

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re

CINEMEX HOLDINGS USA, INC.,
CMX CINEMAS, LLC, AND
CB THEATER EXPERIENCE LLC,¹
Debtors.

Case No. 25-17559-LMI
Chapter 11 (Subchapter V)

**MOTION OF MN THEATERS 2006 LLC FOR
AN ORDER DIRECTING THE APPOINTMENT OF AN
OFFICIAL COMMITTEE OF UNSECURED CREDITORS
(Expedited Hearing Requested)**

MN Theaters 2006 LLC respectfully requests the Court conduct a hearing on this motion on or before July 29, 2025, at 10:30 a.m. (EDT), when a hearing is already scheduled to be held on certain other matters in these cases. A hearing on July 29 and an objection deadline of July 28 would be consistent with regular notice under Rule 9006(d).

Subchapter V of chapter 11 provides for an expedited reorganization process: the meeting of creditors is scheduled for August 4; the Debtors are required to file a status report by August 8; a status conference on progress toward a consensual plan is scheduled for August 22; and the Debtors must propose a plan by September 29. If an official creditors' committee is to participate fully in this process, including by performing investigations into the Debtors' subchapter V eligibility and their relationships with insiders, the committee must be constituted quickly.

¹ The Debtors in these cases and the last four digits of each Debtors' federal identification number are as follows: (1) Cinemex Holdings USA, Inc. (5502); (2) CMX Cinemas, LLC (1938); and (3) CB Theater Experience LLC f/k/a Cobb Theater Experience LLC f/k/a Cinemex NC, LLC (0563). The address for the Debtors is 4300 Biscayne Blvd, Suite 203, Miami, FL 33137.

MN Theaters 2006 LLC (“*MN Theaters*”), as the owner of certain properties leased by CB Theater Experience LLC,² respectfully states as follows.

RELIEF REQUESTED

1. By this motion (the “*Motion*”), MN Theaters seeks entry of an order directing the Office of the U.S. Trustee for Region 21 (the “*U.S. Trustee*”) to appoint an official committee of unsecured creditors in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”). A proposed form of order (the “*Proposed Order*”) is attached to this Motion as **Exhibit A**.

2. The principal statutory bases for this Motion are sections 1102(a)(3) and 1181(b) of title 11 of the U.S. Code (the “*Bankruptcy Code*”).

JURISDICTION AND VENUE

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This case has been referred to the Court pursuant to 28 U.S.C. § 157(a) by the Order of Reference entered by the U.S. District Court for the Southern District of Florida on March 27, 2012. This Motion is a core proceeding under 28 U.S.C. § 157(b). Venue in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. The Debtors’ predecessors filed their first round of chapter 11 cases in 2020, during the COVID-19 pandemic. Those cases were filed as standard chapter 11 cases, as the debtors reported millions of dollars of debts to landlords and trade creditors. *See* Schedule E/F, *In re Cinemex USA Real Estate Holdings, Inc.* (“*Cinemex I*”), Case No. 20-14695-LMI (Bankr. S.D. Fla. June 11, 2020), ECF No. 285. An official committee of unsecured creditors was duly appointed, *see* Notice of Appointment, *Cinemex I* (May 22, 2020), ECF No. 140, hired legal and financial advisors, *see id.*, ECF Nos. 277, 279, 364, and participated vigorously in the restructuring process. The committee ultimately negotiated a chapter 11 plan that included, among other things, (a) the

² *See* Schedule G, rows 2.206 and 2.207, *In re CB Theater Experience LLC*, Case No. 25-17563-LMI (Bankr. S.D. Fla. July 14, 2025), ECF No. 17.

creation of a litigation trust, with over \$5,000,000 of funding, for the benefit of general unsecured creditors, (b) a convenience class with a 12% cash payout for certain unsecured creditors, and (c) a waiver of avoidance actions against general unsecured creditors. *See* Third Am. Joint Chapter 11 Plan of Reorg., *Cinemex I* (Oct. 29, 2020), attached as Ex. A to ECF No. 936 (confirmation order).

