Drilling for Success: An Excavation of Sanchez Energy Corporation’s Ch. 11 Reorganization

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Drilling for Success: An Excavation of Sanchez Energy Corporation’s Ch. 11 Reorganization

By: Nathan Cates & Landon Foody
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Sanchez’s Pre-Petition History.

The Origin Story of Sanchez Energy Corporation.

Antonio R. “Tony” Sanchez, Jr. founded Sanchez Oil & Gas (“SOG”), a private company, in 1972.¹ Tony Jr. obtained his Doctor of Jurisprudence in 1969, but he made a living by drilling wells in and around south Texas.² He and his wife, Maria Josefina “Tani” Guajardo had four children: Tony III, Anna Lee, Eduardo Augusto, and Patricio David.³ In 2005, the family founded Sanchez Midstream Partners LP to provide acquisition, development, ownership, and operation of gas gathering systems, with Patricio as its most current President/COO.⁴ In 2010, breakthroughs in drilling led to the family-owned company’s discovery of the Eagle Ford Shale (“EFS”), a 200-foot-thick zone of oil-bearing underground rock that sits under the ground.⁵ Consequently, the family transferred its properties in the EFS to Sanchez Energy Corporation (“SN”), an exploration and production company developing oil and natural gas resources, which went public on December 19, 2011.⁶ SN incorporated in Texas and established its headquarters in Houston.⁷ Oil-and-gas

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¹ History of Sanchez Oil & Gas, Sanchez Oil & Gas Corp., https://www.sanchezog.com/about/history/, https://perma.cc/3MN8-UXJN.
³ Id.
production subsequently surged to about 16,500 barrels a day from 600 barrels two years prior. In 2014, SN acquired 100,000 acres from Royal Dutch Shell for $560 million.

In 2015, the United States saw domestic oil supply cap at 9.6 million barrels per day, and in 2016 it would drop to 8.5 million barrels per day. Despite the lack of production, Tony III remained optimistic and hopeful that newfound efficiency in an otherwise capped market would flip the script. SN partnered with Blackstone Energy Partners on a $3.2 billion deal to acquire leases from Anadarko Petroleum in the EFS, adjacent to the land purchased from Shell. This move secured SN’s control of nearly 600,000 acres in one of America’s biggest oil fields, nearly 950 net producing wells, and over 2,125 specifically identified potential future drilling locations. SN’s footprint extended beyond the EFS into south Louisiana and even part of Mississippi, including 34,000 acres in the Tuscaloosa Marine Shale (“TMS”). Despite well costs and commodity prices, SN believed that the TMS has significant future development potential.

**Assets and Prepetition Capital Structure.**

SN held assets in the Eagle Ford Shale (466,000 gross acres), which included the Catarina Assets (106,00 acres in Dimmit, La Salle, and Webb counties), the Comanche Assets (318,000 acres adjoining the Catarina Assets), the Maverick Assets (89,000 acres in Dimmit, Frio, La Salle, and Zavala counties), and the Palmetto Assets (7,600 acres in Gonzales county). SN also held

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9 Id.


11 Id.

12 Id.

13 Id.

14 Id.

15 George Declaration, supra note 7, at 8–14, https://perma.cc/D8MG-SR5A.
assets in the TMS, as well as various shared services agreements with SOG that provide SN with an employee workforce for SN’s daily operations.\textsuperscript{16}

As of the Petition Date, SN had debt obligations of $7.9 million in principal amount and $17 million under a First-Out Senior Secured Revolving Credit Facility (2023 maturity); $500 million in principal amount of 7.25\% Senior Secured Notes (2023 maturity); $600 million in principal amount of 7.75\% Senior Notes (2021 maturity); and $1.15 billion in principal amount of 6.125\% Senior Notes (2023 maturity).\textsuperscript{17} Additionally, SN had issued and outstanding equity securities including 620,000 shares of Series A Preferred Stock; 2.5 million shares of Series B Preferred Stock; 100 million shares of Common Stock; and warrants to purchase 8.5 million of additional shares of Common Stock.\textsuperscript{18}

**Events Leading to Chapter 11 Filing.**

**Sanchez’s Version of Events.**

The decline and volatility in commodity prices from 2014 to 2016 wreaked havoc on SN and other oil & gas companies. In 2014, oil prices dropped from $100 per barrel to only $26 per barrel in February 2016.\textsuperscript{19} SN took numerous actions to keep the company afloat, such as changing operational strategies, reducing overhead structure, and disposing of assets to obtain cash.\textsuperscript{20} Then, in 2018, SN sought the services of Moelis & Company, as well as Akin Gump Strauss Hauer & Feld LLP and Alvarez & Marsal North America, LLC for restructuring advice.\textsuperscript{21} SN also appointed

\textsuperscript{16} Id. at 15–17.
\textsuperscript{17} Id. at 18.
\textsuperscript{18} Id.
\textsuperscript{19} Id. at 26.
\textsuperscript{20} Id. at 27.
\textsuperscript{21} George Declaration, supra note 7, at 29, https://perma.cc/D8MG-SR5A.
independent directors to evaluate SN’s options of various sales, financings, recapitalizations, and reorganization transactions.\textsuperscript{22}

The first quarter of 2019 saw the company report a net loss of $67.3 million, which included $44.9 million in non-cash mark-to-market losses related to commodity derivatives and a $3.9 million non-cash impairment charge.\textsuperscript{23} In the press release regarding the company’s filing for bankruptcy, SN cited falling energy prices and a dispute with Blackstone Group Inc. over whether SN defaulted on the assets acquired from Anadarko Petroleum in the EFS, entitling Blackstone to take the assets, as primary reasons for filing.\textsuperscript{24} However, the company planned to use $175 million in new financing to align its capital structure with the low price environment, to reduce debt, and position the company for operation in the normal course.\textsuperscript{25} SN maintained that the company had significant liquidity in cash on hand and the new financing to continue normal business operations; and Sanchez III asserted his confidence in the company’s future.\textsuperscript{26}

\begin{center}
\textbf{The Media’s Take on Sanchez’s Financial Struggles.}
\end{center}

After a plunge in share price and subsequent delisting from the NYSE, SN sought to drill nine new wells in EFS in a bounce-back play.\textsuperscript{27} However, SN failed to generate profits and large

\begin{itemize}
\item \textsuperscript{22} \textit{Id.} at 30.
\item \textsuperscript{25} \textit{Id.}
\item \textsuperscript{27} Jim Bloom, \textit{Sanchez Energy Corporation (OTCMKTS:SNEC) Facing Long Term Uncertainties}, INSIDER FIN. (Feb. 27, 2019), https://insiderfinancial.com/sanchez-energy-corporation-otcmktsnec/177832/, https://perma.cc/KX4T-295E. SN had hoped that that the new drilling projects would help its stock price ”bounce back” to at least $2 per share, instead of the abysmal $0.20 per share figure. \textit{Id.}
\end{itemize}
interest payments and obligations to shareholders loomed over head. Consequently, SN engaged Moelis & Co. to provide financial advisory services. SN had not made an annual profit since 2013 and posted a $9.7 million loss on $1 billion of revenue in 2018. By August 2019, 26 U.S. oil and gas producer filed for bankruptcy; twenty-eight producers filed in all of 2018. According to media analysts, the failure of drillers, like SN, was due to the companies’ inability to service debt and secure new funding. Indeed, the drillers financed growth by becoming highly levered and betting on higher oil prices. Analysts, however, disagree with SN’s analysis that falling crude prices were to blame for the current round of bankruptcies because barrel prices had doubled since 2016 to about $60/barrel. Instead, analysts cite the fact that many of the drillers, like SN, took on debt in 2016 due to the oil slump and the payments on maturities payments proved too high.

Additionally, some have expressed corporate governance concerns because SN operates like a family-run firm. SOG, which manages operations for SN, employs both Sanchez Jr. (Chairman) and Sanchez III (Chief Executive). SN obtained assets from businesses operated by other members of the Sanchez family. For example, SN purchased drilling rights to 40,000 acres in Mississippi from Sanchez Resources LLC, run by Eduardo Sanchez, at a price of $2,500/acre (a price higher than the $144/acre paid by Goodrich Petroleum Corporation to acquire a nearby land only one month earlier). Some questioned the purchase in the TMS since the company

28 Id.
planned to spend a mere 6% of its capital in the project. Moreover, SN’s corporate charter allows executives and family-controlled companies to compete with the business, positing many fiduciary duty concerns for shareholders. Because the executives were in a position of information both in SN and in the other businesses, the grant of competition could have allowed the executives to do something that was not in the company’s best interest.

In short, SN, like most EFS drillers, took on expensive drilling projects through debt, and when the projects did not pay off, the response was to drill more, tightening the noose around the neck. Additionally, the close family ties to the business only raise further causes for concern over fiduciary duty as executives plan for reorganization and yet maintain freedom to compete with the business.

**Filing of Chapter 11 Petition.**

The once third-most active driller listed $2.1 billion in assets and $2.8 billion in debt and filed for bankruptcy in Houston.

**First Day Motions.**

On August 11, 2019 (“The Petition Date”), SN filed a Voluntary Petition for Non-Individuals Filing for Bankruptcy in the United States Bankruptcy Court for the Southern District of Texas (the “Voluntary Petition”). SN then filed its First Day Motions with the court; these motions can be grouped into three categories: 1) Orders Facilitating the Administration of

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33 Id.
34 Id.
First Day Motions were filed as Emergency Motions under Federal Rule of Bankruptcy Procedure 6003, whereby the court may grant Interim and Final Relief following the commencement of the case to the, “extent that relief is necessary to avoid immediate and irreparable harm . . . .”

**Administration of the Estate.**

**Joint Administration.**

SN, along with its ten affiliates (collectively “SN”), submitted an emergency motion for joint administration, asking the court to maintain one filing and one docket for SN, as well as requiring one disclosure statement filing and one reorganization plan filing for all. Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, if “two or more petitions are pending in the same court by or against . . . a Debtor and an affiliate, the court may order a joint administration of the estates.” Further, the Southern District of Texas Bankruptcy Court’s Local Rule 1015-1 provided for joint administration of a debtor and its affiliates’ cases. SN sought joint administration to provide administrative convenience, as many motions, hearings, and orders will affect all the Debtors equally, and independent filings would result in higher

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38 Hereinafter, a “Bankruptcy Rule.”
41 *Id.* at 7.
42 Motion for Joint Administration, *supra* note 40, 2.pdf at 7.
costs without any benefit to the cases. In supporting this motion, SN asserted joint administration would not adversely affect any related party as they only wanted administrative, not substantive, consolidation. The court granted SN’s motion.

