

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:  FRANCIS' DRILLING FLUIDS, LTD., <i>et al.</i> ,  Debtors. <sup>1</sup>	§ § § § § § §	Chapter 11  Case No. 18-35441  Jointly Administered
--	---------------------------------	---

**DEBTORS' NOTICE OF FILING OF PROPOSED THIRD INTERIM  
CASH COLLATERAL ORDER**

**PLEASE TAKE NOTICE** that on September 30, 2018, Francis' Drilling Fluids, Ltd. ("FDF") and its above-captioned affiliated debtors (collectively, the "Debtors") filed their *Emergency Motion for Entry of a Limited Interim Order (A) Authorizing Use of Cash Collateral and Granting Adequate Protection to Prepetition Lenders and (B) Scheduling a Second Interim Hearing* (the "Motion"), at Dkt. No. 21.

**PLEASE TAKE FURTHER NOTICE** that on October 2, 2018, the Court entered the *First Interim Order (I) Authorizing Limited Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Lenders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 507, Bankruptcy Rules 2002, 4001, and 9014, and Local Bankruptcy Rules 4001-1(b) and 4002-1, (III) Modifying the Automatic Stay, and (IV) Scheduling a Second Interim Hearing Pursuant to Bankruptcy Rule 4001(B)* (the "First Interim Order"), at Dkt. No. 32.

**PLEASE TAKE FURTHER NOTICE** that on October 16, 2018, the Court entered the *Second Interim Order (I) Authorizing Limited Use of Cash Collateral, (II) Granting Adequate*

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are, as follows: Francis' Drilling Fluids, Ltd. (0574); FDF Resources Holdings LLC (1956); Francis Logistics LLC (9397). Additional information regarding these cases may be obtained on the website of the Debtors' proposed claims and noticing agent at [www.jndla.com/cases/FrancisDrilling](http://www.jndla.com/cases/FrancisDrilling). The Debtors' address is 100 Asma Blvd., Suite 151, Lafayette, LA 70508.

*Protection to Prepetition Lenders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 507, Bankruptcy Rules 2002, 4001, and 9014, and Local Bankruptcy Rules 4001-1(b) and 4002-1, (III) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) (the “Second Interim Order”), at Dkt. No. 86.*

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider the Debtors’ proposed *Third Interim Order (I) Authorizing Limited Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Lenders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 507, Bankruptcy Rules 2002, 4001, and 9014, and Local Bankruptcy Rules 4001-1(b) and 4002-1, (III) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) (the “Proposed Third Interim Order”) was held on November 1, 2018 (the “Third Interim Hearing”).*

**PLEASE TAKE FURTHER NOTICE** that following the Third Interim Hearing, the Debtors, the Prepetition Secured Parties, and the Committee (collectively, the “Parties”) have conferred on the appropriate form of order authorizing use of cash collateral and granting adequate protection to prepetition lenders, but the Parties have been unable to agree on a proposed form of order.

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby file, attached hereto as **Exhibit A**, the Debtors’ and Prepetition Secured Parties’ proposed *Third Interim Order (I) Authorizing Limited Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Lenders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 507, Bankruptcy Rules 2002, 4001, and 9014, and Local Bankruptcy Rules 4001-1(b) and 4002-1, (III) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) (the “Amended Proposed Third Interim Order”).*

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit B** is a redline of the Amended Proposed Third Interim Order, reflecting changes from the Second Interim Order.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit C** is a copy of the transcript of the Third Interim Hearing.

**PLEASE TAKE FURTHER NOTICE** that the Committee will be submitting a separate proposed form of order regarding the use of cash collateral.

Dated: November 7, 2018.

Respectfully submitted,

**NORTON ROSE FULBRIGHT US LLP**

By: /s/ Jason L. Boland

William R. Greendyke (SBT 08390450)

Jason L. Boland (SBT 24040542)

Robert B. Bruner (SBT 24062637)

Julie Goodrich Harrison (SBT 20492434)

1301 McKinney Street, Suite 5100

Houston, Texas 77010-3095

Telephone: (713) 651-5151

Facsimile: (713) 651-5246

[william.greendyke@nortonrosefulbright.com](mailto:william.greendyke@nortonrosefulbright.com)

[jason.boland@nortonrosefulbright.com](mailto:jason.boland@nortonrosefulbright.com)

[bob.bruner@nortonrosefulbright.com](mailto:bob.bruner@nortonrosefulbright.com)

[julie.harrison@nortonrosefulbright.com](mailto:julie.harrison@nortonrosefulbright.com)

**ATTORNEYS FOR DEBTORS AND  
DEBTORS-IN-POSSESSION**

**CERTIFICATE OF SERVICE**

I certify that on November 7, 2018, a true and correct copy of the above and foregoing was served upon all parties via the Bankruptcy Court's electronic case filing system (ECF).

/s/ Julie Goodrich Harrison

Julie Goodrich Harrison

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

---

In re:	)	
	)	Chapter 11
	)	
FRANCIS' DRILLING FLUIDS, LTD., <i>et al.</i> , <sup>1</sup>	)	Case No. 18-35441 (MI)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 21</b>

---

**THIRD INTERIM ORDER (I) AUTHORIZING LIMITED USE  
OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION  
TO PREPETITION LENDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363,  
AND 507, BANKRUPTCY RULES 2002, 4001, AND 9014, AND LOCAL  
BANKRUPTCY RULES 4001-1(b) AND 4002-1, (III) MODIFYING THE AUTOMATIC  
STAY, AND (IV) SCHEDULING  
A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(B)**

---

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors, as debtors in possession (collectively, the "Debtors"), pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rules 4001-1(b) and 4002-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "Complex Case Rules") promulgated by the United States Bankruptcy Court for the Southern District of Texas (the

---

<sup>1</sup> The Debtors in these chapter 11 cases, for which joint administration has been requested, along with the last four digits of their federal tax identification number, as applicable, are Francis' Drilling Fluids, Ltd. (0574), FDF Resources Holdings LLC (1956), and Francis Logistics LLC (9397).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or further herein, as applicable.

“Court”) for entry of a third interim order (the “Third Interim Order”), and a final order (the “Final Order”):

(a) authorizing the Debtors (as defined herein) to use the cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code, that constitutes Prepetition Collateral (“Cash Collateral”) of (i) PNC Bank, National Association, as administrative agent (the “First Lien Agent”), for the benefit of itself and the lenders and letter of credit issuers party to the First Lien Credit Agreement (as defined below) (collectively, the “First Lien Lenders”, and together with the First Lien Agent, the “First Lien Secured Parties”), and (ii) Gladstone Capital Corporation and Gladstone Business Loan, LLC, as subordinated lender (collectively, the “Subordinated Lender”), under certain senior subordinated notes issued by Subordinated Lender under that certain Subordinated Loan Agreement (as defined below), on an interim basis and solely in accordance with the terms of this Third Interim Order during the period following the date of commencement of these Chapter 11 Cases (as defined herein) and pending the Final Hearing (as defined herein). The First Lien Secured Parties and the Subordinated Lender shall be referred to herein collectively as the “Prepetition Secured Parties”;

(b) granting adequate protection to the First Lien Agent, for itself and for the benefit of the First Lien Secured Parties and to Subordinated Lender (subject to the Intercreditor Agreement) pursuant to sections 361, 362 and 363(e) of the Bankruptcy Code, for any diminution in the value of their respective interests in the Prepetition Collateral resulting from the Debtors’ use of the Cash Collateral, the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code;

(c) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the First Lien Secured Parties to implement and effectuate the terms and provisions of this the Third Interim Order and the Final Order, subject to notice and a hearing as provided herein;

(d) waiving the Debtors’ ability to surcharge against the Prepetition Collateral or the Adequate Protection Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law (i) pursuant to this Third Interim Order from the Petition Date through November 13, 2018 (the “Interim Period”), and (ii) subject to and effective upon entry of a Final Order, from and after November 13, 2018; and subject to and effective up on entry of a Final Order, waiving the applicability of the “equities of the case” exception under section 552(b) of the Bankruptcy Code;

(e) scheduling a hearing (the “Final Hearing”) to consider entry of a Final Order authorizing on a final basis, among other things, the use of Cash Collateral and the provision of adequate protection of the Prepetition Secured Parties’ respective interests in the Prepetition Collateral including, without limitation, Cash Collateral; and

(f) waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for the immediate effectiveness of this Third Interim Order.

and notice of the Motion under the circumstances having been given and such notice having been good and sufficient; and the Court having conducted a hearing for interim relief on the Motion on November 1, 2018 (the “Third Interim Hearing”); and the Court having reviewed the First Day Declaration, the Motion, the other evidence adduced by the parties, the representations of counsel, and the entire record made at the Third Interim Hearing; and it appearing to the Court that granting the relief sought in the Motion, on the terms and conditions contained herein, is necessary and essential to enable the Debtors to preserve the value of their businesses and assets, prevent immediate and irreparable harm to the Debtors’ estates, and that the consent of the First Lien Secured Parties has been obtained to the terms of this Third Interim Order, and that such relief during the Interim Period is fair and reasonable and in the best interests of the Debtors’ estates, their creditors, and all parties in interest, and is a sound and prudent exercise of the Debtors’ business judgment; and after due deliberation and consideration, and good and sufficient cause appears therefor:

**THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. This Court has jurisdiction over these proceedings and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. The Motion and proceedings in connection therewith constitute a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases (as defined herein) and the proceedings on the Motion are proper in this district pursuant

---

<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought in the Motion and granted in this Third Interim Order are Sections 105, 361, 362, 363 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, Bankruptcy Local Rules 4001-1(b) and 4002-1, and the Complex Case Rules.

B. On September 29, 2018 (the "Petition Date"), Francis' Drilling Fluids, Ltd. ("Francis Drilling") and each of the other Debtors filed a voluntary petition for relief with this Court under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Chapter 11 Cases are being jointly administered under Case No. 18-35441 (MI).

C. The Debtors are continuing in possession of their properties and are operating and managing their businesses as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases. The official committee of unsecured creditors (the "Committee") was appointed in the Chapter 11 Cases on October 17, 2018.

D. Without prejudice to the rights of the Committee or any other party in interest (but subject to the limitations thereon contained in paragraph 24 below) the Debtors admit, stipulate, and agree that:

1. The First Lien Agent, the First Lien Lenders, Francis Drilling, FDF Resources Holding LLC ("FDF Resources"), and Francis Logistics LLC ("Francis Logistics") together with Francis Drilling and FDF Resources, collectively the "Borrowers") are parties to that certain Revolving Credit, Term Loan and Security Agreement, dated November 23, 2010, as it was amended and restated by that certain Amended and Restated Revolving Credit, Term Loan and Security Agreement, dated May 4, 2012, and as it was further amended and restated by that certain Second Amended and Restated Revolving Credit, First Out Term Loan and Security Agreement dated as of October 27, 2014 (as it may have been amended, restated, amended and restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "First Lien Credit Agreement"), pursuant to which, each of the Debtors granted a valid, binding, perfected and enforceable first-priority lien on and security interest (the "Prepetition First Priority Liens") in the Collateral (as defined in Section 1.2 of the First

Lien Credit Agreement, the “Prepetition Collateral”) to the First Lien Secured Parties. Pursuant to the First Lien Credit Agreement and all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection with the First Lien Credit Agreement or related thereto, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated or replaced at any time prior to the Petition Date, are collectively referred to herein as the (collectively, the “First Lien Loan Documents”), the Debtors are jointly and severally indebted and liable to the First Lien Secured Parties for all Obligations (as defined in the First Lien Credit Agreement) (the “Prepetition Obligations”) arising under the First Lien Loan Documents and (i) such Prepetition Obligations are legal, valid, binding and enforceable against the Debtors and (ii) constitute “allowed claims” within the meaning of section 502 of the Bankruptcy Code (collectively, the “First Lien Indebtedness”). The Debtors are in default under the First Lien Loan Documents.

2. As of the Petition Date, in accordance with the terms of the First Lien Loan Documents, the Debtors were each jointly and severally indebted and liable to the First Lien Secured Parties for all of the First Lien Indebtedness, comprised of (among other things) (i) the Revolving Advances (as defined in the First Lien Credit Agreement) made by the First Lien Lenders in the aggregate principal amount of not less than \$24,903,109.16 under the First Lien Credit Agreement, (ii) a Term Loan (as defined in the First Lien Credit Agreement) made by the First Lien Lenders in the aggregate principal amount of not less than \$25,661,039.35 under the First Lien Credit Agreement, and (iii) not less than \$65,000.00 in face amount of undrawn Letters of Credit (as defined in the First Lien Credit Agreement) issued by Issuer (as defined in the First Lien Credit Agreement) under the First Lien Credit Agreement, together with all accrued and unpaid interest, fees, expenses (including, without limitation, the reasonable and documented fees and expenses of the First Lien Secured Parties’ attorneys, consultants, accountants, experts and financial advisors required to be reimbursed by the Debtors pursuant to the First Lien Credit Agreement, costs, other charges or amounts paid, incurred or accrued prior to the Petition Date (including any prepayment premium, as defined in the First Lien Loan Documents as of the date hereof), and other obligations incurred in connection therewith, in each case in accordance with the terms of the First Lien Loan Documents, plus all interest, fees, costs and other charges allowable under section 506(b) of the Bankruptcy Code. Each of the First Lien Loan Documents is valid, binding, and enforceable in accordance with its terms. The First Lien Indebtedness is secured by valid, binding, properly perfected, enforceable, non-avoidable, first-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral). There exists no basis upon which the Debtors can properly challenge or avoid the validity, enforceability, priority or perfection of the First Lien Indebtedness or the Prepetition First Priority Liens, and the Debtors shall not assert any claim, challenge or counterclaim in respect of the First Lien Indebtedness, the Prepetition First Priority Lien or the amounts paid or payable to the First Lien Secured Parties. No portion of the First Lien Indebtedness, the Prepetition First Priority Liens, or any amounts paid or payable to the First Lien Secured Parties or applied to the obligations owing under the First Lien Loan Documents prior to the Petition Date is



subject to avoidance, subordination (whether equitable, contractual or otherwise), recharacterization, recovery, attack, offset, counterclaim, cross-claims, disallowance, impairment, recoupment, defense, challenge, objection, reduction, disgorgement, or claim (as defined in section 101(5) of the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

3. All cash proceeds of the Prepetition Collateral and the Adequate Protection Collateral (as defined below), including all such cash proceeds of such Prepetition Collateral or Adequate Protection Collateral held at any time and from time to time in any of the Debtors' banking, checking or other deposit accounts with financial institutions (in each case, other than trust, escrow and custodial funds held as of the Petition Date in properly established trust, escrow and custodial accounts), are and will be Cash Collateral of the First Lien Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

4. The First Lien Secured Parties are entitled, under sections 105, 361, 362 and 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, including the Cash Collateral, for any Collateral Diminution (as defined herein).

E. The Subordinated Lender, Francis Drilling and FDF Resources are parties to a certain Loan Agreement dated as of May 4, 2012 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "Subordinated Loan Agreement"), pursuant to which, each of the Debtors granted a valid, binding, perfected and enforceable second-priority lien on and security interest in the Collateral (as defined in the Intercreditor Agreement) to the Subordinated Lender. Pursuant to the Subordinated Loan Agreement and all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection with the Subordinated Loan Agreement or related thereto, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated or replaced at any time prior to the Petition Date, are collectively referred to herein as the (collectively, the "Subordinated Loan Documents" together with the First Lien Loan Documents, collectively, the "Prepetition Loan Documents"), the Debtors are jointly and severally indebted

and liable to the Subordinated Lender for all Obligations (as defined in the Subordinated Loan Agreement) arising under the Subordinated Loan Documents and (i) such Obligations are legal, valid, binding and enforceable against the Debtors and (ii) constitute “allowed claims” within the meaning of section 502 of the Bankruptcy Code (the “Subordinated Indebtedness” together with the First Lien Indebtedness, collectively, the “Prepetition Indebtedness”). The Debtors are in default under the Subordinated Loan Documents.

F. Each of the Debtors and, subject to paragraph 24 of this Third Interim Order, each of the Debtor’s estates, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns (collectively, the “Releasors”) hereby to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the First Lien Secured Parties, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest (collectively, the “First Lien Releasees”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, objections, challenges, counterclaims, setoff rights, rights to subordinate, recoupment, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof arising out of, relating to or in connection with the Debtors or any of the First Lien Loan Documents, or the transactions

contemplated under such First Lien Loan Documents, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under title 11 of the United States Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection or avoidability of the liens or the claims of the First Lien Secured Parties. The Debtors’ acknowledgements, stipulations and releases are binding on the Debtors and their respective representatives, successors and assigns and, subject to any action timely commenced by the Committee or other party in interest before the end of the Challenge Period (as defined below), on each of the Debtors’ estates, all creditors thereof and each of their respective representatives, successors and assigns, including, without limitation, any trustee or other representative appointed in the Chapter 11 Cases, whether such trustee or representative is appointed in chapter 11 or chapter 7 of the Bankruptcy Code. The Debtors have requested entry of this Third Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (d). Absent granting the relief sought by this Third Interim Order, the Debtors’ estates could be immediately and irreparably harmed. The use of Cash Collateral in accordance with this Third Interim Order is therefore in the best interest of the Debtors’ estates, their creditors and other parties in interest.

G. Good cause has been shown for the entry of this Third Interim Order. The Debtors have an immediate need to use the Cash Collateral to, among other things, fund the orderly continuation of their businesses, maintain the confidence of their customers and vendors, pay their operating expenses, and preserve their going concern value, consistent with the Budget. The terms for the Debtors’ use of Cash Collateral pursuant to this Third Interim Order are fair and reasonable, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration. The terms for the Debtors’ use

of Cash Collateral pursuant to this Third Interim Order have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtors and the First Lien Secured Parties and, pursuant to Bankruptcy Code sections 105, 361 and 363, the First Lien Secured Parties are hereby found to be entities that have acted in "good faith" in connection with the negotiation and entry of this Third Interim Order, and each is entitled to the protection provided under Bankruptcy Code section 363(m).

H. The Debtors have requested entry of this Third Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (d). Absent granting the relief sought by this Third Interim Order, the Debtors' estates could be immediately and irreparably harmed. The use of Cash Collateral in accordance with this Third Interim Order is therefore in the best interest of the Debtors' estates, their creditors and other parties in interest.

I. The Debtors desire to use the cash, rents, income, offspring, products, proceeds and profits that constitute Cash Collateral of the First Lien Agent and the other First Lien Secured Parties, under section 363(a) of the Bankruptcy Code.

J. The First Lien Agent, on behalf of the First Lien Secured Parties has consented to the Debtors' use of the Cash Collateral subject to the terms and conditions set forth herein and for the duration of this Third Interim Order. The First Lien Secured Parties have advised the Court that such consent is binding upon the Subordinated Lender pursuant to the Intercreditor Agreement.

K. The adequate protection provided to the First Lien Secured Parties, as set forth more fully in paragraphs 7 and 8 of this Third Interim Order, for any diminution in the value of the First Lien Secured Parties' interest in the Prepetition Collateral from and after the Petition Date from the use, sale, or lease of the Prepetition Collateral, or the imposition of the automatic stay

pursuant to section 362(a) of the Bankruptcy Code is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Cash Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the First Lien Secured Parties from any diminution of their interests in the value of the Prepetition Collateral and (ii) obtain the foregoing consents and agreements.

L. The Debtors stipulate, and the Court finds, that in permitting the Debtors to use Cash Collateral or in taking any other actions permitted by this Third Interim Order, none of the First Lien Secured Parties or the First Lien Agent shall (i) have liability to any third party or be deemed to be in control of the operation of any of the Debtors or to be acting as a "controlling person," "responsible person," or "owner" or "operator" with respect to the operation or management of any of the Debtors (as such term, or any similar terms, is used in the Internal Revenue Code, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any other federal or state statute) or (ii) owe any fiduciary duty to any of the Debtors, their creditors or their estates, or shall constitute or be deemed to constitute a joint venture or partnership with any of the Debtors.

M. Each of the First Lien Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to and effective upon entry of a Final Order, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to them with respect to proceeds, product, offspring or profits with respect to any of the Prepetition Collateral.

N. The Third Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2). Notice of the requested relief sought at the Third Interim Hearing was provided by the Debtors to:

(i) the U.S. Trustee for the Southern District of Texas (the “U.S. Trustee”); (ii) the First Lien Agent and counsel thereto; (iii) the other Prepetition Secured Parties; and (iv) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis). Sufficient and adequate notice of the Motion and the hearing thereon was provided pursuant to Bankruptcy Rules 2002, 4001(b) and (d), and 9006, as required by sections 361 and 363 of the Bankruptcy Code and Local Bankruptcy Rule 4002-1, the Complex Case Rules, and section 102(1) of the Bankruptcy Code as required by sections 361 and 363 of the Bankruptcy Code. Except as provided herein with respect to notice of the Final Hearing and Final Order, no further notice of, or hearing on, the relief sought in the Motion is necessary or required. Prior to the Third Interim Hearing, the Committee timely filed a comprehensive Objection to the relief requested in the Motion (the “Committee Objection”) [Dkt. No. 111] and has objections to the relief sought in the Motion. All objections and arguments of the Committee asserted in the Committee Objection are expressly reserved and the Committee shall not be required to file any further objection in connection with the Debtors’ Motion and/or with regard to the final relief requested in the Motion in order to preserve such objections.

O. The Debtors have requested immediate entry of this Third Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The permission granted herein to use Cash Collateral (and provide adequate protection therefor) is necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors. The Court concludes that entry of this Third Interim Order is in the best interests of the Debtors’ estates and creditors as its implementation will, among other things, allow the Debtors to preserve and maintain the value of their assets and businesses and enhance the Debtors’ prospects for a successful reorganization.

Based upon the foregoing findings, stipulations, and conclusions, and upon the record made before the Court at the Third Interim Hearing, and good and sufficient cause appearing therefor;

**NOW, THEREFORE, IT IS HEREBY ADJUDGED AND ORDERED:**

1. Motion. The Motion is granted, subject to the terms and conditions set forth in this Third Interim Order. The Debtors shall not use any Cash Collateral except as expressly authorized and permitted herein or by subsequent order of the Court. Any objections to the Motion with respect to the entry of this Third Interim Order that have not been withdrawn, waived, or resolved at the Third Interim Hearing, and (except as set forth herein) all reservations of rights included therein, are hereby denied and overruled. Notwithstanding the foregoing, the objections set forth in the Committee Objection as to the final relief requested in the Motion and with regard to entry of the Final Order are expressly reserved.

2. Use of Cash Collateral. Subject to the terms and conditions of this Third Interim Order, the Debtors are hereby authorized to use Cash Collateral during the period beginning on the Petition Date and ending on the Termination Date (as defined below) (such period, the “Budget Period”), for the disbursements of the type set forth in the 13-week cash disbursements and receipts budget attached as Exhibit A hereto (the “Third Interim Budget” and, as such budget may be modified from time to time by the Debtors in the form of the Proposed Budget (defined below) with the prior written consent of the First Lien Agent, the “Budget”), subject in each case to any Non-Conforming Use permitted herein (as such term is defined below). The Debtors shall provide the Committee with notice and a copy of any Proposed Budget three (3) days in advance of the effectiveness of such Proposed Budget (“Budget Notice Period”). After the expiration of the Budget Notice Period, and with the prior written consent of the First Lien Agent, the Proposed Budget shall become the Budget. If the Committee objects to a Proposed Budget during the Budget Notice Period, Debtors may seek emergency relief from the Court for approval of a Proposed Budget to which First Lien Agent has consented.

3. Liquidity Compliance. The Debtors shall be deemed to be in compliance with the Budget to the extent a Non-Permitted Variance (as defined below) does not arise during any Four Week Period, unless offset by a Positive Variance (as defined below). For purposes of this Third Interim Order, “Four Week Period” shall be defined as the first four weeks of any Budget Period, as updated from time to time with Proposed Budgets, as defined in paragraph 8(a)(v), approved by the First Lien Agent. In the absence of an approved Proposed Budget replacing an existing approved Budget, the Four Week Period shall constitute the subsequent four weeks in the Budget Period following the previous Four Week Period in the same Budget Period. All Positive Variances for Total Receipts (designated in the Budget as “Total Receipts”) or Total Operating Disbursements (designated in the Budget as “Total Operating Disbursements”, which, for the avoidance of doubt, shall include all disbursements, excluding only professional fees and other restructuring-related expenses incurred), respectively, from any previous Four Week Period will be carried forward and may be applied to any Non Permitted Variances arising during a subsequent Four Week Period for the corresponding category of Total Receipts or Total Operating Disbursements, respectively. For purposes of this Third Interim Order, a “Positive Variance” shall mean the cumulative amount from the Petition Date through any date of determination by which (a) the Total Receipts exceeds 100% of the budgeted amount, or (b) Total Operating Disbursements are less than 100% of the budgeted amount, reduced in each case by the cumulative amount (from the Petition Date through such date of determination) of the Positive Variance that has been applied to offset the Non-Permitted Variance (as defined herein) in the preceding Four Week Periods. For purposes of this Third Interim Order, a “Non-Permitted Variance” shall mean, for any Four Week Period set forth in the Budget, the amount of Total Receipts that are less than 90% of the budgeted amount thereof, or the amount of Total Operating Disbursements that exceed



110% of the budgeted amount thereof; provided, however, that, for the purposes of determining whether a Non-Permitted Variance has occurred, (i) Total Receipts may be increased by the amount of any Positive Variance for Total Receipts, and (ii) Total Operating Disbursements may be decreased by the amount of any Positive Variance for Total Operating Disbursements, in each case, that have not previously been applied in such a manner. Non Permitted Variances will be determined at the conclusion of each Four Week Period during the Budget Period. A “Non-Permitted Variance Event” shall occur if, at the end of any Four Week Period, a Non Permitted Variance has occurred. For the avoidance of doubt, Total Receipts and Total Operating Disbursements will be considered mutually exclusive for purposes of calculating the Non Permitted Variance and will not be considered on a net basis.

4. Non-Conforming Use of Cash Collateral. The First Lien Agent may, in its sole discretion, agree in writing to the use of the Cash Collateral in a manner or amount which does not conform to the manner or amount, as applicable, set forth in the Budget (each such approved non-conforming use of Cash Collateral, a “Non-Conforming Use”). The Debtors shall provide (a) prior written notice of any Non-Conforming Use to counsel for the Committee, and (b) substantially contemporaneous notice of any Non-Conforming Use to the United States Trustee. If the Debtor obtains the written consent of First Lien Agent, and the Committee does not object, the Debtors shall be authorized pursuant to this Third Interim Order to use Cash Collateral for any such Non-Conforming Use without further Court approval, and the First Lien Secured Parties shall be entitled to all of the protections specified in this Third Interim Order for any such Non-Conforming Use. If the Committee objects to a Non-Conforming Use to which First Lien Agent has consented, the Debtor may seek emergency relief from the Court to use Cash Collateral for any such Non-Conforming Use.

5. Entitlement to Adequate Protection. The First Lien Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Cash Collateral, solely to the extent of the aggregate postpetition diminution in value of such First Lien Secured Party's interest in the Prepetition Collateral and Cash Collateral, including, without limitation, any diminution in value resulting from (i) the sale, lease or use by the Debtors of the Prepetition Collateral and Cash Collateral, (ii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, or (iii) the subordination of the First Lien Secured Parties' interests in the Prepetition Collateral to the Carve Out ("Collateral Diminution"). The Court finds that the First Lien Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral (including the Cash Collateral), for Collateral Diminution (the "Adequate Protection Obligations").

