1 Dennis Dunne from Milbank, Tweed, Hadley & McCloy on behalf of
2 the ad hoc committee of second lien noteholders. I just want
3 to make clear, and I'm sure this was not intended, but by
4 deleting "exclusive", we're not creating any implication
5 that --
6 THE COURT: Well, there should be a separate
7 injunction provision. Part of the deal was this is a funnel.
8 So even if someone thinks that they can bring an action
9 somewhere else because it's nonexclusive, they have to come to
10 me first to ask for permission a la the other Judge Gerber
11 ruling.
12 MR. DUNNE: And I understand that with respect to
13 other people, but with respect to my clients, in the
14 intercreditor action, that was part of --
15 THE COURT: No, the intercreditor action is separate.
16 I'm talking about --
17 MR. DUNNE: Right, so that the exclusive doesn't --
18 the deletion of the exclusive doesn't really apply to that.
19 THE COURT: You can't really start a second action
20 somewhere on the intercreditor --
21 MR. DUNNE: Correct. Or any similar --
22 THE COURT: File the intercreditor action in New York
23 Supreme tomorrow.
24 MR. DUNNE: Correct, or any other similar claims
25 against us under the intercreditor agreement. That all stays

1 here.
2 THE COURT: Okay. Okay.
3 MR. DUNNE: Judge, just to be clear, that should be a
4 separate injunction to paragraph --
5 THE COURT: Well, I thought -- yeah, that's the point.
6 MR. DUNNE: I just wanted to say that again because
7 with that in, I don't know --
8 THE COURT: Yeah, okay. Maybe here, I mean somewhere.
9 MR. DUNNE: We'll put it in.
10 THE COURT: It's with regard to this litigation.
11 MR. SAGE: I assume (d)(d) is the same as the prior --
12 THE COURT: Yes. Yes, as is --
13 THE CLERK: Could you please state your name for the
14 record, please?
15 MR. SAGE: Michael Sage of Dechert on behalf of the
16 first lien trustee.
17 THE COURT: I don't -- on paragraph 1, I don't see why
18 we need this second proviso. I mean, the order incorporates
19 the bench ruling. So normally it's the order that controls.
20 MR. SAGE: We can change it to (d)(d) (indiscernible)
21 concerned about this.
22 THE COURT: All right, so I think that second proviso
23 should come out. I mean, the order refers to the bench ruling
24 in --
25 MR. SAGE: So this would -- this would mandate that

1 the order controls. Well, I guess it doesn't matter because --
2 THE COURT: Well, the order always controls.
3 MR. SAGE: And it's (indiscernible). Took me a while
4 but I'm there.
5 THE COURT: Okay, I think it's up to page 24, then.
6 MR. FELDMAN: Yes.
7 THE COURT: And this is just a note --
8 MR. SAGE: Yeah, that's to the point we hadn't
9 received any of the drafted documents other than the first lien
10 indenture.
11 THE COURT: Okay. Well, but you do have the
12 indenture.
13 MR. SAGE: We do, but we don't have the securing
14 documents.
15 THE COURT: I mean, I guess if there were a material
16 difference between them, then you could -- I'd let you.
17 MR. SAGE: This isn't a point for the order.
18 THE COURT: Yeah, I don't think it's an order point.
19 MR. SAGE: I agree with you, Judge.
20 THE COURT: Okay. 25, what's the -- these seem to be
21 basically saying the same thing. What's the --
22 MR. SAGE: Well, Section 8.1 deals with distributions,
23 and Section 12 poses additional obligations on the trustees
24 that (indiscernible) the plan regarding distributions. And all
25 we're saying is 12 is we'll comply with 8.1, which we have to,

1 and we'll take additional steps to effectuate it to fruition,
2 according to 8.1, but there's no reason to add additional
3 obligations on trustees that I don't think are -- I don't view
4 it as a customary provision in a confirmation order and it's
5 not what 8.1 says. So I don't know why we have to add to our
6 obligations under 8.1 of the plan, which is, again,
7 (indiscernible).
8 MR. FELDMAN: Judge, obviously, we need cooperation to
9 effectuate it. We're obviously in an adversarial position vis-
10 a-vis the trustees. And so we call to extend a little bit our
11 desire to make sure that they cooperate and they cooperate
12 timely. And --
13 THE COURT: Well, timely is fine. I think the timely
14 point is the key point here. Just timely. Shall -- are hereby
15 directed to timely take all commercially reasonable steps --
16 steps is a pretty broad term -- necessary to effectuate the
17 distribution of the replacement first lien notes.
18 Is that all that they're required to do? Are they
19 required to do anything else?
20 MR. FELDMAN: Well, they are required to give notice
21 to DPC; that's the biggest issue, the cancellation of --
22 MR. SAGE: Your Honor, we'll have bigger problems with
23 our holders if you don't get to the --
24 THE COURT: Well, but if -- well, your holders are --I
25 think you should put in the notice, too. Is that --