**Designation of Complex Chapter 11 Case.**

Following the motion for joint administration, SN filed a motion for designation as a complex Chapter 11 case due to the debtors having over ten million in debt, over fifty interested parties, and due to claims against the Debtor being publicly traded. The court granted SN’s motion. This designation applies special rules, including: notifying interested parties of complex Chapter 11 designation within fourteen days, a master list of parties who must receive notice of motions or pleadings including the thirty largest unsecured creditors, filing of an official form for a noticing agent, requirement of any motion seeking relief within fourteen days to be labeled “emergency,” ninety-day bar date for proofs of claims by entities and 180 days for governmental units, and various other rules. Complex Chapter 11 designation provides the debtor with procedures and special rules that lessen the burden of massive cases through consolidated filings, preset timing periods, and hardline dates that provide predictability and support efficiency.

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43 *Id.*
44 *Id.*
Claims and Noticing Agent.
Next, SN filed an application to appoint Prime Clerk LLC as the claims, noticing, and solicitation agent, instead of the bankruptcy court’s clerk. 49 SN stated appointing Prime Clerk LLC as the claims and noticing agent would “provide the most effective and efficient means of, and relieve Debtors and/or Clerk’s Office of the administrative burden of noticing, administering claims, and soliciting and tabulating votes and is in the best interest of both the Debtor’s estates and their creditors.” 50 Accordingly, the court granted the motion. 51

Consolidated Creditors.
Due to the size and complexity of the case, SN filed an emergency motion requesting consolidation of the lists of the individual debtors’ thirty largest creditors, consolidation of their creditor matrixes, and permission to redact sensitive personal materials from their creditor matrixes that might be used to perpetrate identity fraud. 52 Bankruptcy Code 1007(a)(1) requires debtors to file a list of certain entities names and addresses; also, Bankruptcy Code 1007(d) requires the filing of the name, address, and claim of the twenty-largest creditors. 53 Following the same rationale as that justifying joint administration, the court granted SN’s request for consolidated filing of these documents. 54

50 Id. at 3.
53 Id. at 3.
54 Order (I) Authorizing Consolidated Creditors List; (II) Authorizing Redaction of Certain Personal Identification Information; (III) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11
**Extension for Filing Schedule.**

Per the same rationale as above, SN petitioned the court to extend their deadline to file Schedules and Statements by thirty days, without prejudice to request another extension.55

Alongside this, an extension of sixty days was requested for filing of their Rule 2015.3 reports regarding their business and financial affairs of the Debtors and their non-Debtor subsidiaries.56

SN simultaneously requested a waiver of the requirement to file a list of equity security holders, asserting their intention to timely notice equity security holders through filing with the Securities and Exchange Commission and their contemporaneous filing of a list of significant holders of its outstanding stock.57 The court granted this emergency motion.58

**Cash Management System.**

In the best interest of its creditors and to avoid substantial cost, disruption, and burden to their restructuring process, SN requested the court allow continued use of their current cash management system.59 SN asked the court to permit continued use of their fourteen active bank

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56 [Id. at 6–7.]

57 [Id. at 7–9.]


accounts and six inactive accounts, along with a request to allow payment of related pre-petition expenses and continued payment of such expenses in the ordinary course of business.\textsuperscript{60} SN further requested continued use of their business forms, without reference to its status as a debtor in possession, to avoid the expense and delay of ordering new forms.\textsuperscript{61} Additionally, SN requested the continued use of their corporate credit card program for necessary expenses and allowance to continue intercompany transactions, while affording these transactions administrative expense priority according to §503(b) and §507(a)(2).\textsuperscript{62} SN made its request pursuant to § 363(c)(1) of the Bankruptcy Code, stating a debtor-in-possession may “use property of the estate in the ordinary course without notice or hearing.”\textsuperscript{63} The court granted an interim and final order authorizing the requested relief.\textsuperscript{64}

\textbf{Day-to-Day Operations.}

\textbf{Utility Services.}

To continue undisrupted operation, SN filed a motion to prohibit discontinuance of utility services whilst proposing adequate protection for the utility companies’ services.\textsuperscript{65} Each month SN paid approximately $103,000 for utility services, estimating that in the next fourteen days it

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{60} Id. at 12.
\item \textsuperscript{61} Id.
\item \textsuperscript{62} Id. at 13–14.
\item \textsuperscript{63} Id. at 21.
\item \textsuperscript{64} Final Order (I) Authorizing the Debtors to continue to (A) Operate their Cash Management System and Maintain Existing Bank Accounts, (B) Maintain Existing Business Forms, and (C) Perform Intercompany Transactions and (II) Granting Related Relief 637.pdf, In Re Sanchez Energy Corp., No. 19-34508 (Bankr. S.D. Tex. R. Filed Nov. 25, 2019) \url{https://perma.cc/L3EA-YRNY}.
\item \textsuperscript{65} Debtor’s Emergency Motion for Entry of an Order (I) Approving Debtor’s Proposed Adequate Assurance of Payment for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services; (III) Approving Debtor’s Proposed Procedures for Resolving Additional Assurance Requests; and (IV) Granting Related Relief 8.pdf, In Re Sanchez Energy Corp., No. 19-34508 (Bankr. S.D. Tex. R. Filed Aug. 12, 2019) [hereinafter Motion for Adequate Assurance] \url{https://perma.cc/CMG9-J5EE}.
\end{itemize}
\end{footnotesize}
would owe approximately $48,000 in utility services. As adequate assurance, SN offered to deposit $47,357 into a segregated bank account within fourteen days of the proposed order. Furthermore, SN filed with the court Adequate Assurance Procedures in hopes of streamlining any additional need for adequate assurance in the future.

Uninterrupted utility services are vital to any reorganization, thus the Bankruptcy Code provides a debtor with protection against discontinuance of utility services through § 366 of the Code. In an effort for fairness, the Code also requires a debtor to provide “adequate assurance” to the utility companies in a manner that is “satisfactory.” Here, the court deemed the initial deposit satisfying the amount due within fourteen days “satisfactory,” along with SN’s liquidity moving forward to assure future payments in the ordinary course of business. Further, the court deemed SN’s efforts to provide adequate assurance and future proposed adequate assurance as acceptable and granted their motion.

**Substantive Orders- Pre-Petition Obligations.**

**Pre-Petition Taxes and Fees.**

SN filed an emergency motion seeking authority to pay pre-petition taxes and fees. SN summarized these taxes and fees as follows:

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66 Id. at 5.
67 Id.
68 Id. at 6.
69 Id. at 8.
70 Id.
71 Motion for Adequate Assurance, supra note 66, 8.pdf at 9–10.
• Sales, Use, and Excise Taxes- $4.3 million accrued as of Petition Date, $2.3 million due within 21 days;
• Income Taxes- $17,000 accrued as of petition date, $2,200 due within 21 days;
• Franchise Taxes- $50,000 accrued as of petition date, $0 due within 21 days;
• Property Taxes- $32.2 million accrued as of petition date, $0 due within 21 days;
• Severance Taxes- $19.7 million accrued as of petition date, $9.6 million due within 21 days; and
• Environmental and Business Fees- $0 accrued as of petition date, $0 due within 21 days.
• Approximate Total- $56.3 million accrued as of petition date, $12 million due within 21 days.\(^{74}\)

Payment of these taxes and fees was necessary to avoid undue burden/potential financial repercussions and allow continued, uninterrupted operation of their business.\(^ {75}\) SN supported its motion in three ways. First, it asserted that certain taxes and fees were not property of the Debtor’s estate at all. Second, by claiming certain taxes and fees may be secured or priority claims entitling them to special treatment under the code in order to avoid additional expenses. Third, thereby declaring that payment of these taxes and fees was a sound exercise of the Debtor’s business judgement.\(^ {76}\)

\textbf{Taxes and Fees that may not be Property of the Estate.}

\(^{74}\) Id. at 5.
\(^{75}\) Motion to Pay Prepetition Taxes and Fees, supra note 74, 6.pdf.
\(^{76}\) Id. at 9–11.
SN stated that many of the taxes and fees owed by the Debtor were not property of the estate due to 26 U.S.C. §7501 and Texas’s Tax Code § 111.016(a).\[^{77}\] Essentially, these statutes state that any person holding money to be taxed by another person holds said money in a trust for the benefit of the state and is liable for the full amount, plus accrued penalties and interest.\[^{78}\] Additionally, in accordance with Bankruptcy Code § 541, SN argued that the Debtors may not have possessed legal or equitable interests in the trust account holding such money, and therefore, the court should permit them to pay these monies to the taxing authorities as they become due.\[^{79}\]

**Taxes and Fees that may be Entitled to Special Treatment.**

Furthermore, SN requested authority to pay the taxes and fees that constituted priority claims to avoid accruing penalties and interest.\[^{80}\] Pursuant to Bankruptcy Code § 507(a)(8), taxes on income or gross receipts are provided eighth priority status.\[^{81}\] Section 507(a)(8)(G) provides that a penalty related to a claim of this kind, for actual pecuniary loss to the taxing governmental unit, will be provided equivalent priority status.\[^{82}\] SN’s motion sought to protect the estate and junior creditors against these fees.\[^{83}\]

**Payment is Sound Exercise of the Debtor’s Business Judgement.**

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\[^{77}\] Id. at 9–10.
\[^{79}\] Motion to Pay Prepetition Taxes and Fees, supra note 74, 6.pdf at 9–10.
\[^{80}\] Id. at 10–11.
\[^{81}\] Id. at 10.
\[^{82}\] Id.
\[^{83}\] Id.
Bankruptcy courts authorizing payments when necessary to protect the estate base their decisions in Bankruptcy Code sections 363(b), 1107(a), and 105(a).\textsuperscript{84} Section 363(b) of the Bankruptcy Code permits payment of prepetition obligations where there is a sound business purpose, subject to court approval.\textsuperscript{85} Section 363(b) along with § 1107(a), prescribing the rights, powers, and duties of Debtor in Possession, support these payments as an exercise of the Debtor’s sound business judgement as the Debtor in Possession “[has an] implied duty . . . to ‘protect and preserve the estate, including an operating business’ going-concern value.”\textsuperscript{86} Finally, Section 105(a) states the “[Court] may issue any order, process, or judgement that is necessary or appropriate to carry out the provision of [the Bankruptcy Code].”\textsuperscript{87} These sections of the Code provide the statutory authority to allow payment of these taxes and fees as a sound exercise of business judgement and as necessary to avoid additionally liability that may result from non-payment.\textsuperscript{88}

The court authorized payment of these pre-petition taxes and fees as they become due and further authorized their payment in the ordinary course of business post-petition.\textsuperscript{89}

\textsuperscript{84} \textit{Id.} at 11.
\textsuperscript{85} Motion to Pay Prepetition Taxes and Fees, \textit{supra} note 74, 6.pdf at 11; see 11 U.S.C. §363(b).
\textsuperscript{87} Motion to Pay Prepetition Taxes and Fees, \textit{supra} note 74, 6.pdf at 11–12.
\textsuperscript{88} \textit{Id.} at 12.
**Payment of Prepetition Compensation Obligations.**

SN contemporaneously filed two motions to facilitate their need to pay compensation obligations arising under their Shared Services Arrangement and payment of their independent contractors and non-executive directors.⁹⁰

**Shared Services Arrangement.**

SN utilized the services of SOG in lieu of hiring their own workforce by employing SOG for all managerial, operational, and administrative matters.⁹¹ SOG operated as a flow-through to SN, charging no premiums or markups in connection with their shared services.⁹² The Shared Services Agreement comprised of three separate agreements, the Services Agreement, the Contract Operating Agreement, and the License Agreement.⁹³

On a monthly basis SN pre-paid an estimated amount of funds to SOG, averaging $5 million to $7 million per month, and SOG provided an itemized invoice of the expenses related to that month’s work.⁹⁴ SN estimated that $2.5 million dollars will need to be funded during the 21 day interim period following the petition.⁹⁵ SN requested permission to continue payment under this agreement as it provided a net benefit to the estate, avoiding prohibitively costly replacement of their services.⁹⁶

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⁹¹ Id. at 4–5.