6. Carve Out. As used in this Third Interim Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate, during the period covered by this Third Interim Order; (ii) all reasonable fees and expenses up to \$30,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) effective immediately upon approval of this Third Interim Order, an amount not to exceed the lesser of (A) the aggregate of the weekly amounts budgeted to be funded for any particular person or firm retained by the Debtors (any such persons or firms, collectively, the "Debtors' Professionals") in accordance with the Budget from the Petition Date through November 13, 2018, and (B) the actual allowed amount of such professional fees incurred by any such Debtors' Professionals on or after the Petition Date though the earlier of (I) November 13, 2018 and (II) the period prior to the first

business day following delivery of a notice (the “Carve Out Notice”) by the First Lien Agent (via electronic mail, overnight delivery or hand delivery) to the Debtors, counsel to the Debtors (Jason L. Boland and William R. Greendyke, Norton Rose Fulbright US LLP), the United States Trustee, and counsel to the Committee (Shari Heyen and David Kurzweil, Greenberg Traurig, LLP) (the “Trigger Date”) which notice may be delivered at any time following the occurrence of the Termination Date stating that the Termination Date has occurred, whether such fees are allowed by the Court on an interim or final basis prior to or after the Trigger Date; and (iv) the allowed fees and expenses (whether allowed by interim order, procedural order, or otherwise) of the Debtors’ Professionals in an aggregate amount not to exceed \$50,000 (the “Post Carve Out Notice Cap”) incurred after the first business day following the Trigger Date; provided that (x) the Carve Out shall not be available to pay the fees or expenses of Debtors’ Professionals incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the First Lien Secured Parties, and (y) no Debtor Professionals may be paid in excess of the amounts set forth in the Budget on an aggregate basis prior to the Trigger Date; *provided further*, that the Carve Out shall not include any bonus, transaction fees, success fees, completion fees, substantial contribution fees, or any other fees of similar import of any of the Debtors’ Professionals except that Debtors’ retained investment banker (SSG Advisors, LLC (“SSG”)) shall be entitled to be paid the applicable transaction fee as provided in this Court’s Order approving SSG’s retention and solely from the proceeds of such transaction; and *provided further*, that for Debtors’ Professionals that have or are maintaining any type of retainer, such professionals shall apply such retainer to any accrued and unpaid allowed fees and expenses before having recourse to the Carve Out or Post Carve Out Notice Cap. Nothing in this Third Interim Order shall be construed to impair the ability of any party to object to any fees, expenses, reimbursements or

compensation sought by any Debtors' Professional or other estate professional, or the retention of any such professionals whose application for employment has not been approved by the Court as of the date of entry of this Third Interim Order. Nothing in this Third Interim Order shall be construed to impair or limit the ability of the debtors, the Debtors' Professionals, and the First Lien Secured Parties to agree to additional budgeted amounts for Debtors' Professionals.

7. Adequate Protection for the First Lien Agent and First Lien Secured Parties. As adequate protection, the First Lien Agent and the other First Lien Secured Parties are hereby granted the following claims, liens, rights, and benefits (the "First Lien Adequate Protection Obligations"):

(a) Section 507(b) Claim. Subject and subordinate only to the Carve Out, the First Lien Agent, for itself and on behalf of the other First Lien Secured Parties are hereby granted allowed joint and several superpriority administrative claims against the Debtors as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against the Debtors, now existing or hereafter arising in the Chapter 11 Cases, including all claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to the Final Order), 507(a), 507(b), 726, 1113 or 1114, and shall at all times be senior to the rights of the Debtors, and any successor trustee or any creditor, in the Chapter 11 Cases or any subsequent proceedings, including, without limitation, any chapter 7 proceeding, under the Bankruptcy Code (the "First Lien 507(b) Claims"), which administrative claim shall have recourse to and be payable from all prepetition and postpetition property of the Debtors. For the avoidance of doubt, the First Lien 507(b) Claims arising or incurred during or related to the Interim Period shall have recourse to proceeds of Avoidance Actions (defined below).

(b) First Lien Adequate Protection Liens. Subject and subordinate only to the Carve Out, and effective as of the Petition Date, solely to the extent of the First Lien Adequate Protection Obligations, and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the First Lien Agent of any Adequate Protection Collateral (as defined below), the First Lien Agent for the benefit of the First Lien Secured Parties is hereby granted valid, binding, continuing, enforceable, fully-perfected, non-avoidable first priority liens and/or replacement liens on, and security interest in, all of the Prepetition Collateral, to the same extent that such liens and security interests existed pre-

petition and subject to any valid, perfected, non-avoidable senior liens existing as of the Petition Date, and all other of the Debtors' now owned and hereafter arising or acquired real and personal property, assets and rights of any kind or nature, wherever located, including, without limitation, all property of the Debtors' estates, and the proceeds, products, offspring, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, all accounts into which the proceeds of any property of the Debtors' estates may be deposited, accounts receivable, other rights to payment, cash, inventory, general intangibles, contracts, servicing rights, servicing receivables, securities, chattel paper, owned real estate and real property leaseholds and proceeds thereof (provided, however, that as to a lien on all fee, leasehold, and other real property interests and the proceeds thereof: (i) with respect to non-residential real property leases, no liens or encumbrances shall be granted or extended to such leases under this Third Interim Order, except as permitted by the applicable lease or pursuant to applicable law, but if any such restriction applies, liens shall then be deemed to extend only to the economic value of proceeds of any sale or other disposition of, and any other proceeds or products of, such leasehold interests; and (ii) should any First Lien Lender's internal regulatory or compliance requirements require the completion of either or both flood due diligence and obtaining evidence of applicable flood insurance with respect to any real property or leasehold interest, then until completion of such flood due diligence, the First Lien Agent shall be deemed to have obtained a lien only on the economic value of, proceeds of sale, or other disposition of such real property interests), fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, claims and causes of action (including those arising under the Bankruptcy Code) and all proceeds, products, offspring, rents and profits of the foregoing (the "Adequate Protection Collateral," and the liens and security interests therein, the "First Lien Adequate Protection Liens"). Subject and subordinate only to the Carve Out, the First Lien Adequate Protection Liens (x) solely for the period between November 1, 2018 and November 13, 2018, shall not extend to recoveries or proceeds of Avoidance Actions<sup>4</sup> (without in any way impacting First Lien Secured Parties' previously granted liens on the proceeds of Avoidance Actions relating to the periods covered by the First Interim Order (defined below) and the Second Interim Order (defined below), and (y) shall not be (i) subject or subordinate to any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise.

(c) Reserved.

(d) Reserved.

8. Additional First Lien Adequate Protection. As additional adequate protection:

---

<sup>4</sup> "Avoidance Actions" shall mean the estates' claims and causes of action (but not on the actual claims and causes of action) arising under sections 544, 547, 548, and 550 of the Bankruptcy Code or any other state or federal law.

(a) Reporting: The Debtors shall comply with the Budget (and its reporting requirements) and all reporting requirements set forth in the First Lien Credit Agreement (including timely provision of Borrowing Base Certificates and other reports as required under Section IX thereof), all of which reports shall be provided to the First Lien Agent and the Committee. In addition, the Debtors shall provide the following additional reporting to the First Lien Agent and the Committee:

- (i) Weekly (or more or less frequently as may be agreed to between the Debtors and the First Lien Agent) calls with the First Lien Agent and its advisors;
- (ii) Within two (2) business days of receipt, copies of any proposals, term sheets or any other indications of interest received by the Debtors for the purchase of any assets of the Debtors;
- (iii) Each update of the Debtors' business plan promptly following their presentation to the Debtors' board of directors;
- (iv) Presentations by the Debtors and/or their advisors to the First Lien Secured Parties at times and places as the First Lien Agent may reasonably request in writing (including via electronic mail) with reasonable prior notice;
- (v) (A) On or before the twentieth (20th) day of each calendar month, an updated rolling 13-week cash flow forecast of the Debtors and their subsidiaries substantially in the form of the Budget (each, a "Proposed Budget"), which Proposed Budget, upon written approval by the First Lien Agent, shall become the Budget effective as of the first day of the following month, and (B) on or before each Wednesday of each calendar week, (1) a weekly report of receipts, disbursements and a reconciliation of actual expenditures and disbursements with those set forth in the Budget for the prior week, on a line by line basis showing any variance to the proposed corresponding line item of the Budget, which report and reconciliation shall be in form and substance reasonably satisfactory to the First Lien Agent, (2) a statement setting forth in reasonable detail the cash balance for each deposit account, securities account, and commodity account of the Debtors and their subsidiaries as of the previous Friday, (3) an accounts payable aging and an accounts receivable aging through the Friday of the prior week, and (4) an updated report of authorized expenditures versus actual expenditures through the Friday of the prior week.
- (vi) Additional detail with respect to the Budget as requested by the First Lien Agent consistent with the detail provided to the First Lien Secured Parties prior to the Petition Date;

- (vii) Promptly, and in any event no later than the thirtieth (30th) day of each month, beginning with the year to date period ended December 31, 2017, a monthly and year-to-date income statement, balance sheet and monthly and year-to-date detail of capital expenditures;
- (viii) Promptly provide copies of all written reports provided by the Debtors to the Committee, the U.S. Trustee, or any other party in interest in the Chapter 11 Cases;
- (ix) Promptly, and in any event no later than weekly, provide any term sheet, proposal, and/or bid concerning the sale of all or any portion of a Debtor's assets;
- (x) Such other reports and information as the First Lien Agent may reasonably request; and
- (xi) Provide weekly Borrowing Base Certificates in accordance with Section 9.2 of the First Lien Credit Agreement.

(b) In addition to, and without limiting, whatever rights to access the First Lien Agent and First Lien Secured Parties have under the First Lien Credit Agreement (including the rights set forth in Section 4.6 of the First Lien Credit Agreement (including, without limitation, to conduct appraisals and field exams at the expense of the Debtors in accordance with the First Lien Credit Agreement)), upon reasonable prior written notice, at reasonable times during normal business hours, and otherwise not to be unreasonably withheld, the Debtors shall permit representatives, advisors, agents, and employees of the First Lien Agent (1) to have access to and inspect the Debtors' properties, (2) to examine the Debtors' books and records, and (3) discuss the Debtors' affairs, finances, and condition with the Debtors' officers, management, financial advisors and counsel.

(c) Debtors shall provide to First Lien Agent and the Committee no less than five (5) business days' prior notice of any motion or other papers it proposes to file with the Bankruptcy Court (including drafts of such motion or other papers) related to any proposed payments made by Debtors to third-parties, any proposed sale of Debtors' assets and the process related thereto, and any other motions or papers that may affect the First Lien Secured Parties' liens, claims, and rights under this Third Interim Order, the Final Order, the First Lien Indebtedness, and any of the First Lien Loan Documents.

9. Adequate Protection for the Subordinated Lender. Subject to the terms of the Intercreditor Agreement, and to the extent legally required under applicable law, as adequate protection, the Subordinated Lender are hereby granted, solely to the extent of any postpetition diminution in value of the Subordinated Lender's interest in the Collateral (as defined in the



Intercreditor Agreement), if it is determined that the Subordinated Lender had any interest in the Collateral as of the Petition Date, the following liens, rights, and benefits (the “Second Lien Adequate Protection Obligations”, and together with the First Lien Adequate Protection Obligations, the “Adequate Protection Obligations”):

(a) Second Lien Adequate Protection Liens. Subject and subordinate only to the Carve Out, the Prepetition First Priority Liens, and the First Lien Adequate Protection Liens, and effective as of the Petition Date, solely to the extent of the any postpetition diminution in value of the Subordinated Lender’s interest in the Collateral (as defined in the Intercreditor Agreement), if it is determined that the Subordinated Lender had any interest in the Collateral as of the Petition Date under Section 506 of the Bankruptcy Code, and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the Subordinated Lender of any Adequate Protection Collateral, the Subordinated Lender is hereby granted valid, binding, continuing, enforceable, fully-perfected, non-avoidable second priority liens and/or replacement liens on, and security interest in, all of the Adequate Protection Collateral (the “Second Lien Adequate Protection Liens”, and together with the First Lien Adequate Protection Liens, the “Adequate Protection Liens”). Notwithstanding the foregoing, the Second Adequate Protection Liens shall not extend to proceeds or recoveries of Avoidance Actions.

10. Reserved.

11. Intercreditor Agreement. For the avoidance of doubt, the priorities and rights of the First Lien Adequate Protection Obligations, the First Lien Adequate Protection Liens, the Second Lien Adequate Protection Obligations, and the Second Lien Adequate Protection Liens shall be governed by the terms of the Intercreditor Agreement. Nothing in this Third Interim Order shall amend or otherwise modify the terms and enforceability of the Intercreditor Agreement. The rights of the Prepetition Secured Parties shall at all times remain subject to the Intercreditor Agreement.

12. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Prepetition Collateral outside of the ordinary course of business without the prior written consent of the First Lien Agent.



13. Termination. The Debtors' right to use the Cash Collateral pursuant to this Third Interim Order shall terminate (the date of any such termination, the "Termination Date") without further notice or court proceeding on the earliest to occur of (i) November 13, 2018, if the Final Order has not been entered by the Court on or before such date; (ii) if the Final Order is timely entered, January 31, 2019, (iii) the effective date of a plan of reorganization; (iv) the closing date of any sale of substantially all of the Debtors' assets; *provided that*, with the consent of the Debtors and the First Lien Agent, in the exercise of their respective sole discretion, the Termination Date may be extended without further Court approval upon the filing of a notice on the docket of the Cases setting forth the new Termination Date; and (v) the occurrence of any of the events set forth in any of clauses (a) through (t) below (the events set forth in clauses (a) through (t) below are collectively referred to herein as the "Termination Events");

(a) [RESERVED];

(b) The failure by the Debtors to deliver to the First Lien Agent any of the material documents or other material information required to be delivered pursuant to this Third Interim Order when due or any such documents or other information shall contain a material misrepresentation;

(c) The failure by the Debtors to observe or perform any of the material terms or material provisions contained herein;

(d) The Debtors shall grant, create, incur or suffer to exist any postpetition liens or security interests other than: (i) those granted pursuant to this Third Interim Order; (ii) carriers', mechanics', operator's, warehousemen's, repairmen's or other similar liens arising in the ordinary course of business for amounts outstanding as of the Petition Date, even if recorded after the Petition Date; (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the payment of any postpetition statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business; and (v) any other liens or security interests that the Debtors are permitted to incur under the First Lien Loan Documents except with respect to Indebtedness for borrowed money;

(e) The Debtors' failure to comply with their obligations set forth in paragraph 3 of this Third Interim Order;

(f) An order shall be entered reversing, adversely amending, adversely supplementing, staying, vacating or otherwise adversely modifying any material provision of this Third Interim Order without the written consent of the First Lien Agent;

(g) There shall be a breach by any Debtor of any material provisions of the Third Interim Order, or the Third Interim Order shall cease to be in full force and effect or shall have been reversed, modified, amended, stayed, vacated or subject to stay pending appeal, in the case of any modification or amendment (other than the entry of a Final Order);

(h) The Debtors shall create, incur or suffer any other claim which is *pari passu* with or senior to the First Lien Adequate Protection Claims;

(i) The Court shall have entered an order dismissing any of the Chapter 11 Cases;

(j) The filing of a chapter 11 plan that does not provide for the indefeasible payment in full in cash of all amounts due and owing under the First Lien Credit Agreement (unless a chapter 11 plan is filed that provides for alternate treatment with the written consent of the First Lien Agent) on the Effective Date;

(k) The Court shall have entered an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code;

(l) The Court shall have entered an order authorizing the appointment or election of a trustee or examiner with expanded powers or any other representative with expanded powers relating to the operation of the businesses in the Chapter 11 Cases;

(m) The Court shall have entered an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code to any entity other than the First Lien Agent or any of the First Lien Secured Parties with respect to any Prepetition Collateral or Cash Collateral without the written consent of the First Lien Agent, which consent may be withheld in its sole discretion;

(n) A filing by any Debtor of any motion, pleading, application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the First Lien Indebtedness or asserting any other cause of action against and/or with respect to the First Lien Indebtedness, the Prepetition Collateral, or the First Lien Agent, any of the First Lien Secured Parties (or if the Debtors support any such motion, pleading, application or adversary proceeding commenced by any third party);

(o) A filing of a motion for bidding procedures or a motion for the sale of any or all of a Debtor's assets, which motion and order approving such motion are not in form and substance acceptable to First Lien Agent in its sole discretion;

(p) The Debtors shall use Cash Collateral in any manner inconsistent with the Budget and the other terms of this Third Interim Order, including, without limitation, paragraphs 2 and 4 hereof; or

(q) The sale or transfer of any assets of any Debtor, or the filing of a motion by any of the Debtors seeking approval of the sale or transfer, of any Prepetition Collateral or First Lien Adequate Protection Collateral outside of the ordinary course of business without the prior consent and approval of the First Lien Agent;

(r) Impairment or failure to preserve the First Lien Secured Parties' First Lien Indebtedness, First Lien Adequate Protection Obligations, and/or their rights to credit bid the First Lien Indebtedness and/or Adequate Protection Obligations; and

(s) Subject to the rights preserved under Paragraph 24, the Court shall have entered an order avoiding, disallowing, subordinating or recharacterizing any claim, lien, or interest held by any First Lien Secured Party arising under the First Lien Credit Agreement, unless (i) the Debtors have sought a stay of such order within five (5) business days after the date of such issuance, and such order is stayed, reversed or vacated within ten (10) business days after the date of such issuance or (ii) the First Lien Agent has consented to such order in writing.

(t) The Debtors shall have failed to meet any of the following milestones by the applicable deadline, which deadlines may be extended by mutual written agreement between the Debtors and First Lien Agent (on behalf of the First Lien Lenders):

- (i) File a motion under Bankruptcy Code section 363 to approve bidding procedures for the sale of all or substantially all of Debtors assets ("363 Asset Sale") on or before November 13, 2018;
- (ii) Entry of an order approving bidding procedures ("Bidding Procedures") for the 363 Asset Sale, in form and substance acceptable to Agent, on or before November 29, 2018;
- (iii) Hold an auction for the 363 Asset Sale, subject to the receipt of higher or better bids (the "Approved 363 Asset Sale"), in accordance with the Bidding Procedures (the "Auction") on or before January 16, 2019;
- (iv) Within two (2) calendar days from the conclusion of the Auction, Debtors' shall obtain an order approving the 363 Asset Sale ("Approved 363 Asset Sale Order"), which provides that the net sale proceeds shall be paid to the First Lien Agent for the benefit of the First Lien Lenders, subject to the rights preserved under Paragraph 24; and
- (v) Closing of the Approved 363 Asset Sale on or before January 31, 2019.

14. Remedies upon the Termination Date. Upon the occurrence and during the continuance of a Termination Event (unless such occurrence and continuance is waived by First Lien Agent in its sole discretion), and upon three (3) days written notice of such Termination Event (the “Default Notice Period”) to Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, (a) the Debtors shall immediately cease using Cash Collateral, (b) the Adequate Protection Obligations, if any, shall become due and payable, and (c) subject to the next sentence below, the First Lien Agent and each First Lien Secured Party may exercise the rights and remedies available under the First Lien Loan Documents, the Intercreditor Agreement, this Third Interim Order, or applicable law, as applicable, including, without limitation, foreclosing upon and selling all or a portion of the Prepetition Collateral or Adequate Protection Collateral in order to collect and satisfy the Adequate Protection Obligations, and First Lien Indebtedness, in accordance with this Third Interim Order and the Intercreditor Agreement. The automatic stay under section 362 of the Bankruptcy Code is hereby deemed modified and vacated to the extent necessary to permit such actions; provided that during the Default Notice Period, unless the Court orders otherwise, the automatic stay under section 362 of the Bankruptcy Code (to the extent applicable) shall remain in effect; *provided further*, that on request of a party in interest at the time First Lien Agent seeks to exercise remedies, the Court shall determine the extent of the Adequate Protection Obligations; *provided further*, during the Default Notice Period (x) the Debtors shall have the opportunity to cure the events set forth in clause (b) of Paragraph 13 above, and (y) consistent with the Court’s statements at the October 15, 2018 hearing, the Debtors or any party in interest shall be permitted to seek relief from the Court on an emergency basis in a contested matter and the Court may consider at that time whether any alternative relief is appropriate under the facts and circumstances of the case. Any delay or failure of the First Lien Agent or First Lien

Secured Parties to exercise rights under the First Lien Loan Documents or this Third Interim Order shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable document. Subject and subordinate only to the Carve Out and as otherwise set forth herein, the First Lien Agent shall be entitled to apply the payments or proceeds of the Prepetition Collateral and the Adequate Protection Collateral in accordance with the provisions of the First Lien Loan Documents and the Intercreditor Agreement, as applicable. Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits and protections provided to the First Lien Agent and the First Lien Secured Parties under this Third Interim Order shall survive the Termination Date.

15. Limitation on Charging Expenses Against Collateral. All rights to surcharge any Prepetition Collateral or Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived from the Petition Date through and including November 13, 2018, and such waiver shall be binding upon the Debtors and all parties in interest in the Cases; provided that Debtors may use Cash Collateral if there is a Termination Event prior to expiration of this Third Interim Order solely for any accrued and unpaid wages and related payroll taxes for which Debtors are liable under applicable law, to the extent actually incurred by Debtors during the period covered by this Third Interim Order that are set forth in the Budget and the payment of the Debtors' Professionals to the extent provided by the Carve Out under clauses (iii) and (iv) of Paragraph 6 above. Neither the First Lien Agents' nor the First Lien Secured Parties' consent to the Budget nor anything else herein shall be deemed or construed as agreement by the First Lien Agent or the First Lien Secured

Parties to be surcharged under section 506(c) or any other provision of the Bankruptcy Code or equitable doctrine.

16. [Reserved].

17. Bankruptcy Code Section 552(b). The First Lien Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to and effective upon entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the First Lien Secured Parties with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the Adequate Protection Collateral.

18. Reserved.

19. Reservation of Rights of the First Lien Secured Parties. Notwithstanding any other provision hereof, the grant of adequate protection to the First Lien Secured Parties pursuant hereto is without prejudice to the rights of the First Lien Parties to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection with respect to any postpetition Diminution in value of the First Lien Secured Parties’ interest in any Prepetition Collateral from and after the Petition Date, and without prejudice to the right of the Debtors or any other party in interest to contest any such modification. Nothing herein shall be deemed to waive, modify, or otherwise impair the respective rights of the First Lien Secured Parties under the First Lien Loan Documents, and the Intercreditor Agreement, or under equity or law, and the First Lien Secured Parties expressly reserve all of their respective rights and remedies whether now existing or hereafter arising under the First Lien Loan Documents, respectively, and/or equity or law in connection with all Defaults and Events of Default (as defined in the First Lien Loan Documents, respectively, and whether arising prior to or after the Petition Date).

20. Reserved.

21. Modification of Automatic Stay. The Debtors are authorized and directed to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Third Interim Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the Debtors and each of the First Lien Secured Parties to accomplish the transactions contemplated by this Third Interim Order.

22. Perfection of Adequate Protection Liens.

(a) The Prepetition Secured Parties are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not any Prepetition Secured Party, in its sole discretion, chooses to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of this Third Interim Order. If a Prepetition Secured Party determines to file or execute any financing statements, agreements, notice of liens or similar instruments, the Debtors will cooperate and assist in any such execution and/or filings as reasonably requested by such Prepetition Secured Party and the automatic stay shall be modified to allow such filings.

(b) A certified copy of this Third Interim Order may, in the discretion of the First Lien Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Third Interim Order for filing and recording; provided that, notwithstanding the date of any such filing, the date of such perfection shall be the date of entry of this Third Interim Order.

(c) For the avoidance of doubt and notwithstanding what is set forth in paragraph 22(a), without the necessity of the filing of financing statements, security agreements, federal or state notices, pledge agreements, recordings, mortgages or other documents or taking possession or control of any Collateral, this Third Interim Order shall be sufficient evidence of the Prepetition Secured Parties' perfected security interests and liens granted in the Collateral pursuant to this Third Interim Order. Furthermore, notwithstanding the foregoing, the Debtors are authorized and directed to execute such documents including, without limitation, mortgages, pledges and Uniform Commercial Code financing statements and to use Cash Collateral to pay such costs and expenses as

may be reasonably requested by the Prepetition Secured Parties to provide further evidence of the perfection of the Prepetition Secured Parties' security interests and liens in the Collateral as provided for herein. All such documents shall be deemed to have been recorded and filed as of the Petition Date.

23. Preservation of Rights Granted Under this Third Interim Order.

(a) Notwithstanding any order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise entered at any time (x) the First Lien 507(b) Claims, the other administrative claims granted pursuant to this Third Interim Order and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Third Interim Order until all Adequate Protection Obligations shall have been paid and satisfied in full in cash (and such First Lien 507(b) Claims, the other administrative claims granted pursuant to this Third Interim Order and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(b) If any or all of the provisions of this Third Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect: (i) the validity, priority or enforceability of any Adequate Protection Obligations incurred prior to the actual receipt of written notice by the Prepetition Secured Parties, of the effective date of such reversal, stay, modification or vacatur; or (ii) the validity, priority or enforceability of the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of the Cash Collateral or any Adequate Protection Obligations incurred by the Debtors hereunder, as the case may be, prior to the actual receipt of written notice by the Prepetition Secured Parties of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Third Interim Order, and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted herein and to the protections afforded in section 363(m) of the Bankruptcy Code with respect to all uses of the Cash Collateral and all Adequate Protection Obligations.

(c) Subject to paragraph 24 of this Third Interim Order, the adequate protection payments made pursuant to this Third Interim Order shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in the Chapter 11 Cases or any subsequent chapter 7 cases (other than a defense that the payment has actually been made).

(d) Except as expressly provided in this Third Interim Order, the Adequate Protection Obligations, the First Lien 507(b) Claims and the Adequate Protection Liens and all other rights and remedies of the Prepetition Secured Parties granted by the provisions of this Third Interim Order shall survive, and shall not be modified, impaired or discharged by the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases, or by any other



act or omission. The terms and provisions of this Third Interim Order shall continue in the Chapter 11 Cases, in any Successor Cases if the Chapter 11 Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the Adequate Protection Liens, the First Lien 507(b) Claims, the other administrative claims granted pursuant to this Third Interim Order, and all other rights and remedies of the Prepetition Secured Parties granted by the provisions of this Third Interim Order shall continue in full force and effect until all Adequate Protection Obligations are indefeasibly paid in full in cash.

24. Effect of Stipulations. The Debtors have admitted, stipulated, and agreed to the various stipulations and admissions contained in this Third Interim Order, including, without limitation, the stipulations and admissions included in paragraph D, which stipulations and admissions shall be binding upon the Debtors and any successors thereto in all circumstances (although such stipulations are not findings of the Court). The stipulations and admissions contained in this Third Interim Order, including without limitation, in paragraph D of this Third Interim Order, shall also be binding upon the Debtors' estates and all other parties in interest, including the Committee or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), for all purposes unless (a) (i) any party in interest other than the Committee, no later than the date that is forty-five (45) days from the Petition Date, and (ii) the Committee, no later than sixty (60) days from the appointment of the Committee (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so and subject to extension by the Court for cause shown or by written agreement of First Lien Agent) (as applicable for clauses (i) and (ii), the "Initial Challenge Period"), has properly filed an adversary proceeding as required under the Bankruptcy Rules (x) challenging the amount, validity, enforceability, priority or extent of the Prepetition Indebtedness or the liens on the Prepetition Collateral securing the Prepetition Indebtedness, or (y) otherwise asserting any other claims, counterclaims, causes of action, objections, contests or defenses against the First Lien Agent,

Subordinated Lender, and/or Prepetition Secured Party (as applicable) on behalf of the Debtors' estates ((x) and (y), collectively, the "Claims and Defenses"), provided, however, if during the Initial Challenge Period, the Committee files a motion for standing with a draft complaint identifying and describing all Claims and Defenses consistent with applicable law and rules of procedure, the Initial Challenge Period will be tolled for the Committee solely with respect to claims asserted in the complaint until three (3) business days from entry of an order granting the Committee standing to prosecute any such Claims and Defenses described in the complaint (the "Extended Challenge Period" together with the Initial Challenge Period, the "Challenge Period"); and (b) the Court rules in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; *provided that*, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished effective as of the Petition Date. If no such adversary proceeding is timely filed prior to the expiration of the Challenge Period, without further order of the Court, or, if applicable, on the date of an order of the Court denying the Committee standing: (1) the Debtors' stipulations, admissions and releases contained in this Third Interim Order shall be binding on all parties in interest, including the Debtors' estates, the Committee, and any Trustee; (2) the Prepetition Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 case; (3) the First Lien Agent's liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected, and of the priority specified in paragraph D, not subject to defense, counterclaim, recharacterization, subordination or avoidance; and (4) the Prepetition Indebtedness, the First Lien Agent's liens on the Prepetition Collateral, and the Prepetition Lenders (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors)

shall not be subject to any other or further challenge by the Committee or any other party in interest, and the Committee or a party in interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period); provided that if the Chapter 11 Cases are converted to chapter 7 or a Trustee is appointed prior to the expiration of the Challenge Period, any such estate representative or Trustee shall receive the full benefit of any remaining Challenge Period, subject to the limitations described herein. If any such adversary proceeding is timely and properly filed prior to the expiration of the Challenge Period, the stipulations and admissions contained in this Third Interim Order, including without limitation, in paragraph D of this Third Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Committee and any other person, including any Trustee, except solely as to any such findings and admissions that were expressly challenged in the original complaint initiating the adversary proceeding and excluding any amended or additional claims that may or could have been asserted thereafter through an amended complaint under FRCP 15 or otherwise. Nothing in this Third Interim Order vests or confers on any person, including the Committee or any Trustee, standing or authority to pursue any cause of action belonging to the Debtors or their estates. This stipulation shall be binding upon the Debtors, their estates, all parties in interest in the Chapter 11 Cases and their respective successors and assigns, including any trustee or other fiduciary appointed in the Chapter 11 Cases or any subsequently converted bankruptcy case(s) of any Debtors and shall inure to the benefit of the First Lien Secured Parties and the Debtors and their respective successors and assigns (collectively, the "Successor Cases").

