to have promised
18 the work to both Kirkland and Ellis and Akin Gump.

19 Q Okay. All right. Did you weigh in on that, how that
20 resolved one way or another?

21 A Well, Tony asked me a question as to, well, do you think
22 these two can work together? And I was interviewing for a job,
23 so -- so the -- and what I told him was it was an unusual
24 circumstance, but it could be made to work, but that there were
25 likely going to be more than one entity to -- to be presented

1 in a restructuring process. There would be the board, probably
2 a Special Committee of some kind, the Sanchez family was going
3 to have to have their own counsel, given the perceived
4 conflicts of interest, so there was work for more than one law
5 firm. You know, whether -- whether we started out with both
6 law firms working for the company or not, I kind had a wait and
7 see.

8 Q You were here as the company's representative and you were
9 able to hear the testimony of Mr. Zylman, correct?

10 A That's correct.

11 Q And he and I talked a lot about the activity that the
12 Special Committee has undertaken since it became -- I guess
13 formed in November 2018.

14 A Correct.

15 Q Do you recall that? Did you hear any testimony from him
16 that you disagree with regarding the number of meetings that
17 you all have attended or participated in?

18 A No. I mean, in terms of the ones that he and I
19 participated in together, I believe his estimate was fairly
20 accurate. There was a fair amount of separate interaction on
21 my part with the management team, particularly around creation
22 of a business plan. So, I mean, there -- I don't know if you'd
23 call them meetings, but there was additional time that -- that
24 I was involved in certain matters where we didn't have a formal
25 meeting and he was caught up after the fact.

1 Q What about the amount of time that it takes to prepare for
2 meetings? Do you agree with what he said?

3 A Well, there was one -- there was one separate step. As
4 the chairman of the committee, the practice of counsel was
5 usually to send me the agenda and the -- and the prepared
6 materials first for me to bless. So I saw them, I saw a draft.
7 Sometimes they had to be revised. I -- I instructed the
8 professionals to cut them loose, and then I received them a
9 second time to -- to review a second time. So there might have
10 been another our or two per meeting that I put in because I was
11 reviewing draft materials before I got the finals.

12 Q Okay. I want to go to the CRO selection process. Were
13 you involved in the brainstorming activity regarding the total
14 number of names that were tossed out at --

15 A Yes.

16 Q -- some point in time?

17 A Yes.

18 Q Do you have a recollection about how many names were
19 tossed out there during that phase, the initial phase?

20 A I want to say that there were close to 30, but names were
21 put out, particularly by me, by way of process of elimination.
22 For instance, the company has -- has right now already retained
23 Alvarez & Marsal. As it happens, Alvarez & Marsal is probably
24 the most -- among other things, the most prominent chief
25 restructuring officer from -- in the world probably. And Jeff

1 Stegenga, who is working our account, is very famous for doing
2 that. He's a very well-thought-of CRO. This is no offense to
3 Mo.

4 So the first question I asked was, well, if we want a CRO
5 that everybody can agree with, can it be Jeff? I was told that
6 that wasn't possible. I then went down a list of people -- as
7 I said, early in my career, I was a chief restructuring officer
8 myself, and there are people that I've met in my travels that I
9 helped get started in the same business who sit on boards now
10 and things like that, kind of proteges, people I brought along.
11 And there were six or seven of those names who would have been
12 perfectly competent CROs, but they -- given the vitriol around
13 me in the situation, I didn't think it would be a good idea to
14 bring a friend of mine into the deal, probably get rejected.
15 So we went -- we went through an iteration like that.

16 There were other people that we approached. I recommended
17 Ankura. They happened to work with me in two oil and gas deals
18 this year, so they were not only a CRO, but they had oil and
19 gas experience, a fellow named Scott Pinsonnault that I know
20 going back to the Beneco deal, which is another oil and gas
21 bankruptcy. Scott had a conflict. I believe that either Akin
22 or someone reached out to him.

23 The other people that I would reach out to do something
24 like this are FTI, but they're already working for somebody
25 else. And as I said, Alvarez & Marsal have been -- have been

1 laid off, so I don't know, 15, 20 names just weren't going to
2 work either because they had conflicts or whatever. My thought
3 initially was to try to find someone who was both an
4 experienced CRO and had oil and gas experience.

5 We got down to a point where it looked like we were going
6 to have a choice of on or the other, and that's one of the
7 reasons, for instance, why we sent two names to the -- to the
8 creditors.

9 Q So I want to talk to you about that. You heard
10 Mr. Zylman's testimony about narrowing it down to three and
11 then adding in the objecting creditors' candidate. Do you
12 recall that?

13 A Yes.

14 Q You agree that's the four that ended up being interviewed
15 and kind of at the final selection process consideration. Is
16 that right?

17 A Well, that's -- that's the four that we interviewed, yes.

18 Q Okay. And tell me, after the deliberation process, before
19 you and Mr. Zylman decided on who to put forward, who were your
20 top two?

21 A The -- I have the same problem as Adam now. I can't
22 remember the name of the fellow from Oklahoma. I think it
23 might have been Crowley (phonetic). I hope it was Crowley. It
24 was Crowley and Mo, and -- and Adam really liked this fellow
25 Walls. And, look, one of the things I have to do in this

1 situation because I've been doing this so long and Adam is new
2 to it, I don't want to be a bully. I don't have to win every
3 fight, every argument. The differences between the two
4 candidates as to who was going to be two or three in my mind
5 were that -- not that far apart. They were going to be the oil
6 and gas candidate as opposed to, you know, the -- the
7 experienced CRO candidate. And I felt it was important for me
8 to compromise and -- and share some of the responsibility in
9 choices with my partner.

10 Q Did you determine who you believed to be your top two
11 before or after Tony Sanchez had his conversations with --

12 A Oh, before.

13 Q Okay. Can you please tell the Court -- Mr. Zylman
14 referred to you a little bit during this conversation. Can you
15 tell the Court why Tony Sanchez was allowed the opportunity to
16 speak with them?

17 A Yeah. Again, first of all, my belief is, having done this
18 now for 35 years, all right, that this is standard operating
19 procedure. No one wants to have a chief restructuring officer
20 come into their company. No one. All right? It takes away
21 from the authority of the CEO. It creates muddled lines of
22 authority. Sometimes big firms, like Alvarez, for instance,
23 will come in not just with a CEO or a CRO, but with
24 replacements for several senior people and people get shunted
25 aside. And I was concerned that -- that we either -- that we

1 took into account the fact that we needed to have the
2 cooperation of management to get a deal done. So that was --
3 that was a determining factor in my mind.

4 It -- so part of that is every CEO has always met the CRO
5 candidates in every situation I've been involved in, including
6 when I was put up for a CRO. They didn't have a vote, but it
7 was part of a process to create a more cooperative atmosphere.
8 You know, if I would have known that people would have
9 construed what was basically just a courtesy of some kind of a
10 cabal with Mr. Sanchez, I would have said forget it, we'll tell
11 them later who the answer is. It was just intended as a
12 courtesy and that's all it was.

13 Q Okay. Did you in any way consider Mr. Sanchez's feedback
14 to you and the Special Committee in deliberating who you
15 thought was the best candidate?

16 A No, because we -- I'd already made a decision as to who my
17 one and two were before Tony spoke to them. The only thing was
18 left to resolve after we heard from Tony was to decide who the
19 number two position was going to be between Adam and myself.
20 And as I said, I deferred to his judgment on that.

21 Q And who was your number one candidate?

22 A It was Mo.

23 Q Can you please tell the Court why it was Mo -- or
24 Mr. Meghji?

25 A Well, I mean, look, assuming for the moment that we

1 couldn't satisfy the criteria of having someone who was both an
2 experienced CRO and somebody with EMP experience, Mo's
3 reputation in the industry, his -- his -- my experience with
4 him myself in the companies he's handed off to me. I've had
5 hand-offs from CROs that were not so great and left the company
6 in shambles or the estate in shambles, and I've had people
7 who've done it correctly, and Mo falls into that second
8 category.

9 I also knew, at least, you know, from what I'd heard, that
10 Mo had been at least at one point considered by the creditors,
11 and I felt that, well, you know, maybe he didn't make their
12 first cut, but if we showed them what a good guy he was, they'd
13 -- they'd be reasonable when they interviewed him again. But
14 he's a CRO. I mean, he's -- he's done it ten times. He's done
15 it successfully. He's built up a business and career around
16 it. He's well thought of and I thought that given all the --
17 given all the internal politics and -- and vitriol in this
18 case, he'd be the guy that would be the leveler and -- and
19 bring -- and bring order to the situation.

20 Q Now, you've heard a lot of discussion about why the
21 Special Committee did not select the objecting creditors'
22 candidate, right?

23 A Yes, I have.

24 Q Can you tell the Court why you didn't select -- or he
25 wasn't your top two, the objecting creditors' candidate?

1 A I -- if I can be permitted to put this into context. I've
2 been doing this for a long time, and as I said before, I've
3 been a CRO myself. I've never actually seen a creditor group
4 only make one selection. Usually they send you two or three
5 names, the company comes up with two or three names, and
6 somehow you find consensus in the middle. It's a cooperative
7 process. It's not an in-your-face, take-this-guy-or-else.
8 I've never seen that before. No one ever did it on my -- for
9 my behalf when I was a CRO. I wish they had.

10 Separate from that, he failed the interview. You know, he
11 -- I -- I know there was some reference before in Adam's
12 testimony to his -- his work at Nortel and his work at Enron.
13 He didn't identify those himself giving a chance that those
14 were CRO assignments.

15 MR. FINESTONE: Your Honor, I'll move to strike. He
16 wasn't -- evidence shows that he wasn't even on the telephonic
17 interview.

18 THE WITNESS: With -- with John Ray?

19 MR. BRIMMAGE: Well, I'm a little confused, Your
20 Honor. I don't know what objection that is, but it's --

21 THE COURT: Well, the objection, if he wasn't on the
22 interview, would be he can't testify about it because he didn't
23 hear it. But he's talking about your candidate and the
24 evidence is that he was on that interview.

25 MR. FINESTONE: I'll withdraw the objection.

1 THE COURT: Okay. Thank you.

2 BY MR. BRIMMAGE:

3 Q Please proceed.

4 A Anyway, as -- as I said, he failed the interview. I know
5 that Adam felt he was long-winded. Long -- I'm long-winded,
6 right? So -- and I'm not -- we can be flip about that, but
7 that's not necessarily the determining factor for me. If I
8 think I'm getting substantive answers from somebody, then you
9 take another ten minutes, you take another 15 minutes.

10 When asked about his CRO experience, he mentioned overseas
11 shipping only. If he thought that the Nortel experience or the
12 Enron experience was the functional equivalent of a CRO or the
13 functional equivalent of a CRO with related party issues, he
14 had ample opportunity to promote himself by bringing that to
15 our attention, and he did not. All right? So like I said, he
16 failed the interview. He wasn't the best candidate as
17 presented. He wasn't the most experienced candidate as
18 presented. Certainly, he -- maybe we missed some facts about
19 him, but he didn't -- he didn't bring them to our attention.