⁹² Id. at 11–13.

⁹³ Id. at 14

⁹⁴ Id. at 14–15.

⁹⁵ Id. at 15.

⁹⁶ Motion Authorizing Performance of Shared Services, supra note 91, 10.pdf at 12–13.
In support, SN cited Bankruptcy Code §363I(1), providing a debtor in possession “may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without a notice or a hearing.”

Additionally, SN asserted §363(b) allows SOG’s employment as it was a sound exercise of business judgement. Section 363(b) mirrors §363(c), except that it allows actions outside the ordinary course of business, after notice and a hearing, if it is deemed an exercise of sound business judgement. SN stated “[i]f the Debtors were not permitted to continue performing under the SOG Agreements, the Debtors would be forced to cease operations as they seek to attract, hire, train, and retain an entirely new workforce and replicate all of the services provided by SOG . . . .”

The court issued an interim and final order authorizing, but not directing SN to continue their Shared Services Arrangement with SOG in the ordinary course of business and further authorized SN to use estate property to fund the agreement as was consistent with prepetition practices.

**Payment of Independent Contractors and Non-Executive Directors.**

In the ordinary course of business SN employs Independent Contractors and Non-Executive Directors to assist in essential aspects of their business operation.

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97 Id. at 14; see 11 U.S.C. § 363(c)(1) https://perma.cc/G24V–ELJD.
98 Id. at 16–17; see 11 U.S.C. § 363(b); https://perma.cc/G24V–ELJD.
99 Motion Authorizing Performance of Shared Services, supra note 91, 10.pdf at 16–17.
100 Id. at 17.
allowance to continue employment of these professionals as consistent with prepetition practices. SN estimated an average monthly cost of $110,000 for their Independent Contractors, with current accrued and unpaid amounts of $140,000 of which $97,000 will become payable in the ordinary course of business during the first 21 days following the petition. Non-executive director compensation was estimated to be $140,000 paid at the beginning of each month, with no accrued and unpaid amounts outstanding.

Analogous to the support offered for the Shared Services Arrangements, SN asserted Bankruptcy Code § 363(b) as support for their motion. Retention of these Independent Contractor and Non-Executive Director’s services was essential to success of SN’s ongoing business and preservation of their business’ going-concern value. The court issued an interim and final order, authorizing but not directing SN to continue paying these prepetition compensation obligations.

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103 Id. at 6.
104 Id. at 7.
105 Id. at 7–9.
106 Id. at 7.
Payment to Holders of Mineral and Other Interest, Joint-Interest Billings, and Cash Calls.

SN’s oil and natural gas exploration and production (“E&P”) business relied on lease agreements under which SN was obligated to remit percentages of their net revenue from production to said leaseholders. SN contracted to pay Royalties and Lease obligations to the holders of Mineral and Other Interests in their E&P operation on the Comanche Assets, Catarina Assets, Maverick Assets, and Palmetto Assets. SN estimated an aggregate cost of approximately $710 million per year for royalties and lease obligations owed to the holders of mineral and other interest. There was an outstanding balance of $75 million, of which $36 million would become due within the first 21 days. SN sought authorization to pay up to $45 million to the holders of Mineral and other Interests in the interim.

Similarly, SN marketed oil and natural gas production on behalf of certain Non-Operating Working Interest in their Palmetto and TMS Assets, which on average cost approximately $1.2 billion yearly. SN estimated approximately $74 million would become due within the first 21 days; and, due to the unpredictability of the payments, it petitioned the court to approve up to $93 million in payment in the interim period.

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108 Debtor’s Emergency Motion for entry of Interim and Final Orders (I) Authorizing Payment of (A) Obligations owed to Holders of Mineral and Other Interest and Non-Operating Working Interests, (B) Joint-Interest Billings, and (C) Cash Calls; and (II) Granting Related Relief 7.pdf, In Re Sanchez Energy Corp., No. 19–34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) [hereinafter Motion Authorizing Payment of Mineral Lease Obligations], https://perma.cc/JKF7-6Z7C.

109 Id. at 4–9.

110 Id. at 9–10.

111 Id.

112 Id. at 10.

113 Id.

114 Motion Authorizing Payment of Mineral Lease Obligations, supra note 111, 7.pdf at 10.
The Non-Operating Working Interests in Palmetto and TMS Assets was intertwined with Marathon.115 Regarding the Palmetto Assets, Marathon offset SN’s share of Joint-Interest Billings ("JIBs") and Cash Calls from its expenses incurred.116 Regarding the TMS Assets, on a monthly basis SN reimbursed SOG their share of expenses through JIB.117 It was estimated that $12 million was due on JIBs and Cash Calls, of which all would become due within the first 21 days.118 SN’s motion requested approval to continue offsetting its JIBs and Cash Calls in the ordinary course of business on a post-petition basis and requests to continue payment of its monthly JIBs with respect to its TMS Assets.119

SN requested relief on two grounds: first, that proceeds from these interests may not have constituted property of the estate under Bankruptcy Code §541(d); and second, that payments were authorized under Bankruptcy Code §§ 105(a) and 363(b).120

Bankruptcy Code §541(d) states that property is excluded from the estate if the debtor only holds bare legal title and not equitable interest.121 SN quoted In re MCZ, Inc. where the court held “[w]here Debtor merely holds bare legal title to property as agent or bailee for another, Debtor’s legal title is of no value to the estate, and Debtor should convey the property to its rightful owner.”122 SN’s interest in the proceeds from the Mineral and Other Interests and Non-Operating Working Interest were bare legal, whereby it was legally entitled to the proceeds but was simultaneously legally entitled to transfer the funds to satisfy their debts related to

115 Id. at 11.
116 Id.
117 Id.
118 Id.
119 Id.
120 Motion Authorizing Payment of Mineral Lease Obligations, supra note 111, 7.pdf at 12–13.
121 Id. at 12; 11 U.S.C. § 541, https://perma.cc/NP77-JF5A.
122 Id. at 12; see also MCZ, Inc. v. Andrus Res., Inc., 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987).
receiving such funds. Consequently, it held no equitable interest and therefore believed these proceeds were not property of the estate.

Like relief requested in other motions, SN supported its request to pay these prepetition and ongoing post-petition debts with Bankruptcy Code §§ 105(a) and 363(b). Payment of these expenses was necessary to preserve and protect the estate because they were inherent in production and sale of oil and natural gas. Accordingly, there existed a sound business purpose for their payment because payment was fundamental to the continuation of their business and effectuation of their reorganization plan. According to §105(a) the court has the power to carry out provisions of the Bankruptcy Code; and, SN argued the court should carry out the provisions of § 363(b) as this payment was necessary to reassure the holders of these Interests of its ability to continue operating under Chapter 11 and to avoid costs associated with disputes resulting from non-payment.

The court entered an order authorizing but not directing SN to pay prepetition amounts owed to the holders of Mineral and Other Interest, Non-Operating Interests, JIBs, and Cash Calls in the ordinary course of business on a prepetition and post-petition basis.

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123 Id. at 13.
124 Id.
126 Motion Authorizing Payment of Mineral Lease Obligations, supra note 111, 7.pdf at 13–14.
127 Id. at 14.
128 Id. at 15–16.
Payment of Business Expenses, Various Claims, and Outstanding Orders

In relation to the usage of the Comanche, Catarina, Maverick, and Palmetto Assets described above, SN incurred Operating and Marketing Expenses as well as Warehouse and Transportation Expenses in the ordinary course of business.\textsuperscript{130} SN petitioned the court to allow payment of goods and services received within twenty days of the petition date as §503(b)(9) claims to prevent potential action from the providers.\textsuperscript{131} Finally SN requested permission to pay Outstanding Orders in efforts to maintain stability and disruption.\textsuperscript{132}

Operating Expenses.

SN served as operator under the majority of its oil and natural gas leases; meaning, it was responsible for payment of capital expenditures related to drilling and well completion and expenses related to operation of their leases.\textsuperscript{133} Owners of non-operated working interests in these Assets reimbursed a portion of these Operating Expenses, and thus, effectively deducted from the overall Operating Expense.\textsuperscript{134} Payment of these operating expenses was imperative to avoid removal as operator and/or potential claims related to non-payment.\textsuperscript{135} Operating expenses over the prior twelve months totaled approximately $853 million, of which $571 million was reimbursed.\textsuperscript{136} At the time, approximately $68 million in Operating Expenses were outstanding, of which $46 million would become due within the first 21 days after the petition date.\textsuperscript{137} SN

\textsuperscript{130} Debtor’s Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of (A) Operating Expenses, (B) Marketing Expenses, (C) Shipping and Warehousing Claims, (D) 504(b)(9) Claims, and (E) Outstanding Orders; and (II) Granting Related Relief 14.pdf, In Re Sanchez Energy Corp., No. 19-34508 (Bankr. S.D. Tex. R. Filed Aug. 12, 2019) [hereinafter Motion Authorizing Payments of Expenses and Claims], https://perma.cc/S5QB–K6NF.

\textsuperscript{131} Id. at 12.

\textsuperscript{132} Id. at 13.

\textsuperscript{133} Id. at 7.

\textsuperscript{134} Id. at 7.

\textsuperscript{135} Id. at 8.

\textsuperscript{136} Id. at 8.

\textsuperscript{137} Motion Authorizing Payments of Expenses and Claims, supra note 133, 14.pdf at 8.