25. Limitation on Use of Cash Collateral. The Debtors shall use the proceeds of the Prepetition Collateral solely as provided in this Third Interim Order. No Cash Collateral may be used to: (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of the Prepetition Indebtedness, or the liens or claims granted under this Third Interim Order, the first interim order authorizing the Debtors' cash collateral use [Dkt. No. 32] ("First Interim Order"), the second interim order authorizing Debtors' cash collateral use [Dkt. No. 86] ("Second Interim Order") or the Prepetition Loan Documents; (b) assert any Claims and Defenses against the Prepetition Secured Parties or their respective agents, affiliates, representatives, attorneys or advisors; (c) seek to modify any of the rights granted to the Prepetition Secured Parties hereunder, or (d) pay any amount on account of any claims arising prior to the Petition Date unless in accordance with the Budget and such payments are approved by an order of the Court; *provided, however*, that an amount not to exceed \$50,000 of Cash Collateral may be used to pay allowed fees and expenses of the Committee to investigate (but not prosecute) claims against and possible objections with respect to the Prepetition Indebtedness and pre-petition liens and security interests of the Prepetition Secured Parties (including, without limitation, issues regarding validity, perfection, priority, or enforceability of the secured claims of the Pre-Petition Secured Parties).

26. Binding Effect; Successors and Assigns. The provisions of this Third Interim Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including without limitation, each of the Prepetition Secured Parties, the Committee, the Debtors, the Debtors' estates (subject to paragraph 24), and their respective successors and assigns (including any Trustee hereinafter appointed or elected for the estate of any Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a

legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of each of the Prepetition Secured Parties and the Debtors and their respective successors and assigns, provided that except to the extent expressly set forth in this Third Interim Order, each of the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral or extend any financing to any Trustee or similar responsible person appointed for the estate of any Debtor. For all adequate protection and stay relief purposes throughout the Debtors' Chapter 11 Cases, the Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection as of the Petition Date.

27. Limitation of Liability. In permitting the use of the Prepetition Collateral or in exercising any rights or remedies as and when permitted pursuant to this Third Interim Order, the Prepetition Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Third Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

28. Right to Credit Bid. Without prejudice to the Committee's rights under paragraph 24, and in accordance with Bankruptcy Code section 363(k), the First Lien Agent, on behalf of the First Lien Lenders, shall have the unqualified right to credit bid all or any part of the outstanding

amount of the First Lien Indebtedness or First Lien Adequate Protection Obligations, as applicable, in each case including any accrued interest without the need for further Court order authorizing the same, in connection with any sale of the Adequate Protection Collateral (or any part thereof) or the Prepetition Collateral (or any part thereof) whether such sale is effectuated under Bankruptcy Code § 363 or Bankruptcy Code § 1129, by a chapter 7 trustee under Bankruptcy Code § 725, or otherwise.

29. No Marshalling. The First Lien Secured Parties shall not be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Prepetition Collateral (including Cash Collateral).

30. Headings. The headings in this Third Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Third Interim Order.

31. Effectiveness. This Third Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of execution of effectiveness of this Third Interim Order. To the extent that any finding of fact shall be determined to be a conclusion of law it shall be so deemed and vice versa.

32. Proofs of Claim. Neither the First Lien Agent nor any First Lien Secured Party will be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases, and the Debtors’ stipulations in paragraph D herein shall be deemed to constitute a timely filed proof of claim against the applicable Debtor(s). Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation, administrative claims) in any of the Chapter 11 Cases or Successor Cases shall not apply to the First Lien Agent or the other First Lien Secured Parties with respect to the First Lien Indebtedness. Notwithstanding the foregoing, the First Lien Agent (on behalf of itself and the other First Lien Secured Parties) is

hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a master proof of claim for any claims of the First Lien Secured Parties arising from the applicable Prepetition Loan Documents; provided that nothing herein shall waive the right of any Prepetition Secured Party to file its own proofs of claim against the Debtors.

33. Committee Interim Fee Applications. Solely for the period of this Third Interim Order, proposed counsel for the Committee is permitted (but not required) to file interim fee applications for each two-week period from the date of their appointment until the earlier of November 13, 2018, or the Termination Date (the “Interim Committee Applications”). Any such Interim Committee Applications shall seek compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors’ chapter 11 cases in compliance with applicable provisions of the Bankruptcy Code, the Federal Bankruptcy Rules, the Local Bankruptcy Rules, and any other applicable procedures and orders of this Court.

34. Reservation of Rights for Midland Central Appraisal District. Notwithstanding any provision in the Motion or this Third Interim Order, any valid, perfected, non-avoidable senior liens, if any, currently held by Midland Central Appraisal District shall neither be primed by nor subordinated to any liens granted herein.

35. Final Hearing. The Final Hearing on the Motion is scheduled for November 13, 2018, at 3:30 p.m., prevailing Central Time before the Court. The Debtors shall promptly mail copies of this Third Interim Order to the parties having been given notice of the Third Interim Hearing and to any other party which has filed a request for notices with the Court. Any party in interest objecting to the relief sought at the Final Hearing shall submit any such objection in writing and file same with the Court no later than 4:00 p.m. (Central Time) on November 11, 2018.

36. Jurisdiction. The Court shall retain jurisdiction to enforce the terms of this Third Interim Order and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Third Interim Order.

37. Controlling Effect of Third Interim Order. To the extent any provision of this Third Interim Order conflicts or is inconsistent with any provision of the Motion, the provisions of this Third Interim Order shall control to the extent of such conflict.

38. Order Immediately Effective. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

39. Debtor Authorization to Effectuate Relief. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

40. Exclusive Jurisdiction. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2018  
Houston, Texas

---

UNITED STATES BANKRUPTCY JUDGE



**Exhibit A**

**Budget**

Francis' Drilling Fluids, Ltd

Cash Collateral Budget - Revised as of 11/6/18

(\$000)

Week Number Week Ending (Sat)	1 <sup>st</sup> Interim Budget		2 <sup>nd</sup> Interim Budget		3 <sup>rd</sup> Interim Budget			4	5	6	7	8	9	10	11	12	13	13	
	6-Oct	13-Oct	20-Oct	27-Oct	1	2	3	4	5	6	7	8	9	10	11	12	13	Week	
	ACT	ACT	ACT	ACT	3-Nov	10-Nov	17-Nov	24-Nov	1-Dec	8-Dec	15-Dec	22-Dec	29-Dec	5-Jan	12-Jan	19-Jan	26-Jan	Total	
<b>Cash Receipts</b>																			
Operating Receipts	2,459	1,167	2,780	1,129	1,722	1,793	1,718	1,218	1,523	1,863	1,815	1,472	1,242	1,537	1,564	1,496	1,428	20,391	
Other Receipts	-	74	-	181	956	-	-	-	-	-	-	-	-	-	-	-	-	956	
<b>Total Receipts</b>	<b>\$ 2,459</b>	<b>\$ 1,241</b>	<b>\$ 2,780</b>	<b>\$ 1,310</b>	<b>\$ 2,678</b>	<b>\$ 1,793</b>	<b>\$ 1,718</b>	<b>\$ 1,218</b>	<b>\$ 1,523</b>	<b>\$ 1,863</b>	<b>\$ 1,815</b>	<b>\$ 1,472</b>	<b>\$ 1,242</b>	<b>\$ 1,537</b>	<b>\$ 1,564</b>	<b>\$ 1,496</b>	<b>\$ 1,428</b>	<b>\$ 21,347</b>	
<b>Operating Disbursements</b>																			
Product Purchases	52	13	187	204	89	107	202	202	145	132	143	105	105	121	100	104	113	1,668	
Salaries & Wages	639	434	508	624	869	611	902	649	923	540	822	568	835	689	913	625	964	9,908	
Payroll Related (Taxes/Benefits/Claims)	230	85	326	162	163	114	167	108	169	108	159	99	160	120	167	104	171	1,810	
Fuel	117	54	137	142	99	111	107	121	112	91	86	100	90	134	111	116	126	1,405	
Leases	140	-	2	45	180	69	69	69	180	69	69	69	69	180	69	69	69	1,235	
Repairs & Maintenance	62	13	9	31	124	126	126	126	125	123	123	123	123	123	123	123	123	1,608	
Utilities & Telecom	15	2	2	4	26	26	26	26	26	26	26	26	26	26	26	26	26	333	
Insurance	341	-	-	32	-	341	-	-	-	341	-	50	-	341	-	-	50	1,123	
Other Operating	168	37	317	20	267	104	161	204	104	104	126	204	318	110	110	110	424	2,345	
<b>Total Operating Disbursements</b>	<b>\$ 1,763</b>	<b>\$ 638</b>	<b>\$ 1,489</b>	<b>\$ 1,264</b>	<b>\$ 1,817</b>	<b>\$ 1,609</b>	<b>\$ 1,760</b>	<b>\$ 1,505</b>	<b>\$ 1,784</b>	<b>\$ 1,533</b>	<b>\$ 1,553</b>	<b>\$ 1,344</b>	<b>\$ 1,725</b>	<b>\$ 1,842</b>	<b>\$ 1,618</b>	<b>\$ 1,277</b>	<b>\$ 2,066</b>	<b>\$ 21,435</b>	
<b>Net Operating Cash Flow</b>	<b>\$ 696</b>	<b>\$ 603</b>	<b>\$ 1,291</b>	<b>\$ 45</b>	<b>\$ 861</b>	<b>\$ 184</b>	<b>\$ (42)</b>	<b>\$ (288)</b>	<b>\$ (261)</b>	<b>\$ 330</b>	<b>\$ 262</b>	<b>\$ 128</b>	<b>\$ (483)</b>	<b>\$ (305)</b>	<b>\$ (54)</b>	<b>\$ 219</b>	<b>\$ (638)</b>	<b>\$ (88)</b>	
<b>Non-Operating Disbursements</b>																			
Debt Fees and Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Pre-Petition Critical Vendor	-	-	-	-	30	30	-	-	-	-	-	-	-	-	-	-	-	60	
Deposits	42	7	10	(11)	60	-	-	-	-	-	-	-	-	-	-	-	-	60	
Capital Expenditures	-	-	-	-	36	36	36	36	36	36	36	36	36	46	46	46	46	509	
Debtor Professionals*	-	-	-	-	453	173	198	140	140	140	165	140	82	82	82	107	82	1,983	
UCC Professionals*	-	-	-	-	40	20	20	20	20	20	20	20	20	20	20	20	20	280	
U.S. Trustee	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	250	250	
Lender Professionals*	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Total Non-Operating Disbursements</b>	<b>\$ 42</b>	<b>\$ 7</b>	<b>\$ 10</b>	<b>\$ (10)</b>	<b>\$ 619</b>	<b>\$ 259</b>	<b>\$ 254</b>	<b>\$ 196</b>	<b>\$ 196</b>	<b>\$ 196</b>	<b>\$ 221</b>	<b>\$ 196</b>	<b>\$ 138</b>	<b>\$ 148</b>	<b>\$ 148</b>	<b>\$ 173</b>	<b>\$ 398</b>	<b>\$ 3,142</b>	
<b>Net Cash Flow</b>	<b>\$ 654</b>	<b>\$ 596</b>	<b>\$ 1,280</b>	<b>\$ 56</b>	<b>\$ 242</b>	<b>\$ (75)</b>	<b>\$ (295)</b>	<b>\$ (484)</b>	<b>\$ (457)</b>	<b>\$ 134</b>	<b>\$ 40</b>	<b>\$ (68)</b>	<b>\$ (621)</b>	<b>\$ (453)</b>	<b>\$ (202)</b>	<b>\$ 46</b>	<b>\$ (1,036)</b>	<b>\$ (3,230)</b>	
<b>Beginning Cash (Book)</b>	<b>822</b>	<b>1,476</b>	<b>2,072</b>	<b>3,353</b>	<b>3,408</b>	<b>3,650</b>	<b>3,575</b>	<b>3,280</b>	<b>2,796</b>	<b>2,339</b>	<b>2,473</b>	<b>2,513</b>	<b>2,445</b>	<b>1,824</b>	<b>1,370</b>	<b>1,168</b>	<b>1,214</b>	<b>3,408</b>	
Net Cash Flow	654	596	1,280	56	242	(75)	(295)	(484)	(457)	134	40	(68)	(621)	(453)	(202)	46	(1,036)	(3,230)	
Net Borrowing/(Paydown)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Ending Cash (Book)</b>	<b>1,476</b>	<b>2,072</b>	<b>3,353</b>	<b>3,408</b>	<b>3,650</b>	<b>3,575</b>	<b>3,280</b>	<b>2,796</b>	<b>2,339</b>	<b>2,473</b>	<b>2,513</b>	<b>2,445</b>	<b>1,824</b>	<b>1,370</b>	<b>1,168</b>	<b>1,214</b>	<b>178</b>	<b>178</b>	
Check Float	155	135	326	100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Ending Cash (Bank)</b>	<b>1,632</b>	<b>2,207</b>	<b>3,678</b>	<b>3,508</b>	<b>3,650</b>	<b>3,575</b>	<b>3,280</b>	<b>2,796</b>	<b>2,339</b>	<b>2,473</b>	<b>2,513</b>	<b>2,445</b>	<b>1,824</b>	<b>1,370</b>	<b>1,168</b>	<b>1,214</b>	<b>178</b>	<b>178</b>	

\* Please refer to the Professional Fee Schedule for additional detail.

**Francis' Drilling Fluids, Ltd  
Professional Fee Schedule '(\$000)**

Week Number	0	0	0	0	0	1	2	3	4	5	6	7	8	9	10	11	12	13	13				
Week Ending (Sat)	29-Sep	6-Oct	13-Oct	20-Oct	27-Oct	3-Nov	10-Nov	17-Nov	24-Nov	1-Dec	8-Dec	15-Dec	22-Dec	29-Dec	5-Jan	12-Jan	19-Jan	26-Jan	Week	Feb '19	Mar '19	Total	
Line Item	Description	ACT	ACT	ACT	ACT	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	Total	Total	Total	Total	
<b>DEBTOR PROFESSIONALS:</b>																							
<b>Norton Rose Fulbright Debtor Counsel</b>																							
Beginning Balance		-	(231)	(129)	(64)	(10)	62	187	312	437	533	629	575	671	767	817	514	564	614	62	664	-	-
New Accruals		-	102	65	54	72	125	125	96	96	96	96	96	50	50	50	50	50	50	1,105	-	-	1,398
Cash Payment		-	-	-	-	-	-	-	-	-	150	-	-	-	354	-	-	-	-	503	664	-	1,167
Retainer		231	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	231
<b>End Balance</b>		<b>(231)</b>	<b>(129)</b>	<b>(64)</b>	<b>(10)</b>	<b>62</b>	<b>187</b>	<b>312</b>	<b>437</b>	<b>533</b>	<b>629</b>	<b>575</b>	<b>671</b>	<b>767</b>	<b>817</b>	<b>514</b>	<b>564</b>	<b>614</b>	<b>664</b>	<b>664</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>CR3 Partners, LLC Debtor FA</b>																							
Beginning Balance		-	(55)	(5)	49	97	156	201	241	281	318	355	231	268	305	330	232	257	282	156	307	-	-
New Accruals		-	50	54	49	59	45	40	40	37	37	37	37	37	25	25	25	25	25	435	-	-	646
Cash Payment		-	-	-	-	-	-	-	-	-	161	-	-	-	123	-	-	-	-	284	307	-	591
Retainer		55	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	55
<b>End Balance</b>		<b>(55)</b>	<b>(5)</b>	<b>49</b>	<b>97</b>	<b>156</b>	<b>201</b>	<b>241</b>	<b>281</b>	<b>318</b>	<b>355</b>	<b>231</b>	<b>268</b>	<b>305</b>	<b>330</b>	<b>232</b>	<b>257</b>	<b>282</b>	<b>307</b>	<b>307</b>	<b>-</b>	<b>-</b>	<b>(0)</b>
<b>SSG Capital Debtor Investment Banker</b>																							
Beginning Balance		-	-	-	-	25	25	25	25	50	50	50	25	50	50	50	25	25	50	25	50	50	-
New Accruals - See note		25	-	-	25	-	-	-	25	-	-	-	25	-	-	-	-	25	-	75	375	-	500
Cash Payment		-	-	-	-	-	-	-	-	-	25	-	-	-	25	-	-	-	-	50	425	-	475
Retainer		25	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	25
<b>End Balance</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>25</b>	<b>25</b>	<b>25</b>	<b>25</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>25</b>	<b>50</b>	<b>50</b>	<b>25</b>	<b>25</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>JND Legal Administration Debtor Claims Agent</b>																							
Beginning Balance		-	(18)	(11)	20	26	32	39	47	54	61	68	36	43	50	57	35	42	49	32	56	0	-
New Accruals		-	7	31	6	6	8	8	8	7	7	7	7	7	7	7	7	7	7	93	-	-	143
Cash Payment		-	-	-	-	-	-	-	-	-	39	-	-	-	29	-	-	-	-	68	56	-	124
Retainer		18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18
<b>End Balance</b>		<b>(18)</b>	<b>(11)</b>	<b>20</b>	<b>26</b>	<b>32</b>	<b>39</b>	<b>47</b>	<b>54</b>	<b>61</b>	<b>68</b>	<b>36</b>	<b>43</b>	<b>50</b>	<b>57</b>	<b>35</b>	<b>42</b>	<b>49</b>	<b>56</b>	<b>56</b>	<b>0</b>	<b>0</b>	<b>-</b>

Assumption - the retainers for Norton Rose, CR3 and JND are credit amounts upon filing Chapter 11

Note: SSG is entitled to a success fee assumed to be paid in February (minimum: \$500k if cash bid; \$375k if credit bid), with monthly amounts credited against the final figure.



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<u>In re:</u>	)	<u>Chapter 11</u>
<del>In re:</del>	)	<del>Chapter 11</del>
FRANCIS' DRILLING FLUIDS, LTD., <i>et al.</i> , <sup>1</sup>	)	Case No. 18-35441 (MI)
<u>Debtors.</u>	)	<u>(Jointly Administered)</u>
<del>Debtors.</del>	)	<del>(Jointly Administered)</del>
	)	<b>Re: Docket No. 21</b>

**~~SECOND~~THIRD INTERIM ORDER (I) AUTHORIZING LIMITED USE  
OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION  
TO PREPETITION LENDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363,  
AND 507, BANKRUPTCY RULES 2002, 4001, AND 9014, AND LOCAL  
BANKRUPTCY RULES 4001-1(b) AND 4002-1, (III) MODIFYING THE AUTOMATIC  
STAY, AND (IV) SCHEDULING  
A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(B)**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors, as debtors in possession (collectively, the "Debtors"), pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rules 4001-1(b) and 4002-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "Complex Case Rules")

<sup>1</sup> The Debtors in these chapter 11 cases, for which joint administration has been requested, along with the last four digits of their federal tax identification number, as applicable, are Francis' Drilling Fluids, Ltd. (0574), FDF Resources Holdings LLC (1956), and Francis Logistics LLC (9397).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or further herein, as applicable.

[HOU 408908052v2](#)

promulgated by the United States Bankruptcy Court for the Southern District of Texas (the “Court”) for entry of a ~~second~~third interim order (the “~~Second~~Third Interim Order”), and a final order (the “Final Order”):

(a) authorizing the Debtors (as defined herein) to use the cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code, that constitutes Prepetition Collateral (“Cash Collateral”) of (i) PNC Bank, National Association, as administrative agent (the “First Lien Agent”), for the benefit of itself and the lenders and letter of credit issuers party to the First Lien Credit Agreement (as defined below) (collectively, the “First Lien Lenders”, and together with the First Lien Agent, the “First Lien Secured Parties”), and (ii) Gladstone Capital Corporation and Gladstone Business Loan, LLC, as subordinated lender (collectively, the “Subordinated Lender”), under certain senior subordinated notes issued by Subordinated Lender under that certain Subordinated Loan Agreement (as defined below), on an interim basis and solely in accordance with the terms of this ~~Second~~Third Interim Order during the period following the date of commencement of these Chapter 11 Cases (as defined herein) and pending the Final Hearing (as defined herein). The First Lien Secured Parties and the Subordinated Lender shall be referred to herein collectively as the “Prepetition Secured Parties”;

(b) granting adequate protection to the First Lien Agent, for itself and for the benefit of the First Lien Secured Parties and to Subordinated Lender (subject to the Intercreditor Agreement) pursuant to sections 361, 362 and 363(e) of the Bankruptcy Code, for any diminution in the value of their respective interests in the Prepetition Collateral resulting from the Debtors’ use of the Cash Collateral, the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code;

(c) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the First Lien Secured Parties to implement and effectuate the terms and provisions of this the ~~Second~~Third Interim Order and the Final Order;~~(d) -~~ ~~subject solely to and effective upon entry of the Final Order (as defined below),~~ to notice and a hearing as provided herein;

(d) waiving the Debtors’ ability to surcharge against the Prepetition Collateral or the Adequate Protection Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law; and (i) pursuant to this Third Interim Order from the Petition Date through November 13, 2018 (the “Interim Period”), and (ii) subject to and effective upon entry of a Final Order, from and after November 13, 2018; and subject to and effective up on entry of a Final Order, waiving the applicability of the “equities of the case” exception under section 552(b) of the Bankruptcy Code;

(e) scheduling a hearing (the “Final Hearing”) to consider entry of ~~the~~ a Final Order authorizing on ~~an~~a final basis, among other things, the use of Cash Collateral and the

provision of adequate protection of the Prepetition Secured Parties' respective interests in the Prepetition Collateral including, without limitation, Cash Collateral; and

(f) waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for the immediate effectiveness of this ~~Second~~Third Interim Order.

and notice of the Motion under the circumstances having been given and such notice having been good and sufficient; and the Court having conducted a hearing for interim relief on the Motion on ~~October 2,~~November 1, 2018 (the "Third Interim Hearing"); and the Court having reviewed the First Day Declaration, the Motion, the other evidence adduced by the parties, the representations of counsel, and the entire record made at the Third Interim Hearing; and it appearing to the Court that granting the relief sought in the Motion, on the terms and conditions contained herein, is necessary and essential to enable the Debtors to preserve the value of their businesses and assets, prevent immediate and irreparable harm to the Debtors' estates, and that the consent of the First Lien Secured Parties has been obtained to the terms of this ~~Second~~Third Interim Order, and that such relief during the Interim Period is fair and reasonable and in the best interests of the Debtors' estates, their creditors, and all parties in interest, and is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appears therefor:

**THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. This Court has jurisdiction over these proceedings and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. The Motion and proceedings in connection therewith constitute a core proceeding as defined in 28 U.S.C. ~~§§~~ 157(b)(2). Venue for the

---

<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

Chapter 11 Cases (as defined herein) and the proceedings on the Motion are proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought in the Motion and granted in this ~~Second~~Third Interim Order are Sections 105, 361, 362, 363 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, Bankruptcy Local Rules 4001-1(b) and 4002-1, and the Complex Case Rules.

B. On September 29, 2018 (the "Petition Date"), Francis' Drilling Fluids, Ltd. ("Francis Drilling") and each of the other Debtors filed a voluntary petition for relief with this Court under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Chapter 11 Cases are being jointly administered under Case No. 18-35441 (MI).

C. The Debtors are continuing in possession of their properties and are operating and managing their businesses as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases. ~~No~~The official committee of unsecured creditors (the "Committee") ~~has been~~was appointed in the Chapter 11 Cases ~~on October 17, 2018.~~

D. Without prejudice to the rights of the Committee or any other party in interest (but subject to the limitations thereon contained in paragraph 24 below) the Debtors admit, stipulate, and agree that:

1. The First Lien Agent, the First Lien Lenders, Francis Drilling, FDF Resources Holding LLC ("FDF Resources"), and Francis Logistics LLC ("Francis Logistics") together with Francis Drilling and FDF Resources, collectively the "Borrowers") are parties to that certain Revolving Credit, Term Loan and Security Agreement, dated November 23, 2010, as it was amended and restated by that certain Amended and Restated Revolving Credit, Term Loan and Security Agreement, dated May 4, 2012, and as it was further amended and restated by that certain Second Amended and Restated Revolving Credit, First Out Term Loan and Security Agreement dated as of October 27, 2014 (as it may have been amended, restated, amended and restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "First Lien Credit Agreement"), pursuant to which, each of the Debtors granted



a valid, binding, perfected and enforceable first-priority lien on and security interest (the "Prepetition First Priority Liens") in the Collateral (as defined in Section 1.2 of the First Lien Credit Agreement, the "Prepetition Collateral") to the First Lien Secured Parties. Pursuant to the First Lien Credit Agreement and all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection with the First Lien Credit Agreement or related thereto, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated or replaced at any time prior to the Petition Date, are collectively referred to herein as the (collectively, the "First Lien Loan Documents"), the Debtors are jointly and severally indebted and liable to the First Lien Secured Parties for all Obligations (as defined in the First Lien Credit Agreement) (the "Prepetition Obligations") arising under the First Lien Loan Documents and (i) such Prepetition Obligations are legal, valid, binding and enforceable against the Debtors and (ii) constitute "allowed claims" within the meaning of section 502 of the Bankruptcy Code (collectively, the "First Lien Indebtedness"). The Debtors are in default under the First Lien Loan Documents.