1 MR. FELDMAN: We'll put the notice back in and just
2 stay timely --
3 THE COURT: Right.
4 MR. FELDMAN: -- and strike the rest.
5 THE COURT: Okay.
6 MR. SAGE: Yup, that's fine.
7 THE COURT: Well, it's clear -- I mean, I don't think
8 you need to -- everyone will want to put it in here, too. Mr.
9 Kirpalani will want to put in the proviso on 13, too.
10 Unlike the e-mail, it's very clear to me, no one's
11 consenting to the entry of this order in your group. So I
12 think the proviso in 13 should come out.
13 It's referring to approvals and consents required, if
14 any; it's not referring to you guys consenting. I mean, they
15 crammed you down, so it's not -- obviously, they're going
16 against your consent.
17 MR. SAGE: Well, we were thinking that that's point of
18 (d)(d), so -- that we weren't protected.
19 THE COURT: Okay.
20 MR. SAGE: So we'd at least have your jurisdiction.
21 Maintaining --
22 THE COURT: That's fine. This proviso should come
23 out.
24 MR. SAGE: And the next up on page 29.
25 THE COURT: That's a -- again, that's just applicable

1 law. There's nothing that says it shall discharge anything,
2 right?
3 MR. SAGE: Yeah, but the discharge provision is very
4 broad. It could be read as a backdoor around the intercreditor
5 agreement surviving -- no, the intercreditor litigation
6 surviving.
7 THE COURT: It just tracks -- it tracks 1141.
8 MR. SAGE: Yeah.
9 THE COURT: I think this should come out, too. If
10 it's truly discharge, in terms of 1141, you don't need to say
11 it because a discharge doesn't unless you get a discharge
12 injunction under 524, discharge nondebtor third-party cases.
13 So I think this language could be read as an ambiguity saying
14 that -- you would say discharge means -- we know what you would
15 say that it would mean, which is that you're not being paid in
16 full, which is fine. You have that argument; you can make that
17 argument. But this phrase would tilt that argument. It just
18 should be left out of here.
19 MR. FELDMAN: Okay.
20 THE COURT: Okay.
21 MR. FELDMAN: Paragraph 24 is fine. We'll accept
22 it --
23 THE COURT: Yeah, on the effective date.
24 MR. FELDMAN: -- tracks the language of the plan, but
25 it's not --

1 THE COURT: Okay. Okay, on the effective date.
2 MR. SAGE: I did three of these this week. Same
3 issue.
4 THE COURT: On 31, in page 25, I think that's right.
5 It's just you guys -- what has happened here is you all have
6 said that you're not putting that feature into the injunction,
7 and it's no longer in the injunction. This would go farther
8 than that and say you've waived all your rights on that point.
9 MR. FELDMAN: Right.
10 THE COURT: Okay, all right. So that should come out,
11 which is what I thought the language in 26. Why is it --
12 what's -- what's 13?
13 MR. SAGE: You're in the last part of 26, Your Honor?
14 THE COURT: Yeah.
15 MR. SAGE: Okay. Our concern here was just anything
16 less specific, in other words, for the avoidance of doubt --
17 THE COURT: All right, so why don't we say for the
18 avoidance of doubt, subject to article 13 of the plan, this
19 paragraph is not an injunction, or does not constitute an
20 injunction, and then carry on with the references that are
21 there. That way we get out of the intention business.
22 Okay, I think we can take out 34, the top there on the
23 bottom of paragraph 37.
24 MR. FELDMAN: And Judge, you're on page 34 at the top
25 of --

1 THE COURT: Yeah.
2 MR. FELDMAN: -- above paragraph -- okay.
3 THE COURT: Well, actually, I don't mind having it in.
4 That's the deal, right?
5 MR. FELDMAN: Yeah.
6 THE COURT: There's no harm having it in there. It's
7 already been said elsewhere. Well, actually, you know what, I
8 am a little worried about -- I was a little worried about what
9 you meant by "discharge". I think what you should say is, for
10 the avoidance of doubt, nothing in this order shall constitute
11 an injunction of either creditor actions or the causes of
12 actions asserted herein, although you should probably have a
13 reference to the other -- yeah, the channeling injunction to
14 me.
15 All right, okay. And then the same in 30; it's no
16 injunction or release. I guess it's a release, too.
17 Nonconsensual release, that's what we're talking -- no
18 injunction or nonconsensual release. Right.
19 And we already took out paragraph 44 -- old paragraph
20 44, which is -- and then on the next one, you can just say for
21 the reasons set forth in the bench decision, without any of the
22 other stuff. Well, actually, no, I'm sorry, forget it. Strike
23 that.
24 So this one, I'm not quite sure why this language is
25 proposed as opposed to the other language.