\textsuperscript{137} Id.
sought approval to pay up to $57 million of the prepetition Operating Expenses, of which approximately $27 million will be reimbursed, and to continue paying prepetition Operating Expenses in the ordinary course of business on a post-petition basis.\textsuperscript{138}

\textbf{Marketing Expenses.}

Related to SN’s obligation as operator, it entered into marketing arrangements to turn its unrefined oil and natural gas into a sellable commodity.\textsuperscript{139} Compliance with these arrangements was essential to receive revenue from their oil and natural gas production.\textsuperscript{140} Failure to timely remit payment could result in refusal by the other party to perform which may result in the need to shut-in a well, i.e. stop production.\textsuperscript{141} SN paid approximately $260 million in Marketing Expenses in the last twelve months, estimating that approximately $35 million was currently outstanding of which $25 million will become due within the first 21 days.\textsuperscript{142} This motion requested approval to pay up to $31 million in prepetition operating expenses and to continue paying prepetition Marketing Expenses in the ordinary course of business on a post-petition basis.\textsuperscript{143}

\textbf{Shipping and Warehouse Claims.}

Acting as operator, SN contracted with various transportation vendors and storage vendors to ship and store goods and materials related to its oil and natural gas production.\textsuperscript{144} In this process the shipper or storage yard often has control over SN’s products and non-payment of these vendors could result in them taking possession of or placing liens on these products.\textsuperscript{145}

\begin{footnotesize}
\textsuperscript{138} Id. at 8–9.
\textsuperscript{139} Id. at 9.
\textsuperscript{140} Id.
\textsuperscript{141} Id. at 9–10.
\textsuperscript{142} Motion Authorizing Payments of Expenses and Claims, supra note 133, 14.pdf at 10.
\textsuperscript{143} Id.
\textsuperscript{144} Id. at 9–10.
\textsuperscript{145} Id. at 10–11.
\end{footnotesize}
Approximately $10 million in Shipping and Warehouse claims have been paid in the last twelve months, and SN estimates that $800,000 will become due in the 21 following the petition.146 As such, SN requested authority to pay up to $1 million in prepetition amounts due and to continue paying prepetition claims in the ordinary course of business as they come due post-petition.147

**Payment of 503(b)(9) Claims.**

In the twenty days prior to its petition filing, SN may have received goods or materials from various vendors with whom they only engage with on an order-by-order basis.148 Not having a long-term contract means these vendors may refuse to fulfill future orders with payment on prior goods.149 Due to the goods being received within twenty days prior to filing, these payments may be afforded administrative priority status under Bankruptcy Code § 503(b)(9); meaning, they must be paid ahead of secured and unsecured creditors of inferior status.150 An estimated $20.7 million in goods were delivered in the twenty days preceding the petition filing.151 SN requested authority to pay undisputed claims arising from the goods received in the twenty days prior to filing to avoid undue burden in continuation of their business and to avoid these claims from gaining administrative expense priority under the code.152

**Payment of Outstanding Orders.**

In the ordinary course of business prior to SN’s Chapter 11 petition, goods may have been ordered that will not be delivered until after the petition date.153 Suppliers of such goods may refuse delivery to avoid becoming unsecured creditors, which may result in substantial

146 *Id.*
147 *Id.* at 11–12.
149 *Id.*
151 Motion Authorizing Payment of Expenses and Claims, *supra* note 133, 14.pdf at 12.
152 *Id.* at 12–13.
153 *Id.* at 13.
disruption to SN’s ongoing business.\textsuperscript{154} According to Bankruptcy Code §503(b), orders delivered after the petition day are afforded administrative expense priority.\textsuperscript{155} SN sought an order granting administrative priority to all undisputed obligations arising from acceptance of these goods and authority to pay these obligations as they come due in the ordinary course of business.\textsuperscript{156}

**Relief.**

SN supported its request to pay Operating, Marketing, Shipping and Warehouse obligations as these creditors may be able to assert and perfect liens on its assets in the event of non-payment.\textsuperscript{157} State law would allow liens to be placed on these assets, and Bankruptcy Code § 362(b)(3) would allow these liens to be perfected and not violate the automatic stay.\textsuperscript{158} Creation of these liens would negatively affect the estate and all parties in connection with the estate.\textsuperscript{159}

To protect and preserve the estate, SN asserted the court should authorize payment of these obligations as it was an exercise of sound business judgement and will not prejudice other creditors.\textsuperscript{160} As discussed previously, §§ 363 and 105(a) grant the court power to authorize payment of these obligations where it is necessary to the on-going business and reorganization plan.\textsuperscript{161}

\textsuperscript{154} Id.
\textsuperscript{156} Motion Authorizing Payment of Expenses and Claims, \textit{supra} note 133, 14.pdf at 13.
\textsuperscript{157} Id. at 13–14.
\textsuperscript{159} Motion Authorizing Payment of Expenses and Claims, \textit{supra} note 133, 14.pdf at 13–14.
\textsuperscript{160} Id. at 15.
Regarding the § 503(b)(9) claims, SN believed it was in the best interest of the company and reorganization plan to pay these claims prior to confirmation to continue its relations with these creditors.\textsuperscript{162} Bankruptcy Code § 503(b)(9) affords these creditors administrative priority status; meaning, their claims will be paid in full upon confirmation of the plan.\textsuperscript{163} SN requested to pay these obligations prior to confirmation as it will not result in unequal treatment of their claims and will merely accelerate their payment.\textsuperscript{164}

Similarly, SN requested the court confirm its orders of outstanding goods as §503(b)(1)(A) administrative priority expenses and authorization to pay them prior to confirmation of the plan as discussed above.\textsuperscript{165} The relief requested would not result in the claims obtaining higher priority status and would only expedite the process of payment, saving SN considerable time and effort in reissuing purchase orders to ensure the creditors they will obtain the administrative priority status they were already entitled to receive.\textsuperscript{166}

The court granted a final order on the motion as requested and later amended its order to grant these on a final basis.\textsuperscript{167}

\textsuperscript{162} Id. at 17–18.


\textsuperscript{164} Motion Authorizing Payment of Expenses and Claims, supra note 133, 14.pdf at 19.

\textsuperscript{165} Id. at 20–21; 11 U.S.C. § 503, https://perma.cc/KBF3-XSAZ.

\textsuperscript{166} Motion Authorizing Payment of Expenses and Claims, supra note 133, 14.pdf at 20.

Transfers of Beneficial Ownership and Declaration of Worthlessness of Stock.

SN estimated it held approximately $2.3 billion in Net-Operating-Losses (“NOL”) which may be used to offset taxable income in future years.\(^{168}\) NOL usage is limited by the Internal Revenue Code § 382 in the event of an ownership change, being when stock owned by one or more persons consisting of five percent of the total stock increases its holdings by more than fifty percentage points over the lowest percentage of stock owned by any stockholder.\(^{169}\) SN’s stock was deemed worthless due to its Chapter 11 filing; meaning, a stockholder can claim a worthless stock deduction which would inevitably result in an ownership change if the stockholder owns 4.5 or more percentage of the outstanding stock.\(^{170}\) In order to protect its ability to utilize its NOLs, SN requested the court enter an Interim and Final order authorizing it to monitor and if necessary, object to certain transfers of stock and declarations of worthlessness according to procedures proposed within the motion.\(^{171}\) SN limited the request to the minimum extent necessary to protect these NOLs so it may use them for the benefit of the estate.\(^{172}\) SN stated because it held legal and equitable title in the NOLs, they were property of the estate according to Bankruptcy Code § 541(a)(1).\(^{173}\) With the NOLs being property of the estate, any action limiting SN’s ability to utilize them would be an attempt to obtain control of or exercise control over property of the estate, violating the automatic stay according to Bankruptcy Code §


\(^{169}\) Id. at 5; see I.R.C. § 382 (1986), https://perma.cc/D2HC-JLM6.


\(^{171}\) Id. at 7.

\(^{172}\) Id.

\(^{173}\) Id. at 13; 11 U.S.C. § 541, https://perma.cc/NP77-JF5A.
Any act that constitutes a change in ownership would limit SN’s usage of the NOLs and be considered an act to control property of the estate. SN’s proposed procedures minimally affected shareholder’s ability to use their stock, only affecting those with enough stock to cause a change in ownership. Implementation of these procedures will minimally affect shareholders whilst providing an enormous benefit to the estate and allow flexibility in operating the business going forward. The court granted SN’s emergency motion first on an interim basis, then on a final basis authorizing its proposed procedures to monitor and control its stock.

Application to Retain Professionals.

Sanchez.

Lead Counsel: Akin Gump Strauss Hauer & Feld LLP.

SN requested the court approve its retention of Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”) as Lead Counsel through its chapter 11 proceedings under Bankruptcy Code §§ 327(a) and 328(a).

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175 Id. at 14–15.
176 Id. at 14.
Section 327(a) provides the debtor, with court approval, “may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested person, to represent or assist the [debtor] in carrying out the [debtor]’s duties under this title.”\textsuperscript{180} Akin Gump extensively searched its client database against any potential parties to SN’s proceedings, revealing multiple clients who may be in conflict.\textsuperscript{181} Section 101(14) defines “disinterested person” as a person who is not a creditor, equity security holder, insiders, employee of the debtor, or person with no materially adverse interest to the estate.\textsuperscript{182} Despite being previously employed by SN, Bankruptcy Code § 1107(b) permits a firm to be a “disinterested person” when their representation was prior to the petition date.\textsuperscript{183} Pursuant to § 327(c) Akin Gump believed it still qualified to represent SN despite these conflicts, stating it does not and will not represent any clients in matters related to SN.\textsuperscript{184}

Section 328(a) permits a debtor to employ professionals under § 327 on reasonable terms and conditions which may fluctuate based on their services and market conditions.\textsuperscript{185} Bankruptcy Rule 2014(a) requires “specific facts showing the necessity for the employment, the name of the firm to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and to the best of the applicant’s knowledge, all of the firm’s connections with” any parties in interest.\textsuperscript{186} SN selected Akin Gump due to its reputation of excellent service in business reorganization as demonstrated by their employment in many of

\textsuperscript{180} Motion to Employ Akin Gump, \textit{supra} note 182, 268.pdf at 13–14.
\textsuperscript{183} 11 U.S.C. § 1107(b), https://perma.cc/B43R-65QP.
the largest reorganizations in the last decade. Additionally SN believed Akin Gump was uniquely situated to assist in their reorganization due to their familiarity and understanding of SN’s business through their previous employment.

The scope of Akin Gump’s employment covers virtually every aspect of a Chapter 11 reorganization: advising on rights/powers as debtor in possession; preservation and protection of the estate; seeking approval of debtor in possession financing; advising on sale of assets and tax matters; preparing pleadings, motions, and all other necessary legal services in connection with their Chapter 11 case. SN proposed an arrangement with Akin Gump’s standard hourly rates, stating these rates were consistent with rates charged in previous chapter 11 matters:

- Partners: $925-$1,755;
- Counsel: $710-$1,420;
- Associates: $510-$975; and
- Paraprofessionals: $100-$435.

SN specifically outlined three attorney’s rates as they hold primary responsibility in connection with the case:

- Ira S. Dizengoff (Partner, Financial Restructuring). $1,550;
- James Savin (Partner, Financial Restructuring), $1,475; and
- Marty L. Brimmage, Jr. (Partner, Litigation), $1,425.