2. As of the Petition Date, in accordance with the terms of the First Lien Loan Documents, the Debtors were each jointly and severally indebted and liable to the First Lien Secured Parties for all of the First Lien Indebtedness, comprised of (among other things) (i) the Revolving Advances (as defined in the First Lien Credit Agreement) made by the First Lien Lenders in the aggregate principal amount of not less than \$24,903,109.16 under the First Lien Credit Agreement, (ii) a Term Loan (as defined in the First Lien Credit Agreement) made by the First Lien Lenders in the aggregate principal amount of not less than \$25,661,039.35 under the First Lien Credit Agreement, and (iii) not less than \$65,000.00 in face amount of undrawn Letters of Credit (as defined in the First Lien Credit Agreement) issued by Issuer (as defined in the First Lien Credit Agreement) under the First Lien Credit Agreement, together with all accrued and unpaid interest, fees, expenses (including, without limitation, the reasonable and documented fees and expenses of the First Lien Secured Parties' attorneys, consultants, accountants, experts and financial advisors required to be reimbursed by the Debtors pursuant to the First Lien Credit Agreement, costs, other charges or amounts paid, incurred or accrued prior to the Petition Date (including any prepayment premium, as defined in the First Lien Loan Documents as of the date hereof), and other obligations incurred in connection therewith, in each case in accordance with the terms of the First Lien Loan Documents, plus all interest, fees, costs and other charges allowable under section 506(b) of the Bankruptcy Code. Each of the First Lien Loan Documents is valid, binding, and enforceable in accordance with its terms. The First Lien Indebtedness is secured by valid, binding, properly perfected, enforceable, non-avoidable, first-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral). There exists no basis upon which the Debtors can properly challenge or avoid the validity, enforceability, priority or perfection of the First Lien Indebtedness or the Prepetition First Priority Liens, and the Debtors shall not assert any claim, challenge or counterclaim in respect of the First Lien Indebtedness, the Prepetition First Priority Lien or the amounts paid or payable to the First Lien Secured Parties. No portion of the First Lien Indebtedness, the Prepetition First

Priority Liens, or any amounts paid or payable to the First Lien Secured Parties or applied to the obligations owing under the First Lien Loan Documents prior to the Petition Date is subject to avoidance, subordination (whether equitable, contractual or otherwise), recharacterization, recovery, attack, offset, counterclaim, cross-claims, disallowance, impairment, recoupment, defense, challenge, objection, reduction, disgorgement, or claim (as defined in section 101(5) of the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

3. All cash proceeds of the Prepetition Collateral and the Adequate Protection Collateral (as defined below), including all such cash proceeds of such Prepetition Collateral or Adequate Protection Collateral held at any time and from time to time in any of the Debtors' banking, checking or other deposit accounts with financial institutions (in each case, other than trust, escrow and custodial funds held as of the Petition Date in properly established trust, escrow and custodial accounts), are and will be Cash Collateral of the First Lien Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

4. The First Lien Secured Parties are entitled, under sections 105, 361, 362 and 363(e) of the Bankruptcy Code, to adequate protection of their interest in the Prepetition Collateral, including the Cash Collateral, for any Collateral Diminution (as defined herein).

E. The Subordinated Lender, Francis Drilling and FDF Resources are parties to a certain Loan Agreement dated as of May 4, 2012 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "Subordinated Loan Agreement"), pursuant to which, each of the Debtors granted a valid, binding, perfected and enforceable second-priority lien on and security interest in the Collateral (as defined in the Intercreditor Agreement) to the Subordinated Lender. Pursuant to the Subordinated Loan Agreement and all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection with the Subordinated Loan Agreement or related thereto, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated or replaced at any time prior to the Petition Date, are collectively referred to herein as the (collectively, the "Subordinated Loan Documents") together with the First Lien Loan Documents,

collectively, the “Prepetition Loan Documents”), the Debtors are jointly and severally indebted and liable to the Subordinated Lender for all Obligations (as defined in the Subordinated Loan Agreement) arising under the Subordinated Loan Documents and (i) such Obligations are legal, valid, binding and enforceable against the Debtors and (ii) constitute “allowed claims” within the meaning of section 502 of the Bankruptcy Code (the “Subordinated Indebtedness” together with the First Lien Indebtedness, collectively, the “Prepetition Indebtedness”). The Debtors are in default under the Subordinated Loan Documents.

F. Each of the Debtors and, subject to paragraph 24 of this ~~Second~~Third Interim Order, each of the Debtor’s estates, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns (collectively, the “Releasors”) hereby to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the First Lien Secured Parties, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest (collectively, the “First Lien Releasees”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, objections, challenges, counterclaims, setoff rights, rights to subordinate, recoupment, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof arising out

of, relating to or in connection with the Debtors or any of the First Lien Loan Documents, or the transactions contemplated under such First Lien Loan Documents, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under title 11 of the United States Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection or avoidability of the liens or the claims of the First Lien Secured Parties. The Debtors’ acknowledgements, stipulations and releases are binding on the Debtors and their respective representatives, successors and assigns and, subject to any action timely commenced by ~~the~~ the Committee ~~(as defined below)~~ or other party in interest before the end of the Challenge Period (as defined below), on each of the Debtors’ estates, all creditors thereof and each of their respective representatives, successors and assigns, including, without limitation, any trustee or other representative appointed in the Chapter 11 Cases, whether such trustee or representative is appointed in chapter 11 or chapter 7 of the Bankruptcy Code. The Debtors have requested entry of this Third Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (d). Absent granting the relief sought by this Third Interim Order, the Debtors’ estates could be immediately and irreparably harmed. The use of Cash Collateral in accordance with this Third Interim Order is therefore in the best interest of the Debtors’ estates, their creditors and other parties in interest.

G. Good cause has been shown for the entry of this ~~Second~~Third Interim Order. The Debtors have an immediate need to use the Cash Collateral to, among other things, fund the orderly continuation of their businesses, maintain the confidence of their customers and vendors, pay their operating expenses, and preserve their going concern value, consistent with the Budget. The terms for the Debtors’ use of Cash Collateral pursuant to this ~~Second~~Third Interim Order are fair and reasonable, reflect the Debtors’ exercise of prudent business judgment consistent with

their fiduciary duties, and constitute reasonably equivalent value and fair consideration. The terms for the Debtors' use of Cash Collateral pursuant to this ~~Second~~Third Interim Order have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtors and the First Lien Secured Parties and, pursuant to Bankruptcy Code sections 105, 361 and 363, the First Lien Secured Parties are hereby found to be entities that have acted in "good faith" in connection with the negotiation and entry of this ~~Second~~Third Interim Order, and each is entitled to the protection provided under Bankruptcy Code section 363(m).

H. The Debtors have requested entry of this ~~Second~~Third Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (d). Absent granting the relief sought by this ~~Second~~Third Interim Order, the Debtors' estates could be immediately and irreparably harmed. The use of Cash Collateral in accordance with this ~~Second~~Third Interim Order is therefore in the best interest of the Debtors' estates, their creditors and other parties in interest.

I. The Debtors desire to use the cash, rents, income, offspring, products, proceeds and profits that constitute Cash Collateral of the First Lien Agent and the other First Lien Secured Parties, under section 363(a) of the Bankruptcy Code.

J. The First Lien Agent, on behalf of the First Lien Secured Parties has consented to the Debtors' use of the Cash Collateral subject to the terms and conditions set forth herein and for the duration of this ~~Second~~Third Interim Order. The First Lien Secured Parties have advised the Court that such consent is binding upon the Subordinated Lender pursuant to the Intercreditor Agreement.

K. The adequate protection provided to the First Lien Secured Parties, as set forth more fully in paragraphs 7 and 8 of this ~~Second~~Third Interim Order, for any diminution in the value of the First Lien Secured Parties' interest in the Prepetition Collateral from and after the

Petition Date from the use, sale, or lease of the Prepetition Collateral, or the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Cash Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the First Lien Secured Parties from any diminution of their interests in the value of the Prepetition Collateral and (ii) obtain the foregoing consents and agreements.

L. The Debtors stipulate, and the Court finds, that in permitting the Debtors to use Cash Collateral or in taking any other actions permitted by this ~~Second~~Third Interim Order, none of the First Lien Secured Parties or the First Lien Agent shall (i) have liability to any third party or be deemed to be in control of the operation of any of the Debtors or to be acting as a "controlling person," "responsible person," or "owner" or "operator" with respect to the operation or management of any of the Debtors (as such term, or any similar terms, is used in the Internal Revenue Code, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any other federal or state statute) or (ii) owe any fiduciary duty to any of the Debtors, their creditors or their estates, or shall constitute or be deemed to constitute a joint venture or partnership with any of the Debtors.

M. Each of the First Lien Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to and effective upon entry of a Final Order, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to them with respect to proceeds, product, offspring or profits with respect to any of the Prepetition Collateral.

N. The ~~Second~~Third Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2). Notice of the requested relief sought at the ~~Second~~Third Interim Hearing was provided by the Debtors to: (i) the U.S. Trustee for the Southern District of Texas (the “U.S. Trustee”); (ii) the First Lien Agent and counsel thereto; (iii) the other Prepetition Secured Parties; and (iv) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis). Sufficient and adequate notice of the Motion and the hearing thereon was provided pursuant to Bankruptcy Rules 2002, 4001(b) and (d), and 9006, as required by sections 361 and 363 of the Bankruptcy Code and Local Bankruptcy Rule 4002-1, the Complex Case Rules, and section 102(1) of the Bankruptcy Code as required by sections 361 and 363 of the Bankruptcy Code. Except as provided herein with respect to notice of the Final Hearing and Final Order, no further notice of, or hearing on, the relief sought in the Motion is necessary or required. Prior to the Third Interim Hearing, the Committee timely filed a comprehensive Objection to the relief requested in the Motion (the “Committee Objection”) [Dkt. No. 111] and has objections to the relief sought in the Motion. All objections and arguments of the Committee asserted in the Committee Objection are expressly reserved and the Committee shall not be required to file any further objection in connection with the Debtors’ Motion and/or with regard to the final relief requested in the Motion in order to preserve such objections.

O. The Debtors have requested immediate entry of this ~~Second~~Third Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The permission granted herein to use Cash Collateral (and provide adequate protection therefor) is necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors. The Court concludes that entry of this ~~Second~~Third Interim Order is in the best interests of the Debtors’ estates and creditors as its

implementation will, among other things, allow the Debtors to preserve and maintain the value of their assets and businesses and enhance the Debtors' prospects for a successful reorganization.

Based upon the foregoing findings, stipulations, and conclusions, and upon the record made before the Court at the ~~Second~~Third Interim Hearing, and good and sufficient cause appearing therefor;

**NOW, THEREFORE, IT IS HEREBY ADJUDGED AND ORDERED:**

1. Motion. The Motion is granted, subject to the terms and conditions set forth in this ~~Second~~Third Interim Order. The Debtors shall not use any Cash Collateral except as expressly authorized and permitted herein or by subsequent order of the Court. Any objections to the Motion with respect to the entry of this ~~Second~~Third Interim Order that have not been withdrawn, waived, or resolved at the ~~Second~~Third Interim Hearing, and (except as set forth herein) all reservations of rights included therein, are hereby denied and overruled. Notwithstanding the foregoing, the objections set forth in the Committee Objection as to the final relief requested in the Motion and with regard to entry of the Final Order are expressly reserved.

2. Use of Cash Collateral. Subject to the terms and conditions of this ~~Second~~Third Interim Order, the Debtors are hereby authorized to use Cash Collateral during the period beginning on the Petition Date and ending on the Termination Date (as defined below) (such period, the "Budget Period"), for the disbursements of the type set forth in the 13-week cash disbursements and receipts budget attached as **Exhibit A** hereto (the "~~Second~~Third Interim Budget" and, as such budget may be modified from time to time by the Debtors in the form of the Proposed Budget (defined below) with the prior written consent of the First Lien Agent, the "Budget"), subject in each case to any Non-Conforming Use permitted herein (as such term is defined below). The Debtors shall provide the Committee with notice and a copy of any Proposed



Budget three (3) days in advance of the effectiveness of such Proposed Budget (“Budget Notice Period”). After the expiration of the Budget Notice Period, and with the prior written consent of the First Lien Agent, the Proposed Budget shall become the Budget. If the Committee objects to a Proposed Budget during the Budget Notice Period, Debtors may seek emergency relief from the Court for approval of a Proposed Budget to which First Lien Agent has consented.

3. Liquidity Compliance. The Debtors shall be deemed to be in compliance with the Budget to the extent a Non-Permitted Variance (as defined below) does not arise during any Four Week Period, unless offset by a Positive Variance (as defined below). For purposes of this ~~Second~~Third Interim Order, “Four Week Period” shall be defined as the first four weeks of any Budget Period, as updated from time to time with Proposed Budgets, as defined in paragraph 8(~~ea~~)(v), approved by the First Lien Agent. In the absence of an approved Proposed Budget replacing an existing approved Budget, the Four Week Period shall constitute the subsequent four weeks in the Budget Period following the previous Four Week Period in the same Budget Period. All Positive Variances for Total Receipts (designated in the Budget as “Total Receipts”) or Total Operating Disbursements (designated in the Budget as “Total Operating Disbursements”, which, for the avoidance of doubt, shall include all disbursements, excluding only professional fees and other restructuring-related expenses incurred), respectively, from any previous Four Week Period will be carried forward and may be applied to any Non Permitted Variances arising during a subsequent Four Week Period for the corresponding category of Total Receipts or Total Operating Disbursements, respectively. For purposes of this ~~Second~~Third Interim Order, a “Positive Variance” shall mean the cumulative amount from the Petition Date through any date of determination by which (a) the Total Receipts exceeds 100% of the budgeted amount, or (b) Total Operating Disbursements are less than 100% of the budgeted amount, reduced in each case by the

cumulative amount (from the Petition Date through such date of determination) of the Positive Variance that has been applied to offset the Non-Permitted Variance (as defined herein) in the preceding Four Week Periods. For purposes of this ~~Second~~Third Interim Order, a “Non-Permitted Variance” shall mean, for any Four Week Period set forth in the Budget, the amount of Total Receipts that are less than 90% of the budgeted amount thereof, or the amount of Total Operating Disbursements that exceed 110% of the budgeted amount thereof; provided, however, that, for the purposes of determining whether a Non-Permitted Variance has occurred, (i) Total Receipts may be increased by the amount of any Positive Variance for Total Receipts, and (ii) Total Operating Disbursements may be decreased by the amount of any Positive Variance for Total Operating Disbursements, in each case, that have not previously been applied in such a manner. Non Permitted Variances will be determined at the conclusion of each Four Week Period during the Budget Period. A “Non-Permitted Variance Event” shall occur if, at the end of any Four Week Period, a Non Permitted Variance has occurred. For the avoidance of doubt, Total Receipts and Total Operating Disbursements will be considered mutually exclusive for purposes of calculating the Non Permitted Variance and will not be considered on a net basis.

4. Non-Conforming Use of Cash Collateral. The First Lien Agent may, in its sole discretion, agree in writing to the use of the Cash Collateral in a manner or amount which does not conform to the manner or amount, as applicable, set forth in the Budget (each such approved non-conforming use of Cash Collateral, a “Non-Conforming Use”).~~—If such written consent is given~~ The Debtors shall provide (a) prior written notice of any Non-Conforming Use to counsel for the Committee, and (b) substantially contemporaneous notice of any Non-Conforming Use to the United States Trustee. If the Debtor obtains the written consent of First Lien Agent, and the Committee does not object, the Debtors shall be authorized pursuant to this ~~Second~~Third Interim

Order to use Cash Collateral for any such Non-Conforming Use without further Court approval, and the First Lien Secured Parties shall be entitled to all of the protections specified in this ~~Second~~Third Interim Order for any such Non-Conforming Use. ~~The Debtors shall provide substantially contemporaneous notice of any Non-Conforming Use to (a) counsel for any Committee, and (b) the United States Trustee.~~ If the Committee objects to a Non-Conforming Use to which First Lien Agent has consented, the Debtor may seek emergency relief from the Court to use Cash Collateral for any such Non-Conforming Use.

5. Entitlement to Adequate Protection. The First Lien Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Cash Collateral, solely to the extent of the aggregate postpetition diminution in value of such First Lien Secured Party's interest in the Prepetition Collateral and Cash Collateral, including, without limitation, any diminution in value resulting from (i) the sale, lease or use by the Debtors of the Prepetition Collateral and Cash Collateral, (ii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, or (iii) the subordination of the First Lien Secured Parties' interests in the Prepetition Collateral to the Carve Out ("Collateral Diminution"). The Court finds that the First Lien Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral (including the Cash Collateral), for Collateral Diminution (the "Adequate Protection Obligations").

6. Carve Out. As used in this ~~Second~~Third Interim Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate, during the period covered by this ~~Second~~Third Interim Order; (ii) all reasonable fees and

expenses up to \$30,000 incurred by a trustee under section 726(b) of the Bankruptcy Code ~~during the period covered by this Second Interim Order, and (iii) subject to and;~~ (iii) effective immediately upon ~~entry~~approval of a ~~Final~~this Third Interim Order ~~acceptable to Agent, for, an amount not to exceed the lesser of (A) the aggregate of the weekly amounts budgeted to be funded for any particular person or firm retained by the Debtors (any such persons or firms, collectively, the “Debtors’ Professionals”) in accordance with the Budget from the Petition Date through November 13, 2018, and (B) the actual allowed amount of such professional fees incurred by any such Debtors’ Professionals on or after the Petition Date though the earlier of (I) November 13, 2018 and (II) the period prior to the first business day following delivery of a notice (the “Carve Out Notice”) by the First Lien Agent (via electronic mail, overnight delivery or hand delivery) to the Debtors, counsel to the Debtors (Jason L. Boland and William R. Greendyke, Norton Rose Fulbright US LLP), the United States Trustee, and counsel to the Committee, ~~if any,~~ (Shari Heyen and David Kurzweil, Greenberg Traurig, LLP) (the “Trigger Date”) which notice may be delivered at any time following the occurrence of the Termination Date stating that the Termination Date has occurred, ~~not to exceed the lesser of (A) the aggregate of the weekly amounts budgeted to be funded for persons or firms retained by the Debtors or the Committee, if any, appointed in these Cases pursuant to sections 327, 328, 330, 331 or 363 of the Bankruptcy Code (any such persons or firms, collectively, the “Professionals”) in accordance with the Budget for the time period preceding the Trigger Date (to the extent the Trigger Date occurs mid-week, pro-rated for such week, and (B) the actual allowed amount of such professional fees incurred on or after the Petition Date though and including the Trigger Date,~~ whether such fees are allowed by the Court on an interim or final basis prior to or after the Trigger Date; and (iv) the allowed fees and expenses (whether allowed by interim order, procedural order, or otherwise) of the Debtors’ Professionals in~~

an aggregate amount not to exceed \$50,000 (the “Post Carve Out Notice Cap”) incurred after the first business day following the Trigger Date; provided that (x) the Carve Out shall not be available to pay the fees or expenses of ~~any Professional~~Debtors’ Professionals incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the First Lien Secured Parties; and (y) no Debtor Professionals may ~~not~~ be paid in excess of the amounts set forth in the Budget on an aggregate basis prior to the Trigger Date; *provided further*, that the Carve Out shall not include any bonus, transaction fees, success fees, completion fees, substantial contribution fees, or any other fees of similar import of any of the ~~foregoing Professionals~~Debtors’ Professionals except that Debtors’ retained investment banker (SSG Advisors, LLC (“SSG”)) shall be entitled to be paid the applicable transaction fee as provided in this Court’s Order approving SSG’s retention and solely from the proceeds of such transaction; and *provided further*, that for ~~any~~Debtors’ Professionals that have or are maintaining any type of retainer, such ~~Professionals~~professionals shall apply such retainer to any accrued and unpaid allowed fees and expenses before having recourse to the Carve Out or Post Carve Out Notice Cap. Nothing in this ~~Second~~Third Interim Order shall be construed to impair the ability of any party to object to any fees, expenses, reimbursements or compensation sought by any ~~Professional. Nothing in this Second~~Debtors’ Professional or other estate professional, or the retention of any such professionals whose application for employment has not been approved by the Court as of the date of entry of this Third Interim Order. Nothing in this Third Interim Order shall be construed to impair or limit the ability of the debtors, the Debtors’ Professionals, and the First Lien Secured Parties to agree to additional budgeted amounts for Debtors’ Professionals.

7. Adequate Protection for the First Lien Agent and First Lien Secured Parties. As adequate protection, the First Lien Agent and the other First Lien Secured Parties are hereby

granted the following claims, liens, rights, and benefits (the “First Lien Adequate Protection Obligations”):

(a) Section 507(b) Claim. Subject and subordinate only to the Carve Out, the First Lien Agent, for itself and on behalf of the other First Lien Secured Parties are hereby granted allowed joint and several superpriority administrative claims against the Debtors as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against the Debtors, now existing or hereafter arising in the Chapter 11 Cases, including all claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to the Final Order), 507(a), 507(b), 726, 1113 or 1114, and shall at all times be senior to the rights of the Debtors, and any successor trustee or any creditor, in the Chapter 11 Cases or any subsequent proceedings, including, without limitation, any chapter 7 proceeding, under the Bankruptcy Code (the “First Lien 507(b) Claim”), which administrative claim shall have recourse to and be payable from all prepetition and postpetition property of the Debtors. For the avoidance of doubt, the First Lien 507(b) Claims arising or incurred during or related to the Interim Period shall have recourse to proceeds of Avoidance Actions (defined below).

(b) First Lien Adequate Protection Liens. Subject and subordinate only to the Carve Out, and effective as of the Petition Date, solely to the extent of the First Lien Adequate Protection Obligations, and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the First Lien Agent of any Adequate Protection Collateral (as defined below), the First Lien Agent for the benefit of the First Lien Secured Parties is hereby granted valid, binding, continuing, enforceable, fully-perfected, non-avoidable first priority liens and/or replacement liens on, and security interest in, all of the Prepetition Collateral, to the same extent that such liens and security interests existed pre-petition and subject to any valid, perfected, non-avoidable senior liens existing as of the Petition Date, and all other of the Debtors’ now owned and hereafter arising or acquired real and personal property, assets and rights of any kind or nature, wherever located, including, without limitation, all property of the Debtors’ estates, and the proceeds, products, offspring, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, all accounts into which the proceeds of any property of the Debtors’ estates may be deposited, accounts receivable, other rights to payment, cash, inventory, general intangibles, contracts, servicing rights, servicing receivables, securities, chattel paper, owned real estate and real property leaseholds and proceeds thereof (provided, however, that as to a lien on all fee, leasehold, and other real property interests and the proceeds thereof: (i) with respect to non-residential real property leases, no liens or encumbrances shall be granted or extended to such leases under this SecondThird Interim Order, except as permitted by the applicable lease or pursuant to applicable law, but if any such restriction applies, liens shall then be deemed to

extend only to the economic value of proceeds of any sale or other disposition of, and any other proceeds or products of, such leasehold interests; and (ii) should any First Lien Lender's internal regulatory or compliance requirements require the completion of either or both flood due diligence and obtaining evidence of applicable flood insurance with respect to any real property or leasehold interest, then until completion of such flood due diligence, the First Lien Agent shall be deemed to have obtained a lien only on the economic value of, proceeds of sale, or other disposition of such real property interests), fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, claims and causes of action (including those arising under the Bankruptcy Code) and all proceeds, products, offspring, rents and profits of the foregoing, ~~provided, however, as to Avoidance Actions<sup>4</sup> such lien shall attach only to the proceeds and property recovered from such Avoidance Actions~~ (the "Adequate Protection Collateral," and the liens and security interests therein, the "First Lien Adequate Protection Liens"). Subject and subordinate only to the Carve Out, the First Lien Adequate Protection Liens (x) solely for the period between November 1, 2018 and November 13, 2018, shall not extend to recoveries or proceeds of Avoidance Actions<sup>4</sup> (without in any way impacting First Lien Secured Parties' previously granted liens on the proceeds of Avoidance Actions relating to the periods covered by the First Interim Order (defined below) and the Second Interim Order (defined below), and (y) shall not be (i) subject or subordinate to any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise.

(c) ~~Payments: Subject to and effective upon entry of a Final Order, the Debtors are authorized and directed to pay to the First Lien Agent for the ratable benefit of the First Lien Secured Parties, adequate protection payments on the last business day of each calendar month after the entry of this Second Interim Order, in each case, in an amount equal to all accrued and unpaid postpetition interest on account of First Lien Indebtedness (including default interest), fees and costs due and payable under the First Lien Credit Agreement (including, without limitation, interest on loans, breakage costs and fees that become due and payable to the First Lien Secured Parties), such payments to be calculated in accordance with the terms of the First Lien Credit Agreement as may be applicable from time to time. If it is subsequently determined that such interests, costs, fees, expenses, or disbursements were not payable under section 506 of the Bankruptcy Code, such amounts will be instead be deemed recharacterized as repayments of principal in reduction of the applicable Prepetition Indebtedness.~~ Reserved.

(d) ~~Fees and Expenses: Subject to and effective upon entry of a Final Order, the Debtors are authorized and directed to pay indefeasibly (subject to paragraph~~

<sup>4</sup> ~~“Avoidance Actions” shall mean the estates’ claims and causes of action (but not on the actual claims and causes of action) arising under sections 544, 547, 548, and 550 of the Bankruptcy Code or any other state or federal law.~~

<sup>4</sup> “Avoidance Actions” shall mean the estates’ claims and causes of action (but not on the actual claims and causes of action) arising under sections 544, 547, 548, and 550 of the Bankruptcy Code or any other state or federal law.



~~24) in cash, on the terms set forth in this paragraph, the reasonable and documented fees, expenses and disbursements, including, but not limited to, contractual agency fees and the reasonable fees, disbursements, and other charges of counsel and financial consultants and advisors arising prior to, on or subsequent to the Petition Date, without duplication and in connection with these Chapter 11 Cases, of the First Lien Agent and First Lien Lenders under the First Lien Credit Agreement including, without limitation, the fees and expenses of Blank Rome LLP and Holland & Knight LLP, regardless of whether such amounts are in the Budget. Within two (2) business days of the later to occur of delivery of a summary redacted invoice or the entry of this Second Interim Order, the Debtors shall pay in cash all invoiced reasonable and documented out-of-pocket fees, expenses, and disbursements set forth in this paragraph that have accrued as of the Petition Date. The payment of the fees, expenses and disbursements set forth in this paragraph accruing on and after the Petition Date shall be made within ten (10) business days after the receipt by the Debtors, the Committee (if appointed), and the U.S. Trustee (the "Review Period") of summary redacted invoices thereof (the "Invoiced Fees") (subject in all respects to applicable privilege or work product doctrines) and without the necessity of filing formal fee applications, provided no objection has been raised within the Review Period, and to the extent there is an objection, the Court may resolve the objection. If it is subsequently determined that such interests, costs, fees, expenses, or disbursements were not payable under section 506 of the Bankruptcy Code, such amounts will be instead be deemed recharacterized as repayments of principal in reduction of the applicable Prepetition Indebtedness.~~Reserved.

8. Additional First Lien Adequate Protection. As additional adequate protection:

(a) Reporting: The Debtors shall comply with the Budget (and its reporting requirements) and all reporting requirements set forth in the First Lien Credit Agreement (including timely provision of Borrowing Base Certificates and other reports as required under Section IX thereof), all of which reports shall be provided to the First Lien Agent and the Committee. In addition, the Debtors shall provide the following additional reporting to the First Lien Agent and the Committee:

- (i) Weekly (or more or less frequently as may be agreed to between the Debtors and the First Lien Agent) calls with the First Lien Agent and its advisors;
- (ii) Within two (2) business days of receipt, copies of any proposals, term sheets or any other indications of interest received by the Debtors for the purchase of any assets of the Debtors;
- (iii) Each update of the Debtors' business plan promptly following their presentation to the Debtors' board of directors;
- (iv) Presentations by the Debtors and/or their advisors to the First Lien Secured Parties at times and places as the First Lien Agent may



reasonably request in writing (including via electronic mail) with reasonable prior notice;

- (v) (A) On or before the twentieth (20th) day of each calendar month, an updated rolling 13-week cash flow forecast of the Debtors and their subsidiaries substantially in the form of the Budget (each, a “Proposed Budget”), which Proposed Budget, upon written approval by the First Lien Agent, shall become the Budget effective as of the first day of the following month, and (B) on or before each Wednesday of each calendar week, (1) a weekly report of receipts, disbursements and a reconciliation of actual expenditures and disbursements with those set forth in the Budget for the prior week, on a line by line basis showing any variance to the proposed corresponding line item of the Budget, which report and reconciliation shall be in form and substance reasonably satisfactory to the First Lien Agent, (2) a statement setting forth in reasonable detail the cash balance for each deposit account, securities account, and commodity account of the Debtors and their subsidiaries as of the previous Friday, (3) an accounts payable aging and an accounts receivable aging through the Friday of the prior week, and (4) an updated report of authorized expenditures versus actual expenditures through the Friday of the prior week.
- (vi) Additional detail with respect to the Budget as requested by the First Lien Agent consistent with the detail provided to the First Lien Secured Parties prior to the Petition Date;
- (vii) Promptly, and in any event no later than the thirtieth (30th) day of each month, beginning with the year to date period ended December 31, 2017, a monthly and year-to-date income statement, balance sheet and monthly and year-to-date detail of capital expenditures;
- (viii) Promptly provide copies of all written reports provided by the Debtors to anythe Committee, the U.S. Trustee, or any other party in interest in the Chapter 11 Cases;
- (ix) Promptly, and in any event no later than weekly, provide any term sheet, proposal, and/or bid concerning the sale of all or any portion of a Debtor’s assets;
- (x) Such other reports and information as the First Lien Agent may reasonably request; and
- (xi) Provide weekly Borrowing Base Certificates in accordance with Section 9.2 of the First Lien Credit Agreement.

