

In Re:
RAVN AIR GROUP INC., et al.
Case No. 20-10755 (BLS)

April 7, 2020

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

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In the Matter of:

RAVN AIR GROUP INC., et al., Case No.

Debtors. 20-10755 (BLS)

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United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

April 7, 2020
10:34 AM

B E F O R E:
HON. BRENDAN L. SHANNON
U.S. BANKRUPTCY JUDGE

ECR OPERATOR: AL LUGANO

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Telephonic and video hearing re:

Motion of the debtors for entry of an order directing the joint administration of the debtors' Chapter 11 cases [Dkt. No. 3]

Debtors' application for appointment of Stretto as claims-and-noticing agent [Dkt. No. 4]

Motion of the debtors for interim and final orders (i) approving continued use of the debtors' cash-management system, bank accounts, and business forms; (ii) granting the debtors authority to open and close bank accounts; and (iii) authorizing banks to honor certain pre-petition transfers [Dkt. No. 6]

Motion of the debtors for interim and final orders establishing adequate-assurance procedures with respect to the debtors' utility providers [Dkt. No. 7]

Motion of the debtors for interim and final orders authorizing the debtors to pay certain pre-petition taxes [Dkt. No. 8]

Motion of the debtors for interim and final orders authorizing the payment of pre-petition insurance obligations [Dkt. No. 9]

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Motion of the debtors for an order authorizing the debtors to pay pre-petition employee wages, benefits, and related items [Dkt. No. 10]

Motion of the debtors for entry of interim and final orders pursuant to 11 U.S.C. Sections 105, 361, 362, 363, 364, and 507 and Bankruptcy Rules 2002, 4001, and 6004 (i) authorizing the debtors to obtain post-petition senior secured superpriority financing, (ii) authorizing the debtors' limited use of cash collateral, (iii) granting adequate protection to the pre-petition secured parties, (iv) scheduling a final hearing, and (v) granting related relief [Dkt. No. 13]

Transcribed by: Clara Rubin

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A P P E A R A N C E S (TELEPHONIC):

BLANK ROME LLP

Attorneys for Debtors

BY: VICTORIA (TORI) A. GUILFOYLE, ESQ.

KELLER BENVENUTTI KIM LLP

Attorneys for Debtors

BY: TOBIAS S. KELLER, ESQ.

JANE KIM, ESQ.

CONWAY MACKENZIE, INC.

Attorneys for Debtors

JAMIE L. CHRONISTER, ESQ.

OFFICE OF THE UNITED STATES TRUSTEE

Attorneys for the United States Trustee

BY: TIMOTHY J. FOX, JR., ESQ.

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ASHBY & GEDDES, P.A.
Attorneys for BNP Paribas
BY: WILLIAM P. BOWDEN, ESQ.
GREGORY A. TAYLOR, ESQ.

ATTORNEY GENERAL'S OFFICE
Attorneys for the State of Alaska
BY: ROBERT H. SCHMIDT, AAG

BARNES & THORNBURG LLP
Interested Party
BY: KEVIN G. COLLINS, ESQ.

BUSH KORNFELD, LLP
In Propria Persona
BY: JAY KORNFELD, ESQ.

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JONES DAY
Attorneys for JFL-RAG Partners, LLC
BY: CARL E. BLACK, ESQ.
T. DANIEL REYNOLDS, ESQ.

U.S. DEPARTMENT OF JUSTICE - CIVIL DIVISION
Attorneys for the United States
BY: ANDREA H. HANDEL, ESQ.

WINSTON & STRAWN LLP
Attorneys for BNP Paribas
BY: DAVID NEIER, ESQ.

ALSO PRESENT (TELEPHONICALLY):
JOHN MANNION, CFO of the Debtors
DAVE PFLIEGER, CEO of the Debtors
RICHARD NEVENS (PH.), Independent Director of the Debtors
JIM DECKER (PH.), Independent Director of the Debtors

1 P R O C E E D I N G S

2 THE COURT: Good morning, everybody. This is Judge
3 Shannon. I understand from the operator that everybody is on
4 the line this morning. We've had some difficulty with this
5 before, so I'm just going ask -- I can see a number of parties
6 today. I would just ask generally, can everybody see me? I'm
7 in the courtroom in Wilmington. Can you folks see me?

8 UNIDENTIFIED SPEAKER: We can see you, Your Honor.

9 THE COURT: Great. All right, thanks.

10 This is a telephonic first-day hearing and a video
11 first-day hearing in the matter of Ravn Air Group, R-A-V-N,
12 which is Case Number 20-10755. Before we get going, I would
13 again express, as I think I have pretty consistently, my
14 appreciation to everybody for their flexibility in trying to
15 deal with the extraordinary circumstances that we're all
16 facing, but nevertheless still carrying out the Court's mission
17 for stakeholders and for your respective clients.

18 In addition, I'm sure everybody on the phone is
19 certainly a teleconference veteran, and now we're becoming
20 videoconference veterans. I want to assure every party that
21 any party that wishes to be heard will have an opportunity to
22 be heard. It is a little bit cumbersome, but it's been working
23 pretty well. But I'll just ask everybody for their patience in
24 advance.

25 In addition, I would like to commend counsel -- I

1 think it's Ms. Guilfoyle and her colleagues -- for really doing
2 a terrific job of sharing the materials with the Court in
3 advance. I have received blacklines that make life a lot
4 easier. And so I think I have a pretty good understanding of
5 where everybody is on the open issues that they've got. And it
6 seemed like most of the issues have been ironed out, and that's
7 certainly welcome news.

8 But before we move any further, I'm looking at my
9 video and I do not see Mr. Fox. Mr. Fox, you're certainly
10 welcome to participate by phone if you're not on the video, but
11 I want to make sure the U.S. Trustee is represented in this
12 morning's hearing.

13 MR. FOX: Good morning, Your Honor. May it please the
14 Court. Tim Fox on behalf of the United States Trustee.

15 As I advised the debtors, when the video option was
16 put forward, our IT department has trouble interfacing with
17 outside-generated conference calls. I think some of my
18 colleagues have been more successful than others. I tried to
19 test it yesterday and it appeared like it would work, and now I
20 continue to get error messages indicating that the program
21 cannot connect me to audio-video presentations. And it's
22 booted me out of the call a couple of times. And I think,
23 unfortunately, I won't be able to start my video today, but I
24 am here on phone and will be able to participate
25 telephonically. And I think, thankfully, we've been able to

1 work through the majority of our issues, so the absence of my
2 video, hopefully, won't be too detrimental to today's
3 proceedings.

4 THE COURT: Great. I appreciate that. And obviously,
5 you're welcome to participate by teleconference. I had heard
6 from some of my colleagues that your office is having some
7 difficulty. I think part of it may just be a policy issue as
8 well as being an IT issue, but hopefully that'll get sorted out
9 as we continue to work through this. But again, I appreciate
10 your engagement with the U.S. Trustee. It's very -- or with
11 the debtors. It's very clear to me that you have managed that
12 process pretty effectively. And I'll look forward to hearing
13 from everybody this morning.

14 With that, I see Mr. Keller. It is good to see you
15 again, Mr. Keller. And the podium is yours

16 MR. KELLER: Thank you, Your Honor. And very nice to
17 see you again. Just for the record; Tobias Keller of Keller
18 Benvenuti Kim, representing the debtors, Ravn Air Group, Ravn
19 Air (sic) Holdings, LLC, JJM, Inc., HoTH, Inc., Peninsula
20 Aviation Services, Inc., Corvus Airlines, Frontier Flying
21 Services (sic), and Hageland Aviation Services. With you
22 remotely is the debtors' CFO, John Mannion.

23 John, if you could indicate -- just give us a wave
24 there on the Skype (ph.) so that the judge can see you.

25 THE COURT: Very good. I do have Mr. -- I have Mr.

1 Mannion on the screen. Great.

2 MR. KELLER: Wonderful. I also believe that on the
3 conference line is our CEO, Dave Pflieger, and several of our
4 directors, including our independent directors, Richard Nevens
5 (ph.) and Jim Decker (ph.). Also on video is my partner, Jane
6 Kim, who will be speaking to a number of the issues on today's
7 agenda.

8 THE COURT: Great.

9 MR. KELLER: With Your Honor's consent, I'd like to
10 give a brief description of the debtors, the reason that bring
11 (sic) us before Your Honor, and our expectations of how the
12 cases will be resolved.

13 THE COURT: That sounds good.

14 MR. KELLER: After that, I'm going to ask -- after
15 that, I'm going to ask Ms. Guilfoyle to get the joint
16 administration, claims agent addressed. And then with your
17 leave, though it's last on the agenda, I'd like to take the
18 DIP-financing motion first.

19 THE COURT: Okay.

20 MR. KELLER: After that, I think Ms. -- great.

21 So, thank you. Ravn Air Group is a collection of
22 several air-transportation businesses in Alaska that were
23 consolidated under the Ravn masthead. Immediately before the
24 filing, there were three core businesses: Ravn Alaska, Penair,
25 and Ravn Connect. The first two are what we call Part 121

1 carriers, indicating that they flew larger passenger planes,
2 while RavnAir Connect was a, quote, "Part 135" carrier, running
3 smaller airplanes to over 110 smaller Alaskan communities.

4 One of the unique features of the Alaskan terrain is
5 that the state is massive but connected by very few highways.
6 As a result, airplane travel is of central importance to
7 providing mail, food, and supplies for rural villages, bringing
8 medicine to their residents, and taking residents to medical
9 treatment when necessary, and getting businesspeople and
10 workers to various industries throughout Alaska, including oil
11 and gas, commercial fishing, and defense.

12 THE COURT: Mr. Keller --

13 MR. KELLER: To give Your --

14 THE COURT: -- Judge Shannon. I just --

15 MR. KELLER: Yes.

16 THE COURT: -- have to comment. And it's difficult to
17 have a colloquy on the teleconference, so I'll keep it short.
18 But I did read carefully Mr. Mannion's declaration.

19 And, Mr. Mannion, I think it's 6:30 in the morning
20 there, so I do apologize for that.

21 MR. MANNION: Not at all, Your Honor.

22 THE COURT: What really struck me is the concept. I
23 guess I had known about the need for air travel in Alaska and
24 the idea that there are places where there aren't roads. But
25 the idea that there are large towns and even cities that

1 ultimately don't have a road out of them is just a -- it's
2 almost like a science-fiction proposition. I mean, it's hard
3 to wrap my head around that in a place the size of Delaware.

4 MR. KELLER: That's -- that is in fact the case. And
5 Ravn is a major player. In 2019, our revenues exceeded 200
6 million dollars, passenger-servicing providing the largest
7 revenue stream, slightly over half, followed by mail and bypass
8 mail, which is about a quarter; and then charter and freight,
9 which took up about twenty percent as well. Before the
10 shutdown of its operations, Ravn operated 72 aircraft at 21 hub
11 airports and 73 facilities, serving a total of 115 destinations
12 in Alaska, with up 400 daily flights.

13 So as Your Honor observes, Ravn has been a significant
14 and critical part of Alaska's economy but also the
15 infrastructure. And one of the issues that has arisen that we
16 are trying to get resolved but may have to come back before
17 Your Honor is, in fact -- it was deemed so critical to one
18 small town, Barrow, that it issued an order purporting to
19 commandeer Ravn's assets at its location, an issue that we hope
20 to resolve in short order without having to come before Your
21 Honor. But with that said, we are looking for a quick
22 resolution of the Barrow situation. We may have to return to
23 Your Honor on short notice if we can't get it addressed.

24 THE COURT: I'll be here.

25 MR. KELLER: In any event, because of Alaska's harsh

1 winter climate, the debtors' businesses are highly seasonal.
2 Their operations tend to consume cash during the last and first
3 quarters of the year, and they generate excess cash during the
4 second and third quarters. Of course, this year's an
5 exception. The COVID pandemic hit Alaska squarely in the
6 middle of last month, and the group experienced an eighty- to
7 ninety-percent decrease in passenger revenue in all three of
8 its airlines, as compared to historical results. So it was
9 immediately apparent that Ravn isn't going to be generating
10 cash during this busy period and it was going to need a cash
11 infusion immediately.

12 When it was evident that it was not going to be able
13 to pay for fuel and necessities or make future payrolls, it
14 made a painful decision over the weekend to permanent -- or not
15 permanent; to temporarily shut down its operations and lay off
16 a substantial majority of its employees.

17 I don't think I need to belabor the point that capital
18 is hard to come by in this environment. Ravn has submitted
19 applications for loans and grants under the CARES Act. It's
20 also sought external debt capital and it's engaged with its
21 sponsors for equity infusions. To this point, it could not
22 procure capital outside of bankruptcy, notwithstanding its
23 strong market position, its established business, in large part
24 because, like the rest of us, it cannot tell its investors when
25 the pandemic will recede and bookings will return.

1 At this point, all that Ravn could secure was the DIP-
2 financing package that gives it a brief runway during which it
3 must prepare for an orderly liquidation if nothing else appears
4 on the horizon. We do have room for hope. Ravn is actively
5 working with government officials to secure funding. And if
6 funding were obtained, we may be able to come up with a
7 restructuring or at least parts -- a sale of parts of its
8 businesses.

9 We will keep Your Honor apprised of any positive
10 developments but, in the absence of relief soon, we will
11 unhappily but necessarily -- we will be put in a position where
12 we will be presenting Your Honor with a liquidating plan that
13 will allow the company to realize an orderly liquidation and a
14 value for its assets, rather than the forced fire-sale process
15 that would otherwise follow.

16 Your Honor, that's the summary. And I'd be pleased to
17 entertain any questions Your Honor has. Otherwise, I'd propose
18 that we proceed to the agenda.

19 THE COURT: I only have one or two questions, and they
20 may not be able to be answered right now. I understand the
21 challenges that the company faced and the circumstances that
22 required the decision, the sort of the spearpoint decision, to
23 file. Obviously, it's an unprecedented economic environment,
24 but concerns with respect to being able to make payroll and to
25 pay for fuel and other items that are being ordered by the

1 company, at least as far as I understand, drove the timing of
2 the debtors' filings for purposes of today. In addition, I
3 don't think any bankruptcy professional or finance professional
4 is unaware of the loan provisions of the CARES Act. My guess
5 is that that will require some machinery and a little bit of
6 time to get through.

7 I would ask, given the description, which I certainly
8 take at face value and it certainly seems plausible, that this
9 company is a central part of the infrastructure of Alaska, has
10 the debtor been in touch with authorities in Alaska, either
11 city or state, in order to determine whether or not there may
12 be some support in that respect?

13 MR. KELLER: There have been multiple outreaches both
14 with federal officials -- and to that point, I should note that
15 particularly Sens. Sullivan and Murkowski have been very aware
16 of and, frankly, sympathetic to us. We understand that they
17 have been advocating Ravn's position in the federal system,
18 with Department of Treasury. There've also been a number of
19 outreaches to state officials, and those outreaches continue,
20 for the reason that Your Honor has implied, which is, if Ravn
21 isn't there to provide essential services, we need to cooperate
22 with the local authorities to make sure that, if need be, our
23 runways and facilities can be subleased so that others can get
24 in planes and get supplies.

25 So there is a humanitarian aspect that we are fully

1 aware of and working with authorities on. We are also hoping
2 that -- as the reality of where Ravn stands sets in, that
3 perhaps, in addition to (indiscernible), there will be other
4 opportunities to come up with something more robust, an orderly
5 liquidation.

6 THE COURT: Okay. All right, I understand. I think
7 you've answered the questions that I have. Before we go any
8 further, I would just touch base with the Office of the United
9 States Trustee.

10 Mr. Fox, has your office had any opportunity to
11 consider scheduling a formation meeting?

12 MR. FOX: Good morning again, Your Honor. May it
13 please the Court. Tim Fox on behalf of the United States
14 Trustee.

15 With the circumstances we're currently facing, we have
16 not yet determined a date for the formation of a committee. I
17 think, at the conclusion or at least when we get to the first
18 item that requires the scheduling of a final hearing with
19 respect to today's first-day matters, that'll provide insight
20 as to what our outside date is and allow my office to work back
21 from that to figure out a time line that works.

22 It's not anticipated that we'll conduct any in-person
23 meeting. We will send out our solicitation as promptly as
24 possible after today's proceedings, and then my office will
25 touch base with creditors that are interested and file a notice

1 of appointment on the docket should there be sufficient
2 interest, and allow the committee members to then set about
3 their business and get up and running as quickly as possible.

4 But unfortunately, we won't have a date certain by
5 which the committee will be formed. But it's my expectation
6 and my hope that we are able to form a committee sufficiently
7 in advance of the second-day hearing with respect to the final
8 DIP financing and other motions where the committee should have
9 an opportunity to weigh in.

10 THE COURT: Okay. Let's take care of, if we can, just
11 at least one or two other pieces of housekeeping, for purposes
12 of today's hearing. First, I do note that in the amended
13 agenda that was submitted, a number of the status lines reflect
14 that the debtor has considered and accepted whatever
15 modifications or revisions your office has requested, so that
16 you're okay with the entry of the order.

17 The way that I'm going to deal with this, rather than
18 ask you to come off mute and jump on every time, is, if a
19 matter is presented that you don't have any -- that I don't
20 hear from you, I'm going to assume the U.S. Trustee is okay
21 with that order, which I think is pretty close to how we
22 usually operate. And then if there is an issue with respect to
23 any particular order or request for relief, simply sing out and
24 I'll be happy to hear from you.

25 And obviously, I'd hear from any other party that

1 wishes to be heard.

2 Second, it might make sense, right out of the gate, to
3 do a little bit of scheduling so that we can identify a second-
4 day hearing. So today is the 7th of April. And I would assume
5 that this hearing will be videoconferenced again if we're in
6 that time line. I believe Judge Sontchi's entered an order
7 further providing that nonessential hearings are adjourned and
8 basically we're operating by video and audio. So that gives
9 you a lot of flexibility.

10 Mr. Keller, have you given thoughts to a date or a
11 time? I've got some flexibility in my calendar.

12 MR. KELLER: Your Honor, given the requirement -- the
13 time requirements, I think we're looking at something the week
14 of April 26. And I think, knowing what works on Your Honor's
15 calendar, at this point I don't think Monday gets us quite
16 enough time, so perhaps -- I'm looking right now. Perhaps --

17 THE COURT: How about Wednesday the 29th? Does
18 Wednesday the 29th work?

19 MR. KELLER: Wednesday the 29th is good. And if we
20 could -- if we could either use a morning time or later in the
21 afternoon, that would be ideal.

22 THE COURT: Can we do 11 a.m.?

23 MR. KELLER: I think that would work perfectly, Your
24 Honor.

25 THE COURT: Okay. So you're going to have a second-

1 day hearing scheduled for the 29th. Any objection deadlines
2 would be consistent with our local rules. You guys can sort
3 that out. And Mr. Fox can work backward from that for figuring
4 out what may work for a virtual committee-formation meeting.

5 And again, folks, I really have to commend the
6 professionals in all of the cases that are pending before me.
7 People have been remarkably cooperative, for a large collection
8 of bankruptcy lawyers, and I appreciate it.

9 And so to the extent that there's a committee formed,
10 you'll work with them with respect to dates and deadlines and
11 the mechanics of the process. But that date on the 29th will
12 give you a date to shoot for. I'd be happy to hear second-day
13 matters, retentions, the usual stuff.

14 You mentioned, Mr. Keller, that there're issues
15 potentially, with at least one stakeholder, that may result in
16 the need for emergency proceedings. The way we're viewing it
17 is the court is open. And so you can get in touch with my
18 chambers through Ms. Bello and Ms. Walker. And your Delaware
19 counsel can certainly help with that. But if we need to get on
20 the phone or get on for a video -- we're basically trying to
21 operate, as close as we possibly can, the business as usual.

22 Again, it would be my hope that these matters can be
23 successfully resolved, at least for the interim period. They
24 seem to be -- a lot of these are real business issues more than
25 pure legal issues. But I'll leave that to the judgment of the

1 parties. And if there's a need for assistance, we're here.

2 And that's, I guess, the easiest way to approach it.

3 With that, I think I'd be prepared to move forward.

4 MR. KELLER: Thank you, Your Honor. I do want to echo
5 Your Honor's comments. We have found working with all the
6 professionals in this extraordinary environment to be very
7 businesslike. We have sought, and gotten solutions to, pretty
8 much everything we've wanted. And we have relied heavily on
9 our local counsel at Blank Rome, who, as Your Honor notes,
10 worked through all hours of the note to make sure that we were
11 properly prepared for today.

12 THE COURT: Right. No, no, and I think we're in good
13 shape.

14 MR. KELLER: With that, I would like to introduce Tori
15 Guilfoyle, who has agreed to handle the first two items on the
16 agenda, which we think are helpful to just get cleared out
17 before we move on to the DIP item.

18 THE COURT: That sounds great.

19 Ms. Guilfoyle, good morning.

20 MS. GUILFOYLE: Good morning, Your Honor. Tori
21 Guilfoyle of Blank Rome, on behalf of the debtors. I'm just
22 going to handle the first two matters on the agenda, the first
23 one being the motion for joint administration of the debtors.
24 We're asking that the seven affiliated debtors with Ravn Air
25 Group be jointly administered with that lead debtor, for

1 procedural purposes only, to ease the burden on the court and
2 to lessen the amount of docket filings. And if Your Honor has
3 any questions about that Honor -- or that motion -- it's fairly
4 procedural.

5 THE COURT: No, I don't have any questions.

6 I would ask if anyone wishes to be heard with respect
7 to the request for joint administration.

8 Very good. I'm going to grant that motion. Based
9 upon the record before me, I do find that the relief requested
10 is standard and routine, and I do find that joint
11 administration of these cases will ease the burden on the
12 Clerk's Office, on the Court, and, frankly, on all parties, by
13 giving a single docket site for which to look for recent
14 filings and developments in the case. So I do believe that the
15 motion is well founded. The motion is granted, and the order
16 will issue.

17 And I'll look for all of the orders to be uploaded,
18 because I know you got to plug dates into some of them. So
19 I'll look for all of the orders to be uploaded after the
20 hearing, and we'll get them on the docket.

21 Ms. Guilfoyle, the next matter?

22 MS. GUILFOYLE: Thank you, Your Honor. The next
23 matter on the agenda is the debtors' application to retain and
24 employ Stretto as the claims-and-noticing agent. There was one
25 comment -- informal comment from the Office of the United

1 States Trustee, with respect to this filing. The request was
2 just that we file a supplemental declaration by the Stretto
3 declarant to reflect the names that were run in the conflicts
4 system. I do have to repeat that there were no connections
5 found, either by Stretto or its ultimate equity owner, with any
6 of the parties that were listed on that potential-interested-
7 parties list.