5. Not even two months after the final decree was entered in *Cinemex I*, the Debtors filed chapter 11 cases once again. This time, the Debtors designated the Chapter 11 Cases as cases under subchapter V of chapter 11, the Small Business Reorganization Act of 2019, alleging that their “aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition,” 11 U.S.C. § 101(51D), amounted to approximately \$1.9 million. *See* Decl. of Rafael Muñoz Pedregal, ECF No. 13.

6. The Debtors’ schedules of liabilities reported the same amount of non-contingent liquidated debt, as well as over \$1.1 million in taxes that are alleged to be contingent. *See* Schedule E/F, rows 2.1 through 2.12, *In re CB Theater Experience LLC*, Case No. 25-17563-LMI (Bankr. S.D. Fla. July 14, 2025), ECF No. 17 (The Debtors’ basis for describing routine tax debt as contingent and unliquidated is unclear, and they reported most of their local tax debt is non-contingent and liquidated in the previous chapter 11 cases, when small business eligibility was not at stake.) The Debtors’ filings in the 2025 cases also indicate that the Debtors’ parent, Wine and Roses S.A. de C.V., is owed \$50,000,000 in allegedly secured financing. This insider financing did not arise under the previous cases’ chapter 11 plan, and the circumstances surrounding the financing remain obscure. *See* Third Amended Joint Chapter 11 Plan of Reorg., Art. IV, *Cinemex I* (Oct. 29, 2020) (no mention of funded debt); Stock Purchase Agr. from Plan Supp. (providing for stock to be issued to Wine and Roses); *See* Decl. of Rafael Muñoz Pedregal, ECF No. 13, ¶ 49.

7. Because the new Chapter 11 Cases were filed under subchapter V, no official committee of unsecured creditors has been appointed. *See* 11 U.S.C. §§ 1102(a)(3), 1181(b). Tarek Kiem was appointed as subchapter V trustee (the “*Subchapter V Trustee*”) on July 2, 2025. *See* ECF No. 27.

BASIS FOR RELIEF

I. CAUSE EXISTS TO APPOINT AN OFFICIAL CREDITORS' COMMITTEE.

8. Congress enacted the Small Business Reorganization Act of 2019 (codified as subchapter V of chapter 11 of the Bankruptcy Code) to streamline the chapter 11 reorganization process for small businesses and to preserve equity for owners. To achieve these goals, Congress eliminated many of the Bankruptcy Code's protections for creditors. Most significantly, perhaps, is that Congress eliminated the traditional absolute priority rule of § 1129(b)(2)(B). *See* 11 U.S.C. § 1191(b)–(c). Instead, a small business debtor's owner may retain ownership of the business, even over the objections of unsecured creditors, so long as the plan allocates the debtor's "projected disposable income" to creditor dividends for three to five years after emergence. *See* 11 U.S.C. § 1191(c). In replacing the absolute priority rule with a "projected disposable income" requirement along the lines of chapter 13, Congress recognized that a typical family-run small business cannot survive without the original entrepreneurs.

9. Subchapter V also winnows the roster of estate-funding participants. In an ordinary chapter 11 case, an official committee of unsecured creditors is appointed unless the local U.S. trustee cannot find unsecured creditors willing to serve; in a subchapter V case, an unsecured creditors' committee is appointed only "for cause." *Compare* 11 U.S.C. § 1102(a)(1) *with* § 1102(a)(3); *see also* H.R. Rep. No. 595, 95th Cong., 1st sess. 401 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6357 (predicting that, in a standard chapter 11 case, official committees "will be the primary negotiating bodies for the formulation of the plan"). In place of the committee, a subchapter V trustee is appointed. *See* § 1183(a). Aside from appearing at certain hearings and making distributions in the manner similar to a chapter 13 trustee, the subchapter V trustee's main duty is to "facilitate the development of a consensual plan of reorganization." § 1183(b). The subchapter V trustee is not dedicated to advancing the interests of unsecured creditors in the manner of an official committee in a traditional case. Furthermore, unlike a trustee or examiner³ in a traditional chapter 11 case, the subchapter V trustee does not, by default, have the authority to perform an inves-

³ The court may not appoint an examiner in a subchapter V case. *See* 11 U.S.C. § 1181(a) (providing that § 1104 does not apply).

tigation of the debtor. *See* 11 U.S.C. § 1183(b)(2) (permitting court to expand the subchapter V trustee’s role to include duties of a chapter 11 trustee under § 1106(a)(3)–(4)).

