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

	§	
In re:	§	Chapter 11
	§	
CHESAPEAKE ENERGY CORPORATION, *et al.*,[1]	§	Case No. 20-33233 (DRJ)
	§	
Debtors.	§	(Jointly Administered)
	§	**Re: Docket Nos. 22, 128, 340, 344,**
	§	**345, 517, 519, 551, 552**

DEBTORS'
OMNIBUS REPLY IN SUPPORT OF THE DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE EXISTING SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") file this omnibus reply (the "Reply") to the objection of the official committee of unsecured creditors (the "Committee"), the preliminary objection and reservation of rights of the official committee of royalty owners (the "RO Committee"), and the limited objection of Energy Transfer[2] (collectively, the "Objections") to the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Claims with Superpriority Administrative*

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://dm.epiq11.com/chesapeake. The location of Debtor Chesapeake Energy Corporation's principal place of business and the Debtors' service address in these chapter 11 cases is 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

[2] "Energy Transfer" means, collectively, ETC Texas Pipeline, Ltd., Energy Transfer Fuel, LP, ETC Katy Pipeline, LLC, Houston Pipe Line Company LP, Oasis Pipeline, LP, Sunoco Pipeline L.P. and Trade Star, LLC.

Expense Status, (IV) Granting Adequate Protection to the Existing Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [Docket No. 22] (the "DIP Motion").[3] In further support of the DIP Motion and this Reply, the Debtors respectfully state as follows.

Preliminary Statement

1. Neither the Committee, the RO Committee, nor Energy Transfer disputes that the Debtors have an existential need for postpetition financing. Nor could they. With historic volatility and decline in oil and natural gas prices, the Debtors' access to liquidity is essential to their ability to successfully reorganize. The objecting parties do not—and cannot—dispute this critical point.

2. Further, no objecting party disputes that the DIP Facility resulted from a robust and competitive marketing process undertaken by the Debtors, with the assistance of their advisors, over the course of more than two months. In fact, the Committee expressly acknowledges how hard the Debtors fought to secure the best DIP financing possible. As set forth in the DIP Motion and the Antinelli Declaration, the Debtors contacted nine financial institutions to gauge their interest in providing debtor-in-possession financing to the Debtors, including five institutions that were already lenders under the Debtors' existing revolving credit agreement. In addition to this outreach, the Debtors continued to explore and pursue every type of DIP financing imaginable: (a) junior DIP financing, (b) take-out DIP financing, (c) nonconsensual priming DIP financing, and (d) alternative DIP financing proposals designed to win the support of the majority of the Existing RBL Lenders. The Debtors conceived and pursued a "middle ground" financing package and continued to press for, and obtain, improved terms from MUFG. Ultimately, following

[3] Capitalized terms used but not otherwise defined herein are defined in the DIP Motion.

multiple rounds of conferences, diligence, proposals, and syndication attempts, only one actionable DIP proposal emerged, the terms and economics of which were materially improved as a result of the competitive marketing process. Against the background that the Debtors undeniably needed post-petition financing and their robust marketing process led to an improved, final actionable proposal, the Debtors made the informed business decision that the DIP Facility, including its size, fees, milestones, roll-up, and other terms and conditions, presented the best available alternative under the circumstances.

3. At the same time, the Debtors acknowledge that certain terms of the DIP Facility reflect the customary "give and take" of commercial negotiations and the reality of the current economy and the oil and gas industry. But the specific provisions objected to by the Committee in particular are both customary and appropriate for financings of this type, and well within the ambit of comparable financings, particularly in the current uncertain market and sector environment. Specifically, the allowance of the roll-up of certain prepetition loans, inclusion of case milestones, inclusion of customary 506(c), 552(b), and marshaling waivers, and provision of adequate protection liens and claims on unencumbered assets are routinely provided in financings of this size.

4. While the Committee implies that there are (or should be) actionable claims against the DIP Lenders in light of their unwillingness to cut a better deal for the Debtors, the commercial and legal reality is that chapter 11 debtors cannot compel third parties to lend. The DIP Lenders have no duty to lend under these terms or any others, and they are not fiduciaries of the Debtors. Notably, the Committee (who is represented by sophisticated legal and financial advisors) has not identified a superior ***available*** alternative. The only alternative financing the Committee identifies is really only a hypothetical alternative financing. It was an alternative that was not actually

available to the Debtors due to the inability to satisfy the conditions precedent: namely, the support of a majority of the Existing RBL Lenders. As the only fiduciary tasked with maximizing value for all stakeholders, the Debtors cannot allow the Committee's attempt to elevate the interests of a subset of stakeholders to jeopardize their reorganization by risking what all parties agree is essential liquidity to fund these chapter 11 cases.

5. In the end, it remains undisputed that the Debtors require liquidity and that the DIP Facility is the product of an exhaustive marketing process and entered into only after vigorous, arm's length negotiations. Without question, the Debtors were obliged to make certain concessions along the way in light of the limited universe of potential lenders, size of their liquidity need, and limited leverage as a company on the precipice of chapter 11. These are the realities of commercial lending, and these concessions were not made lightly or without vigorous attempts to seek a superior alternative. The Debtors determined that these concessions were outweighed by the overall benefits provided by the DIP Facility. The Debtors submit that they exercised sound business judgment and that the DIP Facility provides significant benefits to their stakeholders. Accordingly, the Objections should be overruled and the DIP Motion should be granted on a final basis.

Reply

6. This Reply is organized into five parts. Part I provides additional support for the Debtors' exercise of their reasonable business judgment. Part II provides rebuttals to the specific objections raised by the Committee. Part III provides rebuttals to the specific objections raised by the RO Committee. Part IV provides specific rebuttals to the limited objection raised by Energy Transfer. Part V addresses the remaining objections filed to the DIP Motion.

I. The DIP Facility Provides Substantial Benefits, Reflects a Sound Exercise of the Debtors' Business Judgment, and Should Be Approved.

7. The record is uncontroverted that the Debtors (i) have a clear need for liquidity, (ii) broadly marketed their financing prepetition, and (iii) determined that the DIP Facility was the best and only available financing. "[C]ourts will almost always defer to the business judgement of a debtor in the selection of the lender." *See*, *e.g.*, *In re YL W. 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) ("Courts have generally deferred to a debtor's business judgment in granting section 364 financing."). Courts in the Fifth Circuit recognize that DIP financing is often necessary to avoid immediate and irreparable harm to a debtor's estate and have granted such DIP financing when the terms "are fair, just, and reasonable under the circumstances, are ordinary and appropriate . . . reflect the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration." *In re Tridimension Energy, L.P.*, No. 10-33565-SGJ, 2010 WL 5267029, at *5 (Bankr. N.D. Tex. Oct. 18, 2010).

8. The Debtors' determination to move forward with the DIP Facility is a sound exercise of their business judgment consistent with their fiduciary duties following a thorough process and careful evaluation of alternatives given the timing of the Debtors' liquidity crisis. *See* DIP Motion ¶ 78. Specifically, the Debtors and their advisors determined that the Debtors would require significant postpetition financing to support the administration of these chapter 11 cases and their ongoing operations. *See id.*; Antinelli Decl. ¶ 32. The Debtors conducted a robust marketing process that resulted in multiple competitive DIP proposals and negotiated the proposals in good faith, at arm's length, and with the assistance of their advisors. The Committee's expert agrees. *See* Albergotti Dep. 29:13, July 29, 2020, attached hereto as **Exhibit D**, ("I think a fulsome

process was run"). As a result of this acknowledged fulsome process, the Debtors believe that they have obtained the best financing available. *See* Antinelli Decl. ¶ 34.

9. Absent the funds available from the DIP Facility and access to Cash Collateral, the Debtors would face immediate and irreparable harm, value-destructive interruption to their business, and lose support from important stakeholders on whom the Debtors' business depends. *See* DIP Motion ¶ 58. This, in turn, would hinder the Debtors' ability to maximize the value of their estates and would force the Debtors to curtail their operations significantly to the detriment of the Debtors, their estates, and their creditors. *See id.* Accordingly, the Debtors submit that the terms of the DIP Facility are fair and reasonable, consistent with similar DIP financings approved in this district, represent the best (and only) available financing alternative, and that entry into the DIP Facility is a reasonable exercise of the Debtors' business judgment.

II. The Committee's Objection Should Be Overruled.

A. The Size of DIP Facility Is Appropriate in Light of the Debtors' Liquidity Needs and Current Market Volatility.

10. The Committee raises multiple objections to the DIP Motion that center on the same issue—the size of the DIP Facility. *See* UCC. Obj. ¶¶ 6, 44–46, 56–57. In particular, the Committee repeatedly points to the fact that the Approved Budget only projects a draw of $650 million during these chapter 11 cases to imply that the $925 million DIP Facility is either not available (it is) or was demanded by the Existing RBL Lenders in attempt to extract more fees (it wasn't). *See id.* This argument is flawed and untethered to reality.

11. The Approved Budget is a projection of cash needs over a set period, not an absolute or infallible determination of the Debtors' aggregate DIP draw throughout these chapter 11 cases. The Debtors' business is very sensitive to fluctuations in the price of natural gas and oil, a fact that the Committee's expert acknowledges. *See* Albergotti Dep. 41:9–16 ("Q: Have you considered

what would happen if commodity prices dropped by 10%? A: Yes. Q: And what did you determine? A: It would have a significant downward impact on the company's liquidity or the forecast and liquidity here which would require additional borrowings."). Specifically, a 10 percent decrease in the price of natural gas and oil would increase the Debtors' projected cash needs by approximately $150 million. A further 10 percent decrease in the price of natural gas and oil would require an additional approximately $160 million over that same time period. *See* **Exhibit A**.

12. Natural gas and oil pricing has experienced historical volatility and distress throughout the first half of 2020. On March 9, 2020, the WTI index declined ***24.59 percent in a single day***. *See* First Day Dec. ¶ 88. Major oil indexes then continued to hover around $20.00 per barrel, until prices plummeted to a level never before seen on April 20, 2020, when WTI crude oil for May delivery settled at negative $37.63 per barrel, a record low and drop of roughly ***306 percent in a single day***. *Id.* As of the Petition Date, prices had rebounded to $38.49 per barrel (WTI) and $1.47 per mmbtu (Henry Hub). *Id.* at ¶ 89. Similarly, natural gas volatility (as measured by implied volatility from gas futures contracts) hit a multi-year high of 84 percent in late April. When viewed in this light, it is clear that the Debtors' determination to negotiate and secure $925 million of postpetition financing was a prudent exercise of their business judgement. *See* Antinelli Dep. 31:15–32:6, July 28, 2020, attached hereto as **Exhibit E**, ("if I have a billion dollar or billion dollars plus stake in a company in this industry, which is very volatile in what I would consider a relatively unprecedented time of volatility generally in the economy both locally and globally, we wanted to make sure that we had headroom in the DIP . . . If I have an issue and I need incremental funds, it's very difficult to solicit incremental funds from DIP lenders once you have a problem"). In fact, a failure to secure sufficient financing to protect against unprecedented

volatility in the commodities markets arguably would have been a failure to exercise business judgment.

13. Further, the Debtors initially requested materially more than $925 million in new money financing and the initial MUFG proposal provided even less than $925 million, undermining any argument that the DIP sizing was driven by ulterior motives. To the contrary, the Debtors' ability to improve the terms of the MUFG proposal from $700 million to $925 million was a material concession extracted during the Debtors' robust marketing process and a direct result of the Debtors' competitive DIP marketing process. The Committee speaks out of both sides of its mouth when it argues, on the one hand, that the DIP Facility provides "a $275 million liquidity cushion that comes at enormous cost to the estates appears to be facially unreasonable," while its expert claims, on the other hand, that the non-MUFG proposal was superior in part because it provided even more liquidity than the DIP Facility. *See* UCC Obj. ¶ 6; Albergotti Report ¶ 30. The Committee cannot both object to the size of the DIP Facility as too large, and simultaneously put forth an expert opinion that suggests the Debtors should have negotiated for an even larger DIP.

14. The Committee also contends that the Debtors are limited to borrowing only $597 million of the DIP Facility. *See* UCC. Obj. ¶¶ 6, 45, 56–57. But the Committee's expert acknowledges that is not true. *See* Albergotti Dep. 42:6–11 ("Q: Going back to paragraph 7 on page 3, you would agree it's possible that the Debtors could borrow more than 597 million at one point during the bankruptcy and pay down that balance at the time of exit? A: Yes, I agree with that.").

15. Finally, the Committee's assertion that the size of the DIP Facility implies that the global consensus outlined in the Restructuring Support Agreement may no longer be feasible is

contrary to the Debtors' expectation that each of the parties to the Restructuring Support Agreement will continue to work with the Debtors in good faith to preserve the overall consensual restructuring transaction. However, even if the Company is not able to preserve the global deal, the Debtors still need to access additional liquidity to operate their business and the DIP Facility allows the Debtors to do so. It was imperative for the Debtors to obtain sufficient DIP financing to continue operating as a going concern. The Debtors fought hard to get every dollar they could because, as this Court recently acknowledged in *In re Rosehill Resources*, No. 20-33695 (DRJ) (Bankr. S.D. Tex. July 28, 2020), a failure to secure sufficient financing to protect against volatility in the commodities markets arguably would have been a failure to exercise business judgment given the uncertainty of the rebound in oil and gas prices.

B. The Roll-Up is Necessary and Appropriate Under the Circumstances.

16. The Committee objects to and mischaracterizes the Roll-Up under the DIP Facility. *See* UCC. Obj. ¶¶ 42–52. As set forth in the DIP Motion and as disclosed to the Court at the hearing on the DIP Motion on June 29, 2020, the DIP Facility provides for a roll-up of all loans outstanding under the Existing RBL Credit Facility in excess of $750 million, inclusive of loans beneficially owned by the DIP Lenders and non-DIP Lenders. *See* DIP Motion ¶ 72; Antinelli Decl. ¶ 27.

17. The conversion of prepetition loans into DIP loans pursuant to a "roll-up" has become a customary provision in large DIP financings and is routinely granted where, as here: (a) the debtor's business operations will not survive absent the proposed financing; (b) the debtor is unable to obtain alternative financing on acceptable terms; (c) the proposed lender will not accede to less preferential terms; and (d) the proposed financing is in the best interests of all creditors. *See In re Vanguard Diversified, Inc.*, 31 B.R. 364, 366 (Bankr. E.D.N.Y. 1983); *see also Unsecured Creditors' Comm. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*,

834 F.2d 599, 601 (6th Cir. 1987); *In re Beker Indus. Corp.*, 58 B.R. 725 (Bankr. S.D.N.Y. 1986); *In re FCX, Inc.*, 54 B.R. 833, 837 (Bankr. E.D.N.C. 1985); *In re Gen. Oil Distribs., Inc.*, 20 B.R. 873 (Bankr. E.D.N.Y. 1982).

18. The DIP Facility demonstrably satisfies each of the elements set forth above:

- the liquidity provided by the DIP Facility is essential to the Debtors' ability to continue operating their business (*see* Antinelli Decl. ¶ 11);
- the Debtors have no viable alternative financing options (*see* Antinelli Decl. ¶¶ 31–32);
- the DIP Lenders would not agree to advance funds under the DIP Facility or consent to the use of cash collateral without the roll-up (*see* Antinelli Decl. ¶¶ 27–28); and
- the DIP Facility is in the best interests of the general creditor body because the DIP Facility provides the necessary liquidity to fund operations (*see* Antinelli Decl. ¶ 32).

19. The customary nature of a roll-up is further evidenced by the fact that every DIP financing proposal the Debtors received included a roll-up as a necessary component of the DIP financing. *See* DIP Motion ¶ 73. Both the "middle ground" financing proposal and the non-MUFG financing proposal required dollar-for-dollar roll-ups that, in light of the size of those proposed financings, would have resulted in the conversion of a larger amount of the Existing RBL Credit Facility than contemplated by the DIP Facility.

20. Here, the Roll-Up was integral in securing the DIP Lenders' consent to provide the DIP Facility. *See* Antinelli Decl. ¶ 27. Absent the Roll-Up, the DIP Lenders would not have been willing to provide the DIP Facility and the Debtors would not have been able to secure 100 percent consent of the Existing RBL Lenders to the Restructuring Support Agreement—an agreement that provides for the deleveraging of the Debtors' balance sheet by over $7 billion dollars.