8 And one other note, Your Honor, in that I think that
9 we've resolved the Office of the United States Trustee's
10 comment or observation with respect to that application.

11 And just one other note on that is we attached a fee
12 structure to the end of the engagement letter. And for
13 proprietary reasons, I do have to represent that you're
14 actually approving a little bit lesser of a fee structure here,
15 Your Honor. Just for proprietary reasons, we didn't want to
16 attach the discounted rates that Stretto provided the debtors.
17 But there was an accommodation from Stretto. We obviously
18 thank them for working with us and providing us with a very
19 commercially reasonable set of fees, because, as you know, Your
20 Honor, we did have to solicit the bids of three other -- or two
21 other claims agents, and Stretto came in, obviously, as the
22 lowest, and that's what prompted us to retain them; that plus
23 the convenient fact that they're also West Coast, so they're a
24 little lined up with our decision-makers.

25 So it all kind of came together seamlessly with their

1 rates and their location in the country. And with that, I'd
2 ask that Your Honor would approve the retention of Stretto as
3 the claims agent. And we'll obviously be filing a follow-up
4 application with them as kind of the administrative agent for
5 the debtors, later on with the second-day retention
6 applications.

7 THE COURT: Great. Thank you.

8 Does anyone wish to be heard with respect to the
9 Stretto application?

10 Okay, I appreciate the presentation. I have had an
11 opportunity to review the application and its attachments. I'm
12 going to approve the retention application for Stretto. I
13 noticed a threshold matter that our local rules require, that,
14 in a case of this size, a debtor promptly move to engage a
15 claims-and-noticing agent. The Court is certainly familiar
16 with Stretto. And I'm satisfied that the record is sufficient
17 to demonstrate that the debtors' decision is consistent with,
18 again, our applicable rules and procedures and that Stretto is
19 certainly able and eligible to perform the services that are
20 identified in the application. The motion is granted, and the
21 order will issue.

22 Before we go any further, we should probably take a
23 step -- I'm not sure who on the team is going to do it, but we
24 should probably be introducing Mr. Mannion's declaration for
25 purposes of the first-day hearing. I would note -- so I'll

1 leave that to counsel.

2 MS. GUILFOYLE: I'm going to turn it over to Mr.
3 Keller, who will introduce his declaration and then proceed
4 with the DIP-financing motion, Your Honor.

5 THE COURT: That sounds fine.

6 Mr. Keller.

7 MS. GUILFOYLE: Thank you.

8 MR. KELLER: Thank you, Your Honor. Not one to miss a
9 cue. We have submitted Mr. Mannion's declaration and
10 supplemental declaration; they are a matter of record. Mr.
11 Mannion is here virtually in the courtroom, as it were, and
12 available to be examined. I would ask that the declaration be
13 accepted as evidence, subject to subsequent cross-examination.

14 THE COURT: All right. I note that there are two
15 separate declarations: there was the lead declaration and then
16 a supplemental declaration filed last night or this morning.
17 I've had an opportunity to review both.

18 Is there any objection to the admission of Mr.
19 Mannion's declaration? Again, consistent with my practice,
20 that -- those declarations are being submitted exclusively in
21 connection with the request for relief before the Court at this
22 first-day hearing and generally don't necessarily roll through
23 the balance of the case. So are there any objections to the
24 admission of the declarations?

25 Very well. Both declarations are admitted.

1 (Declaration and supplemental declaration of John Mannion
2 in support of DIP financing was hereby received into evidence
3 as Debtors' exhibit, as of this date.)

4 THE COURT: Just so that I have some sense of what may
5 be coming, is there any party on the line that expects to seek
6 to cross-examine Mr. Mannion regarding the contents of his
7 declaration, at this morning's hearing?

8 Very well. Mr. Mannion's declaration is admitted
9 without opposition. I would make one further comment so that
10 the record is complete. I did have an opportunity, as I said,
11 to read both of Mr. Mannion's declarations. I appreciate
12 getting them in advance of the hearing. I note that neither of
13 Mr. Mannion's declarations are notarized, for very obvious
14 reasons. And so I'm going to simply note that the Court has
15 observed -- and given the circumstances, I don't believe that
16 there's any material defect with respect to the lack of a
17 notarization of the declarations. They're admitted. And I
18 think we can move forward. All right?

19 MR. KELLER: Thank you, Your Honor. With Your Honor's
20 leave, I'd like to move to item 10, the last item on the
21 agenda, which is the debtor-in-possession-financing order.
22 Knowing -- understanding that Your Honor has read through it, I
23 thought I would make, again, a quick presentation just to
24 explain what --

25 THE COURT: That'd be great.

1 MR. KELLER: -- what is in there. Very well.

2 THE COURT: Yeah, I think it would --

3 MR. KELLER: So --

4 THE COURT: Let me make -- let me make a point. And I
5 appreciate the offer. You've been to my court plenty of times,
6 and normally we would just roll through with the understanding
7 that everybody had all the documents and we're all here and
8 everybody's up to speed and I've reviewed them. Given, again,
9 the circumstances everybody's dealing with, nobody's getting
10 hard binders, et cetera, and everybody's working off of either
11 iPads, laptops, et cetera, providing a little bit more context
12 maybe than would be typical in one of my hearings, is probably
13 appropriate. So you're welcome to proceed, Mr. Keller.

14 MR. KELLER: That was exactly my thought. And knowing
15 that there are certain issues that need special attention, we
16 wanted to call those out as well.

17 Just by way of background; the borrowers have pledged
18 substantially all of their assets to the pre-petition secured
19 creditors, who are owed, in the aggregate, a little over ninety
20 million dollars. Mr. Mannion and people at his direction
21 sought various forms of financing for Ravn, including through
22 secured debtor-in-possession-finance loans. But no financiers,
23 other than the DIP lenders, have even made a proposal to Ravn.
24 We believe this is because its cashflow prospects as a business
25 are so dire and the value of its assets without an operating

1 business is almost certainly less than the amount of its
2 secured debt.

3 While the pre-petition and DIP lenders are represented
4 here by Mr. Neier, I think it's safe to represent that the
5 lenders believe that Ravn's business is worth more if its
6 assets are sold in an orderly liquidation over time rather than
7 in an immediate sale. I would also venture to guess that, if
8 Ravn can locate a more promising exit, perhaps with the
9 assistance of CARES Act funding, the lenders would engage in
10 further negotiations with Ravn about alternative exit
11 scenarios.

12 In the meantime, however, the terms of the debtor's
13 DIP are set forth in the motion. The total amount of the DIP
14 is twelve million dollars, of which we are asking for authority
15 today to draw six million dollars. The interest rate is set as
16 the base rate plus eight percent, so approximately ten percent.
17 The commitment fee is three percent of the entire facility, or
18 360,000 dollars, plus an agent fee and unused-line fee, which
19 unused-line fee we expect to be nominal because we expect to
20 fully draw.

21 At the time of the final hearing, we will ask for
22 authority to allow the DIP lenders to be permitted to roll up
23 their pre-petition secured debt in a ratio of two dollars of
24 pre-petition debt to every one dollar of DIP advances. The DIP
25 lenders have also asked for various waivers that are disclosed

1 in the DIP motion, including lien stipulations, 506(c) and
2 552(b) waivers, and liens on avoidance actions.

3 In acknowledgment of the situation and the general
4 rules around the court, the lenders have agreed that all of
5 those foregoing provisions would be subject to entry of the
6 final order; however, except for the lien stipulation, which
7 would remain subject to a committee investigation in the
8 challenge period.

9 The credit agreement is substantially in the form
10 presented to the Court. But in light of the commandeered
11 property in Barrow, I should identify one revision to the
12 representations and warranties, which relates to casualty
13 events; if anyone wanted to look at section 3.05 of our reps
14 and warrants in the credit agreement. And it's essentially the
15 addition of a parenthetical that says that, while we're
16 representing there are no casualty events that are material,
17 it's agreed that aircraft spare parts and hangars with an
18 aggregate value in excess of a million dollars or other amounts
19 as the required lenders shall agree, shall be deemed material
20 for the purposes of this section 3.15(c) (sic).

21 We believe that the Barrow event does not trigger a
22 material disclosure in the reps and warranties, but it
23 certainly does indicate the anxiety that both we and the
24 secured creditors have about this situation, in Barrow being
25 seen as a creative solution to other communities' problems.

1 The DIP loan itself provides a glide path to a
2 controlled liquidation that would result in a liquidating trust
3 and the sale of its assets over a period of time. More
4 important to Ravn's board and management, it does leave some
5 hope that there may still be a rescue to be had. And very
6 significantly, it provides for payment of substantially all of
7 the accrued compensation of the debtors' employees,
8 substantially all of whom had to be laid off on Sunday. For
9 all of these reasons, we're asking that the Court approve the
10 DIP on an interim basis.

11 There are details that I'd be happy to address, but at
12 this point I think it'd be appropriate for me to let Mr. Neier
13 add anything he might have -- or Mr. Fox, add any thoughts they
14 have, and take any questions the judge -- Your Honor may have.

15 THE COURT: No, that sounds great. I'd be happy to
16 hear from Mr. Neier.

17 Mr. Neier, good morning. It's good to see you.

18 MR. NEIER: Good morning, Your Honor. How are you?

19 THE COURT: I am well. And yourself?

20 MR. NEIER: I'm well, and I hope your family's well
21 and safe, as well.

22 THE COURT: We are. Thank you.

23 MR. NEIER: Your Honor, this is a -- for a relatively
24 small DIP, this has been one of the most contested DIPs I've
25 worked on in years. Many of the lenders think that they would

1 be better off in a Chapter 7; the reason is because the
2 collateral's probably worth about one-third of the outstanding
3 amount of the loan. And then putting an additional amount on
4 top of that was extremely difficult and extremely contested.
5 And as of this morning, I have two lenders in the DIP lender
6 group who are refusing to fund, based on the North Barrow
7 situation. But I'll get to that in a minute.

8 I think the major thing about the DIP is it's a fairly
9 standard DIP that we presented to Your Honor, and all of the --
10 sort of the extraordinary provisions are subject to entry of a
11 final order, as you would expect. The one provision I did want
12 to raise is the two-to-one rollup. That was necessary -- the
13 two-to-one rollup of participating DIP lenders; get their pre-
14 petition debt rolled up. That was necessary to induce a
15 sufficient number of lenders to go into the DIP and to make the
16 DIP loan.

17 One of the issues with respect to the DIP loan,
18 frankly, is that the debtor -- basically, it's had
19 professionals involved in this, and they haven't been able to
20 visit Alaska because Alaska has a fourteen-day quarantine from
21 anybody coming from the Lower 48 -- or isolation period. And
22 so they've been involved about a week. I don't know how long
23 the special directors were involved, but I don't think it was
24 much longer. And so there's very little information that's
25 been done -- or been able to get collected.

1 The part that is really troubling for the lenders has
2 been that the first six million dollars, the initial draw
3 that's on the table for today, that's really just to have the
4 debtors make payroll; has nothing to do with, really,
5 protecting the collateral. I think the debtors have over six
6 million dollars that will have to be paid out today,
7 essentially, to make that payroll payment.

8 It was understood that the debtors were primarily
9 interested in making sure that their employees, who have now
10 largely been laid off and are paid in arrears -- that they get
11 paid for every day they work. And that's certainly
12 understandable. But it makes the loan that much more difficult
13 because it's the second part of the DIP, the next six million
14 dollars, that really go to protecting, securing, and ultimately
15 having an orderly liquidation of the collateral.

16 Now, with respect to today's hearing, this North
17 Barrow situation has caused a great deal of consternation among
18 the lenders. They're not precisely worried about the North
19 Barrow situation itself; it's really the fact that it'll set a
20 precedent for other towns and villages to do exactly the same
21 thing that it serves (sic) by the debtor.

22 Now, we're perfectly willing to work out an
23 arrangement with the State of Alaska -- and I believe the State
24 of Alaska has approached the debtors on this -- to resume some
25 kind of operations that are necessary for delivery of medicine

1 and delivery of packages and what have you, which is what
2 the -- what was -- the debtors' limited operations were only --
3 very limited in -- they weren't able to fly passengers, by and
4 large; they were really just delivering essential packages and
5 Amazon packages and what have you, during the COVID-19 period.

6 So my understanding, for everybody's benefit, is that,
7 in North Barrow, there were no aircraft fees. I want to repeat
8 that: there were no aircraft fees. That's my latest
9 understanding. And the debtors' professionals have been trying
10 to make sure that that is in fact the case. There are some
11 other villages that may be part of the North Barrow situation.
12 We're trying to confirm that no aircraft (gap in audio). But
13 the precedent that it sets is that, under the guise of police
14 powers, various government officials -- local government
15 officials could somehow seize the collateral of the lenders and
16 just start using it without paying for it.

17 Now, COVID-19's a very serious issue, and obviously we
18 want people to get medicine, we want people to have access to
19 packages, which could include food deliveries. So it's not
20 like we're unaware of this. But the idea of just seizing
21 assets without paying for them, when we're willing to consider
22 some kind of limited operations which are paid for by the State
23 of Alaska or by municipalities in the state of Alaska, that's
24 unacceptable. And it makes it very difficult to actually go
25 through this loan.

1 And the DIP lenders -- or the proposed DIP lenders
2 have actually called for a call immediately after this call, to
3 discuss whether they should fund this case. And that's why I
4 think Mr. Keller keeps on saying, we're hopeful to have a DIP
5 but, if we don't have a DIP, we're going to move quickly to a
6 Chapter 7.

7 So I think it is going to be necessary -- and I'm
8 sorry to do this in real time. If we were -- if we were -- if
9 we were in the court, Your Honor, I would have taken a break
10 and I would have spoken to Mr. Keller outside the hall. That's
11 just not something that I can do. And then I would have
12 conferred with our clients to make sure that they were also on
13 board.

14 I think it's going to be necessary for some kind of
15 comfort order. Hopefully that's all it is, not like a contempt
16 motion but some kind of comfort order that basically says that
17 people can't seize assets without paying for them and start
18 operating in the name of the public good. We're all in favor
19 of the public good, but we haven't reached the point where
20 people commandeer things. And that's actually what the order
21 says: they're commandeering the debtors' assets for the
22 benefit of this town. We're sympathetic, but we can't have a
23 situation where this creates a precedent that other towns then
24 adopt and the debtors' collateral is essentially being used
25 without being paid for.

1 So that's the issue that we have today.

2 THE COURT: I think I'd like a little bit of clarity,
3 then. Obviously, I'm learning -- this is evolving very
4 quickly, and I'm sympathetic to the position of all parties
5 and, frankly, to the position of the authorities in Alaska.
6 The question is not, at least immediately, before me, and I'm
7 not necessarily going to either rule or comment on it at this
8 point in the hearing.

9 If I were to boil down your comments, though, Mr.
10 Neier, is the point that the lenders are not necessarily
11 committed to fund under this order, given the uncertainty,
12 or -- I'm trying to figure out the path forward, and my
13 instinct would be to say you've laid out this issue, you've
14 expressed, frankly, legitimate concerns, but since, again, we
15 can't really necessarily take a break, go into the hall, and
16 deal with these -- when I said that this process is cumbersome,
17 I'm certainly the one who's acutely feeling that, just because
18 I would normally try to guide that process as best I can, and
19 it's difficult under these circumstances. But I think, in
20 terms of a path forward, I'd like some clarity. I understand
21 that there's this issue. Mr. Keller mentioned it. You've now
22 mentioned it. The point that I made was that the court is
23 open, and this process should play itself out and, if you need
24 redress to me, I'll be here.

25 Hang on just a second. I'm going to ask that

1 everybody that's on the call place their phones on mute,
2 because we're getting a little bit of feedback right now.

3 But I think the most rational path forward is to move
4 forward with the DIP financing and hopefully get a form of
5 order entered. If there are gating issues to the funding
6 request that require some business issues, some negotiations,
7 or even further proceedings in front of me, we can deal with
8 that. But, I mean, I do think that we should move forward with
9 a DIP-financing order, because I think the debtors made their
10 case that they need that.

11 Does that process make sense to you? And obviously,
12 if we need to get back on the phone promptly, you've got my
13 commitment that we'll accomplish that. And again, I make no
14 comments on the substance of the issues. I'm in -- this is
15 a -- this is a little bit of a untrod territory for me and, I
16 think, for everybody on the call. So we'll figure it out. But
17 can we move forward with the DIP financing, notwithstanding the
18 concerns you've shared with me that the lenders have?

19 MR. NEIER: Yes, Your Honor. I think that's a good
20 idea, because ultimately the DIP order is the Court approving
21 the debtors' request to be authorized to enter into the loan
22 documents and the DIP order.

23 So I think that's a good idea to move forward on the
24 DIP facility and get the Court's -- subject to the Court's
25 approval of the debtors' authorization into the DIP facility.

1 I did want to -- I did want to raise the issue,
2 because -- and I want -- I know that there are some officials
3 from the State of Alaska who were invited to participate in
4 this proceeding. The initial funding that is going under the
5 DIP order is to make payroll; it's to pay 1,000 employees in
6 the state of Alaska for the time they've worked. So it's sort
7 of a leap of faith for the lenders to make that accommodation
8 and pay that money without understanding that their
9 collateral's also going to be safe. And that's the issue I
10 wanted to highlight for the Court.

11 We may have to take advantage of Your Honor's
12 availability to bring on some emergency relief, but I'm not
13 asking, with no papers in front of you, no opposition, to have
14 you make some ruling from the bench. But we view this as a
15 very serious matter that may have to be addressed by the Court.
16 I do think it makes sense to go forward.

17 I want to mention that -- and Mr. Fox, I know, is on
18 the phone -- we did make several changes to the DIP order, at
19 the request of the U.S. Trustee. Hopefully, you were provided
20 with a blackline.

21 THE COURT: I have it.

22 MR. NEIER: Okay. Thank you, Your Honor. And I don't
23 know if Mr. Fox has any other comments, but we'll continue to
24 work through the issues. And we hope to upload an order with
25 an attached form of DIP credit agreement and DIP budget, later

1 on today.

2 THE COURT: Thank you, Mr. Neier.

3 Mr. Fox?

4 MR. FOX: Good morning, Your Honor. Tim Fox again, on
5 behalf of the United States Trustee.

6 So I just want to start by thanking both the debtors
7 and the lenders for working through my comments cooperatively.
8 And I can represent to the Court that, under the current
9 circumstances and the facts facing these debtors, my office
10 doesn't object to the entry of the interim order as revised. I
11 would highlight for the Court -- and unfortunately, I was
12 inadvertently disconnected for a moment, so I missed some of
13 Mr. Keller's presentation. So there was at least one point
14 that I wanted him to walk through, and I hope it was made.

15 But one of the issues that I struggled with and that
16 under all the circumstances here I will not press an objection
17 with respect to is that normally it would be more appropriate,
18 for fees that are going to be generated by extension of the DIP
19 financing to be ratable across the distributions, approving and
20 paying fees commensurate with the interim draw that's
21 available, and then doing the balance at the final hearing.

22 It's my understanding that the debtors are pressing
23 forward with approval of the entire facility fees here, at the
24 entry of the interim order, potentially with some ability for
25 other parties at the second-day to wrangle the issues as they

1 see fit. But under the circumstances here, and based on
2 lenders' counsel's representations regarding the issues that
3 are facing the lenders syndicate here, my office doesn't object
4 to the current request with respect to the fees but highlight
5 that issue as being something that in other circumstances would
6 not necessarily be appropriate.

7 And, Your Honor, if you have any questions regarding
8 the redline, I can address those points. But for the most
9 part, my comments were accepted and, I believe, are beneficial
10 to the parties-in-interest, to allow these issues to play out
11 in advance of a final hearing on the DIP financing.

12 THE COURT: Thank you, Mr. Fox. I don't have any
13 specific questions for you. And again, I very much appreciate
14 getting from the debtors the blackline, which I've really
15 carefully read this morning. So I think I've got a handle on
16 the nature of the relief that's being requested and the
17 modifications that were negotiated by your office.

18 I don't think that I have any specific questions. Let
19 me ask -- but I do think that there is one appropriate comment
20 before we move forward. There's been a good deal of
21 discussion, starting with the debtor and then particularly from
22 Mr. Neier, with respect to concerns about what may be going on
23 in Alaska. And I am acutely aware, as aware as anybody, of the
24 difficulty in just the mechanics of trying to negotiate some of
25 these issues or navigate these challenges. We've got

1 significant time-zone differences, we've got people thousands
2 of miles apart, where often these things would get resolved --
3 you're right, Mr. Neier -- in the lobby and satisfactorily.

4 But I think it's incumbent upon me to afford an
5 opportunity to the representative for the State of Alaska. I
6 do note that there is, at least on my participant calendar, a
7 representative from the State of Alaska. I want to be clear,
8 though: I am not looking to put anyone on the spot. This has
9 been evolving rapidly. And if the position of the State of
10 Alaska is right now they do not wish to address these issues in
11 court without consultation with the client, I absolutely
12 respect that. But I think it's appropriate to give the State
13 of Alaska or other participants an opportunity to weigh in on
14 the issues that have been raised, before we get to the specific
15 consideration of the DIP order.

16 Counsel?

17 MR. SCHMIDT: Yes, Your Honor. This is Robert
18 Schmidt, Assistant Attorney General with the State of Alaska,
19 Department of Law. And I appreciate this opportunity. I was
20 waiting for a pause to interject myself to address these
21 issues.

22 To give Your Honor some context; Alaska does not have
23 counties. The state is generally divided into boroughs; these
24 are, by way of area, mega-counties. The North Slope Borough
25 has an area of almost 95,000 square miles, which is to say it

1 is just under twice the size the state of New York. It has
2 fewer than 10,000 people. It has approximately half a dozen,
3 or eight or so, primary villages; they are all rapidly
4 approaching twenty-four hours of daylight but, in my survey of
5 their current temperatures, all of them -- all of them but one,
6 the weather is currently below zero.

7 Barrow, which formerly changed its name recently to
8 Utqiagvik, but most people still refer to it as "Barrow" --
9 that's the population hub, as it were, of the North Slope
10 Borough. It's the northernmost town in the United States.
11 It's seventy degrees north latitude. They have approximately
12 3,000 people that live there. Many of the other villages, for
13 example, Kaktovik, Point Lay, Wainwright, those are all
14 villages of a few hundred people, and separated by hundreds of
15 miles. Also to give Your Honor some context, two cities served
16 by Ravn -- Barrow and Unalaska -- are about as far apart as
17 Wilmington and Houston, Texas.