20 Separately, I made some inquiries on my own. I asked
21 about the Nortel situation with -- actually with Akin Gump, and
22 I -- the information I got back was he was very difficult to
23 deal with. The Enron situation, and the restructuring
24 committee, at least the part that I'm in, is legendary. All
25 right? The Enron board was formed after the bankruptcy. Steve

1 Cooper was the trustee and there was a board that was supposed
2 to be paid \$150,000 a year until the case got ramped up.

3 Somewhere along the line -- I didn't know the names until
4 after I went back and checked -- the board staged a revolt,
5 threw Steve Cooper out, and two of the board members that
6 organized the revolt gave themselves very large raises. I
7 believe in Mr. Ray's case, he moved his compensation from
8 150,000 to a million-two a year.

9 I do this work. I can promise you -- in fact, some --
10 some of the -- the clients of the -- of the other side here
11 used me for things like this before. If I unilaterally gave
12 myself a 10X raise, I probably wouldn't work again. So that
13 kind of stuff was troubling.

14 But that wasn't the determining factor. It was really two
15 things: Number one, that Mo was a better candidate, and number
16 two, that he failed the interview.

17 Q Okay. In considering the objecting creditors' candidate,
18 did you consider the fact that the objecting creditors had put
19 the candidate forward?

20 A For me, that's a very, very, important issue. Even though
21 I'm doing this job now as a -- working on the debtors' side,
22 for those that know me in this room, they know the overwhelming
23 majority of the work I get is by reference from bondholders and
24 lenders when they take over companies through bankruptcy and
25 reorganization processes. I'm a -- I'm a post-bankruptcy

1 director mostly. That work comes directly from the lender
2 community. And for me to defy their wishes or to not take them
3 into account seriously is a very difficult thing for me to do
4 because it has ramifications of the rest of my career. So I
5 gave it quite a bit of weight.

6 But I'll also tell you there's things I've learned in the
7 years that I've been doing this. The person who I believed to
8 be the largest of the lead lender in the 1L group is Nate Van
9 Duzer at Fidelity. Nate has been a colleague and a friend for
10 quite a long time. He was personally responsible for me being
11 on the board of Delta Airlines. There was a moment in time
12 when, after the Lehman collapse, where Fidelity was supposed to
13 chair the creditors' committee at General Growth Properties,
14 Sanjaya Reid (phonetic) at the time, Nate didn't have the time
15 to do it, so he hired me to be the chairman of that committee.
16 So I've been lucky enough to enjoy his trust over the years,
17 and I know that he's a very rational person. And I know that
18 in the past, he's trusted my judgment.

19 My sense was that the -- the way that the candidate was
20 posed to us, bearing in mind that there was no requirement for
21 a CRO the first time we did the DIP, all right, I believe that
22 these were concessions that were made -- and by the way, that
23 doesn't go to whether we need a CRO. All right? That just
24 goes to what happened. There was no requirement for an DIP --
25 or for a CRO in the first version of the DIP. When it looked

1 like that was not going to succeed and consultations were
2 required with the junior lenders, all of a sudden we had a CRO.
3 So my intuition told me that was a concession to try to get the
4 group together.

5 My intuition told me at that point this -- the 1Ls maybe
6 didn't care that much, they just wanted peace and to get the
7 thing done. But I also believed that we -- if we insisted on
8 bringing them the right candidate, they would step up and do
9 the right thing, which they eventually did. So this is a
10 process where you have to know the people on the other side and
11 to -- and to have a sense of how they're going to react. I
12 could've been wrong, in which case we would have a different
13 result right now. But I believed that at least the people in
14 the 1L group you know me and know my judgment and have trusted
15 me over the years, trusted -- trusted the selection that I
16 supported of Mo.

17 Q Do you have a view one way or another, as a Special Committee
18 member and the chair of the Special Committee, what and/or who
19 is your duty to?

20 A My duty is -- is, number one, to -- to generate the -- as
21 much value as possible in the enterprise to satisfy the claims
22 of all stakeholders. So, you know, until the matter is
23 resolved of who's in the money and who's out of the money, the
24 only function that we can do is to preserve the value of the
25 estate and enhance it to the extent possible. How it gets

1 whacked up, that's going to get decided in a plan of
2 reorganization. That will either be a consensual deal or it's
3 going to turn out to be a contested deal and -- and the judge
4 here will decide. So the -- the idea is to preserve the pie
5 and make the pie as big as possible.

6 Q How do you view the Special Committee's selection of a CRO
7 candidate with regard to fulfilling its duties?

8 A The -- as time has progressed, the need for a CRO has
9 become more apparent to me. And then I know -- I mean, the DIP
10 -- the DIP deal requires it, so it would be -- it's kind of a
11 fait accompli. Early on in this process when the Special
12 Committee was formed, there were some functions that a CRO
13 typically performs that I did myself. Now, I wasn't running
14 the company day to day, but the business planning process in
15 its first stages, and second stage, and its third and fourth,
16 was done under my auspice is. I presented the company with a
17 template that I've used in about 60 other companies that's been
18 successful. We had several iterations where we went back and
19 forth. I think there was some mention before that the price of
20 the commodity kept falling, so we had to find more cuts and
21 more cuts and more cuts.

22 My hope was that we were going to have a plan, be able to
23 carry that to our lenders, all of our lenders, early in the
24 process before we had to file a bankruptcy, and see if that
25 plan would form a consensual basis for some kind of a deal,

1 even if a bankruptcy was involved. That's one of the reasons I
2 took this assignment to begin with was typically when I get
3 these pre-bankruptcy deals, the house is already on fire and
4 I'm just there to carry the company through the process. I've
5 always wanted to have the chance to actually do it right: do a
6 plan, build consensus around it, take it through a process, you
7 know, and -- and try to get as much of a happy ending for
8 people as possible.

9 Unfortunately, we -- we completed a plan, but we didn't
10 get engagement. We tried. I don't know how many times we sent
11 Moelis out to talk to -- to the various, you know,
12 representatives of the different lending groups, and we
13 couldn't get a meeting. Now, I'm sure people remember it
14 differently, but this is definitely what was reported to us.

15 We also spent quite a bit of time shopping that plan
16 around on the theory that if we could raise money from a third
17 party, it might -- it might make the deal easier. And we
18 actually got indications of interest from other parties, so
19 this was not a garbage plan. It was seriously considered by
20 real financiers. So that's what I thought the deal was.

21 Q Can you tell the Court why it's important or if -- first
22 of all, do you have an opinion one way or another if it's
23 important for the Court to grant the CRO motion?

24 A Yes. Well, at this point, the situation has crystallized
25 over the last several weeks. Almost -- almost from the moment

1 that the -- that the Court did not grant the original DIP
2 motion, it became clear that we were going to have to revisit
3 the business plan again. In the first go-around, in the second
4 go-around, and the third go-around, I felt that we got a very
5 high level of buy-in from management. I know that I tore -- I
6 know that I tore up sections of that plan several times and
7 sent them back to the drawing board, and without grumbling,
8 they came back with something.

9 This time -- this time the process seemed a little bit
10 more opaque. I was getting -- I was getting reports back from
11 the consultants -- our consultants, not -- not legal advice,
12 but consultants saying they didn't think they were getting the
13 proper level of cooperation. It began to trouble me.

14 And then last week or the week before, I can't remember
15 when, we got the -- I'm sorry, Judge, I forget what we are
16 calling that letter.

17 Q Indication of interest.

18 A It's the indication of interest. At that point -- at that
19 point, the conflict of interest was crystallized. And let me
20 explain what the difference is to me.

21 My understanding is from the day that Sanchez became a
22 public company, the arrangement that they had where the
23 management is in a separate company and the pipeline system is
24 in a separate company was there from day one. Everybody who
25 bought stock in the company, everybody who bought bonds,

1 everybody who loaned money, they took that risk. Whether
2 that's a good idea or a bad idea, it's not nefarious in
3 retrospect. Now, I mean in terms of execution, maybe people
4 took advantage, but the -- the structure was a structure.

5 The -- the idea was to try -- was to try to get a plan
6 that people could -- could come to consensus about, and
7 bringing in a third party was part of a good faith effort to
8 say to people, look, you don't have to own the company if you
9 don't want to. We'll bring in someone who will give you a
10 pay-down and maybe you'll reinstate some of the debt, maybe
11 you'll take some equity. The whole idea was to come with
12 self-help, to not sit as one of these creditors that was
13 pretending the house wasn't on fire until it was consuming
14 everybody. So -- so we tried to do all those things.

15 Q Do you have a view one way or another whether or not the
16 Special Committee exercised its business judgment in
17 recommending Mo as the CRO?

18 A Absolutely. It was a perfect process.

19 Q Can you explain that to the Court?

20 A Yeah, I've heard it called a flawed process here, and I'm
21 not going to take this personally. We did everything a company
22 is supposed to do. We got names, we solicited names. We had
23 interviews. We did as much background checking as we could do
24 in a short period of time. There was -- there was some heat on
25 because people thought that the DIP hearing was going to happen

1 quickly and we had to produce a CRO for the DIP hearing.

2 I would even tell you that in terms of the scope, I've
3 heard a lot of conversation here about this today. The Special
4 Committee has not pushed back one iota on the scope at any
5 point. We realized that the CRO was a pre-condition to the
6 DIP. The original scope was something that was more or less
7 handed to us by the 1Ls, and we just adopted it. And when it
8 came back and it didn't look like it was strong enough, we
9 adopted that. There has been no negotiation here. It's been
10 basically tell us what -- what you need to get comfortable so
11 you'll advance us the funds.

12 I'm not afraid to have a CRO in the business. At this
13 point, I can no longer use the senior management to help me
14 with the plan because they're a potential buyer. All right? I
15 need to have somebody in there that can do that. We can't get
16 a -- we can't get a plan of reorganization without a plan to
17 operate the company. We can't do valuations, we can't do any
18 of those things, so we do need a CRO, yes.

19 MR. BRIMMAGE: Your Honor, I'll pass the witness.

20 THE COURT: Thank you. Any other questions from any
21 other proponents? Okay. Who's going to take the lead for the
22 opponents?

23 MR. FINESTONE: Okay to start, Your Honor?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION



1 BY MR. FINESTONE:

2 Q Mr. Davis, one of the focuses of your Special Committee is
3 the debtors' relationship with SNMP, correct?

4 A Correct.

5 Q And the second one is the debtors' relationship with
6 Sanchez Oil and Gas, or SOG, correct?

7 A Those are two of the set focuses, yes.

8 Q And that's because the Sanchez family has interest in
9 SNMP, correct?

10 A Among other reasons, yes.

11 Q They also have economic interests in Sanchez Oil & Gas,
12 correct?

13 A That is correct.

14 Q And you agree with me, Mr. Davis, don't you, that because
15 of all of the related party transactions, it's not appropriate
16 for Mr. Sanchez, as a subject of the related party
17 investigation, to be involved in the selection of the party
18 that's going to investigate him, correct?

19 A I'm not sure if I can answer that question because the
20 actual investigation has been delegated to the Special
21 Committee, and Mr. Sanchez had a hand in selecting me. So I'm
22 not sure I want to undermine my own credibility here.