21. The portion of the Roll-Up provided to certain non-DIP Lenders (approximately $34 million) was heavily negotiated in connection with and necessary to secure the non-DIP

Lenders' consent to being primed by the DIP Facility and support for the Restructuring Support Agreement and ultimately represents a fraction (less than 1.6 percent) of the overall DIP Facility. Finally, the exact size of the Roll-Up was negotiated to preserve the economic deal first agreed to by the parties which, absent a roll-up of all Existing RBL Obligations in excess of $750 million, would have been disrupted as the Debtors continued to draw on the Existing RBL Credit Facility prepetition while parties finalized the Restructuring Support Agreement. *See* Dell'Osso Dep. 51:14–20, July 28, 2020, attached hereto as **Exhibit F**, ("Q: Was it ever communicated to you why Union Bank was requesting a larger roll-up? A: Primarily the -- my understanding of that was that they were requesting a larger roll-up because we had borrowed more under the [Existing RBL Facility] as the filing date was pushed back from previous assumptions.").

22. Given the importance of the Roll-Up to the DIP Lenders' agreement to provide the DIP Facility and the non-DIP Lenders consent to being primed and support for the Restructuring Support Agreement, any language requested by the Committee that would potentially unwind the Roll-Up would similarly diminish the DIP Lenders' willingness to provide the DIP Facility, which would be to the detriment of all parties in interest.

23. Finally, while debtors frequently negotiate for low conversion rates in roll-up provisions, there is no Bankruptcy Code provision or judicial standard—including a standard that states that roll-ups with a conversion rate in excess of 1:1 may only be approved if the official creditors' committee consents—that requires that the conversion of prepetition loans to debtor-in-possession loans remain at or below a particular ratio. *See* UCC Obj. ¶ 51. DIP facilities with a ratio of roll-up loans to new money loans exceeding 1:1 have repeatedly been approved by courts in this district. *See e.g.*, *In re Unit Corporation*, No. 20-32740 (DRJ) (Bankr. S.D. Tex. June 19, 2020) (approving a roll-up of approximately $96 million of prepetition debt with a new money

commitment of $36 million); *In re American Commercial Lines Inc.*, No. 20-30982 (MI) (Bankr. S.D. Tex. March 5, 2020) (approving a roll-up of approximately $640 million of prepetition debt with a new money commitment of $50 million); *In re Legacy Reserves Inc.*, No. 19-33396 (MI) (Bankr. S.D. Tex. June 20, 2019) (approving a roll-up of approximately $250 million of prepetition debt with a new money commitment of $100 million); *In re Westmoreland Coal Company*, No. 18-35672 (MI) (Bankr. S.D. Tex. November 15, 2018) (approving a roll-up of approximately $90 million of prepetition debt with a new money commitment of $20 million); *In re Gastar Exploration Inc.*, No. 18-36057 (MI) (Bankr. S.D. Tex. November 26, 2018) (approving a roll-up of approximately $283.9 million of prepetition debt with a new money commitment of $100 million); *In re EXCO Resources, Inc.*, No. 18-30155 (MI) (Bankr. S.D. Tex. February 22, 2018) (approving a roll-up of approximately $150 million of prepetition debt with a new money commitment of $100 million); *In re Shoreline Energy LLC*, No. 16-35571 (DRJ) (Bankr. S.D. Tex. December 16, 2016) (approving a roll-up of approximately $32 million of prepetition debt with a new money commitment of $16 million); *In re HII Technologies, Inc.*, No. 15-60070 (DRJ) (Bankr. S.D. Tex. October 14, 2015) (approving a roll-up of approximately $11.5 million of prepetition debt with a new money commitment of $.5 million); *In re ATP Oil & Gas Corporation*, No. 12-36187 (DRJ) (Bankr. S.D. Tex. September 21, 2012) (approving a roll-up of approximately $367.6 million of prepetition debt with a new money commitment of $250 million).[4] Notably, the roll-up ratio in each of the cases cited in the preceding sentence was based on the amount of new money committed, not the amount projected to be drawn in the initial approved budget. *See* UCC Obj. ¶¶ 44–45.

[4] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Reply. Copies of these orders are available upon request to the Debtors' proposed counsel.

24. The Committee's attempt to paint the Roll-Up as off market falls flat as the Committee's expert admits that there are no truly comparable cases without a roll-up. *See* Albergotti Dep. 49:10–17 ("Q: But there's no precedent for large complicated oil and gas cases to receive substantial DIP financing without having to roll-up prepetition debt; is that right? A: I think in a case as large as Chesapeake's, no, we could not find a comparable company that had -- there was an E&P company that did not have roll-up debt.").

C. The DIP Facility's Milestones Are Reasonable and Appropriate.

25. The Committee asserts that the Milestones "prematurely accelerate" and "impose unreasonably short deadlines on" the Debtors' chapter 11 cases that ignore "the complexity of reorganizing a Fortune 500 company of this scale and geographic breadth." UCC Obj. ¶¶ 6, 33, 38. Specifically, the Committee takes issue with the milestones surrounding (i) the approval for the Debtors to pay certain exit financing fees to hold open exit financing commitments and enter into the backstop commitment agreement and (ii) appointment of a CRO in the event that certain Milestones are not satisfied. The Committee's objection to these Milestones is misplaced and erroneous.

26. The Milestones are entirely consistent with the Debtors' business imperative of completing a successful restructuring transaction and emerging from these chapter 11 cases as expeditiously as possible. The Debtors' decision to negotiate the Milestones and publicly ratify their intention to preserve and maximize the going-concern value of their enterprise through an efficient chapter 11 process is consistent with their fiduciary duties and in the best interests of their stakeholders and the industry. While the Committee suggests the Milestones preordain an unduly aggressive process, the Debtors would seek a similar timetable with or without memorialized milestones because business realities require it.

27. Further, neither the Bankruptcy Code nor any case law prohibits a secured creditor from conditioning a debtor's financing or use of cash collateral on the achievement of milestones relating to the progression of the cases and confirmation of a chapter 11 plan. Milestones are designed to minimize the stay in bankruptcy and are thus consistent with the Bankruptcy Code's goals. *See Bittner v. Borne Chem. Co., Inc.*, 691 F.2d 134, 137 (3d Cir. 1982) ("To realize the goals of Chapter 11, a reorganization must be accomplished quickly and efficiently."); *Nassau Smelting & Refining Works v. Brightwood Bronze Foundry Co.*, 265 U.S. 269, 272 (1924) ("The bankrupt is impelled by vital interests, not only to make the offer promptly, but to expedite confirmation."). It is common practice for milestones to be tied to cash collateral or debtor-in-possession financing orders. *See, e.g.*, *In re Neiman Marcus Group LTD LLC*, No. 20-32519 (DRJ) (Bankr. S.D. Tex. June 16, 2020); *In re Hornbeck Offshore Services, Inc.*, No. 20-32679 (DRJ) (Bankr. S.D. Tex. June 15, 2020); *In re J. C. Penney Company, Inc.*, No. 20-20182 (DRJ) (Bankr. S.D. Tex. June 5, 2020); *In re McDermott Int'l, Inc.*, No. 20-30336 (DRJ) (Bankr. S.D. Tex. February 24, 2020).

28. The Committee offers no evidence, only speculation and conclusory statements, that the Milestones are too aggressive. The Debtors, on the contrary, believe that the Milestones are both achievable and reasonable under the circumstances and fairly reflect the Debtors' challenging operating situation. Further, the Milestones are more lenient compared to milestones in other recent prearranged or prepackaged cases. *See In re California Resources Corp.*, No. 20-33568 (DRJ) (Bankr. S.D. Tex. July 22, 2020) (approving milestones including entry of an order confirming the plan no later than 105 days after the Petition Date); *In re Neiman Marcus Group LTD LLC*, No. 20-32519 (DRJ) (Bankr. S.D. Tex. June 16, 2020) (approving milestones including entry of an order confirming the plan no later than 120 days after the Petition Date);

In re Ultra Petroleum, Corp., 20-32631 (MI) (Bankr. S.D. Tex. June 16, 2020) (approving milestones including entry of an order confirming the plan no later than 115 days after the petition date); *In re J. C. Penney Company, Inc.*, No. 20-20182 (DRJ) (Bankr. S.D. Tex. June 5, 2020) (approving milestones including entry of an order confirming the plan, or approving a sale, no later than 160 days after the petition date); *In re McDermott Int'l, Inc.*, No. 20-30336 (DRJ) (Bankr. S.D. Tex. February 24, 2020) (approving milestones including the filing of a plan and disclosure statement no later than 30 days after the petition date and entry of an order confirming the plan no later than 150 days after the petition date).

29. The Debtors intend to work constructively with the Committee and all stakeholders in these chapter 11 cases to continue building consensus for the transactions set forth in the Restructuring Support Agreement. And the Debtors recognize the need for and look forward to engaging in negotiation with the Committee between now and the plan confirmation milestone of 195 days after the Petition Date. However, in the event the Committee's concerns cannot be addressed, the Debtors intend to prosecute their plan on the timetable contemplated by the Milestones and the Committee will be unimpaired in its right to prosecute its plan objections at that time. Finally, the Milestones are completely appropriate for the DIP Lenders to insist upon when negotiating the DIP Facility in order to have assurances, especially in the current volatile oil and gas industry, that their investment is protected if these chapter 11 cases were to deteriorate.

D. The Committee's Challenge Period and Investigation Budget Is Reasonable and Adequate.

30. The Committee objects to the time period and budget allotted for its investigation. *See* UCC Obj. ¶¶ 32–41. Most notably, and despite taking aim at the size of the DIP Facility, the Committee requests an ***unlimited*** budget to conduct its investigation—an outcome that would all but ensure that the Debtors would be required to draw far in excess of the amounts set forth in the

Approved Budget. The Committee requests $1 million ***solely*** to undertake a lien review of the mortgages securing the Existing RBL Facility, the Existing FLLO Term Loan Facility, and the Existing Second Lien Notes. The Committee's request completely ignores the fact that the Debtors undertook a comprehensive mortgage mapping and lien analysis in the lead up to these cases and provided the results of this analysis (and all related materials) to the Committee's advisors within days of their appointment.

31. The Committee's attempts to justify its request for an unlimited budget and a 180-day challenge period read as though they were pulled from an objection filed in a different case. A case in which the debtor executed a prepetition LBO transaction, dividend recap, or other similar transactions, all of which were approved by insider directors. But those are not the facts of this case.

32. In this case, the investigation will apparently center on the December 2019 refinancing transactions, which included a $1.5 billion new money term loan, and an uptier transaction that ***reduced the Debtors' outstanding indebtedness by approximately $1 billion***, and the Debtors' decision—a decision that was made over a short period of time—to let the preference period lapse as to certain liens securing the Existing FLLO Term Loan Facility and the Existing Second Lien Notes—all of which was approved by a board comprised entirely of disinterested directors (other than the Debtors' chief executive officer). As such, this is not the type of case that will require dozens of depositions or extensive document and factual discovery that would require a lengthy and protracted challenge period.

33. Despite this reality, the Committee cites two inapposite cases—*In re Exide Techs., Inc.*[5] and *In re Vitreous Steel Prods. Co.*[6]—to support its assertion that "[t]here is much here to investigate and consider." *See* UCC Obj. ¶ 3. In *Exide*, the issue before the court was a motion to dismiss certain claims against alleged "insider" lenders who, among other things, were alleged to have served as lenders and investment bankers for certain transactions consummated in the lead up to the bankruptcy cases, demanded liens on significant additional collateral in connection with such transactions, dictated the timing of the filing, dictated the entities included in the filing, and used leverage to influence the board of directors into making certain key decisions. Similarly, *Vitreous* concerned a motion to lift the stay and proceed in an adversary complaint alleging multiple claims in connection with inequitable conduct of a secured lender and alleged insider of the debtor during the 90-day preference period to shield value from the estate.

34. Here, the Debtors engaged in good-faith arm's-length negotiations with the DIP Lenders, the Consenting Revolving Credit Facility Lenders, the Consenting FLLO Term Loan Facility Lenders and Consenting Second Lien Noteholders (each as defined in the Restructuring Support Agreement), which resulted in securing meaningful value for unsecured creditors, as evidenced by the recoveries contemplated by the Restructuring Support Agreement.

35. The proposed Final Order provides the Committee with 75 days from selection of its counsel to challenge prepetition liens. This timetable is consistent with the requirements of section I, paragraph 25 of the Complex Case Procedures, as well as other postpetition financings approved by courts in this jurisdiction. *See, e.g.*, *In re Ultra Petroleum Corp.*, No. 20-32631 (MI) (Bankr. S.D. Tex. June 16, 2020) (granting the committee a 45-day challenge period); *In re Neiman*

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[5] 299 B.R. 732 (Bankr. D. Del. 2003).

[6] 911 F.2d 1223 (7th Cir. 1990).

Marcus Group LTD LLC, No. 20-32519 (DRJ) (Bankr. S.D. Tex. June 16, 2020) (granting the committee a 75-day challenge period); *In re Whiting Petroleum Corp.*, No. 20-32021 (DRJ) (Bankr. S.D. Tex. June 16, 2020) (granting the committee a 55-day challenge period); *In re Hornbeck Offshore Services, Inc.*, No. 20-32679 (DRJ) (Bankr. S.D. Tex. June 15, 2020) (granting the committee a 60-day challenge period); *In re Stage Stores, Inc.*, No. 20-32564 (DRJ) (Bankr. S.D. Tex. June 10, 2020) (granting the committee a 40-day challenge period); *In re J. C. Penney Company, Inc.*, No. 20-20182 (DRJ) (Bankr. S.D. Tex. June 5, 2020) (granting the committee a 60-day challenge period). Even the Committee's own expert has not been able to point to a case where a 180-day challenge period—or anywhere close to that amount of time—was granted. Albergotti Report ¶ 21.

36. Further, the Committee's advisors were provided access to a populated data room within days of their retention. To date, the Debtors have complied with and are actively producing information in response to information requests submitted by the Committee's advisors, and intend to respond to future information requests and/or work constructively with the Committee to resolve any informal discovery disputes. The Committee's proposal of extending the investigation period to 180 days is especially unnecessary given the size and sophistication of the Committee's advisors. The Committee's advisors are experienced in oil and gas restructuring matters similar to these chapter 11 cases and are capable of conducting a thorough review of the mortgage mapping and lien analysis in much less than 180 days. In light of the foregoing, the Debtors submit the 75-day investigation period is sufficient and should be approved.

37. In connection with the challenge period, the Final Order contemplates a $250,000 investigation budget, which is both reasonable and consistent with precedent. *See, e.g.*, *In re Ultra Petroleum Corp.*, No. 20-32631 (MI) (Bankr. S.D. Tex. June 16, 2020) (approving investigation

budget of $150,000); *In re Neiman Marcus Group LTD LLC*, No. 20-32519 (DRJ) (approving investigation budget of $250,000); *In re Whiting Petroleum Corp.*, No. 20-32021 (DRJ) (Bankr. S.D. Tex. June 16, 2020) (approving investigation budget of $250,000); *In re Hornbeck Offshore Services, Inc.*, No. 20-32679 (DRJ) (Bankr. S.D. Tex. June 15, 2020) (approving investigation budget of $50,000); *In re Stage Stores, Inc.*, No. 20-32564 (DRJ) (Bankr. S.D. Tex. June 10, 2020) (approving investigation budget of $100,000); *In re McDermott Int'l, Inc.*, No. 20-30336 (DRJ) (Bankr. S.D. Tex. February 24, 2020) (approving investigation budget of $50,000); *In re Sheridan Holding Company II, LLC*, No. 19-35198 (MI) (Bankr. S.D. Tex. Oct. 21, 2019) (approving investigation budget of $50,000).

38. As evidenced by the proposed Final Order, the DIP Lenders have agreed to increase both the length of the challenge period and the Committee's investigation budget to levels on the generous side of market. The Debtors cannot compel the DIP Lenders to provide the Committee with additional capital to investigate and potentially initiate litigation throughout the capital structure and the Debtors' ability to secure sufficient liquidity to administer these cases should not be jeopardized by the Committee's desire to do exactly that.

E. The Fees Associated with the DIP Facility Are Appropriate.

39. The Committee's complaints about the fees associated with the DIP Facility ignore the unprecedented societal and economic circumstances surrounding these chapter 11 cases and the Debtors' need for DIP financing. And, the Committee does not and cannot identify how these fees violate any provision or policy of the Bankruptcy Code, thus deference to the Debtors' business judgment is plenary. *See, e.g.*, *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. Jul. 22, 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *accord In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. Jul. 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors'

business judgment). Rather, the Committee's expert, Mr. Albergotti, compares and contrasts the fees set forth in the MUFG proposal and the non-MUFG proposal and correctly concludes that the non-MUFG proposal fees were less. But that conclusion is not, as the Committee suggests, evidence that the DIP Facility fees are off market. In fact, it is evidence of the opposite—lenders were unwilling to lend at such lower rates. *See* Dell'Osso Dep. 36:4–10 ("Q: Did the steering committee ever communicate to you specific reasons why they wouldn't match or agree to the [non-MUFG] deal? A: Generally they felt the economics of the [non-MUFG] deal were not -- they weren't supportive of them, they were not sufficient to entice the banks to provide the DIP."). And comparing the MUFG proposal to the non-MUFG proposal is inappropriate because the non-MUFG proposal was never actionable. Quite frankly, "we knew we needed 51 percent again in order to effectuate a transaction." Antinelli Dep. 63:13–15. As the Committee's expert agreed, any decision to pursue the non-MUFG proposal over the objection of the prepetition revolving credit facility lenders would have led to a value-destructive priming fight. *See* Albergotti Dep. 33:22–34:13 ("Q: Have you considered the risk or cost of a priming dispute in these Chapter 11 cases? A: Yes. Q: And what was your conclusion? A: I think that any time you go down a contested cash collateral or DIP priming fight, it has the potential to be extremely expensive from a litigation standpoint. And there is significant operational risk that is put on the business, because if you lose the fight, you are more or less at the mercy of the existing [l]enders. And they may instill more onerous terms or pursue a different path of the restructuring than the [d]ebtor may want.").