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187 Declaration of Ira Dizengoff, supra note 184, 661.pdf at 4.
188 Id. at 5.
189 Id. at 7–8.
190 Id. at 9.
191 Id.
Along with these hourly rates, the arrangement proposed Akin Gump would bill for actual and necessary costs and expenses incurred in carrying out its legal services.\textsuperscript{192} These services include, but were not limited to, photocopying services, printing, delivery charges, filing fees, postage, and fees associated with computer research time.\textsuperscript{193}

Akin Gump’s employment prior to the petition left a remaining retainer balance of $2,358,351.81, SN proposed that any retainer amount leftover upon filing of Akin Gump’s final fee application be applied to the approved balance.\textsuperscript{194}

The court approved SN’s motion for employment of Akin Gump, authorizing the proposed scope of services and requiring interim and final fee application to be filed with the court as set forth in §§ 330 and 331.\textsuperscript{195} Section 330 requires a detailed filing of billed hours with descriptions of work performed and all expenses being charged, the court then reviews this fee application to determine the reasonable amount of compensation owed.\textsuperscript{196} The court required this to ensure the estate was only paying what was reasonable and owed, to protect the estate to the fullest extent possible from wasting funds.

SN filed its first interim fee application with the court, requesting permission to pay Akin Gump for services from August 11, 2019 through November 30, 2019.\textsuperscript{197} Since the petition date, Akin Gump filed three monthly statements with the court detailing their work.\textsuperscript{198} In total, Akin

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\textsuperscript{192} Id. at 10. \\
\textsuperscript{193} Declaration of Ira Dizengoff, supra note 184, 661.pdf at 11. \\
\textsuperscript{194} Id. at 11–12. \\
\textsuperscript{198} Id. 4–5.
\end{flushright}
Gump requested payment of $10,951,912.50 for their services. Akin Gump requested $10,499,440.50 for 11,361 hours of professional work, averaging $924.17 per hour. Additionally, it requested $452,472.00 for 1,264.1 hours of paraprofessional work, averaging $357.94 per hour. Finally, reimbursement of $453,054.89 for actual and necessary expenses was requested. The court entered an order approving SN’s first interim fee application for allowance of payment to Akin Gump in full as requested in the application.

Co-Counsel and Conflicts Council- Jackson Walker LLP.
SN requested the court approve retention of Jackson Walker LLP (“Jackson Walker”) as co-counsel and conflicts counsel to assist Akin Gump in the proceedings. Jackson Walker was a Texas-based law firm with seven offices in the state and over 400 attorneys.

Following § 327(a) and Rule 2014(a) SN sought to employ Jackson Walker as it was a disinterested person with no adverse interest, whose aid is necessary to facilitate an efficient Chapter 11 reorganization. SN believed employment of Jackson Walker was necessary due to its experience in complex Chapter 11 cases, its extensive knowledge of Local Rules, and history.

199 Id. at 1.
200 Id.
201 Id.
202 Id.
205 https://www.jw.com/
of practice before this court. Jackson Walker asserted it was a disinterested person pursuant to § 101(14) as it does not represent any client with a material adverse interest to the estate as shown in the Kopel Declaration.

To avoid duplicative work and establish a division of services, Jackson Walker provided the scope of its services be primarily focused on local rules, practices, and procedures within the Fifth Circuit, reviewing and commenting on proposed pleadings, and providing legal services on any matters Akin Gump may have conflicts with. Furthermore, Jackson Walker proposed rates consistent with prior Chapter 11 cases and billing of reasonable expenses related to their legal services:

- Partners: $565-$900;
- Associates: $420-$565; and
- Paraprofessionals: $185.

The court granted SN’s motion to employ Jackson Walker as Co-Counsel and Conflicts Counsel according to the terms in the motion and requiring interim and final fee application to be filed with the court as set forth in §§ 330 and 331.

SN filed its first interim fee application and requested permission to pay Jackson Walker for its previous three months of employment. In total, Jackson Walker’s professional fees totaled $779,620.50 for 1317.9 hours of actual professional work at an average rate of 591.56 per

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207 Motion to Employ Jackson Walker, supra note 207, 269.pdf at 7.
208 Id. at 7–8, 13–15.
209 Id. at 3–4.
hour, and 109.3 hours of paraprofessional work at an average of 187.44 per hour.\textsuperscript{212} Additionally, Jackson Walker requested reimbursement for $61,867.43 of actual and necessary expenses.\textsuperscript{213} On February 11, 2020, SN filed a Certificate of No Objection;\textsuperscript{214} and, the Court subsequently entered a Final Order, granting the fee application, consisting of the same terms as the Proposed Order.\textsuperscript{215}

**Restructuring Advisory Firm- M-III Advisory Partners, LP.**

SN sought to employ M-III Advisory Partners, LP (“M-III”) and retain M-III’s Mr. Mohsin Meghji as Chief Restructuring Officer (“CRO”) pursuant to Bankruptcy Code §§ 363(b) and 105(a).\textsuperscript{216}

Section 363(b) authorizes the debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate” with notice and a hearing.\textsuperscript{217} Section 363(b) requests are routinely approved by courts if there is a reasonable business rationale for use of property of the estate.\textsuperscript{218} SN’s board of directors (“Special Committee”) conducted an extensive analysis of the needs it would face during a Chapter 11 filing, finding that appointment of an experienced CRO was crucial to a successful reorganization plan.\textsuperscript{219} Specifically, SN and the Special

\textsuperscript{212} Id. at 1.  
\textsuperscript{213} Id.  
\textsuperscript{216} Debtor’s Emergency Motion for Entry of an Order (I) Authorizing (A) Retention of M-III Advisory Partners, LP and (B) Designation of Mohsin Y. Meghji as Chief Restructuring Officer; and (II) Granting Related Relief 593.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Nov. 11, 2019) [hereinafter Motion to Employ M-III] https://perma.cc/GL25-E3AU.  
\textsuperscript{217} Id. at 14; see 11 U.S.C. § 363 https://perma.cc/G24V-ELJD.  
\textsuperscript{218} Motion to Employ M-III, *supra* note 217, 593.pdf at 14–15.  
\textsuperscript{219} Id. at 4–5.
Committee selected Mr. Meghji’s due to his experience in: (i) developing and implementing business plans; (ii) developing and executing turnaround strategies; (iii) planning and implementing financial and operation restructurings and debt reorganizations; (iv) financial modeling; (v) managing negotiations with stakeholders; (vi) stabilizing business operations; and (vii) improving and managing liquidity. The compensation terms of M-III as advisory partner were set according to their standard hourly rates along with reimbursement of reasonable out-of-pocket expenses incurred through their services:

- Managing Partner: $1,150;
- Senior E&P Advisor: $1,025;
- Managing Director: $900-$1025
- Director: $725-$835;
- Vice President: $650;
- Senior Associate: $550;
- Associate: $475; and
- Analyst: $375

Furthermore, SN acknowledged that § 327(a) does not govern M-III’s retention but asserted that M-III was a disinterested person according to § 110(14) nonetheless. M-III disclosed connections with creditors and potential parties in interest but asserted it held no materially adverse interest to SN’s estate and no conflict of interest will arise.

**Objections.**

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220 Id. at 6–8.
222 Motion to Employ M-III, supra note 217, 593.pdf at 13.
The Ad Hoc Group of Unsecured Noteholders (“Unsecured Noteholders”) filed an objection against SN’s motion to retain M-III and Mr. Meghji.\(^\text{223}\) First objecting to the selection process, asserting it was biased because subjects of the investigation participated in the selection process.\(^\text{224}\) The Unsecured Noteholders stated the Special Committee failed to consider the input of the majority of creditors and was driven by conflicts of interests; therefore, the motion should be denied.\(^\text{225}\) The Unsecured Noteholders believe Mr. Meghji was not suited for the role of CRO as he has no experience in exploration and production business, and he previously mismanaged aspects of the Sears Holding Corporation reorganization that resulted in administrative insolvency.\(^\text{226}\)

Additionally, the Official Committee of Unsecured Creditors (“Unsecured Creditor’s Committee”) objected to the retention of M-III and Mr. Meghji.\(^\text{227}\) The Unsecured Creditor’s Committee believed the court should employ a heightened standard of review concerning the selection process.\(^\text{228}\) First, the Special Committee comprised individuals with whom the CRO would have to act adversely to; and second, SN refused the candidate selected by the Creditor’s Committee with shifting and inexplicable reasoning; and finally, creditor’s lack confidence in the CRO and the selection was through a faulty, conflict riddled process.\(^\text{229}\)

\textbf{Reply.}\n

\(^\text{224}\) \textit{Id.} at 6.

\(^\text{225}\) \textit{Id.} at 7–8.

\(^\text{226}\) \textit{Id.} at 11–13.

\(^\text{227}\) Objection of Official Committee of Unsecured Creditors to Debtor’s Motion for Entry of an Order (I) Authorizing (A) Retention of M-III Advisory Partners, LP and (B) Designation of Mohsin Y. Meghji as Chief Restructuring Officer; and (II) Granting Related Relief 669.pdf, In re Sanchez Energy Corp., No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 05, 2019) \url{https://perma.cc/443Y-2CAZ}.

\(^\text{228}\) \textit{Id.} at 9–10.

\(^\text{229}\) \textit{Id.} at 12–14.
SN structured its reply in four parts: (1) Selection Process and Business Judgement; (2) Special Committee and its Fiduciary Duties; (3) Support of Mr. Meghji as CRO; and (4) Objections against Unsecured Noteholders and Unsecured Creditor’s Committee (“Creditors Committee”) Preferred Candidate.\(^\text{230}\)

(1) Selection Process and Business Judgement.

SN stated its selection process was thorough and independent, accounting for all relative factors as could be applied to the creditors and debtor.\(^\text{231}\) The Special Committee reviewed and interviewed all four candidates (three from the objectors) without any member of SN’s management involved in the process.\(^\text{232}\) SN asserted the Creditors Committee objected solely because its proposed candidate was not selected, despite the Special Committee exercising reasonable business judgement and a fair, comprehensive process in their selection.\(^\text{233}\)

(2) Special Committee and its Fiduciary Duties

SN believed the Special Committee acted consistent with its fiduciary duties as it employed Ropes & Gray as counsel to their process, who was ordered to inform the court of any influence or motivation in the selection process that was inconsistent with its fiduciary duties.\(^\text{234}\) There was no inconsistent influence or motivation reported to the court.\(^\text{235}\)

(3) Support of Mr. Meghji as CRO

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\(^\text{231}\) Id. at 9.

\(^\text{232}\) Id.

\(^\text{233}\) Id. at 10–12.

\(^\text{234}\) Id.

\(^\text{235}\) Id.
The Special Committee selected Mr. Meghji because he fulfilled their criteria of: (1) extensive experience as a CRO involving complicated transactions; (2) disinterestedness and independence from all parties; (3) and reputation as a successful consensus builder in complex, contentious cases.  