18 It has come to everybody's attention that the mayor of
19 the North Slope Borough issued a proclamation on Sunday,
20 purporting to commandeer Ravn's assets. State of Alaska has a
21 very clear position on this:

22 First, under substantive state law, boroughs do not
23 have the legal authority, under Alaska law, to commandeer
24 property.

25 Second, as a matter of bankruptcy law, everything that

1 they sought to commandeer is part of the bankruptcy estate, and
2 that very much puts the North Slope Borough in the crosshairs
3 for potential relief before this Court.

4 Third, and I can't resist myself, but the last time I
5 checked, the North Slope Borough was not authorized by the
6 Federal Aviation Administration to operate an airline or an
7 air-cargo operation. The thought of government officials
8 attempting to operate an air-cargo facility is, frankly, very
9 concerning; very concerning.

10 And finally, and most importantly, frankly, is that
11 was royally counterproductive. We are hearing from the lenders
12 that the uncertainty created by Barrow's actions are making the
13 situation worse, not better.

14 Now, having said all of that, the state is acutely
15 aware, and has been trying to work with the debtors, that these
16 air services are almost in the nature of a utility. Everything
17 that you see on (sic) your stores in Delaware or in San
18 Francisco or wherever you're at, your prescription medications,
19 your groceries, all of that right now has to come in by air,
20 and it is critically, critically important. And the counsel
21 for the debtor used the phrase (sic) "humanitarian". That's
22 absolutely right. It is a humanitarian need for these
23 communities, in the North Slope Borough and throughout Alaska,
24 that they have substitute air service absolutely as quickly as
25 possible. And that will require that Ravn allow the State of

1 Alaska to sublet or otherwise allow others to use property
2 that's currently leased to Ravn.

3 In particular as regards Barrow, it is -- we don't
4 have the facts but, just to frame the issues that are going to
5 evolve very quickly, Ravn owns substantially all of the ground-
6 service facilities and infrastructure at the Barrow Airport.
7 So in order for any -- for Barrow to be served or for any of
8 the communities in the North Slope Borough to be served, we
9 have to be able to utilize -- other air carriers who are ready,
10 willing, and able to step up will need to be able to use Ravn's
11 facilities on the North Slope Borough, whether it's by sublease
12 with the Alaska Department of Transportation or otherwise.

13 Secondly, moving down to Southwest Alaska, which is,
14 like I said, about 1,000 miles, or more, from Barrow, if Your
15 Honor has ever had king crab, it has almost certainly come out
16 of the Southwest Alaska region, as well as Alaska red salmon.

17 Alaska Airlines, which is a major regional carrier
18 throughout the west coast, they do offer seasonal service.
19 They apparently have contracts with Ravn for the use of Ravn's
20 facilities. I was on the phone yesterday with Alaska Airlines
21 that they need approval whether it's from Ravn or this Court,
22 that they are ready, willing, and able to start up some service
23 to Southwest Alaska in as soon as two weeks as long as they can
24 get the approval to utilize the facilities that they have
25 already got agreements with Ravn on in Southwest Alaska.

1 So to sum up, the State of Alaska's position is clear.
2 The North Slope Borough's actions are void and of no force and
3 effect under state law. They violate the Bankruptcy Code
4 provisions relating to assets of the estate. They violate any
5 number of provisions of substantive FAA regulations. And the
6 State of Alaska would join in any effort to seek relief should
7 the parties not be able to get the North Slope Borough to stand
8 down.

9 But most importantly, it's counterproductive. If the
10 goal is to get air service started as quickly as possible, then
11 they have done the wrong thing. And they're making the
12 lenders, the central parties to this bankruptcy, quite nervous.

13 Then the last issue that is not before the Court today
14 but could be very soon is hopefully negotiated relief allowing
15 substitute air service to start up as soon as possible.

16 And thank you, Your Honor, for the opportunity.

17 THE COURT: Mr. Schmidt, thank you very much. I
18 appreciate your comments. And again, I did not mean to put you
19 on the spot, but your comments were particularly helpful and
20 informative.

21 Again, before we turn back to the DIP, I have some
22 comments. But I would ask if anyone else wished to be heard.

23 MR. NEIER: Your Honor, one -- this is David Neier.
24 One minor -- one less important point is we were contacted and
25 the debtors were contacted by the airline's clearing house,

1 ACH. Ravn Air provided interconnection services with major air
2 carriers for those people going throughout the state of Alaska.
3 They wanted to know that the debtors are not going to assert a
4 position essentially that they're entitled to the gross
5 receivables out of the interconnection service that they
6 provide; rather, they're entitled to the net receivables.

7 So my way of thinking, if ACH has a prior committed
8 lien by virtue of setoff, that's not something that we're --
9 that the lenders are seeking under the DIP order to take action
10 about. I think we can address this either through a separate
11 stipulation with ACH or just getting through that issue or in
12 the final DIP order. But I wanted to raise it. I think their
13 counsel, Hogan Lovells, is on the phone. And I'd invite them
14 to say any comments as well.

15 THE COURT: All right. Do I have counsel from Hogan
16 Lovells on the line?

17 MR. NEIER: Oh, apparently they didn't make it.

18 THE COURT: All right.

19 MR. NEIER: We'll work that issue out, Your Honor.

20 THE COURT: Okay. All right.

21 MS. GUILFOYLE: Your Honor, this is Tori Guilfoyle.

22 I don't mean to interrupt, but there has been a couple
23 problems with CourtCall connections. I know I was dropped for
24 about six minutes. Mr. Fox referenced that he had been dropped
25 on the call. So there's some intermittent connection problems

1 with CourtCall. And I --

2 THE COURT: Okay.

3 MS. GUILFOYLE: -- I just dialed in, but I just wanted
4 to let you know.

5 THE COURT: All right. That sounds fine. Obviously,
6 we're all just doing our best here. And to the extent the
7 parties got dropped off and want to chime back in, they would
8 be welcome to do so.

9 All right. Before we turn to the DIP-financing order
10 itself, I had some comments that I was planning to make toward
11 the conclusion of the hearing. But I think now is actually an
12 appropriate time.

13 Also, can I ask -- can parties, again, place their
14 phones on mute? I'm getting a good deal of feedback right now.

15 All right. It's been observed now a couple times that
16 we are in a difficult circumstance. And I don't mean the
17 pandemic. That goes without saying. But it is a challenging
18 exercising for all the professionals and stakeholders in the
19 process in a rapidly evolving case that provides an essential
20 service to deal with these issues.

21 And I say that cognizant that I have a luxury in this
22 job, and that is that I am often surrounded by able and
23 experienced professionals that have done this kind of thing,
24 dealt with these kind of emergencies in the past. But right
25 now we can't get people into a room. And every type of

1 communication takes longer and more time. And it is more
2 difficult, frankly, to get in front of the Court.

3 I appreciate Mr. Schmidt's comments very much. It's
4 certainly helpful to hear from the State of Alaska and the
5 guidance with respect to both the immediate issues of concerns
6 with respect to North Barrow but also the larger issues of the
7 nature of the services that are provided by this debtor.

8 So my observations would be as follows: It's not my
9 position or my prerogative to second-guess the thought process
10 of the lenders. And again, I think the lenders have identified
11 some very, very legitimate concerns, even independent of the
12 Barrow, North Barrow issues about the position about they're
13 in. And this is a classic circumstance that secured lenders
14 face in lots and lots of cases.

15 If there is a case that cries out for a practical
16 business solution going forward -- and again, I'm not speaking
17 directly to the Barrow issue. I would hope that that issue can
18 get explored and resolved. But it would seem to me that this
19 is a case that really cries out for that. And there may be
20 need for a variety of business arrangements to hold things
21 together, if possible, to provide necessary service.

22 When we talk about delivery of food and medicine,
23 every single person that's on this call is trying to figure out
24 and to time when it is that they would go to a grocery store
25 right now. But we have the luxury of going to a grocery store

1 that is going to be, other than toilet paper, fully stocked.
2 That's a situation that might be a luxury not enjoyed by the
3 folks in the towns that are -- that have been the subject of
4 our discussion and that I'm sure Mr. Mannion could speak to
5 with more clarity.

6 So I can't predict and I wouldn't presume to identify
7 how this is going to evolve over the next hours and days. But
8 I am cognizant of the need for the services that are being
9 provided here. I'm not making any comment about who's
10 providing what and who's paying for what. But I will tell you
11 this. There should be, and I expect there will be, meaningful
12 discussions between players in order to try to hold value
13 together, to maintain value, and to maintain the services. We
14 are in a complicated situation. But I think the easiest way
15 that I can explain this to you is one of the real challenges is
16 both -- for you folks is negotiating one of these deals.

17 And then the last thing is, what is the judge going to
18 do with this? And so I think the short answer is -- without
19 getting myself too deep into trouble is that I think you should
20 expect that you would have a willing partner in the Court.

21 If there are business arrangements and stipulations
22 that can hold this together that are responsive to the
23 interests that are at stake and, frankly, the rights that are
24 at stake here as well that need to be respected, you can expect
25 that I would be likely supportive of those efforts and likely

1 to address them in terms of providing necessary authority on a
2 short-term basis, if we need to.

3 I'm not inviting the world to expedited motion
4 practice. But the last thing I would want is promising
5 negotiations hung up by a concern about whether or not you can
6 get this in front of Shannon or, if we do this, are we going to
7 get crucified for not necessarily having all of the authority
8 that perhaps we had.

9 That is a general observation. And again, I'm
10 confident, having had a lot of experience with many, many of
11 the folks that I see that are on the phone today, that you've
12 got a pretty good sense of how the Court is going to address
13 this going forward. But we are in an emergency just generally.
14 And the concerns that are expressed about the folks that are
15 serviced by this debtor are manifest and really not subject to
16 debate.

17 And the last observation I would have is -- again,
18 it's not my money. It's not my liens. It's not my -- it's not
19 my business. But there seems to be no doubt that when -- not
20 if, but when we emerge from this current crisis, there is no
21 doubt that the state of Alaska and the citizens of Alaska will
22 need a service pretty much identical to what it is that Ravn
23 provides. And I think that's the tightrope that everybody
24 that's on this call is trying to navigate. And in that
25 respect, you have my support to try to navigate that.

1 I would ask if other parties wish to be heard with
2 respect to the proposed DIP financing. Okay.

3 Here's what we're going to do. I'm going to grant the
4 DIP-financing motion. And I will enter the proposed form of
5 order that is reflected in the latest blackline.

6 Obviously -- and it's becoming a recurrent theme.
7 Normally, we would do an extensive page turn and we would talk
8 about some of the specific issues. They had been pointed out
9 to me. And I appreciate Mr. Neier raising the point of the
10 rollup in the business context in which that was negotiated and
11 the rationale behind it. And I am satisfied that that is
12 appropriate and warranted.

13 And I would, again, express my appreciation to the
14 Office of the United States Trustee, again, under difficult
15 circumstances for working through the order and working through
16 issues with the lenders and the debtor in order to get to a
17 final order.

18 Again, I take a relatively light hand in this context
19 just because it's difficult to sort of do a page turn. I did
20 it the other day, and it took a long time. But I have a sense
21 and, frankly, a high level of confidence with respect to the
22 nature of the relief that's requested.

23 And I'm sympathetic to the angst I guess that the
24 lenders have expressed about the fact that the interim
25 financing is largely going to pay employees. But I have said

1 in almost every single first-day hearing I've had for more than
2 fourteen years that, at the outset of one of these cases, I
3 have no greater constituency that I'm concerned for than those
4 employees that work or have worked for the debtor. And so I
5 understand that much of the money is going to go to wages and
6 salary.

7 And I think I would agree with Mr. Neier that that is,
8 from the debtors' point of view, a big ask. But, nevertheless,
9 I think it's appropriate. And I do think that it also
10 hopefully positions the debtor for an opportunity to hold
11 things together and perhaps to rebuild and revitalize to the
12 extent possible a business that's just essential in this
13 community.

14 So again, in the absence of pending objections and
15 with understanding of the concerns or hesitation expressed by
16 Mr. Neier, given some of the issues in North Barrow, I'm being
17 asked today to approve the debtors' request for authority to
18 enter into a financing arrangement. And I will do so.

19 I'm not going to heavily burden the record. I will
20 simply note under Bankruptcy Code Section 361, 363, and 364, as
21 well as Bankruptcy Rule 4001, that the debtors have carried
22 their burden under each of those statutory sections. And under
23 Bankruptcy Rule 4001, I do find that the financing is necessary
24 to avoid immediate and irreparable harm to the debtors'
25 reorganization effort. The DIP-financing order is granted.

1 And again, I think we would deal with that in a final context
2 at our hearing late April.

3 Mr. Keller, what do we have next? You got to take me
4 off mute.

5 MR. KELLER: Thank you, Your Honor. I would note that
6 we have found the invariable typo in the interim order and
7 dupe. And we will send the Court a cleaned-up version of that
8 order to be entered finally.

9 THE COURT: Very good.

10 MR. KELLER: At this point, I will be presenting my
11 partner, Jane Kim, to take the rest of the agenda.

12 Before I do, I'm afraid that I was booked for another
13 hearing to start at noon, Your Honor's time. So with Your
14 Honor's consent, I will drop off in about ten minutes and let
15 Jane Kim carry the rest of the hearing.

16 THE COURT: That's just fine. All right. And thank
17 you, Mr. Keller. Good luck to you.

18 MR. KELLER: Thank you.

19 And with that, I would like to introduce my partner,
20 Jane Kim, who will take the remaining items on the calendar.

21 THE COURT: All right. Good morning, Ms. Kim.

22 MS. KIM: Good morning, Your Honor. For the record,
23 Jane Kim, Keller Benevenuti Kim, on behalf of the debtors.

24 Your Honor, I'm going to be going through the rest of
25 the agenda in the order that the matters are listed unless Your

1 Honor wishes to take them in a different order.

2 THE COURT: No, that's fine.

3 MS. KIM: As I think it's been -- Your Honor has
4 mentioned, that -- has observed and is obvious from the revised
5 orders that we filed last night, we have been working with the
6 Office of the United States Trustee and with Mr. Fox on all of
7 these matters. And the revised orders that we filed last night
8 reflect comments from Mr. Fox.

9 And so my understanding is that, while he may wish to
10 speak on some of the specific matters, that we are proceeding
11 on a consensual basis. And we really do thank Mr. Fox and his
12 office for working with us to resolve his concerns.

13 THE COURT: Very good. You may proceed.

14 MS. KIM: So the first item that I will be going
15 through is the cash-management order, docket number 6. And in
16 connection with that, I would reference the supplement
17 declaration as well as the first-day declaration and the
18 supplement to the cash-management motion that we also filed
19 late last night.

20 THE COURT: I have seen -- I've seen it.

21 MS. KIM: Thank you, Your Honor. And thank you for
22 going through all of the papers that we filed late last night.

23 Through the cash-management motion, we are asking for
24 an interim order to allow the debtors to continue the use of
25 their cash-management system and their existing bank accounts

1 and business forms.

2 And in particular, one of the items that I wanted to
3 call out to Your Honor that Your Honor has probably already
4 noticed is we have a DACA on -- for the benefit of the secured
5 lenders at the First National Bank of Alaska. And there are --
6 oh, I'm sorry.

7 THE COURT: That's okay.

8 MS. KIM: Is that call -- okay.

9 THE COURT: We're good.

10 MS. KIM: And FNBA is not an authorized depository
11 with the U.S. Trustee, doesn't have a uniform depository
12 agreement with the Office of the U.S. Trustee. We have asked
13 FNBA if they will execute one. They're reviewing it. But the
14 way that the interim order works right now is that we -- it
15 will allow the debtors to continue to hold its cash in the FNBA
16 account, and in particular the DIP funds that Your Honor just
17 approved. And while the debtors work with the DIP lenders to
18 execute -- negotiate a DACA with Wells Fargo if FNBA is not
19 able to becoming its authorized depository and sign a UDA with
20 the Office of U.S. Trustee.

21 THE COURT: Okay.

22 MS. KIM: And the only other -- the other items that
23 we wanted to call was we do have a -- the supplement to the
24 cash-management motion had referenced some -- the ACH clearing
25 house issue that Mr. Neier had mentioned. We worked with ACH

1 and included some additional language in the revised cash-
2 management order that we filed last night with the supplement
3 that makes it clear that the billings that -- the settlements
4 that ACH does with respect to inner line billing can be
5 continued to be set off.

6 And thus, the automatic stay can be modified in order
7 to permit ACH's participants to effectuate those setoffs such
8 that the debtors are able to receive those settlements in the
9 form of revenue which they were scheduled to receive today but
10 because of the timing of this hearing and that scheduled
11 settlement might need to be delayed. But we are hopeful that
12 with this interim order being entered that we will be able to
13 get that settlement from ACH as soon as possible.

14 THE COURT: Okay. I did see the supplemental
15 declaration that touched on the issues with ACH. And there was
16 a -- basically a prediction in the supplements that were
17 submitted that the parties would be able to memorialize a
18 stipulation or some proposed order going forward. And I'm
19 happy to let that process play out.

20 I would ask if anyone else wishes to be heard with the
21 respect to the debtors' cash-management motion.

22 Very well. I'm going to go ahead and grant the cash-
23 management motion.

24 And again, I note that the record does reflect that
25 there was a supplemental declaration and a supplement to the

1 motion itself to address some specific issues. But as a
2 threshold matter, I note that the relief requested is
3 consistent with that which the Court has seen in many, many
4 prior cases. This is a corporate debtor with a sophisticated
5 process for managing and moving money within the corporate
6 family. And I do find that the relief requested is
7 appropriated and warranted under the circumstances.

8 The motion is granted, and the order will issue. To
9 the extent that there is a resolution as noted regarding the
10 ACH issues, I would be happy to entertain that under
11 certification of counsel, if the parties believe that that's
12 procedurally appropriate, or we can deal with it by motion or
13 by stipulation. But I think the matter can move forward.

14 Ms. Kim, next motion?

15 MS. KIM: Yes. Sorry. Just to clarify on the ACH
16 issue as well as the cash-management order that we will be
17 submitting, that order itself actually has what we believe
18 is --

19 THE COURT: Okay.

20 MS. KIM: -- is the resolution of the issues with ACH.
21 So I still believe that is a further stipulation in that regard
22 as required.

23 There is one other minor change to the revised order
24 that we submitted last night, reflecting a comment that we
25 received from Mr. Fox this morning which is that, with respect

1 to the thirty-day stay -- a waiver of the Section 345(b)
2 requirements, that we will -- if we need to because aren't able
3 to, for example, negotiate a DACA within those thirty days,
4 that rather than get a -- have it done by an agreement with the
5 U.S. Trustee, that we'll seek court approval both of in
6 language that Mr. Fox has assured me is flexible enough to be
7 able to accomplish through certification of counsel rather than
8 a separate motion. And --

9 THE COURT: Okay. That sounds fine.

10 MS. KIM: So we will submit that order.

11 And then the next matter is the utilities motion at --

12 THE COURT: Okay.

13 MS. KIM: -- docket number 7.

14 THE COURT: Sure.

15 MS. KIM: The utilities motion provides for an
16 adequate-assurance deposit of 70,000 dollars into a segregated
17 interest-bearing account that reflects approximately two weeks
18 of the debtors' estimated utility expenses.

19 The one somewhat unusual aspect of this motion is our
20 treatment of aircraft fuel and utilities. Your Honor has heard
21 numerous times today I think this morning that Alaska -- and
22 how things are in Alaska is quite different than we are used to
23 down here in the contiguous forty-eight states.

24 And in particular, because there are so many remote
25 areas in Alaska, there are a number of fuel providers that end

1 up being the sole source of fuel in those remote areas. Unlike
2 here where we might have an ARCO and a Mobil and a Chevron gas
3 station and so we don't have to think about them at utilities,
4 there they are much more like utilities because they are --
5 really it's a single source of fuel.

6 We believe that the current adequate-assurance deposit
7 is sufficient to protect those utilities, given just the
8 overall reduction in operations. The 70,000-dollar deposit was
9 based on pre-petition utility usage over two weeks. And the
10 fact is that we don't anticipate that there will be much of any
11 immediate fuel needs.

12 But at the U.S. Trustee's suggestion, we'll be adding
13 in a provision to the interim order that the adequate-assurance
14 deposit calculation is subject to adjustment if operations do
15 return to a normal level just so that we can bring that up if
16 it turns out that we do need more fuel than we anticipated
17 during this interim period.

18 THE COURT: Okay. That sounds fine.

19 MS. KIM: I think everything else is hopefully
20 self-evident in terms of the process by which utilities, once
21 they receive service of this order, can go about requesting
22 additional adequate-assurance deposits or having it done in a
23 different way before they -- but we do believe that this order
24 is necessary in order to ensure that the debtors are able to
25 preserve their assets and their ability to operate in whatever

1 way they need to without disruption. And we would ask Your
2 Honor to grant the interim order.

3 THE COURT: Okay. Can I ask if any party wishes to be
4 heard with respect to the debtors' utility request?

5 And, Ms. Kim, I do appreciate the extended focus on
6 the fuel service providers. That's not typical, but I
7 understand the debtors' position in that respect.

8 Does any other party wish to be heard right now?

9 Okay. I'm going to grant the motion. And I'll deal
10 with it in two steps.

11 As a threshold matter, the first issue is basically
12 the routine utility services motion that we see in every case.
13 And I'm going to grant the motion. I do find that it is
14 consistent with that which -- with relief that I and my
15 colleagues have approved and authorized in many, many prior
16 cases. And I find that the relief strikes an appropriate
17 balance between the rights of a utility service provider to
18 adequate assurance and the needs of a debtor-in-possession to
19 maintain uninterrupted supplies of utilities services and the
20 balance that's identified and provided for under Bankruptcy
21 Code Section 366.

22 With respect to the fuel service issue, I do think
23 that -- given the nature of the services that are provided and
24 the geography where it's being provided, I think that it is not
25 a stretch at all to describe the fuel service providers that

1 have been identified in the motion and described by Ms. Kim
2 today as being akin to actually utilities. And so I am
3 satisfied that the relief requested is appropriate and
4 warranted. The motion is granted, and the order will issue.

5 MS. KIM: Thank you, Your Honor.

6 The next item on the agenda is the taxes motion,
7 docket number 8, for which we're seeking an interim order
8 allowing us to -- the debtors to pay any unpaid tax obligation
9 during the interim period before the final hearing.

10 At this time, the only unpaid taxes of which we're
11 aware is 320,000 dollars in excise taxes that, under the DIP
12 budget, is not contemplated to be paid until after the
13 second-day hearing. But that said, we thought it was still
14 appropriate to request interim relief in the event that there
15 are unanticipated tax obligations that are discovered to avoid
16 the need for an emergency request.