40. Here, the fees are not exorbitant or egregious, but instead are reasonable and customary for DIP financing similar to the DIP Facility, particularly in light of the volatility in the oil and gas market. As explained by Mr. Dell'Osso, market consensus was

> [e]ssentially . . . that [the fee structure was] several transactions built into one and there's not an easy way to provide comparables. In

> addition to that the volatility in the industry was proving such that the ability to look at historical financing structures and determine that anyone would be willing to provide capital consistent with past terms was proving to be just false. It just wasn't relevant.

Dell'Osso Dep. 55:21–56:6.

41. Each of the fees related to the DIP Facility were the subject of arm's-length and good-faith negotiations between the Debtors and the DIP Lenders, are an integral component of the overall terms of the DIP Facility, and are required by the DIP Agent and the DIP Lenders as consideration for the extension of postpetition financing. *See* Antinelli Decl. ¶¶ 29–30. Accordingly, the Debtors submit the fees are appropriate and reasonable and should be approved. *Id.*; *see also In re PG&E Corp.*, Case No. 19-30088 (DM), [Docket No. 217], at 3, 8 (N.D. Cal. Jan. 31, 2019) (approving the payment of pre-petition DIP lender fees as "fair, reasonable, and the best available under the circumstances, reflect[ing] the [d]ebtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and consideration").

F. The Consensual Grant of DIP Liens and Adequate Protection Liens on the Proceeds of Certain Avoidance Actions Is Appropriate and in Many Respects Required Under the Bankruptcy Code.

42. The Committee objects to the grant of liens on the proceeds of Avoidance Actions to secure the DIP Obligations and adequate protection obligations but provides no basis for such objection. *See* UCC Obj. ¶ 59(ii). The objection should be overruled.

43. The Avoidance Actions are estate assets that may be utilized in accordance with the Debtors' business judgment. As a threshold matter, unsecured creditors do not hold exclusive rights to the proceeds of avoidance actions or commercial tort claims. The law is clear that proceeds of avoidance actions are property of the Debtors' estates under section 541(a)(3) of the Bankruptcy Code. As with any estate asset, the Debtors may grant DIP or adequate protection

liens on those assets to the extent necessary to obtain financing or the use of cash collateral. *See* 11 U.S.C. §§ 361(2), 364(c)(2); *see also In re AppliedTheory Corp.*, 2008 WL 1869770, at *1 (Bankr. S.D.N.Y. Apr. 24, 2008) ("Of course those assets started out unencumbered. But those assets can thereafter be encumbered (or made available to satisfy superpriority claims), if necessary to provide adequate protection. That's expressly authorized under section 361(2)."); *see also* 11 U.S.C. § 361(2) ("such adequate protection may be provided by . . . (2) providing . . . an additional or replacement lien"). Moreover, liens on the proceeds of avoidance actions are particularly appropriate in cases such as these where adequate protection liens on unencumbered assets may prove insufficient. *See In re Metaldyne Corp.*, 2009 WL 2883045, at *4 (Bankr. S.D.N.Y. Jun. 23, 2009) (approving grant of lien on proceeds of avoidance actions where, among other things, "[t]he Debtors have only limited unencumbered assets upon which replacement liens can be provided").

44. There is no requirement that proceeds of avoidance actions be reserved for unsecured creditors. To the contrary, the proceeds of avoidance actions are for the benefit of the estate. *See* 11 U.S.C. §§ 550(a) (preserving recoveries on avoidance actions "for the benefit of the estate"), 541(a)(3), 541(a)(4). The Seventh Circuit has stated:

> Lest this way of resolving the issue be taken to assume that § 550(a) requires that some benefit flow to unsecured creditors, we add that the statute does not say this. Section 550(a) speaks of benefit to the estate—which in bankruptcy parlance denotes the set of all potentially interested parties—rather than to any particular class of creditors.

Mellon Bank, N.A. v. Dick Corp., 351 F.3d 290, 293 (7th Cir. 2003); *In re Fleming Packaging Corp.*, No. 03-82408, 2007 WL 4556985, at *6 (Bankr. C.D. Ill. 2007) ("This Court does not consider Section 550(a)'s 'for the benefit of the estate' phraseology as a statutory requirement that the unsecured creditors benefit directly from the recovery of an avoided transfer"); *see also In re*

Enserv Co., 64 B.R. 519, 521 (B.A.P. 9th Cir. 1986) ("Section 547 specifically gives the debtor in possession the right to bring an action to recover preferences. This is a decision subject to its discretion."); *Cambridge Realty West, L.L.C. v. NOP, L.L.C.*, 2010 WL 4668436, at *4 (Bankr. E.D. La. Nov. 8, 2010) ("[T]he fact that [the debtor] will then be compelled to distribute [avoidance action recoveries] according to 'contractual and statutory entitlements' does not mean that the original recovery does not benefit the estate."); *In re C.W. Min. Co.*, 477 B.R. 176, 189 (B.A.P. 10th Cir. 2012) (noting in the context of section 550(a) actions, that "[t]his Court has specifically rejected the position that 'benefit of the estate' means 'payment to general unsecured creditors' and has held that 'benefit of the estate' should be interpreted broadly.").

45. Here, the DIP Liens and the Adequate Protection Liens attach to the proceeds of Avoidance Actions rather than the avoidance actions themselves. *See* proposed Final Order ¶ 11–14. Courts in this district have found that such liens are appropriate in several cases, including *In re Cobalt Int'l Energy, Inc.*:

> There is nothing impermissible about granting a lien on the proceeds of avoidance actions. I agree with the arguments that have been made that avoidance actions are property of the [e]state, they are not property of the unsecured creditors . . . I was worried about them granting a lien as I first heard on the avoidance actions themselves because I thought that might have gone a step further than would have been prudent given what we explained before. But as long as it's only on the proceeds, there's no economic difference that I can think of . . . there's no real upside to the unsecured creditors . . . if I do or don't grant this because the 507(b) rights prime all of their rights anyway.

No. 17-36709 (Bankr. S.D. Tex.) Hr'g Tr. 177–78, Jan. 25, 2018.

46. The grant of liens on the proceeds of Avoidance Actions was heavily negotiated by the Debtors, the DIP Lenders, and the Existing Lenders, and was part of a comprehensive financing package. The Debtors would be prejudiced and irreparably harmed without access to the DIP Facility or the consensual use of Cash Collateral. If the Existing Lenders do not receive

sufficient adequate protection, they are entitled to seek and obtain relief from the automatic stay (*e.g.*, to foreclose on their collateral). *See* 11 U.S.C. § 362(d)(1) ("[T]he court shall grant relief from the stay . . . (1) for cause, including the lack of adequate protection of an interest in property of such party in interest."). Were the Existing Lenders to exercise remedies, such actions would undoubtedly destroy value in these chapter 11 cases that could otherwise be used to drive recoveries for stakeholders.

47. This analysis applies with equal force to the Debtors' determination to provide the DIP Lenders and Existing Lenders adequate protection claims with recourse to unencumbered assets. Section 507(b) of the Bankruptcy Code is clear that where a secured creditor's collateral is diminished, a secured creditor's adequate protection claim "***shall*** have priority" over every other administrative claim. 11 U.S.C. § 507(b) (emphasis added); *see*, *e.g.*, *In re The Pac. Lumber Co.*, 584 F.3d 229, 239 fn. 11 (5th Cir. 2009) ("Courts have implied in 11 U.S.C. § 507(b) a right to a superpriority administrative claim for the diminution of value of collateral during the operation of the automatic stay."); *see also In re Scopac*, 624 F.3d 274, 282 (5th Cir. 2010) ("A secured creditor whose collateral is subject to the automatic stay may first seek adequate protection for diminution of the value of the property . . . and then, if the protection ultimately proves inadequate, a priority administrative claim under § 507(b) . . . where adequate protection payments prove insufficient to compensate a secured creditor for the diminution in the value of its collateral."). Section 507(b) of the Bankruptcy Code does not contemplate, or even permit, assets to be excluded from such claims, absent agreement. Courts in this district and others routinely approve final cash collateral and debtor-in-possession orders providing adequate protection liens on unencumbered assets, including proceeds of avoidance actions, and granting section 507(b) superpriority claims as part of the adequate protection package, as reflected in the chart attached hereto as **Exhibit B**.

48. Despite the Committee's dissatisfaction with the proposed adequate protection claims, these claims will only apply to the extent of diminution in value of the Existing Lenders' collateral, which diminution will have to be proven prior to allowance of any such claims. For these reasons, the UCC's Objection should be overruled.

G. The 506(c), 552(b) "Equities of the Case" Exception, and Marshaling Waivers Are Appropriate Under the Circumstances.

49. The Committee objects to the Debtors' waiver of their section 506(c) surcharge rights, section 552(b) "equities of the case" exception, and rights to seek marshaling again without providing a rationale. *See* UCC Obj. ¶ 59(vi). The Committee's arguments lack merit and ignore the practical commercial realities justifying these provisions.

(i) The 506(c) Waiver Is Reasonable and Appropriate.

50. Section 506(c) of the Bankruptcy Code provides a debtor the right to "recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of" such property. 11 U.S.C. §506(c). Section 506(c) of the Bankruptcy Code claims are available to, and are an asset of, the Debtors, and not any other party in interest. *See In re Smart World Techs., LLC,* 423 F.3d 166, 181–82 (2d Cir. 2005) ("Section 506(c) . . . allows only the 'trustee,' or debtor-in-possession, to take advantage of this exception . . . § 1109(b) does not entitle parties in interest, such as [the debtor]'s creditors, to usurp the debtor-in-possession's role as legal representative of the estate."); *In re River Ctr. Holdings, LLC*, 394 B.R. 704, 717 (Bankr. S.D.N.Y. 2008) ("The Supreme Court has made clear that only the trustee has the power, under the plain language of the [Bankruptcy Code], to assert a section 506(c) claim.") (citing *Hartford Underwriters Ins. Co. v. Planters Bank N.A.*, 530 U.S. 1 (2000)); *Hartford Underwriters*, 530 U.S. at 6 ("[T]he trustee is the only party empowered to invoke" section 506(c)).

51. Exercise of the Debtors' section 506(c) rights are limited and subject to a high evidentiary standard. *See, e.g.*, *In re Grimland, Inc.*, 243 F.3d 228, 233 (5th Cir. 2001) ("The default rule in bankruptcy is . . . that administrative expenses are paid out of the estate and not by the secured creditors of the debtor."); *In re Delta Towers, Ltd.*, 924 F.2d 74, 76 (5th Cir. 1991) (observing that section 506(c) of the Bankruptcy Code "furnishes an exception to the general rule" only when the claimant can show the expenses were necessary, reasonable, and for the primary benefit of the secured creditor). As a result, the circumstances in which the Debtors would be able to exercise such surcharge rights are limited.

52. In contrast, waiving the Debtors' surcharge rights under section 506(c) of the Bankruptcy Code does not provide the Existing Lenders with a windfall or otherwise create a risk that the costs of the Debtors' estates would be borne by unsecured creditors. *See* UCC Obj. ¶ 59(vi), n.4. The Existing Lenders hold valid, perfected liens on substantially all of the Debtors' assets and are allowing the Debtors' consensual use of Cash Collateral and the proceeds of the DIP Facility to fund (a) post-petition working capital, capital investments as permitted under the DIP Credit Agreement, and general corporate purposes of the Debtors, (b) the payment of current interest and fees under the DIP Facility, (c) the payment of adequate protection payments to the Existing RBL Secured Parties, including letter of credit and other fees payable under the Existing RBL Credit Agreement, (d) the payment of fees and expenses of certain professionals; and (e) the payment of allowed administrative costs and expenses of these chapter 11 cases.

53. In this context, it would be inappropriate and counterproductive to require the Existing Lenders to pay twice for such consensual use by allowing the Committee to commence subsequent litigation to surcharge their collateral. Indeed, a waiver of section 506(c) of the Bankruptcy Code is particularly appropriate where a secured creditor has agreed to pay, *from its*

collateral, estate administrative costs and subordinate its liens to the carve out for professional fees and other administrative expenses, as the Existing Lenders have done here. *See, e.g.*, *In re Mineral Park, Inc.*, No. 14-11996 (KJC) (Bankr. D. Del.), Hr'g Tr. 43:10–12, Sept. 23, 2014 (overruling the committee's objection and stating "given what [the secured lenders are] funding, I think [they've] paid for a 506(c) waiver and I would be willing to grant it"); *In re MPM Silicones, LLC*, No. 14-22503 (RDD) (Bankr. S.D.N.Y.), Hr'g Tr. 58:11–12; 93:12–20, May 23, 2014 (where a carve-out is provided, a 506(c) waiver is often an "acceptable trade-off").

54. Further, it is well-established that the right to waive the 506(c) surcharge is within a debtor's discretion. *See Hartford Underwriters* 530 U.S. at 6 (only a trustee or a debtor in possession may seek recovery under section 506(c)). The DIP Lenders would not consent to the Debtors' continued operations and commit to the DIP Facility without a section 506(c) waiver, and the Debtors determined that such a waiver was reasonable in light of the considerable benefits arising from the DIP Facility and consensual use of cash collateral.

55. Finally, section 506(c) claims are standard with respect to postpetition financings between sophisticated parties, and this Court and other courts have approved final orders providing for such waivers where the parties have negotiated an appropriate carve out and the secured parties have agreed to subordinate their claims to that carve out. *See* chart attached hereto as **Exhibit B**.

(ii) The 552(b) Waiver Is Reasonable and Appropriate.

56. The Committee argues that the waiver of the "equities of the case" exception under section 552(b) of the Bankruptcy Code should also be deleted. *See* UCC Obj. ¶ 59(vi). The Debtors disagree and believe that such waiver is reasonable and appropriate in light of the circumstances.

57. Section 552(b) of the Bankruptcy Code generally ensures that an entity's prepetition security interest in the proceeds of collateral extends to such proceeds acquired

postpetition, subject to a limited exception from this general rule to the extent that the "equities of the case" so require. *See* 11 U.S.C. § 552(b)(1).

58. The 552(b) waiver is appropriate where, as here, the Existing Lenders have agreed to a carve out from their collateral to fund the Debtors' operations and fees and expenses of other parties, such as U.S. Trustee fees and the Committee's professional fees. *See, e.g.*, *In re Hostess Brands, Inc.*, No. 12-22052 (Bankr. S.D.N.Y.), Hr'g Tr. 58–59, Feb. 2, 2012 (secured creditors' "willingness to provide for a carve-out upfront as opposed to letting the professionals hang on that point" was a sufficient "tradeoff" to justify section 552(b) waiver); *In re Abitibibowater, Inc.*, No. 09-11296 (Bankr. D. Del.), Hr'g Tr. 35:5–18, Jun. 4, 2009 (finding that such waivers are usually granted "in cases in which it looks like . . . the lenders are doing the right thing in terms of . . . providing for payment of administrative expenses."); *see also In re Stacy's, Inc.*, 508 B.R. 370, 380–81 (Bankr. D.S.C. 2014) (declining to apply "equities of the case" exception where secured lender had already agreed to carve-out and estate was only able to continue operating through the use of the lender's cash collateral); *In re Am. Media, Inc.*, 2010 WL 5141244, at *4 (Bankr. S.D.N.Y. Dec. 6, 2010) ("In light of the Prepetition Agent's and Prepetition Lenders' agreement to subordinate their liens and superpriority claims to the Carve Out . . . and to permit the use of their Cash Collateral as set forth herein, the Prepetition Agent and Prepetition Lenders are entitled to (a) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code.").

59. This Court and other courts have approved final DIP orders providing for such a waiver where the parties have negotiated an appropriate carve out and the DIP secured parties and other secured parties have agreed to subordinate their claims to that carve out. *See* chart attached hereto as **Exhibit B**.