(4) **Objections against Creditors Committee’s Preferred Candidate**

The Special Committee rejected the Creditors Committee’s candidate due to: lack of experience as CRO compared to Mr. Meghji; lack of experience in dealing with potential conflicts and related party transaction in complex Chapter 11 cases; lack of experience as consensus builder; concerns arising from candidates inability to answer interview questions; and concerns regarding the candidates reputation in other chapter 11 cases. Overall, the Creditors Committee’s selection lacked Mr. Meghji’s experience and track record, and importantly lacked the ability to be a strong consensus builder.

The court entered an order authorizing SN to retain M-III and designate Mr. Meghji as the CRO. To avoid the Creditors Committee’s concern, the court provided the CRO with the explicit right to request the Special Committee conduct an investigation on any prepetition transaction with affiliate parties and access to unredacted copies of all information pertaining to the investigation. Thus far, no fee applications have been filed.

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236 Motion to Retain M-III, *supra* note 231, 687.pdf at 18–19.
237 *Id.* at 18–20.
238 *Id.* at 20–21.
239 *Id.* at 5.
240 *Id.* at 5.
Pursuant to Bankruptcy Code §§ 327(e) and 328(a), SN requested the court grant permission to employ and retain Ropes & Gray LLP ("Ropes & Gray") as special counsel to assist the Special Committee in its investigation on any potential causes of action against SN.\footnote{Debtor’s Application for Entry of an Order Authorizing the Retention and Employment of Ropes & Gray LLP as Special Counsel to the Special Committee of the Board of Directors of Sanchez Energy Corporation Effective Nunc Pro Tunc to the Petition Date 272.pdf, In re Sanchez Energy Corp., No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 06, 2019) [hereinafter Motion to Employ Ropes & Gray] \url{https://perma.cc/MTE2-6EYN}; see 11 U.S.C. § 328 https://perma.cc/P7K3-BP6T; see also 11 U.S.C. § 327 https://perma.cc/L8RD-CZM9.}

Section 327(e) provides that debtors may employ counsel that has previously represented the debtor for a specified special purpose so long as counsel holds no adverse interests to the debtors and employment is in the best interest of the estate.\footnote{Id. at 13.} When § 327(e) is invoked, courts generally look to four factors in considering whether to appoint special counsel, whether “(1) the representation is in the best interest of the estate, (2) the attorney represented the debtor in the past, (3) the attorney is for a specific purpose approved by the court other than to represent the debtor in conducting the case, (4) the attorney does not represent or hold an interest adverse to the debtor or the debtor’s estate.”\footnote{Id. at 13; see In re Woodworkers Warehouse, Inc., 323 B.R. 403, 406 (Bankr. D. Del. 2005).}

Retention of Ropes & Gray was in the best interest of the estate to facilitate the Special Committee’s to their investigation in connection with the chapter 11 case.\footnote{Motion to Employ Ropes & Gray, supra note 242, 272.pdf at 5.} Ropes & Gray had extensive experience and knowledge in restructuring representation as well as assisting special committees in dutifully carrying out their fiduciary duties during investigations.\footnote{Id. at 5–6.} The scope of Ropes & Gray’s services was specifically to assist the Special Committee in any legal matters
involving the restructuring or investigation process, and to advise it of its fiduciary duties and powers.\textsuperscript{246}

Ropes & Gray has represented the Special Committee since March of 2019, as of the petition date all legal services were paid for in full.\textsuperscript{247} As of the petition date Ropes & Gray held excess retainer, which should be applied against any approved fees and expenses incurred in their representation of the Special Committee. \textsuperscript{248} Ropes & Gray conducted a thorough conflicts analysis to ensure it was considered “disinterested” under §101(14).\textsuperscript{249} Ropes & Gray confirmed neither it nor any professionals employed by it had any connection to the Special Committee, the debtors, or any creditors or parties in interest in the Chapter 11 case.\textsuperscript{250}

Furthermore, § 328(a) authorizes the debtors to employ a professional person under §327 on reasonable terms and conditions.\textsuperscript{251} Ropes & Gray will provide its services at its standard hourly rates, with reimbursement for actual and necessary expenses incurred through its representation.\textsuperscript{252} The standard rates for the firm and specific professionals were as follows:

- Partners: $1,120- $1,760;
  - Mark R. Somerstein (Partner, Business Restructuring): $1,520;
  - Andrew G. Devore (Partner, Business Restructuring): $1,150;
  - Matthew L. McGinnis (Partner, Litigation): $1,120;
- Counsel: $640- $1,645;
- Associates: $570- $1,050; and

\textsuperscript{246} Id. at 6–7.
\textsuperscript{247} Id. at 11.
\textsuperscript{248} Id. at 11.
\textsuperscript{249} Id. at 12; 11 U.S.C. § 101(14)  https://perma.cc/WNR2-4J3J.
\textsuperscript{250} Motion to employ Ropes & Gray, supra note 242, 272.pdf at 13–14.
\textsuperscript{251} Id.; see 11 U.S.C. § 328  https://perma.cc/P7K3-BP6T.
\textsuperscript{252} Motion to Employ Ropes & Gray, supra note 242, 272.pdf at 7–9.
• Paraprofessionals: $205- $480

**Objections.**

The Unsecured Noteholders filed an objection against SN’s motion to retain and employ Ropes & Gray.\(^{253}\) The Unsecured Noteholders stated the Special Committee could not be impartial in its investigations of insiders and affiliates of SN, and substantially all of the work has been completed prepetition.\(^{254}\) The Unsecured Noteholders believed Ropes & Gray would not objectively evaluate its investigatory work performed prepetition and would effectively reaffirm all of its prior work product.\(^{255}\) The Unsecured Noteholders requested if Ropes & Gray be appointed, the court order the Special Committee to not conduct any investigations concerning the management affairs with the debtor as it would be duplicative of previous work and waste resources of the estate.\(^{256}\)

Simultaneously, the Unsecured Creditors Committee filed an objection.\(^{257}\) The Unsecured Creditors Committee asserted, under § 1106(a)(3)-(4), SN was permitted to perform the functions of the trustee except in an investigatory capacity.\(^{258}\) The Unsecured Creditors Committee believed the Special Committee was essentially a group handpicked by SN and was biased and effectively an extension of SN.\(^{259}\) Additionally, the Special Committee allowed generous payments to directors months before the petition date and allowed a subsidiary of SN to

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\(^{253}\) Ad Hoc Group of Unsecured Noteholders’ Limited Objection to Debtor’s Application to Employ Ropes & Gray LLP as Special Counsel to the Special Committee of the Board of Directors of Sanchez Energy Corporation 403.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex. R. Filed Sept. 27, 2019) [hereinafter Ad Hoc Group], https://perma.cc/ZES5-MCLB.

\(^{254}\) *Id.* at 1–3.

\(^{255}\) *Id.* at 4.

\(^{256}\) *Id.* at 4–5.

\(^{257}\) Limited Objection of Official Committee of Unsecured Creditors to Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Ropes & Gray LLP as Special Counsel to the Special Committee of the Board of Directors of Sanchez Energy Corporation Effective Nunc Pro Tunc to the Petition Date 407.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex. R. Filed Sept. 27, 2019) [hereinafter Unsecured Creditors Committee’s Objection], https://perma.cc/ESF4-3KSF.

\(^{258}\) *Id.* at 3–4; see 11 U.S.C. § 1106, https://perma.cc/HSC5-M25F.

increase its rates charged to SN on dubious grounds. 260 Also, the Unsecured Creditors Committee was kept in the dark regarding Ropes & Grays investigations, never called to interview regarding any of the investigations. 261 The Unsecured Creditors Committee believed the only efficient manner to move forward was to conclude the investigation and hand it over to a committee established by the Unsecured Creditors Committee. 262 Finally, the Unsecured Creditors Committee requested the court review Ropes & Gray’s compensation under Bankruptcy Code § 330, permitting a deep analysis of all relevant factors concerning compensation and forbidding duplicative services and services unlikely to benefit the estate. 263

**Reply.**

The Special Committee addresses the objections in an omnibus reply structured as follows: (1) The objections did not dispute satisfaction of § 327(e); (2) the objection that a debtor could investigate estate claims was baseless; and (3) the objector’s attacks on the investigation were irrelevant and false. 264

1. **The objections did not dispute satisfaction of § 327(e).**

The Special Committee stated no objections called into question Ropes & Gray’s satisfaction of the conditions required to retain them as found under § 327(e). 265 The Special Committee reaffirms Ropes and Gray’s qualifications as set forth in SN’s motion, stating their retention should be permitted as such. 266

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260 Id. at 6–8.
261 Id. at 3.
262 Id. at 9.
263 Unsecured Creditors Committee’s Objection, supra note 258, 407.pdf at 9–10.
265 Id. at 4–6.
266 Id. at 5–7.
(2) **The objection that a debtor could investigate estate claims was baseless.**

The Special Committee cited Bankruptcy Code § 1107(a) in reply to the objections, stating a debtor in possession has all the rights, other than compensation under §330, and powers of a trustee and shall perform all the functions and duties as such.\(^\text{267}\) The Special Committee argued the objection’s interpretation of § 1107 would result in prohibition of the debtor in possession’s power to perform nearly every investigatory duty in a Chapter 11 case, impeding a debtor in possession’s ability to formulate and propose a reorganization plan as it would preclude investigation and determination of claims against the estate.\(^\text{268}\) The debtor in possession must have the power to investigate claims and determine whether pursuing such claims is in the best interest of the estate, without the power to investigate fulfillment of fiduciary duties is impossible.\(^\text{269}\)

(3) **Objector’s attacks on the investigations were irrelevant and false.**

First, the Special Committee stated although the prepetition investigation was costly and extensive, it was necessary to thoroughly investigate.\(^\text{270}\) Second, the Special Committee did not involve the Unsecured Creditors Committee in its investigation because it was not a percipient witness to the investigated events and its knowledge was based off information that other parties involved in the investigated events disclosed.\(^\text{271}\) Finally, the Unsecured Creditors Committee’s assertion that the Special Committee’s approval of executive compensation undermined its independence was irrelevant; it could not investigate its own acts and thus investigation of the

\(^{267}\) *Id.* at 7–8; *see* 11 U.S.C. § 1107(b), https://perma.cc/B43R-65QP.

\(^{268}\) *Id.* at 10.

\(^{269}\) Special Committee Omnibus Reply, *supra* note 265, 482.pdf at 10–12.

\(^{270}\) *Id.* at 12.