1 MR. SOMERSTEIN: Your Honor, I think I can explain
2 that. Mark Somerstein, Ropes & Gray for the 1.5 lien trustee.
3 Judge, in the adversary proceedings by the debtors
4 that contested the make-whole, there was a second claim for
5 relief. There was also a claim for a declaratory judgment
6 relief that the trustees were not entitled to recover their
7 fees for their efforts in connection with prosecuting the make-
8 whole dispute. That actually, Your Honor, was never ruled on
9 by you. I think, frankly, it might have just been an
10 oversight, I'm suspecting.
11 So what this paragraph does is it recognizes that the
12 bench rulings govern the adversary proceeding except for the
13 open fee dispute, which is then discussed subsequently in the
14 comments.
15 THE COURT: So are they -- so that -- this is not
16 intended to resolve that dispute?
17 MR. SOMERSTEIN: No, Your Honor, it's not. But I will
18 concede that we do, later in our comments to the order, in
19 paragraph 46, assert our entitlement and then provide a
20 mechanic to resolve reasonableness.
21 MR. FELDMAN: Judge, they've already asserted their
22 entitlement. You have the papers --
23 MR. SOMERSTEIN: Yes.
24 THE COURT: Well, so in this ruling here, it should
25 say that the Court rules as follows and then should say that

1 the fee dispute is reserved, I guess.
2 MR. FELDMAN: I think it's reserved, Judge, until you
3 want to rule on it.
4 MR. SOMERSTEIN: Well, it --
5 MR. FELDMAN: Apart from the papers that would do
6 it --
7 MR. SOMERSTEIN: I think paragraph 44 does reserve the
8 dispute, and then, in our comments subsequently, we did provide
9 for a ruling on the dispute. We could --
10 THE COURT: Well, I don't like the "except to the
11 extent". I think it should just be I rule this way on the
12 adversarial proceedings. However --
13 MR. SOMERSTEIN: Provided, however --
14 THE COURT: Provided, however, there's been no
15 determination on the fee dispute --
16 MR. SOMERSTEIN: Okay.
17 THE COURT: -- which will be decided later.
18 MR. SOMERSTEIN: Okay.
19 THE COURT: I mean, I haven't read the mechanic for
20 deciding it. You can certainly propose that. I just don't
21 think we need it in the confirmation order.
22 MR. SOMERSTEIN: Okay, Your Honor.
23 UNIDENTIFIED SPEAKER: Is that in the original 44?
24 THE COURT: No, that's the one we were just talking
25 about.

1 The lead in to 44, instead of saying this this way,
2 it'll say the Court has ruled -- on the adversary proceeding,
3 the Court has ruled --
4 MR. SAGE: We're on the -- I'm sorry, they were
5 confused by --
6 THE COURT: The two 44s?
7 MR. SAGE: -- the two 44s.
8 THE COURT: Okay. So I think we're on 45 in the
9 blackline.
10 MR. SOMERSTEIN: Which is the same thing.
11 THE COURT: Which is the same point.
12 MR. SOMERSTEIN: Yes.
13 MR. SAGE: You covered all the points through --
14 MR. SOMERSTEIN: We had --
15 THE COURT: I think we should --
16 MR. SAGE: I think you covered the points through 47.
17 THE COURT: Yeah, 46 will just be decided in the
18 future, so --
19 MR. SOMERSTEIN: Understood, Your Honor.
20 THE COURT: -- rather than this mechanism.
21 MR. SOMERSTEIN: Understood.
22 THE COURT: Okay, and 47, I guess the same way.
23 49 should be added; that's fine.
24 54, I guess that's right. The DIP order probably does
25 have a mechanism for that, so that's fine. Same with 55.