(iii) The Committee Lacks Standing to Contest Waiver of "Marshaling" or Any Similar Doctrines.

60. The Committee objects to the Debtors' agreement to waive marshaling and to language in the proposed Final Order that provides the DIP Agent may first apply proceeds of the DIP Collateral that is not Existing Collateral to marshal in favor of the Existing FLLO Lenders, which language the Committee has mislabeled "reverse marshaling".[7] *See* UCC Obj. ¶ 59(vi). These objections belie a fundamental misunderstanding of the marshaling doctrine.

61. Marshaling is a right of a senior creditor "to proceed against more than one asset of a debtor [to], in fairness, attempt to satisfy his claim(s) from assets that are not encumbered with junior liens." *See In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 937 (Bankr. S.D. Tex. 1988); *see also In re Glob. Serv. Grp., LLC*, 316 B.R. 451, 463 (Bankr. S.D.N.Y. 2004) ("Marshaling is an equitable principle designed to protect the rights of a junior creditor by compelling a senior creditor to attempt to collect its claim first from another source unavailable to the junior creditor."). As such, the "reverse marshaling" language to which the Committee objects is, in fact, an appropriate application of the marshaling doctrine. Importantly, contrary to the Committee's belief, the marshaling provision does not force the DIP Lenders to recover from any unencumbered assets. Instead, the marshaling provision indicates that the DIP Agent *may* charge against unencumbered assets prior to charging against the Existing Collateral, which is the very thing that is meant by providing a marshaling waiver. In contrast, unsecured creditors may not utilize the doctrine of marshaling. *See In re Mesa Int'l, Inc.*, 79 B.R. 669, 672 (Bankr. S.D. Tex. 1987) (holding that an unsecured creditor "falls outside the class of creditors able to request

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7 "Reverse marshaling" would require the DIP Agent to first seek satisfaction of DIP claims from unencumbered assets. The language of the proposed Final Order permits the DIP Agent to first seek satisfaction of DIP claims from unencumbered assets—i.e. it is a simple waiver of marshaling and similar doctrines.

[marshaling]"); *see also In re Craner*, 110 B.R. 111, 123 (Bankr. N.D.N.Y. 1988), *rev'd on other grounds* ("[A]n unsecured creditor may not avail himself of the doctrine of marshaling assets as it is basically a protection for junior secured creditors"). The Committee's attempt to preserve the marshaling doctrine for unsecured creditors, is a misguided attempt to recast unsecured creditors as creditors "secured by" unencumbered collateral and "reverse marshal."

62. Further, the no-marshaling provision is a common element of a negotiated postpetition financing facility between a debtor and its secured lenders. In fact, courts recognize it as one of the bargaining chips debtors may use to reach an agreement with their secured lenders. *See MPM Silicones, LLC*, Hr'g Tr. 92–93 (approving a no-marshaling provision in a cash collateral order and commenting that "[g]enerally speaking, this is the debtor's right to negotiate or secured creditors' right to insist on").

63. To that end, it is unsurprising that final DIP and cash collateral orders containing no-marshaling provisions are considered customary and are regularly approved by courts in this district. *See* chart attached hereto as **Exhibit B**.

64. In light of the foregoing, the Debtors submit that the section 506(c), section 522(b), and marshaling waivers are appropriate as proposed, and that the UCC's Objection to these terms should be overruled.

H. The Remaining Committee Objections Should Be Overruled.

65. Consistent with its general attempts to rewrite certain of the terms of the DIP Facility negotiated at arms'-length between the Debtors and DIP Lenders, the Committee raises a laundry list of minor objections, modifications, and other complaints. *See* UCC Obj. ¶ 59.

<table>
<tr><th><u>Objection</u></th><th><u>Response</u></th></tr>
<tr><td colspan="2">Carve-Out & Budget</td></tr>
<tr><td>• The Committee contends that:
• the estate professional fees should be excluded from DIP Budget testing and delinked from any potential events of default under the DIP Credit Agreement;
• if included in DIP Budget testing, any unused Pre-Carve Out Amounts for professional fees should carryover in the event there are post-trigger fees in excess of post-trigger cap; and
• the variance for Committee professionals is lower than that for Debtor professionals.</td><td>• As discussed, the DIP Budget was heavily negotiated and the restrictions included in the DIP Budget are required by the DIP Lenders in exchange for their agreement to provide the DIP Facility.
• The Committee's requested changes to the DIP Budget are counter to the prepetition budget negotiations between the parties and limit the DIP Lenders' ability to control certain estate expenditures. Nevertheless, the Debtors and the DIP Lenders have agreed to increase the budgeted amounts for the Committee's professionals, which increase will be implemented in the next budget update.
• The Debtors and the DIP Lenders previously agreed to conform the variance for the Committee's professionals to that for the Debtors' professionals—a fact the Committee conveniently omitted from its objection. That change is reflected in the proposed Final Order.</td></tr>
<tr><td colspan="2">Additional Adequate Protection Objection</td></tr>
<tr><td>• The Committee contends that providing the payment of fees and expenses to the Existing Second Lien Notes and Franklin as adequate protection is inappropriate because they are "purportedly out-of-the-money".</td><td>• The Debtors believe that this argument is flawed. First, adequate protection is not defined in the Bankruptcy Code and courts have conducted a case-by-case analysis to determine whether adequate protection is appropriate.
• Adequate protection is typically provided to creditors that do not have a sufficient equity cushion. If a creditor is "out-of-the-money," providing other forms of protection for any potential diminution in value of their collateral is appropriate.
• The adequate protection package for the Existing Second Lien Notes and Franklin was a highly negotiated aspect of the DIP Facility and Restructuring Support Agreement, and failure to approve it could lead the Existing Second Lien Notes or Franklin to reconsider their continued commitment to the</td></tr>
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	Restructuring Support Agreement and support of the DIP Facility.
Reporting	
• The Committee contends that they are not "contemporaneously" receiving reporting along with the DIP Lenders.	• The Debtors and the DIP Lenders agreed to provide the Committee reporting prior to the filing of the Committee's objection. That change is reflected in the proposed Final Order.
Good Faith Finding	
• The Committee contends that a good-faith finding on the DIP Order should be deferred until the plan confirmation, at the earliest.	• As discussed herein, the Debtors conducted a robust marketing process that resulted in multiple competitive DIP proposals and negotiated the proposals in good faith and at arm's length. As a result, there is no legitimate reason why a good faith finding on the DIP Order should be deferred until confirmation of the Debtors' plan.
Credit Bidding	
• The Committee contends that credit bidding rights should be subject in all respects to section 363(k) of the Bankruptcy Code.	• The Debtors have revised the proposed Final DIP Order to provide that • the Existing RBL Agent shall have the right to credit bid the Existing RBL Obligations in any sale of DIP Collateral or Existing RBL Collateral, as applicable, as provided for in section 363(k) of the Bankruptcy Code, and • the Existing FLLO Agent and Existing Second Lien Notes Trustee shall have the right to credit bid the Existing FLLO Obligations and Existing Second Lien Obligations, respectively, pursuant to section 363(k) of the Bankruptcy Code solely to the extent permitted in the Intercreditor Agreements.
Termination Events	
• The Committee contends that the rights of the DIP Secured Parties should be limited to the extent that an event of default has occurred.	• As discussed above, the DIP Facility was heavily negotiated and certain rights negotiated for by the DIP Secured Parties are necessary in exchange for their lending of financing pursuant to the DIP Credit Agreement. As with all loans, the DIP Secured Parties negotiated for protections in the case, including the rights to

	request conversion of the Chapter 11 Cases to cases under chapter 7, dismissal of the Chapter 11 Cases, the appointment of a trustee or examiner in the Chapter 11, or seek early termination of the Debtors' exclusive rights to propose a plan under the Bankruptcy Code. • The Committee's requested changes to the DIP Secured Parties' rights are counter to the prepetition negotiations between the parties and limit the DIP Secured Parties' ability to take certain actions they believe are necessary to protect their collateral.
Amendments to the DIP Loan Documents	
• The Committee contends that it should have consent rights on any amendments that "materially and adversely affects the interests of the Committee or general unsecured creditors."	• The Committee is not party to the DIP Loan Documents and therefore should not be provided consent rights on any amendments to the DIP Loan Documents.

66. These changes are unwarranted and should be denied. The proposed Final Order represents a valid exercise of the Debtors' business judgment, maximizes the value of their estates for the benefit of their stakeholders, and is consistent with the requirements of the Bankruptcy Code.

III. The RO Committee Objections Should Be Overruled.

67. As an initial matter, the RO Committee fails to raise any new or novel issues in their objection to the DIP Financing. The RO Committee joins in all aspects of the objection filed by the Committee and reiterates many of the Committee's flawed arguments addressed above. The RO Committee also reiterates certain arguments raised in the objections filed by individual royalty owners, which the Debtors believe should be resolved through language added to the proposed Final Order. The remaining issues raised by the RO Committee reflect a fundamental misunderstanding of the relief requested in the DIP Motion and of the role of the RO Committee.

This underscores the simple fact that the royalty owners are clearly already represented, both individually and by the Committee.

A. The Final Order Does Not Seek to Prime Permitted Priority Liens.

68. The RO Committee objects to the Debtors' purported attempt to grant the DIP Lenders perfected, first priority security interests and liens that would prime any liens or security interests asserted by royalty owners in the proceeds or production from their oil and gas leases under applicable state law or under the terms of their leases. RO Comm. Obj. ¶ 15. The Debtors do no such thing. The DIP Credit Agreement and the proposed Final Order carve out Permitted Priority Liens from the liens granted to the DIP Lenders pursuant to the DIP Facility. Specifically, the proposed Final Order states the DIP Liens shall be subject and subordinate to liens that are "valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code" or "under applicable law, are senior to, and have not been subordinated to, the Existing RBL Liens." Proposed Final Order ¶ 11(c). Thus, to the extent the royalty owners hold valid, perfected, and enforceable prepetition liens on the proceeds of or production from their oil and gas leases under either applicable state law or the terms of their oil and gas leases, those liens will not be primed by the DIP Liens.

B. The Proposed Final Order Does Not Seek to Adjudicate the Validity Extent or Priority of Any Particular Secured Claim.

69. The RO Committee objects to the DIP motion on the basis that the relief requested allegedly seeks to "adjudicate the validity, priority or extent of the Royalty Owners' secured claims." RO Comm. Obj. ¶ 18. It does not. While the proposed Final Order seeks to establish the relative priority of various liens and claims, it does not attempt to adjudicate any particular claim. To the extent any such disputes exist, they will be adjudicated pursuant to the claims resolution

process. The Debtors have worked with several individual royalty owner groups to formulate language in the proposed Final Order that specifies that the royalty owners' pending litigation claims against the Debtors remain intact and are not affected by the proposed Final Order. Although the individual royalty owners have not yet signed off on this language, the Debtors believe that this language should also resolve the concerns of the individual royalty owners and the RO Committee.

C. The RO Committee's Proposed Investigation Would Be an Inappropriate Use of Estate Resources.

70. Finally, the RO Committee takes issue with the challenge period. RO Comm. Obj. ¶¶ 24–26. The RO Committee's objection on this point is telling. The scope of the investigation the RO Committee seeks to undertake is one that would treat the RO Committee as individual counsel for each of the Debtors' royalty owners and allow proposed counsel to the RO Committee to undertake an investigation of each of the Debtors' oil and gas leases to ferret out any potential claims that individual royalty owners may have. RO Comm. Obj. ¶ 30. That is not an appropriate use of estate resources and not the role of an official committee. The appointment of a committee is not an opportunity for committee counsel to litigate individual cases. A committee exists to protect and promote the interests of a group of stakeholders as a whole. *In re Residential Capital, LLC*, 480 B.R. 550, 558–59 (Bankr. S.D.N.Y. 2012) ("[F]orming a Borrowers Committee solely to advance individual borrowers' claims is not appropriate, because acting as *de facto* counsel for borrowers would be an impermissible role for an official committee.") (citation omitted).[8] The RO Committee should not be provided an extended period of time or a budget to conduct an

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[8] For further discussion, *see* the *Debtors' Emergency Motion for Entry of an Order Disbanding the Royalty Committee*, filed contemporaneously with this Reply.

inappropriate investigation of individual royalty owner's claims. For these reasons, the RO Committee's objection should be overruled.

IV. The Energy Transfer Objection Should Be Overruled.

71. Energy Transfer operates natural gas transportation pipelines and storage facilities and transports certain of the Debtors' crude and natural gas through its pipeline transportation systems. Energy Transfer asserts that it holds lien rights and security interests in certain prepetition gathering agreements and that, "as of the Petition Date, Energy Transfer had in its possession certain quantities of the Debtors' crude oil, natural gas, and NGLs in its gathering, processing, and transportation pipelines and systems" that were subject to Energy Transfer's liens and security interests under the TEXAS BUSINESS AND COMMERCE CODE. *See* Energy Transfer Obj. at ¶¶ 11–12. Energy Transfer argues that its carrier liens and security interests in this collateral are perfected by possession of such collateral. *See id*. at ¶ 12.

72. Pursuant to section 363(e) of the Bankruptcy Code, a transporter or warehouseman, as a bailee, may be entitled to adequate protection pursuant to section 363(3) of the Bankruptcy Code on account of any valid possessory lien.[9] Texas statutes provide that a transporter or warehouseman has a lien on the goods ***in its possession*** securing the charges or expenses incurred in connection with the transportation or storage of those goods.[10] *See* Tex. Bus.

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[9] Section 9-310(6) of the Texas Business and Commerce Code allows perfection by the secured party's possession without the filing of a financing statement. Tex. Bus. & Com. Code Ann. § 9.310(6) (West). Under Texas law, a "possessory lien" is an interest "(1) that secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business; (2) that is created by statute or rule of law in favor of the person; and (3) whose effectiveness depends on the person's possession of the goods." Tex. Bus. & Com. Code Ann. § 9.333 (West).

[10] Modeled after section 7-307 of the Uniform Commercial Code, section 7-307 of the TEXAS BUSINESS AND COMMERCE CODE provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." Tex. Bus. & Com. Code Ann. § 7.307 (West); U.C.C. § 7-307(a) (2003) (same).

& Com. Code Ann. § 7–307(1). Texas statue also provides that a carrier "loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver." Tex. Bus. & Com. Code Ann. § 7–307(3).

73. Due to the nature of Energy Transfer's pipeline transportation system, any crude, natural gas, or NGLs in Energy Transfer's possession as of the Petition Date has since been delivered. As such, Energy Transfer's liens on and security interests in such crude, natural gas, and NGLs were extinguished. *See In re UAL Corp.*, 297 B.R. 710 (Bankr. N.D. Ill. 2003) (applying Okla. Stat. Ann. tit. 12A, § 7-307, modeled after section 7-307 of the Uniform Commercial Code, and finding that a carrier lien acquired in fuel transported prepetition by a pipeline company terminated upon delivery of fuel postpetition).

74. A similar argument was prosecuted by Explorer Pipeline Company ("Explorer Pipeline"), a common carrier of refined petroleum in *UAL Corp.* In that case, the debtors, an aviation fuel purchasing subsidiary of United Airlines, Inc., entered into a prepetition contract with a pipeline company to carry fuel through an interstate pipeline. *Id*. at 713. After the bankruptcy filing, the debtors continued to ship fuel through the pipeline, however, the prepetition delivery charges remained largely unpaid. Explorer Pipeline filed a motion for the debtors to provide adequate protection on account of the prepetition fuel that Explorer Pipeline alleged was collateral subject to its possessory lien. *Id*. at 714. Applying Okla. Stat. tit. § 7–307, which, like Tex. Bus. & Com. Code Ann. § 7–307, is modeled after the Uniform Commercial Code, the court found that once certain goods had been delivered, a party could no longer assert a possessory lien on such goods. *See In re UAL Corp.*, 297 B.R. at 716 ("[E]ven if [the debtor] had not paid the charges secured by the carrier lien, that lien, by the plain language of § 7–307(3), terminated upon [the carrier's] voluntary delivery of the petition-date fuel.").

75. Similarly, Energy Transfer delivered any crude, natural gas, or NGLs in its possession as of the Petition Date. Thus, any possessory lien Energy Transfer had in such collateral terminated once the crude, natural gas and NGLs were released from Energy Transfer's possession. Section 7–307(1) of the TEXAS BUSINESS AND COMMERCE CODE, relied upon by Energy Transfer, is unavailing as that statute, just like the Oklahoma statute interpreted by the court in *UAL Corp.*, provides that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof ***in its possession***" Tex. Bus. & Com. Code Ann. 7–307(1). Like *UAL Corp.*, the Debtors have shipping invoices with Energy Transfer which cover the transportation of the Debtors' crude and natural gas. Further, section 7–307(3) of the statute specifically states that a carrier loses the possessory lien once the goods have been delivered. *See* Tex. Bus. & Com. Code Ann. 7–307(3). Because Energy Transfer's possessory lien was extinguished upon delivery of the hydrocarbons in its system as of the Petition Date is not entitled to adequate protection.