(b) In addition to, and without limiting, whatever rights to access the First Lien Agent and First Lien Secured Parties have under the First Lien Credit Agreement (including the rights set forth in Section 4.6 of the First Lien Credit Agreement (including, without limitation, to conduct appraisals and field exams at the expense of the Debtors in accordance with the First Lien Credit Agreement)), upon reasonable prior written notice, at reasonable times during normal business hours, and otherwise not to be unreasonably withheld, the Debtors shall permit representatives, advisors, agents, and employees of the First Lien Agent (1) to have access to and inspect the Debtors' properties, (2) to examine the Debtors' books and records, and (3) discuss the Debtors' affairs, finances, and condition with the Debtors' officers, management, financial advisors and counsel.

(c) Debtors shall provide to First Lien Agent and the Committee no less than five (5) business days' prior notice of any motion or other papers it proposes to file with the Bankruptcy Court (including drafts of such motion or other papers) related to any proposed payments made by Debtors to third-parties, any proposed sale of Debtors' assets and the process related thereto, and any other motions or papers that may affect the First Lien Secured Parties' liens, claims, and rights under this ~~Second~~Third Interim Order, the Final Order, the First Lien Indebtedness, and any of the First Lien Loan Documents.

9. Adequate Protection for the Subordinated Lender. Subject to the terms of the Intercreditor Agreement, and to the extent legally required under applicable law, as adequate protection, the Subordinated Lender are hereby granted, solely to the extent of any postpetition diminution in value of the Subordinated Lender's interest in the Collateral (as defined in the Intercreditor Agreement), if it is determined that the Subordinated Lender had any interest in the Collateral as of the Petition Date, the following liens, rights, and benefits (the "Second Lien Adequate Protection Obligations"), and together with the First Lien Adequate Protection Obligations, the "Adequate Protection Obligations"):

(a) Second Lien Adequate Protection Liens. Subject and subordinate only to the Carve Out, the Prepetition First Priority Liens, and the First Lien Adequate Protection Liens, and effective as of the Petition Date, solely to the extent of the any postpetition diminution in value of the Subordinated Lender's interest in the Collateral (as defined in the Intercreditor Agreement), if it is determined that the Subordinated Lender had any interest in the Collateral as of the Petition Date under Section 506 of the Bankruptcy Code, and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the Subordinated Lender of any Adequate Protection Collateral, the Subordinated Lender is hereby granted valid, binding, continuing, enforceable, fully-perfected,

non-avoidable second priority liens and/or replacement liens on, and security interest in, all of the Adequate Protection Collateral (the “Second Lien Adequate Protection Liens”, and together with the First Lien Adequate Protection Liens, the “Adequate Protection Liens”). Notwithstanding the foregoing, the Second Adequate Protection Liens shall not extend to proceeds or recoveries of Avoidance Actions.

10. Reserved.

11. Intercreditor Agreement. For the avoidance of doubt, the priorities and rights of the First Lien Adequate Protection Obligations, the First Lien Adequate Protection Liens, the Second Lien Adequate Protection Obligations, and the Second Lien Adequate Protection Liens shall be governed by the terms of the Intercreditor Agreement. Nothing in this ~~Second~~Third Interim Order shall amend or otherwise modify the terms and enforceability of the Intercreditor Agreement. The rights of the Prepetition Secured Parties shall at all times remain subject to the Intercreditor Agreement.

12. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Prepetition Collateral outside of the ordinary course of business without the prior written consent of the First Lien Agent.

13. Termination. The Debtors’ right to use the Cash Collateral pursuant to this ~~Second~~Third Interim Order shall terminate (the date of any such termination, the “Termination Date”) without further notice or court proceeding on the earliest to occur of (i) November ~~4~~13, 2018, if the Final Order has not been entered by the Court on or before such date; (ii) if the Final Order is timely entered, January 31, 2019, (iii) the effective date of a plan of reorganization; (iv) the closing date of any sale of substantially all of the Debtors’ assets; *provided that*, with the consent of the Debtors and the First Lien Agent, in the exercise of their respective sole discretion, the Termination Date may be extended without further Court approval upon the filing of a notice on the docket of the Cases setting forth the new Termination Date; and (v) the occurrence of any of

the events set forth in any of clauses (a) through (t) below (the events set forth in clauses (a) through (t) below are collectively referred to herein as the “Termination Events”):

(a) ~~Failure of the Debtors to make any payment under this Second Interim Order to the First Lien Agent or First Lien Secured Parties when due;~~[\[RESERVED\]](#);

(b) The failure by the Debtors to deliver to the First Lien Agent any of the [material](#) documents or other [material](#) information required to be delivered pursuant to this ~~Second~~[Third](#) Interim Order when due or any such documents or other information shall contain a material misrepresentation;

(c) The failure by the Debtors to observe or perform any of the material terms or material provisions contained herein;

(d) The Debtors shall grant, create, incur or suffer to exist any postpetition liens or security interests other than: (i) those granted pursuant to this ~~Second~~[Third](#) Interim Order; (ii) carriers’, mechanics’, operator’s, warehousemen’s, repairmen’s or other similar liens arising in the ordinary course of business for amounts outstanding as of the Petition Date, even if recorded after the Petition Date; (iii) pledges or deposits in connection with workers’ compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the payment of any postpetition statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business; and (v) any other liens or security interests that the Debtors are permitted to incur under the First Lien Loan Documents except with respect to Indebtedness for borrowed money;

(e) The Debtors’ failure to comply with their obligations set forth in paragraph 3 of this ~~Second~~[Third](#) Interim Order;

(f) An order shall be entered reversing, adversely amending, adversely supplementing, staying, vacating or otherwise adversely modifying any material provision of this ~~Second~~[Third](#) Interim Order without the written consent of the First Lien Agent;

(g) There shall be a breach by any Debtor of any material provisions of the ~~Second~~[Third](#) Interim Order, or the ~~Second~~[Third](#) Interim Order shall cease to be in full force and effect or shall have been reversed, modified, amended, stayed, vacated or subject to stay pending appeal, in the case of any modification or amendment (other than the entry of a Final Order);

(h) The Debtors shall create, incur or suffer any other claim which is *pari passu* with or senior to the First Lien Adequate Protection Claims;

(i) The Court shall have entered an order dismissing any of the Chapter 11 Cases;

(j) The filing of a chapter 11 plan that does not provide for the indefeasible payment in full in cash of all amounts due and owing under the First Lien Credit Agreement (unless a chapter 11 plan is filed that provides for alternate treatment with the written consent of the First Lien Agent) on the Effective Date;

(k) The Court shall have entered an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code;

(l) The Court shall have entered an order authorizing the appointment or election of a trustee or examiner with expanded powers or any other representative with expanded powers relating to the operation of the businesses in the Chapter 11 Cases;

(m) The Court shall have entered an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code to any entity other than the First Lien Agent or any of the First Lien Secured Parties with respect to any Prepetition Collateral or Cash Collateral without the written consent of the First Lien Agent, which consent may be withheld in its sole discretion;

(n) A filing by any Debtor of any motion, pleading, application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the First Lien Indebtedness or asserting any other cause of action against and/or with respect to the First Lien Indebtedness, the Prepetition Collateral, or the First Lien Agent, any of the First Lien Secured Parties (or if the Debtors support any such motion, pleading, application or adversary proceeding commenced by any third party);

(o) A filing of a motion for bidding procedures or a motion for the sale of any or all of a Debtor's assets, which motion and order approving such motion are not in form and substance acceptable to First Lien Agent in its sole discretion;

(p) The Debtors shall use Cash Collateral in any manner inconsistent with the Budget and the other terms of this ~~Second~~Third Interim Order, including, without limitation, paragraphs 2 and 4 hereof; or

(q) The sale or transfer of any assets of any Debtor, or the filing of a motion by any of the Debtors seeking approval of the sale or transfer, of any Prepetition Collateral or First Lien Adequate Protection Collateral, outside of the ordinary course of business without the prior consent and approval of the First Lien Agent;

(r) Impairment or failure to preserve the First Lien Secured Parties' First Lien Indebtedness, First Lien Adequate Protection Obligations, and/or their rights to credit bid the First Lien Indebtedness and/or Adequate Protection Obligations; and

(s) Subject to the rights preserved under Paragraph 24, the Court shall have entered an order avoiding, disallowing, subordinating or recharacterizing any claim, lien, or interest held by any First Lien Secured Party arising under the First Lien Credit Agreement, unless (i) the Debtors have sought a stay of such order within five (5) business

days after the date of such issuance, and such order is stayed, reversed or vacated within ten (10) business days after the date of such issuance or (ii) the First Lien Agent has consented to such order in writing.

(t) The Debtors shall have failed to meet any of the following milestones by the applicable deadline, which deadlines may be extended by mutual written agreement between the Debtors and First Lien Agent (on behalf of the First Lien Lenders):

- (i) File a motion under Bankruptcy Code section 363 to approve bidding procedures for the sale of all or substantially all of Debtors assets ("363 Asset Sale") on or before November ~~4~~, 13, 2018;
- (ii) Entry of an order approving bidding procedures ("Bidding Procedures") for the 363 Asset Sale, in form and substance acceptable to Agent, on or before November ~~15~~, 29, 2018;
- (iii) Hold an auction for the 363 Asset Sale, subject to the receipt of higher or better bids (the "Approved 363 Asset Sale"), in accordance with the Bidding Procedures (the "Auction") on or before January 16, 2019;
- (iv) Within two (2) calendar days from the conclusion of the Auction, Debtors' shall obtain an order approving the 363 Asset Sale ("Approved 363 Asset Sale Order"), which provides that the net sale proceeds shall be ~~applied~~ paid to the First Lien ~~Indebtedness~~ Agent for the benefit of the First Lien Lenders, subject to the rights preserved under Paragraph 24; and
- (v) Closing of the Approved 363 Asset Sale on or before January 31, 2019.

14. Remedies upon the Termination Date. Upon the occurrence and during the continuance of a Termination Event (unless such occurrence and continuance is waived by First Lien Agent in ~~its~~ its sole discretion), and upon three (3) days written notice of such Termination Event (the "Default Notice Period") to Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, ~~if any~~, (a) the Debtors shall immediately cease using Cash Collateral, (b) the Adequate Protection Obligations, if any, shall become due and payable, and (c) subject to ~~and effective upon the entry of a Final Order~~ the next sentence below, the First Lien Agent and each First Lien Secured Party may exercise the rights and remedies available under the

First Lien Loan Documents, the Intercreditor Agreement, this ~~Second~~Third Interim Order, or applicable law, as applicable, including, without limitation, foreclosing upon and selling all or a portion of the Prepetition Collateral or Adequate Protection Collateral in order to collect and satisfy the Adequate Protection Obligations, and First Lien Indebtedness, in accordance with this ~~Second~~Third Interim Order and the Intercreditor Agreement. The automatic stay under section 362 of the Bankruptcy Code is hereby deemed modified and vacated to the extent necessary to permit such actions; provided that during the Default Notice Period, unless the Court orders otherwise, the automatic stay under section 362 of the Bankruptcy Code (to the extent applicable) shall remain in effect; *provided further*, that on request of a party in interest at the time First Lien Agent seeks to exercise remedies, the Court shall determine the extent of the Adequate Protection Obligations; provided further, during the Default Notice Period (x) the Debtors shall have the opportunity to cure the events set forth in ~~clauses (a) and~~clause (b) of Paragraph 13 above, and (y) consistent with the Court's statements at the October 15, 2018 hearing, the Debtors or any party in interest shall be permitted to seek relief from the Court on an emergency basis in a contested matter and the Court may consider at that time whether any alternative relief is appropriate under the facts and circumstances of the case. Any delay or failure of the First Lien Agent or First Lien Secured Parties to exercise rights under the First Lien Loan Documents or this ~~Second~~Third Interim Order shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable document. Subject and subordinate only to the Carve Out and as otherwise set forth herein, the First Lien Agent shall be entitled to apply the payments or proceeds of the Prepetition Collateral and the Adequate Protection Collateral in accordance with the provisions of the First Lien Loan Documents and the Intercreditor Agreement, as applicable.



Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits and protections provided to the First Lien Agent and the First Lien Secured Parties under this ~~Second~~Third Interim Order shall survive the Termination Date.

15. Limitation on Charging Expenses Against Collateral. ~~Subject to and effective upon entry of the Final Order, all~~All rights to surcharge any Prepetition Collateral or Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived; from the Petition Date through and including November 13, 2018, and such waiver shall be binding upon the Debtors and all parties in interest in the Cases; provided that Debtors may use Cash Collateral if there is a Termination Event prior to expiration of this Third Interim Order solely for any accrued and unpaid wages and related payroll taxes for which Debtors are liable under applicable law, to the extent actually incurred by Debtors during the period covered by this Third Interim Order that are set forth in the Budget and the payment of the Debtors' Professionals to the extent provided by the Carve Out under clauses (iii) and (iv) of Paragraph 6 above. Neither the First Lien Agents' nor the First Lien Secured Parties' consent to the Budget nor anything else herein shall be deemed or construed as agreement by the First Lien Agent or the First Lien Secured Parties to be surcharged under section 506(c) or any other provision of the Bankruptcy Code or equitable doctrine.

16. ~~Payments Free and Clear. Any and all payments or proceeds remitted to the First Lien Agent on behalf of the First Lien Secured Parties pursuant to the provisions of this Second Interim Order or any subsequent order of the Court shall be irrevocable (subject to paragraph 24 of this Second Interim Order), received free and clear of any claim, charge, assessment or other liability, including without limitation, subject to entry of the Final Order, any such claim or charge~~



~~arising out of or based on, directly or indirectly, sections 506(e) (whether asserted or assessed by, through or on behalf of the Debtors) or 552(b) of the Bankruptcy Code.~~ [\[Reserved\]](#).

17. Bankruptcy Code Section 552(b). The First Lien Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to and effective upon entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the First Lien Secured Parties with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the Adequate Protection Collateral.

18. Reserved.

19. Reservation of Rights of the First Lien Secured Parties. Notwithstanding any other provision hereof, the grant of adequate protection to the First Lien Secured Parties pursuant hereto is without prejudice to the rights of the First Lien Parties to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection with respect to any postpetition Diminution in value of the First Lien Secured Parties’ interest in any Prepetition Collateral from and after the Petition Date, and without prejudice to the right of the Debtors or any other party in interest to contest any such modification. Nothing herein shall be deemed to waive, modify, or otherwise impair the respective rights of the First Lien Secured Parties under the First Lien Loan Documents, and the Intercreditor Agreement, or under equity or law, and the First Lien Secured Parties expressly reserve all of their respective rights and remedies whether now existing or hereafter arising under the First Lien Loan Documents, respectively, and/or equity or law in connection with all Defaults and Events of Default (as defined in the First Lien Loan Documents, respectively, and whether arising prior to or after the Petition Date).

20. Reserved.

21. Modification of Automatic Stay. The Debtors are authorized and directed to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this ~~Second~~Third Interim Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the Debtors and each of the First Lien Secured Parties to accomplish the transactions contemplated by this ~~Second~~Third Interim Order.

22. Perfection of Adequate Protection Liens.

(a) The Prepetition Secured Parties are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not any Prepetition Secured Party, in its sole discretion, chooses to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of this ~~Second~~Third Interim Order. If a Prepetition Secured Party determines to file or execute any financing statements, agreements, notice of liens or similar instruments, the Debtors will cooperate and assist in any such execution and/or filings as reasonably requested by such Prepetition Secured Party and the automatic stay shall be modified to allow such filings.

(b) A certified copy of this ~~Second~~Third Interim Order may, in the discretion of the First Lien Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this ~~Second~~Third Interim Order for filing and recording; provided that, notwithstanding the date of any such filing, the date of such perfection shall be the date of entry of this ~~Second~~Third Interim Order.

(c) For the avoidance of doubt and notwithstanding what is set forth in paragraph 22(a), without the necessity of the filing of financing statements, security agreements, federal or state notices, pledge agreements, recordings, mortgages or other documents or taking possession or control of any Collateral, this ~~Second~~Third Interim Order shall be sufficient evidence of the Prepetition Secured Parties' perfected security interests and liens granted in the Collateral pursuant to this ~~Second~~Third Interim Order. Furthermore, notwithstanding the foregoing, the Debtors are authorized and directed to execute such documents including, without limitation, mortgages, pledges and Uniform Commercial Code financing statements and to use Cash Collateral to pay such costs and

expenses as may be reasonably requested by the Prepetition Secured Parties to provide further evidence of the perfection of the Prepetition Secured Parties' security interests and liens in the Collateral as provided for herein. All such documents shall be deemed to have been recorded and filed as of the Petition Date.

23. Preservation of Rights Granted Under this ~~Second~~Third Interim Order.

(a) Notwithstanding any order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise entered at any time (x) the First Lien 507(b) Claims, the other administrative claims granted pursuant to this ~~Second~~Third Interim Order and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this ~~Second~~Third Interim Order until all Adequate Protection Obligations shall have been paid and satisfied in full in cash (and such First Lien 507(b) Claims, the other administrative claims granted pursuant to this ~~Second~~Third Interim Order and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(b) If any or all of the provisions of this ~~Second~~Third Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect: (i) the validity, priority or enforceability of any Adequate Protection Obligations incurred prior to the actual receipt of written notice by the Prepetition Secured Parties, of the effective date of such reversal, stay, modification or vacatur; or (ii) the validity, priority or enforceability of the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of the Cash Collateral or any Adequate Protection Obligations incurred by the Debtors hereunder, as the case may be, prior to the actual receipt of written notice by the Prepetition Secured Parties of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this ~~Second~~Third Interim Order, and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted herein and to the protections afforded in section 363(m) of the Bankruptcy Code with respect to all uses of the Cash Collateral and all Adequate Protection Obligations.

(c) Subject to paragraph 24 of this ~~Second~~Third Interim Order, the adequate protection payments made pursuant to this ~~Second~~Third Interim Order shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in the Chapter 11 Cases or any subsequent chapter 7 cases (other than a defense that the payment has actually been made).

(d) Except as expressly provided in this ~~Second~~Third Interim Order, the Adequate Protection Obligations, the First Lien 507(b) Claims and the Adequate Protection Liens and all other rights and remedies of the Prepetition Secured Parties granted by the provisions of this ~~Second~~Third Interim Order shall survive, and shall not be modified, impaired or discharged by the entry of an order converting any of the Chapter 11

Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases, or by any other act or omission. The terms and provisions of this ~~Second~~Third Interim Order shall continue in the Chapter 11 Cases, in any Successor Cases if the Chapter 11 Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the Adequate Protection Liens, the First Lien 507(b) Claims, the other administrative claims granted pursuant to this ~~Second~~Third Interim Order, and all other rights and remedies of the Prepetition Secured Parties granted by the provisions of this ~~Second~~Third Interim Order shall continue in full force and effect until all Adequate Protection Obligations are indefeasibly paid in full in cash.

24. Effect of Stipulations. The Debtors have admitted, stipulated, and agreed to the various stipulations and admissions contained in this ~~Second~~Third Interim Order, including, without limitation, the stipulations and admissions included in paragraph D, which stipulations and admissions shall be binding upon the Debtors and any successors thereto in all circumstances (although such stipulations are not findings of the Court). The stipulations and admissions contained in this ~~Second~~Third Interim Order, including without limitation, in paragraph D of this ~~Second~~Third Interim Order, shall also be binding upon the Debtors' estates and all other parties in interest, including ~~any~~the Committee or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), for all purposes unless (a) (i) any party in interest other than the Committee, no later than the date that is forty-five (45) days from the Petition Date, and (ii) the Committee, no later than ~~the earlier of forty five (45)~~sixty (60) days from the appointment of the Committee ~~or sixty (60) days from the Petition Date~~ (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so and subject to extension by the Court for cause shown or by written agreement of First Lien Agent) (as applicable for clauses (i) and (ii), the "Initial Challenge Period"), has properly filed an adversary proceeding as required under the Bankruptcy Rules (x) challenging the amount, validity, enforceability, priority or extent of the Prepetition Indebtedness or the liens on the Prepetition Collateral securing the Prepetition Indebtedness, or (y) otherwise asserting any other claims, counterclaims, causes of

action, objections, contests or defenses against the First Lien Agent, Subordinated Lender, and/or Prepetition Secured Party (as applicable) on behalf of the Debtors' estates ((x) and (y), collectively, the "Claims and Defenses"), provided, however, if during the Initial Challenge Period, the Committee files a motion for standing with a draft complaint identifying and describing all Claims and Defenses consistent with applicable law and rules of procedure, the Initial Challenge Period will be tolled for the Committee solely with respect to claims asserted in the complaint until three (3) business days from entry of an order granting the Committee standing to prosecute any such Claims and Defenses described in the complaint (the "Extended Challenge Period" together with the Initial Challenge Period, the "Challenge Period"); and (b) the Court rules in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; *provided that*, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished effective as of the Petition Date. If no such adversary proceeding is timely filed prior to the expiration of the Challenge Period, without further order of the Court, or, if applicable, on the date of an order of the Court denying the Committee standing: (1) the Debtors' stipulations, admissions and releases contained in this ~~Second~~Third Interim Order shall be binding on all parties in interest, including the Debtors' estates, the Committee, and any Trustee; (2) the Prepetition Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 case; (3) the First Lien Agent's liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected, and of the priority specified in paragraph D, not subject to defense, counterclaim, recharacterization, subordination or avoidance; and (4) the Prepetition Indebtedness, the First Lien Agent's liens on the Prepetition Collateral, and the Prepetition

Lenders (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors) shall not be subject to any other or further challenge by the Committee or any other party in interest, and ~~any such~~the Committee or a party in interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period); provided that if the Chapter 11 Cases are converted to chapter 7 or a Trustee is appointed prior to the expiration of the Challenge Period, any such estate representative or Trustee shall receive the full benefit of any remaining Challenge Period, subject to the limitations described herein. If any such adversary proceeding is timely and properly filed prior to the expiration of the Challenge Period, the stipulations and admissions contained in this ~~Second~~Third Interim Order, including without limitation, in paragraph D of this ~~Second~~Third Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Committee and any other person, including any Trustee, except solely as to any such findings and admissions that were expressly challenged in the original complaint initiating the adversary proceeding and excluding any amended or additional claims that may or could have been asserted thereafter through an amended complaint under FRCP 15 or otherwise. Nothing in this ~~Second~~Third Interim Order vests or confers on any person, including at~~the~~ Committee or any Trustee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, ~~but the Court may utilize the existence of the stipulations to determine whether standing or authority should be granted~~. This stipulation shall be binding upon the Debtors, their estates, all parties in interest in the Chapter 11 Cases and their respective successors and assigns, including any trustee or other fiduciary appointed in the Chapter 11 Cases or any subsequently converted bankruptcy case(s) of any

Debtors and shall inure to the benefit of the First Lien Secured Parties and the Debtors and their respective successors and assigns (collectively, the “Successor Cases”).

25. Limitation on Use of Cash Collateral. The Debtors shall use the proceeds of the Prepetition Collateral solely as provided in this ~~Second~~Third Interim Order. No Cash Collateral may be used to: (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of the Prepetition Indebtedness, or the liens or claims granted under this ~~Second~~Third Interim Order, the first interim order authorizing the Debtors’ cash collateral use [Dkt. No. 32]; ~~(“First Interim Order”)~~, the second interim order authorizing Debtors’ cash collateral use [Dkt. No. 86] (“Second Interim Order”) or the Prepetition Loan Documents; (b) assert any Claims and Defenses against the Prepetition Secured Parties or their respective agents, affiliates, representatives, attorneys or advisors; (c) seek to modify any of the rights granted to the Prepetition Secured Parties hereunder, or (d) pay any amount on account of any claims arising prior to the Petition Date unless in accordance with the Budget and such payments are approved by an order of the Court; ~~provided that, notwithstanding anything to the contrary herein, no more than \$25,000 of the Prepetition,~~ however, that an amount not to exceed \$50,000 of Cash Collateral in the aggregate may be used by any to pay allowed fees and expenses of the Committee to investigate ~~the validity, enforceability or priority of~~ (but not prosecute) claims against and possible objections with respect to the Prepetition Indebtedness ~~or the liens on the Prepetition Collateral or investigate any Claims and Defenses or other causes action against~~ and pre-petition liens and security interests of the Prepetition Secured Parties (including, without limitation, issues regarding validity, perfection, priority, or enforceability of the secured claims of the Pre-Petition Secured Parties).

26. Binding Effect; Successors and Assigns. The provisions of this ~~Second~~Third Interim Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including without limitation, each of the Prepetition Secured Parties, ~~any~~the Committee, the Debtors, the Debtors' estates (subject to paragraph 24), and their respective successors and assigns (including any Trustee hereinafter appointed or elected for the estate of any Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of each of the Prepetition Secured Parties and the Debtors and their respective successors and assigns, provided that except to the extent expressly set forth in this ~~Second~~Third Interim Order, each of the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral or extend any financing to any Trustee or similar responsible person appointed for the estate of any Debtor. For all adequate protection and stay relief purposes throughout the Debtors' Chapter 11 Cases, the Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection as of the Petition Date.

27. Limitation of Liability. In permitting the use of the Prepetition Collateral or in exercising any rights or remedies as and when permitted pursuant to this ~~Second~~Third Interim Order, the Prepetition Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this ~~Second~~Third Interim Order shall in any way be construed or interpreted to impose or allow the



imposition upon the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

28. Right to Credit Bid. ~~The~~Without prejudice to the Committee's rights under paragraph 24, and in accordance with Bankruptcy Code section 363(k), the First Lien Agent, on behalf of the First Lien Lenders, shall have the unqualified right to credit bid all or any part of the outstanding amount of the First Lien Indebtedness or First Lien Adequate Protection Obligations, as applicable, in each case including any accrued interest without the need for further Court order authorizing the same, in connection with any sale of the Adequate Protection Collateral (or any part thereof) or the Prepetition Collateral (or any part thereof) whether such sale is effectuated under Bankruptcy Code § 363 or Bankruptcy Code § 1129, by a chapter 7 trustee under Bankruptcy Code § 725, or otherwise.

29. No Marshalling. The First Lien Secured Parties shall not be subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect to any of the Prepetition Collateral (including Cash Collateral).

30. Headings. The headings in this ~~Second~~Third Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this ~~Second~~Third Interim Order.

31. Effectiveness. This ~~Second~~Third Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of execution of effectiveness of this ~~Second~~Third Interim Order. To the extent that any finding of fact shall be determined to be a conclusion of law it shall be so deemed and vice versa.

32. Proofs of Claim. Neither the First Lien Agent nor any First Lien Secured Party will be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases, and the Debtors' stipulations in paragraph D herein shall be deemed to constitute a timely filed proof of claim against the applicable Debtor(s). Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation, administrative claims) in any of the Chapter 11 Cases or Successor Cases shall not apply to the First Lien Agent or the other First Lien Secured Parties with respect to the First Lien Indebtedness. Notwithstanding the foregoing, the First Lien Agent (on behalf of itself and the other First Lien Secured Parties) is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a master proof of claim for any claims of the First Lien Secured Parties arising from the applicable Prepetition Loan Documents; provided that nothing herein shall waive the right of any Prepetition Secured Party to file its own proofs of claim against the Debtors.