23 Q That's going to be my point, actually, but first --

24 A Okay.

25 Q -- let's see if you agree with the concept.

1 A No, I --

2 Q Do you me to read that to you again or I can pass you the
3 deposition transcript, too. Give me a second, sir.

4 A By all means.

5 MR. FINESTONE: Your Honor, can I approach?

6 THE COURT: Yes, sir.

7 MR. FINESTONE: Okay.

8 BY MR. FINESTONE:

9 Q All right. This the second one, Mr. Davis.

10 A Thank you.

11 Q Mr. Davis, can you turn to Page 71?

12 A Sure.

13 Q Give a -- you gave a -- I'll use your words, a long-winded
14 answer, but I just want to read to you Page 71, 5 to 11:

15 "In this particular situation, because of the items you
16 mentioned, it's not appropriate for Mr. Sanchez, as a subject
17 of the related party investigation, to be involved in the
18 selection of the party that's going to investigate him."

19 Did you give that testimony at your deposition?

20 A Yes, I did, but the party I was referring to was the CRO
21 and Ropes & Gray, not the committee itself.

22 MR. FINESTONE: Which, Your Honor, is the actual
23 question.

24 BY MR. FINESTONE:

25 Q You -- do you agree with the concept with respect to the



1 CRO, though, sir? Do you agree that it's not appropriate for
2 Mr. Sanchez to be involved in the selection of the CRO?

3 A Yes, I agree. The CRO is an agent of the Special
4 Committee. He's an employee of the Special Committee. He --
5 he works at the direction and under the protection of the
6 Special Committee. Clearly, Mr. Sanchez should not be picking
7 him.

8 Q Okay. Thank you. Or involved in -- or as, I think to use
9 your words, he shouldn't be involved in the selection, correct?

10 A It depends on what you mean by the word "involved." If
11 showing him a courtesy is involving him, then I don't agree
12 with you because there was -- there was no weight to him
13 talking to the person on the telephone.

14 Q Okay. Thank you.

15 A We didn't use that in the selection process.

16 Q Thank you, Mr. Davis. When you were contacted for your
17 role, you had your initial meeting with Tony Sanchez, III,
18 correct?

19 A That's correct.

20 Q There was no one else there, correct?

21 A I don't believe anybody else was there, no.

22 Q It was just you and Tony in Akins' New York office,
23 correct?

24 A I believe I answered that, yes.

25 Q That was an interview for the role, correct?

1 A It was more of an introduction. The interview happened
2 when I went to Houston.

3 MR. FINESTONE: May I approach again, Your Honor?

4 THE COURT: Yes, sir. Thank you.

5 (Counsel confer)

6 BY MR. FINESTONE:

7 Q Can you turn to Page 26, please, Mr. Davis?

8 A You mean the page with 26 on the bottom or the --

9 Q Small 26. I think it's probably on Page 8.

10 A Hold on a second. I didn't bring my reading glasses. I
11 apologize. I have it.

12 Q At Line 10, Mr. Davis, did I ask you the question, "And
13 was this your first meeting in which your role was described to
14 you?"

15 And you answered, "It was an interview."

16 A Yes.

17 Q Okay. Thank you. Ultimately, you negotiated an enhanced
18 fee package for yourself for this role, given that you were
19 going to be the chair of the Special Committee, correct?

20 A No, I did not. I told them what it was going to cost to
21 have me, and I -- they came back with -- with a different
22 setup, and I accepted it. There was no -- there was no
23 negotiation. I -- I took what they offered me.

24 Q Can I ask you to take a look at Page 52, sir? Small 52,
25 big 14.

1 A Hold on, hold on. Okay.

2 Q Question, Line 21:

3 "Q Who was the individual that you negotiated your
4 compensation package with? And just to be clear, Mr. Davis,
5 we're talking about -- we're not talking about the amount you
6 agreed to when you were initially appointed to the board.
7 We're talking about the subsequent increased amount when you
8 were confirmed to be restructuring" --

9 A I'm sorry -- I'm sorry, which page are you referring to?

10 Q 52, Line 21, through 53, Line 4. And you answered, "Tony
11 Sanchez."

12 A One second, please. My recollection is that the actual
13 fee -- I'm sorry, I can't -- I can't find what you're -- what
14 you're referring to on Page 52.

15 Q Are you on little 52, the bottom left corner of Page 8?

16 A Yeah, yeah, I'm looking at it.

17 Q Line 21, I asked you who you negotiated your compensation
18 package with.

19 A Who was the individual -- Tony Sanchez told me what they'd
20 pay me, yes, but I wouldn't characterize it as a -- as a
21 negotiation. I mean, they would be -- that was clearly in your
22 question, but there was -- no back and forth.

23 Q Okay. Thanks. And you didn't correct my question, right?
24 This is -- you -- this correctly states your answer, Tony
25 Sanchez, correct?

1 A Tony Sanchez told me what I would be paid as his chairman
2 of the restructuring committee, yes.

3 Q Did you answer Tony Sanchez when I asked you who
4 negotiated your compensation with?

5 A I just said so, yes.

6 Q Thank you, sir. And you make between 25- and \$31,000 a
7 month, do you not?

8 A My recollection was I get paid \$35,000 a month to be the
9 committee chair, and then there's another payment of a base
10 board fee. It's a -- I think in the answer I gave you here, I
11 told you it was a fairly antiquated system that the company
12 used to pay board fees and pay meeting fees, which is no longer
13 really used in practice. And rather than do what they -- what
14 a company usually does when they -- when they hire me for
15 something like this, which is just to pay me a flat fee with no
16 reference to the board fee, what they decided to do was give me
17 a supplement to the board fee as opposed to a separate fee.

18 Q Bottom line, your pay double what Mr. Zylman is paid, are
19 you not?

20 A I haven't seen his 1099, but I'm assuming for -- for the
21 role on the committee, yes.

22 Q And when you negotiated your compensation, Mr. Davis, you
23 didn't understand that the debtor was previously sued for
24 excessive compensation for directors, did you?

25 A I don't believe that I knew at the time, and I'm not sure

1 it's relevant.

2 Q It's not something you did any -- you do diligence on
3 companies before you agree to be members of the board of
4 directors, do you not?

5 A I do what I think is an appropriate level of diligence to
6 determine a company's state when I join the company. But in
7 terms of what happened before I showed up, that's none of my
8 business. I'm not liable for that, why would I care?

9 Q The question is not whether you care, sir. I just -- I
10 just wanted the record to be clear. You didn't do any
11 diligence on the fact -- you didn't know that the company was
12 sued for excessive director compensation, did you?

13 A I don't -- I don't recall knowing that, no.

14 Q Okay. And it's not something you did any diligence on.

15 A With regards to the -- with regard to too much director
16 compensation, no. I took a look at the company's assets, I
17 took a look at its debt. I took a look at -- at the business
18 plan that they showed me. Whatever happened before I got there
19 was not my business.

20 Q And at the time, in your view, Mr. Davis, equity was not
21 going to be the fulcrum security, correct?

22 A I suspected that it wouldn't. Ordinarily when I have
23 these assignments in pre-bankruptcy companies, I'm not offered
24 equity, I'm offered cash.

25 Q And you didn't -- so you didn't view equity -- you didn't

1 think that equity was going to be a fulcrum security, correct?

2 A I've been in the oil and gas business 40 years and been
3 through at least four major downturns. And in each one of
4 those cases, the equity in the companies was not worth
5 anything. So I -- based on my own experience, no, I didn't
6 think the equity here would be worth anything, no.

7 Q Thank you. You didn't speak to any creditors in doing due
8 diligence before you took the role, did you?

9 A No.

10 Q You didn't speak to any secured creditors?

11 A Nope.

12 Q Unsecured creditors.

13 A No.

14 Q Also, in connection with negotiating your fee, you didn't
15 speak to any creditors in connection with negotiating your fee,
16 correct?

17 A No.

18 Q And, in fact, from late October when you were appointed
19 all the way through the filing of these bankruptcy cases, you
20 didn't speak to any creditors or this debtor about anything at
21 all, did you?

22 A We -- we made outreach to try to have meetings with
23 creditors and we were rebuffed, but we certainly made the
24 efforts. So the answer is no, I didn't speak to anyone, but
25 not because I didn't want to.

1 Q Let me ask you a slightly different question. You,
2 Mr. Davis, you didn't reach out to any unsecured creditors to
3 discuss the state of affairs of the company after you were
4 appointed, did you?

5 A There were people who heard my name was attached to
6 Sanchez that I work with on a regular basis who called me up
7 and said I hear you're on Sanchez, and they wanted to make
8 small talk. I didn't discuss the company's business with them.
9 Some of them purported to own securities, but they wouldn't
10 tell me which ones they are. Some of them I believe are in
11 your group, people I work with on a regular basis. So I took
12 the call as a courtesy, but no, I didn't discuss company
13 business with them and I wasn't negotiating my fee with them.

14 Q The question is much more simpler than that, Mr. Davis.
15 Did you reach out to any creditors between the time you were
16 appointed and the filing of the bankruptcy cases? Reach out.
17 Did you pick up the phone and contact anybody?

18 A Me personally?

19 Q That's right.

20 A No. I did -- I did it through advisors.

21 Q Well, you never instructed Ropes & Gray to reach out to
22 any creditors during the entire period prior to the bankruptcy
23 case, did you?

24 A Ropes & Gray was retained for the specific purpose of
25 conducting --

1 THE COURT: Sir, I'm going to interrupt, Mr. Davis.
2 You've got good lawyers. Let's answer his questions.

3 THE WITNESS: I -- I am, Your Honor.

4 THE COURT: No, you're not.

5 Ask your question again.

6 THE WITNESS: Go ahead.

7 BY MR. FINESTONE:

8 Q From the time that you were appointed in late October,
9 sir, you didn't ask Ropes & Gray to reach out to any creditors
10 of the bankruptcy estate -- I'll withdraw.

11 You didn't instruct Ropes & Gray to reach out to any
12 creditors of these debtors.

13 A No, the answer is no because it wasn't their role.

14 Q Okay. And you personally didn't reach out to them either,
15 correct, Mr. Davis?

16 A As I said before, I instructed the advisors to reach out
17 to them. I gave that instruction, yes.

18 Q Okay. Mr. Davis, you take conflicts of interest pretty
19 seriously, don't you?

20 A Yes.

21 Q And prior to you accepting your role, you understood that
22 certain Sanchez directors had been sued in a lawsuit alleging
23 that they were beholden to the Sanchez family?

24 A I had heard something like that, yes.

25 Q Well, I think you had read the description in the

1 company's public SEC filings, correct?

2 A I believe I had, yes.

3 Q But other than that, you didn't make any further
4 inquiries, right?

5 A No, I just had to make sure that whatever I -- role I took
6 was properly prescribed.

7 Q And even now, you don't know whether action was settled or
8 how it was resolved, correct?

9 A I've shown no interest in it. It happened before my time.

10 Q You don't even know, Mr. Davis, which of your fellow
11 directors were the ones that were alleged to be beholden to the
12 Sanchez family, do you?

13 A I'm sure I knew when I read it at the time, but I don't
14 recall it now.

15 Q And on the same day you were appointed, Mr. Davis, the CFO
16 of the company resigned. Isn't that true?

17 A I -- I came to understand that, yes.

18 Q You don't know why he resigned, do you?

19 A No, but it's not atypical for a CFO to resign when a
20 company is in trouble.

21 Q You didn't ask any questions about it, did you?

22 A None.

23 Q You didn't ask at the successor CFO whether he knew?

24 A No.

25 Q You never asked the Sanchez family about it either, did

1 you?