10. Given how recently subchapter V was enacted, little case law yet exists concerning the appointment “for cause” of a creditors’ committee under subchapter V. In one early case, the debtor re-designated its case as a subchapter V case after a committee had been appointed. *See In re Bonert*, 619 B.R. 248 (Bankr. C.D. Cal. 2020). The court granted the committee leave to demonstrate why it should continue to serve, on the grounds that “its continued existence will improve recoveries to creditors, will assist in the prompt resolution of this case, and is necessary to provide effective oversight of the debtors.” *Bonert*, 619 B.R. at 254. In another early case, a bankruptcy judge ordered the appointment of an official committee *sua sponte* so that a certain class of interested parties⁴ could “have a voice” in their treatment “without individual members having to incur the costs of doing so.” Tr. of Aug. 9, 2021 Hr’g, *In re Sharity Ministries, Inc.*, Case No. 21-11001 (JTD) (Bankr. D. Del.) (excerpt attached as Ex. B).

11. Within this Circuit, Judge Colton commented in the context of a motion to allow a class claim that “the appointment of a committee in a Subchapter V case is within the discretion of the court. The Court can envision possible scenarios where a creditors’ committee . . . may be an efficient and appropriate vehicle in a Subchapter V case, particularly while the debt limits are set at a higher level.” *In re Wildwood Villages, LLC*, Case No. 3:20-bk-02569-RCT, 2021 WL 1784408, at *4, 2021 Bankr. LEXIS 1188, at *8 (Bankr. M.D. Fla. May 4, 2021). The “higher level” that Judge Colton mentioned was the temporary eligibility cap of \$7,500,000 that applied to cases filed during and shortly after the COVID-19 pandemic.⁵ Although the higher eligibility level is no longer in effect, Judge Colton’s comment is still meaningful in a case where the debtors’ non-qualifying debt vastly exceeds the former eligibility cap.

⁴ The relevant parties in *In re Sharity Ministries* were the so-called “members” of an entity that had offered them a service akin to unlicensed health insurance.

⁵ *Cf.* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (Mar. 27, 2020), § 1113(a)(1), (3) (enactment and initial sunset of increased cap); Bankruptcy Threshold Adjustment and Technical Corrections Act, Pub. L. 117-151 (June 21, 2022), § 2(d), (h)(2), (i) (extension of sunset to June 2024).

12. Another instructive case, *In re Haskell-Dawes, Inc.*, 188 B.R. 515 (Bankr. E.D. Pa. 1995), arose under an earlier version of the statute, under which a court could find cause in a small business case to order the U.S. trustee *not* to appoint a creditors' committee—the reverse of the present statute. *See* Bankruptcy Reform Act of 1994, 11 U.S.C. §§ 101–1330 (2018). In *In re Haskell-Dawes*, the debtors chiefly argued that a creditors' committee should not be appointed because it would incur costs to the estate. The court easily dispensed with this argument, calling it a “truism that the appointment of a creditors' committee may result in additional costs.” *In re Haskell-Dawes*, 188 B.R. at 520. The court also anticipated that a creditors' committee might serve a useful role in the case at hand, to test the terms on which the business owner intended to retain his equity under a cram-down plan. *See id.* at 521.

13. More frequently, courts have considered whether to appoint an additional committee (aside from the general committee of unsecured creditors) in a traditional chapter 11 case, under § 1102(a)(2) of the Bankruptcy Code. Courts have applied § 1102(a)(2) flexibly, examining a wide range of considerations such as benefit to the estate's overall administration, incremental costs and complexity, alternative or existing avenues to adequately representation of the proposed constituency, and uniqueness of the proposed constituency's interests. *See, e.g., In re Winn-Dixie Stores, Inc.*, 326 B.R. 853, 858 (Bankr. M.D. Fla. 2005); *In re Enron Corp.*, 279 B.R. 671, 684–694 (Bankr. S.D.N.Y. 2002); *In re Sharon Steel Corp.*, 100 B.R. 767, 776–785 (Bankr. W.D. Pa. 1989). Courts have concluded that an additional committee is unnecessary in the mine run of cases where a creditors' committee has already been appointed and where the U.S. trustee has declined to appoint a separate committee. However, the U.S. trustee frequently appoints separate committees whether different categories of unsecured creditors have different interests, and even bankruptcy judges have been willing to do so in the rare case where a proposed constituency is not represented on the official committee. *See In re Dow Corning Corp.*, 194 B.R. 121, 141–146 (Bankr. E.D. Mich. 1996) (ordering U.S. trustee to appoint tort creditors' committee with attention to interests of health benefit plans and foreign tort claimants); *In re Beker Indus. Corp.*, 55 B.R. 945 (Bankr. S.D.N.Y. 1985) (ordering appointment of committee of debenture holders, where debenture holders were not represented on committee of unsecured creditors).