33. Committee Interim Fee Applications. Solely for the period of this Third Interim Order, proposed counsel for the Committee is permitted (but not required) to file interim fee applications for each two-week period from the date of their appointment until the earlier of November 13, 2018, or the Termination Date (the "Interim Committee Applications"). Any such Interim Committee Applications shall seek compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors' chapter 11 cases in compliance with applicable provisions of the Bankruptcy Code, the Federal Bankruptcy Rules, the Local Bankruptcy Rules, and any other applicable procedures and orders of this Court.

34. Reservation of Rights for Midland Central Appraisal District. Notwithstanding any provision in the Motion or this Third Interim Order, any valid, perfected, non-avoidable senior

liens, if any, currently held by Midland Central Appraisal District shall neither be primed by nor subordinated to any liens granted herein.

35. ~~33.~~ Final Hearing. The Final Hearing on the Motion is scheduled for \_\_\_\_\_, November 13, 2018, at \_\_\_\_\_ ~~a.m./~~3:30 p.m., prevailing Central Time before the Court. The Debtors shall promptly mail copies of this ~~Second~~Third Interim Order to the parties having been given notice of the Third Interim Hearing and to any other party which has filed a request for notices with the Court. Any party in interest objecting to the relief sought at the ~~Second Interim~~Final Hearing shall submit any such objection in writing and file same with the Court no later than 4:00 p.m. (Central Time) on \_\_\_\_\_, November 11, 2018.

36. ~~34.~~ Jurisdiction. The Court shall retain jurisdiction to enforce the terms of this ~~Second~~Third Interim Order and to adjudicate any and all matters arising from or related to the interpretation or implementation of this ~~Second~~Third Interim Order.

37. ~~35.~~ Controlling Effect of ~~Second~~Third Interim Order. To the extent any provision of this ~~Second~~Third Interim Order conflicts or is inconsistent with any provision of the Motion, the provisions of this ~~Second~~Third Interim Order shall control to the extent of such conflict.

38. ~~36.~~ Order Immediately Effective. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

39. ~~37.~~ Debtor Authorization to Effectuate Relief. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

40. ~~38.~~ Exclusive Jurisdiction. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2018  
Houston, Texas

---

UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**Budget**

[HOU 408908052v2](#)

[1" = "1" "" ""](#)  
[1" = "1" "074658.14083/114002440v.4" "" 074658.14083/114002440v.4](#)

Document comparison by Workshare Professional on Wednesday, November 7, 2018 6:49:02 PM

**Input:**

Document 1 file://C:\Temp\Workshare\wmttemp18f8\113811484\_(1)\_Francis  
 ID - Second Interim Cash Collateral Order (ENTERED).DOCX  
 Description (113811484)\_ (1)\_Francis - Second Interim Cash Collateral Order  
 (ENTERED)  
 Document 2 file://C:\Temp\Workshare\wmttemp18f8\PNC Proposed Third  
 ID Interim Cash Collateral Order.docx  
 Description PNC Proposed Third Interim Cash Collateral Order  
 Rendering set Standard

**Legend:**

Insertion

~~Deletion~~

Moved from

Moved to

Style change

Format change

~~Moved deletion~~

Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

**Statistics:**

	Count
Insertions	221
Deletions	179
Moved from	18
Moved to	18
Style change	0
Format changed	0

---

---

Total changes	436
---------------	-----

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE:	§	CASE NO. 18-35441-H1-11
	§	
FRANCIS' DRILLING FLUIDS, LTD.	§	HOUSTON, TEXAS
AND FDF RESOURCES	§	
HOLDINGS, LLC,	§	THURSDAY,
	§	NOVEMBER 1, 2018
DEBTORS.	§	9:30 P.M. TO 5:19 P.M.

MOTIONS HEARING

BEFORE THE HONORABLE MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:	SEE NEXT PAGE
CASE MANAGER:	RUBEN CASTRO
COURT RECORDER:	SAMANTHA WARDA

TRANSCRIPTION SERVICE BY:

JUDICIAL TRANSCRIBERS OF TEXAS, LLC  
935 ELDRIDGE ROAD, #144  
SUGAR LAND, TEXAS 77478  
Tel: 281-277-5325 ▼ Fax: 281-277-0946  
www.judicialtranscribers.com

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

FOR THE DEBTORS:

NORTON ROSE FULBRIGHT US, LLP  
Jason Lee Boland, Esq.  
William R. Greendyke, Esq.  
Julie Goodrich Harrison, Esq.  
Robert Bernard Bruner, Esq.  
1301 McKinney St., Ste. 5100  
Houston, TX 77010  
713-651-3769

FOR PNC BANK:

BLANK ROME, LLP  
James Tillman Grogan, Esq.  
717 Texas Avenue, Suite 1400  
Houston, TX 77002  
713-632-8652

BLANK ROME, LLP  
Regina Stango Kelbon, Esq.  
One Logan Square  
130 North 18th Street  
Philadelphia, PA 19103  
215-569-5500

FOR THE UNSECURED  
CREDITORS' COMMITTEE:

GREENBERG TRAURIG  
Karl D. Burrer, Esq.  
1000 Louisiana St., Ste. 1700  
Houston, TX 77002  
713-374-3612

GREENBERG TRAURIG, LLP  
David Kurzweil, Esq.  
Terminus 200  
3333 Piedmont Road NE  
Suite 2500  
Atlanta, GA 30305  
678-553-2100

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES (CONT'D):

FOR PROPHET EQUITY: JACKSON WALKER, LLP  
Patricia Baron Tomasco, Esq.  
Kristhy Peguero, Esq.  
1401 McKinney St., Ste. 1900  
Houston, TX 77002  
713-752-4276

FOR COMSTOCK RESOURCES: Phillip Eisenberg, Esq.

ALSO APPEARING TELEPHONICALLY:

FOR PROPHET EQUITY: Michael How, Esq.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
GREG BARACATO By Ms. Harrison	46		--	

<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Received</u>
DEBTORS' EXHIBITS Numbers 1 through 30	27	27	27

1           HOUSTON, TEXAS; THURSDAY, NOVEMBER 1, 2018; 9:30 A.M.

2           THE COURT: All right. The next case we have on  
3 this morning's Docket is Francis' Drilling Fluids. It's  
4 18-35441.

5           Mr. Grogan, good morning.

6           MR. GROGAN: Your Honor, I think people are still  
7 gathering, but I'll go ahead and appear. James Grogan from  
8 Blank Rome, on behalf of PNC Bank, as administrative agent  
9 to the First Lien Lenders. And with me here today is my  
10 partner, Regina Stango Kelbon.

11          THE COURT: Good morning.

12          MS. KELBON: Good morning, Your Honor.

13          THE COURT: Good morning. All right.

14          Mr. Boland, good morning.

15          MR. BOLAND: Good morning, Your Honor.

16 Jason Boland, Norton Rose Fulbright, proposed counsel for  
17 the Debtors. I'm joined by my colleagues, Bill Greendyke,  
18 Julie Harrison and Bob Bruner.

19          THE COURT: Thank you. Good morning.

20          MR. BURRER: Good morning, Your Honor.

21          THE COURT: Good morning, Mr. Burrer.

22          MR. BURRER: Karl Burrer with Greenberg Traurig,  
23 proposed counsel to the Official Committee of Unsecured  
24 Creditors. With me today is David Kurzweil.

25          THE COURT: Good morning.

1 MR. KURZWEIL: Good morning, Your Honor.

2 MS. TOMASCO: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. TOMASCO: Patty Tomasco, on behalf of Prophet  
5 Equity, LLP.

6 THE COURT: Good morning.

7 MR. EISENBERG: Phillip Eisenberg, on behalf of  
8 Comstock Resources.

9 THE COURT: Good morning.

10 MR. EISENBERG: Good morning.

11 THE COURT: If anyone on the phone wishes to  
12 participate, you'll need to press five star on your phone.

13 Mr. How, good morning.

14 (No audible response.)

15 THE COURT: Well, I may not have gotten that  
16 clicked right. Let me try that again.

17 Mr. How, good morning.

18 MR. HOW: Thank you, Your Honor. As you said,  
19 Mike How here, also on behalf of Prophet Equity on the  
20 phone.

21 THE COURT: Thank you, sir. I show that's all  
22 the appearances on the phone that have pressed five star so  
23 far.

24 Mr. Boland, how do you want to proceed today?

25 MR. BOLAND: Your Honor, if it's okay with the

1 Court, I'd like to kind of give the Court a brief intro,  
2 whether it's considered opening or not, then let other  
3 folks --

4 THE COURT: I was going to ask you what was going  
5 on in the business anyway so.

6 MR. BOLAND: Got it. If it's okay with  
7 Your Honor, I prefer just to make a few statements and then  
8 open it up for others to comment and then we can see how to  
9 proceed from there, if that's okay.

10 THE COURT: Thank you.

11 MR. BOLAND: Your Honor, there's -- we filed an  
12 agenda late last night, Your Honor. There's a host of  
13 matters set for hearing today most of which I'm happy to  
14 report are noncontroversial and I think without objection,  
15 Your Honor. And I'll let my colleagues address those  
16 Motions at the appropriate time later.

17 But there is one gating issue today and that's  
18 the Cash Collateral Motion, the Cash Collateral Order, the  
19 form of order. Your Honor, the Committee filed an objection  
20 I guess a week or so ago that I know Your Honor's probably  
21 read at this point. I'll let the Committee address their  
22 objection. But to try to alleviate some of the issues for  
23 today's hearing and to try to get to a point where we can  
24 all sit down and try to discuss a consensual path forward,  
25 Your Honor, the parties have at least agreed that today we

1 would treat this hearing as a third interim cash collateral  
2 hearing instead of what was really scheduled as a final  
3 hearing, Your Honor. So from the Debtors' perspective, that  
4 makes a lot of sense given the recent formation of the  
5 Committee and where things stand today, Your Honor, so  
6 that's how we'd like to proceed.

7 As to the Debtors and lenders, Your Honor, I  
8 think we are, in large part, on a consensual basis from a  
9 cash collateral standpoint, but I don't think the Committees  
10 are there yet, Your Honor.

11 Before I turn the podium over, I did just want to  
12 make a couple of brief comments, Your Honor. When we showed  
13 up in the day -- the first day of this case, there was a  
14 13-week budget attached to our Original Cash Collateral  
15 Motion, Your Honor, and that showed \$3.1 million in net  
16 operating cash through December 2018. The current budget  
17 that Your Honor's going to see today will show \$3.3 million  
18 through that same time period, Your Honor. So the company  
19 itself is actually performing well and doing even better  
20 than what we had originally projected, Your Honor, so that's  
21 good and positive news.

22 The central part of the dispute I think today  
23 that you're going to hear in large part deals with what I  
24 call "below-the-line" item of the Budget, Your Honor, and  
25 that deals primarily with carve-out issues, I think. I know

1 the Committee has other issues that they'll raise, but I  
2 think that's ultimately what this boils down to in large  
3 part today, at least from the Debtors' perspective.

4 And for us, Your Honor, we think that's something  
5 that reasonable parties can sit down and come to an  
6 agreement on for a case of this size and nature and we're  
7 hopeful that we'll ultimately get there today.

8 As to the same First Day Hearing, Your Honor, you  
9 might recall Ms. Tomasco standing up at the very end of that  
10 hearing. She told you that her client intended to submit an  
11 offer to the Debtors that would purchase or propose to  
12 purchase substantially all of our assets and assume certain  
13 liabilities of unsecured creditors. Your Honor, we have  
14 received that offer. We're evaluating it.

15 SSG is also our proposed investment banker. We  
16 have a representative from SSG in the courtroom today.  
17 They're out in the market soliciting additional offers,  
18 Your Honor, and we hope that through that process we'll  
19 generate a fulsome sales process to maximize recoveries to  
20 the Estate.

21 We also, from the Debtors' perspective, have a  
22 bid and procedures motion ready to go. We can file it on  
23 any moment's notice. We're just waiting for comments and  
24 authorities from our creditor constituencies to hopefully  
25 get a consensual path before we file this. So that's the



1 only holdup from our perspective.

2           Ultimately, Your Honor, I think that's where we  
3 will end up and that's what we told Your Honor we wanted to  
4 do on the first day of the case. I think we're still on  
5 track to do exactly what we told Your Honor we wanted to do.  
6 We just need to get through today and get to a cash  
7 collateral agreement that allows us to get to that point,  
8 Your Honor.

9           So let me stop there and I'll turn it over to  
10 other people.

11           THE COURT: Well, if you get your way today, when  
12 would you come back for a final cash collateral hearing?

13           MR. BOLAND: Your Honor, right now it's proposed  
14 November 19th, I believe, which would be the next hearing  
15 for -- Your Honor's already set it for a few matters, a  
16 utilities motion and one or two interim compensation.

17           THE COURT: Let me just take a look at that too.

18           (Pause in the proceedings.)

19           THE COURT: All right.

20           MS. TOMASCO: Your Honor, on the "me too" side of  
21 the Docket -- Patty Tomasco, on behalf of Prophet Equity --  
22 we did submit an offer and we have been in discussions with  
23 PNC Bank and massaging the terms of that post-emergent  
24 structure. All of those details are being worked out.

25           We agreed, you know, and advocated for this to be

1 an interim hearing so that nothing was set in stone while  
2 more of that detail got baked. I think that's the  
3 appropriate path forward.

4 I think what you're going to hear from the  
5 Committee is sort of a fatalistic view of the world, which  
6 is not accurate, not responsible. And we think this case  
7 can do great things given sufficient time.

8 THE COURT: So although we have four pretty  
9 straightforward Francis' Drilling matters set at 9:30 on  
10 the 19th, we then have a number of EXCO matters set at  
11 10:00 o'clock on the 19th. So if we're looking for a big  
12 fight -- and I'm perfectly happy to have a big fight -- I  
13 don't know that that's the right day to do it, and I just  
14 want to sort of give everybody a head's up. We can  
15 certainly start and then do some EXCO stuff and come back.  
16 But if we're looking for a long day, that probably isn't the  
17 day. I've then got iHeart that same afternoon for some  
18 time.

19 MR. BOLAND: Understood, Your Honor. From our  
20 perspective, we just -- we tried to accommodate the Court  
21 and pick a date that we already had a hearing set. I think  
22 probably all the parties are willing to come to a different  
23 date, if it's more convenient for the Court. The ultimate  
24 goal, of course, is to show up on the 19th with a proposed  
25 agreed final cash collateral order. We were hoping to get

1 there today, you know, we were but --

2 THE COURT: All right. I mean, it may be.

3 And let me hear from Mr. Burrer that it makes  
4 some sense to do an interim that goes a little longer than  
5 the 19th and then have the 19th as a status conference so  
6 we're not dragging a bunch of witnesses down for a day where  
7 we won't finish and then --

8 MR. BOLAND: That's okay with the Debtors,  
9 Your Honor, subject to the Banks and the Committee.

10 THE COURT: Okay. Mr. Grogan. I know -- we're  
11 going to let everybody go against you first, Mr. Kurzweil,  
12 and then we'll take you.

13 (Laughter.)

14 Mr. Grogan?

15 MR. GROGAN: Thank you, Your Honor. James Grogan  
16 for the Record. Your Honor, let me just start by saying  
17 that I think the objective of the Banks today is to give the  
18 Debtors a runway, and I think there is a path to giving this  
19 company an adequate runway to let the sale process run its  
20 course and see if we get an offer that maximizes value.

21 As the parties have indicated, those negotiations  
22 are well underway. The only thing that will impede that  
23 effort is if professional fees run amuck and drive up the  
24 administrative costs of the case.

25 What we have proposed is that first of all, the

1 Banks are not going to be paid anything during the interim  
2 period so -- and frankly I don't think we're -- we're not  
3 going to ask for any payments during the case so fees are  
4 not being paid, our financial advisor's fees are not being  
5 paid and the Banks are not being interest or any other  
6 periodic payments. So we've taken that out of the proposed  
7 Interim Order.

8           Second, we've proposed a budget that would give  
9 the Committee a carve-out of \$60,000 for the next two-week  
10 period to begin its work and do its investigation and  
11 fulfill its fiduciary duties on a short time period.

12           The Committee's come in and asked for roughly  
13 \$200,000 in that two-week period or \$500,000 a month. Now,  
14 comparatively Norton Rose has billed \$580,000 in more than a  
15 month during -- since the case was filed. So they're  
16 essentially asking for enough money to duplicate what the  
17 Debtors are doing which, you know, is just ridiculous in a  
18 case of this size. The Debtors do not have that kind of  
19 money.

20           So we're trying to manage the process to the  
21 point where the Debtors stay cash flow positive, avoid an  
22 administrative expense that will foreclose the sale process  
23 and give the Debtors a runway. But that's going to require  
24 cooperation from all the parties including the Committee in  
25 managing the costs. And I think the Banks are doing

1 everything they can to do that by not forcing the Debtors to  
2 make any payments.

3           Your Honor, I think today we are just looking for  
4 a two-week window. We can come back in two weeks and see  
5 where we get. But for two weeks, we've made an offer to  
6 give them a \$60,000 carve-out. As part of that, we would  
7 also want a 506(c) waiver through -- from the petition date  
8 through the end of the interim period. We're not asking for  
9 a permanent 506(c) waiver, just a waiver that gets us  
10 through the period what we're agreeing to pay the fees.

11           Alternatively, we can keep -- we can have no  
12 carve-outs and we can just live with our surcharge  
13 obligations if that becomes a reality and we'll see where we  
14 go.

15           THE COURT: So I don't believe -- I mean,  
16 carve-outs are something that had been appropriately created  
17 by parties and Courts in order to allow cases to run  
18 smoothly.

19           MR. GROGAN: Yeah.

20           THE COURT: And as you know, I frequently do.  
21 And maybe in every large case I've done a carve-out, but  
22 it's always been by agreement.

23           MR. GROGAN: Yeah.

24           THE COURT: What I will require in any case is  
25 that the administrative costs, which includes the full

1 approved costs of all professionals including the Committee  
2 and the Debtor, have to be paid on a current basis. So if  
3 there isn't money to do that, the case is closed down. But  
4 "current basis" doesn't mean in advance.

5           This is very similar to the East Coast case at  
6 confirmation where the question was: well, the carve-out  
7 isn't adequate to pay all of the approved expenses. Well,  
8 they all have to be paid. So I don't know what is  
9 reasonable for the Committee to incur and I'm not going to  
10 say up front to them what their fees might or might not be  
11 able to be. If they incur \$200,000 worth of fees but only  
12 40,000 is reasonable, then they've got to be paid 40 and  
13 they've got to be paid in the ordinary course, which is not  
14 in advance.

15           MR. GROGAN: Uh-huh.

16           THE COURT: But if I approve 200, they've got to  
17 be paid 200. And if they're not paid 200, then the case  
18 converts.

19           So I'm actually not very inclined to have a big  
20 fight over a carve-out because I think those are consensual  
21 and not court-ordered events to try and let cases run  
22 smoothly. You all either can have a deal with the  
23 Committee, not have a deal with the Committee. It's between  
24 you and the Committee and the Debtor and everybody else and  
25 I probably won't get in the way of it.

1           But if there isn't a deal, I'm just telling  
2 everybody what the law is. And the law is: they get to  
3 submit fee apps and if I approve them, he's got to pay him.  
4 And if he doesn't pay them, this case goes away.

5           MR. GROGAN: I know.

6           THE COURT: So carve-outs get through a lot of  
7 that if people have agreed on sort of the cash flow event  
8 that's going to occur. But that's not something I'm going  
9 to do non-consensually. I'm not going to make them accept  
10 that 60,000 is all they get paid, nor am I going to require  
11 you to agree to more so.

12           MR. GROGAN: All right. No, I understand,  
13 Your Honor. We're okay with an order that has no carve-out  
14 and we just -- leaves the 506(c) rights in place so, you  
15 know, that may be where we wind up.

16           THE COURT: Let me hear from -- I don't know who  
17 wants to speak, Mr. Kurzweil or Mr. Burrer? But I'm happy  
18 for you to negotiate anything you want. Just don't ask me  
19 to make people do something I can't do.

20           Mr. Kurzweil?

21           MR. KURZWEIL: Thank you, Your Honor. For the  
22 Record, I'm David Kurzweil, on behalf of the Official  
23 Committee of Unsecured Creditors. Your Honor, I feel a  
24 little bit like I'm playing the game of Whac-A-Mole here  
25 with trying to figure out what the Debtor and the lenders

1 are looking for because this was noticed up for a final --  
2 for a final order of cash collateral. That's what we  
3 responded to. And we're happy with them to work on a bridge  
4 order and we've told them that.

5 But to put this in perspective, we are 30 days  
6 into a case. Our firm has only been involved for 12 days  
7 and we're on our third bridge order. The courtroom was full  
8 of people, yet they come and say, "It's not a complicated  
9 case." Certainly this case is not as large as most of the  
10 cases that come before -- a lot of the cases that come  
11 before the Court --

12 THE COURT: It's much harder than most of the  
13 cases that come before the Court and I just dealt with a car  
14 repossession, but that -- it's a real case and we need to  
15 treat it realistically, but I don't think that that means I  
16 need -- I'm not going to follow some cookie-cutter mechanism  
17 that implements voluntariness if we don't have  
18 voluntariness.

19 MR. KURZWEIL: I completely understand that,  
20 Your Honor. And what we're looking for and what we  
21 explained to the lender and the Debtor is that a responsible  
22 case be run through this process. Have no issue with this  
23 being a sale case and we understand that that's where  
24 they're going with it, that it may take some time to get  
25 there and working with them for this. But we've expressed



1 numerous times that we want the case to be run in a  
2 responsible fashion just as Your Honor has just said, that  
3 the admins have to be paid, and that's what's not happening  
4 at this point.

5           What we've responded to in our Objection -- and  
6 by the way, Your Honor, we did mark up an order that works.  
7 We did send them the comments. We heard maybe some of them  
8 may work -- some of the comments may work, maybe some of the  
9 comments may not work. So when I talk about the  
10 Whac-A-Mole, I'm not sure exactly what we're responding to  
11 and they're looking for but I'll just go through some of the  
12 items.

13           Your Honor heard about the carve-out and the  
14 admin issue. We just told them we want the admins paid. We  
15 said they just -- we just want to make sure the admins are  
16 paid. We're not -- no one's waiving their right to court  
17 review and reasonableness. We understand that.

18           We certainly had to get up to speed on this.  
19 They won't talk to us about any of the provisions. They  
20 forced us to file a motion. They forced us to come here and  
21 put on a contested hearing. They're not being very  
22 responsive to this.

23           We've asked for discovery in an email to keep the  
24 costs down. We asked for their loan documents, we asked for  
25 the credit files. We haven't gotten any acknowledgement.

1 We did get some of the loan files, but we haven't gotten any  
2 acknowledgement about the credit files. We do everything we  
3 can to keep costs down in this case.

4 Right now though the case is structured for the  
5 sole benefit of the secured lenders and it's clear from the  
6 milestones in the Cash Collateral Order and it's clear from  
7 what the lenders are insisting on even for a bridge order to  
8 get to a point to stabilize the case. And we're happy to  
9 work with them on those items but, for example, the part  
10 about the 506(c) waiver, but they're not agreeing to pay  
11 admins.

12 They also want a 552(b) waiver for equities of  
13 the case at this point in time. They don't want to put into  
14 a budget enough to pay what we believe the admins will be  
15 but at the same time, they want to remove from the Court's  
16 ability to review those in 20/20 hindsight. Both of those  
17 really don't work in an interim order without some consent  
18 by all parties on how to get from A to B. And really that's  
19 what we're looking for.

20 Other items that they're insisting on, at least  
21 what we have in the pleadings, is -- they said liens on  
22 proceeds of avoidance actions. They say they will back off  
23 on that. We haven't actually seen that in writing, but they  
24 still want their 507(b) claim from all the avoidance  
25 actions, which means unless they have a budget that

1 responsibly pays for all the costs of the sale, what they  
2 want to do is fund any shortfall with proceeds of the  
3 avoidance actions, which puts all of the creditors in a much  
4 worse position than they would be. The 507(b) should be for  
5 diminution in value for the implementation of the automatic  
6 stay, not used a funding mechanism for costs that a lender  
7 would normally have to incur outside of bankruptcy.

8 THE COURT: So I didn't -- show me that because  
9 that's not something I -- that's not the way I read it so  
10 show me that.

11 MR. KURZWEIL: All right. In the 507(b), they're  
12 seeking a -- I think the Order that we provided said they  
13 wanted a lien on avoidance actions.

14 THE COURT: No, the -- I thought that they were  
15 taking a 507(b) claim only for diminution. If you're  
16 telling me they want a 507(b) claim beyond diminution, then  
17 I want to see where they're doing that because I'm not aware  
18 of how you can do that.

19 MR. KURZWEIL: And, Your Honor, it is for  
20 diminution value.

21 THE COURT: Okay.

22 MR. KURZWEIL: But in discussions, they said  
23 diminution in value is for them paying for the costs of  
24 administration of the Estate. For example, if they have a  
25 receivable and the receivable turns into cash, there's cash

1 that's used to pay admins and there's a reduction in the  
2 amount of the receivables, they would say that is diminution  
3 in value. All we ask --

4 THE COURT: Well, if they start with 10 million  
5 in receivables and then end up with \$8 million in  
6 receivables, I'm not sure it matters where it went to,  
7 they've had a \$2 million diminution, right?

8 MR. KURZWEIL: Yes. But what was that money used  
9 for?

10 THE COURT: Well --

11 MR. KURZWEIL: That money was used for the sale  
12 of their assets.

13 THE COURT: So there may be a 506(c) claim coming  
14 back against them.

15 MR. KURZWEIL: There may be a --

16 THE COURT: And I got that.

17 MR. KURZWEIL: Okay.

18 THE COURT: That's a different question. I've  
19 got to deal with these individually.

20 MR. KURZWEIL: Sure.

21 THE COURT: And 507(b) ought to be for the  
22 diminution. And 506(c) we're not going to waive today. But  
23 I'm not going to link the two together. It's just they're  
24 two different questions.

25 MR. KURZWEIL: I understand, Your Honor. They

1 seek to pick up unencumbered property as replacement liens,  
2 at least in the Order that we've seen, and there's no  
3 identification yet of what unencumbered property is. We  
4 don't know what's out there. They want to use that, but  
5 there's been no -- we've asked if a full audit has been done  
6 on the liens of the secured lender to find out what they're  
7 actually secured for and we've been told based on the way  
8 the case was filed, there wasn't sufficient time to do that,  
9 no fault on anybody.

10 But at this time it'd be inappropriate to give a  
11 lien on unencumbered assets until we understand at least  
12 what those are and the value of what those are. The  
13 Schedules just got filed on Saturday. There are hundreds of  
14 vehicles. There are numerous pieces of land both leased and  
15 owned, pieces of equipment. We don't know what's out there  
16 that's encumbered or unencumbered or whether there are any  
17 claims or causes of action that they're picking up without  
18 some disclosure on an interim basis.

19 All these things could be fine on a permanent  
20 basis, but the items that they're asking for you would  
21 normally see in DIP financing, not in a cash collateral  
22 order, which is all they're really entitled to would be  
23 replacement liens on the type of collateral that they  
24 perfected and now going forward. That's what the Code  
25 provides. If that's what it is for the two-week period, we

1 certainly have no objection to that because that's what  
2 they're entitled to, as long as they don't away from the  
3 Court the ability to look for -- look at it in 20/20  
4 hindsight under 506(c) and 552(b) because we're -- they're  
5 also asked for an equities of the case waiver up front,  
6 which takes away the Court's review at a time when we need  
7 to be able to look back.

8           And if they just want to stabilize it, hold it  
9 for two weeks, we're very supportive of that. In fact,  
10 we've expressed our support. We'd like to see this case  
11 succeed. We'd like to see it sold to a new -- pardon me?

12           THE COURT: It sounds as if we don't have an  
13 agreement and I think that means -- I can give you all a  
14 couple of choices. We can either proceed with a contested  
15 interim cash collateral hearing, or I can give you all some  
16 time to talk about whether you can agree on contested order.  
17 But I'm not going to guess at what that ought to be in the  
18 absence of evidence if you all can't reach an agreement.