76. Energy Transfer's proposed language in resolution of its objection [Docket No. 552] tacitly acknowledges this. In its supplemental objection, Energy Transfer proposes to include the following language in the proposed Final Order: "For the avoidance of doubt, any action or inaction of Energy Transfer on or after the Petition Date shall not constitute a relinquishment of the Prepetition Energy Transfer Liens, the Energy Transfer Replacement Liens, or the Energy Transfer Administrative Claims." But Energy Transfer cannot and should not be able to revive its liens in this way. Energy Transfer is not entitled to adequate protection and its Objection should be overruled.

V. The Remaining Objections Have Been Resolved or Should Be Overruled.

77. The Debtors are pleased to report that substantially all of the objections raised by the remaining objectors have been withdrawn or resolved through modifications to the proposed Final Order, as set forth in the chart attached hereto as **Exhibit C**. In addition, the Debtors included

language in the proposed Final Order at paragraphs 46 and 47 to resolve objections filed by certain groups of royalty owners involved in prepetition litigation with the Debtors [Docket Nos. 344, 345]. Although the objectors have not yet agreed to this language as of the time of the filing this reply, the Debtors submit the language addresses the concerns raised in the objections, and the objections should be overruled. Finally, Tributary Resources, LLC filed an objection joining the objections of the Committee and the RO Committee [Docket No. 551] on July 30, 2020, 15 days after the objection deadline. For this reason and the reasons for overruling the objections of the Committee and the RO Committee discussed above, this objection should be overruled.

Conclusion

78. For all of the foregoing reasons and the reasons set forth in the DIP Motion, the Debtors request that (a) the Court overrule the Objections and (b) grant the relief requested in the DIP Motion on a final basis.

[*Remainder of page intentionally left blank.*]

WHEREFORE, for the foregoing reasons, the Debtors respectfully request that the Court overrule the Objections and enter the proposed Final Order.

Houston, Texas
July 30, 2020

/s/ *Matthew D. Cavenaugh*

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Certificate of Service

I certify that on July 30, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavenaugh
Matthew D. Cavenaugh

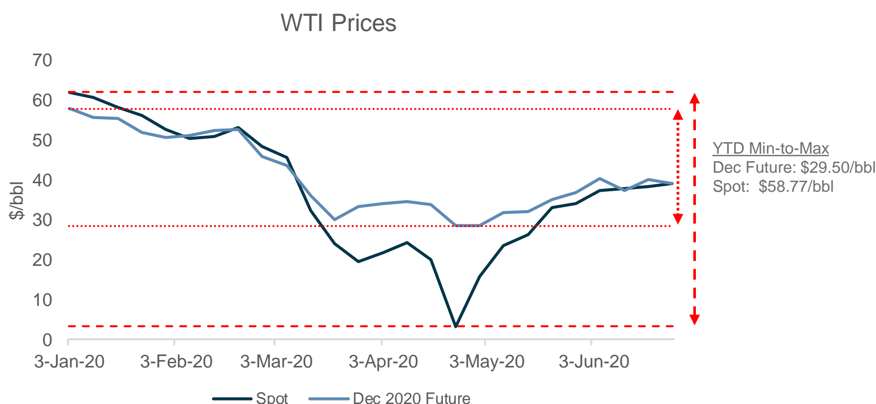
Exhibit A

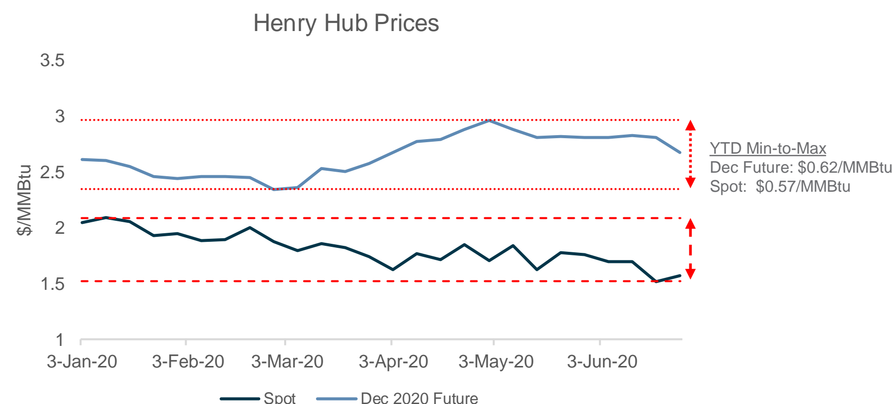
DIP Sensitivities

CASH FLOW RISKS

Market Pricing

- With the extraordinary disruption to the world economy driven by the COVID-19 pandemic, as well as significant international pressures, oil and natural gas commodity prices have demonstrated significant volatility throughout 2020





- Downside pricing scenarios imply a significant incremental DIP need, with a 10% decline in prices resulting in approximately **$150 million** of additional need

	Base Case	10% Downside	20% Downside
Peak Drawn DIP Balance	$ 572.0	$ 718.0	$ 879.0
LCs issued against the DIP Commitment	80.9	84.3	84.3
Total Revolving DIP Need	**$ 652.9**	**$ 802.3**	**$ 963.3**
$925M DIP Facility Excess / (Deficit)	**$ 272.1**	**$ 122.7**	**$ (38.3)**
% Excess / (Deficit)	*29.4%*	*13.3%*	*(4.1%)*
Date of Peak DIP Need	1/15/2021	2/12/2021	2/12/2021

CHESAPEAKE ENERGY

Sources: S&P Global Market Intelligence, NYMEX, CME

Exhibit B

DIP Precedent Chart

DIP Precedent Chart[1]

Case	Result
Liens on Proceeds of Avoidance Actions	
In re Whiting Petroleum Corp., No. 20-32021 (DRJ) (Bankr. S.D. Tex. June 16, 2020)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re J. C. Penney Company, Inc., No. 20-20182 (DRJ) (Bankr. S.D. Tex. Jun. 5, 2020)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re McDermott International, Inc., No. 20-30336 (DRJ) (Bankr. S.D. Tex. Feb. 24, 2020)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re American Commercial Lines, Inc., No. 20-30982 (MI) (Bankr. S.D. Tex. Feb. 10, 2020)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Sanchez Energy Corporation, No. 19-34508 (Bankr. S.D. Tex. Jan. 22, 2020)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Southern Foods Groups, LLC, No. 19-36313 (DRJ) (Bankr. S.D. Tex. Dec. 23, 2019)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Sheridan Holding Company II, LLC, No. 19-35198 (MI) (Bankr. S.D. Tex. Oct. 15, 2019)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Shale Support Global Holdings, LLC, No. 19-33884 (DRJ) (Bankr. S.D. Tex. Aug. 16, 2019)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Weatherford International PLC, No. 19-33694 (DRJ) (Bankr. S.D. Tex. Aug. 1, 2019)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Legacy Reserves Inc., No. 19-33395 (MI) (Bankr. S.D. Tex. Jul. 23, 2019)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Vanguard Natural Resources, Inc., No. 19-31786 (DRJ) (Bankr. S.D. Tex. Apr. 30, 2019)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Gastar Exploration Inc., No. 18-36057 (MI) (Bankr. S.D. Tex. No. 28, 2018)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Westmoreland Coal Company, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Nov. 15, 2018)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re iHeartMedia, Inc., No. 18-31274 (MI) (Bankr. S.D. Tex. Apr. 12, 2018)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Seadrill Limited, No. 17-60079 (DRJ) (Bankr. S.D. Tex. Oct. 24, 2017)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.

[1] Due to their voluminous nature, the orders and cases cited herein are not attached to this chart. Such orders and cases are available upon request to the Debtors.

Case	Result
In re Ameriforge Group, Inc., No. 17-32660 (DRJ) (Bankr. S.D. Tex. may 22, 2017)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re CJ Holding Co., No. 16-33590 (DRJ) (Bankr. S.D. Tex. Sept. 25, 2016)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re Linn Energy, LLC, No. 16-60040 (DRJ) (Bankr. S.D. Tex. Jul. 29, 2016)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re Midstates Petroleum Co., Inc., No. 16-32237 (DRJ) (Bankr. S.D. Tex. June 30, 2016)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re Goodrich Petroleum Corp., No. 16-31975 (MI) (Bankr. S.D. Tex. June 6, 2016)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re Sherwin Alumina Co., LLC, No. 16-20012 (DRJ) (Bankr. S.D. Tex. Mar. 16, 2016)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re RAAM Global Energy Co., No. 15-35615 (MI) (Bankr. S.D. Tex. Dec. 2, 2015)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re Emerald Oil, Inc., No. 16-10704 (KG) (Bankr. D. Del. May 6, 2016)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Paragon Offshore PLC, No. 16-10386 (CSS) (Bankr. D. Del. Mar. 9, 2016)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re Swift Energy Co., No. 15-12670 (MFW) (Bankr. D. Del. Feb. 2, 2016)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Sabine Oil & Gas Corp., No. 15-11835 (SCC) (Bankr. S.D.N.Y. Sept. 16, 2015)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re Milagro Holdings, LLC, No. 15-11520 (KG) (Bankr. D. Del. Aug. 19, 2015)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Xinergy Ltd., No. 15-70444 (PMB) (Bankr. W.D. Va. June 5, 2015)	• Approved final DIP financing order with adequate protection liens on proceeds of avoidance actions.
In re Quicksilver Res. Inc., No. 15-10585 (LSS) (Bankr. D. Del. May 1, 2015)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re Caesars Entm't Op. Co., Inc., No. 15-01149 (ABG) (Bankr. N.D. Ill. Mar. 25, 2015)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
In re ITR Concession Co., LLC, No. 14-34284 (PSH) (Bankr. N.D. Ill. Oct. 28, 2014)	• Approved final cash collateral order with adequate protection liens on proceeds of avoidance actions.
Superpriority Administrative Expense Claims	
In re Ultra Petroleum Corp., No. 20-32631 (MI) (Bankr. S.D. Tex. June 16, 2020)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
Neiman Marcus Group LTD LLC, No. 20-32519 (DRJ) (Bankr. S.D. Tex. June 16, 2020)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Hornbeck Offshore Services, Inc., No. 20-32679 (DRJ) (Bankr. S.D. Tex. June 15, 2020)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.

Case	Result
In re J. C. Penney Company, Inc., No. 20-20182 (DRJ) (Bankr. S.D. Tex. Jun. 5, 2020)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re McDermott International, Inc., No. 20-30336 (DRJ) (Bankr. S.D. Tex. Feb. 24, 2020)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re American Commercial Lines, Inc., No. 20-30982 (MI) (Bankr. S.D. Tex. Feb. 10, 2020)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Sanchez Energy Corporation, No. 19-34508 (Bankr. S.D. Tex. Jan. 22, 2020)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Southern Foods Groups, LLC, No. 19-36313 (DRJ) (Bankr. S.D. Tex. Dec. 23, 2019)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re EP Energy Corporation, No. 19-35654 (MI) (Bankr. S.D. Tex. Nov. 25, 2019)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Sheridan Holding Company II, LLC, No. 19-35198 (MI) (Bankr. S.D. Tex. Oct. 15, 2019)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Epic Companies, LLC, No. 19-34752 (Bankr. S.D. Tex. Oct. 4, 2019)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Matra Petroleum USA, Inc., No. 19-34190 (DRJ) (Bankr. S.D. Tex. Aug. 28, 2019)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Shale Support Global Holdings, LLC, No. 19-33884 (DRJ) (Bankr. S.D. Tex. Aug. 16, 2019)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Weatherford International PLC, No. 19-33694 (DRJ) (Bankr. S.D. Tex. Aug. 1, 2019)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Legacy Reserves Inc., No. 19-33395 (MI) (Bankr. S.D. Tex. Jul. 23, 2019)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Vanguard Natural Resources, Inc., No. 19-31786 (DRJ) (Bankr. S.D. Tex. Apr. 30, 2019)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Gastar Exploration Inc., No. 18-36057 (MI) (Bankr. S.D. Tex. No. 28, 2018)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Westmoreland Coal Company, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Nov. 15, 2018)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re iHeartMedia, Inc., No. 18-31274 (MI) (Bankr. S.D. Tex. Apr. 12, 2018)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Exco Resources, Inc., No. 18-30155 (MI) (Bankr. S.D. Tex. Feb. 22, 2018)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Cobalt International Energy, Inc., No. 17-36709 (MI) (Bankr. S.D. Tex. Jan. 25, 2018)	• Approved cash collateral order with 507(b) superpriority claims as part of the adequate protection package.

Case	Result
In re Seadrill Limited, No. 17-60079 (DRJ) (Bankr. S.D. Tex. Oct. 24, 2017)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re CJ Holding Co., No. 16-33590 (DRJ) (Bankr. S.D. Tex. Sept. 25, 2016)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Linn Energy, LLC, No. 16-60040 (DRJ) (Bankr. S.D. Tex. Jul. 29, 2016)	• Approved cash collateral order with 507(b) superpriority claims as part of the adequate protection package.
In re Sandridge Energy, Inc., No. 16-32488 (DRJ) (Bankr. S.D. Tex. July 5, 2016)	• Approved cash collateral order with 507(b) superpriority claims as part of the adequate protection package.
In re Midstates Petroleum Co., Inc., No. 16-32237 (DRJ) (Bankr. S.D. Tex. June 30, 2016)	• Approved cash collateral order with 507(b) superpriority claims as part of the adequate protection package.
In re Goodrich Petroleum. Corp., No. 16-31975 (MI) (Bankr. S.D. Tex. Jun. 6, 2016)	• Approved cash collateral order with 503(b) and 507(b) superpriority claims as part of the adequate protection package.
In re Linc USA GP, No. 16-32689 (DRJ) (Bankr. S.D. Tex. July 11, 2016)	• Approved DIP financing order with 503(b) and 507(b) superpriority claims as part of the adequate protection package.
In re Armada Water Assets, Inc., No. 16-60056 (DRJ) (Bankr. S.D. Tex. June 28, 2016)	• Approved DIP financing order with 503(b) and 507(b) superpriority claims as part of the adequate protection package.
In re Energy XXI, Ltd., No. 16-31928 (DRJ) (Bankr. S.D. Tex. May 19, 2016)	• Approved cash collateral order with 503(b) and 507(b) superpriority claims as part of the adequate protection package.
In re Southcross Holdings LP, No. 16-20111 (MI) (Bankr. S.D. Tex. Apr. 11, 2016)	• Approved DIP financing order with 503(b) and 507(b) superpriority claims as part of the adequate protection package.
In re Sherwin Alumina Co., LLC, No. 16-20012 (DRJ) (Bankr. S.D. Tex. Mar. 16, 2016)	• Approved cash collateral order with 507(b) superpriority claims as part of the adequate protection package.
In re University Gen. Health Sys., Inc., No. 15-31086 (DRJ) (Bankr. S.D. Tex. July 13, 2015)	• Approved DIP financing order with 507(b) superpriority claims as part of the adequate protection package.
In re Metro Fuel Oil Corp., No. 12-46913 (ESS) (Bankr. E.D.N.Y. Nov. 20, 2012)	• Approved DIP financing order with 507(b) claims as part of the adequate protection package.
In re Global Aviation Holdings Inc., No. 12-40783 (CEC) (Bankr. E.D.N.Y. Mar. 30, 2012)	• Approved DIP financing order with 507(b) claims as part of the adequate protection package.
In re Innkeepers USA Trust, No. 10-13800 (SCC) (Bankr. S.D.N.Y. Sept. 2. 2010)	• Approved DIP financing order with 507(b) claims as part of the adequate protection package.
In re Reader's Digest Ass'n, Inc., No. 09-23529 (RDD) (Bankr. S.D.N.Y. Oct. 7, 2009)	• Approved DIP financing order with 507(b) claims as part of the adequate protection package.
In re Gen. Growth Props., Inc., No. 09-11977 (ALG) (Bankr. S.D.N.Y. May 14, 2009)	• Approved DIP financing order with 507(b) claims as part of the adequate protection package.