14. Strong cause exists to constitute an official committee of unsecured creditors in these Chapter 11 Cases.

15. Looming over all other considerations, Cinemex is an edge-case subchapter V debtor, if indeed it qualifies at all.⁶ *See* Decl. of Rafael Muñoz Pedregal, ECF No. 13, ¶ 9. Cinemex owns 28 multiplex theaters, from Florida to Minnesota. Cinemex is owned by an even larger conglomerate that has previously marketed itself as the sixth largest cinema chain in the world. *See* “About CMX Cinemas,” (website of CMX Cinemas, archived as of Nov. 27, 2020), *available at* <https://web.archive.org/web/20201127233915/https://www.cmxcinemas.com/about-cmx-cinemas>. Cinemex is managed by professional executives with “extensive experience in both finance and operations” and “deep experience and expertise in the movie theater industry,” *See* Decl. of Rafael Muñoz Pedregal, ECF No. 13, ¶¶ 1, 27–30, rather than by “mom and pop” owners whose company-specific know-how is essential to an equity-led small business reorganization. Even amid an industry slump, Cinemex receives and spends over \$120 million per year, and has acknowledged that its total liabilities are more than \$65 million. *Id.* at ¶ 32–34. And, depending on how many leases it attempts to reject, Cinemex may owe much, much more.

16. Just as importantly, unsecured creditors have no unified voice or representation in the absence of an official committee. No single creditor has a large enough claim that it will volunteer to fund a serious investigation of, or serious negotiations with, the equity holders on its own for the benefit of all unsecured creditors. The few trade creditors appear to have claims in the hundreds of thousands of dollars, and the landlords do not yet know whether the Debtors intend to assume or reject their leases. Therefore, as with the club members in *Sharity Ministries* and the debenture holders in *Beker Industries*, unsecured creditors will lack a voice in the process if a committee is not formed. Although the subchapter V trustee undoubtedly plays an important role in an ordinary subchapter V case, the trustee has no particular duties to unsecured creditors and does not offer adequate representation of unsecured creditors’ particular interests.

⁶ In the most famous example of a “big” enterprise that tested the outer bounds of subchapter V (the case of Free Speech Systems, which produced Alex Jones’s website and talk show), tort claimants filed a motion to appoint an official committee. *See* Sandy Hook Families’ Mot., *In re Free Speech Sys.*, Case No. 22-60043 (Bankr. S.D. Tex. Aug. 25, 2022), ECF No. 102. That motion fell by the wayside after Jones filed an individual chapter 11 case in which an official committee was appointed, and the business’s subchapter V case was eventually dismissed.

17. As in *Haskell-Dawes*, a committee would have important work in these Chapter 11 Cases. First, there is the question of Cinemex’s eligibility for subchapter V. The Debtors have acknowledged that over \$1.8 million of their debt counts against the eligibility cap of \$3,024,725. But they have also reported over \$1.3 million of debt as “contingent” and “unliquidated,” without any explanation of how an obligation such as \$782,182.41 owed to the Florida Department of Revenue is “contingent.” *Cf.* Schedule E/F, *In re CB Theater Experience LLC*, Case No. 25-17563 (Bankr. S.D. Fla. July 14, 2025), ECF No. 17. And the Debtors’ scheduled debts do not appear to include any accrued employee compensation, even though nothing in the Bankruptcy Code exempts these obligations from the small business cap. Unsecured creditors would benefit immensely if an official committee’s investigation returns these Debtors to the normal rules of big-business chapter 11.