17 So in that regard, we've included in the revised
18 interim order based upon a comment from the Office of the U.S.
19 Trustee for a 100,000-dollar cap on interim payments of tax
20 obligations.

21 THE COURT: Okay. Does anybody wish to be heard with
22 respect to the debtors' tax motion?

23 Okay. I'm going to grant the motion. I am satisfied
24 that the relief requested is appropriate and warranted. And I
25 don't disagree with Ms. Kim that there is -- while it may be

1 that these obligations are likely to come due perhaps after the
2 hearing we've got scheduled for the 29th, experience does teach
3 that tax bills and invoices often arrive without warning and as
4 a surprise. And especially at this time it would be wise to
5 try to avoid the process of trying to pull together emergency
6 hearings or emergency relief, given the challenges everyone is
7 facing.

8 In addition, I note that they've been described as
9 excise taxes. And I think an argument could be made that these
10 are in fact -- they may be trust fund taxes. Case law teaches
11 that if they are true trust fund taxes, it's not even likely
12 property of the estate.

13 But nevertheless, I'm satisfied that the debtors have
14 carried their burden as to the relief requested. And I do note
15 that the relief requested implicates Bankruptcy Rule 6003 in
16 that it contemplates potentially the payment of certain
17 pre-petition obligations in the first few weeks of the case.

18 Nevertheless, based upon Mr. Mannion's declaration as
19 well as counsel's representations and the Court's long
20 experience, I'm satisfied the debtors' reorganization effort
21 would suffer the risk of immediate and irreparable harm in the
22 absence of the relief requested. The motion is granted. The
23 order will issue.

24 MS. KIM: Thank you, Your Honor.

25 The next item on the agenda is the insurance motion at

1 docket number 9. By that motion, we are seeking an interim
2 order asking for the ability to pay pre-petition obligations
3 under our insurance program and the insurance financing
4 arrangement that the debtors have.

5 As described in Mr. Mannion's first-day declaration
6 and in the motion, there is 1.25 million dollars of a -- of
7 pre-petition obligations that, if the debtors were to renew
8 their insurance, continue their insurance program, they would
9 have to pay at this time as described in the motion and Mr.
10 Mannion's declaration.

11 We are exploring new insurance policies. Obviously,
12 given where we are right now, our -- the debtors' insurance
13 needs may be different and may require lower insurance coverage
14 than it had during normal operation. So we're exploring that.

15 And we may not need to pay any pre-petition amounts
16 owing under the debtors' insurance programs and the insurance
17 financing arrangements. But out of an abundance of caution,
18 because these are our existing insurance policies, while other
19 options are being explored, we would like to be able to
20 maintain them. And therefore, the debtors seek authority to be
21 able to pay those pre-petition amounts and would seek a
22 confirmation that the debtors can paid any immediately owed
23 post-petition obligations under those insurance policies.

24 THE COURT: Okay. Can I ask if anyone wishes to be
25 heard with respect to the debtors' insurance motion?

1 MR. FOX: Good morning again, Your Honor. Tim Fox on
2 behalf of the United States Trustee.

3 I just rise to address this motion because it is a
4 little bit of an unusual circumstance from what Your Honor and
5 I normally see. It's my understanding that the debtors realize
6 the important of maintaining adequate insurance coverage but,
7 given the operational realities that they're facing, may look
8 for flexibility in tailoring their insurance coverage to better
9 suit their current operational footprint.

10 And with the understanding that, regardless of
11 whatever path they take, they will maintain adequate insurance
12 coverage, my office doesn't object to the relief that's being
13 sought here today on the first-day.

14 THE COURT: Thank you, Mr. Fox.

15 Does anyone else wish to be heard? Okay.

16 I'm going to grant this motion. I do note that it is
17 a little bit different from a typical motion in that there is a
18 little bit of optionality or flexibility built into it. But
19 again, I think, consistent with Mr. Fox's observations, the
20 debtors' need for that or desire for that flexibility is pretty
21 obviously.

22 Nevertheless, the relief requested completes the
23 debtor obtaining authority to maintain appropriate insurance.
24 And I'm going to grant that motion.

25 I note, again, that this is relief that's consistent

1 with that which the Court has granted on many, many prior
2 occasions. And I typically observe that any debtor that comes
3 under the jurisdiction of this Court is obliged to maintain
4 appropriate insurance consistent with its post-petition conduct
5 and activities.

6 I would further note that the Office of the United
7 States Trustee operating guidelines likewise require a
8 debtor-in-possession to maintain appropriate and necessary
9 insurance. And I'm satisfied that this motion accomplishes
10 that.

11 I do note as well that this motion does also implicate
12 Bankruptcy Rule 6003 and that certain obligations may come due
13 or be paid within the first few weeks of the case.

14 Nevertheless, I'm satisfied that, based upon the
15 record before me and relying upon Mr. Mannion's declaration, I
16 do find that the relief requested is necessary to avoid
17 immediate and irreparable harm to the debtors' operations and
18 its reorganization effort. The motion is granted, and the
19 order will issue.

20 MS. KIM: Thank you, Your Honor.

21 The final item on the agenda which, in many ways to
22 the debtors is the most important operational first-day motion
23 on the agenda, is the employee wages and benefits motions.

24 You have heard elusion multiple times this morning to
25 the fact that the debtors are seeking the interim financing

1 largely to pay the payroll and the employee wage obligation of
2 the debtors, particularly for the employees who were terminated
3 in a large-scale reduction of force on Sunday before the filing
4 of the Chapter 11 cases.

5 There are thirty-nine employees who are remaining at
6 the company since that reduction of force post-petition. And I
7 can represent to the Court that they are working very, very
8 tirelessly to -- largely to ensure not just that the cases
9 continue to be administered and that all of the assets are
10 protected but also try to get these paychecks out to the
11 employees and make sure -- to their formal colleagues.

12 And I think we all can understand that being able to
13 pay these employees will be important to the morale of the
14 current -- the remaining employees as well as the -- to protect
15 the ability of the debtors to rehire those employees, former
16 employees, should we be able to resume operations.

17 So with that context and with the understanding that
18 this is a difficult situation, made even more difficult in
19 these -- in this current economic environment where, for a
20 variety of reasons, not the least of which is just the fact
21 that nobody can be with each other, that being able to get
22 alternative employment will be difficult, if not impossible,
23 during these times. And therefore, the debtors very much
24 believe that being able to make sure that these employees and
25 former employees who were just terminated are able to receive

1 their full paychecks is important.

2 So therefore, we are seeking not -- in this case not
3 an interim order but a final order for the purpose of allowing
4 for finality and giving certainty to those employees that
5 they're able to get their paychecks. We're asking for a final
6 order to permit the debtors to pay all pre-petition
7 compensation, including any accrued pay time off for terminated
8 employees, unreimbursed business expenses, as well as our
9 pre-petition deductions and pre-petition benefits.

10 We did, as Your Honor knows, file a supplemental
11 declaration of Mr. Mannion to correct some of the numbers
12 around the priority cap.

13 THE COURT: Right.

14 MS. KIM: And it's discussed further, the paid time
15 off benefits, after receiving some comments from Mr. Fox and
16 the Office of the U.S. Trustee.

17 As noted, there are thirty-two employees who are owed
18 more than the statutory priority cap under 507(a)(4) and
19 (a)(5). This is almost entirely relating to accrued paid time
20 off benefits that must be paid to the terminated employees and
21 the -- which is under the debtors' employee policies. PTO is
22 required to be paid to employees who are involuntarily
23 terminated once they are terminated.

24 These are terminated employees who lost their jobs
25 because of the coronavirus-related disruption and the financial

1 impact on the debtors that led to needing to stop operations
2 for the time being. And these are employees that, if the
3 company is able to get the government funding necessary to
4 resume operations, would need to be rehired. And the debtors
5 believe that that possibility, in and of itself, is valuable
6 enough to the estate to warrant payment.

7 But even if there were no restart possible, the
8 employees who lost their jobs, they've lost their jobs.
9 They're in an extraordinarily challenging economic season. And
10 it's both the debtors would submit humane to make sure that
11 they receive their full entitlement to pay and a much-needed
12 morale boost for their few remaining colleagues who are --
13 remain with the company and are just essential to administer
14 the estate and preserve the value of the debtors' assets.

15 And for that reason, I would ask that Your Honor grant
16 the wages motion, employee wages motion.

17 THE COURT: Okay. Before I hear from any other party,
18 I just want to make sure I understand. I have had an
19 opportunity to review the supplemental declaration. So I think
20 I understand the PTO issue and the amounts as it relates to the
21 caps. And I get the thought process behind that.

22 But I just want some clarity. Is the debtor asking
23 today for a final order with respect to the authority to pay
24 wages and benefits, et cetera?

25 MS. KIM: Yes, Your Honor.

1 THE COURT: Okay. I understand the request.
2 Can I hear from the Office of the United States
3 Trustee?

4 MR. FOX: Yes, Your Honor. Tim Fox again on behalf of
5 the United States Trustee.

6 So in reviewing this motion, I initially provided my
7 informal comments which included our standard provisions about
8 payments exceeding the statutory priority caps and, in that
9 colloquy with the debtor, was informed about the nature of
10 those overages and that -- the majority of them -- that the
11 overwhelming majority of those relate to the paid time off
12 benefit. One of the other standard provisions that we
13 routinely see in these wages order is a provision that says
14 notwithstanding any other provision that they not pay accrued
15 paid time off.

16 But given the circumstances here where state law
17 requires the payment of those amounts and that circumstance
18 falling in these extraordinary times, my office is not
19 objecting to the relief that's being sought today and with
20 respect to do this on a final basis on the first-day rather
21 than doing an interim order and a final order for the reasons
22 the debtors' counsel stated.

23 It's, again, my understanding, and the supplemental
24 declaration makes this even more clear, that these payments are
25 required under state law and that these individuals that are

1 receiving these payments are going to be faced with difficult
2 times here going forward. And whatever can be done to minimize
3 that impact, given the extraordinary circumstances, is not
4 something that my office believes is improper under the
5 circumstances.

6 So with the modification that was made to the form of
7 order at my office's request, we have no objection to entry of
8 this order.

9 THE COURT: Okay. Does any other party wish to be
10 heard? All right.

11 Ms. Kim, I'd like a little bit more clarity. I am
12 struggling with the proposition that -- I got -- I will be
13 candid. I don't have an issue with the relief that's
14 requested. But I am troubled by the prospect of doing it on a
15 final basis on the first-day. We've talked plenty of times
16 about the challenging circumstances we all face today.

17 Our local rules specifically provide that,
18 essentially, all orders entered on a first-day are interim.
19 And I think if I understand the nature of the relief, you are
20 asking for authority to make payments that have been described.
21 If I enter that order, interim or file, you have the authority
22 to make those payments.

23 I don't know that I've ever had a situation where it
24 has gotten questioned or unwound at a later point. But I am
25 reluctant as a practical matter to leave any other party in the

1 bankruptcy case that may not have heard about any of this to an
2 emergency appeal -- and I think the appeal deadline, if I'm not
3 mistaken, is fourteen days, so that would be before our
4 second-day hearing -- or a motion for reconsideration.

5 So I think I'd like some -- a little bit more clarity
6 about why the debtor believes that a final order today is
7 necessary. I appreciate the desire for certainty and closure.
8 I would also note that the relief requested is beyond what
9 would often be approved in this Court, particularly with the
10 lump sums that may exceed the cap and everything. And you've
11 gotten support from -- or lack of opposition from the Office of
12 the United States Trustee and I think as I -- as far as I can
13 tell generally right now support from the lenders for that.

14 But the concern I have is that a final order today is
15 a bridge too far. I'd like your thoughts.

16 MS. KIM: Your Honor, I understand. And that is why
17 for all of these other motions that -- for which we're asking
18 for payment to be made that we did ask for -- structure them as
19 in the form of interim orders.

20 In this one instance, which I understand it is a large
21 sum relative to the other payments that we were contemplating
22 today, as well as the fact that it is the majority of what
23 the -- the initial drawdown during the interim period under the
24 DIP facility.

25 That said, we believe that subjecting the employees to

1 that uncertainty that might arise even during a short period of
2 time between now and the final hearing will -- in the context
3 of everything else that is happening and the circumstances
4 being faced, will be -- it will cause some consternation and
5 trouble.

6 And we would like to be able to reassure the employees
7 and the former employees that, regardless of whatever else may
8 happen with respect to the future of this company -- and you
9 have -- Your Honor has heard many times today about the
10 essential nature of some of the services that the debtors had
11 been providing, that regardless of the rest of the uncertainty,
12 that the one thing that is certain is that once this money --
13 the paychecks go out, that they are their paychecks to cash.
14 And they can do without concern.

15 THE COURT: Okay. Does anyone else wish to be heard?

16 MR. FOX: Your Honor, this is Tim Fox again on behalf
17 of the United States Trustee.

18 In further response, and to elaborate on my prior
19 comment, I took it as styling this as final on the first day
20 didn't affect what the standing practice is in the jurisdiction
21 and is reflected, I believe, in Judge Carey's comments that all
22 orders entered on the first day are, in nature, interim orders,
23 just that this one isn't specifically going to be sought for a
24 final order with additional relief. If that understanding is
25 incorrect, then I apologize for that.

1 And I understand the debtors' comments now to reflect
2 maybe a larger degree of finality than I had appreciated. So I
3 just wanted to clarify that before any other parties spoke.

4 But it would be my hope and expectation that,
5 consistent with practice in this district, that, despite the
6 styling of the order, should there be any party that didn't
7 receive the opportunity to be heard today and won't get notice
8 of these cases until the second-day hearing is going to be
9 held, that they'd have the right to come forward with any
10 issues. I don't imagine there would be much in the way of
11 practical issues that exist. But that -- I just wanted to make
12 my comments a little bit more clear on the record.

13 THE COURT: Okay. All right. Anyone else? All
14 right.

15 MR. NEIER: Your Honor, it's David Neier. Your Honor,
16 it's David Neier.

17 THE COURT: Yeah.

18 MR. NEIER: I would just point out that we're talking
19 about 129,000 dollars spread over thirty-two employees. It's
20 hardly a princely sum. Yes, it could be a committee issue or
21 something like that. But it's really a -- it's really di
22 minimis when you consider what we're talking about here.

23 THE COURT: I don't disagree, but I'm still not
24 prepared to do it on a final order. I would take it on an
25 interim. I think experience teaches that it is highly unlikely

1 that these would be challenged. I think, to the extent -- as I
2 said, many of you have been in my court for a long time. While
3 it's highly unlikely that they would be attacked, it's also
4 unlikely that that attack would be well-received.

5 But I understand the concerns. Ms. Kim I think has
6 laid out the challenges that are faced by these employees and
7 the extraordinary circumstances that they face.

8 And again, but I'm concerned that an entry of a final
9 order on day one as to this issue would create, frankly, a
10 measure of confusion as evidenced, frankly, by the colloquy
11 with Mr. Fox. If I enter a final order, I think it's final.
12 And I think your remedy is an appeal and a prompt one.

13 But the bottom line is this. This debtor is --
14 notwithstanding all of the extraordinary circumstances we're
15 facing, the motion that is before me is pretty typical. And to
16 the extent that there's relief sought in that motion, the
17 amounts that Mr. Neier just touched on and Ms. Kim has dealt
18 with in specifics is not typical, but it's also not unheard of.
19 We deal many times with amounts that are beyond the caps, often
20 with sales people for commissions, those kind of things.

21 And so again, I don't -- I'm not troubled by the
22 relief that's requested. And I think that the debtors have
23 carried their burden as to that respect. I just think that the
24 request that the Court on this -- at this hearing, twenty-four
25 hours into the proceeding, request final relief as to really

1 anything is, as I said, a step too far.

2 So I would be prepared to take the typical approach
3 that we have in prior cases. And I would grant the motion for
4 wages and salaries, all of the relief that's been requested.
5 And the debtor is asking for authority to make those payments
6 prior to the entry of a further order, if one comes at our
7 later hearing in April. And that is precisely what I
8 understand and expect will happen. Those monies will go. And
9 the employees will get their checks.

10 As to the relief requested, as noted, it is generally
11 pretty standard. And I do find from, one, the Court's long
12 experience, as well as, second, Mr. Mannion's declaration that
13 the -- in the absence of the relief that's requested, I think
14 the debtors' reorganization effort will suffer the risk of
15 immediate and irreparable harm. And I realize that the debtor
16 is in something of a state of limbo because of, again, the
17 circumstances that we face with the COVID-19 pandemic.

18 But, as I said a few moments ago, if there is a way to
19 keep an operating and functional business alive here for the
20 opportunity to be revived and rebuilt, hopefully once the
21 circumstances pass, this case cries out for that. And as I
22 said, the Court would be prepared to be a willing partner. And
23 I view these payments as being a step in that direction.

24 So based upon the record before me, I'm satisfied the
25 debtors have carried their burden under applicable provisions

1 to the Bankruptcy Code as well as Bankruptcy Rule 6003. And
2 with the one proviso that the order will be denominated as is
3 our practice as an interim order, the motion is granted. And
4 that order will issue once it's uploaded.

5 Ms. Kim, I think that that was the last of the
6 motions. Are there any other items that we need to cover now
7 this afternoon?

8 MS. KIM: No, Your Honor. Thank you.

9 I will note that, just to -- for clarity so that
10 there's no surprise later that obviously the -- actually being
11 able to pay out those paychecks will be highly dependent on
12 being able to get in the DIP funding.

13 And then even then, there's a little bit of mechanical
14 issues in trying to issue out a thousand-plus paychecks. So
15 it'll take possibly two days before the checks can go out. But
16 our hope is that we can be able to do all of that very
17 expeditiously. And I appreciate Your Honor's comments.

18 And with that, I also on behalf of the debtors and my
19 cocounsel very much appreciate Your Honor's attention to these
20 matters on such an expedited basis. And I believe that it will
21 be a major step forward in being able to make sure that the
22 debtors are able to maximize value of their assets and try to
23 protect whatever they can protect in the state of Alaska.

24 THE COURT: Very good. Thank you, Ms. Kim.

25 Before we conclude, are there any other matters that

1 the Court needs to address?

2 All right. Hearing none, I appreciate, again,
3 everyone's time and patience and cooperation this morning. I
4 will look for the orders to be uploaded. We'll have them
5 entered on the docket promptly.

6 Thank you very much. We are adjourned.

7 IN UNISON: Thank you, Your Honor.

8 (Whereupon these proceedings were concluded at 12:15 PM)

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I N D E X

E X H I B I T S

DEBTORS'	DESCRIPTION	PAGE
--	Declaration and supplemental declaration of John Mannion in support of DIP financing	25

RULINGS

	Page	Line
Debtors' motion for joint administration of cases is granted.	21	8
Debtors' application to retain and employ Stretto as the claims-and- noticing agent is approved.	23	12
Debtors' DIP-financing motion is granted	49	3
Debtors' cash management motion is Granted.	54	22
Debtors' motion for interim and final orders establishing adequate-assurance procedures is granted.	58	9
Debtors' motion authorizing payment certain pre-petition taxes is granted	59	23

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RULINGS (cont'd.)

	Page	Line
Debtors' motion authorizing the payment of pre-petition insurance obligations is granted.	62	16
Debtors' motion authorizing debtors to pay pre-petition employee wages, benefits, and related items is granted.	74	3

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C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.