2 A No.

3 Q And you had no idea he was paid a million dollars in
4 severance, did you?

5 A No.

6 Q You also agree, Mr. Davis, it's appropriate for the
7 company to do diligence about you before accepting you as a
8 member of the Board of Directors, correct?

9 A Whatever they think is appropriate, yes.

10 Q And not what they think is appropriate. Do you agree,
11 sir, that it's appropriate for the company to do diligence on
12 you?

13 A I think the company has a process for evaluating
14 directors. Whatever they do is fine with me.

15 Q Sir, it's not about whether -- what's fine with you.
16 You're a director on many boards, do you not --

17 A Yes.

18 Q -- are you not? You think you have a pretty good view in
19 terms of the appropriate corporate governance, correct?

20 A Yes.

21 Q If you were on a company's Board of Directors and you're
22 considering -- and you were considering an appointee for a
23 restructuring committee and you were already on the board,
24 would it be appropriate to do due diligence about the
25 candidate?



1 A I would assume so, yes.

2 Q You wouldn't just offer the job to anyone, would you?

3 A It depends if I knew them from before or they came -- or
4 they came well referred.

5 Q It's important, Mr. Davis, that a company select a
6 director that's not conflicted. Do you agree with me?

7 A It's important that they select directors that are not
8 conflicted. With regard to the Sanchez family, yes, I agree
9 with you. Yeah, they wouldn't be independent, then.

10 Q Particularly true for a role on a Special Committee,
11 right?

12 A Someone who -- who had a history with the Sanchezes,
13 assume for the moment that the related party's transactions
14 will be part of the brief, yes, that person should -- that
15 should not have a conflict with the Sanchez family.

16 Q You have no idea if this company did any diligence on you,
17 correct?

18 A I believe I've already answered the question. I don't
19 know.

20 Q You have an idea or you don't -- you have no idea whether
21 the company did any diligence on you, correct?

22 A I've already answered. I don't know what the company did
23 in terms of diligence.

24 Q Okay. No one asked you about the fact that you used to be
25 a lawyer at Akin Gump, correct?

1 A I think I might have mentioned it to them.

2 Q I'm sorry. I'm just not hearing you.

3 A When I was interviewed for the board, people asked me to
4 give a synopsis of my -- of my history, and I believe that I
5 did mention that I worked at Akin Gump, yes.

6 Q All right. Can you take a look at Page 40, sir, of the
7 deposition, small 40. I'm going to read from Line 11:

8 "Do you remember anybody asking you, sir, about the fact that
9 you were -- that you used to be a lawyer at Akin Gump?"

10 You answered, "I don't believe I was asked that, no."

11 Did I ask you that question and did you give me that
12 answer?

13 A Yes. I wasn't asked specifically about Akin Gump, but I
14 was asked to give my biography, which included the fact that I
15 was at Akin Gump.

16 Q Thank you, sir. No one asked you about how many board
17 seats you sat on at the time, did they?

18 A They asked me if I had time to do the job properly, and I
19 answered in the affirmative.

20 Q My question is more specific. No one asked you about how
21 many board seats you were on, correct?

22 A I don't recall being asked the question, no.

23 Q And you don't know how many board seats you sat on at the
24 time, do you?

25 A At that moment no.

1 Q You don't even know whether it was more or less than 40,
2 do you?

3 A I do know that it was less than 40.

4 Q Okay. Well, let me take -- let me ask you to take a look
5 at Page 38 of your deposition, sir.

6 A Sure.

7 Q Page -- Line 25, Page 38: "Well, do you think it's more
8 or less than 40?"

9 You answered, "I can speculate. It changes from time to
10 time and I really don't -- can't give you an answer."

11 A That's correct.

12 Q Did I give you that question and you gave me that answer?

13 A Yes. That's correct, yes.

14 Q And even here today, Mr. Davis, you don't know how many
15 boards you sit on, do you?

16 A Well, actually I do. I took the time to try to figure it
17 out so I could answer the question if it was asked.

18 Q At the time of your deposition, you wouldn't even give me
19 a guess as to whether it's more or less than 50. Do you agree
20 with that?

21 A No, because I wouldn't speculate under oath.

22 Q No. I asked you the question whether you thought it was
23 more or less than 50, and you wouldn't answer the question,
24 correct?

25 A And my response was I wouldn't speculate under oath. I'm

1 -- that's what I said at the deposition.

2 Q I asked -- all right. Let me ask you to take a look at
3 Page 39, please, Line 25.

4 A All right.

5 Q "Could it be -- can you even tell me if it's more or less
6 than 50?"

7 You answered, "I can't tell you anything because I won't
8 speculate."

9 A That's correct. That's consistent with what I just said.

10 Q Okay. Continuing further on the diligence that the
11 company did about you before naming you chair of the Special
12 Committee, no one at the company -- no director of this company
13 asked you about the fact that you've been sued twice as a
14 director of other companies, correct.

15 A I've actually been sued more than twice as a director of
16 other companies. They've all been dismissed. It's -- it's a
17 common occupational hazard of sitting on the boards of
18 companies that get sold.

19 Q Mr. Davis, the question is did anybody ask you about --
20 two cases that I'm talking about or the more cases that you're
21 talking about. No one asked you about them, correct?

22 A You're talking about the Wayzata case and Rural/Metro,
23 nobody asked me about those specifically. But I haven't -- I
24 haven't hidden those. They're public knowledge about me.

25 Q Can you just answer the questions? The lawyers can argue

1 about the significance after the fact, Mr. Davis. You had no
2 discussions about the Rural/Metro case with anybody, correct?

3 A No one asked me about Rural/Metro, no.

4 Q And that case, it was alleged, Mr. Davis, that there were
5 personal circumstances that inclined you towards a near-term
6 sale of the assets, was it not?

7 MR. BRIMMAGE: Your Honor, I'm going to object this
8 point. I think it's not relevant to the inquiry were here for
9 today, and I don't think it goes to Mr. Davis's credibility. I
10 think this is the kind of stuff that we were concerned about,
11 trying to trash Mr. Davis, and I think it's inappropriate.
12 This has nothing to do with anything that he's done on the
13 Special Committee or what he has or hasn't done or the decision
14 he did or didn't make regarding the CRO.

15 MR. FINESTONE: I've got an offer in compromise given
16 the time of the day. I will read into the record the citation
17 from the Delaware Supreme Court, 129 A.3d 816.

18 THE COURT: No.

19 MR. FINESTONE: And in response to the relevance --

20 THE COURT: No.

21 MR. FINESTONE: Yeah.

22 THE COURT: Respond to his objection.

23 MR. FINESTONE: Okay. I'm sorry, Your Honor.

24 THE COURT: Yeah. What's his --

25 MR. FINESTONE: It's relevant for two reasons. The

1 first point has already been established that he was -- the
2 company didn't to any due diligence before anointing him chair
3 of the Special Committee. And then point two, the Delaware
4 Supreme Court, if I was allowed to continue the questioning,
5 went on to find that he --

6 MR. BRIMMAGE: Your Honor, I'm going to object at
7 this point.

8 THE COURT: So his -- your question wasn't whether he
9 had been found liable for anything. It wasn't whether any
10 court had criticized him. It was only whether someone had made
11 allegations against him. I think that question is
12 inappropriate unless those allegations have been sustained. So
13 start at the end, but I'm going to sustain the objection. I
14 think that it is irrelevant to the Court whether people have
15 made allegations against somebody. It is unfortunately all too
16 common that people sue people without merit, and so -- if it
17 has merit, different question.

18 MR. FINESTONE: Yeah. Your --

19 THE COURT: But I'm not going to let you just talk
20 about allegations.

21 MR. FINESTONE: Fair enough, Your Honor. The reason
22 why I started with allegations is because the follow-up
23 question was that the -- did the Supreme Court conduct an
24 independent review of the record and find that the findings of
25 the trial court below were supported by the evidence. These

1 are not just merely allegations.

2 THE COURT: Well, if you want to ask him a question
3 -- your question that was pending was isn't it true someone
4 alleged something, and I am sustaining the objection to what
5 people might have alleged.

6 MR. FINESTONE: Okay.

7 THE COURT: That's just introducing hearsay that is
8 inappropriate. It's an inappropriate way to impeach somebody.
9 It's an inappropriate way to attack them. So if you have
10 something that says isn't it true you been found liable for,
11 that's a totally different question. Those are not
12 allegations.

13 BY MR. FINESTONE:

14 Q Mr. Davis, is it not true that the trial court, the
15 Delaware Chancery Court, found that you had personal
16 circumstances that inclined you towards a near-term sale of the
17 company's assets?

18 MR. BRIMMAGE: Your Honor, that -- I'm going to
19 object. It's hearsay and irrelevant. There's no liability
20 there. This is a mere opinion where they found no liability.
21 This is inappropriate. This is dragging Mr. Davis through the
22 mud when there is no liability found by the court, period.

23 THE COURT: Was he found liable for this?

24 MR. FINESTONE: The trial court made these factual
25 findings. That's the Delaware Chancery Court. The Supreme

1 Court reviewed the factual findings and concluded that, after
2 doing its own independent review of the record, that they were
3 supported by the evidence. Liability, I don't know about
4 liability here. I'm just on the factual findings.

5 THE COURT: Let me see the opinion.

6 MR. FINESTONE: Okay. Your Honor, do you have our
7 exhibits up there?

8 THE COURT: Yeah.

9 MR. FINESTONE: It's the last tab. I direct Your
10 Honor to pincite 826.

11 (Counsel confer)

12 THE COURT: I'm not going to allow you to put in what
13 someone found about somebody who wasn't there to defend
14 himself. It's not fair.

15 MR. FINESTONE: Okay. Okay, Your Honor.

16 BY MR. FINESTONE:

17 Q The Special Committee, Mr. Davis, it's supposed to be
18 independent from the Sanchez family, is it not?

19 A It is independent of the Sanchez family.

20 Q And in connection with your role on the Special Committee,
21 any officers that you would select to report to the Special
22 Committee must also be independent, correct?

23 A Yes.

24 Q They would have to be free of conflict, right?

25 A That would be my view, yes.



1 Q Same thing with any lawyers that the Special Committee
2 would retain, right?

3 A I'm not so sure about the lawyers, but I do know that the
4 officers have to be independent.

5 Q Well, when you chose Ropes & Gray, it was important that
6 they not be conflicted, correct?

7 A Ropes & Gray was retained for the specific purpose of
8 conducting a related party investigation, and it was
9 appropriate for them to have no prior history with anyone
10 involved in the case.

11 Q Right. And --

12 A It was a limited -- limited purpose retention.

13 Q You wouldn't have selected Ropes & Gray if they'd
14 previously represented Sanchez Midstream Partners, correct?

15 A I would not have -- I would not have selected them if they
16 represented anybody in the greater Sanchez circle, including
17 in-laws and cousins.

18 Q In these Chapter 11 cases, Mr. Davis, you haven't taken
19 any steps to make sure that Ropes & Gray represents the debtors
20 adverse to Sanchez Midstream Partners, have you?

21 THE COURT: I'm sorry. I just didn't follow the
22 question.

23 THE WITNESS: I didn't either. Sorry.

24 BY MR. FINESTONE:

25 Q You haven't taken any steps in these Chapter 11 cases to

1 make sure that it's Ropes & Gray that represents the debtors
2 adverse to Sanchez Oil and Gas, have you?