Case	Result
Section 506(c) Waiver	
In re Ultra Petroleum Corp., No. 20-32631 (MI) (Bankr. S.D. Tex. June 16, 2020)	• Approved section 506(c) waiver in a final DIP financing order.
Neiman Marcus Group LTD LLC, No. 20-32519 (DRJ) (Bankr. S.D. Tex. June 16, 2020)	• Approved section 506(c) waiver in a final DIP financing order.
In re Hornbeck Offshore Services, Inc., No. 20-32679 (DRJ) (Bankr. S.D. Tex. June 15, 2020)	• Approved section 506(c) waiver in a final DIP financing order.
In re Stage Stores, Inc., No. 20-32564 (DRJ) (Bankr. S.D. Tex. June 10, 2020)	• Approved section 506(c) waiver in a final cash collateral order.
In re J. C. Penney Company, Inc., No. 20-20182 (DRJ) (Bankr. S.D. Tex. Jun. 5, 2020)	• Approved section 506(c) waiver in a final DIP financing order.
In re McDermott International, Inc., No. 20-30336 (DRJ) (Bankr. S.D. Tex. Feb. 24, 2020)	• Approved section 506(c) waiver in a final DIP financing order.
In re American Commercial Lines, Inc., No. 20-30982 (MI) (Bankr. S.D. Tex. Feb. 10, 2020)	• Approved section 506(c) waiver in a final DIP financing order.
In re Sanchez Energy Corporation, No. 19-34508 (Bankr. S.D. Tex. Jan. 22, 2020)	• Approved section 506(c) waiver in a final DIP financing order.
In re Southern Foods Groups, LLC, No. 19-36313 (DRJ) (Bankr. S.D. Tex. Dec. 23, 2019)	• Approved section 506(c) waiver in a final DIP financing order.
In re EP Energy Corporation, No. 19-35654 (MI) (Bankr. S.D. Tex. Nov. 25, 2019)	• Approved section 506(c) waiver in a final DIP financing order.
In re Sheridan Holding Company II, LLC, No. 19-35198 (MI) (Bankr. S.D. Tex. Oct. 15, 2019)	• Approved section 506(c) waiver in a final DIP financing order.
In re Epic Companies, LLC, No. 19-34752 (Bankr. S.D. Tex. Oct. 4, 2019)	• Approved section 506(c) waiver in a final DIP financing order.
In re Matra Petroleum USA, Inc., No. 19-34190 (DRJ) (Bankr. S.D. Tex. Aug. 28, 2019)	• Approved section 506(c) waiver in a final DIP financing order.
In re Shale Support Global Holdings, LLC, No. 19-33884 (DRJ) (Bankr. S.D. Tex. Aug. 16, 2019)	• Approved section 506(c) waiver in a final DIP financing order.
In re Weatherford International PLC, No. 19-33694 (DRJ) (Bankr. S.D. Tex. Aug. 1, 2019)	• Approved section 506(c) waiver in a final DIP financing order.
In re Legacy Reserves Inc., No. 19-33395 (MI) (Bankr. S.D. Tex. Jul. 23, 2019)	• Approved section 506(c) waiver in a final DIP financing order.
In re Vanguard Natural Resources, Inc., No. 19-31786 (DRJ) (Bankr. S.D. Tex. Apr. 30, 2019)	• Approved section 506(c) waiver in a final DIP financing order.
In re Gastar Exploration Inc., No. 18-36057 (MI) (Bankr. S.D. Tex. No. 28, 2018)	• Approved section 506(c) waiver in a final DIP financing order.

Case	Result
In re Westmoreland Coal Company, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Nov. 15, 2018)	• Approved section 506(c) waiver in a final DIP financing order.
In re iHeartMedia, Inc., No. 18-31274 (MI) (Bankr. S.D. Tex. Apr. 12, 2018)	• Approved section 506(c) waiver in a final DIP financing order.
In re Cobalt International Energy, Inc., No. 17-36709 (MI) (Bankr. S.D. Tex. Jan. 25, 2018)	• Approved section 506(c) waiver in a final cash collateral order.
In re Seadrill Limited, No. 17-60079 (DRJ) (Bankr. S.D. Tex. Oct. 24, 2017)	• Approved section 506(c) waiver in a final DIP financing order.
In re CJ Holding Co., No. 16-33590 (DRJ) (Bankr. S.D. Tex. Sept. 25, 2016)	• Approved section 506(c) waiver in a final DIP financing order.
In re Linn Energy, LLC, No. 16-60040 (DRJ) (Bankr. S.D. Tex. Jul. 29, 2016)	• Approved section 506(c) waiver in a final cash collateral order.
In re Sandridge Energy, Inc., No. 16-32488 (DRJ) (Bankr. S.D. Tex. July 5, 2016)	• Approved section 506(c) waiver in a final cash collateral order.
In re Midstates Petroleum Co., Inc., No. 16-32237 (DRJ) (Bankr. S.D. Tex. June 30, 2016)	• Approved section 506(c) waiver in a final cash collateral order.
In re Goodrich Petroleum. Corp., No. 16-31975 (MI) (Bankr. S.D. Tex. Jun. 6, 2016)	• Approved section 506(c) waiver in a final cash collateral order.
In re Energy XXI Ltd., No. 16-31928 (DRJ) (Bankr. S.D. Tex. May 19, 2016)	• Approved section 506(c) waiver in a final cash collateral order.
In re Sherwin Alumina Co., LLC, No. 16-20012 (DRJ) (Bankr. S.D. Texas Mar. 16, 2016)	• Approved section 506(c) waiver in a final cash collateral order.
In re Goldking Holdings, LLC, No. 13-37200 (DRJ) (Bankr. S.D. Tex. Dec. 10, 2013)	• Approved section 506(c) waiver in a final cash collateral order.
In re Edge Petroleum Corp., No. 09-20644 (RSS) (Bankr. S.D. Tex. Oct. 27, 2009)	• Approved section 506(c) waiver in a final cash collateral order.
In re Baseline Oil & Gas Corp., No. 09-36291 (JB) (Bankr. S.D. Tex. Sept. 25, 2009)	• Approved section 506(c) waiver in a final cash collateral order.
In re CDX Gas, LLC, No. 08-37922 (LZC) (Bankr. S.D. Tex. Jan. 9, 2009)	• Approved section 506(c) waiver in a final cash collateral order.
In re Molycorp, Inc., No. 15-11357 (CSS) (Bankr. D. Del. July 24, 2015)	• Approved section 506(c) waiver in a final DIP financing order.
In re Mineral Park, Inc., No. 14-11996 (KJC) (Bankr. D. Del. Sept. 23, 2014)	• **Overruled the committee's objection to 506(c) waiver.** • "[G]iven what [the secured lenders are] funding, I think [they've] paid for a 506(c) waiver and I would be willing to grant it." Hr'g Tr. 43:10–12, Sept. 23, 2014.
In re Entegra Power Grp. LLC, No. 14-11859 (PJW) (Bankr. Del. Sept. 3, 2014)	• Approved section 506(c) waiver in a final cash collateral order.

Case	Result
In re MPM Silicones, LLC, No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 23, 2014)	• **Overruled the committee's objection to 506(c) waiver**. • "[I]f the carve-out is sufficient, and to avoid a fight over 506(c) down the road, or the cost of carrying the case, generally speaking a 506(c) waiver is granted." Hr'g Tr. 58:11–13, May 23, 2014. • "[H]aving had the ability to look at the carve-out now . . . I don't think the debtors are leaving unpaid obligations that are incurring." *See id.* at 58:16–18.
In re Terrestar Networks Inc., No. 10-15446 (SHL) (Bankr. S.D.N.Y. Nov. 16, 2010)	• Approved section 506(c) waiver in a final cash collateral order.
In re Int'l Aluminum Corp., No. 10-10003 (MFW) (Bankr. D. Del. Feb. 17, 2010)	• Approved section 506(c) waiver in a final cash collateral order.
In re Lear Corp., No. 09-14326 (ALG) (Bankr. S.D.N.Y. July 30, 2009)	• **Overruled the committee's objection to 506(c) waiver**. • Court stated that a 506(c) waiver is "pretty standard, [committee counsel]. There's a large part of that in this case." Hr'g Tr. 98:18–99:2, July 30, 2009.
In re Extended Stay Inc., No. 09-13764 (JMP) (Bankr. S.D.N.Y. July 17, 2009)	• **Overruled the committee's objection to 506(c) waiver**. • "As to the 506(c) waiver such waivers are traditionally included in final orders authorizing DIP financing and authorizing the use of cash collateral. Routinely, the tradeoff is not something as unusual in my experience as a liquidity cushion, but is typical in my experience as a carve-out. The typical trade in these negotiations is okay, we'll agree that the final order can include a 506(c) waiver, but there needs to be a robust and fair carve-out. . . . I consider the million-dollar separate carve-out in favor of the creditors' committee to be in the context of this bankruptcy case, and given the fact that the carve-out is only triggered once there is a triggering event, to be an ample and substantial carve-out in favor of the creditors' committee. Accordingly, a 506(c) waiver, is under these circumstances, entirely appropriate and consistent with what I consider to be standard practice in this district." Hr'g Tr. 122:9–123:10, July 17, 2009.
In re Abitibibowater, Inc., No. 09-11296 (KJC) (Bankr. D. Del. June 4, 2009)	• Approved section 506(c) waiver in a final cash collateral order.
In re Metaldyne, No. 09-13412 (MG), 2009 WL 2883045 (Bankr. S.D.N.Y. June 23, 2009)	• **Overruled the committee's objection to 506(c) waiver**. • "The Prepetition ABL Lenders are therefore funding these cases, and should not be surcharged for the privilege of doing so." *See* 2009 WL 2883045, at *5.
In re Lyondell Chem. Co., No. 09-10023 (REG) (Bankr. S.D.N.Y. Mar. 1, 2009)	• **Overruled the committee's objection to 506(c) waiver**. • "Normally, we permit 506 waivers if, but only if, they have appropriate carve-outs. Here, we have that, and the 506 waivers are thus permissible[.]" Hr'g Tr. 749:19–750:2, Feb. 27, 2009.

Case	Result
Section 552(b) Waiver	
In re Ultra Petroleum Corp., No. 20-32631 (MI) (Bankr. S.D. Tex. June 16, 2020)	• Approved final DIP financing order with a 552(b) waiver.
Neiman Marcus Group LTD LLC, No. 20-32519 (DRJ) (Bankr. S.D. Tex. June 16, 2020)	• Approved final DIP financing order with a 552(b) waiver.
In re Whiting Petroleum Corp., No. 20-32021 (DRJ) (Bankr. S.D. Tex. June 16, 2020)	• Approved final cash collateral order with a 552(b) waiver.
In re Hornbeck Offshore Services, Inc., No. 20-32679 (DRJ) (Bankr. S.D. Tex. June 15, 2020)	• Approved final DIP financing order with a 552(b) waiver.
In re Stage Stores, Inc., No. 20-32564 (DRJ) (Bankr. S.D. Tex. June 10, 2020)	• Approved final cash collateral order with a 552(b) waiver.
In re J. C. Penney Company, Inc., No. 20-20182 (DRJ) (Bankr. S.D. Tex. Jun. 5, 2020)	• Approved final DIP financing order with a 552(b) waiver.
In re McDermott International, Inc., No. 20-30336 (DRJ) (Bankr. S.D. Tex. Feb. 24, 2020)	• Approved final DIP financing order with a 552(b) waiver.
In re American Commercial Lines, Inc., No. 20-30982 (MI) (Bankr. S.D. Tex. Feb. 10, 2020)	• Approved final DIP financing order with a 552(b) waiver.
In re Southern Foods Groups, LLC, No. 19-36313 (DRJ) (Bankr. S.D. Tex. Dec. 23, 2019)	• Approved final DIP financing order with a 552(b) waiver.
In re EP Energy Corporation, No. 19-35654 (MI) (Bankr. S.D. Tex. Nov. 25, 2019)	• Approved final DIP financing order with a 552(b) waiver.
In re Sheridan Holding Company II, LLC, No. 19-35198 (MI) (Bankr. S.D. Tex. Oct. 15, 2019)	• Approved final DIP financing order with a 552(b) waiver.
In re Epic Companies, LLC, No. 19-34752 (Bankr. S.D. Tex. Oct. 4, 2019)	• Approved final DIP financing order with a 552(b) waiver.
In re Shale Support Global Holdings, LLC, No. 19-33884 (DRJ) (Bankr. S.D. Tex. Aug. 16, 2019)	• Approved final DIP financing order with a 552(b) waiver.
In re Weatherford International PLC, No. 19-33694 (DRJ) (Bankr. S.D. Tex. Aug. 1, 2019)	• Approved final DIP financing order with a 552(b) waiver.
In re Legacy Reserves Inc., No. 19-33395 (MI) (Bankr. S.D. Tex. Jul. 23, 2019)	• Approved final DIP financing order with a 552(b) waiver.
In re Vanguard Natural Resources, Inc., No. 19-31786 (DRJ) (Bankr. S.D. Tex. Apr. 30, 2019)	• Approved final DIP financing order with a 552(b) waiver.
In re Westmoreland Coal Company, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Nov. 15, 2018)	• Approved final DIP financing order with a 552(b) waiver.
In re iHeartMedia, Inc., No. 18-31274 (MI) (Bankr. S.D. Tex. Apr. 12, 2018)	• Approved final DIP financing order with a 552(b) waiver.

Case	Result
In re Cobalt International Energy, Inc., No. 17-36709 (MI) (Bankr. S.D. Tex. Jan. 25, 2018)	• Approved final cash collateral order with a 552(b) waiver.
In re Seadrill Limited, No. 17-60079 (DRJ) (Bankr. S.D. Tex. Oct. 24, 2017)	• Approved final DIP financing order with a 552(b) waiver.
In re CJ Holding Co., No. 16-33590 (DRJ) (Bankr. S.D. Tex. Sept. 25, 2016)	• Approved final cash collateral order with a 552(b) waiver.
In re Linn Energy, LLC, No. 16-60040 (DRJ) (Bankr. S.D. Tex. Jul. 29, 2016)	• Approved final cash collateral order with a 552(b) waiver.
In re Sandridge Energy, Inc., No. 16-32488 (DRJ) (Bankr. S.D. Tex. July 5, 2016)	• Approved final cash collateral order with a 552(b) waiver.
In re Midstates Petroleum Co., Inc., No. 16-32237 (DRJ) (Bankr. S.D. Tex. June 30, 2016)	• Approved final cash collateral order with a 552(b) waiver.
In re Goodrich Petroleum Corp., No. 16-31975 (MI) (Bankr. S.D. Tex. Jun. 6, 2016)	• Approved final cash collateral order with a 552(b) waiver.
In re Energy XXI Ltd., No. 16-31928 (DRJ) (Bankr. S.D. Tex. May 19, 2016)	• Approved final cash collateral order with a 552(b) waiver.
In re RAAM Global Energy Co., No. 15-35615 (MI) (Bankr. S.D. Tex. Dec. 2, 2015)	• Approved final cash collateral order with a 552(b) waiver.
In re Paragon Offshore PLC, No. 16-10386 (CSS) (Bankr. D. Del. Mar. 9, 2016)	• Approved final cash collateral order with a 552(b) waiver.
In re Quicksilver Res. Inc., No. 15-10585 (LSS) (Bankr. D. Del. May 1, 2015)	• Approved final cash collateral order with a 552(b) waiver.
In re ITR Concession Co., LLC, No. 14-34284 (PSH) (Bankr. N.D. Ill. Oct. 28, 2014)	• Approved final cash collateral order with a 552(b) waiver.
In re Energy Future Holding Corp., No. 14-10979 (CSS) (Bankr. D. Del. June 6, 2014)	• Approved final cash collateral order with a 552(b) waiver.
In re Stacy's, Inc., 508 B.R. 370, 380–81 (Bankr. D.S.C. 2014)	• Court declined to apply "equities of the case" exception where secured lender had already "agreed to carve-outs from the proceeds of its collateral totaling $1,400,000 for administrative expenses and unsecured creditors" and the evidence revealed that the estate was only able to continue operating through the use of the lender's cash collateral.
In re Hostess Brands, Inc., No. 13-02223 (RDD) (Bankr. S.D.N.Y. Feb. 2, 2012)	• **Overruled the committee's objection to 552(b) waiver.** • Secured creditors' "willingness to provide for a carve-out upfront as opposed to letting the professionals hang on that point" was a sufficient "tradeoff" to justify section 552(b) waiver. Hr'g Tr. 58–59, Feb. 2, 2012.
In re Abitibibowater, Inc., No. 09-11296 (KJC) (Bankr. D. Del. June 4, 2009)	• Approved final cash collateral order with a 552(b) waiver.