19           Which way would you like to go?

20           MR. KURZWEIL: Your Honor, we'd certainly be  
21 happy to talk to them and remain, since we've gotten  
22 involved in the case, happy to talk with them through those  
23 issues.

24           THE COURT: Mr. Boland?

25           MR. BOLAND: Your Honor, the Debtors' always

1 happy to talk. There was a comment about being  
2 nonresponsive. The Debtors have always talked to the  
3 Committee and we've answered every call, we've answered  
4 every question and we're happy to --

5 THE COURT: I don't think -- I'm not getting  
6 terribly bent out of shape.

7 (Laughter.)

8 THE COURT: What I want to do is either find out  
9 you either have an agreement or I want to proceed with the  
10 contested so.

11 MR. BOLAND: We're happy to have those  
12 discussions and have a little break.

13 THE COURT: What I would suggest --

14 MR. KURZWEIL: And I do want --

15 THE COURT: -- we do then is --

16 MR. KURZWEIL: I'm sorry, Your Honor.

17 THE COURT: Go ahead.

18 MR. KURZWEIL: I just do want to correct the  
19 Record. The Debtor has been very -- it was to lenders. The  
20 Debtors have been very cooperative in this case.

21 THE COURT: All right. I think that every one of  
22 the principle properties is represented by more than one  
23 lawyer here.

24 Can we designate a negotiating team on the  
25 Interim Cash Collateral Order and proceed with the rest of

1 the hearing with other counsel or do we need to stop the  
2 hearing?

3 MR. BOLAND: That's certainly okay with us,  
4 Your Honor.

5 THE COURT: I think most of the other things are,  
6 as I saw it, not terribly controversial but they're going to  
7 take 20 minutes and I'm thinking we ought to just go ahead  
8 and send out the negotiating team and keep the rest of the  
9 case going while we're doing that. And I'm perfectly happy  
10 having lead counsel if you want be on the negotiating team  
11 or whoever you all want to do that and having non-lead stay  
12 in here for the more routine motions.

13 If that also just doesn't work for you, that's  
14 okay. You know my afternoon is not very pretty, right?

15 MR. BOLAND: Yes.

16 THE COURT: So I would prefer to finish this  
17 morning.

18 MR. KURZWEIL: Your Honor, may I just have one  
19 minute with Mr. Greendyke just to --

20 THE COURT: Of course.

21 (Pause/voices off record.)

22 THE COURT: For those of you on the phone, in the  
23 anticipation of proceeding with the hearing, I've turned on  
24 the join.me website. If you want to watch what we're doing  
25 on the screen, you can go to join.me and then the meeting



1 room is one word judgeisgur, J-U-D-G-E-I-S-G-U-R. I know  
2 we've already got several people who are there.

3 (Pause/voices off record.)

4 MR. BOLAND: Thank you for your patience, Judge.  
5 There's discussions we have now --

6 THE COURT: I would rather everybody figure out  
7 what the right way to go than me having to figure it out.

8 (Pause/voices off record.)

9 MR. BOLAND: Your Honor, we'll take Your Honor's  
10 suggestion, I think, and separate out if that's okay.

11 THE COURT: Sure. I think the conference room is  
12 unlocked. Would you --

13 THE CLERK: It's okay.

14 THE COURT: Thank you. So anyone who wishes to  
15 be excused to the more important room is welcome to do that  
16 and we'll stay here and we'll handle the routine things.

17 Ms. Harrison?

18 MS. HARRISON: Good morning, Your Honor.  
19 Julie Harrison, proposed counsel for the Debtors.

20 THE COURT: Good morning.

21 MS. HARRISON: Your Honor, the Debtors have filed  
22 an agenda at Docket 141, which sets forth the remaining  
23 matters for today. The Debtors also filed an amended  
24 exhibit and witness list. I have a book of exhibits that  
25 I'd like to hand up to the Court.

1 THE COURT: Thank you. Are these identical  
2 books?

3 MS. HARRISON: Yes. You only need one of them.

4 THE COURT: Thank you.

5 MS. HARRISON: Your Honor, the exhibits contain  
6 the proposed third interim cash collateral budget, various  
7 proposed orders, the Variance Reports, affidavits of  
8 service.

9 I don't believe that there are any objections to  
10 the exhibits so I would move to admit Exhibits 1 through 30  
11 into the Record.

12 THE COURT: Any objection to 1 through 30?

13 MR. GROGAN: No objection, Your Honor.

14 MR. SPEAKER: No objection.

15 THE COURT: One to 30 are admitted.

16 (Debtors' Exhibit Numbers 1 through 30 received in  
17 evidence.)

18 MS. HARRISON: Thank you, Your Honor. Unless  
19 Your Honor prefers otherwise, I would propose just walking  
20 through the Motions as they're set forth in the agenda.

21 THE COURT: However you want to go.

22 MS. HARRISON: Okay. The first item on the  
23 agenda is the cash management Motion. The Court granted  
24 this on an interim basis at the First Day Hearing and the  
25 Interim Order set a response and objection deadline for

1 October 26th. The Debtors did not receive any formal or  
2 informal objections or responses to the Motion.

3           The Interim Order also contemplated some  
4 requirements requested by the US Trustee to meet  
5 requirements under the Bankruptcy Code. The Debtors have  
6 complied with all of those requirements and so the Debtors  
7 would request entry of the Final Order approving the Cash  
8 Management Motion.

9           THE COURT: All right. Let me hear objections to  
10 the Order. I did receive from Ms. Harrison on the Court's  
11 order submission email address Word versions of the Orders  
12 so I'll put this up on the screen. I think everybody's  
13 probably seen it, but go through it kind of quickly.

14           So does anyone have any objection to that Order?

15           MR. GROGAN: No objection.

16           THE COURT: All right. Thank you.

17           (Pause in the proceedings.)

18           THE COURT: All right. This is a routine cash  
19 management motion. It's largely an issue for compliance  
20 with the US Trustee regulations although other parties are  
21 interested in the disposition as well. No party has  
22 objected to this other than some accommodations are made to  
23 the US Trustee.

24           We reviewed the Order and I will -- I find it's  
25 appropriate and I'll sign the Order.

1 MS. HARRISON: Thank you, Your Honor.

2 THE COURT: Let me find out where it just went  
3 and then I'm going to get it signed.

4 (Pause in the proceedings.)

5 THE COURT: All right. The Order has now been  
6 signed.

7 Where do you want to go next?

8 MS. HARRISON: The next item on the agenda is the  
9 critical vendor Motion. The Court has previously entered  
10 two interim orders approving this Motion.

11 THE COURT: Right.

12 MS. HARRISON: The Debtors have begun the process  
13 of entering into vendor agreements. Although none of the  
14 \$60,000 have been paid yet, the Debtors anticipate making  
15 those payments within the next couple of weeks.

16 The Debtors in the final proposed Order are not  
17 seeking authority beyond that \$60,000 although they do  
18 retain the right in that Order to request additional funds  
19 with consent of the lenders.

20 And we've received no formal or informal  
21 objections to the final proposed Order and so the Debtors  
22 would request entry of that Order.

23 THE COURT: All right. And is this -- I think  
24 you filed a redline of this and it was substantially  
25 identical to what we had received; is that correct?

1 MS. HARRISON: Yes, it is, but the only  
2 additional change that's reflected in the redline is: there  
3 is an addition that vendors were required to continue work  
4 with the Debtors through December 31st or the life of the  
5 case, and we have removed the reference to December 31st.

6 THE COURT: Correct. All right.

7 Any objection to the critical vendor Order?

8 (No audible response.)

9 THE COURT: All right. We're going to carry  
10 forward all the findings that we've made previously.  
11 There's now no new objection. The Order has been modified  
12 slightly in order to extend the life of the runway for  
13 creditors having to provide services, if they choose to be  
14 treated as critical vendors and the Debtor chooses to treat  
15 them that way.

16 Based on all of our prior findings, I will sign  
17 this Order. Let me get it printed and signed.

18 (Pause in the proceedings.)

19 THE COURT: All right. I've signed that Order.

20 MS. HARRISON: Thank you, Your Honor. The next  
21 motion before the Court is the Motion to pay prepetition  
22 taxes. This is one of the First Day type motions and the  
23 reasons that the Debtors filed this a little late is: the  
24 Debtors needed to close their September books and records to  
25 determine exactly what amounts were owed. And now that the

1 Debtors have completed that process and determined the  
2 amounts, the Debtors are seeking to pay prepetition sales  
3 and use taxes.

4           The Debtors have estimated that a little over  
5 \$141,000 of prepetition sales taxes remain outstanding and  
6 the Debtors are requesting authority to pay those amounts  
7 plus any related penalties or interest in connection with  
8 the Motion.

9           We've not received any responses to the Motion.  
10 It was filed on an emergency basis, but it was served  
11 overnight on the relevant taxing authorities.

12           THE COURT: Yeah, I don't think those are going  
13 to be the ones to object, so let me see if anybody else has  
14 any objection to the taxing Motion?

15           (No audible response.)

16           THE COURT: All right. Is this the same Order  
17 that was uploaded?

18           MS. HARRISON: Yes, Your Honor.

19           THE COURT: The one that you emailed is the same  
20 as what was filed?

21           MS. HARRISON: That's correct, Your Honor.

22           THE COURT: Okay. I had a chance to review that.  
23 There's no objection. It's not -- it appears -- I'm sorry,  
24 go ahead.

25           MS. HARRISON: I'm sorry, Your Honor. There is

1 one -- I think there is one additional paragraph that the US  
2 Trustee requested.

3 And if you could scroll up? It's paragraph 3  
4 requiring the Debtor to maintain a matrix.

5 THE COURT: Right.

6 MS. HARRISON: And that's an additional --

7 THE COURT: I think that was in the redline  
8 though that you filed.

9 MS. HARRISON: Okay. It might have been.

10 THE COURT: Yeah, I think it was there. Thank  
11 you for pointing it out.

12 All right. I've reviewed the Motion. This is to  
13 pay taxes. It is -- in general, the rule is is that when  
14 the Debtor collects taxes, they're holding them in trust  
15 anyway. This is paying out money that the Debtor is holding  
16 that probably is not even estate money. It's going  
17 eventually have to be paid in full no matter what  
18 interpretation you give.

19 I will, in the absence of any objections, sign  
20 the Order.

21 (Pause in the proceedings.)

22 THE COURT: It's taking my computer a moment for  
23 whatever reason so.

24 (Pause in the proceedings.)

25 THE COURT: All right. That Order has been

1 signed. Thank you.

2 MS. HARRISON: Thank you, Your Honor. And the  
3 final Motions before the Court are the various Applications  
4 to employ Debtors' professionals, which include SSG, CR3 and  
5 Norton Rose Fulbright. These are filed at Docket Number 72,  
6 73 and 74. We believe these are pretty standard employment  
7 applications.

8 We received comments from the US Trustee and the  
9 lenders and incorporated those into the proposed Orders.

10 THE COURT: So, for example, the new indemnity  
11 provisions that are shown in the redlines and the --

12 MS. HARRISON: Correct. Those are --

13 THE COURT: -- requirement to keep hours --

14 MS. HARRISON: -- also the US Trustee.

15 THE COURT: Okay. So are the Orders you've  
16 uploaded identical to the redlines that were filed?

17 MS. HARRISON: There's one change to the SSG  
18 Order. We deleted paragraph 15, which --

19 THE COURT: To the SSG -- to the SRG?

20 MS. HARRISON: SSG.

21 THE COURT: SSG. I've got an SRG.

22 MS. HARRISON: That's a typo.

23 THE COURT: I'll start with typo order.

24 (Laughter.)

25 THE COURT: I'm going to -- okay. So here's the



1 SSG Order, (indicating).

2 And where is the change to?

3 MS. HARRISON: I don't believe that you'll  
4 actually see it in this order because the paragraph was  
5 deleted.

6 THE COURT: Okay.

7 MS. HARRISON: And that paragraph basically said  
8 that any party that failed to file an objection would  
9 forever waive the right to file an objection. We had a  
10 similar paragraph in the Norton Rose Fulbright Application  
11 that was removed on request of the Trustee so we just  
12 removed that paragraph to be consistent.

13 THE COURT: Thank you. Is there any objection to  
14 the retention of SSG or to the proposed form of Order that  
15 will retain them?

16 (No audible response.)

17 THE COURT: All right. I reviewed the  
18 Application. There have been no objections filed. The  
19 parties-in-interest are here.

20 I'm going to sign the SSG Order and I'm going to  
21 sign it in the form that is uploaded. I will change the  
22 title.

23 MS. HARRISON: Thank you.

24 (Pause in the proceedings.)

25 THE COURT: I signed SSG.

1                   Where do you want to go next?

2                   MS. HARRISON: We could go to the CR3

3 Application.

4                   THE COURT: All right. Is there any objection to  
5 the employment of CR3 with the amended form of Order that  
6 was filed under redline on the Docket Sheet?

7                   (No audible response.)

8                   THE COURT: All right. And is the one that  
9 you've emailed identical to the one that was redlined?

10                  MS. HARRISON: Yes. Yes, it is.

11                  THE COURT: Thank you. All right. We've  
12 reviewed that. We have no objections.

13                  The Application justifies the retention, no  
14 party-in-interest has objected and I'll sign the Order.

15                  And that should leave us then with Fulbright,  
16 right?

17                  MS. HARRISON: Absolutely the most important one,  
18 Your Honor.

19                  THE COURT: It is. It is.

20                  (Laughter.)

21                  THE COURT: And again, is there any objection to  
22 the retention of Fulbright on the form of order that was  
23 uploaded?

24                  (No audible response.)

25                  THE COURT: All right.

1 MS. HARRISON: And this form of order is  
2 identical to the one that was filed with the Court.

3 THE COURT: Thank you.

4 (Pause in the proceedings.)

5 THE COURT: So I'm going to sign CR3 and I have  
6 to sign Fulbright and then I think everything will have been  
7 signed.

8 Is there anything else we have on the agenda?

9 MS. HARRISON: The only remaining item is the  
10 Cash Collateral Motion.

11 THE COURT: All right. Do you want to go see how  
12 long the parties need, whether they're -- I should take a  
13 break or whether you want to call people in? I'm happy to  
14 go either way. I do have some 11:00 o'clock hearings and  
15 they're going to take a little while so --

16 MS. HARRISON: We're happy to check in.

17 THE COURT: Okay. Thank you.

18 (Pause in the proceedings.)

19 THE COURT: Ms. Tomasco, what's it look like out  
20 there, is there a lot of blood flowing or are we okay?

21 MS. TOMASCO: Well, they're on page 12. They're  
22 going line by line. And so my feeling is that if you have  
23 something after your 11:00 o'clock docket, it would probably  
24 be the best.

25 (Pause in the proceedings.)

1 THE COURT: Okay. We'll come back at 1:30, will  
2 that work, 1:15?

3 MS. TOMASCO: One fifteen. I have a meeting at  
4 1:30 but 1:15 would be great.

5 THE COURT: Anyone object to an adjournment until  
6 1:15?

7 (No audible response.)

8 THE COURT: Okay.

9 MR. GROGAN: Well, Your Honor, can I check with  
10 Ms. Kelbon real quick? Because I know she has a flight at  
11 4:00 o'clock and I --

12 THE COURT: Sure. Let's get this done right.

13 MR. GROGAN: Okay.

14 THE COURT: If you want to come back at 10 till  
15 11:00, that's fine with me.

16 (Pause in the proceedings.)

17 THE COURT: Mr. Grogan, what works best?

18 MR. GROGAN: One fifteen is fine, Your Honor.

19 THE COURT: All right. Then we'll be in  
20 adjournment until 11:00. We'll take up our seven 11:00  
21 o'clock hearings and then we will adjourn again and return  
22 at 1:15. Thank you.

23 MS. HARRISON: Thank you, Your Honor.

24 (Recess taken from 10:19 a.m. to 1:16 p.m.)

25 AFTER RECESS

1 THE COURT: We're going to go back on the Record  
2 in the Francis' Drilling case, which is 18-35441.

3 We do not need to redo appearances, so where are  
4 we?

5 Mr. Greendyke?

6 MR. GREENDYKE: Good afternoon, Judge.  
7 Bill Greendyke on behalf of the Debtor. Judge, I've got a  
8 list of issues that has been pared down. We've been talking  
9 literally for hours since we last left you with regard to  
10 the Cash Collateral Order. I'm going to tell you what the  
11 disputes are and then kind of where we think we're going.  
12 I'm going to let counsel for the Bank and counsel for the  
13 Creditor's Committee kind of talk about it.

14 THE COURT: Okay.

15 MR. GREENDYKE: Number one, there's no agreement  
16 with regard to allowing liens on unnumbered assets in favor  
17 of the Bank.

18 Number two, there's no agreement with regard to  
19 allowing liens on proceeds of chapter 5 causes of action.

20 Consequently, number three, there's no carve-out  
21 agreement between the parties with regard to the  
22 professional fees going forward in the case.

23 And there's no 506(c) surcharge waiver. Those are  
24 the first four issues.

25 The fifth issue is a challenge period that

1 would be enabled to the Committee to challenge the liens  
2 whatever -- of the Bank. There's some agreement --  
3 disagreement about whether that should be 60 or 75 days from  
4 the date of appointment, and that all hinges upon whether or  
5 not that length of that challenge period would impair a  
6 potential quicker sale in the event a sale occurs in the  
7 course of the bankruptcy case.

8           The next item would be probably -- number six is:  
9 with regard to the remedies provision, the Committee has  
10 asked notwithstanding what we've had in our prior orders  
11 that was in large part dictated or I guess framed by the  
12 Court with regard to what the rights of the Debtors are,  
13 their interested parties might be in the event of a  
14 termination event, I think the Committee -- and I'll let  
15 them clarify it or expand upon it -- has basically asked  
16 that the Bank be required to file a motion to lift stay in  
17 the event there was a termination event before they would be  
18 entitled to foreclose or begin foreclosure proceedings.

19           There was a disagreement with regard to -- the  
20 credit bid rights has been resolved by agreement between the  
21 parties that we can deal with in a subsequent version of the  
22 Cash Collateral Order, third interim. There are a lot of  
23 minor edits that were -- agreed upon I think we can get  
24 through, but it's way too voluminous for us to present it to  
25 the Court today. I think we're going to have to redo it and

1 then pass among the parties. And they're like minor  
2 semantic type things unrelated to these big issues that I've  
3 just outlined for you.

4 And I think finally, the only other thing that I  
5 would add would be rather than looking at the 19th for a  
6 final hearing, we'd like to really have something a lot more  
7 quickly, maybe a week -- 10 days, something like that, if  
8 the Court's calendar would permit, rather than going out  
9 beyond the 19th or even as long as the 19th to have a final  
10 hearing to see if we can get this stuff resolved.

11 THE COURT: Is that to get those eight issues or  
12 have you all not even agreed to get between now and the  
13 final?

14 MR. GREENDYKE: We don't have an agreement  
15 between --

16 THE COURT: Between now and then.

17 MR. GREENDYKE: I'm telling you what the issues  
18 are, but there are but there are some things --

19 THE COURT: But that's even for an interim --

20 MR. GREENDYKE: -- we wanted to pitch to you. I'm  
21 just --

22 THE COURT: Even for an interim today.

23 MR. GREENDYKE: Right.

24 THE COURT: Okay.

25 MR. GREENDYKE: Right. I think there's a

1 framework for an interim. But I will tell you that  
2 obviously the Debtors' professional is very upset with the  
3 fact that there is no carve-out.

4 THE COURT: Okay.

5 MR. GREENDYKE: You know, I think we heard the  
6 Court earlier say you don't impose one, you let the parties  
7 agree upon it. I mean, we're not happy with this at all.  
8 It was just why we'd like a more quick hearing frankly.

9 THE COURT: Well, It sounds like you need a  
10 hearing today on interim use, right?

11 MR. GREENDYKE: Well, I mean, some of these things  
12 I think are legal that I think we can let the parties  
13 describe to you and maybe we can resolve. I mean, we're  
14 okay --

15 THE COURT: I don't think so.

16 MR. GREENDYKE: We're okay with this framework,  
17 but if we go forward to allow --

18 THE COURT: I don't think so. I mean --

19 MR. GREENDYKE: -- the Debtor to use cash collateral,  
20 then we --

21 THE COURT: I think I ought to be presented with  
22 an agreement between two parties, the Debtor and the Bank  
23 have an agreement, right? I either approve that Agreement  
24 or I don't. I'm not going to write the Agreement. And they  
25 can attack and shoot down the Agreement.



1 MR. GREENDYKE: I guess we anticipated that some  
2 of these issues the parties could express what they thought  
3 and you might have an opinion on other than the lack of  
4 liens and --

5 THE COURT: Well, I've got opinions on all of  
6 them, but those don't matter because it --

7 MR. GREENDYKE: Okay.

8 THE COURT: If you all have an agreement, then I  
9 either need to approve or not approve the Agreement. I  
10 don't get to write it. I mean, I --

11 MR. GREENDYKE: Okay. I understand.

12 THE COURT: It's of like what I said before on the  
13 carve-out. I think carve-outs are a good idea. I think  
14 they're useful, I think they're helpful.

15 MR. GREENDYKE: Yeah.

16 THE COURT: I don't think I get to order a carve-  
17 out. That's what people can agree to.

18 MR. GREENDYKE: We heard that.

19 THE COURT: And I don't think I get to order it  
20 any more than I didn't get to order there shouldn't be liens  
21 on unencumbered property. I don't know why the Bank needs  
22 liens on unencumbered property, but they may very well. And  
23 I can't just do that out of the blue. It's evidentiary.

24 Mr. Grogan?

25 MR. GROGAN: Your Honor, James Grogan for PNC

1 Bank. Your Honor, so the Debtors and the Bank have an  
2 agreement on a carve-out. We've agreed to a budget. We had  
3 agreed to 506(c) waivers.

4 THE COURT: Right.

5 MR. GROGAN: The only issue with respect to the  
6 carve-out is the amount of carve-out that would go to  
7 Committee professionals.

8 THE COURT: I understand that, but the Committee  
9 gets to raise what objections they want --

10 MR. GROGAN: Yeah.

11 THE COURT: -- and they can -- I'm not going to  
12 approve part of your agreement, right? I'm either going to  
13 approve it or not approve it. And they can raise objections  
14 or not raise objections. You can all agree to something to  
15 carry you for a week or 10 days or proceed today.

16 And I just -- I'm not going to guess at what to do  
17 based on what normally occurs. If what we do is what  
18 normally occurs, then you don't need me, right? Because  
19 those are for -- normally what happens is: there's a deal  
20 and I'm approving a deal. I don't have a deal.

21 So, I mean, I'll hear from somebody that thinks  
22 I'm wrong about that, but I don't think I ought to pick and  
23 choose what I like and don't like without evidence. Just  
24 prove up the case.

25 MR. GROGAN: Don't think so. Go ahead.

1 THE COURT: Let me hear from the Committee.

2 Am I missing something?

3 MR. KURZWEIL: Thank you, Your Honor. The Court's  
4 correct, there is no agreement. We were able to, in the  
5 effort to move the process along, resolve a tremendous  
6 amount of the open issues.

7 But the issues that Mr. Greendyke relayed to the  
8 Court are still open and there is a disagreement on this.  
9 And I think that some of it turns on the fact that the Bank  
10 may not know what direction this case should go in. And  
11 everybody is here trying to protect the unknown and without  
12 the direction, it's hard to fashion an order or agree to an  
13 order because they want protections that are completely to  
14 the detriment of the Estate and to the other constituencies  
15 should this case get converted --

16 THE COURT: Sure.

17 MR. KURZWEIL: -- because they want to fight.

18 THE COURT: Sure. But are they worth -- I mean,  
19 the question I have to answer at the end of the day is: do I  
20 say, "No," the Debtor isn't to spend cash collateral  
21 therefore, they should go out of business or do I approve  
22 the protections? And if I don't approve this deal, then  
23 they can't spend cash collateral at which point the Debtor  
24 can try and come back and compel the use of cash collateral.  
25 But I can't make the Bank consent to the use of cash

1 collateral on terms the Bank doesn't consent to.

2 MR. KURZWEIL: Completely.

3 THE COURT: So if the only time the Bank is  
4 prepared to consent to the use of cash collateral is if they  
5 have a lien on all unencumbered property, which I'm taking  
6 sort of just the first one on the list, the Bank can set  
7 that as a standard for getting the agreement. The Debtor  
8 can say, "We've made a judgment. We think it's worth  
9 agreeing to that." You can shoot it down. If you win, the  
10 Debtor can't spend cash collateral. The Debtor can come  
11 back in three minutes later and say, "We want to compel the  
12 Bank to let us use cash collateral."

13 Maybe I do, maybe I don't. If you want to risk  
14 the case on the fight, we'll risk the case on the fight.  
15 It's not my choice.

16 MR. KURZWEIL: Your Honor, and as the continuum  
17 because each one of these items add to the likelihood that  
18 the unsecured creditors and the constituencies are much  
19 worse off, the case shouldn't go forward if they continue to  
20 insist on all the items they're insisting on because they  
21 are --

22 THE COURT: I'll let you prove that with your  
23 witnesses. They get to prove an agreement. You get to  
24 prove it's a bad agreement. That's what I'm supposed to do  
25 as a living. I'm not supposed to sit here and say what I

1 like and don't like. Prove up the case.

2 How long is it going to take to get the witnesses  
3 together?

4 (No audible response.)

5 THE COURT: You all ready?

6 MR. KURZWEIL: Yeah.

7 THE COURT: Everybody ready?

8 (No audible response.)

9 THE COURT: Okay. It's going to be a long  
10 afternoon. You're going to be interrupted a lot, but let's  
11 get started.

12 MS. HARRISON: Your Honor, the Debtors would call  
13 Mr. Greg Baracato to the stand.

14 THE COURT: Mr. Baracato? Would you raise your  
15 right hand please, sir?

16 (Witness sworn.)

17 THE COURT: Thank you. Have a seat please.

18 THE WITNESS: I'm going to need some water.

19 MS. HARRISON: Good afternoon, Mr. Baracato.

20 THE WITNESS: Good afternoon.

21 DIRECT EXAMINATION OF GREG BARACATO

22 BY MS. HARRISON:

23 Q Could you please state your name for the Record?

24 A Phillip Gregory Baracato.

25 Q At the first hearing on Day One, you testified about

1 your educational background and your work history.

2           Could you just briefly give an overview of that  
3 for the Court?

4 A     Yes. I've got a BS in industrial management and an MBA  
5 in finance, and have worked the last 20 years doing  
6 restructuring services.

7 Q     Where are you currently employed?

8 A     CR3 Partners.

9 Q     And if you could, can you briefly remind the Court of  
10 what your title with CR3?

11 A     At CR3, I'm a partner.

12 Q     And can you briefly describe the work that you do with  
13 CR3?

14 A     I do 90 percent debtor advisory restructuring type  
15 work.

16 Q     Has CR3 Partners been retained by the Debtor to provide  
17 those types of advisory services?

18 A     Yes.

19 Q     When was CR3 retained?

20 A     We were retained on August the 8th.

21 Q     And are you the proposed Chief Restructuring Officer  
22 for the Debtors?

23 A     I believe I was approved today actually but, yes.

24 Q     And when did that appointment become effective?

25 A     Today.

1 Q Can you generally describe the services that CR3 has  
2 been providing for the Debtors?

3 A We've been doing financial advisory business plan  
4 analysis, budgeting, those types of services.

5 Q Okay. And during that time, have you become familiar  
6 with the Debtors' day-to-day operations?

7 A Yes.

8 Q I don't think you have an exhibit book, do you?

9 A No.

10 Q Okay. I'm going to pass up a book of exhibits.

11 MS. HARRISON: And, Your Honor, these are the same  
12 exhibits that were admitted into evidence earlier this  
13 morning?

14 THE COURT: Correct.

15 MS. HARRISON: I'm going to have you take a look  
16 at Exhibit 1.

17 BY MS. HARRISON:

18 Q Are you familiar with this exhibit?

19 A Yes, I am.

20 Q And what is this exhibit?

21 A This is our proposed 13-week cash collateral budget.

22 Q Did you prepare this document?

23 A Yes, I did.

24 Q And did you prepare this document based on the Debtors'  
25 books and records?

1 A Yes, I did.

2 Q Okay. I'd like to just get a better understanding of  
3 where the Debtors are today versus where they were during  
4 the First Day Hearings.