April 9, 2020

CLARA RUBIN

DATE

eScribers, LLC
352 Seventh Avenue, Suite #604
New York, NY 10001
(973) 406-2250
operations@escribers.net

A	<p>activities (1) 63:5</p> <p>actually (8) 22:14;32:24;33:2, 20:45:11;55:17; 59:2;74:10</p> <p>acutely (3) 34:17;38:23;41:14</p> <p>add (2) 29:13,13</p> <p>adding (1) 57:12</p> <p>addition (6) 7:18,25;15:2;16:3; 28:15;60:8</p> <p>additional (4) 30:3;54:1;57:22; 70:24</p> <p>address (10) 29:11;38:8;39:10, 20:44:10;48:1,12; 55:1;62:3;75:1</p> <p>addressed (3) 10:16;12:23;36:15</p> <p>adequate (3) 58:18;62:6,11</p> <p>adequate-assurance (4) 56:16;57:6,13,22</p> <p>adjourned (2) 18:7;75:6</p> <p>adjustment (1) 57:14</p> <p>administer (1) 66:13</p> <p>administered (2) 20:25;64:9</p> <p>administration (5) 10:16;20:23;21:7, 11:41:6</p> <p>administrative (1) 23:4</p> <p>admission (2) 24:18,24</p> <p>admitted (3) 24:25;25:8,17</p> <p>adopt (1) 33:24</p> <p>advance (5) 7:24;8:3;17:7; 25:12;38:11</p> <p>advances (1) 27:24</p> <p>advantage (1) 36:11</p> <p>advised (1) 8:15</p> <p>advocating (1) 15:17</p> <p>affect (1) 70:20</p> <p>affiliated (1) 20:24</p> <p>afford (1)</p>	<p>39:4</p> <p>afraid (1) 51:12</p> <p>afternoon (2) 18:21;74:7</p> <p>again (39) 7:13;9:9,15,17; 16:12;18:5;19:5,22; 23:18;24:19;25:23; 26:8;34:14;35:13; 37:4;38:13;43:18, 21:45:13;46:10,16; 48:9,17;49:13,14,18; 50:14;51:1;54:24; 62:1,19,25;67:4,23; 70:16;72:8,21; 73:16;75:2</p> <p>agenda (14) 10:7,17;14:18; 17:13;20:16,22; 21:23;25:21;51:11, 25:59;6:60:25; 63:21,23</p> <p>agent (6) 10:16;21:24;23:3, 4,15;27:18</p> <p>agents (1) 22:21</p> <p>aggregate (2) 26:19;28:18</p> <p>ago (1) 73:18</p> <p>agree (2) 28:19;50:7</p> <p>agreed (3) 20:15;28:4,17</p> <p>agreement (5) 28:9,14;36:25; 53:12;56:4</p> <p>agreements (1) 42:25</p> <p>ahead (1) 54:22</p> <p>Air (14) 7:11;9:18,19; 10:21;11:23;20:24; 41:16,19,24;42:9; 43:10,15;44:1,1</p> <p>air-cargo (2) 41:7,8</p> <p>aircraft (6) 12:10;28:17;32:7, 8,12;56:20</p> <p>airline (1) 41:6</p> <p>Airlines (4) 9:20;13:8;42:17, 20</p> <p>airline's (1) 43:25</p> <p>airplane (1) 11:6</p> <p>airplanes (1)</p>	<p>11:3</p> <p>Airport (1) 42:6</p> <p>airports (1) 12:11</p> <p>air-transportation (1) 10:22</p> <p>akin (1) 59:2</p> <p>Alaska (47) 5:9;10:22,24; 11:10,23;12:12; 13:5;15:9,10;30:20, 20:31;23,24;32:23, 23:34;5;36:3,6; 38:23;39:5,7,10,13, 18,22;40:20,23; 41:23;42:1,12,13,16, 16,17,20,23,25;43:6; 44:2;46:4;48:21,21; 53:5;56:21,22,25; 74:23</p> <p>Alaskan (2) 11:3,4</p> <p>Alaska's (3) 12:14,25;43:1</p> <p>alive (1) 73:19</p> <p>allow (9) 14:13;16:20;17:2; 27:22;38:10;41:25; 42:1;52:24;53:15</p> <p>allowing (3) 43:14;59:8;65:3</p> <p>almost (7) 12:2;27:1;39:25; 41:16;42:15;50:1; 65:19</p> <p>alternative (2) 27:10;64:22</p> <p>Amazon (1) 32:5</p> <p>amended (1) 17:12</p> <p>among (1) 31:17</p> <p>amount (5) 21:2;27:1,13;30:3, 3</p> <p>amounts (7) 28:18;61:15,21; 66:20;67:17;72:17, 19</p> <p>ANDREA (1) 6:10</p> <p>angst (1) 49:23</p> <p>answered (2) 14:20;16:7</p> <p>anticipate (1) 57:10</p> <p>anticipated (2) 16:22;57:16</p>	<p>anxiety (1) 28:23</p> <p>apart (2) 39:2;40:16</p> <p>apologize (2) 11:20;70:25</p> <p>apparent (1) 13:9</p> <p>apparently (2) 42:19;44:17</p> <p>appeal (3) 69:2,2;72:12</p> <p>appeared (1) 8:19</p> <p>appears (1) 14:3</p> <p>applicable (2) 23:18;73:25</p> <p>application (7) 21:23;22:10;23:4, 9,11,12,20</p> <p>applications (2) 13:19;23:6</p> <p>appointment (1) 17:1</p> <p>appreciate (16) 9:4,9;19:8;23:10; 25:11;26:5;38:13; 39:19;43:18;46:3; 49:9;58:5;69:7; 74:17,19;75:2</p> <p>appreciated (1) 71:2</p> <p>appreciation (2) 7:14;49:13</p> <p>apprised (1) 14:9</p> <p>approach (2) 20:2;73:2</p> <p>approached (1) 31:24</p> <p>approaching (1) 40:4</p> <p>appropriate (17) 26:13;29:12; 37:17;38:6,19; 39:12;45:12;49:12; 50:9;55:12;58:16; 59:3,14,24;62:23; 63:4,8</p> <p>appropriated (1) 55:7</p> <p>approval (5) 35:25;37:23; 42:21,24;56:5</p> <p>approve (4) 23:2,12;29:9; 50:17</p> <p>approved (3) 53:17;58:15;69:9</p> <p>approving (3) 22:14;35:20;37:19</p> <p>approximately (4)</p>
----------	---	--	--	--

<p>27:16;40:2,11; 56:17 April (4) 18:4,14;51:2;73:7 ARCO (1) 57:2 area (2) 39:24,25 areas (2) 56:25;57:1 argument (1) 60:9 arise (1) 70:1 arisen (1) 12:15 around (3) 12:3;28:4;65:12 arrangement (3) 31:23;50:18;61:4 arrangements (3) 46:20;47:21;61:17 arrears (1) 31:10 arrive (1) 60:3 ASHBY (1) 5:2 aspect (2) 15:25;56:19 assert (1) 44:3 assets (15) 12:19;14:14; 26:18,25;27:6;29:3; 32:21;33:17,21; 40:20;43:4;57:25; 64:9;66:14;74:22 assistance (2) 20:1;27:9 Assistant (1) 39:18 assume (2) 17:20;18:4 assurance (1) 58:18 assure (1) 7:20 assured (1) 56:6 attach (1) 22:16 attached (2) 22:11;36:25 attachments (1) 23:11 attack (1) 72:4 attacked (1) 72:3 attempting (1) 41:8 attention (3)</p>	<p>26:15;40:18;74:19 ATTORNEY (2) 5:8;39:18 Attorneys (5) 5:3,9;6:3,9,14 audio (2) 18:8;32:12 audio-video (1) 8:21 authorities (4) 15:10,22;16:1; 34:5 authority (12) 27:14,22;40:23; 48:1,7;50:17;61:20; 62:23;66:23;68:20, 21;73:5 authorization (1) 35:25 authorized (5) 35:21;41:5;53:10, 19;58:15 automatic (1) 54:6 availability (1) 36:12 available (2) 24:12;37:21 Aviation (3) 9:20,21;41:6 avoid (4) 50:24;59:15;60:5; 63:16 avoidance (1) 28:2 aware (6) 15:15;16:1;38:23, 23;41:15;59:11</p>	<p>24;30:6;31:17,19; 32:7,11;40:7,8,16; 42:3,6,7,14;46:6,12, 12,17;50:16 Barrow's (1) 41:12 base (3) 16:8,25;27:16 Based (8) 21:8;30:6;38:1; 57:9;59:18;60:18; 63:14;73:24 basically (6) 18:8;19:20;30:18; 33:16;54:16;58:11 basis (6) 29:10;48:2;52:11; 67:20;68:15;74:20 becoming (3) 7:19;49:6;53:19 behalf (9) 8:14;16:13;20:21; 37:5;51:23;62:2; 67:4;70:16;74:18 behind (2) 49:11;66:21 belabor (1) 13:17 believes (2) 68:4;69:6 Bello (1) 19:18 below (1) 40:6 bench (1) 36:14 beneficial (1) 38:9 benefit (4) 32:6;33:22;53:4; 67:12 benefits (5) 63:23;65:9,15,20; 66:24 Benevenuti (1) 51:23 Benvenuti (1) 9:18 best (2) 34:18;45:6 better (3) 30:1;41:13;62:8 beyond (2) 69:8;72:19 bids (1) 22:20 big (1) 50:8 billing (1) 54:4 billings (1) 54:3 bills (1)</p>	<p>60:3 binders (1) 26:10 bit (15) 7:22;15:5;18:3; 22:14;26:11;34:2; 35:2,15;62:4,17,18; 68:11;69:5;71:12; 74:13 BLACK (1) 6:4 blackline (3) 36:20;38:14;49:5 blacklines (1) 8:3 Blank (2) 20:9,21 BNP (2) 5:3;6:14 board (2) 29:4;33:13 boil (1) 34:9 booked (1) 51:12 bookings (1) 13:25 boost (1) 66:12 booted (1) 8:22 Borough (9) 39:24;40:10,19; 41:2,5,23;42:8,11; 43:7 boroughs (2) 39:23;40:22 Borough's (1) 43:2 borrowers (1) 26:17 both (10) 15:13;24:17,25; 25:11;28:23;37:6; 46:5;47:16;56:5; 66:10 bottom (1) 72:13 BOWDEN (1) 5:4 break (2) 33:9;34:15 bridge (1) 69:15 brief (2) 10:10;14:2 bring (3) 10:10;36:12;57:15 bringing (1) 11:7 budget (2) 36:25;59:12 built (1)</p>	<p>62:18 burden (7) 21:1,11;50:19,22; 60:14;72:23;73:25 BUSH (1) 5:18 business (17) 13:23;17:3;19:21, 24;26:24;27:1,5; 35:6;46:16,20; 47:21;48:19;49:10; 50:12;53:1;65:8; 73:19 businesses (4) 10:22,24;13:1; 14:8 businesslike (1) 20:7 businesspeople (1) 11:9 busy (1) 13:10 bypass (1) 12:7</p>
C				
			<p>calculation (1) 57:14 calendar (4) 18:11,15;39:6; 51:20 call (13) 8:22;10:25;26:16; 33:2,2;35:1,16; 44:25;46:23;48:24; 53:3,8,23 called (1) 33:2 calls (1) 8:17 came (2) 22:21,25 can (52) 7:5,6,7,8;9:24; 15:23,23;17:10;18:3, 22;19:2,3,17,19,21, 22;25:18;27:8; 33:11;34:18;35:7, 17;37:8;38:8;42:23; 44:10;45:13,13; 46:17;47:15,22,24; 48:5;54:4,6;55:12, 13;57:15,21;58:3; 61:22,24;64:7,12,21; 67:2;68:2;69:12; 70:14;74:15,16,23 candid (1) 68:13 cap (4) 59:19;65:12,18; 69:10 capital (3)</p>	

13:17,20,22 caps (3) 66:21;67:8;72:19 care (1) 17:10 carefully (2) 11:18;38:15 CARES (3) 13:19;15:4;27:9 Carey's (1) 70:21 CARL (1) 6:4 carried (4) 50:21;60:14; 72:23;73:25 carrier (2) 11:2;42:17 carriers (3) 11:1;42:9;44:2 carry (1) 51:15 carrying (1) 7:16 Case (18) 7:12;12:4;21:14; 23:14;24:23;32:10; 33:3;35:10;45:19; 46:15,19;58:12; 60:10,17;63:13; 65:2;69:1;73:21 cases (11) 10:12;19:6;21:11; 46:14;50:2;55:4; 58:16;64:4,8;71:8; 73:3 cash (6) 13:2,3,10,10; 53:15;70:13 cash- (2) 54:1,22 cashflow (1) 26:24 cash-management (7) 52:15,18,23,25; 53:24;54:21;55:16 casualty (2) 28:12,16 cause (1) 70:4 caused (1) 31:17 caution (1) 61:17 central (3) 11:6;15:9;43:12 CEO (2) 6:20;10:3 certain (5) 17:4;26:15;60:16; 63:12;70:12 certainly (14) 7:19;8:7,9;15:7,8;	19:19;23:15,19; 27:1;28:23;31:11; 34:17;42:15;46:4 certainty (2) 65:4;69:7 certification (2) 55:11;56:7 cetera (3) 26:10,11;66:24 CFO (2) 6:19;9:22 challenge (1) 28:8 challenged (1) 72:1 challenges (5) 14:21;38:25; 47:15;60:6;72:6 challenging (3) 45:17;66:9;68:16 chambers (1) 19:18 change (1) 55:23 changed (1) 40:7 changes (1) 36:18 Chapter (3) 30:1;33:6;64:4 charter (1) 12:8 checked (1) 41:5 checks (2) 73:9;74:15 Chevron (1) 57:2 chime (1) 45:7 circumstance (4) 45:16;46:13;62:4; 67:17 circumstances (21) 7:15;14:21;16:15; 25:15;26:9;34:19; 37:9,16;38:1,5; 49:15;55:7;67:16; 68:3,5,16;70:3;72:7, 14;73:17,21 cities (2) 11:25;40:15 citizens (1) 48:21 city (1) 15:11 CIVIL (1) 6:8 claims (3) 10:16;22:21;23:3 claims-and-noticing (2) 21:24;23:15 clarify (2)	55:15;71:3 clarity (7) 34:2,20;47:5; 66:22;68:11;69:5; 74:9 classic (1) 46:13 cleaned-up (1) 51:7 clear (7) 9:11;39:7;40:21; 43:1;54:3;67:24; 71:12 cleared (1) 20:16 clearing (2) 43:25;53:24 Clerk's (1) 21:12 client (1) 39:11 clients (2) 7:17;33:12 climate (1) 13:1 close (2) 17:21;19:21 closure (1) 69:7 Coast (2) 22:23;42:18 cocounsel (1) 74:19 Code (4) 43:3;50:20;58:21; 74:1 cognizant (2) 45:21;47:8 collateral (4) 31:5,15;32:15; 33:24 collateral's (2) 30:2;36:9 colleagues (6) 8:1,18,9;6:58;15; 64:11;66:12 collected (1) 30:25 collection (2) 10:21;19:7 COLLINS (1) 5:15 colloquy (3) 11:17;67:9;72:10 comfort (2) 33:15,16 coming (2) 25:5;30:21 commandeer (5) 12:19;33:20; 40:20,23;41:1 commandered (1) 28:10	commandeering (1) 33:21 commend (2) 7:25;19:5 commensurate (1) 37:20 comment (11) 11:16;21:25,25; 22:10;25:9;34:7; 38:19;47:9;55:24; 59:18;70:19 comments (19) 20:5;34:9;35:14; 36:23;37:7;38:9; 43:18,19,22;44:14; 45:10;46:3;52:8; 65:15;67:7;70:21; 71:1,12;74:17 commercial (1) 11:11 commercially (1) 22:19 commissions (1) 72:20 commitment (2) 27:17;35:13 committed (2) 34:11;44:7 committee (8) 16:16;17:2,5,6,8; 19:9;28:7;71:20 committee-formation (1) 19:4 communication (1) 46:1 communities (3) 11:3;41:23;42:8 communities' (1) 28:25 community (1) 50:13 company (8) 14:13,21;15:1,9; 64:6;66:3,13;70:8 compared (1) 13:8 compensation (2) 29:7;65:7 complete (1) 25:10 completes (1) 62:22 complicated (1) 47:14 concept (1) 11:22 concern (3) 48:5;69:14;70:14 concerned (2) 50:3;72:8 concerning (2) 41:9,9 concerns (10)	14:24;34:14; 35:18;38:22;46:5, 11;48:14;50:15; 52:12;72:5 conclude (1) 74:25 concluded (1) 75:8 conclusion (2) 16:17;45:11 conduct (2) 16:22;63:4 conference (2) 8:17;10:3 conferred (1) 33:12 confidence (1) 49:21 confident (1) 48:10 confirm (1) 32:12 confirmation (1) 61:22 conflicts (1) 22:3 confusion (1) 72:10 connect (3) 8:21;10:25;11:2 connected (1) 11:5 connection (3) 24:21;44:25;52:16 connections (2) 22:4;44:23 consensual (1) 52:11 consent (2) 10:9;51:14 consider (3) 16:11;32:21;71:22 consideration (1) 39:15 considered (1) 17:14 consistent (9) 19:2;23:17;24:19; 55:3;58:14;62:19, 25;63:4;71:5 consistently (1) 7:13 consolidated (1) 10:23 consternation (2) 31:17;70:4 constituency (1) 50:3 consultation (1) 39:11 consume (1) 13:2 contacted (2)
--	--	--	--	---

43:24,25 contemplated (1) 59:12 contemplates (1) 60:16 contemplating (1) 69:21 contempt (1) 33:15 contents (1) 25:6 contested (2) 29:24;30:4 context (8) 26:11;39:22; 40:15;49:10,18; 51:1;64:17;70:2 contiguous (1) 56:23 continue (8) 8:20;9:9;15:19; 36:23;52:24;53:15; 61:8;64:9 continued (1) 54:5 contracts (1) 42:19 controlled (1) 29:2 convenient (1) 22:23 cooperate (1) 15:21 cooperation (1) 75:3 cooperative (1) 19:7 cooperatively (1) 37:7 core (1) 10:24 coronavirus-related (1) 65:25 corporate (2) 55:4,5 Corvus (1) 9:20 counsel (11) 7:25;19:19;20:9; 24:1;39:16;41:20; 44:13,15;55:11; 56:7;67:22 counsel's (2) 38:2;60:19 counterproductive (2) 41:11;43:9 counties (1) 39:23 country (1) 23:1 couple (3) 8:22;44:22;45:15 course (1)	13:4 COURT (107) 7:2,9;8:2,14;9:4, 25;10:8,13,19;11:12, 14,16,22;12:24; 14:19;16:6,13; 17:10;18:17,22,25; 19:17;20:12,18;21:1, 5,12;23:7,15;24:5, 14,21;25:4,14,25; 26:2,4,5;28:4,10; 29:9,15,19,22;33:9; 34:2,22;35:20;36:10, 15,21;37:2,8,11; 38:12;39:11;41:3; 42:21;43:13,17; 44:15,18,20;45:2,5; 46:2;47:20;48:12; 51:7,9,16,21;52:2, 13,20;53:7,9,21; 54:14;55:3,19;56:5, 9,12,14;57:18;58:3; 59:21;61:24;62:14; 63:1,3;64:7;65:13; 66:17;67:1;68:9; 69:9;70:15;71:13,17, 23;72:2,24;73:22; 74:24;75:1 CourtCall (2) 44:23;45:1 courtroom (2) 7:7;24:11 Court's (5) 7:16;35:24,24; 60:19;73:11 cover (1) 74:6 coverage (4) 61:13;62:6,8,12 COVID (1) 13:5 COVID-19 (2) 32:5;73:17 COVID-19's (1) 32:17 crab (1) 42:15 create (1) 72:9 created (1) 41:12 creates (1) 33:23 creative (1) 28:25 credit (3) 28:9,14;36:25 creditors (3) 16:25;26:19;28:24 cries (3) 46:15,19;73:21 crisis (1) 48:20	critical (2) 12:14,17 critically (2) 41:20,20 cross-examination (1) 24:13 cross-examine (1) 25:6 crosshairs (1) 41:2 crucified (1) 48:7 cue (1) 24:9 cumbersome (2) 7:22;34:16 current (8) 37:8;38:4;40:5; 48:20;57:6;62:9; 64:14,19 currently (3) 16:15;40:6;42:2	dealt (2) 45:24;72:17 debate (1) 48:16 debt (5) 13:20;27:2,23,24; 30:14 debtor (22) 15:10;17:14; 20:25;23:14;30:18; 31:21;38:21;41:21; 46:7;48:15;49:16; 50:4,10;55:4;62:23; 63:2;66:22;67:9; 69:6;72:13;73:5,15 debtor-in-possession (2) 58:18;63:8 debtor-in-possession-finance (1) 26:22 debtor-in-possession-financing (1) 25:21 Debtors (53) 6:19,20,21,22; 8:15;9:11,18;10:10; 20:21,23,24;22:16; 23:5;31:4,5,8,24; 35:9;37:6,9,22; 38:14;41:15;43:25; 44:3;50:21;51:23; 52:24;53:15,17; 54:8;57:24;59:8; 60:13;61:4,7,20,22; 62:5;63:22,25;64:2, 15,23;65:6;66:1,4, 10;70:10;72:22; 73:25;74:18,22 debtors' (32) 9:22;13:1;15:2; 21:23;23:17;25:3; 29:7;32:2,9;33:21, 24;35:21,25;50:8,17, 24;54:21;56:18; 58:4,7;59:22;60:20; 61:12,16,25;62:20; 63:17;65:21;66:14; 67:22;71:1;73:14 debtor's (1) 27:12 decision (4) 13:14;14:22,22; 23:17 decision-makers (1) 22:24 DECKER (2) 6:22;10:5 declarant (1) 22:3 declaration (26) 11:18;22:2;23:24; 24:3,9,10,12,15,16, 19;25:1,1,7,8;52:17, 17;54:15,25;60:18; 61:5,10;63:15;	65:11;66:19;67:24; 73:12 declarations (7) 24:15,20,24,25; 25:11,13,17 decrease (1) 13:7 deductions (1) 65:9 deemed (2) 12:17;28:19 deep (1) 47:19 defect (1) 25:16 defense (1) 11:11 degree (1) 71:2 degrees (1) 40:11 Delaware (3) 12:3;19:18;41:17 delayed (1) 54:11 deliveries (1) 32:19 delivering (1) 32:4 delivery (3) 31:25;32:1;46:22 demonstrate (1) 23:17 denominated (1) 74:2 DEPARTMENT (5) 6:8;8:16;15:18; 39:19;42:12 dependent (1) 74:11 deposit (4) 56:16;57:6,8,14 depository (3) 53:10,11,19 deposits (1) 57:22 describe (1) 58:25 described (5) 59:1;60:8;61:5,9; 68:20 description (2) 10:10;15:7 desire (2) 62:20;69:7 despite (1) 71:5 destinations (1) 12:11 details (1) 29:11 determine (1) 15:11
D				
DACA (3) 53:4,18;56:3				
daily (1) 12:12				
DANIEL (1) 6:5				
date (7) 16:16,20;17:4; 18:10;19:11,12;25:3				
dates (2) 19:10;21:18				
DAVE (2) 6:20;10:3				
DAVID (4) 6:15;43:23;71:15, 16				
DAY (8) 6:2;18:4;19:1; 31:11;49:20;70:19, 22;72:9				
daylight (1) 40:4				
days (4) 47:7;56:3;69:3; 74:15				
deadline (1) 69:2				
deadlines (2) 19:1,10				
deal (12) 7:15;17:17;31:17; 34:16;35:7;38:20; 45:14,20;51:1; 55:12;58:9;72:19				
dealing (1) 26:9				
deals (1) 47:16				