\(^{271}\) *Id.* at 13.
executive’s compensation was outside of its scope of investigation.\textsuperscript{272} Thus, the compensation approval had no bearing on the Special Committee’s independence.\textsuperscript{273}

The court granted SN’s motion to retain and employ Ropes & Gray as requested, with the addition that all fee applications would be subject to review under Bankruptcy Code § 330.\textsuperscript{274}

\textbf{Restructuring Advisor- Alvarez & Marsal North America, LLC.}

SN requested permission to retain and employ Alvarez & Marsal North America, LLC (“Alvarez & Marsal”) as restructuring advisor.\textsuperscript{275} SN believed employment of Alvarez & Marsal will substantially improve their ability to maximize the value of their estate as Alvarez & Marsal has extensive knowledge and expertise in managing Chapter 11 restructuring.\textsuperscript{276} Pursuant to Bankruptcy Code §§ 327(a), 328, and 1107(b), SN asserted its right to employ professionals and requested the court approve.\textsuperscript{277}

Alvarez & Marsal was qualified under § 327(a) to assist SN in restructuring as it was a disinterested professional who had no connection to the debtors or parties of interest and held no adverse interest to the estate.\textsuperscript{278} Although SN retained Alvarez & Marsal prepetition, § 1107(b) states employment under § 327 is not disqualified due to prior representation.\textsuperscript{279} Additionally,

\textsuperscript{272} Id.
\textsuperscript{273} Id.
\textsuperscript{274} Order Authorizing the Retention and Employment of Ropes & Gray LLP as Special Counsel to the Special Committee of the Board of Directors of Sanchez Energy Corporation Effective \textit{Nunc Pro Tunc} to the Petition Date 398.pdf, \textit{In re Sanchez Energy Corp.}, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 26, 2019) \texttt{https://perma.cc/2MTK-6SJU}.
\textsuperscript{276} Id. at 4.
\textsuperscript{277} Id.
\textsuperscript{278} Id. at 10–11.
\textsuperscript{279} Id. at 10.
§328 allows employment of professionals on reasonable terms and conditions, including on retainer.\textsuperscript{280} Alvarez & Marsal’s terms and conditions for retention were reasonable and customary for cases of this size and complexity, therefore SN asserted their retention was qualified under § 328.\textsuperscript{281}

SN’s retention of Alvarez & Marsal focused on reorganization efforts, whereby Alvarez & Marsal would assist in the following matters: preparation of financial disclosures; debtor-in-possession financing, analysis of financial matters; cost/benefit analysis of executory contracts and lease assumption/rejection; analysis of creditor claims; analysis of avoidance actions; preparation of materials for confirmation of a reorganization plan; and general business consulting.\textsuperscript{282} Compensation for services were proposed at the standard hourly billing rates as follows:

- **Restructuring:**
  - Managing Directors: $875- $1,100;
  - Directors: $675- $875;
  - Analysts/Associates: $400- $650;

- **Case Management Services:**
  - Managing Directors: $825- $950;
  - Directors: $650- $800; and
  - Analysts/Associates: $400- $600

\textsuperscript{280} Application to Retain Alvarez, \textit{supra} note 276, 270.pdf at 10–11.
\textsuperscript{281} \textit{Id.}
\textsuperscript{282} \textit{Id.} at 6–7.
Additionally, SN agreed to indemnify and hold harmless Alvarez & Marsal in connection with the services.\(^\text{283}\) Prior to the petition, SN provided a $250,000 retainer for Alvarez & Marsal’s services, the unapplied retainer shall apply to the court’s final approved fee amount.\(^\text{284}\)

The court granted SN’s motion on a final basis, authorizing the retention of Alvarez & Marsal as restructuring advisors and approving the terms and conditions of their engagement as set out.\(^\text{285}\)

SN filed a first interim fee application requesting permission to pay Alvarez & Marsal for work performed from August 12, 2019 through November 20, 2019.\(^\text{286}\) In total, SN requested to pay $4,165,634.00 for 6,930.5 hours of professional services at an average hourly rate of 601.06.\(^\text{287}\) Additionally, SN requested permission to pay $123,538.06 to reimburse Alvarez & Marsal for actual and necessary expenses incurred.\(^\text{288}\) The court entered an order authorizing SN to pay Alvarez & Marsal $4,289,172.06, the total of professional services plus reimbursement of actual and necessary expenses.\(^\text{289}\)

\(^{283}\) Id. at 10.
\(^{284}\) Id. at 9.
\(^{287}\) Id. at 2.
\(^{288}\) Id.
Financial Advisor & Investment Banker- Moelis & Company LLC.

SN petitioned the court to authorize employment of Moelis & Company LLC (“Moelis”) as financial advisor and investment banker in their Chapter 11 reorganization. Moelis had extensive experience in assisting with reorganization and restructuring in the energy sector, with a lengthy list of successful cases under their belt. Moelis was selected due to its knowledge of SN’s case, its proven skills in investment banking and financial advisory services, and its success with similarly situated debtors in complex Chapter 11 cases. Moelis would continue to assist SN in analyzing its operations and financial conditions, analyzing restructuring alternatives and capital transactions, and advising and negotiating in connection with creditors and potential financiers. SN requested permission to retain Moelis pursuant to Bankruptcy Code §§ 327(a), 328(a), and 1107(b).

Sections 327(a) and 328(a) work in conjunction, allowing SN to employ professional persons under reasonable terms and conditions(§ 328(a)) so long as they do not hold an adverse interest to the estate and are disinterested( § 327(a)). The terms and conditions proposed by Moelis operate in three sectors: first, the monthly fee of $150,000 payable in advance each month; next the restructuring fee of $10,000,000 upon closing of the case; and third, the capital transaction fee under which Moelis will receive four percent of the aggregate gross amount of

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291 Id. at 4.
292 Id. at 6.
293 Id.
294 Id. at 15.
295 Id.
capital raised, two percent of junior secured or unsecured debt raised, and one percent of aggregate gross amount of first lien secured debt obligations raised in capital transactions.\textsuperscript{296} Accordingly, Moelis would seek reimbursement for any reasonable and documented out of pocket expenses incurred through their services.\textsuperscript{297} Due to the fixed nature of the fees, SN petitioned the court to waive the Bankruptcy Code’s timekeeping requirement.\textsuperscript{298} Additionally, SN agreed to indemnify and hold harmless Moelis and its affiliates in connection with any services provided, as set forth in the Moelis Engagement Letter.\textsuperscript{299}

According to the Latiff Declaration, SN believed to the best of its knowledge Moelis was a disinterested person as defined in § 101(14) and modified by § 1107(b).\textsuperscript{300} Moelis performed extensive searches, determining that to the best of its knowledge no Moelis professionals were creditors, security holders, or insiders of SN, has been employed by SN within the last two years, or hold any materially adverse interest to the debtors.\textsuperscript{301} Due to the large number of parties involved, Moelis cannot state with certainty it hold no conflicts but will continually perform inquiries and disclose any relevant findings with the court.\textsuperscript{302}

The court granted SN’s motion to retain Moelis under certain conditions.\textsuperscript{303} First, no capital transaction fees could be earned on account of any prepetition debt that any debtor in

\textsuperscript{296} Motion to Employ Moelis, \textit{supra} note 291.pdf at 8–9.
\textsuperscript{297} \textit{Id.} at 10.
\textsuperscript{298} \textit{Id.} at 18.
\textsuperscript{299} \textit{Id.} at 13; \textit{see id.} at 35–36.
\textsuperscript{301} Latif Declaration, \textit{supra} note 301, 461.pdf at 12–13.
\textsuperscript{302} Motion to Employ Moelis, \textit{supra} note 291, 271.pdf at 14.
possession financing rolled up or refinance.\textsuperscript{304} Second, no capital transaction fees could be earned upon conversion of debtor in possession financing into exit financing, unless new capital was raised in connection with such conversion.\textsuperscript{305} Third, the capital transaction fees resulting from existing creditors, stakeholders, or equity holders shall be reduced by 50\%.\textsuperscript{306} Fourth, capital transaction fees may only be earned on debtor in possession financing if approved on a final basis by the court.\textsuperscript{307} Finally, 50\% of transaction fees from new parties shall be applied to the restructuring fee of $10,000,000 provided that the restructuring fee does not reach zero.\textsuperscript{308} Compensation will be granted according to the Engagement Letter, as modified by this order, after review pursuant to § 330.\textsuperscript{309} Accordingly, the monthly fee of $150,000 would be prorated for any day in which Moelis was not employed.\textsuperscript{310}

The first interim fee application was submitted, seeking authorization to pay Moelis for professional services and actual and necessary expenses from August 11, 2019 through November 30, 2019.\textsuperscript{311} Moelis’s fees totaled $490,000, $150,00 per month prorated for August, and its actual and necessary expenses incurred totaled $392,000 for the period.\textsuperscript{312} The court entered an order permitting SN to pay the fees and expenses in total.\textsuperscript{313}

\begin{thebibliography}{9}
\bibitem{304} Id. at 2.
\bibitem{305} Id.
\bibitem{306} Id. at 2–3.
\bibitem{307} Id. at 3.
\bibitem{308} Order Authorizing Moelis, supra note 304, 495.pdf at 3.
\bibitem{309} Id. at 4.
\bibitem{310} Id. at 6.
\bibitem{312} Id. at 1.
\end{thebibliography}
Audit & Tax Consulting- KPMG LLP.

Pursuant to Bankruptcy Code §§ 327(a), 328(a) and Bankruptcy Rule 2014(a), SN requested to retain KMPG LLP (“KPMG”) for audit and tax consulting services.\(^\text{314}\) KPMG undertook an extensive search of their records to determine they were disinterested as required by § 101(14) of the code, and pledged to update SN and the court if any new relationships were discovered.\(^\text{315}\) Per § 1107(b), KMPG’s retention was permitted despite prepetition employment.\(^\text{316}\) KPMG and SN agreed to reasonable employment terms and conditions as were customarily charged in similar circumstances.\(^\text{317}\) KMPG had diverse and extensive knowledge in the fields of accounting, taxation, and operation controls and has been employed by SN since 2015, making it familiar with SN’s records and operations and particularly qualified to provide these services.\(^\text{318}\)

KPMG would provide audit and tax services in connection with the Chapter 11 reorganization.\(^\text{319}\) It would perform audits on balance sheets dating back to December 31, 2019 and 2018; furthermore, KPMG would provide comfort and consent letters in connection with securities offerings as requested by SN.\(^\text{320}\) Tax services would cover any and all matters that


\(^{315}\) Id. at 11.

\(^{316}\) Id.

\(^{317}\) Id. at 12.

\(^{318}\) Id. at 4–5.

\(^{319}\) Application to Retain KPMG, supra note 315, 283.pdf at 5.