5 Generally speaking, how have the Debtors been  
6 performing post-petition versus prepetition?

7 A We've been performing surprisingly well, Your Honor,  
8 versus that First Day. We were real nervous about the  
9 impact of the filing and then doing well.

10 Q Have the Debtors experienced any significant loss of  
11 employees since the petition date?

12 A Nothing significant. We've had our normal turnover and  
13 especially drivers.

14 Q Okay. Have the Debtors experienced a significant loss  
15 of contracts?

16 A No. We had two minor contracts, but I think I  
17 mentioned on the First Day we had three new contracts in the  
18 hopper which we've now closed on and so we replaced the two  
19 small ones that we lost.

20 Q And have the Debtors had any significant loss of  
21 vendors?

22 A No.

23 Q Are the company's operations stable?

24 A Yes.

25 Q I'm going to have you look quickly at Exhibit 2 in the



1 notebook.

2 Are you familiar with these documents?

3 A Yes, I am.

4 Q And what are they?

5 A This is our Weekly Variance Report that we provide to  
6 the lending group every week.

7 Q Did you prepare these documents?

8 A Yes, I did.

9 Q Okay. And were the documents prepared based on the  
10 books and records of the company?

11 A Yes.

12 Q What do the Variance Reports generally show as to the  
13 Debtors' actual performance versus the forecasted  
14 performance?

15 A We report every week on both a weekly and cumulative  
16 basis to the lending group primarily and I have a weekly  
17 call and discuss the results.

18 Q And do these Variance Reports show on a cumulative  
19 basis the Debtors' performance?

20 A Yes, they do. If you turn back to the very last one,  
21 it shows our cumulative for the first four weeks of this  
22 case.

23 Q Okay. And what was the cumulative performance?

24 A So if you look at this spreadsheet on that last page,  
25 on the right-hand side, it shows our cumulative performance.

1 And starting at the top -- and I think the cumulative is  
2 more important for you to look at, Your Honor -- you can see  
3 we've outperformed on receipts by \$1.3 million versus our  
4 Budget. And then moving on down, you can see that --

5 THE COURT: I may be looking at the wrong thing.  
6 I'm seeing you outperformed on receipts by \$1.8 million.

7 Am I misreading it? Well, I'm on the wrong page.  
8 No, I'm on the -- I was on the wrong page. I was  
9 misreading. Okay. I'm there with you.

10 THE WITNESS: Okay. So receipt -- cumulative  
11 receipts are \$1.3 million in excess of our Budget. And then  
12 you can -- down below we show the variances on our  
13 disbursements so we're \$800,000 under on our disbursements.  
14 So our cumulative cash flow from operations is over  
15 \$2 million in excess of what we had budgeted for the first  
16 four weeks.

17 And then I would point you to the left-hand side.  
18 Here we track our cash on a weekly basis, but in this  
19 particular case, you can see as of last Friday, we had  
20 \$3.4 million of cash in the bank account.

21 MS. HARRISON: Mr. Baracato, I'd like to turn back  
22 to Exhibit 1 to look at the third interim Budget.

23 BY MS. HARRISON:

24 Q How long is the current proposed third interim budget  
25 period?

1 A When we prepared this, we were only looking for the  
2 three -- the upcoming three weeks.

3 Q And what is the Debtors' projected ending cash at the  
4 end of that three-week period?

5 A We're showing here \$2.9 million in cash.

6 Q And is that an accurate estimate of the Debtors' actual  
7 ending cash at the end of the three weeks?

8 A That is a representation of the cash. But what we have  
9 in here, Your Honor, for Debtor professionals and UCC  
10 professionals, those amounts are accrued professional fees  
11 estimated through November 17th from the beginning of the  
12 case through that date.

13 Q So will those amounts actually be paid during the third  
14 interim budget period?

15 A Some of them will be because of the Orders that were  
16 approved today, and it's only two smaller ones that don't  
17 have to do -- or the -- JND doesn't have to do fee  
18 applications. But for the most part, those fees will not be  
19 paid until probably December the 8th when the fee  
20 application objection period will be over.

21 Q Okay. And if you recall, what was the Debtors'  
22 starting cash position on the petition date?

23 A It was 830,000 -- \$820,000.

24 THE COURT: All right. I'm going to take a short  
25 break and I'm going to call my 1:30 hearings. You can

1 either step down or keep your seat. These aren't going to  
2 take a very long time. You all can definitely keep your  
3 seats here.

4 (Recess taken from 1:35 p.m. to 1:57 p.m.)

5 AFTER RECESS

6 THE COURT: It's going to be a while before I  
7 really get to you, I'm sorry. I thought we would -- I  
8 didn't think these were going to take quite that long. You  
9 know I've got a whole bunch of cases at 2:00 and 2:30.

10 MS. HARRISON: Would you mind if Mr. Baracato  
11 stepped off the stand in the meantime or do --

12 THE COURT: Absolutely, because we're going to be  
13 now I would guess an hour and a half to two hours, and then  
14 we'll just stay tonight till we get it finished.

15 (Witness steps down.)

16 MS. HARRISON: Okay.

17 THE COURT: Do you want me to give you -- so just  
18 so you know, I've got 2:00 o'clock Cobalt hearings. I've  
19 got it looks like 15 Cobalt hearings at 2:00. And then at  
20 2:30 we have the new *Gastar* case. You all may know better  
21 than I know. I don't think *Gastar* is going to take forever  
22 so I'm guessing by 3:30 we can come back.

23 Do we have any *Gastar* people here that can give me  
24 a time estimate?

25 (No audible response.)

1 THE COURT: Okay. Go ahead.

2 MS. HARRISON: Your Honor, I don't think it will  
3 take very long at all.

4 THE COURT: You think we'll be done in an hour?

5 MS. HARRISON: I don't want to speak out of turn,  
6 but I don't think it will take long. And I can confirm that  
7 with Counsel.

8 THE COURT: That's okay. Do you all want to come  
9 back and wait a little bit or do you want to come back at  
10 3:30? You tell me what you want to do.

11 MR. SPEAKER: Let's just come back.

12 THE COURT: I'm sorry, do you want to come back  
13 at --

14 MS. HARRISON: I think we're happy to come back.

15 THE COURT: You can come at 3:30 or you can come  
16 back at 3:15 and wait a little bit.

17 MR. SPEAKER: Yeah.

18 THE COURT: What do you want to do?

19 MR. SPEAKER: Yeah, 3:30, Your Honor, is good.

20 MS. HARRISON: We'll come back at 3:30.

21 THE COURT: Okay. I'm sorry that the day just got  
22 jammed like that, but I didn't expect to time it that way.

23 MS. HARRISON: We understand.

24 THE COURT: Okay. We will adjourn then the  
25 current Francis' hearing. It will resume at about 3:30.

1 And we're going to move to the Cobalt hearings at 2:00. And  
2 I apologize to everybody for inconveniencing.

3 MR. SPEAKER: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (Recess taken from 1:58 p.m. to 4:54 p.m.)

6 AFTER RECESS

7 THE COURT: So you all are my last hearing for the  
8 day so I think we won't have any more interruptions. The  
9 only thing I'll interrupt you all do is: I do want people to  
10 remake their appearances. We have a new court reporter here  
11 and she's going to need to be able to identify everybody.

12 So if we could start over with announcements  
13 please?

14 MS. TOMASCO: Your Honor, Patty Tomasco, Kristhy  
15 Peguero, Jackson Walker, on behalf of Prophet Equity, LLP.

16 THE COURT: Thank you.

17 MR. GREENDYKE: Good afternoon, Judge.

18 Bill Greendyke, Jason Boland, Julie Harrison and Bob Bruner  
19 for Norton Rose Fulbright, on behalf of the Debtor.

20 THE COURT: Thank you.

21 MR. BURRER: Karl Burrer, B-U-R-R-E-R, and  
22 David Kurzweil for the Committee.

23 THE COURT: Thank you.

24 MR. GROGAN: Good afternoon. James Grogan and  
25 Regina Stango Kelbon from Blank Rome, for PNC Bank as

1 administrative agent to the first lienholders.

2 THE COURT: Thank you. So sorry, the one hour was  
3 a rotten estimate. I'll stay till we're done. I don't know  
4 what else I can do.

5 How do you all want to move ahead?

6 MR. GREENDYKE: Judge, Bill Greendyke, on behalf  
7 of the Debtor. And I'm going to defer to PNC's counsel. We  
8 have an agreement with them. I think there's still an  
9 objection to the agreement with respect to the Committee.  
10 But before you started hearing more evidence from us, we  
11 wanted to let you know where we were.

12 THE COURT: Thank you.

13 MS. KELBON: Yes, Your Honor. I think -- I'm  
14 Regina Stango Kelbon, on behalf of PNC. We at least used  
15 this time to narrow the issues down even further.

16 THE COURT: Thank you.

17 MS. KELBON: So we're down to one issue. But  
18 during the break, we agreed that for this two or three-week  
19 period, depending on when Your Honor gives us the next  
20 hearing before the 19th, that we will split the lien, the  
21 adequate protection lien, solely with respect to the  
22 diminution occurring during this two or three-week period  
23 because we already have the lien for diminution for the  
24 first four weeks of the case, but we will retain the lien on  
25 unencumbered assets for this -- for the diminution and we

1 will defer the lien on the avoidance action until the final  
2 hearing with respect to any diminution that occurred during  
3 this two or three-week period.

4 We are still retaining a superpriority claim as to  
5 the avoidance action proceeds, if we do have a superpriority  
6 claim and our needs are inadequate.

7 THE COURT: Okay.

8 MS. KELBON: So that resolved the lien issue, and  
9 we decided to split the lien.

10 That left us then with one issue, which is the  
11 carve-out issue, and we agreed with the Debtors to provide a  
12 carve-out. The budget line item had a mistake in it as to  
13 the amount of the carve-out for the Debtors' professional so  
14 we will be revising that because it was to be reduced by the  
15 amount of any held retainers. So we've agreed to reduce  
16 that first week only to 493 instead of 781.

17 Since the way the Order reads, it's the lesser of  
18 the amount set forth in the Budget and the actuals. So we  
19 wanted to make sure we had -- we actually -- and it requires  
20 applications of retainers first. So that would -- so that's  
21 the agreement. We've provided for a carve-out, a 493, 196,  
22 and 221. The 493 is really a catchall for Debtors'  
23 professionals for the four weeks as well.

24 And then we agreed to put a carve-out for the  
25 Committee, which we had in before, at 40, 20 and 20. And



1 with -- and the consideration and the agreement on the  
2 carve-out is: we will provide this carve-out, but we are  
3 getting a limited 506(c) waiver. And by "limited," the  
4 following are the stipulations:

5           It would be from the petition date to the next  
6 hearing if -- you know, during -- the 19th or before that  
7 for any accrued and unpaid admin claims during that time  
8 frame. And provided, however, that to the extent let's say  
9 there was an emergency shut-down, conversation or whatever,  
10 that we would make sure that the accrued wages got paid out  
11 of cash collateral for any unpaid wages to the extent  
12 they're paying in arrears any wage for that week. Let's say  
13 there was a week of wages --

14           THE COURT: Yeah. I'm having trouble linking this  
15 back to 506(c) and it's just been a long day so.

16           MS. KELBON: Well, we're agreeing that our  
17 collateral could be surcharged for that.

18           THE COURT: Got it. You're agreeing to that  
19 surcharge.

20           MS. KELBON: Yeah, it's covered --

21           THE COURT: Okay.

22           MS. KELBON: -- to cover any accrued and unpaid  
23 wage for the period that might -- if there were to be any  
24 hang over. We're hoping that's never the issue, but that  
25 was the agreement we reached with the Debtors. And the

1 Committee is still reserving their objections.

2 We fixed the challenge period, I think, to the  
3 Committee's satisfaction with the Committee's rights to  
4 fully seek to extend to go for a longer challenge period at  
5 the final hearing. We've agreed to 60 days from their  
6 appointment with the Committee's right to argue for 75 at  
7 the final hearing. And I think that is -- they were the  
8 issues that we had narrowed it down to.

9 And so really, Your Honor, the Committee's not in  
10 agreement with our carve-out proposal. They would rather us  
11 go with no carve-out and no 506(c) waiver. But Debtors'  
12 professionals have asked us to go for the carve-out with the  
13 506(c) -- the limited 506(c) waiver for this period because  
14 they do not want to go without a carve-out and we're willing  
15 to do it either way. Thank you, Your Honor.

16 THE COURT: Okay. Thank you.

17 MR. GREENDYKE: Judge, on behalf of the Debtor, we  
18 agree with that.

19 THE COURT: Thank you.

20 MR. GREENDYKE: We just wanted you to have the  
21 background.

22 THE COURT: Mr. Kurzweil?

23 MR. GREENDYKE: Thank you.

24 MR. KURZWEIL: Yeah, thank you, Your Honor. I was  
25 not expecting that those comments would be made on Record.

1 I thought they were going forward with an evidentiary  
2 hearing. We're trying to work through the issues.

3 A couple of issues that arise with that,  
4 Your Honor, firstly, the fact that they'd be getting a  
5 506(c) waiver at all this early in the case, in a case that  
6 is existing solely for the benefit of the secured creditor  
7 is problematic. I believe that the evidence will be shown  
8 to the Court that under no circumstances does anybody  
9 anticipate that they pay more than \$75 million for the  
10 assets, which would be the approximate sum of the first and  
11 second lien debt in this case meaning that everything  
12 happened -- happening in this case is for the benefit of the  
13 secured creditors.

14 I believe also that we went through that the  
15 evidence would show that the funds being spent in the case  
16 are for the preservation of collateral to get to the sale,  
17 and it'd be the same funds or mostly the same funds that the  
18 Debtor -- well, it should be that the secured lender would  
19 have to spend if they foreclosed on the collateral.

20 The evidence would further show that this is being  
21 funded, by the way the Budget is set up, by the unencumbered  
22 assets and all through a 507(b) claim which means at the end  
23 of the day, all of the constituents are worse off than they  
24 are today other than the secured lender.

25 I think the evidence would further show that when

1 they say they're getting a lien on unencumbered assets, that  
2 nobody can identify for the Court what those unencumbered  
3 assets are because we've been asking. No one yet has done.  
4 Even though PNC does have blanket liens and the UCC filed,  
5 there are some land involved. We don't know the course of  
6 actions. There's a couple of hundred vehicles. We don't  
7 know what they have a lien in or don't have a lien in. If  
8 it's insignificant, they don't need it. And if it's  
9 significant, they shouldn't be getting it.

10 THE COURT: So I had misunderstood what PNC said.  
11 I thought that they had a deal with you on everything other  
12 than the 506(c) carve-out trade and I'm hearing that's not  
13 the case, which is just fine. Unless I misheard, you all  
14 were telling me completely different things.

15 MR. KURZWEIL: Well, we don't. We were looking at  
16 a package to settle on.

17 THE COURT: Okay.

18 MR. KURZWEIL: That's why this took me --

19 THE COURT: So there is no deal unless there's a  
20 full deal. That's fine.

21 MR. KURZWEIL: Yeah, Your Honor. The idea of that  
22 they'd be giving -- that committee counsel just got involved  
23 in the case and they're not providing any resources to get  
24 up to speed and in the Order they want a summary proceeding  
25 which they have also said, "We don't know next week if this

1 case is going to go forward or not." They have said that  
2 they're looking at it but they can come back and they can  
3 want this case to be converted. They may want relief from  
4 stay. Without that protection of getting a 506(c) waiver  
5 and the 507(b) claim against unencumbered assets, it's just  
6 not appropriate this early in the case.

7 I understand nobody can force them to give a  
8 carve-out, but all -- if all the professionals are going to  
9 be naked going forward, let's all be all, you know, naked  
10 without the carve-out going forward. But to give lots of  
11 money to Debtors' counsel in this case, which they've got a  
12 prepetition retainer -- well-deserved, a prepetition  
13 retainer and other monies -- and then say the entire  
14 professionals for the unsecured creditors can have -- I  
15 think it's \$60,000. If my math is wrong, I apologize  
16 because it's been moving.

17 THE COURT: Well, she said 80.

18 MR. KURZWEIL: Eighty? Okay, \$80,000 to get up to  
19 speed and move this case along doesn't give us the ability  
20 to work through these issues. We have given them the  
21 numbers and the numbers that we gave -- that we provided for  
22 actually are where we are, you know, about 95 for the first  
23 week, 80 and then it goes down because we just got to get up  
24 to speed. And we believe the fees were going down -- will  
25 be going down. The fact that we've had to file this

1 objection because we called in advance, we wanted to work  
2 through all the issues with them to get to this point.

3 We've been calling --

4 THE COURT: Can I make --

5 MR. KURZWEIL: -- to try to get this down.

6 THE COURT: -- a suggestion?

7 MR. KURZWEIL: Yes, Your Honor.

8 THE COURT: You don't have to do this and they  
9 don't either.

10 Why don't I give you the right to file two-week  
11 fee apps, two-week interim fee apps? Those will become  
12 administrative obligations. You don't really need the  
13 carve-out if you're getting paid. You got 80 up front.

14 MR. KURZWEIL: That would be very -- you know,  
15 Your Honor, that would be a great help in this case.

16 THE COURT: Would that solve the problem?

17 MR. KURZWEIL: It would certainly mitigate it  
18 tremendously enough to go forward.

19 THE COURT: Would it result in an agreed cash  
20 collateral order?

21 MS. TOMASCO: Your Honor, the standard fee  
22 procedures Motion is on file and set for hearing on the  
23 19th.

24 THE COURT: I'm going to make it -- if we're going  
25 to do disproportionate carve-outs --

1 MS. TOMASCO: Okay.

2 THE COURT: -- I got the complaint -- the  
3 protection that I think he has is that admin claims have to  
4 get paid. And so if I give him two-week fee app rights  
5 which he doesn't need to take but that way if he ever starts  
6 getting nervous --

7 MS. TOMASCO: I see.

8 THE COURT: -- he can do it up front and he can it  
9 later. The Bank's willing to agree that his fees can be  
10 paid up to 80.

11 MS. TOMASCO: Uh-huh.

12 THE COURT: Once his fees exceed 80, the Debtor's  
13 going to be obliged to pay. The Debtor can either get a  
14 concession from the Bank or not. If the Debtor can't get a  
15 concession from the Bank, the case is in trouble, right?  
16 Because he has -- you all have to pay -- or, excuse me, the  
17 Debtor has to pay its admin expenses on an ongoing basis.  
18 And then we don't cross all these bridges.

19 I'm also willing to just have the hearing, but it  
20 seems to me that we can just solve the problem without a  
21 whole bunch of imposition --

22 MS. TOMASCO: I'm happy to --

23 THE COURT: -- on a whole lot of people.

24 MS. TOMASCO: I'm happy to solve the problem, but  
25 filing fee apps is in and of itself an expensive thing to do

1 as opposed to the --

2 THE COURT: Well, you can do it in the interim  
3 statement kind of format where he files his fees --

4 MS. TOMASCO: Yeah.

5 THE COURT: -- and if there's no objection,  
6 they're approved. And if there is, we have the hearing.

7 MS. TOMASCO: Correct.

8 THE COURT: Just like we normally do, but we'll --  
9 I'll give him an every two-week right unlike everybody else  
10 because these guys don't need it. They got a carve-out.

11 MS. TOMASCO: Then we could probably just modify  
12 the Fee Procedures Order to say that the Committee can file  
13 it every two weeks without them having to go through the  
14 entire fee app process.

15 THE COURT: They can do it on an interim basis.

16 MS. TOMASCO: Yeah.

17 THE COURT: Do you all want to talk about that?  
18 Because I'm prepared to sort of try and create something  
19 that I don't think I created before to recognize the  
20 disparity and the Bank's right. I am not going to make the  
21 Bank give a carve-out. But the Debtor does have to pay its  
22 ongoing admin expenses. You all tell me if that doesn't  
23 work. If it doesn't, we'll just proceed with the hearing  
24 and I'll hear disagreement.

25 MR. GROGAN: Your Honor, James Grogan. We're



1 fined to consider that and we need to talk to Norton Rose.  
2 I don't want the Court to have the impression that there's a  
3 gross disparity here. We have the actuals from Norton Rose  
4 for the first month of the case and they're running about  
5 72,000 a month -- or, I'm sorry, 72,000 a week.

6 THE COURT: All right.

7 MR. GROGAN: So the carve-out -- I mean, you know,  
8 it's less than that but it's not, I don't think,  
9 disproportionate.

10 THE COURT: I would expect there to be a gross  
11 disparity in what is spent by Debtors' counsel versus the  
12 Committee especially in a case like this. So that's not a  
13 complaint. It's just saying --

14 MR. GROGAN: Yeah.

15 THE COURT: -- you've given them a much bigger  
16 carve-out. And if that -- I don't know what the Committee's  
17 going to earn or not earn. I'm never going to pay them what  
18 they don't earn whether there's a carve-out or not. I'm not  
19 going to pay Mr. Boland what he doesn't earn, I don't care  
20 whether there's a carve-out. But it just means we don't  
21 need to worry too much about the carve-out situation if I  
22 act quickly on theirs.

23 MR. GROGAN: On the fees. Yeah.

24 Can we have five minutes to just --

25 THE COURT: Sure.

1 MR. GROGAN: Thank you, Your Honor.

2 (Recess taken from 5:10 p.m. to 5:15 p.m.)

3 AFTER RECESS

4 THE COURT: Mr. Grogan?

5 MR. GROGAN: All right. Thank you, Your Honor.

6 So after talking through the issues, we're not entirely sure  
7 how this is going to impact the Debtors' liquidity long  
8 term. However, we would be willing to do it for the third  
9 interim period so basically until the final hearing at which  
10 point you know --

11 THE COURT: Well, all bets are off at the final  
12 hearing.

13 MR. GROGAN: All bets are off at the final.

14 THE COURT: On all issues, right?

15 MR. GROGAN: We may come back cut a new deal on  
16 carve-out or whatever.

17 THE COURT: No, no, every bet and everything is  
18 off at the final hearing.

19 MR. GROGAN: Exactly. But I don't want the -- we  
20 just don't think -- I don't think we can get to the comfort  
21 level to make this a permanent situation, but we could do it  
22 on the interim basis.

23 THE COURT: And I may get comfortable doing it --

24 MR. GROGAN: I understand.

25 THE COURT: -- which may matter. But for now, all

1 bets are off at the final hearing. They don't -- they're  
2 not going to agree to the 506(c) necessarily. They're not  
3 going to agree to the carve-out necessarily. You're not  
4 going to agree to their two-week.

5 MR. GROGAN: Yeah.

6 THE COURT: No one's agreeing to anything at the  
7 final.

8 (Laughter.)

9 MR. GROGAN: That's right.

10 THE COURT: The question is: are we going to keep  
11 things going --

12 MR. GROGAN: Correct.

13 THE COURT: -- until then on this basis?

14 MR. GROGAN: Yes.

15 THE COURT: And that's your understanding, right,  
16 Mr. Kurzweil?

17 MR. KURZWEIL: That's my understanding, yes,  
18 Your Honor. We can reserve until the final.

19 THE COURT: Yeah. Okay, good.

20 MR. GROGAN: Does that work?

21 THE COURT: Works for me.

22 MR. GROGAN: Okay.

23 THE COURT: And it may very well be that in  
24 practice it doesn't work. I mean, I got that because I've  
25 never done it before and --

1 MR. GROGAN: Yeah.

2 THE COURT: -- let's experiment a little bit. But  
3 it's sort of a way to get through almost a battle that I  
4 don't -- the Debtors so far has performed far beyond  
5 forecast, which is a very good sign as to whether we're  
6 going to eventually get to a confirmed plan.

7 MR. GROGAN: Uh-huh.

8 THE COURT: If we get to a confirmed plan, this  
9 issues goes away. The closer we get to a confirmation  
10 hearing, the less of an issue this is for lots of reasons.  
11 So it makes a little bit of sense for me to kick it down the  
12 road given the performance.

13 I think there are some potential negatives as I  
14 sit here and think about it, which is: people have a bigger  
15 incentive to shoot at your fee applications than they might  
16 normally, but that's a positive too. I want to keep your  
17 fees low so we'll see what happens. Okay.

18 Can I get you all then to upload an -- let me be  
19 sure. All the other announcements that the Bank announced  
20 as to the deal, if we add this two-week interim fee app  
21 right to it, that does resolve all other issues, right, this  
22 split of the collateral kind of issues?

23 MR. KURZWEIL: Your Honor, we believe it does  
24 because a lot of them are questioning. Obviously, we'd like  
25 to review the new Order but --

1 THE COURT: Right, but --

2 MR. KURZWEIL: -- I believe -- we believe for this  
3 -- well, this is a very short period.

4 THE COURT: The interim period.

5 MR. KURZWEIL: My understanding was the Debtor was  
6 going to request subject to the Court's calendar a hearing  
7 earlier than the 19th to get -- for the final hearing  
8 subject to the availability of the Court. So we're really  
9 only talking a week or a two-week period anyway until we get  
10 to a final hearing on this.

11 THE COURT: Okay. November 13th at 3:30 work?

12 MR. GREENDYKE: For the Debtor, yes.

13 THE COURT: Thank you.

14 MR. GROGAN: It works for me.

15 MR. GREENDYKE: And Bill Greendyke again on behalf  
16 of the Debtor. To answer the Court's question about the  
17 rest of the deal being together, yes. As I said earlier,  
18 we're going to have to, you know, take some time and fix an  
19 order that we all agree on the form, but we've plowed  
20 through everything except for this page.

21 THE COURT: Well, let me tell you what my view is.

22 MR. GREENDYKE: Yes.

23 THE COURT: You all have announced a deal. You've  
24 announced it on the Record. Everybody's agreed to it. I  
25 agree the wording has to be worked out. But if the wording

1 doesn't get worked out, I will enforce wording on people to  
2 enforce the oral announcement because everybody is now bound  
3 to the oral announcement.

4 MR. GREENDYKE: Yes.

5 THE COURT: The wording then has to fairly  
6 implement that. But if there's a problem, I'm ordering  
7 immediately the use of cash collateral as authorized. I'm  
8 ordering it on the terms that have been announced on the  
9 Record, and I'm authorizing parties to submit disputes to me  
10 if you can't agree on the wording. I don't anticipate that  
11 occurring but if it does, I'll enforce the oral announcement  
12 with my own language if required.

13 MR. GREENDYKE: Thank you.

14 MR. KURZWEIL: Thank you.

15 MS. KELBON: Thank you, Your Honor.

16 MR. KURZWEIL: Understood.

17 THE COURT: Thank you.

18 MR. KURZWEIL: Your Honor, I think that works for  
19 the Committee, thank you.

20 THE COURT: Thank you. What else can we  
21 accomplish today?

22 MR. BOLAND: I think I'm good.

23 MR. GREENDYKE: Thank you, Your Honor.

24 MR. KURZWEIL: Thank you for staying late.

25 THE COURT: It's been a long day. I apologize

1 that the afternoon just turned into a zoo.

2 MR. GREENDYKE: Thank you, Judge.

3 MS. KELBON: Thank you, Your Honor, we understand.

4 MR. CASTRO: Thank you, Your Honor. Thank you.

5 THE COURT: Thank you all. All right. Good  
6 night.

7 (Hearing adjourned at 5:19 p.m.)

8 \* \* \* \* \*

9 I certify that the foregoing is a correct  
10 transcript to the best of my ability produced from the  
11 electronic sound recording of the proceedings in the above-  
12 entitled matter.

13 /S/ MARY D. HENRY

14 CERTIFIED BY THE AMERICAN ASSOCIATION OF

15 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET\*\*337

16 JUDICIAL TRANSCRIBERS OF TEXAS, LLC

17 JTT TRANSCRIPT #59487

18 DATE FILED: NOVEMBER 3, 2018

19

20

21

22

23

24

25