3 A Ropes & Gray was retained for a specific purpose. That
4 purpose did not include a general representation of the Special
5 Committee on restructuring. It was a representation of the
6 Special Committee in terms of the investigation of related
7 party transactions. They were not retained to be restructuring
8 counsel. That's -- that's Akin Gump's job.

9 Q So with respect to the receivable that Sanchez Oil and Gas
10 owns the debtors, that's not something that you've ensured
11 Ropes & Gray handles, correct?

12 A We haven't completed our work, and whether -- whether
13 there is a receivable that's inappropriate or whether it's --
14 whether it's regular course in trade is something that's under
15 investigation. And to the extent that it requires some action,
16 we would likely use Ropes & Gray. But I'm not -- but I'm not
17 sure because I don't know that the allocation has substance
18 other than you put it into some documents. Vendors and -- and
19 customers have receivable balances and payable balances all of
20 the time. I know there's an allegation that it's a large
21 number, and I agree with you, it needs to be investigated and
22 is being investigated. But at this point, I wouldn't know
23 whether it's Ropes & Gray would take the action or Akin Gump or
24 neither.

25 Q You have -- since the time you've been appointed, you

1 haven't taken any steps to collect that receivable, correct?

2 A Not true.

3 Q What steps have you taken, sir?

4 A We've sent demand letters to the Sanchez organizations
5 with regard to the number of items that were uncovered in the
6 -- in the investigation.

7 Q Let's talk about the receivable that's in the debtors'
8 schedules. Have you taken any steps to collect the receivable,
9 sir?

10 A I don't believe that we've finished investigating that
11 yet, and we're going to use Mo Meghji, assuming that he's
12 approved today, to complete the forensic investigation of that
13 particular receivable.

14 Q So for the pre-petition period, you didn't take any steps
15 to collect the receivable, right?

16 A For the pre-petition period. I'm -- I'm a little lost
17 here. The -- the -- in the pre-petition period, we were not
18 empowered to act as a collection agent with regard to the
19 Sanchez family. As far as I know, the arrangement that was --
20 that was set up way back when -- when these deals were first
21 done, when the company went public, or maybe shortly
22 thereafter, was that anything having to do with billing and
23 collection under the service agreements was to go through the
24 independent audit committee. And to the extent that there were
25 adjustments or payments or whatever else, the audit committee



1 would be the appropriate body. Once this company entered into
2 a restructuring, related party transactions were transferred to
3 the committee, and we haven't completed all that work yet.
4 We've been looking at what we can look at. We've made demands
5 with regard to what we found, but the work is not done. And --
6 and we need a CRO to help us complete it.

7 Q Okay. Prior to the decision to retain a CRO, you didn't
8 make any demand to pay the \$18 million receivable that's in the
9 debtors' schedules, have you, Mr. Davis?

10 MR. BRIMMAGE: Your Honor, I'm going to object.
11 Assumes facts not in evidence about this receivable. I think
12 this receivable amount is way overinflated, and there's no
13 proof that it even exists.

14 THE COURT: For now, I'm going to sustain that it's
15 facts not in evidence. I'm not saying you can't get them into
16 evidence.

17 BY MR. FINESTONE:

18 Q Do you understand that there's a receivable in the
19 debtors' schedules that have been filed in these bankruptcy
20 cases, Mr. Davis?

21 A I understand that there's an allegation with regard to a
22 receivable. Whether it's in the ordinary course of business
23 are outside the ordinary course of business, I haven't received
24 sufficient information to make a judgment. It clearly has been
25 brought to my attention, and it's going to be looked into.

1 Q And you haven't taken any steps to repeat -- to correct
2 the repeated statements that SOG is merely a pass-through
3 entity, correct, during the entire pre-petition period?

4 A I'm -- again, I'm -- I'm at a loss. What does that --
5 whatever -- whatever the nature of SOG is, the -- the committee
6 is supposed to look at SOG's interaction with Sanchez Energy.
7 All right? How -- whether that's set up as a -- as a
8 pass-through entity for tax purposes or whatever else, that's a
9 decision on the part of the people who formed that. And by the
10 way, that -- as far as I know, that structure hasn't changed
11 since the time the company went public. Every single person
12 who invested in this company invested in the company with that
13 relationship already existing. My committee is not responsible
14 for how that relationship was created. We are responsible to
15 see if it's been abused. All right? And that's something that
16 we're looking into, and that's something that we've taken
17 concrete steps about.

18 Q Okay. Let me just wrap it up. Mr. Davis, you have no
19 idea what sort of receivable is disclosed in the debtors'
20 schedules from SOG to the debtors.

21 A I wouldn't go so far as to say I have no idea. What I'm
22 saying, the investigation and the characterization of those
23 receivables has not been completed. One of the reasons we
24 think we need a CRO is to help us complete that. We need an
25 independent person with an accounting background to help us

1 look into those things. That's why that's part of the CRO
2 charter.

3 Q You don't know whether there's a receivable that's in the
4 debtors' schedules or not, do you.

5 A There's a receivable, but whether the receivable is
6 inappropriate or overstated or understated, I don't know until
7 a forensic examination. And for that, I need an accountant. I
8 need Mo Meghji.

9 Q You don't know the dollar amount of the receivable, do
10 you?

11 A It was something like 10 or \$15 million if I remember
12 correctly, but I'm -- but I'm doing this from memory.

13 Q Okay. Thank you, Mr. Davis. You understand there are
14 Midstream contracts between the debtor and Sanchez Midstream
15 Partners, do you not?

16 A Yes.

17 Q And you don't know who the CEO of Sanchez Midstream
18 Partners is, do you?

19 A Sanchez -- I have since refreshed my memory. It's a guy
20 named Winnegar [sic], I think is his name. He's the one that -
21 - I can't reference the -- okay. Well, anyway, yes. But -- but
22 he's not the owner of the company. He's not the guiding spirit
23 there, it's Tony Sanchez.

24 Q You understand that Tony Sanchez III, for all intents and
25 purposes, calls the shots at SNMP, correct?

1 A I believe that I made that statement, and I stand by it.

2 Q And you also understand that Sanchez Midstream Partners
3 twice, in January and April 2019, unilaterally raised rates,
4 correct, on the debtor?

5 A I believe that there was an agreement in place that allows
6 them to raise rates, that those rates were supposed to be
7 reviewed by the audit committee which had a -- which had a
8 procedure in place to challenge them and even have them looked
9 at by third parties. That properly fell to the audit committee
10 until such time as we went into bankruptcy whenever all the
11 related party stuff was transferred to the Special Committee.
12 So if they raised rates during that period and the audit
13 committee blessed it, then it wouldn't have come to us because
14 it was a proper -- it was the proper procedure under the
15 contract.

16 Q Mr. Davis, we can only talk about what came to you. Let's
17 just talk about the Special Committee. January 2019, Ropes &
18 Gray, they were not on the same, correct?

19 A Ropes & Gray had not been retained, and we were devoting
20 our attention at that time to business plan writing.

21 Q Okay.

22 A We can't do every single thing at once.

23 Q Akin advised the Board, correct, not Ropes & Gray, in
24 January 2019.

25 A Akin has always advised the Board. Ropes & Gray only

1 advises the committee.

2 Q Mr. Davis, you didn't take any steps in response to the
3 rate raised in January 2019, did you?

4 A As I said before, it went to the audit committee, which is
5 the proper contractual arrangement between the two parties.
6 I'm not on the audit committee.

7 Q I'm asking about the Special Committee. You did or you
8 didn't? You took no steps, sir?

9 A And I've explained to you before --

10 Q We can move on.

11 A -- it wasn't in -- it wasn't in the purview of the Special
12 Committee at that time.

13 Q You didn't research any alternatives for the company, did
14 you? You didn't take any steps to make sure the audit
15 committee did anything, did you?

16 MR. BRIMMAGE: Your Honor, I'm going to object at
17 this point. I think what's been asked and answered is it
18 wasn't within the purview of the Special Committee. So now he
19 wants to ask a bunch of questions what they didn't do that
20 wasn't in the purview, I think that's just inappropriate.

21 THE COURT: Why is it relevant?

22 MR. FINESTONE: Your Honor, it's relevant because the
23 Special Committee is -- this entire motion rests upon the fact
24 that the Special Committee is independent of the rest of the
25 board and the Sanchez family. And the Special Committee has

1 been around since October 2018. And every time an affiliate
2 came to the debtor and raised rates or -- raised rates or allow
3 that receivable to grow to \$18 million, the Special Committee
4 didn't do anything. They were the only guardian there, and now
5 the motion rests on their independence and --

6 THE COURT: What I don't think -- what I'm not
7 hearing is any evidence that any of those actions were
8 inappropriate. And unless it's linked to something
9 inappropriate, I don't understand why it's relevant that he did
10 something or did nothing. And telling me there was a rate
11 increase without telling me that there was a wrongful rate
12 increase isn't relevant to me.

13 BY MR. FINESTONE:

14 Q Mr. Davis, you agree with me, do you not, that the rate
15 increase is an issue of dispute between the company and SNMP.

16 A I would say that it's an issue of investigation right now
17 with the Special Committee. But at the time it was passed
18 through, the audit committee had control over it, and the audit
19 committee appears to have approved it, or at least not
20 challenged it. And that was -- that was within their power at
21 that time.

22 Q Mr. Davis, you do understand that a related party has put
23 in a formal indication of interest to acquire the company's
24 assets, correct?

25 A Yes.

1 Q And if your CRO is appointed, you anticipate it's that CRO
2 that would respond to such a proposal?

3 A No. It would be the Special Committee that would respond
4 to the proposal.

5 Q Did you understand, Mr. Davis, that -- when you authorized
6 Mr. Sanchez to speak to the candidates, did you understand that
7 as -- that that -- that this affiliate was considering
8 acquiring all the assets?

9 A No. No, that letter came later.

10 Q Is that -- had -- if you had known that fact, Mr. Davis,
11 would you have reconsidered your decision to let Tony Sanchez
12 consult with the candidates?

13 MR. BRIMMAGE: Your Honor, I'll object. I think it's
14 an improper hypothetical and it calls for speculation. The
15 situation didn't occur.

16 THE COURT: Sustained.

17 BY MR. FINESTONE:

18 Q Mr. Davis, you believe these Chapter 11 cases would
19 benefit from the appointment of a CRO, do you not?

20 A I believe that as the situation has developed, a CRO is
21 mandatory at this point, yes.

22 Q And you believe that the Special Committee's work requires
23 input from the CRO as soon as possible, correct?

24 A I believe that given the -- given the existence of the
25 indication of interest, it is no longer reasonable for us to --



1 to work exclusively through the management without our own
2 person on the ground in the company because it's clear now as
3 we move towards a plan of reorganization, this would be a
4 competing sponsor or a competing buyer. And then, to keep --
5 to keep the process pristine and fair, we can't have them
6 involved. The business plan will be the basis of valuation,
7 and we can't have somebody manipulate the plan so that makes it
8 better or worse for them to buy the company. So now they have
9 to be out.

10 Q You need an independent officer to respond to the
11 proposal.

12 A No, we need an independent officer to help us create a
13 business plan that's completely impartial and has not been
14 directed in one direction or another for valuation purposes to
15 favor a particular buyer.