18. Second, the ostensible \$50,000,000 secured claim of the Debtors’ parent (Wine and Roses S.A. de C.V.) cries out for investigation. The Debtors’ first-day declaration says virtually nothing about the circumstances around this claim. What little it does say (“Cinemex made up [a] shortfall by borrowing money from parent Wine & Roses.”) suggests that this supposed insider debt should be recharacterized as equity.⁷ *See, e.g., In re N & D Props., Inc.*, 799 F.2d 726, 733 (11th Cir. 1986) (“Shareholder loans may be deemed capital contributions . . . where the trustee proves initial under-capitalization or . . . the loans were made when no other disinterested lender would have extended credit.”); *In re First NCL Fin. Servs.*, 415 B.R. 874, 880 (Bankr. S.D. Fla. 2009) (recognizing that loans may be recharacterized in other circumstances).

19. Third, even if the Debtors qualify for subchapter V and even if the parent debt is legitimate, a creditors’ committee would play an important role in developing a plan of reorganization that benefits unsecured creditors. Subchapter V allows an equity holder to maintain its equity, even over the contrary votes of unsecured creditors, only if the debtor devotes three to five years of “projected disposable income” to creditor dividends. *See* 11 U.S.C. § 1191(c)(2). If the

⁷ The Statement of Financial Affairs for Debtor CB Theater Experience LLC further states that “Operadora de Cinemas S.A. de C.V. pays the salary of Rafael Muñoz, and CB Theaters increases the amount owing to Wine & Roses, S.A. de C.V. by a corresponding amount.” Case 25-17563, ECF No. 17, at 137 (Bankr. S.D. Fla. July 14, 2025). This arrangement hardly suggests that the Debtors’ parent has been extending capital on arm’s-length terms.

Debtors file such a cram-down plan, no fiduciary other than a creditors' committee will have the duty or incentive to challenge the equity holders' self-serving estimates of projected disposable income. The creditors' committee will also ensure that any new-money contribution is adequately market-tested and that the plan is in the best interests of unsecured creditors.

II. IN THE ALTERNATIVE, THE COURT SHOULD EXPAND THE SUBCHAPTER V TRUSTEE'S POWERS.

20. For all the foregoing reasons, the Court should order the U.S. Trustee to appoint an official committee of unsecured creditors. However, if the Court elects not to do so, then the Court should at least expand the Subchapter V Trustee's powers, to direct him to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan" and to file a report of such an investigation. 11 U.S.C. § 1106(3)–(4); *see also* § 1183(b)(2) (authority to expand subchapter V trustee's role). Although a fiduciary for unsecured creditors is best suited to conduct such an investigation and act upon the results, an investigation by the subchapter V trustee would be better than none at all.

WHEREFORE, MN Theaters respectfully requests that the Court (a) enter the Proposed Order granting this Motion and (b) grant such other relief as is just and proper.

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Dated: July 22, 2025
Miami, Fla.

Respectfully submitted,

/s/ Paul Steven Singerman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 22nd day of July, 2025, by electronic transmission through the Court's CM/ECF system upon all parties registered to receive electronic notice in these cases as reflected on the attached CM/ECF Service List.

By: /s/ Paul Steven Singerman
Paul Steven Singerman

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EXHIBIT A
(PROPOSED ORDER)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re

CINEMEX HOLDINGS USA, INC.,
CMX CINEMAS, LLC, AND
CB THEATER EXPERIENCE LLC,⁸
Debtors.

Case No. 25-17559-LMI
Chapter 11 (Subchapter V)

ORDER DIRECTING THE APPOINTMENT OF AN
OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Upon the motion (the “*Motion*”), of MN Theaters 2006 LLC for entry of an order (this “*Order*”) directing the appointment of an official committee of unsecured creditors in the above-captioned chapter 11 cases; and the Court having jurisdiction to decide the Motion and to enter this Order pursuant to 28 U.S.C. § 1334; and these chapter 11 cases having been referred to this Court pursuant to 28 U.S.C. § 157(a) by the Order of Reference entered by the U.S. District Court