Case	Result
In re Tower Air, Inc., 268 B.R. 404, 408 (Bankr. D. Del. 2001), *aff'd*, 397 F.3d 191, 205 (3d Cir. 2005)	• Court held that 552(b) exception did not apply and observed that although the lender might receive a "net enhancement" with respect to one aspect of its collateral, it was otherwise "grossly undersecured."
In re Groves Farms, Inc., 64 B.R. 276, 278 (Bankr. S.D. Ind. 1986)	• Court declined to apply "equities of the case" exception and noted that "courts have been more inclined to assist the debtor through the section 552(b) equity exception where the creditor whose interest will be modified is oversecured."
Marshaling Waiver	
In re Ultra Petroleum Corp., No. 20-32631 (MI) (Bankr. S.D. Tex. June 16, 2020)	• Approved no-marshaling language in final DIP financing order.
Neiman Marcus Group LTD LLC, No. 20-32519 (DRJ) (Bankr. S.D. Tex. June 16, 2020)	• Approved no-marshaling language in final DIP financing order.
In re Whiting Petroleum Corp., No. 20-32021 (DRJ) (Bankr. S.D. Tex. June 16, 2020)	• Approved no-marshaling language in final cash collateral order.
In re Hornbeck Offshore Services, Inc., No. 20-32679 (DRJ) (Bankr. S.D. Tex. June 15, 2020)	• Approved no-marshaling language in final DIP financing order.
In re Stage Stores, Inc., No. 20-32564 (DRJ) (Bankr. S.D. Tex. June 10, 2020)	• Approved no-marshaling language in final cash collateral order.
In re J. C. Penney Company, Inc., No. 20-20182 (DRJ) (Bankr. S.D. Tex. Jun. 5, 2020)	• Approved no-marshaling language in final DIP financing order.
In re McDermott International, Inc., No. 20-30336 (DRJ) (Bankr. S.D. Tex. Feb. 24, 2020)	• Approved no-marshaling language in final DIP financing order.
In re American Commercial Lines, Inc., No. 20-30982 (MI) (Bankr. S.D. Tex. Feb. 10, 2020)	• Approved no-marshaling language in final DIP financing order.
In re Sanchez Energy Corporation, No. 19-34508 (Bankr. S.D. Tex. Jan. 22, 2020)	• Approved no-marshaling language in final DIP financing order.
In re Southern Foods Groups, LLC, No. 19-36313 (DRJ) (Bankr. S.D. Tex. Dec. 23, 2019)	• Approved no-marshaling language in final DIP financing order.
In re EP Energy Corporation, No. 19-35654 (MI) (Bankr. S.D. Tex. Nov. 25, 2019)	• Approved no-marshaling language in final DIP financing order.
In re Sheridan Holding Company II, LLC, No. 19-35198 (MI) (Bankr. S.D. Tex. Oct. 15, 2019)	• Approved no-marshaling language in final DIP financing order.
In re Epic Companies, LLC, No. 19-34752 (Bankr. S.D. Tex. Oct. 4, 2019)	• Approved no-marshaling language in final DIP financing order.
In re Matra Petroleum USA, Inc., No. 19-34190 (DRJ) (Bankr. S.D. Tex. Aug. 28, 2019)	• Approved no-marshaling language in final DIP financing order.
In re Shale Support Global Holdings, LLC, No. 19-33884 (DRJ) (Bankr. S.D. Tex. Aug. 16, 2019)	• Approved no-marshaling language in final DIP financing order.

Case	Result
In re Weatherford International PLC, No. 19-33694 (DRJ) (Bankr. S.D. Tex. Aug. 1, 2019)	• Approved no-marshaling language in final DIP financing order.
In re Legacy Reserves Inc., No. 19-33395 (MI) (Bankr. S.D. Tex. Jul. 23, 2019)	• Approved no-marshaling language in final DIP financing order.
In re Vanguard Natural Resources, Inc., No. 19-31786 (DRJ) (Bankr. S.D. Tex. Apr. 30, 2019)	• Approved no-marshaling language in final DIP financing order.
In re Gastar Exploration Inc., No. 18-36057 (MI) (Bankr. S.D. Tex. No. 28, 2018)	• Approved no-marshaling language in final DIP financing order.
In re Westmoreland Coal Company, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Nov. 15, 2018)	• Approved no-marshaling language in final DIP financing order.
In re iHeartMedia, Inc., No. 18-31274 (MI) (Bankr. S.D. Tex. Apr. 12, 2018)	• Approved no-marshaling language in final DIP financing order.
In re Cobalt International Energy, Inc., No. 17-36709 (MI) (Bankr. S.D. Tex. Jan. 25, 2018)	• Approved no-marshaling language in final cash collateral order.
In re Seadrill Limited, No. 17-60079 (DRJ) (Bankr. S.D. Tex. Oct. 24, 2017)	• Approved no-marshaling language in final DIP financing order.
In re CJ Holding Co., No. 16-33590 (DRJ) (Bankr. S.D. Tex. Sept. 25, 2016)	• Approved no-marshaling language in final DIP financing order.
In re Linn Energy, LLC, No. 16-60040 (DRJ) (Bankr. S.D. Tex. Jul. 29, 2016)	• Approved no-marshaling language in final cash collateral order.
In re Sandridge Energy, Inc., No. 16-32488 (DRJ) (Bankr. S.D. Tex. July 5, 2016)	• Approved no-marshaling language in final cash collateral order.
In re Midstates Petroleum Co., Inc., No. 16-32237 (DRJ) (Bankr. S.D. Tex. June 30, 2016)	• Approved no-marshaling language in final cash collateral order.
In re Goodrich Petroleum Corp., No. 16-31975 (MI) (Bankr. S.D. Tex. Jun. 6, 2016)	• Approved no-marshaling language in final cash collateral order.
In re Energy XXI Ltd., No. 16-31928 (DRJ) (Bankr. S.D. Tex. May 19, 2016)	• Approved no-marshaling language in final cash collateral order.
In re Sherwin Alumina Co., LLC, No. 16-20012 (DRJ) (Bankr. S.D. Tex. Mar. 16, 2016)	• Approved no-marshaling language in final cash collateral order.
In re Inversiones Alsacia, S.A., No. 14-12896 (MG) (Bankr. S.D.N.Y. Nov. 5, 2014)	• Approved no-marshaling language in final cash collateral order.
In re Nautilus Holdings Ltd., No. 14-22885 (RDD) (Bankr. S.D.N.Y. Sept. 25, 2014)	• Approved no-marshaling language in final cash collateral order.
In re Genco Shipping & Trading Ltd., No. 14-11108 (SHL) (Bankr. S.D.N.Y. May 16, 2014)	• Approved no-marshaling language in final cash collateral order.

Case	Result
In re Goldking Holdings, LLC, No. 13-37200 (DRJ) (Bankr. S.D. Tex. Dec. 10, 2013)	• Approved no-marshaling language in final cash collateral order.
In re MSR Resort Golf Course LLC, No. 11-10372 (SHL) (Bankr. S.D.N.Y. Apr. 15, 2011)	• Approved no-marshaling language in final cash collateral order.
In re Innkeepers USA Trust, No. 10-13800 (SCC) (Bankr. S.D.N.Y. Sept. 2, 2010)	• Approved no-marshaling language in final cash collateral order.
In re Citadel Broadcasting Corp., No. 09-17442 (CGM) (Bankr. S.D.N.Y. Mar. 3, 2010)	• Approved no-marshaling language in final cash collateral order.
In re Edge Petroleum Corp., No. 09-206644 (RSS) (Bankr. S.D. Tex. Oct. 27, 2009)	• Approved no-marshaling language in final cash collateral order.

Exhibit C

DIP Resolutions Chart

IN RE CHESAPEAKE ENERGY CORP., et al., CASE NO. 20-33233

STATUS CHART OF OBJECTIONS TO THE DIP MOTION AND RESPONSES

Objecting Party	Docket No.	Objection	Response / Status
Formal Objections			
Certain Texas Taxing Entities	Docket No. 325	• The Certain Texas Taxing Entities assert that the DIP Order should provide, as adequate protection for their claims, that the first proceeds from the sale of the Debtors' assets constituting collateral securing the payment of the 2020 taxes should be set aside in a segregated account in an amount sufficient to pay the 2020 taxes together with any interest calculated at the applicable non-bankruptcy rate in the event the taxes are not paid prior to delinquency under Texas law. • Alternately, the Certain Texas Taxing Entities assert that the DIP Order should provide, as adequate protection for their claims, that the Debtors shall retain and set aside proceeds from the sale of the collateral securing their tax claims in an amount sufficient to pay the 2020 taxes together with any interest calculated at the applicable non-bankruptcy rate in the event the taxes are not paid prior to delinquency under Texas law and shall not pay or distribute such amounts for any other purpose without the agreement of the Certain Texas Taxing Entities or by order of the Court.	Resolved. The Debtors added the following language in paragraph 49 of the proposed Final Order: Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved thereby or hereby, any statutory liens on account of ad valorem property taxes (collectively, the "Tax Liens") of Dimmit County, Borden County Appraisal District, Crosby Independent School District, Dawson County Central Appraisal District, Martin County Appraisal District, Crockett County Tax Office, Howard County Tax Office, Midland County, Upton County Appraisal District, Gray County Tax Office, Hansford County Tax Office, Sheldon ISD, Austin ISD, Houston County, Nacogdoches County et al., Panola County, Burleson County, Fayette County, Karnes County, Gause Independent School District, Young County, Wilbarger County, Brazos County, Bastrop County, Cherokee County, Cherokee County Central Appraisal District, Pine Tree ISD, the City of Gladewater, Grimes Central Appraisal District, Harrison Central Appraisal District, Harrison County, Irion County, Leon Independent School District, Midland Central Appraisal District, Milam County, Reeves County Tax District, Stephens County, Atascosa County, Bexar County, Cotulla ISD, Culberson Co – Allamoore ISD, DeWitt County, Dilley ISD, Frio Hospital District,

Objecting Party	Docket No.	Objection	Response / Status
			Goliad County, Gregg County, Harris County, Jasper County, Jim Wells CAD, Karnes City ISD, La Salle County, Lee County, McMullen County, Montgomery County, Nueces County, Orange County, Parker CAD, Pearsall ISD, Polk County, Reeves County, Robertson County, San Augustine County, Tarrant County, Washington County, Webb CISD, Zapata County, Zavala CAD, and other similarly situated taxing entities (the "Texas Taxing Jurisdictions"), shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount and extent of the claims and liens asserted by the Texas Taxing Jurisdictions are fully preserved. In the event of a sale of the Debtors' assets subject to such Tax Liens, the rights of the Texas Taxing Jurisdictions to request that proceeds of such sale be segregated are preserved.
Certain Texas Taxing Entities	Docket No. 341	• The Certain Texas Taxing Entities assert that they hold secured prepetition tax claims for ad valorem taxes for the 2020 tax year, which are secured by senior tax liens on the real and personal taxable property of the Debtors within their boundaries. • The Certain Texas Taxing Entities filed a reservation of rights requesting clarification that the DIP Order was not intended to prime their prepetition tax claims, and requesting adequate protection, including the creation of a tax reserve if granted, either formally or informally, to any other similarly situated taxing entity. • The Certain Texas Taxing Entities assert that the DIP Order should provide, as adequate protection for their claims, that the first proceeds from the sale of the Debtors' assets constituting collateral securing the payment of the 2020 taxes should be set aside in a segregated account in an amount sufficient to pay the 2020 taxes together with any interest	Resolved. The Debtors added the following language to paragraph 49 of the proposed Final Order: Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved thereby or hereby, any statutory liens on account of ad valorem property taxes (collectively, the "Tax Liens") of Dimmit County, Borden County Appraisal District, Crosby Independent School District, Dawson County Central Appraisal District, Martin County Appraisal District, Crockett County Tax Office, Howard County Tax Office, Midland County, Upton County Appraisal District, Gray County Tax Office, Hansford County Tax Office, Sheldon ISD, Austin ISD,

Objecting Party	Docket No.	Objection	Response / Status
		calculated at the applicable non-bankruptcy rate in the event the taxes are not paid prior to delinquency under Texas law. • Alternately, the Certain Texas Taxing Entities assert that the DIP Order should provide, as adequate protection for their claims, that the Debtors shall retain and set aside proceeds from the sale of the collateral securing their tax claims in an amount sufficient to pay the 2020 taxes together with any interest calculated at the applicable non-bankruptcy rate in the event the taxes are not paid prior to delinquency under Texas law and shall not pay or distribute such amounts for any other purpose without the agreement of the Certain Texas Taxing Entities or by order of the Court upon hearing duly noticed. • The Certain Texas Taxing Entities further objected to the extent the DIP Order provides special language or concessions for the sole benefit of similarly situated taxing entities without also applying to the Certain Texas Taxing Entities, as it would unfairly lead to the disparate treatment of similarly situated creditors.	Houston County, Nacogdoches County et al., Panola County, Burleson County, Fayette County, Karnes County, Gause Independent School District, Young County, Wilbarger County, Brazos County, Bastrop County, Cherokee County, Cherokee County Central Appraisal District, Pine Tree ISD, the City of Gladewater, Grimes Central Appraisal District, Harrison Central Appraisal District, Harrison County, Irion County, Leon Independent School District, Midland Central Appraisal District, Milam County, Reeves County Tax District, Stephens County, Atascosa County, Bexar County, Cotulla ISD, Culberson Co – Allamoore ISD, DeWitt County, Dilley ISD, Frio Hospital District, Goliad County, Gregg County, Harris County, Jasper County, Jim Wells CAD, Karnes City ISD, La Salle County, Lee County, McMullen County, Montgomery County, Nueces County, Orange County, Parker CAD, Pearsall ISD, Polk County, Reeves County, Robertson County, San Augustine County, Tarrant County, Washington County, Webb CISD, Zapata County, Zavala CAD, and other similarly situated taxing entities (the "Texas Taxing Jurisdictions"), shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount and extent of the claims and liens asserted by the Texas Taxing Jurisdictions are fully preserved. In the event of a sale of the Debtors' assets subject to such Tax Liens, the rights of the Texas Taxing Jurisdictions to request that proceeds of such sale be segregated are preserved.
Cactus Wellhead LLC	Docket No. 342	• Cactus Wellhead asserts that the Debtors owe at least $741,918.80 for goods and services provided prepetition for which it was entitled to	Resolved.

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		assert mineral liens to collect the amounts owed (which relate back to the time goods or services were provided at a particular well). • Cactus Wellhead filed its limited objection to preserve its mineral lien rights and reclamation rights and priorities, to ensure that the DIP Liens do not prime mineral or mechanic's liens perfected under section 546(b) of the Bankruptcy Code against the Debtors' unencumbered properties. • Cactus Wellhead proposed certain amendments to the DIP Order in resolution of its objection. •	Cactus Wellhead withdrew its objection at Docket No. 549.
Certain Royalty Owner Plaintiffs ("Eagle Ford MDL Plaintiffs")	Docket No. 344	• The Eagle Ford MDL Plaintiffs, consisting of over 170 parties who have pending Texas state court royalty non-payment and release-of-acreage litigation cases against four Chesapeake entities and their one-third joint venture (non-debtor) partner CNOOC, object to the extent that the DIP Order grants a superpriority lien (or any lien whatsoever) in the Eagle Ford MDL Plaintiffs' mineral interests in the Eagle Ford Shale that--by operation of the specific language in the leases--were released by Chesapeake (and OOGC/CNOOC). • The Eagle Ford MDL Plaintiffs also object to the DIP Motion (and any related orders) to the extent it requires the Eagle Ford MDL Plaintiffsto bring additional suit (a challenge) in this Court. • The Eagle Ford MDL Plaintiffs object to any impairment of their right under Section 9.343 of the Texas Business and Commerce Code. • The Eagle Ford MDL Plaintiffs object to the extent the DIP Motion is deemed as an adjudication of or having any preclusive effect as to: • the extent of Chesapeake's ownership of oil and gas minerals on Eagle Ford MDL Plaintiffs' leased acreage in the Eagle Ford Shale, or	Unresolved. The Debtors added the following language to paragraph 46 of the proposed Final Order, which they believe adequately addresses the Eagle Ford MDL Plaintiffs' objections: Notwithstanding anything to the contrary in the DIP Motion, in the DIP Credit Documents, in the Interim Order or in this Final DIP Order: (A) nothing in the DIP Motion, in the Interim Order, in this Final Order, or in the DIP Credit Documents shall be deemed to be an adjudication of, or have a preclusive effect as to (i) the extent of the Debtors' ownership of oil and gas minerals and the originally-leased acreage subject to the claims of the plaintiff-lessors in the multi-district litigation currently pending in Texas (the "Texas MDL Litigation"), or (ii) whether any such ownership has or has not terminated, or any such acreage has been deemed released to plaintiff-lessors or is subject to judicial order of release to plaintiff-lessors, and all rights