16 Q The entire pre-petition period, you never suggested that
17 you needed an independent officer, correct, Mr. Davis?

18 A The business planning process was conducted under my
19 auspices, and I'm an experienced chief restructuring officer
20 myself. All right? I felt I was getting proper cooperation
21 from the company. I also had Alvarez and Marsal and Moelis and
22 Akin there, all of whom were helping me police the process.
23 Since the DIP order was denied, there's been a noticeable
24 deterioration in the cooperation between the management and the
25 advisors. All right? Maybe that was in anticipation of a CRO,

1 I don't know. And then we got this letter which created a
2 crystal-clear conflict and we had to make a change. We -- we
3 banished the Sanchezes from the restructuring committee
4 meetings. We've told them they can't even see our work
5 product.

6 Q If Mr. Sanchez was not the CEO, that call absolutely would
7 not have occurred, correct?

8 THE COURT: I'm sorry, which call?

9 BY MR. FINESTONE:

10 Q The call that you -- the Special Committee authorized Tony
11 Sanchez III to speak to the candidates for CRO, correct, sir?

12 A We invited him to speak to them. We didn't authorize
13 anything. We invited him.

14 Q You solicited it. You solicited the calls, correct?

15 A No, no. We invited them to have a conversation as a
16 courtesy.

17 Q And if Mr. Sanchez III was not the CEO of the debtors,
18 those calls absolutely would not have occurred, correct?

19 A It would have occurred with whoever was the CEO. So if it
20 was a different person, it would be that person, yes.

21 Q And those calls, it wouldn't have been appropriate for a
22 competitor. You wouldn't have solicited the input of a
23 competitor to speak to candidates for the CRO, correct?

24 A Are you talking about, like, from another oil company?

25 Q How about from --

1 A I --

2 Q How about from Midstream Company? Would you have
3 solicited the input of the CEO from the debtors' Midstream
4 Company?

5 A I would not have solicited that, no, but that's a vendor.
6 That's not a competitor. All right? Companies have vendors.
7 It just so happens that this arrangement here is between a
8 company owned by a family who also controls the -- the
9 management of this company. It's not unusual, but that doesn't
10 make them competitors, it makes them a vendor. Now, whether
11 you want to continue with that vendor, ask for the Court to
12 reject the contract, find another vendor, there's all
13 possibilities, but they're not competitors.

14 Q Mr. Davis, you wouldn't have solicited the input of an
15 individual who was interested in buying the assets of the
16 estate, would you?

17 A No, I would not.

18 Q You wouldn't have solicited the input of an adversary in
19 disputed contracts, would you? A counter-party to a disputed
20 contract, you wouldn't have solicited that person's input,
21 would you?

22 A It all depends on what -- on whether -- what you're
23 terming a disputed contract. The contracts themselves are not
24 in dispute. All right? The question of -- of whether -- of
25 whether the contracts were properly enforced and managed and

1 that the bookkeeping was right is what's in dispute right now.
2 The contracts are valid contracts. They've existed since the
3 -- since the dawn of the company, and no one's questioning the
4 validity of the contracts. The question is whether -- whether
5 the -- whether the charging mechanism used under the contract
6 was proper, whether the amounts are proper, whether people owe
7 each other money, whether there's balancing. This happens in
8 the oil and gas business all the time. Companies have joint
9 interest billings under operating agreements, and there's a
10 constant balancing and fixing of shortfalls on whatever. This
11 is so common in the business, it's not a big deal. Now, it
12 happens to be that both companies are controlled by the same
13 people, so there's a higher level of scrutiny. But I wouldn't
14 -- I wouldn't consider a vendor a competitor, no.

15 Q Mr. Davis, you wouldn't have solicited the input of a
16 target of the investigation with respect to the identity of the
17 investigator, would you?

18 A Once again, he's a CEO of Sanchez --

19 THE COURT: I think we've covered this.

20 THE WITNESS: Yeah.

21 THE COURT: Let's go to something we haven't covered.

22 BY MR. FINESTONE:

23 Q It's important that the CRO be independent, Mr. Davis,
24 correct?

25 A It's important that the CRO be independent of the Sanchez

1 family, but the CRO reports to the Special Committee and
2 they're not independent of the Special Committee.

3 Q And it's important that that CRO be able to give you
4 clinically clean investigations, correct?

5 A Clinically clean information of every kind, investigations
6 included.

7 Q And at the time -- your deposition was prior to the
8 hearing that this Court had about the timing of the examiner
9 motion, correct?

10 A I believe that my deposition was last Friday. I can't
11 remember when the -- when the hearing was on the examiner.

12 Q And at that point, prior to the hearing, you had no plans
13 of expanding the scope of the CRO to allow him or her to
14 investigate, correct?

15 A We didn't have a plan one way or the other. Our -- our
16 entire -- as I testified earlier, our entire view with regard
17 to the scope of the CRO was reactive to what the DIP lenders
18 wanted to have. From my own personal perspective, I give them
19 as much latitude as possible. Even if -- even if it wasn't in
20 the document, they'd have a free run of the company and a free
21 use of the lawyers. I believe in transparency, and we
22 certainly have nothing to hide. And -- and, for instance, when
23 I was in court here and the judge suggested the whistleblower
24 with Ropes & Gray, nobody here -- and I stood up and I shook my
25 head, it's a great idea. I want transparency. I don't want

1 any questions about what we're doing.

2 Q Mr. Davis, can I take -- ask you to take a look at
3 Exhibit 11 in the spiral in front of you that --

4 A I've got two spirals here.

5 Q It says Ad Hoc Group on the top. I can approach if
6 it's --

7 A Hold on, hold on. I'm really sorry, I can't -- oh, yeah,
8 Ad Hoc, okay. Not quite the top, but I get it. Okay. It's
9 Tab 11?

10 Q Yes, please.

11 A Okay. Thank you. All right.

12 MR. FINESTONE: This was pre-admitted.

13 THE COURT: It's admitted.

14 BY MR. FINESTONE:

15 Q You have no firsthand knowledge about John Ray. Isn't
16 that right, Mr. Davis?

17 A Other -- other than his interview, no. And -- and his
18 resume.

19 Q And this is an email you sent, accidentally copying John
20 Ray. Isn't that correct, sir?

21 A Well, it turns out I replied all and didn't realize he was
22 on there, but there's nothing I didn't say here that I wouldn't
23 say to his face.

24 Q You were concerned, Mr. Davis, that John Ray may be a
25 defendant in an action that you were bringing in your role as a

1 GTAT litigation trustee, correct?

2 A Well, you characterize it that way, but if you want an
3 accurate answer, I can -- I can tell you what I was thinking.

4 Q Okay.

5 A Okay. I knew -- you asked me earlier today whether I
6 cared about whether the lenders had put up a name, and I told
7 you before that I really do care because these are people who I
8 looked to for my other -- my other assignments that are a part
9 of my livelihood. And I really don't want to make them upset
10 if I don't have to. What I saw John Ray's resume, the first
11 thing that jumped out at me, that he had been a director at
12 GTAT. I didn't want the people who sent him to think that I'd
13 set a trap for him by going to an interview and asking him a
14 question that would make him look bad. So I reached out to
15 Akin Gump who had -- who are my counsel with regard to GTAT and
16 say, please remind me whether John Ray was part of the
17 litigation because I was suing all the D's and O's. There as a
18 massive securities fraud involved in GTAT, and I didn't recall
19 the names of all the directors.

20 Q I didn't get a response from Akin Gump. All right?
21 So I wrote a note back saying basically why haven't I gotten
22 the answer yet, I'm supposed to interview this guy and I don't
23 want to surprise him with a bear trap. That's what all these
24 emails are about. It was to give them -- and -- and in a lucky
25 way, even though I made the mistake, John wrote back to me. He

1 pointed out that he wasn't one of the defendants. I was able
2 to confirm that. And as I said in the last email, I'm glad
3 that we got this so I didn't ask a question that I shouldn't
4 have asked in front of Adam. That's it.

5 Q And, Mr. Davis, having received that answer, you
6 understood that there was no GTAT angle on Mr. Ray, correct?

7 A Correct.

8 Q And how do you explain the use of your word "GTAT angle"
9 on this guy when you had no firsthand knowledge about him?

10 A Again, I'm the litigation trustee at GTAT. I'm suing all
11 the old D's and O's. It's quite a lengthy list of people. All
12 right. We just got a settlement under the D&O carrier, so my
13 -- that trustee is going to disappear shortly. All right?
14 When I asked what the GTAT angle was, if he was a director
15 during the period that I was suing the other directors, I
16 didn't know if he was on the defendant list. I didn't
17 recognize the name. That's all that -- so the GTAT angle was
18 am I suing this guy because if I'm suing him, I can't, at the
19 same time, recommend him for a fiduciary position. I don't
20 know why I'm so difficult to understand.

21 Q It's difficult to understand the use of the word "angle,"
22 sir.

23 A I was writing --

24 MR. BRIMMAGE: Your Honor --

25 THE WITNESS: -- to Akin Gump.

1 MR. BRIMMAGE: Your Honor, that's not a question.

2 THE COURT: I'm going to sustain the -- no, sustain
3 the objection.

4 MR. BRIMMAGE: Thank you.

5 BY MR. FINESTONE:

6 Q All right. Mr. Davis, Mr. Zylman testified earlier, I
7 want to see if you agree. When it comes to a plan of
8 reorganization in this case, the Special Committee has to
9 report to the entire board, does it not?

10 A The way that the charter is currently set up, that's the
11 way that it was done. There was a lot of power delegated to
12 the committee, but certain things were reserved to the board,
13 among them the final approval of a plan of reorganization and
14 among them the appointment of officers.

15 Q And that authority that the entire board has, Mr. Davis,
16 that includes a plan of reorganization that would -- that might
17 seek to settle inter-affiliate claims, correct?

18 A To the extent that there's -- that there are related
19 parties that are impacted by the plan -- again, speculation at
20 this point -- I would assume that we would find the mechanism
21 where the votes of interested parties would either not count or
22 they would voluntarily recuse themselves. This is common
23 corporate practice in every company where there is some kind of
24 a conflict of interest. Not knowing what the plan looks like
25 and whether it's going to involve a friendly or an adversarial

1 resolution with the Sanchezes, I can't tell you really what's
2 going to happen. But that's the way this was set up and that's
3 the way we accepted it. On the other hand, we have changed the
4 charter of the -- of the committee before, and if we need to
5 change it again, I have no objection to changing it. This is
6 just the way it was set up.

7 Q Okay. So even if the plan has settlement of
8 inter-affiliate claims, the Special Committee would have to
9 report to the entire Board, correct?

10 A The Special Committee only has the authority to refer a
11 plan to the Board.

12 Q Okay. Thank you, sir.

13 A All right.

14 Q Last question. After the hearing, the telephonic hearing
15 on the Wednesday before Thanksgiving, you didn't reach out to
16 any creditors to discuss the identity of a CRO other than
17 Mr. Meghji, did you?

18 MR. BRIMMAGE: Your Honor, I'll object. I don't know
19 what the point of the question is, but it sounds like it could
20 get into settlement discussions or the lack of settlement
21 discussions. Either way, I think it's inappropriate, and I
22 think there's a lack of foundation about what Mr. Davis was
23 involved in regarding the hearing and when the hearing was and
24 all that good stuff. So I would object on multiple grounds.