⁸ The Debtors in these cases and the last four digits of each Debtors’ federal identification number are as follows: (1) Cinemex Holdings USA, Inc. (5502); (2) CMX Cinemas, LLC (1938); and (3) CB Theater Experience LLC f/k/a Cobb Theater Experience LLC f/k/a Cinemex NC, LLC (0563). The address for the Debtors is 4300 Biscayne Blvd, Suite 203, Miami, FL 33137.

for the Southern District of Florida on March 27, 2012; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and after notice and a hearing, as defined in section 102 of the Bankruptcy Code; and the Court having determined that the legal and factual bases set forth in the Motion and in the record establish just cause for entry of this Order on an expedited basis; and it appearing that entry of this Order is in the best interests of the Debtors' estates; it is

ORDERED that:

1. The U.S. Trustee is respectfully directed to appoint an official committee of unsecured creditors, forthwith.

2. The Court will retain jurisdiction over all matters arising from or related to the implementation, interpretation or enforcement of this Order.

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Submitted by:

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(Paul Steven Singerman, Esq., is directed to serve this Order upon all non-registered users or registered users who have yet to appear electronically in this case and file a conforming certificate of service.)

EXHIBIT B
(EXCERPT OF *SHARITY MINISTRIES* TRANSCRIPT)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 21-11001 (JTD)
SHARITY MINISTRIES, INC.,
Courtroom No. 5
824 Market Street
Wilmington, Delaware 19801
Debtor. August 9, 2021
10:00 A.M.

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

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MATTER GOING FORWARD:

11. United States Trustee's Motion to Remove the Debtor-In-Possession Pursuant to 11 U.S.C. Section 1185, or Alternatively, Motion to Authorize the Subchapter V Trustee to Investigate the Debtor's Financial Affairs Pursuant to 11 U.S.C. Section 1185 [D.I. 68; Filed on 7/22/21]

CLOSING ARGUMENTS:

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By Ms. Ryan	24
By Ms. Cordry	26
By Mr. Rose	31

Ruling: 60

1 have Mrs. Miller in place, looking at any causes of action,
2 looking at the members payments that came in and the share
3 requests that need to be paid, I believe that is in the best
4 interests of the members as this bankruptcy is winding down.

5 And I am finished for now, Your Honor, unless you
6 have any questions.

7 THE COURT: No questions. Thank you, Ms. Ryan.

8 All right, I'm going to take a short recess until
9 noon and then I will come back and let you know what we're
10 going to do. So we'll stand in recess until 12 o'clock.

11 (Recess taken at 11:43 a.m.)

12 (Proceedings resumed at 12:05 p.m.)

13 THE COURT: Can everyone hear me okay? All right.

14 COUNSEL: Yes, Your Honor.

15 THE COURT: We are back on the record.

16 Clearly, this case is highly unusual, to say the
17 least, and, as Mr. Luria stated during his testimony, it's a
18 mess. The paramount issue for this case is clearly how the
19 members are going to be treated and I think it is important
20 that those members have a voice in how they are going to be
21 treated without individual members having to incur the costs
22 of doing so.

23 So, number one, I am going to direct the
24 appointment of a member committee. Ms. Sierra, how long do
25 you think it would take to get that accomplished?

1 MS. SIERRA: Your Honor, Rosa Sierra on behalf of
2 the U.S. Trustee. I believe I have contact information from
3 various members that were present at the 341 meeting.
4 Without overpromising, I think a week just to contact them
5 and then to confer with my client.

6 THE COURT: All right. Well, we'll -- at the end
7 of this I'm going to say we're going to set a hearing for --
8 a further hearing on this. I want to keep this on a tight
9 schedule, so I will have another hearing in very short order
10 here.

11 At this point in the case, I don't have concerns
12 that Mr. Luria, the CRO, is an independent professional
13 working to ensure that this case moves forward in an
14 expedited fashion. I have some concerns that perhaps he was
15 not provided information by the debtors that he should have
16 received or that the debtors did not move quickly to try to
17 get that information from Alieria, as has been set forth in
18 the evidence during this hearing. Mr. Luria has taken steps
19 to collect the debtor's data and to provide it in a usable
20 format, and I think it's important that we not lose that
21 knowledge or the time that he has spent in preparing to get
22 that data in a usable format.