determined (1) 16:16	discuss (1) 33:3		72:6;73:9	et (3) 26:10,11;66:24
detrimental (1) 9:2	discussed (1) 65:14	E	employment (1) 64:22	even (10) 11:25;26:23;35:7; 46:11;60:11;64:18; 66:7;67:24;70:1; 74:13
developments (2) 14:10;21:14	discussion (2) 38:21;47:4	ease (2) 21:1,11	end (2) 22:12;56:25	event (3) 12:25;28:21;59:14
di (1) 71:21	discussions (1) 47:12	easier (1) 8:4	engage (2) 23:14;27:9	events (2) 28:13,16
dialed (1) 45:3	disruption (2) 58:1;65:25	easiest (2) 20:2;47:14	engaged (1) 13:20	everybody (12) 7:2,3,6,14,18,23; 8:5;9:13;26:7;35:1, 16;48:23
differences (1) 39:1	distributions (1) 37:19	echo (1) 20:4	engagement (2) 9:10;22:12	everybody's (5) 26:8,9,10;32:6; 40:18
different (5) 52:1;56:22;57:23; 61:13;62:17	district (1) 71:5	economic (3) 14:23;64:19;66:9	enjoyed (1) 47:2	everyone (1) 60:6
difficult (13) 11:16;30:4;31:12; 32:24;34:19;45:16; 46:2;49:14,19;64:18, 18,22;68:1	divided (1) 39:23	economy (1) 12:14	enough (3) 18:16;56:6;66:6	everyone's (1) 75:3
difficulty (3) 7:4;9:7;38:24	DIVISION (1) 6:8	effect (1) 43:3	ensure (2) 57:24;64:8	evidence (2) 24:13;25:2
DIP (48) 17:8;20:17;25:2; 26:23;27:3,13,13,22, 24,24;28:1;29:1,10, 24;30:5,8,9,13,15,16, 17;31:13;33:1,1,4,5; 35:4,17,20,22,24,25; 36:5,18,25,25;37:18; 38:11;39:15;43:21; 44:9,12;49:2;53:16, 17;59:11;69:24; 74:12	docket (9) 17:1;21:2,13,20; 52:15;56:13;59:7; 61:1;75:5	effectively (1) 9:12	enter (5) 35:21;49:4;50:18; 68:21;72:11	evidenced (1) 72:10
DIP- (1) 14:1	documents (2) 26:7;35:22	effectuate (1) 54:7	entered (7) 18:6;35:5;51:8; 54:12;68:18;70:22; 75:5	evident (1) 13:12
DIP-financing (6) 10:18;24:4;35:9; 45:9;49:4;50:25	dollar (1) 27:24	effort (5) 43:6;50:25;60:20; 63:18;73:14	entertain (2) 14:17;55:10	evolve (2) 42:5;47:7
DIPs (1) 29:24	dollars (14) 12:6;26:20;27:14, 15,18,23;28:18;31:2, 6,14;56:16;59:11; 61:6;71:19	efforts (1) 47:25	entire (2) 27:17;37:23	evolving (3) 34:3;39:9;45:19
dire (1) 26:25	done (6) 30:25;43:11; 45:23;56:4;57:22; 68:2	eight (2) 27:16;40:3	entirely (1) 65:19	exactly (2) 26:14;31:20
direction (2) 26:20;73:23	doubt (2) 48:19,21	eighty- (1) 13:6	entitled (2) 44:4,6	examined (1) 24:12
directly (1) 46:17	down (5) 13:15;34:9;42:13; 43:8;56:23	either (6) 15:10;18:20;22:5; 26:10;34:7;44:10	entitlement (1) 66:11	example (2) 40:13;56:3
Director (2) 6:21,22	dozen (1) 40:2	elaborate (1) 70:18	entry (8) 17:16;28:5;30:10; 37:10,24;68:7;72:8; 73:6	exceed (1) 69:10
directors (3) 10:4,4;30:23	draw (4) 27:15,20;31:2; 37:20	eligible (1) 23:19	environment (4) 13:18;14:23;20:6; 64:19	exceeded (1) 12:5
disagree (2) 59:25;71:23	drawdown (1) 69:23	else (9) 14:3;43:22;54:20; 57:19;62:15;70:3,7, 15;71:13	equity (2) 13:21;22:5	exceeding (1) 67:8
disclosed (1) 27:25	drop (1) 51:14	elusion (1) 63:24	error (1) 8:20	except (1) 28:6
disclosure (1) 28:22	dropped (3) 44:23,24;45:7	emerge (1) 48:20	especially (1) 60:4	exception (1) 13:5
disconnected (1) 37:12	drove (1) 15:1	emergencies (1) 45:24	ESQ (8) 5:4,5,15,20;6:4,5, 10,15	excess (2) 13:3;28:18
discounted (1) 22:16	due (2) 60:1;63:12	emergency (7) 19:16;36:12; 48:13;59:16;60:5,6; 69:2	essential (6) 15:21;32:4;45:19; 50:12;66:13;70:10	excise (2) 59:11;60:9
discovered (1) 59:15	dupe (1) 51:7	employ (1) 21:24	essentially (5) 28:14;31:7;33:24; 44:4;68:18	exclusively (1) 24:20
	during (11) 13:2,3,10;14:2; 32:5;57:17;59:9; 61:14;64:23;69:23; 70:1	employee (4) 63:23;64:1;65:21; 66:16	established (1) 13:23	execute (2) 53:13,18
		employees (29) 13:16;29:7;31:9; 36:5;49:25;50:4; 64:2,5,11,13,14,15, 16,24,25;65:4,8,17, 20,22,24;66:2,8; 69:25;70:6,7;71:19;	estate (5) 41:1;43:4;60:12; 66:6,14	exist (1) 71:11
			estimated (1) 56:18	existing (2)

52:25;61:18 exit (2) 27:8,10 expect (7) 27:19,19;30:11; 47:11,20,24;73:8 expectation (2) 17:5;71:4 expectations (1) 10:11 expects (1) 25:5 expedited (2) 48:3;74:20 expeditiously (1) 74:17 expenses (2) 56:18;65:8 experience (5) 48:10;60:2,20; 71:25;73:12 experienced (2) 13:6;45:23 explain (2) 25:24;47:15 explored (2) 46:18;61:19 exploring (2) 61:11,14 express (2) 7:13;49:13 expressed (4) 34:14;48:14; 49:24;50:15 extended (1) 58:5 extension (1) 37:18 extensive (1) 49:7 extent (6) 19:9;45:6;50:12; 55:9;72:1,16 external (1) 13:20 extraordinarily (1) 66:9 extraordinary (7) 7:15;20:6;30:10; 67:18;68:3;72:7,14 extremely (2) 30:4,4	facilities (6) 12:11;15:23;42:6, 11,20,24 facility (6) 27:17;35:24,25; 37:23;41:8;69:24 facing (7) 7:16;16:15;37:9; 38:3;60:7;62:7; 72:15 fact (11) 12:4,17;22:23; 31:19;32:10;49:24; 57:10;60:10;63:25; 64:20;69:22 facts (2) 37:9;42:4 fairly (2) 21:3;30:8 faith (1) 36:7 falling (1) 67:18 familiar (1) 23:15 family (1) 55:6 family's (1) 29:20 far (5) 15:1;40:16;69:12, 15:73:1 Fargo (1) 53:18 favor (1) 33:18 features (1) 11:4 federal (3) 15:14,17;41:6 fee (6) 22:11,14;27:17,18, 18,19 feedback (2) 35:2;45:14 feeling (1) 34:17 fees (7) 22:19;32:7,8; 37:18,20,23;38:4 few (6) 11:5;40:14;60:17; 63:13;66:12;73:18 fewer (1) 40:2 figure (4) 16:21;34:12; 35:16;46:23 figuring (1) 19:3 file (5) 14:23;16:25;22:2; 65:10;68:21	filed (6) 24:16;52:5,7,18, 22;54:2 filing (4) 10:24;22:1;23:3; 64:3 filings (3) 15:2;21:2,14 final (28) 16:18;17:7;27:21; 28:6;30:11;37:21; 38:11;44:12;49:17; 51:1;59:9;63:21; 65:3,5;66:23;67:20, 21;68:15;69:6,14; 70:2,19,24;71:24; 72:8,11,11,25 finality (2) 65:4;71:2 finally (2) 41:10;51:8 finance (1) 15:3 financial (1) 65:25 financiers (1) 26:22 financing (15) 14:2;17:8;25:2; 26:21;35:4,17; 37:19;38:11;49:2, 25;50:18,23;61:3,17, 63:25 find (8) 21:9,10;50:23; 55:6;58:13,16; 63:16;73:11 fine (6) 24:5;45:5;51:16; 52:2;56:9;57:18 fire-sale (1) 14:14 first (17) 10:18,25;13:2; 16:17;17:12;20:15, 22,22;31:2;40:22; 52:14;53:5;58:11; 60:17;63:13;70:19, 22 first-day (13) 7:10,11;16:19; 23:25;24:22;50:1; 52:17;61:5;62:13; 63:22;67:20;68:15, 18 fishing (1) 11:11 fit (1) 38:1 flew (1) 11:1 flexibility (6) 7:14;18:9,11;62:8,	18,20 flexible (1) 56:6 flights (1) 12:12 fly (1) 32:3 Flying (1) 9:20 FNBA (4) 53:10,13,15,18 focus (1) 58:5 folks (6) 7:7;19:5;47:3,16; 48:11,14 follow (1) 14:15 followed (1) 12:7 follows (1) 46:8 follow-up (1) 23:3 food (3) 11:7;32:19;46:22 footprint (1) 62:9 force (3) 43:2;64:3,6 forced (1) 14:14 foregoing (1) 28:5 form (8) 17:6;28:9;35:4; 36:25;49:4;54:9; 68:6;69:19 formal (1) 64:11 formation (2) 16:11,16 formed (2) 17:5;19:9 former (3) 64:15,25;70:7 formerly (1) 40:7 forms (2) 26:21;53:1 forth (1) 27:13 forty-eight (1) 56:23 forward (21) 8:16;9:12;20:3; 25:18;34:12,20;35:3, 4,8,17,23;36:16; 37:23;38:20;46:16; 48:13;54:18;55:13; 68:2;71:9;74:21 found (3) 20:5;22:5;51:6	founded (1) 21:15 fourteen (2) 50:2;69:3 fourteen-day (1) 30:20 Fox (30) 8:9,9,13,14;16:10, 12,13;19:3;29:13; 36:17,23;37:3,4,4; 38:12;44:24;52:6,8, 11;55:25;56:6;62:1, 1,14;65:15;67:4,4; 70:16,16;72:11 Fox's (1) 62:19 frame (1) 42:4 Francisco (1) 41:18 frankly (12) 15:16;21:12; 30:18;34:5,14;41:8, 10;46:2;47:23; 49:21;72:9,10 freight (1) 12:8 front (4) 35:7;36:13;46:2; 48:6 Frontier (1) 9:20 fuel (11) 13:13;14:25; 56:20,25;57:1,5,11, 16;58:6,22,25 full (2) 65:1;66:11 fully (3) 15:25;27:20;47:1 functional (1) 73:19 fund (5) 30:6;33:3;34:11; 60:10,11 funding (7) 14:5,6;27:9;35:5; 36:4;66:3;74:12 funds (1) 53:16 further (12) 8:8;16:8;18:7; 23:22;25:9;27:10; 35:7;55:21;63:6; 65:14;70:18;73:6 future (2) 13:13;70:8
F				G
FAA (1) 43:5 face (5) 15:8;46:14;68:16; 72:7;73:17 faced (4) 14:21;68:1;70:4; 72:6	gap (1) 32:12 gas (2)			

<p>11:11;57:2 gate (1) 18:2 gating (1) 35:5 GEDDES (1) 5:2 general (3) 28:3;39:18;48:9 generally (6) 7:6;24:22;39:23; 48:13;69:13;73:10 GENERAL'S (1) 5:8 generate (1) 13:3 generated (1) 37:18 generating (1) 13:9 geography (1) 58:24 gets (1) 18:15 given (14) 15:7;18:10,12; 25:15;26:8;34:11; 50:16;57:7;58:23; 60:6;61:12;62:7; 67:16;68:3 gives (2) 14:2;18:8 giving (2) 21:13;65:4 glide (1) 29:1 goal (1) 43:10 goes (1) 45:17 Good (31) 7:2;8:4,13;9:14, 25;10:13;16:12; 18:19;20:12,19,20; 21:8;29:17,17,18; 33:18,19;35:19,23; 37:4;38:20;45:14; 48:12;51:9,17,21,22; 52:13;53:9;62:1; 74:24 government (5) 14:5;32:14,14; 41:7;66:3 grant (11) 21:8;49:3;54:22; 58:2,9,13;59:23; 62:16,24;66:15;73:3 granted (9) 21:15;23:20; 50:25;55:8;59:4; 60:22;63:1,18;74:3 grants (1) 13:19</p>	<p>Great (10) 7:9;9:4;10:1,8,20; 20:18;23:7;25:25; 29:15;31:17 greater (1) 50:3 GREGORY (1) 5:5 groceries (1) 41:19 grocery (2) 46:24,25 gross (1) 44:4 ground- (1) 42:5 Group (6) 7:11;9:18;10:21; 13:6;20:25;30:6 guess (5) 11:23;15:4;20:2; 27:7;49:23 guidance (1) 46:5 guide (1) 34:18 guidelines (1) 63:7 Guilfoyle (13) 8:1;10:15;20:15, 19,20,21;21:21,22; 24:2,7;44:21,21;45:3 guise (1) 32:13 guys (1) 19:2</p>	<p>hard (3) 12:2;13:18;26:10 hardly (1) 71:20 harm (4) 50:24;60:21; 63:17;73:15 harsh (1) 12:25 head (1) 12:3 hear (8) 17:20,24,25; 19:12;29:16;46:4; 66:17;67:2 heard (21) 7:21,22;9:5;18:1; 21:6;23:8;43:22; 49:1;54:20;56:20; 58:4,8;59:21;61:25; 62:15;63:24;68:10; 69:1;70:9,15;71:7 hearing (36) 7:10,11;8:12;9:12; 16:18;17:7,12;18:4, 5;19:1;21:20;23:25; 24:22;25:7,12; 27:21;31:16;34:8; 37:21;38:11;41:11; 45:11;50:1;51:2,13, 15;54:10;59:9,13; 60:2;69:4;70:2;71:8; 72:24;73:7;75:2 hearings (3) 18:7;26:12;60:6 heavily (2) 20:8;50:19 held (1) 71:9 help (1) 19:19 helpful (3) 20:16;43:19;46:4 hereby (1) 25:2 Here's (1) 49:3 hesitation (1) 50:15 high (1) 49:21 highlight (3) 36:10;37:11;38:4 highly (4) 13:1;71:25;72:3; 74:11 highways (1) 11:5 historical (1) 13:8 hit (1) 13:5 Hogan (2)</p>	<p>44:13,15 hold (5) 46:20;47:12,22; 50:10;53:15 Holdings (1) 9:19 Honor (75) 7:8;8:13;9:16; 10:11;11:21;12:13, 17,21,23;14:9,12,16, 17;15:20;16:12; 18:12,24;20:4,9,20; 21:2,3,22;22:8,15, 20;23:2;24:4,8; 25:19,22;29:14,18, 23;30:9;33:9;35:19; 36:22;37:4;38:7; 39:17,22;40:15; 42:15;43:16,23; 44:19,21;51:5,22,24; 52:1,3,21;53:3,3,16; 56:20;58:2;59:5; 60:24;62:1,4;63:20; 65:10;66:15,25; 67:4;69:16;70:9,16; 71:15,15;74:8;75:7 Honor's (9) 10:9;18:14;20:5; 25:19;36:11;51:13, 14;74:17,19 hope (11) 12:19;14:4;17:6; 19:22;29:5,20; 36:24;37:14;46:17; 71:4;74:16 hopeful (2) 33:4;54:11 hopefully (9) 9:2,8;33:15;35:4; 36:19;43:14;50:10; 57:19;73:20 hoping (1) 16:1 horizon (1) 14:4 HoTH (1) 9:19 hours (4) 20:10;40:4;47:7; 72:25 house (2) 43:25;53:25 housekeeping (1) 17:11 Houston (1) 40:17 hub (2) 12:10;40:9 humane (1) 66:10 humanitarian (3) 15:25;41:21,22 hundred (1)</p>	<p>40:14 hundreds (1) 40:14 hung (1) 48:5</p>
	H		I	
	<p>Hageland (1) 9:21 half (2) 12:7;40:2 hall (2) 33:10;34:15 hand (1) 49:18 HANDEL (1) 6:10 handle (3) 20:15,22;38:15 Hang (1) 34:25 hangars (1) 28:17 happen (2) 70:8;73:8 happening (1) 70:3 happy (6) 17:24;19:12; 29:11,15;54:19; 55:10</p>		<p>idea (5) 11:24,25;32:20; 35:20,23 ideal (1) 18:21 identical (1) 48:22 identified (4) 23:20;46:10; 58:20;59:1 identify (3) 18:3;28:11;47:6 imagine (1) 71:10 immediate (7) 27:7;46:5;50:24; 57:11;60:21;63:17; 73:15 Immediately (6) 10:23;13:9,11; 33:2;34:6;61:22 impact (2) 66:1;68:3 implicate (1) 63:11 implicates (1) 60:15 implied (1) 15:20 importance (1) 11:6 important (7) 29:4;41:20;43:24; 62:6;63:22;64:13; 65:1 importantly (2) 41:10;43:9 impossible (1) 64:22 improper (1) 68:4 inadvertently (1) 37:12 Inc (3) 9:19,19,20 include (1) 32:19 included (3) 54:1;59:17;67:7 including (5) 10:4;11:10;26:21; 28:1;65:7 incorrect (1) 70:25 incumbent (1)</p>	

39:4 Independent (4) 6:21,22;10:4; 46:11 indicate (2) 9:23;28:23 indicating (2) 8:20;11:1 indiscernible (1) 16:3 individuals (1) 67:25 induce (1) 30:14 industries (1) 11:10 informal (2) 21:25;67:7 information (1) 30:24 informative (1) 43:20 informed (1) 67:9 infrastructure (3) 12:15;15:9;42:6 infusion (1) 13:11 infusions (1) 13:21 initial (3) 31:2;36:4;69:23 initially (1) 67:6 inner (1) 54:4 in-person (1) 16:22 insight (1) 16:19 instance (1) 69:20 instinct (1) 34:13 insurance (19) 60:25;61:3,3,8,8, 11,12,13,16,16,18, 23,25;62:6,8,11,23; 63:4,9 interconnection (2) 44:1,5 interest (2) 17:2;27:15 interest-bearing (1) 56:17 Interested (3) 5:14;16:25;31:9 interests (1) 47:23 interfacing (1) 8:16 interim (29) 19:23;29:10;	37:10,20,24;49:24; 51:6;52:24;53:14; 54:12;57:13,17; 58:2;59:7,9,14,18, 19:61:1;63:25;65:3; 67:21;68:18,21; 69:19,23;70:22; 71:25;74:3 interject (1) 39:20 intermittent (1) 44:25 interrupt (1) 44:22 into (13) 21:18;25:2;30:15; 34:15;35:21,25; 39:23;45:25;47:19; 50:18;56:16;62:18; 72:25 introduce (3) 20:14;24:3;51:19 introducing (1) 23:24 invariable (1) 51:6 investigation (1) 28:7 investors (1) 13:24 invite (1) 44:13 invited (1) 36:3 inviting (1) 48:3 invoices (1) 60:3 involuntarily (1) 65:22 involved (3) 30:19,22,23 iPads (1) 26:11 ironed (1) 8:6 irreparable (4) 50:24;60:21; 63:17;73:15 isolation (1) 30:21 issue (32) 9:7,8;12:19;17:22; 21:16;23:21;32:17; 34:1,13,21;36:1,9; 38:5;43:13;44:11, 19;46:17,17;53:25; 55:8,16;58:11,22; 59:4;60:23;63:19; 66:20;68:13;71:20; 72:9;74:4,14 issued (2) 12:18;40:19	issues (37) 8:5,6;9:1;10:6; 12:15;19:14,24,25; 26:15;30:17;35:5,6, 14;36:24;37:15,25; 38:2,10,25;39:10,14, 21;42:4;45:20;46:5, 6,12;49:8,16;50:16; 54:15;55:1,10,20; 71:10,11;74:14 item (8) 16:18;20:17; 25:20,20;52:14; 59:6;60:25;63:21 items (6) 14:25;20:15; 51:20;53:2,22;74:6 J Jane (5) 10:5;51:11,15,20, 23 JAY (1) 5:20 JFL-RAG (1) 6:3 JIM (2) 6:22;10:5 JJM (1) 9:19 job (2) 8:2;45:22 jobs (3) 65:24;66:8,8 JOHN (4) 6:19;9:22,23;25:1 join (1) 43:6 joint (4) 10:15;20:23;21:7, 10 jointly (1) 20:25 JONES (1) 6:2 Judge (7) 7:2;9:24;11:14; 18:6;29:14;47:17; 70:21 judgment (1) 19:25 jump (1) 17:18 jurisdiction (2) 63:3;70:20 JUSTICE (1) 6:8 K Kaktovik (1) 40:13	keep (3) 11:17;14:9;73:19 keeps (1) 33:4 Keller (39) 9:14,15,16,17,17; 10:2,9,14,20;11:12, 13,15;12:4,25;15:13; 18:10,12,19,23; 19:14;20:4,14;24:3, 6,8;25:19;26:1,3,13, 14;33:4,10;34:21; 51:3,5,10,17,18,23 Keller's (1) 37:13 KEVIN (1) 5:15 Kim (37) 9:18;10:6;51:11, 15,20,21,22,23,23; 52:3,14,21;53:8,10, 22,55;14,15,20; 56:10,13,15;57:19; 58:5;59:1,5,25; 60:24;63:20;65:14; 66:25;68:11;69:16; 72:5,17;74:5,8,24 kind (9) 22:25;23:4;31:25; 32:22;33:14,16; 45:23,24;72:20 king (1) 42:15 knowing (3) 18:14;25:22;26:14 known (1) 11:23 knows (1) 65:10 KORNFELD (2) 5:18,20 L lack (2) 25:16;69:11 laid (4) 29:8;31:10;34:13; 72:6 language (2) 54:1;56:6 laptops (1) 26:11 large (5) 11:25;13:23;19:7; 32:4;69:20 largely (4) 31:10;49:25;64:1, 8 larger (3) 11:1;46:6;71:2 large-scale (1) 64:3	largest (1) 12:6 last (17) 10:17;13:2,6; 24:16;25:20;41:4; 43:13;47:17;48:4, 17;52:5,7,19,22; 54:2;55:24;74:5 late (3) 51:2;52:19,22 later (6) 18:20;23:5;36:25; 68:24;73:7;74:10 latest (2) 32:8;49:5 latitude (1) 40:11 Law (8) 39:19;40:22,23, 25;43:3;60:10; 67:16,25 lawyers (1) 19:8 lay (2) 13:15;40:13 lead (2) 20:25;24:15 leap (1) 36:7 learning (1) 34:3 leased (1) 42:2 least (10) 14:7;15:1;16:17; 17:11;19:15,23; 34:6;37:13;39:6; 64:20 leave (6) 10:17;19:25;24:1; 25:20;29:4;68:25 led (1) 66:1 legal (2) 19:25;40:23 legitimate (2) 34:14;46:11 lender (1) 30:5 lenders (33) 26:23;27:3,5,9,22, 25;28:4,19;29:25; 30:5,13,15;31:1,18; 32:15;33:1,1;34:10; 35:18;36:7;37:7; 38:3;41:11;43:12; 44:9;46:10,10,13; 49:16,24;53:5,17; 69:13 lenders' (1) 38:2 less (2) 27:1;43:24
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<p>lessen (1) 21:2</p> <p>lesser (1) 22:14</p> <p>letter (1) 22:12</p> <p>level (2) 49:21;57:15</p> <p>lien (3) 28:1,6;44:8</p> <p>liens (2) 28:2;48:18</p> <p>life (1) 8:3</p> <p>light (2) 28:10;49:18</p> <p>likely (4) 47:25,25;60:1,11</p> <p>likewise (1) 63:7</p> <p>limbo (1) 73:16</p> <p>limited (3) 32:2,3,22</p> <p>line (8) 7:4;10:3;16:21; 18:6;25:5;44:16; 54:4;72:13</p> <p>lined (1) 22:24</p> <p>lines (1) 17:13</p> <p>liquidating (2) 14:12;29:2</p> <p>liquidation (6) 14:3,13;16:5;27:6; 29:2;31:15</p> <p>list (1) 22:7</p> <p>listed (2) 22:6;51:25</p> <p>little (18) 7:22;15:5;18:3; 22:14,24;26:11,19; 30:24;34:2;35:2,15; 62:4,17,18;68:11; 69:5;71:12;74:13</p> <p>live (1) 40:12</p> <p>LLC (2) 6:3;9:19</p> <p>LLP (3) 5:13,18;6:13</p> <p>loan (8) 15:4;29:1;30:3,16, 17;31:12;32:25; 35:21</p> <p>loans (2) 13:19;26:22</p> <p>lobby (1) 39:3</p> <p>local (6) 15:22;19:2;20:9;</p>	<p>23:13;32:14;68:17</p> <p>locate (1) 27:8</p> <p>location (2) 12:19;23:1</p> <p>long (6) 30:22;42:23; 49:20;60:19;72:2; 73:11</p> <p>longer (2) 30:24;46:1</p> <p>look (7) 9:12;21:13,17,19; 28:13;62:7;75:4</p> <p>looking (5) 8:8;12:21;18:13, 16;39:8</p> <p>lost (3) 65:24;66:8,8</p> <p>lot (4) 8:3;18:9;19:24; 48:10</p> <p>lots (2) 46:14,14</p> <p>Lovells (2) 44:13,16</p> <p>Lower (2) 30:21;61:13</p> <p>lowest (1) 22:22</p> <p>luck (1) 51:17</p> <p>lump (1) 69:10</p> <p>luxury (3) 45:21;46:25;47:2</p>	<p>management (3) 29:4;54:2,23</p> <p>managing (1) 55:5</p> <p>manifest (1) 48:15</p> <p>MANNION (11) 6:19;9:22;10:1; 11:19,21;24:11;25:1, 6;26:20;47:4;65:11</p> <p>Mannion's (12) 11:18;23:24;24:9, 19;25:8,11,13;60:18; 61:5,10;63:15;73:12</p> <p>Many (15) 29:25;40:12; 48:10,10;55:3,3; 56:24;58:15,15;63:1, 1,21;70:9;72:2,19</p> <p>market (1) 13:23</p> <p>massive (1) 11:5</p> <p>masthead (1) 10:23</p> <p>material (4) 25:16;28:16,19,22</p> <p>materials (1) 8:2</p> <p>matter (13) 7:11;17:19;21:21, 23;23:13;24:10; 36:15;40:25;55:2, 13;56:11;58:11; 68:25</p> <p>matters (9) 16:19;19:13,22; 20:22;51:25;52:7, 10;74:20,25</p> <p>maximize (1) 74:22</p> <p>May (30) 8:13;9:7;12:16,22; 14:6,20;15:11; 16:12;19:4,15;25:4; 29:5,14;32:11;36:11, 15;38:22;46:19; 52:9,13;59:25; 60:10;61:13,13,15; 62:7;63:12;69:1,10; 70:7</p> <p>maybe (2) 26:12;71:2</p> <p>mayor (1) 40:18</p> <p>mean (5) 12:2;35:8;43:18; 44:22;45:16</p> <p>meaningful (1) 47:11</p> <p>meantime (1) 27:12</p> <p>measure (1)</p>	<p>72:10</p> <p>mechanical (1) 74:13</p> <p>mechanics (2) 19:11;38:24</p> <p>medical (1) 11:8</p> <p>medications (1) 41:18</p> <p>medicine (4) 11:8;31:25;32:18; 46:22</p> <p>meeting (3) 16:11,23;19:4</p> <p>mega-counties (1) 39:24</p> <p>members (1) 17:2</p> <p>memorialize (1) 54:17</p> <p>mention (1) 36:17</p> <p>mentioned (5) 19:14;34:21,22; 52:4;53:25</p> <p>messages (1) 8:20</p> <p>middle (1) 13:6</p> <p>might (6) 18:2;29:13;47:2; 54:11;57:2;70:1</p> <p>miles (4) 39:2,25;40:15; 42:14</p> <p>million (9) 12:6;26:20;27:14, 15;28:18;31:2,6,13; 61:6</p> <p>minimis (1) 71:22</p> <p>minimize (1) 68:2</p> <p>minor (2) 43:24;55:23</p> <p>minute (1) 30:7</p> <p>minutes (2) 44:24;51:14</p> <p>miss (1) 24:8</p> <p>missed (1) 37:12</p> <p>mission (1) 7:16</p> <p>mistaken (1) 69:3</p> <p>Mobil (1) 57:2</p> <p>modification (1) 68:6</p> <p>modifications (2) 17:15;38:17</p>	<p>modified (1) 54:6</p> <p>moment (1) 37:12</p> <p>moments (1) 73:18</p> <p>Monday (1) 18:15</p> <p>money (5) 36:8;48:18;50:5; 55:5;70:12</p> <p>monies (1) 73:8</p> <p>month (1) 13:6</p> <p>morale (2) 64:13;66:12</p> <p>more (22) 8:18;16:4;19:24; 26:11;27:5,8;29:3; 31:12;37:17;42:14; 46:1,1,4;47:5;50:1; 57:4,16;64:18; 65:18;67:24;68:11; 69:5;71:12</p> <p>morning (22) 7:2,4;8:13;9:13; 11:19;16:12;18:20; 20:19,20;24:16; 29:17,18;30:5;37:4; 38:15;51:21,22; 55:25;56:21;62:1; 63:24;75:3</p> <p>morning's (2) 8:12;25:7</p> <p>most (8) 8:6;29:24;35:3; 38:8;40:8;41:10; 43:9;63:22</p> <p>motion (56) 10:18;20:23;21:3, 8,15,15;23:20;24:4; 27:13;28:1;33:16; 48:3;49:4;52:18,23; 53:24;54:21,23;55:1, 8,12,14;56:8,11,15, 19;58:9,12,13;59:1, 4,6,22,23;60:22,25; 61:1,6,9,25;62:3,16, 17,24;63:9,11,18,22; 66:16,16;67:6;69:4; 72:15,16;73:3;74:3</p> <p>motions (4) 17:8;63:23;69:17; 74:6</p> <p>move (13) 8:8;20:3,17;23:14; 25:18,20;33:5;35:3, 8,17,23;38:20;55:13</p> <p>moving (2) 42:13;55:5</p> <p>much (15) 20:8;30:24;31:12;</p>
	M			
<p>machinery (1) 15:5</p> <p>mail (3) 11:7;12:7,8</p> <p>maintain (8) 47:13,13;58:19; 61:20;62:11,23;63:3, 8</p> <p>maintaining (1) 62:6</p> <p>major (5) 12:5;30:8;42:17; 44:1;74:21</p> <p>majority (5) 9:1;13:16;67:10, 11;69:22</p> <p>makes (5) 31:12;32:24; 36:16;54:3;67:24</p> <p>making (4) 31:9;41:12;43:11; 47:9</p> <p>managed (1) 9:11</p>				