25 THE COURT: Overruled as asked. Go ahead.

1 THE WITNESS: I'm sorry, I lost track of the
2 question. Are you talking about the day that the judge met
3 with you on the examiner motion?

4 MR. FINESTONE: Let me withdraw and ask it
5 differently, Mr. Davis.

6 BY MR. FINESTONE:

7 Q In the last seven days, you haven't reached out to any
8 creditors of this company to discuss a unified individual for
9 the role of CRO, correct?

10 A In the last two weeks, I don't believe in the last seven
11 days, but I could be wrong, I don't have a calendar in front of
12 me, as I believe I told you in my -- in my deposition, I was at
13 a -- or maybe I told it to you afterwards, I'm trying to
14 remember. I don't want -- I don't want to be misleading. I'm
15 also on the board of a company called Tribune Resources.
16 Tribune Resources has observers, investors that come to the
17 board meetings. One of them is a representative from Southpaw
18 Asset Management, which is a 1L lender. All right? And his
19 name is Ceki Medina. And Ceki and I made -- exchanged a few
20 words about -- about Sanchez. I don't believe that I solicited
21 anybody to support anybody, but we did talk about Sanchez for a
22 couple minutes.

23 Last night I was in New York and I attended the Houlihan
24 Lokey Christmas party. As it happened, Nate Van Duzer, who I
25 already pointed out was an old friend, was there beforehand and



1 we shared a cup of coffee and we talked about a number of
2 things. And he -- he expressed his feelings about me having to
3 testify today, he felt kind of bad about it. But aside from
4 that, we did not -- we did not talk about -- about the CRO.

5 Q Thank you, Mr. Davis.

6 A Okay.

7 THE COURT: Thank you. Any questions?

8 UNIDENTIFIED: We have no questions, Judge.

9 THE COURT: Thank you.

10 MR. BRIMMAGE: Your Honor, no further questions.

11 THE COURT: You can step down, Mr. Davis.

12 THE WITNESS: Thank you, Your Honor.

13 (Witness excused)

14 THE COURT: Do I have the authority to condition my
15 approval on two things?

16 MR. BRIMMAGE: I'm sorry, Your Honor.

17 THE COURT: Do I have -- I don't know if I have the
18 authority to condition my approval on some things, so I'm
19 asking -- I want the parties to address as a matter of law
20 whether I have this legal authority, and that is to condition
21 the motion for the appointment of a CRO on being certain in my
22 own mind that it is efficacious with two changes. One, that
23 the restrictions on the CFO's [sic] responsibilities are
24 eliminated. Two, that the CRO reports to the Special
25 Committee. I guess, three, that within the purview of the

1 Special Committee's responsibilities, the Special Committee may
2 act totally independently without taking any action of the
3 Board. And I would order that they are not allowed to discuss
4 their decisions with the other board members.

5 So basically, the Special Committee would be fulling
6 empowered to act. It would be prohibited from consulting with
7 other board members with respect, for example, to a plan of
8 reorganization. The CRO would report to that Special
9 Committee, but the strings that are currently tied to the CRO
10 on his hands would be removed. He's free to -- for example,
11 there is -- and I don't remember the exact language, it says
12 with respect to the matters the committee has already -- the
13 Special Committee has already investigated, there are all these
14 steps to go through. Those all go away. And he reports to
15 them. If they think he's breaching some duty, they can fire
16 him. But he is authorized to act fully.

17 Do I have the -- my question to everyone is do I have
18 the authority to do that? Maybe I don't.

19 MR. BRIMMAGE: Before I address the authority, I just
20 want to make sure. Number one is no restrictions on the CRO.

21 THE COURT: Right.

22 MR. BRIMMAGE: Number two is the CRO reports to the
23 Special Committee.

24 THE COURT: Only.

25 MR. BRIMMAGE: Only. And number three is the --



1 THE COURT: Special Committee with respect to all
2 matters concerning the reorganization and the investigation of
3 insider transactions, it's whole current charge, it never has
4 to go to the board and may not go to the board. In other
5 words, I want the Special Committee to be isolated from the
6 board. And then -- I'm trying to do this to make this an
7 efficacious appointment that people can trust and rely on. And
8 I don't know if I have the authority to do that, and if I
9 don't, I don't know that I'm going to approve this because as I
10 said before, I'm not inclined to appoint someone that's just
11 doomed to fail.

12 MR. LEBLANC: Your Honor, Andrew LeBlanc, Milbank. I
13 will -- my view, our view, the committee's view is that because
14 Your Honor has the ability to deny the motion that's presented,
15 you can certainly say that I will approve it if these changes
16 are made. I don't think there's any question about your
17 ability to do that. And having the ability to deny the motion
18 as it's currently framed, I don't think there's any limitation
19 on your ability to say but if these changes were made, then I
20 would favorably consider the motion. So we agree that you have
21 the authority to do exactly --

22 THE COURT: And I know you think this whole idea is a
23 bad idea, but I appreciate --

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

25 THE COURT: I know you may think the whole idea is a



1 bad idea, but I appreciate the directness of the answer.

2 MR. LEBLANC: I'm trying to just respond to the
3 question.

4 THE COURT: I very much appreciate that.

5 Mr. Brimmage?

6 MR. BRIMMAGE: Your Honor, Mr. LeBlanc and I can't
7 agree on what time of day it is, but we do agree with that. We
8 think you have the authority to grant the CRO motion
9 conditioned on these three things. Now, we don't have the
10 authority to agree to that today. We have to take that back to
11 the client --

12 THE COURT: Yes, and that's why my question is
13 actually different than that.

14 MR. BRIMMAGE: As a matter of corporate governance --

15 THE COURT: I didn't ask whether you could propose
16 it. I know you can propose it and I know I can suggest it. I
17 want to know if I can order it.

18 MR. BRIMMAGE: I think you can order it as a
19 condition of granting the CRO motion. And if it doesn't
20 happen, the CRO motion is not granted. If it -- if those
21 things happen -- but we have corporate governance hoops that we
22 have to go through. I don't -- if that makes sense.

23 THE COURT: But I'm not so sure --

24 MR. BRIMMAGE: Okay.

25 THE COURT: -- that I can't simply order it. I have



1 two motions before me today, let's not forget that.

2 MR. BRIMMAGE: I have not.

3 THE COURT: And I'm not so sure that I can't merely
4 order it on what's before me and not have this go back to the
5 Board to give you authorization.

6 MR. BRIMMAGE: Can I have two more minutes to consult
7 with my --

8 THE COURT: Yeah. And my --

9 MR. BRIMMAGE: -- expert advisors?

10 THE COURT: But I really -- let me just say, I agree
11 with what Mr. LeBlanc said. He's correct. My question is do I
12 have the authority to order it?

13 MR. BRIMMAGE: Can we have a five-minute break, Your
14 Honor?

15 THE COURT: Yeah.

16 MR. BRIMMAGE: I know it's late.

17 THE COURT: Let me let Mr. Finestone speak to whether
18 I have the authority to order it.

19 MR. FINESTONE: I think Your Honor has the authority
20 to appoint a Chapter 11 trustee. You're -- as a matter of
21 federal U.S. bankruptcy law, you can override the state law
22 charter. You can completely override it and impose completely
23 independent corporate governance. Is that even more expansive
24 than what you're proposing?

25 THE COURT: And I can do that, do you think, on the



1 current motions that are before me?

2 MR. FINESTONE: I think the -- well, I don't think it
3 disposes of my motion.

4 THE COURT: Pardon me?

5 MR. FINESTONE: It doesn't necessarily dispose of my
6 motion.

7 THE COURT: I know that. I'm not suggesting that.
8 But with those pending motions -- and why don't you all come
9 back at the end of the break. What I really want to learn is
10 with what is pending before me today, whether it's in full
11 disposition or partial disposition, does it affect whether I
12 have the authority to do this. May I impose my will on the
13 company governance with those changes? And I want -- I'm not
14 asking for the company to consent to it because I understand
15 I'm not going to get that tonight, nor do I know that it's --
16 nor do I think it's necessarily appropriate under the
17 circumstances to ask the company to consent to it. I'm asking
18 the lawyers to tell me whether I have the authority to do it.
19 It's -- so we'll take a break. Is 8:10 okay? It is getting
20 late, so --

21 MR. BRIMMAGE: Thank you.

22 THE COURT: Okay. See you all at 8:10.

23 THE CLERK: All rise.

24 (Recess taken at 8:02 p.m.)

25 (Proceedings resumed at 8:10 p.m.)



1 THE CLERK: All rise.

2 THE COURT: Please be seated.

3 Mr. Brimmage?

4 MR. BRIMMAGE: Your Honor, with regard to your
5 question, we have consulted. We are not aware of any precedent
6 that would in any way restrict you from doing what it is that
7 you're proposing doing.

8 THE COURT: Thank you. Have -- has anyone else
9 changed their mind and wants to argue that I do not have the
10 legal authority to do that? All right.

11 With that backdrop, knowing that I would order those
12 things if I approved this, I want to know whether there is
13 opposition to the approval?

14 MR. FINESTONE: For the record, Your Honor, we object
15 -- our objection stands to the appointment of the CRO to the
16 extent the CRO reports to the Special Committee. It's obvious
17 we have issues with the Special Committee. What we would ask
18 the Court to do is appoint -- give the CRO true power and
19 independence, akin to a Chapter 11 trustee, without displacing
20 the rest of the Board, and just have the CRO be the independent
21 body that reports to the Court for the benefit of creditors.

22 THE COURT: Mr. LeBlanc.

23 MR. LEBLANC: Your Honor, Mr. Fleck and I were just
24 talking. We obviously haven't had any opportunity to consult
25 with our clients on the question. I know Your Honor's clearly



1 aware of that. We obviously oppose the appointment of the CRO
2 for the reasons that we stated in our papers. I -- and it's
3 not clear to me, I think for the same reason Mr. Finestone said
4 that those changes -- even with those changes, that it fixes
5 the problem entirely. And so while I think Your Honor's
6 conditions certainly make it better, and in particular the
7 third provision, taking the approval of a plan of
8 reorganization out of the affected full board, I -- we're not
9 in a position to tell Your Honor that we'd consent to the
10 appointment of Mr. Meghji under -- even under those conditions.

11 THE COURT: I want to be careful about picking my
12 words here, but I mentioned before how impressed I was with
13 Mr. Zylman. Mr. Davis is obviously an impressive guy. He's
14 not a very likable guy. But it removes some of the concern
15 that I have that he will not act independently. He may act --
16 and, Mr. Davis, this is meant as a compliment -- he may act
17 arrogantly, but probably isn't going to do what he's told to
18 do. I think he's going to act independently. That's what he's
19 there for.

20 We do have the examiner motion remains on the table,
21 and what I'm inclined to do -- and again, I want -- if somebody
22 wants to really argue the evidence against this, but what I
23 have are -- my conclusion is different than you all's. I do
24 think we have two independent board members, but their hands
25 have not been totally freed to be independent. I intend to

1 create an order that makes them truly independent and lets them
2 function with their independence.