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		◦ whether any of Chesapeake's ownership of oil and gas minerals on Eagle Ford MDL Plaintiffs' leased acreage has or has not terminated, which is at issue in the pre-petition litigation against Debtors. • The Eagle Ford MDL Plaintiffs further object to any order that expressly or impliedly gives the DIP lenders any lien on any Eagle Ford oil and gas minerals that are the subject of Eagle Ford MDL Plaintiffs' claims that certain Eagle Ford acreage under lease to Debtors (and OOGC/CNOOC) is released or terminated by operation of specific lease terms. •	of the parties in the Texas MDL Litigation are hereby preserved; (B) the DIP Liens shall not attach to the property interests of the plaintiffs in the Texas MDL Litigation in which the Debtors' do not hold an interest; (C) nothing in the DIP Motion, in the Interim Order, in this Final Order, or in the DIP Credit Documents shall limit in any manner the plaintiffs in the Texas MDL Litigation from challenging the validity, extent, priority, perfection, or enforceability of any purported interest—solely with respect to the property that is the subject of the Texas MDL Litigation -- asserted by the Existing RBL Secured Parties, the Existing FLLO Secured Parties, or the Existing Second Lien Secured Parties, solely on the basis of the Debtors' disputed interests in such property; and (D) nothing in the DIP Motion, in the Interim Order, in this Final Order, or in the DIP Credit Documents shall limit in any manner the rights of any parties in the Texas MDL Litigation under any recorded lis pendens.
Allen Johnson, *et al.*, Rodney Hudson, *et al.*, Saundra Nelson, *et al.*, Elizabeth Ruth Middleton, *et al.*, (collectively, the "<u>Louisiana Mineral Owners</u>")	Docket No. 345	• The Louisiana Mineral Owners are plaintiffs in multiple pending actions against Chesapeake challenging, among other things, certain "post-production" cost deductions improperly made to their interests, including a class action in which the Hudson mineral owners are putative class representatives for all unleased mineral owners in Chesapeake-operated force-pooled units in Louisiana. • The Louisiana Mineral Owners object to Chesapeake's proposed use and disposition of cash collateral on the basis that: ◦ the unleased owners' share of unleased production from Louisiana force-pooled units is property of the Louisiana Mineral Owners and not property of the estate;	Unresolved. The Debtors added the following language to paragraph 47 of the proposed Final Order, which they believe adequately addresses the Louisiana Mineral Owners' objections: The DIP Liens shall attach to the property interests that are subject to litigation currently pending in Louisiana (collectively, the "<u>Louisiana Cases</u>," and the plaintiffs in the Louisiana Cases, the "<u>Louisiana Unleased Plaintiffs</u>") solely to the extent of the Debtors' interest in such property but not to Louisiana Unleased Plaintiffs' interest in such property. Nothing in the Interim Order, this Final Order, or the DIP Credit Documents shall (i)

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		• proceeds derived from the sale of Louisiana unleased owners' share of production are not property of the estate and are not subject to prepetition liens of Chesapeake's secured creditors; • Chesapeake asserts that all "as-extracted collateral" derived from its operated units is subject to security interests in favor of both its prepetition secured creditors and the creditors it has obtained to provide postpetition financing; and • Chesapeake has not made provision for adequate protection of the Louisiana unleased owners' proceeds, to protect them from either being commingled with operating funds or from being diverted as collateral for Chesapeake's obligations to its secured creditors. • The Louisiana Mineral Owners respectfully urged that their interests be recognized in the cash proceeds from their share of unit mineral production, and object to the use of their cash proceeds by Chesapeake. • The Louisiana Mineral Owners further request that Chesapeake provide adequate protection by separating all unleased owners' share of mineral proceeds into a separate account that is not subject to lien, pledge or security interest to Chesapeake's secured creditors.	be deemed to be an adjudication of the underlying matters asserted in the Louisiana Cases, and all rights of the parties to the Louisiana Cases are preserved, or (ii) preclude the plaintiffs in the Louisiana Cases from seeking adequate protection or other relief in accordance with the Bankruptcy Code, and all parties' rights to object to such relief are reserved
Archrock Partners Operating LLC	Docket No. 346	• Archrock filed a limited objection and reservation of rights and joinder with the objection filed by Cactus Wellhead related to statutory mechanic's liens that may be filed by Archrock. • Archrock expressly reserved its right to raise these objections and any other such objections, or to join in any other objections relating to the DIP Motion, at any time prior to the final DIP hearing. • Archrock reserved its right to object to the entry of the Final Order absent the proposed order including the provisions requested by Cactus Wellhead relating to preservation of statutory mechanic's liens.	Resolved.

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J-W Power Company	Docket No. 348	• JW Power filed a limited objection and reservation of rights and joinder with the objection filed by Cactus Wellhead related to statutory mechanic's liens that may be filed by JW Power. • JW Power expressly reserved its right to raise these objections and any other such objections, or to join in any other objections relating to the DIP Motion, at any time prior to the final DIP hearing. • JW Power reserved its right to object to the entry of the Final Order absent the proposed order including the provisions requested by Cactus Wellhead relating to preservation of statutory mechanic's liens.	Resolved.

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Informal Objections			
Petty Entities	N/A	Requested language in DIP order regarding the liens of the Petty Entities on leases and interests that are superior except in the limited circumstance described in the leases.	Resolved. The Debtors added the following language in paragraph 45 of the proposed Final Order: Notwithstanding anything in this Final Order, the Interim Order, or the DIP Credit Documents, the DIP Liens shall not prime or be senior to the liens or interests of Petty Business Enterprises, LP, Petty Energy L.P, Petty Grandchildren's Trust, Susan Petty Arnim Trust, Scott James Petty Trust, Joan L. Petty Trust, Scott James Petty, Joan L. Petty, Susan Petty Arnim, Petty Group LLP, Ferncliff Investments, L.P., Scott Jr. and Eleanor Petty, Susan and Thomas Arnim, Eleanor O. Petty, and The Petty Family Limited Partnership, LLP (each a "Petty Entity") under any oil and gas lease between a Petty Entity as lessor and Chesapeake Exploration L.L.C. as lessee and any operating agreement between Chesapeake Exploration L.L.C. as operator and Petty Energy L.P. as non-operator, in each case to the extent such lien or interest of the Petty Entity constitutes a valid, perfected non-avoidable lien senior to the Existing RBL Liens as of the Petition Date.
Existing Second Lien Notes Trustee	N/A	Requested language in the DIP order regarding the payment of reasonable and documented fees and expenses accrued by Deutsche Bank Trust Company Advisors.	The Debtors added the following language in paragraph 14(d) of the proposed Final Order, which they believe adequately addresses the Existing Second Lien Notes Trustee's request: (ii)(a) the reasonable and documented fees and expenses incurred or accrued by Deutsche Bank Trust Company Americas, as the Existing Second Lien Notes Trustee and any other role(s) under the Second Lien Documents (the

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			foregoing to include all unpaid prepetition fees, costs and expenses) (the "Existing Second Lien Notes Trustee Fees and Expenses"), (b) including the reasonable and documented fees and expenses of the professionals for Deutsche Bank Trust Company Americas, as the Existing Second Lien Notes Trustee (including Morgan, Lewis & Bockius LLP and one local counsel in each other relevant local jurisdiction) ((i) and (ii)(b), the "Second Lien Professionals").
ACE American	N/A	Requested language in DIP order regarding the Debtors' insurance policies.	Resolved. The Debtors added the following language to paragraph 38 of the proposed Final Order: The DIP Secured Parties shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained now or in the future by any of the Debtors which in any way relates to the DIP Collateral; provided, however, that nothing in this Final Order, the Interim Order, or the DIP Credit Agreement shall modify the terms and conditions of any insurance policies or related agreements issued to the Debtors by ACE American Insurance Company, Federal Insurance Company, and/or any of their respective affiliates or successors unless agreed to or acknowledged by ACE American Insurance Company, Federal Insurance Company or their respective affiliates, as applicable. Notwithstanding the foregoing, the Debtors are authorized and directed to take any actions that the DIP Agent shall request, in its sole and absolute discretion, to have the DIP Agent, on behalf of the DIP Secured Parties, added as an additional insured and loss payee on each insurance policy.

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U.S. and Other Governmental Units	N/A	Requested language in DIP order regarding a reservation of rights.	Resolved. The Debtors added the following language to paragraph 44 of the proposed Final Order: Notwithstanding anything to the contrary in the Interim Order, this Final Order, or the DIP Credit Documents, nothing in the Interim Order, this Final Order, or the DIP Credit Documents shall: (i) impair or adversely affect the United States' rights, claims, and defenses under applicable law of set-off and recoupment, or those of any governmental unit as defined under 11 U.S.C. § 101(27) ("governmental unit"), and all such rights, claims and defenses (the "Setoff/Recoupment Rights") shall be preserved in their entirety, provided, however, that the exercise of any such Setoff/Recoupment Rights must be in accordance with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; provided further, however, that (a) exercise of such Setoff/Recoupment Rights shall not impair or adversely affect the rights of the DIP Secured Parties to assert remedies (if any) with respect to any Event of Default in the event any governmental unit exercises any such Setoff/Recoupment Rights, (b) nothing in this paragraph shall limit the right of any party in interest to challenge the Setoff/Recoupment Rights of any such governmental unit, and (c) nothing in the Interim Order, this Final Order, or the DIP Credit Documents shall modify or determine the rights or priority of any governmental unit's Setoff/Recoupment Rights vis-à-vis the rights and liens of the DIP Secured Parties, and all rights of the governmental units and the DIP Secured Parties with respect to the determination of such rights or priority (to the extent such priority is a disputed issue) are preserved; (ii) impair or adversely

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			affect any right under applicable law of any governmental unit with respect to any financial assurance, letter of credit, trust, surety bond, or insurance proceeds; (iii) waive, impair, or adversely affect any governmental unit's rights (if any) under applicable law to refuse to provide its consent to the proposed assumption and/or assignment of any lease or executory contract; (iv) limit any governmental unit in the exercise of its police powers in accordance with 11 U.S.C. § 362(b)(4); (v) impair or adversely affect the right of any governmental unit to object to the terms of any credit bid for cause; or (vi) relieve the Debtors of any obligations under police or regulatory laws or under 28 U.S.C. § 959(b), provided that nothing herein shall limit or impair the Debtors rights to assert any defenses under applicable law, and nothing herein shall create new defenses to obligations under such police or regulatory laws or 28 U.S.C. § 959(b). With respect to environmental liabilities owed to any governmental unit, to the extent that the actions of the DIP Secured Parties or Existing Secured Parties (i) constitute, within the meaning of 42 U.S.C. § 9601(F) and (G), actual participation in the management or operational functions of a vessel or facility owned or operated by the Debtors, or (ii) otherwise cause lender liability to arise or the status of control, responsible person, owner or operator to exist under applicable law, the rights of such governmental unit under such applicable laws are preserved, and all rights of the DIP Secured Parties or Existing Secured Parties to contest such liability or status under applicable law are preserved.
Ad valorem Texas Tax Entities	N/A	Requested language in DIP order to ensure that tax liens will not be primed and that upon any sale of the tax entities' collateral, funds will be segregated to pay the taxes prior to distributions to any other creditors.	Resolved.

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			The Debtors added the following language to paragraph 49 of the proposed Final Order: Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved thereby or hereby, any statutory liens on account of ad valorem property taxes (collectively, the "Tax Liens") of Dimmit County, Borden County Appraisal District, Crosby Independent School District, Dawson County Central Appraisal District, Martin County Appraisal District, Crockett County Tax Office, Howard County Tax Office, Midland County, Upton County Appraisal District, Gray County Tax Office, Hansford County Tax Office, Sheldon ISD, Austin ISD, Houston County, Nacogdoches County et al., Panola County, Burleson County, Fayette County, Karnes County, Gause Independent School District, Young County, Wilbarger County, Brazos County, Bastrop County, Cherokee County, Cherokee County Central Appraisal District, Pine Tree ISD, the City of Gladewater, Grimes Central Appraisal District, Harrison Central Appraisal District, Harrison County, Irion County, Leon Independent School District, Midland Central Appraisal District, Milam County, Reeves County Tax District, Stephens County, Atascosa County, Bexar County, Cotulla ISD, Culberson Co – Allamoore ISD, DeWitt County, Dilley ISD, Frio Hospital District, Goliad County, Gregg County, Harris County, Jasper County, Jim Wells CAD, Karnes City ISD, La Salle County, Lee County, McMullen County, Montgomery County, Nueces County, Orange County, Parker CAD, Pearsall ISD, Polk County, Reeves County, Robertson County, San Augustine County, Tarrant County, Washington County, Webb CISD, Zapata County,

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			Zavala CAD, and other similarly situated taxing entities (the "Texas Taxing Jurisdictions"), shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount and extent of the claims and liens asserted by the Texas Taxing Jurisdictions are fully preserved. In the event of a sale of the Debtors' assets subject to such Tax Liens, the rights of the Texas Taxing Jurisdictions to request that proceeds of such sale be segregated are preserved.
PMBG Parties	N/A	Requested language in the DIP order to provide that the DIP Liens shall not prime the PMBG Parties' liens in the DIP Collateral to the extent such lien constitutes a valid, perfected, non-avoidable lien senior to the Existing RBL Liens as of the Petition Date.	Resolved. The Debtors added the following language to paragraph 48 of the proposed Final Order: The DIP Liens shall not prime or be senior to the liens or interests of the PMBG Parties[1] in the DIP Collateral to the extent such lien or interest of the PMBG Party constitutes a valid, perfected, non-avoidable lien senior to the Existing RBL Liens as of the Petition Date,

[1] PMBG Parties" are the following parties asserting mineral and other interests: (i) Kelly Vesper, individually, as Trustee of the Kelly Vesper Heritage Trust, and as Executrix of the Estate of John B. Vesper, Deceased and the Estate of Leslie T. Vesper, Deceased; (ii) Gates Mineral Company, Ltd., Gates Production Company EF, LLC, Donald G. Elliott, Jannifer M. Elliott, David B. Elliott, Richard J. Gates, Linda A. Pederson, Louise G. Davis, Thomas A. Gates, Alonzo E. Gates, II, Laura I. Gates, Terri Street Gates Life Estate, and Alonzo E. Gates II Testamentary Trust, Argent Trust as Trustee; (iii) Leojua Ltd.; (iv) Blackstone Dilworth, Paul Dirks, Executor of the Estate of Frances Dilworth, deceased, Joya Minerals, LP, Frances Diane Dilworth Gates, Thomas A. Gates, Jr., Anthony Aguilar, David Ortiz, Horacio Saenz, Louise Dilworth Davis, Trustee of the Louise Dilworth Davis 2006 Trust, Frost Bank, Trustee for the J.C. Dilworth, III, Generation Skipping Trust for the benefit of Eric Davis, Frost Bank, Trustee for the J.C. Dilworth, III, Generation Skipping Trust for the benefit of Daniel Davis, Frost Bank, Trustee for the J.C. Dilworth, III, Generation Skipping Trust for the benefit of Serena Davis, Frost Bank, Trustee for the J.C. Dilworth, III, Generation Skipping Trust for the benefit of Michelle Davis; (v) MBF Holdings La Salle LP, formerly MBF Partnership; (vi) Dan W. Kinsel III, individually, and as Trustee of the 2009 Dan and Leslie Kinsel Children's Trust and Karl Gene Kinsel, Individually, and as Trustee of the 2009 Karl Gene Kinsel Child's Trust; and (vii) Leighton Arthur Wier, Ronald Hargis Wier, Vicki Grace Gilbert, Max Harris Wier III, Leonard H. Sims III, Elizabeth Sims Hufft, Terry Lewis, Executor of the Estate of Diana Rose Sims Lewis, deceased, James Edward Sheldon, Executor of the Estate of Catherine Lilley Sheldon, deceased, and James Edward Sheldon, or their successors or assigns.

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			whether those liens arise by contract, under statute, by operation of law, or otherwise. The DIP Liens shall attach to the property interests that are subject to the mineral and other interests held by the PMBG Parties to the extent of the Debtors' interest in such property (and including all proceeds from the Debtors' interest in such property), and, with respect to amounts being held in escrow pending resolution of any disputes between the Debtors and the PMBG Parties, the DIP Liens shall attach to such amounts solely to the extent of the Debtors' interests in such amounts. Nothing in the Interim Order, this Final Order, or the DIP Credit Documents shall be deemed to be an adjudication of, or have a preclusive effect as to the extent of the Debtors' ownership of oil and gas minerals on the leased acreage subject to the mineral and other interests held by the PMBG Parties, and all rights of the Debtors and the PMBG Parties are preserved; provided, however, that any interest of the Debtors in such property is subject to the DIP Liens, the DIP Credit Documents, the Interim Order and this Final Order.

Exhibit D

Robert Albergotti Deposition Transcript

[Filed Under Seal]

Exhibit E

Stephen J. Antinelli Deposition Transcript

[Filed Under Seal]

Exhibit F

Domenic J. Dell'Osso, Jr. Deposition Transcript

[Filed Under Seal]