<p>38:13;41:2;43:17; 46:3;48:22;50:5; 57:4,10;64:23; 71:10;74:19;75:6 much-needed (1) 66:11 multiple (2) 15:13;63:24 municipalities (1) 32:23 Murkowski (1) 15:15 must (2) 14:3;65:20 mute (4) 17:18;35:1;45:14; 51:4 myself (3) 39:20;41:4;47:19</p>	<p>38:17;43:14;49:10 negotiating (1) 47:16 negotiations (3) 27:10;35:6;48:5 NEIER (27) 6:15;27:4;29:12, 16,17,18,20,23; 34:10;35:19;36:22; 37:2;38:22;39:3; 43:23,23;44:17,19; 49:9;50:7,16;53:25; 71:15,15,16,18; 72:17 neither (1) 25:12 nervous (1) 43:12 net (1) 44:6 NEVENS (2) 6:21;10:4 nevertheless (6) 7:16;50:8;60:13, 18;62:22;63:14 New (2) 40:1;61:11 news (1) 8:7 next (9) 21:21,22;31:13; 47:7;51:3;55:14; 56:11;59:6;60:25 nice (1) 9:16 night (7) 24:16;52:5,7,19, 22;54:2;55:24 ninety (1) 26:19 ninety-percent (1) 13:7 nobody (1) 64:21 nobody's (1) 26:9 nominal (1) 27:19 none (1) 75:2 nonessential (1) 18:7 noon (1) 51:13 normal (2) 57:15;61:14 normally (5) 26:6;34:18;37:17; 49:7;62:5 North (19) 30:6;31:16,18; 32:7,11;39:24;40:9, 11,19;41:2,5,23;</p>	<p>42:8,11;43:2,7;46:6, 12;50:16 northernmost (1) 40:10 notarization (1) 25:17 notarized (1) 25:13 note (22) 15:14;17:12; 20:10;22:8,11; 23:25;24:14;25:12, 14;39:6;50:20;51:5; 54:24;55:2;60:8,14; 62:16,25;63:6,11; 69:8;74:9 noted (3) 55:9;65:17;73:10 notes (1) 20:9 notice (3) 12:23;16:25;71:7 noticed (2) 23:13;53:4 notwithstanding (4) 13:22;35:17; 67:14;72:14 number (12) 7:5,12;10:6;15:18; 17:13;30:15;43:5; 52:15;56:13,25; 59:7;61:1 numbers (1) 65:11 numerous (1) 56:21</p>	<p>observes (1) 12:13 obtained (1) 14:6 obtaining (1) 62:23 obvious (2) 25:13;52:4 obviously (14) 9:4;14:23;17:25; 22:17,21;23:3; 32:17;34:3;35:11; 45:5;49:6;61:11; 62:21;74:10 occasions (1) 63:2 off (15) 13:15;17:18; 26:10;29:8;30:1; 31:10;45:7;51:4,14; 54:5;65:7,15,20; 67:11,15 offer (2) 26:5;42:18 OFFICE (26) 5:8;9:6;16:8,10, 20,24;17:15;21:12, 25;22:9;37:9;38:3, 17;49:14;52:6,12; 53:12,20;59:18; 62:12;63:6;65:16; 67:2,18;68:4;69:11 office's (1) 68:7 officials (7) 14:5;15:14,19; 32:14,15;36:2;41:7 often (5) 39:2;45:22;60:3; 69:9;72:19 oil (1) 11:10 once (5) 57:20;65:23; 70:12;73:20;74:4 One (42) 11:4;12:15,17; 14:19;17:11;19:15; 20:23;21:24;22:8, 11;24:8;25:9;26:12; 27:24;28:11;29:24; 30:11,17;34:17; 37:13,15;38:19; 40:5;43:23,24,24; 47:15,16;50:2;53:2, 13;55:23;56:19; 67:12;69:20;70:12, 23;72:9,12;73:6,11; 74:2 one-third (1) 30:2 only (5) 14:19;21:1;32:2;</p>	<p>53:22;59:10 open (3) 8:5;19:17;34:23 operate (5) 17:22;19:21;41:6, 8;57:25 operated (1) 12:10 operating (5) 18:8;26:25;33:18; 63:7;73:19 operation (2) 41:7;61:14 operational (3) 62:7,9;63:22 operations (12) 12:10;13:2,15; 31:25;32:2,22;57:8, 14;63:17;64:16; 66:1,4 operator (1) 7:3 opportunities (1) 16:4 opportunity (14) 7:21;16:10;17:9; 23:11;24:17;25:10; 39:5,13,19;43:16; 50:10;66:19;71:7; 73:20 opposition (3) 25:9;36:13;69:11 option (1) 8:15 optionality (1) 62:18 options (1) 61:19 order (84) 12:18,20;15:11; 17:16,21,23;18:6; 21:15;23:21;25:21; 28:6;30:11;33:15,16, 20;34:11;35:5,9,20, 22;36:5,18,24;37:10, 24;39:15;42:7;44:9, 12;45:9;47:12;49:5, 15,16,17;50:25;51:6, 8,25;52:1,15,24; 53:14;54:2,6,12,18; 55:8,16,17,23;56:10; 57:13,21,23,24;58:2; 59:4,7,18;60:23; 61:2;63:19;65:3,3,6; 66:23;67:13,21,21; 68:7,8,21;69:6,14; 70:24;71:6,24;72:9, 11;73:6;74:2,3,4 ordered (1) 14:25 orderly (5) 14:3,13;16:4;27:6; 31:15</p>
N		O		
<p>name (2) 33:18;40:7 names (1) 22:3 National (1) 53:5 nature (9) 38:16;41:16;46:7; 49:22;58:23;67:9; 68:19;70:10,22 navigate (3) 38:25;48:24,25 necessarily (7) 14:11;24:22;34:7, 10,15;38:6;48:7 necessary (14) 11:9;30:12,14; 31:25;33:7,14; 46:21;48:1;50:23; 57:24;63:8,16,66:3; 69:7 necessities (1) 13:13 need (29) 11:23;13:10,17; 15:21,22;19:16,19; 20:1;26:15;34:23; 35:10,12;41:22; 42:10,21;46:20;47:8, 24;48:2,22;54:11; 56:2;57:16;58:1; 59:16;61:15;62:20; 66:4;74:6 needing (1) 66:1 needs (4) 57:11;58:18; 61:13;75:1 negotiate (3) 38:24;53:18;56:3 negotiated (3)</p>	<p>object (3) 37:10;38:3;62:12 objecting (1) 67:19 objection (4) 19:1;24:18;37:16; 68:7 objections (2) 24:23;50:14 obligation (2) 59:8;64:1 obligations (8) 59:15,20;60:1,17; 61:2,7,23;63:12 obliged (1) 63:3 observation (3) 22:10;48:9,17 observations (2) 46:8;62:19 observe (1) 63:2 observed (3) 25:15;45:15;52:4</p>			

<p>orders (9) 21:17,19;52:5,7; 68:18;69:19;70:22, 22;75:4</p> <p>others (3) 8:18;15:23;42:1</p> <p>otherwise (4) 14:15,17;42:1,12</p> <p>out (39) 7:16;8:6,22;9:8; 12:1;16:21,23; 17:23;18:2;19:3,4; 20:16;26:16;31:6, 22;34:12,13,23; 35:16;38:10;42:15; 44:5,19;46:15,19,23; 49:8;53:3;54:19; 57:16;61:17;64:10; 70:13;71:18;72:6; 73:21;74:11,14,15</p> <p>outreaches (3) 15:13,19,19</p> <p>outset (1) 50:2</p> <p>outside (3) 13:22;16:20;33:10</p> <p>outside-generated (1) 8:17</p> <p>outstanding (1) 30:2</p> <p>over (11) 11:3;12:7;13:14; 24:2;26:19;27:6; 29:3;31:5;47:7;57:9; 71:19</p> <p>overages (1) 67:10</p> <p>overall (1) 57:8</p> <p>overwhelming (1) 67:11</p> <p>owed (3) 26:19;61:22;65:17</p> <p>owing (1) 61:16</p> <p>owner (1) 22:5</p> <p>owns (1) 42:5</p>	<p>63:13;65:14,19,20, 22;67:11,15</p> <p>painful (1) 13:14</p> <p>pandemic (4) 13:5,25;45:17; 73:17</p> <p>paper (1) 47:1</p> <p>papers (2) 36:13;52:22</p> <p>parenthetical (1) 28:15</p> <p>Paribas (2) 5:3;6:14</p> <p>part (11) 9:7;10:25;11:2; 12:14;13:23;15:9; 31:1,13;32:11;38:9; 41:1</p> <p>participant (1) 39:6</p> <p>participants (2) 39:13;54:7</p> <p>participate (4) 8:10,24;9:5;36:3</p> <p>participating (1) 30:13</p> <p>particular (5) 17:23;42:3;53:2, 16;56:24</p> <p>particularly (5) 15:15;38:21; 43:19;64:2;69:9</p> <p>parties (15) 7:5;20:1;21:12; 22:6,7;34:4;37:25; 43:7,12;45:7,13; 49:1;54:17;55:11; 71:3</p> <p>parties-in-interest (1) 38:10</p> <p>partner (5) 10:5;47:20;51:11, 19;73:22</p> <p>Partners (1) 6:3</p> <p>parts (3) 14:7,7;28:17</p> <p>Party (11) 5:14;7:20,21; 17:25;25:5;58:3,8; 66:17;68:9,25;71:6</p> <p>pass (1) 73:21</p> <p>passenger (2) 11:1;13:7</p> <p>passengers (1) 32:3</p> <p>passenger-servicing (1) 12:6</p> <p>past (1) 45:24</p>	<p>path (5) 29:1;34:12,20; 35:3;62:11</p> <p>patience (2) 7:23;75:3</p> <p>pause (1) 39:20</p> <p>pay (18) 13:13;14:25;36:5, 8;49:25;59:8;61:2,9, 15,21;64:1,13;65:6, 7;66:11,23;67:14; 74:11</p> <p>paychecks (7) 64:10;65:1,5; 70:13,13;74:11,14</p> <p>paying (5) 32:16,21;33:17; 37:20;47:10</p> <p>payment (6) 29:6;31:7;60:16; 66:6;67:17;69:18</p> <p>payments (9) 59:19;67:8,24; 68:1,20,22;69:21; 73:5,23</p> <p>payroll (5) 14:24;31:4,7;36:5; 64:1</p> <p>payrolls (1) 13:13</p> <p>Penair (1) 10:24</p> <p>pending (2) 19:6;50:14</p> <p>Peninsula (1) 9:19</p> <p>People (14) 19:7;26:20;32:18, 18;33:17,20;39:1; 40:2,8,12,14;44:2; 45:25;72:20</p> <p>percent (4) 12:9;27:16,16,17</p> <p>perfectly (2) 18:23;31:22</p> <p>perform (1) 23:19</p> <p>perhaps (7) 16:3;18:16,16; 27:8;48:8;50:11; 60:1</p> <p>period (10) 13:10;19:23;28:8; 29:3;30:21;32:5; 57:17;59:9;69:23; 70:1</p> <p>permanent (2) 13:14,15</p> <p>permit (2) 54:7;65:6</p> <p>permitted (1) 27:22</p>	<p>person (1) 46:23</p> <p>Persona (1) 5:19</p> <p>petition (1) 30:14</p> <p>PFLEGER (2) 6:20;10:3</p> <p>PH (5) 6:21,22;9:24;10:5, 5</p> <p>phone (9) 7:18;8:10,24; 19:20;35:12;36:18; 42:20;44:13;48:11</p> <p>phones (2) 35:1;45:14</p> <p>phrase (1) 41:21</p> <p>pieces (1) 17:11</p> <p>place (3) 12:3;35:1;45:13</p> <p>places (1) 11:24</p> <p>plan (1) 14:12</p> <p>planes (2) 11:1;15:24</p> <p>planning (1) 45:10</p> <p>plausible (1) 15:8</p> <p>play (3) 34:23;38:10;54:19</p> <p>player (1) 12:5</p> <p>players (1) 47:12</p> <p>please (2) 8:13;16:13</p> <p>pleased (1) 14:16</p> <p>pledged (1) 26:17</p> <p>plenty (2) 26:5;68:15</p> <p>plug (1) 21:18</p> <p>plus (3) 22:22;27:16,18</p> <p>PM (1) 75:8</p> <p>podium (1) 9:15</p> <p>point (19) 13:17,21;14:1; 15:14;18:15;26:4; 29:12;33:19;34:8,10, 22;37:13;40:13; 43:24;49:9;50:8; 51:10;68:24;71:18</p> <p>pointed (1) 49:8</p>	<p>points (1) 38:8</p> <p>police (1) 32:13</p> <p>policies (4) 61:11,18,23;65:21</p> <p>policy (1) 9:7</p> <p>population (1) 40:9</p> <p>position (12) 13:23;14:11; 15:17;34:4,5;39:9; 40:21;43:1;44:4; 46:9,12;58:7</p> <p>positions (1) 50:10</p> <p>positive (1) 14:9</p> <p>possibility (1) 66:5</p> <p>possible (9) 16:24;17:3;41:25; 43:10,15;46:21; 50:12;54:13;66:7</p> <p>possibly (2) 19:21;74:15</p> <p>post-petition (3) 61:23;63:4;64:6</p> <p>potential (1) 41:3</p> <p>potential-interested- (1) 22:6</p> <p>potentially (3) 19:15;37:24;60:16</p> <p>powers (1) 32:14</p> <p>practical (3) 46:15;68:25;71:11</p> <p>practice (5) 24:19;48:4;70:20; 71:5;74:3</p> <p>pre- (1) 30:13</p> <p>precedent (3) 31:20;32:13;33:23</p> <p>precisely (2) 31:18;73:7</p> <p>predict (1) 47:6</p> <p>prediction (1) 54:16</p> <p>prepare (1) 14:3</p> <p>prepared (5) 20:3,11;71:24; 73:2,22</p> <p>pre-petition (13) 26:18;27:3,23,24; 57:9;60:17;61:2,7, 15,21;65:6,9,9</p> <p>prerogative (1)</p>
P				
<p>PA (1) 5:2</p> <p>package (1) 14:2</p> <p>packages (4) 32:1,4,5,19</p> <p>page (2) 49:7,19</p> <p>paid (14) 31:6,10,11;32:22; 33:25;59:12;61:22;</p>				