1 I don't think we need -- I mean, again, I think -- you
2 could say your rights -- without prejudice to your rights or
3 something like that, but I -- in 60 --
4 MR. SAGE: I think what you're suggesting is the same
5 resolution that you had with the subdebt.
6 THE COURT: That's fine.
7 MR. SAGE: It would be preferred that -- that's what I
8 understand -- I heard you say.
9 THE COURT: Okay.
10 UNIDENTIFIED SPEAKER: I'm sorry. I don't understand
11 what the resolution of that is.
12 THE COURT: The resolution is like we did with the
13 subdebt which is that it just says without prejudice to their
14 appellate rights.
15 MR. FELDMAN: So I didn't think 61 is --
16 THE COURT: 61. Yeah, the DIP order is still in
17 effect. I don't have a problem with 61 --
18 MR. FELDMAN: Okay.
19 THE COURT: -- unless I'm missing something.
20 MR. FELDMAN: I don't think you are.
21 THE COURT: The adequate protection doesn't go
22 forever; it just goes --
23 MR. SAGE: We understand.
24 THE COURT: Okay. All right, I'm not quite sure what
25 the difference is in 63.

1 MR. FELDMAN: We're just clarifying that they cannot
2 modify the indenture record.
3 THE COURT: Ever?
4 MR. FELDMAN: Ever.
5 THE COURT: That's fine. That's fine. Although I
6 would say it "and no document shall be amended", as opposed to
7 the other way around. Okay.
8 MR. SAGE: Your Honor, I think that -- this is just --
9 we won't modify the record, but there are documents
10 (indiscernible) documents that are directed --
11 THE COURT: Oh, that'd be great. All right.
12 MR. SAGE: And that's the problem with the language
13 that was debated on.
14 THE COURT: Yeah, let's see. You're right.
15 MR. FELDMAN: It should say --
16 THE COURT: Why don't you just say and the
17 evidentiary -- the confirmation hearing should not be amended.
18 MR. SAGE: Yeah.
19 THE COURT: Just that -- just say that the evidentiary
20 record shall not be amended. Okay.
21 52, I mean, I think this is just stating -- I don't
22 think you need this in here.
23 MR. FELDMAN: Where are you now? I'm sorry.
24 THE COURT: The bottom of 52 --
25 MR. SOMERSTEIN: Paragraph 68?

1 THE COURT: -- carrying over to 53.
2 MR. FELDMAN: Oh, right.
3 THE COURT: I agree with this deletion.
4 MR. FELDMAN: And 76 is the same thing.
5 THE COURT: Right, we dealt with that earlier.
6 No, this is actually different. It just says to the
7 fullest extent that is legally permissible. I don't have a
8 problem with this, although --
9 MR. FELDMAN: It needs to be consistent.
10 THE COURT: -- I think it should use the same language
11 that we agreed on. Okay.
12 MR. SAGE: Your Honor, just a quick point, just a
13 clarification. I assume that the counterpoint to those
14 findings of fact, we have to amend, for example, intercreditor
15 action, to the extent the Court's ruling presents on
16 confirmation (indiscernible). When you told me the
17 intercreditor action, they're not stacked.
18 THE COURT: No, it's just they're in front of me.
19 MR. SAGE: I understand that point. I'm going to tell
20 them (indiscernible).
21 THE COURT: So you want to amend the complaint?
22 MR. SAGE: Yeah.
23 THE COURT: Oh, sure. There's no --
24 MR. SAGE: I thought so, Your Honor. I just --
25 THE COURT: Yeah. And you'd be doing that in front of

1 me. Okay.
2 MR. SAGE: I hear you.
3 MR. DUNNE: I'm a little confused, Your Honor.
4 THE COURT: Well, you're always entitled to -- I
5 mean --
6 MR. DUNNE: Right, you can amend a complaint, but it's
7 also -- we only carved out from release those claims in the
8 intercreditor action. They're going more broadly than that in
9 amending the complaint in front of is taking on the power of a
10 release. And we're not --
11 THE COURT: Well, all right, but that's -- the
12 language we're referring to is the intercreditor action and
13 similar claims or -- that's fine.
14 MR. FELDMAN: Thank you, Your Honor.
15 THE COURT: I think that's it.
16 MR. FELDMAN: Correct.
17 THE COURT: Okay.
18 MR. FELDMAN: We'll circulate the (indiscernible) now
19 so (indiscernible).
20 THE COURT: All right. I have Chapter 13 day
21 tomorrow, so I won't turn to this until the afternoon anyway,
22 so.
23 MR. FELDMAN: Okay.
24 THE COURT: Okay. All right, I'm sure Mr. Sage will
25 be waiting for it.

1 MR. FELDMAN: Thank you, Your Honor.
2 THE COURT: Okay, thank you.
3 THE CLERK: All rise.
4 (Whereupon these proceedings were concluded at 7:07 PM)
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