3 This is not the first rodeo we've been here on this
4 case today. If, in exercising their duties, Ropes & Gray
5 observes that the CRO is not getting the free hand he needs to
6 do what he needs to do, they're charged to come into court and
7 being certain that he gets a free hand in what he needs to do.
8 So it's one thing to say they do need to get approval of the
9 Special Committee, they do. But if Ropes & Gray observes
10 things that aren't appropriate, I've got lots of checks and
11 balances in terms of what I'm doing here.

12 The CRO certainly has free access. Under the order,
13 he already has the right to hire his own attorney. If he
14 thinks there's misbehavior, his lawyer can come to court.
15 Ropes & Gray can come to court. I have a lot of competence,
16 frankly, in the Special Committee members that you all don't
17 have.

18 I believe that the standard is a business judgment
19 standard and that the debtors have just clearly proven their
20 case once you take the point of view that I'm taking, which is
21 these guys really are independent. I believe that they did
22 give due deference to the views of the creditors. I think they
23 did that when they added, without any limitation, that they
24 would consider on a head-up basis the nominee of the creditors.
25 I think they did that on a heads-up basis. There's simply no



1 evidence that they didn't, and they're credible witness.

2 I think when they came back to the committee and
3 said, we don't like your guy, but here's two choices, give us
4 your feedback, and then the committee and creditor groups say,
5 you know, no, we're not going to -- we're not playing that
6 game, we want our guy, our guy is a take-it-or-leave-it guy,
7 I'm not sure that the creditors were in any way deprived of
8 their ability to have their concerns heard. I think they were
9 heard. The choice of who to employ is quintessentially the
10 debtors' choice. I think they've exercised proper business
11 judgment in doing that.

12 I'm not sure that you all's idea is a bad one. So
13 I'm going to ask whether we should go ahead and enter the order
14 as I've promised you I would do, requiring the appointment of
15 an examiner, or give the parties a week or so to decide whether
16 they want to negotiate away the examiner motion by giving both
17 the Special Committee and the CRO levels of independence that I
18 haven't given. In other words, I'm making the CRO report to
19 the committee. They're actually no longer complaining about
20 Mr. Meghji. I mean, his qualifications are easy to understand
21 and to approve. But maybe if he has direct access without
22 having to be controlled by the Special Committee -- and the
23 Special Committee is there, maybe that solves it. I don't
24 know.

25 But if you -- I'm going to live up to my word to you



1 all and give you your examiner order if you want it tonight, or
2 I'll let you wait and try and use that as a weapon to get what
3 you want in terms of his authority. I'm going to let people --
4 that's where I'm heading. Somebody can tell me no to any of
5 this and I'll listen to it. But I think given the findings
6 that I've made, that the committee is independent, that it's
7 difficult to -- for you all to prevail at this point.

8 Anyone want to argue against --

9 MR. LEBLANC: Your Honor, the only point I'll make is
10 that the examiner motion is not ours, it's not the committee's
11 motion. That's Mr. Finestone's motion, so I'll let him react
12 to that. But I've heard your finding of fact, Your Honor, and
13 we'll stand on our papers.

14 THE COURT: Thank you, sir.

15 Mr. Finestone? Do you need a minute? Do you need a
16 minute to get some authority? It's perfectly legitimate to me
17 if you need a minute to get some authority. I'm not going to
18 be offended by that.

19 MR. FINESTONE: I need -- I don't have any authority
20 to withdraw our request to have the order entered. I've heard
21 Your Honor's findings of fact, and we respectfully disagree
22 with the Court, but that was on us. So I -- if you could give
23 me a minute or -- if you could give me a minute.

24 THE COURT: What you -- it's up to you. I mean, I'm
25 not breaking my word to you. I told you I would enter that



1 order tonight. If you want me to not enter it so that the
2 negotiations can take place, that's you and your client's
3 choice. If you need a minute to make that choice, that's fine.
4 Otherwise, I'm doing exactly what I said. I'm entering the
5 order requiring the appointment of an examiner. I believe it
6 is mandatory, so this will only not occur at your affirmative
7 consent.

8 MR. FINESTONE: Will you give us a week? Can we have
9 a week and return in the same place and ask the Court to enter
10 the order. We can speak with the debtor in possession for a
11 week, see whether there's something to be done on the CRO.

12 THE COURT: Yes.

13 MR. FINESTONE: Are you amenable to that? Does that
14 make sense?

15 UNIDENTIFIED: (Indiscernible).

16 THE COURT: Well, no -- we -- you --

17 MR. BRIMMAGE: Are we delaying the CRO decision?

18 THE COURT: Yeah, we'd go ahead and enter the CRO
19 order, but we would wait and figure out what to do with the
20 examiner if they want to renegotiate the CRO order, and if you
21 do, so that you expand his independence, perhaps to obviate the
22 examiner motion. And we can come back next Friday. I haven't
23 looked at my calendar for Friday, but --

24 MR. FLECK: Evan Fleck on behalf of the committee.
25 We do have a hearing, Your Honor, in the cases on Thursday.



1 And the creditors' committee would be supportive of that
2 resolution, at least a temporary resolution, potentially a
3 bridge to a more permanent one.

4 THE COURT: Does Thursday work for you, then, instead
5 of Friday?

6 MR. FINESTONE: I think I'll be at the hearing
7 anyway, Your Honor.

8 THE COURT: So you're okay with Thursday?

9 MR. FINESTONE: Yeah.

10 THE COURT: I'm going to look. So essentially,
11 though, that Thursday hearing will only be an announce. I'm
12 not going to take more evidence on the examiner question. If
13 you say "please enter the examiner order," I'm going to keep my
14 word and enter it then. Right?

15 MR. FINESTONE: Thank you.

16 THE COURT: Anyone object to that process?

17 MR. BRIMMAGE: I'm sorry, Your Honor. Can you repeat
18 it, please?

19 THE COURT: So there is a hearing in this case at
20 two o'clock on December 12th. I'm going to carry the examiner
21 motion until two o'clock on the 12th. I will not take evidence
22 on it. At that point, if the parties have not reached an
23 agreement on amendments to the CRO order that are sufficient so
24 that they will withdraw their examiner motion, I'm then simply
25 going to order the appointment of an examiner and the scope of



1 that examiner's responsibilities -- and I'm -- I forget the
2 exact words that the U.S. Trustee is suggesting I need to use,
3 and if I use the inappropriate words, I'm not ruling on their
4 issue at all. Whatever that examiner is going to be charged
5 with doing will be determined at a subsequent hearing. So all
6 that would occur on the 12th would be I order the appointment
7 of the -- the U.S. Trustee to appoint an examiner the same as
8 we were going to do today, but that leaves you all until
9 Thursday to see if you can obviate that with some additional
10 agreements with respect to Mr. Meghji.

11 MR. BRIMMAGE: And along with that --

12 THE COURT: But we will enter --

13 MR. BRIMMAGE: -- tonight if Your --

14 THE COURT: -- the CRO order Monday -- well, I'm not
15 -- I'm going to enter it Monday because you need to upload
16 something that does it. But I'm --

17 MR. BRIMMAGE: With your one, two, three.

18 THE COURT: -- orally ordering immediately the
19 retention of Mr. Meghji with the order as I've described. The
20 only thing that's waiting is the written order, and I'm going
21 to ask whether everyone can agree that that order is effective
22 immediately on my order oral direction. Okay. And I'm not
23 giving --

24 MR. FINESTONE: Is it with the one, two, three, Your
25 Honor?



1 THE COURT: What is that?

2 MR. FINESTONE: It this with the -- Mr. Brimmage's
3 one, two, three.

4 THE COURT: It's with the one, two, three.

5 MR. FINESTONE: Okay. Thank you.

6 THE COURT: The big thing that I'm trying to make
7 clear, though, is I'm not giving -- given the argument I heard
8 about my authority, this is not if the debtor consents to one,
9 two, three. One, two, three, I am ordering. I'm also ordering
10 the appointment of Mr. Meghji. Anybody want to tell me that
11 I'm -- and your objections are preserved, but anybody believe
12 that's not what we all just discussed, those two things? Okay.

13 U.S. Trustee have any problem if we carry this until
14 Thursday? I know we've kept you hear late on something that --

15 MS. LIVINGSTONE: No, Your Honor. I have no issue
16 with that.

17 THE COURT: Thank you.

18 Mr. Fleck?

19 MR. FLECK: Just one question, Your Honor. I think
20 we it's clear, but all papers in connection with the scope of
21 the examiner, examiner with extended powers, those are not due
22 for the hearing on Thursday. Is that correct?

23 THE COURT: That is correct.

24 MR. FLECK: For some subsequent day. Okay.

25 THE COURT: That is correct. On Thursday, I can tell



1 you I will do one of two things, and that is I will allow the
2 examiner motion to be withdrawn or abated, whichever is
3 appropriate, or I'm going to enter an order directing the
4 United States Trustee to appoint an examiner with the
5 responsibilities of that examiner to be determined at a
6 subsequent hearing. But I'm not going to cross the
7 responsibility issue on Thursday.

8 MR. FLECK: All right, thank you.

9 THE COURT: Okay? All right.

10 I'm sorry that I kept you all here again late at
11 night. It seems to me that every late hearing that I've had
12 for the last month, I've got Brimmage and Finestone in. I need
13 to do something about that.

14 MR. BRIMMAGE: Cause and effect, Your Honor. Quite
15 the opposite, though.

16 THE COURT: Perhaps.

17 MR. BRIMMAGE: I want to thank the Court, and more
18 importantly the court staff, for hanging with us today and
19 getting this to the finish line. We very much appreciate it.
20 It is Friday. It is inconvenient, but thank you. Thank you to
21 you all.

22 THE COURT: No, I do -- well, this is a very
23 difficult matter. It's important we get it resolved. I'm
24 really happy we had the hearing. I'm very happy I heard the
25 arguments, and I'm very happy I heard the evidence. It's



1 important that we get this case on down the road, and I'm
2 hoping that Mr. Meghji is the person to do that. And I am
3 unleashing him to get that done. So thank you all.

4 THE CLERK: All rise.

5 (Proceedings concluded at 8:26 p.m.)

6 * * * * *

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



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

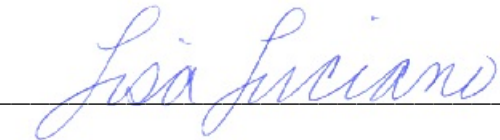
We, Ilene Watson, Lisa Luciano, and Alicia Jarrett,
court-approved transcribers, hereby certify that the foregoing
is a correct transcript from the official electronic sound
recording of the proceedings in the above-entitled matter.



ILENE WATSON, AAERT CET/CER 447

DATE: December 10, 2019

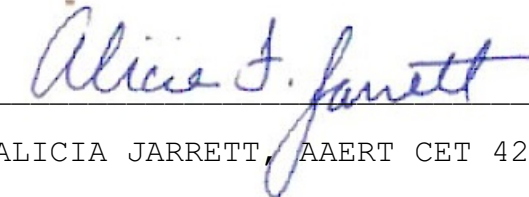
ACCESS TRANSCRIPTS, LLC



LISA LUCIANO, AAERT CET 327

DATE: December 10, 2019

ACCESS TRANSCRIPTS, LLC



ALICIA JARRETT, AAERT CET 428

DATE: December 10, 2019

ACCESS TRANSCRIPTS, LLC