<p>46:9 prescription (1) 41:18 PRESENT (1) 6:18 presentation (3) 23:10;25:23;37:13 presentations (1) 8:21 presented (3) 17:19;28:10;30:9 presenting (2) 14:12;51:10 preserve (2) 57:25;66:14 press (1) 37:16 pressing (1) 37:22 presume (1) 47:6 pretty (11) 7:13;23;8:4;9:12; 17:21;20:7;48:12; 22;62:20;72:15; 73:11 primarily (1) 31:8 primary (1) 40:3 princely (1) 71:20 prior (7) 44:7;55:4;58:15; 63:1;70:18;73:3,6 priority (3) 65:12,18;67:8 probably (5) 23:22,24;26:12; 30:2;53:3 problems (3) 28:25;44:23,25 procedural (2) 21:1,4 procedurally (1) 55:12 procedures (1) 23:18 proceed (4) 14:18;24:3;26:13; 52:13 proceeding (3) 36:4;52:10;72:25 proceedings (5) 9:3;16:24;19:16; 35:7;75:8 process (14) 9:12;14:14;19:11; 34:16,18,23;35:11; 45:19;46:9;54:19; 55:5;57:20;60:5; 66:21 proclamation (1)</p>	<p>40:19 procure (1) 13:22 professional (2) 15:3,3 professionals (6) 19:6;20:6;30:19; 32:9;45:18,23 program (3) 8:20;61:3,8 programs (1) 61:16 promising (2) 27:8;48:4 prompt (1) 72:12 prompted (1) 22:22 promptly (4) 16:23;23:14; 35:12;75:5 properly (1) 20:11 property (4) 28:11;40:24;42:1; 60:12 proposal (1) 26:23 propose (1) 14:17 proposed (4) 33:1;49:2,4;54:18 proposition (2) 12:2;68:12 Propria (1) 5:19 proprietary (2) 22:13,15 prospect (1) 68:14 prospects (1) 26:24 protect (4) 57:7;64:14;74:23, 23 protected (1) 64:10 protecting (2) 31:5,14 provide (5) 15:21;16:19;44:6; 46:21;68:17 provided (9) 22:16;36:19;44:1; 46:7;47:9;58:20,23, 24;67:6 provider (1) 58:17 providers (3) 56:25;58:6,25 provides (5) 29:1,6;45:19; 48:23;56:15</p>	<p>providing (8) 11:7;12:6;18:7; 22:18;26:11;47:10; 48:1;70:11 provision (4) 30:11;57:13; 67:13,14 provisions (8) 15:4;28:5;30:10; 43:4,5;67:7,12;73:25 proviso (1) 74:2 PTO (2) 65:21;66:20 public (2) 33:18,19 pull (1) 60:5 pure (1) 19:25 purporting (2) 12:18;40:20 purpose (1) 65:3 purposes (5) 15:2;17:11;21:1; 23:25;28:20 put (4) 8:16;14:11;39:8; 43:18 puts (1) 41:2 putting (1) 30:3</p>	<p>ratable (1) 37:19 rate (2) 27:15,16 rates (2) 22:16;23:1 rather (7) 14:14;17:17;27:6; 44:6;56:4,7;67:20 ratio (1) 27:23 rational (1) 35:3 rationale (1) 49:11 Ravn (30) 7:11;9:18,18; 10:21,23,24,25;12:5, 10,13;13:9,18;14:1, 4;15:20;16:2;20:24; 26:21,23;27:8,10; 40:16;41:25;42:2,5, 19,21,25;44:1;48:22 R-A-V-N (1) 7:11 RavnAir (1) 11:2 Ravn's (7) 12:19;15:17;27:5; 29:4;40:20;42:10,19 reached (1) 33:19 read (4) 11:18;25:11,22; 38:15 ready (2) 42:9,22 real (3) 19:24;33:8;47:15 realities (1) 62:7 reality (1) 16:2 realize (3) 14:13;62:5;73:15 really (18) 8:1;11:22;19:5; 31:1,3,4,14,19;32:4; 34:15;38:14;46:19; 48:15;52:11;57:5; 71:21,21;72:25 reason (4) 10:10;15:20;30:1; 66:15 reasonable (1) 22:19 reasons (6) 22:13,15;25:14; 29:9;64:20;67:21 reassure (1) 70:6 rebuild (1) 50:11</p>	<p>rebuilt (1) 73:20 recede (1) 13:25 receivables (2) 44:5,6 receive (6) 54:8,9;57:21; 64:25;66:11;71:7 received (3) 8:3;25:2;55:25 receiving (2) 65:15;68:1 recent (1) 21:13 recently (1) 40:7 reconsideration (1) 69:4 record (11) 9:17;21:9;23:16; 24:10;25:10;50:19; 51:22;54:24;63:15; 71:12;73:24 recurrent (1) 49:6 red (1) 42:16 redline (1) 38:8 redress (1) 34:24 reduction (3) 57:8;64:3,6 refer (1) 40:8 reference (1) 52:16 referenced (2) 44:24;53:24 reflect (5) 17:13;22:3;52:8; 54:24;71:1 reflected (2) 49:5;70:21 reflecting (1) 55:24 reflects (1) 56:17 refusing (1) 30:6 regard (2) 55:21;59:17 regarding (4) 25:6;38:2,7;55:9 regardless (3) 62:10;70:7,11 regards (1) 42:3 region (1) 42:16 regional (1) 42:17</p>
		Q		
		<p>quarantine (1) 30:20 quarter (1) 12:8 quarters (2) 13:3,4 quick (2) 12:21;25:23 quickly (6) 17:3;33:5;34:4; 41:24;42:5;43:10 quite (3) 18:15;43:12;56:22 quote (1) 11:2</p>		
		R		
		<p>raise (3) 30:12;36:1;44:12 raised (1) 39:14 raising (1) 49:9 rapidly (3) 39:9;40:3;45:19</p>		

regulations (1) 43:5	9:18;28:16	rest (5) 13:24;51:11,15, 24;70:11	road (1) 12:1	satisfied (9) 23:16;49:11;59:3, 23;60:13,20;63:9,14; 73:24
rehire (1) 64:15	reps (2) 28:13,22	restart (1) 66:7	roads (1) 11:24	saying (2) 33:4;45:17
rehired (1) 66:4	request (16) 17:23;21:7;22:1; 24:21;35:6,21; 36:19;38:4;50:17; 58:4;59:14,16;67:1; 68:7;72:24,25	restructuring (1) 14:7	ROBERT (2) 5:10;39:17	scenarios (1) 27:11
relate (1) 67:11	requested (19) 17:15;21:9;38:16; 49:22;55:2,6;59:3, 24;60:14,15,22; 62:22;63:16;68:14; 69:8;72:22;73:4,10, 13	result (3) 11:6;19:15;29:2	robust (1) 16:4	scheduled (4) 19:1;54:9,10;60:2
relates (2) 28:12;66:20	requiring (1) 57:21	results (1) 13:8	roll (3) 24:22;26:6;27:22	scheduling (3) 16:11,18;18:3
relating (2) 43:4;65:19	require (6) 15:5;23:13;35:6; 41:25;61:13;63:7	resume (3) 31:24;64:16;66:4	rolled (1) 30:14	SCHMIDT (4) 5:10;39:17,18; 43:17
relative (1) 69:21	required (5) 14:22;28:19; 55:22;65:22;67:25	retain (2) 21:23;22:22	rollup (3) 30:12,13;49:10	Schmidt's (1) 46:3
relatively (2) 29:23;49:18	requirements (2) 18:13;56:2	retention (3) 23:2,5,12	Rome (2) 20:9,21	science-fiction (1) 12:2
relied (1) 20:8	requires (2) 16:18;67:17	retentions (1) 19:13	room (2) 14:4;45:25	screen (1) 10:1
relief (36) 14:10;17:23;21:9; 24:21;36:12;38:16; 41:3;43:6,14;49:22; 55:2,6;58:14,16; 59:3,14,24;60:6,14, 15,22;62:12,22,25; 63:16;67:19;68:13, 19;69:8;70:24; 72:16,22,25;73:4,10, 13	rescue (1) 29:5	return (3) 12:22;13:25;57:15	routine (2) 21:10;58:12	seamlessly (1) 22:25
reluctant (1) 68:25	residents (2) 11:8,8	revenue (3) 12:7;13:7;54:9	routinely (1) 67:13	season (1) 66:9
relying (1) 63:15	resist (1) 41:4	revenues (1) 12:5	royally (1) 41:11	seasonal (2) 13:1;42:18
remain (2) 28:7;66:13	resolution (3) 12:22;55:9,20	review (3) 23:11;24:17;66:19	rule (6) 34:7;50:21,23; 60:15;63:12;74:1	second (6) 13:4;18:2;31:13; 34:25;40:25;73:12
remaining (4) 51:20;64:5,14; 66:12	resolves (2) 12:20;52:12	reviewed (1) 26:8	rules (5) 19:2;23:13,18; 28:4;68:17	second- (2) 18:3,25
remarkably (1) 19:7	resolved (6) 10:12;12:16; 19:23;22:9;39:2; 46:18	reviewing (2) 53:13;67:6	ruling (1) 36:14	second-day (7) 17:7;19:12;23:5; 37:25;59:13;69:4; 71:8
remedy (1) 72:12	respect (34) 14:24;15:12; 16:19;17:7,22; 19:10;21:6;22:1,10; 23:8;25:16;30:17; 31:16;37:17;38:4, 22;39:12;46:5,6; 48:25;49:2,21;54:4, 21;55:25;58:4,7,22; 59:22;61:25;66:23; 67:20;70:8;72:23	revised (6) 37:10;52:4,7;54:1; 55:23;59:17	run (1) 22:3	second-guess (1) 46:9
remote (2) 56:24;57:1	respective (1) 7:17	revisions (1) 28:11	running (2) 11:2;17:3	Secondly (1) 42:13
remotely (1) 9:22	response (1) 70:18	revisors (1) 17:15	runway (1) 14:2	section (5) 28:13,20;50:20; 56:1;58:21
renew (1) 61:7	responsive (1) 47:22	revitalize (1) 50:11	runways (1) 15:23	sections (1) 50:22
reorganization (4) 50:25;60:20; 63:18;73:14		revived (1) 73:20	rural (1) 11:7	secure (2) 14:1,5
repeat (2) 22:4;32:7		REYNOLDS (1) 6:5	S	secured (7) 26:18,22;27:2,23; 28:24;46:13;53:4
represent (4) 22:13;27:4;37:8; 64:7		RICHARD (2) 6:21;10:4	safe (3) 27:4;29:21;36:9	securing (1) 31:14
representations (3) 28:12;38:2;60:19		right (34) 7:9;14:20;16:6; 18:2,16;20:12; 24:14;25:18;35:2; 39:3,10;41:19,22; 44:15,18,20;45:5,9, 14,15,24;46:25; 51:16,21;53:14; 58:8;61:12;65:13; 68:10;69:13;71:9,13, 14;75:2	salaries (1) 73:4	seek (5) 25:5;43:6;56:5; 61:20,21
representative (2) 39:5,7		rights (2) 47:23;58:17	salary (1) 50:6	seeking (5) 44:9;59:7;61:1; 63:25;65:2
represented (2) 8:11;27:3		rise (1) 62:3	sale (3) 14:7;27:7;29:3	seem (2) 19:24;46:18
representing (2)		risk (2) 60:21;73:14	sales (1) 72:20	seemed (1) 8:6
			salmon (1) 42:16	seems (2)
			same (1) 31:20	
			San (1) 41:17	
			satisfactorily (1) 39:3	

15:8;48:19 segregated (1) 56:16 seize (2) 32:15;33:17 seizing (1) 32:20 self-evident (1) 57:20 send (2) 16:23;51:7 Sens (1) 15:15 sense (6) 18:2;25:4;35:11; 36:16;48:12;49:20 separate (3) 24:15;44:10;56:8 separated (1) 40:14 serious (2) 32:17;36:15 served (3) 40:15;42:7,8 serves (1) 31:21 service (15) 41:24;42:6,18,22; 43:10,15;44:5; 45:20;46:21;48:22; 57:21;58:6,17,22,25 serviced (1) 48:15 Services (14) 9:20,21,21;15:21; 23:19;41:16;44:1; 46:7;47:8,13;58:12, 19,23;70:10 servicing (1) 12:11 set (6) 17:2;22:19;27:13, 15;31:19;54:5 setoff (1) 44:8 setoffs (1) 54:7 sets (2) 16:2;32:13 settlement (2) 54:11,13 settlements (2) 54:3,8 seven (1) 20:24 seventy (1) 40:11 several (3) 10:3,22;36:18 shall (2) 28:19,19 Shannon (3) 7:3;11:14;48:6	shape (1) 20:13 shared (1) 35:18 sharing (1) 8:2 shoot (1) 19:12 short (5) 11:17;12:20,23; 47:18;70:1 short-term (1) 48:2 shut (1) 13:15 shutdown (1) 12:10 sic (7) 9:19,21;10:11; 28:20;31:21;41:17, 21 sign (1) 53:19 significant (2) 12:13;39:1 significantly (1) 29:6 simply (3) 17:23;25:14;50:20 sing (1) 17:23 single (4) 21:13;46:23;50:1; 57:5 site (1) 21:13 situation (13) 12:22;28:3,24; 30:7;31:17,19; 32:11;33:23;41:13; 47:2,14;64:18;68:23 six (5) 27:15;31:2,5,13; 44:24 size (3) 12:3;23:14;40:1 Skype (1) 9:24 slightly (1) 12:7 Slope (10) 39:24;40:9,19; 41:2,5,23;42:8,11; 43:2,7 small (2) 12:18;29:24 smaller (2) 11:3,3 sold (1) 27:6 sole (1) 57:1 solicit (1)	22:20 solicitation (1) 16:23 solution (2) 28:25;46:16 solutions (1) 20:7 somehow (1) 32:15 somewhat (1) 56:19 Sontchi's (1) 18:6 soon (5) 14:10;42:23; 43:14,15;54:13 sophisticated (1) 55:4 sorry (3) 33:8;53:6;55:15 sort (5) 14:22;19:2;30:10; 36:6;49:19 sorted (1) 9:8 sought (8) 13:20;20:7;26:21; 41:1;62:13;67:19; 70:23;72:16 sounds (7) 10:13;20:18;24:5; 29:15;45:5;56:9; 57:18 source (2) 57:1,5 Southwest (4) 42:13,16,23,25 spare (1) 28:17 speak (2) 47:4;52:10 SPEAKER (1) 7:8 speaking (2) 10:6;46:16 spearpoint (1) 14:22 special (2) 26:15;30:23 specific (6) 38:13,18;39:14; 49:8;52:10;55:1 specifically (2) 68:17;70:23 specifics (1) 72:18 speed (1) 26:8 spoke (1) 71:3 spoken (1) 33:10 sponsors (1)	13:21 spot (2) 39:8;43:19 spread (1) 71:19 square (1) 39:25 squarely (1) 13:5 stake (2) 47:23,24 stakeholder (1) 19:15 stakeholders (2) 7:17;45:18 stand (1) 43:7 standard (5) 21:10;30:9;67:7, 12;73:11 standing (1) 70:20 stands (1) 16:2 start (7) 8:23;32:16;33:17; 37:6;42:22;43:15; 51:13 started (1) 43:10 starting (1) 38:21 State (31) 5:9;11:5;15:11,19; 31:23,23;32:22,23; 36:3,6;39:5,7,9,12, 18,23;40:1,20,22; 41:14,25;43:1,3,6; 44:2;46:4;48:21; 67:16,25;73:16; 74:23 stated (1) 67:22 States (17) 6:9;8:14;16:9,13; 22:1,9;37:5;40:10; 49:14;52:6;56:23; 62:2;63:7;67:2,5; 69:12;70:17 station (1) 57:3 status (1) 17:13 statutory (3) 50:22;65:18;67:8 stay (2) 54:6;56:1 step (5) 23:23;42:10;73:1, 23;74:21 steps (1) 58:10 still (6)	7:16;29:5;40:8; 55:21;59:13;71:23 stipulation (5) 28:6;44:11;54:18; 55:13,21 stipulations (2) 28:1;47:21 stocked (1) 47:1 stop (1) 66:1 store (2) 46:24,25 stores (1) 41:17 STRAWN (1) 6:13 stream (1) 12:7 stretch (1) 58:25 Stretto (11) 21:24;22:2,5,16, 17,21;23:2,9,12,16, 18 strikes (1) 58:16 strong (1) 13:23 struck (1) 11:22 structure (3) 22:12,14;69:18 struggled (1) 37:15 struggling (1) 68:12 stuff (1) 19:13 styling (2) 70:19;71:6 subject (8) 24:13;28:5,7; 30:10;35:24;47:3; 48:15;57:14 subjecting (1) 69:25 sublease (1) 42:11 subleased (1) 15:23 sublet (1) 42:1 submit (2) 56:10;66:10 submitted (6) 13:18;17:13;24:9, 20;54:17;55:24 submitting (1) 55:17 subsequent (1) 24:13 substance (1)
--	---	---	---	---

<p>35:14 substantial (1) 13:16 substantially (5) 26:18;28:9;29:6,8; 42:5 substantive (2) 40:22;43:5 substitute (2) 41:24;43:15 successful (1) 8:18 successfully (1) 19:23 suffer (2) 60:21;73:14 sufficient (4) 17:1;23:16;30:15; 57:7 sufficiently (1) 17:6 suggestion (1) 57:12 suit (1) 62:9 Sullivan (1) 15:15 sum (3) 43:1;69:21;71:20 summary (1) 14:16 sums (1) 69:10 Sunday (3) 29:8;40:19;64:3 supplement (5) 52:16,18;53:23; 54:2,25 supplemental (9) 22:2;24:10,16; 25:1;54:14,25; 65:10;66:19;67:23 supplements (1) 54:16 supplies (3) 11:7;15:24;58:19 support (5) 15:12;25:2;48:25; 69:11,13 supportive (1) 47:25 sure (15) 7:18;8:11;15:22; 20:10;23:23;31:9; 32:10;33:12;47:4; 56:14;64:11,24; 66:10,18;74:21 surprise (2) 60:4;74:10 surrounded (1) 45:22 survey (1) 40:4</p>	<p>sympathetic (4) 15:16;33:22;34:4; 49:23 syndicate (1) 38:3 system (3) 15:17;22:4;52:25</p> <p style="text-align: center;">T</p> <p>table (1) 31:3 tailoring (1) 62:8 talk (2) 46:22;49:7 talked (1) 68:15 talking (2) 71:18,22 tax (5) 59:8,15,19,22;60:3 taxes (6) 59:6,10,11;60:9, 10,11 TAYLOR (1) 5:5 teach (1) 60:2 teaches (2) 60:10;71:25 team (1) 23:23 teleconference (3) 7:19;9:5;11:17 telephonic (1) 7:10 TELEPHONICALLY (2) 6:18;8:25 temperatures (1) 40:5 temporarily (1) 13:15 ten (2) 27:16;51:14 tend (1) 13:2 terminated (7) 64:2,25;65:7,20, 23,23,24 terms (4) 27:12;34:20;48:1; 57:20 terrain (1) 11:4 terrific (1) 8:2 territory (1) 35:15 test (1) 8:19 Texas (1) 40:17</p>	<p>thankfully (1) 8:25 thanking (1) 37:6 thanks (1) 7:9 That'd (1) 25:25 that'll (2) 9:8;16:19 theme (1) 49:6 therefore (3) 61:20;64:23;65:2 there're (1) 19:14 There've (1) 15:18 thinking (1) 44:7 third (2) 13:4;41:4 thirty (1) 56:3 thirty-day (1) 56:1 thirty-nine (1) 64:5 thirty-two (2) 65:17;71:19 THORNBURG (1) 5:13 though (3) 10:17;34:9;39:8 thought (6) 25:23;26:14;41:7; 46:9;59:13;66:21 thoughts (3) 18:10;29:13;69:15 thousand-plus (1) 74:14 thousands (1) 39:1 three (4) 10:24;13:7;22:20; 27:17 threshold (3) 23:13;55:2;58:11 throughout (4) 11:10;41:23; 42:18;44:2 thus (1) 54:6 tightrope (1) 48:23 Tim (6) 8:14;16:13;37:4; 62:1;67:4;70:16 times (11) 8:22;26:5;45:15; 56:21;63:24;64:23; 67:18;68:2,15;70:9; 72:19</p>	<p>time-zone (1) 39:1 timing (2) 15:1;54:10 tirelessly (1) 64:8 Tobias (1) 9:17 today (25) 7:6;8:23;15:2; 18:4;20:11;27:15; 31:3,6;34:1;37:1; 43:13;48:11;50:17; 54:9;56:21;59:2; 62:13;66:23;67:19; 68:16;69:6,14,22; 70:9;71:7 today's (6) 9:2;10:6;16:19,24; 17:12;31:16 together (6) 22:25;46:21; 47:13,22;50:11;60:5 toilet (1) 47:1 took (3) 12:9;49:20;70:19 top (1) 30:4 Tori (3) 20:14,20;44:21 total (2) 12:11;27:13 touch (4) 15:10;16:8,25; 19:17 touched (2) 54:15;72:17 toward (1) 45:10 town (3) 12:18;33:22;40:10 towns (4) 11:25;31:20; 33:23;47:3 Transportation (1) 42:12 travel (2) 11:6,23 Treasury (1) 15:18 treatment (2) 11:9;56:20 tried (1) 8:18 trigger (1) 28:21 trouble (3) 8:16;47:19;70:5 troubled (2) 68:14;72:21 troubling (1) 31:1</p>	<p>true (1) 60:11 trust (3) 29:2;60:10,11 Trustee (23) 8:11,14;9:10;16:9, 14;17:20;22:1; 36:19;37:5;49:14; 52:6;53:11,12,20; 56:5;59:19;62:2; 63:7;65:16;67:3,5; 69:12;70:17 Trustee's (2) 22:9;57:12 try (6) 34:18;47:12; 48:25;60:5;64:10; 74:22 trying (12) 7:14;12:16;19:20; 32:9,12;34:12; 38:24;41:15;46:23; 48:24;60:5;74:14 turn (5) 24:2;43:21;45:9; 49:7,19 turns (1) 57:16 twelve (1) 27:14 twenty (1) 12:9 twenty-four (2) 40:4;72:24 twice (1) 40:1 two (15) 10:25;14:19; 17:11;20:15,22; 22:20;24:14;27:23; 30:5;40:15;42:23; 56:17;57:9;58:10; 74:15 two-to-one (2) 30:12,13 type (1) 45:25 typical (6) 26:12;58:6;62:17; 72:15,18;73:2 typically (1) 63:2 typo (1) 51:6</p> <p style="text-align: center;">U</p> <p>UDA (1) 53:19 ultimate (1) 22:5 ultimately (3) 12:1;31:14;35:20</p>
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10 (1) 25:20	12:12			
10,000 (1) 40:2	4001 (2) 50:21,23			
100,000-dollar (1) 59:19	48 (1) 30:21			
11 (2) 18:22;64:4	5			
110 (1) 11:3	506c (1) 28:1			
115 (1) 12:11	507a4 (1) 65:18			
12:15 (1) 75:8	552b (1) 28:2			
121 (1) 10:25	6			
129,000 (1) 71:19	6 (1) 52:15			
135 (1) 11:2	6:30 (1) 11:19			
2	6003 (3) 60:15;63:12;74:1			
200 (1) 12:5	7			
20-10755 (1) 7:12	7 (3) 30:1;33:6;56:13			
2019 (1) 12:5	70,000 (1) 56:16			
21 (1) 12:10	70,000-dollar (1) 57:8			
26 (1) 18:14	72 (1) 12:10			
29th (6) 18:17,18,19;19:1, 11;60:2	73 (1) 12:11			
3	7th (1) 18:4			
3,000 (1) 40:12	8			
3.05 (1) 28:13	8 (1) 59:7			
3.15c (1) 28:20	9			
320,000 (1) 59:11	9 (1) 61:1			
345b (1) 56:1	95,000 (1) 39:25			
360,000 (1) 27:18				
361 (1) 50:20				
363 (1) 50:20				
364 (1) 50:20				
366 (1) 58:21				
4				
400 (1)				