23 Clearly, there's significant issues involving how
24 the company was managed prepetition and there's open
25 questions about how the case has progressed to date, but

1 while reasonable people might disagree with the way the case
2 has moved so far, I'm not yet prepared to remove the debtors
3 as debtor-in-possession. I am going to -- I'm not going to
4 deny the motion at this point either, I'm going to hold that
5 motion in abeyance for now until we see how things move over
6 the next few weeks.

7 I am going to increase the powers of the
8 Subchapter V trustee to investigate the financial affairs of
9 the debtor. That will include working closely with Mr. Luria
10 to see how the data migration is progressing. And I would
11 expect Mr. Luria to keep the Sub V trustee fully informed on
12 that process, how it's working and how eventually that data
13 will be used by a liquidating trustee in the future. She
14 will also have the power to investigate whether the debtors
15 are eligible for Subchapter V status and whether or not
16 current employees of the debtors, because I have a number of
17 employees but, frankly, I have no testimony about what they
18 do or why they're needed. So I would ask Ms. Miller to
19 investigate as a part of the investigation of the financial
20 affairs of the company whether those employees are necessary
21 or not to the operations of the debtors at this point given
22 where this case is heading and whether we can save some money
23 by eliminating those positions if they're no longer needed.

24 She also -- I would also ask Ms. Miller to give me
25 some guidance once you've had the opportunity to conduct an

1 investigation and work with Mr. Luria to determine how long
2 Mr. Luria's services would be needed by the debtors, because
3 it is expensive at \$50,000 a week with limited resources
4 available to the debtors. So I would expect that as soon as
5 Mr. Luria's work is done and could be picked up by a
6 liquidating trustee that his services would be concluded.

7 I'm going to reserve a ruling on appointing the
8 Subchapter V trustee as the liquidating trustee because I've
9 appointed a member committee and that member committee should
10 have some say in that. So I'm going to wait on that issue
11 until the member committee can have an opportunity to weigh
12 in.

13 At this point, I haven't seen the retention, as
14 it's been revised, Mr. Rose, for Mr. Luria giving him the
15 full powers to direct the debtors, so I would like to see an
16 order that gives Mr. Luria that power and that he cannot be
17 removed without permission of the Court --

18 MR. ROSE: Yes, Your Honor.

19 THE COURT: -- and I want to put that into a form
20 of order.

21 MR. ROSE: Yes, Your Honor.

22 THE COURT: So, with that, we need to schedule
23 another hearing. And, as I said, I want to do this --
24 probably do this before the end of the month, given Ms.
25 Sierra's belief that she might be able to get a committee

1 appointed within a week. Let's set a hearing for Monday,
2 August 30th, at 10:00 a.m. That gives us three -- yes, three
3 weeks from now. That will give Ms. Miller time to at least
4 get some of her investigation underway and I would expect a
5 full report on where that investigation is, whether or not
6 the employees are needed, and all the other issues that I
7 laid out. And I would ask the parties to confer and come up
8 with a form of order.

9 MR. ROSE: Thank you, Your Honor.

10 MR. MCGUIRE: Your Honor, Matthew McGuire of
11 Landis Rath & Cobb on behalf of the debtors. With respect to
12 the order expanding Mr. Luria's powers or ensuring that he
13 can't be removed without permission of the Court, I guess I
14 would just suggest that we could add provisions to the SOLIC
15 retention order, which I don't believe are now contested and
16 that we can work that language into that retention order and
17 submit that under a certification of counsel after conferring
18 with Ms. Sierra and the Subchapter V trustee.

19 THE COURT: Yes, that's fine. Thank you.

20 All right, anything else for today?

21 MR. MCGUIRE: Your Honor, it's Matthew McGuire
22 again. Your Honor, we did have a number of other items on
23 the agenda, believe it or not. A vast majority of those
24 orders were submitted under a certification of counsel. I'm
25 not sure if Your Honor wants to walk through those or has had

CERTIFICATE

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajackowski August 9, 2021
Mary Zajackowski, CET**D-531

/s/William J. Garling August 9, 2021
William J. Garling, CE/T 543

/s/ Tracey J. Williams August 9, 2021
Tracey J. Williams, CET-914