\(^{320}\) Id.
involve taxation, ranging from routine tax advice on federal, state, and local matters to
interpretation of new tax legislation, changes in accounting methods, and analysis of tax
gain/loss transactions.\textsuperscript{321} KPMG would provide other consulting, advice, research, planning, and
analysis that may be necessary through the reorganization process.\textsuperscript{322}

As described in the engagement letter, KPMG and SN agreed to a fixed fee of $1,026,000
for audit services, of which $436,000 was paid prepetition and with the remaining balance paid
in five monthly installments of $118,000.\textsuperscript{323} Additionally, KPMG and SN agreed to a fixed fee of
$25,000 to $125,000 for each comfort letter and $25,000 for each consent letter.\textsuperscript{324} Also, KMPG
would provide hourly services charged at a rate reduced by approximately 41\% for audit services
and 30\% for tax services at the following rates:

- **Audit Services:**
  - Partners: $550;
  - Senior Managers: $450;
  - Managers: $400
  - Senior Associates: $325; and
  - Associates: $225

- **Tax Services:**
  - Partners: $840- $935;
  - Managing Directors: $840- $870;
  - Senior Managers: $755- $825;
  - Managers: $585- $755;

\textsuperscript{321} Id. at 5–6.
\textsuperscript{322} Id. at 6.
\textsuperscript{323} Id. at 7.
\textsuperscript{324} Id.
Senior Associates: $435 - $575;

Associates: $320 - $350; and

Paraprofessionals: $180-280\textsuperscript{325}

Generally, KPMG did not keep detailed time records in connection with their services; accordingly, SN requested permission for KPMG to file time keeping records with the court in half hour increments as opposed to the customary one-tenth hour increments\textsuperscript{326} Additionally, as compensation, SN agreed to indemnification provisions with respect to services provided by KPMG.\textsuperscript{327}

The court approved SN’s motion to retain KPMG subject to modification by the order.\textsuperscript{328} KPMG would not be entitled to indemnification for services other than described in the engagement letter, unless approved by the court.\textsuperscript{329} SN would not be obliged to indemnify KPMG if it judicially determined the issue arose due to bad faith, gross negligence, or willful misconduct, arose from a breach of contractual obligations, or was settled prior to a judicial determination.\textsuperscript{330} Furthermore, KPMG would submit interim and final fee applications subject to review pursuant to § 330.\textsuperscript{331}

From August 11, 2019 to November 30, 2019, KPMG requested payment of $449,925.40 for professional services and $1,015.13 for reimbursement of actual, reasonable and necessary

\textsuperscript{325} Application to Retain KPMG, supra note 315, 283.pdf at 9.
\textsuperscript{326} Id. at 10.
\textsuperscript{327} Id. at 12.
\textsuperscript{329} Id. at 2.
\textsuperscript{330} Id.
\textsuperscript{331} Id. at 4.
expenses. The court entered an order, granting the first interim fee application and awarding KPMG a total of $450,940.53.

Special Litigation Counsel - Gibbs & Bruns LLP.

SN requested permission to retain Gibbs & Bruns LLP ("Gibbs & Bruns") as special litigation counsel in connection with the Comanche Joint Development Agreement Dispute ("Comanche JDA") and Terra Dispute. SN employed Gibbs & Bruns prior to the petition date to serve as lead counsel in their dispute with Gavilan Resources, LLC ("Gavilan"). The Comanche JDA Dispute began February 18, 2019 when Gavilan filed an arbitration demand on SN for allegedly defaulting under their Comanche JDA. SN served Gavilan with counterclaims and defenses, an evidentiary hearing was set for October 14, 2019. In the Terra Dispute, SN, as plaintiffs, filed causes of action for misappropriation of trade secrets, breach of fiduciary duties, aiding and abetting breach of fiduciary duty, breach of contract, and violation of the Harmful Access by Computer Act. The defendants sought to dismiss the case, but the court denied their motion and held it had the sole intent of delaying the proceedings; the defendants were appealing this ruling.

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335 Id. at 4–5.
336 Id. at 5.
337 Id. at 6.
338 Id.
339 Motion to Employ Gibbs, supra note 335, 284.pdf at 6.
Bankruptcy Code § 327(e) provides that with court approval, SN may employ an attorney, who has represented it in the past, for a specified special purpose so long as it is in the best interest of the estate and the attorney holds no adverse interest to the debtor or estate in the matter at hand.\(^{340}\) Retention under § 327(e) differs from §327(a) as it only requires the attorney possess no conflicts of interest.\(^{341}\) Additionally, SN sought to employ Gibbs & Bruns on reasonable terms and conditions as allowed under § 328(a).\(^{342}\)

SN employed Gibbs & Bruns for their extensive experience in complex commercial litigation and knowledge of oil and gas and trade secret litigation.\(^{343}\) Furthermore, SN believed Gibbs & Bruns prepetition work demonstrated their qualification to be retained as special litigation counsel post-petition.\(^{344}\) Gibbs & Bruns compensation would differ for their work on the Comanche JDA and the Terra Dispute.\(^{345}\)

Compensation for work performed involving the Comanche JDA would be on an hourly basis as follows:

- **Partners:** $1250- $445;
  - Robin C. Gibbs: $1,250;
  - Sam W. Cruse III: $565;
  - Brice Wilkinson: $445;

- **Counsel:** $430- 305;
  - Jorge Gutierrez: $400;


\(^{341}\) *Motion to Employ Gibbs, supra* note 335, 284.pdf at 13; *see Meespierson Inc. v. Strategic Telecom Inc.*, 202 B.R. 845, 847 (D. Del. 1996) (“[S]pecial counsel employed under [section] 327(e) need only avoid possessing a conflict of interest concerning the matter at hand.”).

\(^{342}\) *Id.* at 13.

\(^{343}\) *Id.* at 7.

\(^{344}\) *Id.*

\(^{345}\) *Id.* at 8.
• Associates: $425- $345; and

• Paraprofessionals: $210- $125

In connection, Gibbs & Bruns would seek reimbursement for actual, documented expenses in connection with their representation, including retention of experts and professionals.  

SN sought authorization to compensate Gibbs & Bruns via contingency agreement for work performed under the Terra Dispute. Gibbs & Bruns, at the time of settlement or resolution, would receive 12.5% of the gross sum if resolved before the appeal, 17.5% if resolved before the selection of a jury, and 35% if resolved after a jury was selected. Gibbs & Bruns would be responsible for all litigation expenses and not include time records in its monthly fee statements, rather it would include a summary of the services rendered when it seeks payment of the contingency fee.

The court granted SN’s motion to retain Gibbs & Bruns as special litigation counsel, authorizing each respective compensation method. There were no fee applications at the time of this paper.

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346 Motion to Employ Gibbs, supra note 335, 284.pdf at 9–10.
347 Id. at 10.
348 Id. at 11.
349 Id.
The Unsecured Creditors Committee sought to employ Milbank LLP (“Milbank”) as counsel due to its successful record of accomplishment in representing creditor’s committees in complex Chapter 11 cases.\textsuperscript{351}

The Unsecured Creditors Committee constituted a § 1102 committee; meaning, it had the power, with court approval, to authorize employment of one or more attorneys or professionals to represent or perform services on their behalf under § 1103.\textsuperscript{352} Milbank asserted it was disinterested as defined by § 101(14) and without adverse conflicts of interest.\textsuperscript{353}

Milbank’s scope of services would encompass the entirety of their involvement in the Chapter 11 case, ranging from advising on rights and duties, to assisting in preparation of materials, and assisting in the Unsecured Creditors Committee in its interactions during the case.\textsuperscript{354} Milbank’s compensation would encompass reimbursement for actual and necessary expenses as well as standard hourly rates as follows:

- Partners- $1,155- $1,540;
- Counsel- $1,120- $1315;
- Associates/Senior Attorneys- $450- $995; and

\textsuperscript{351} Application of the Official Committee of Unsecured Creditors for Entry of an Order Authorizing the Retention of Milbank LLP as Counsel, Effective as of August 29, 2019 405.pdf, \textit{In re Sanchez Energy Corp.}, No. 19-34508 (Bank. S.D. Tex. Filed Sept. 27, 2019) [hereinafter Motion to Employ Milbank] https://perma.cc/77QG-DXJQ.
\textsuperscript{353} Motion to Employ Milbank, \textit{supra} note 352, 405.pdf at 6.
\textsuperscript{354} Id. at 5.
- Paralegals- $260- $360

The court approved the Unsecured Creditors Committee’s request, authorizing retention of Milbank as counsel and requiring applications for compensation subject to §§ 330 and 331 of the code.

Milbank submitted its first fee application for the period of August 29, 2019 through November 30, 2019. Milbank requested $4,541,639.50, consisting of 5,112.30 hours of professional services for $4,447,441.50 at an average hourly rate of $869.95, 308.6 hours of paraprofessional service for $94,198.00 at an average hourly rate of $305.24, and $158,886.66 for reimbursement of actual and necessary expenses. The court ordered payment of interim compensation in the amount of $4,700,526.16, authorizing full payment for services and expenses that include $158,886.66 held back from prior fee applications.

Co-Counsel- Locke Lord, LLP.

The Unsecured Creditors Committee sought to employ Locke Lord, LLP (“Locke Lord”) as co-counsel and to the extent necessary, conflicts counsel during the chapter 11 case. Locke

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355 Id. at 7.
358 Id. at 6–7.
Lord was selected due to its experience in complex Chapter 11 cases and importantly, its extensive practice before this court and their knowledge of the local rules.\textsuperscript{361}

The Unsecured Creditors Committee sought authorization under §§ 328(a) and 1103(a), asserting their eligibility, with court approval, to hire an attorney(s) to represent them under reasonable terms and conditions.\textsuperscript{362} Additionally, Locke Lord submitted it was a disinterested person within the meaning of § 101(14).\textsuperscript{363}

Locke Lord’s employment was requested to provide services according to its familiarity of the Fifth Circuit and local Texas law, reviewing and analyzing documents to be filed with the court, and performing all services requested of them as co-counsel.\textsuperscript{364} In connection with its services, Locke Lord requested reimbursement for actual and necessary expenses along with compensation according to their standard hourly rates of $325- $1,200 for attorneys and $200-$425 for paraprofessionals.\textsuperscript{365}

The court approved retention of Locke Lord, requiring compensation applications in compliance with §§ 330 and 331, and explicitly barring any reimbursement for office supplies and any secretarial or overtime fees, and any fees related to defense of fee applications.\textsuperscript{366}

Locke Lord submitted its first fee application for the period of August 29, 2019 through November 30, 2019.\textsuperscript{367} Locke Lord requested compensation for $695,186.00, comprised of 868.3

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{361} Id. at 3–4.
\item \textsuperscript{362} Id. at 3.
\item \textsuperscript{363} Id. at 6.
\item \textsuperscript{364} Id. at 4–5.
\item \textsuperscript{365} Id. at 7.
\end{itemize}
\end{footnotesize}
hours of professional services for $648,329.00 at an average hourly rate of $746.66, 185.70 hours of paraprofessional service for $46,857.00 at an average hourly rate of $252.33, and $7,875.12 for actual and necessary expenses. The court authorized interim compensation in the amount of $695,186.00, plus $139,037.20 in fees held back from prior fee statements.

Financial Advisor- FTI Consulting, Inc.

The Unsecured Creditors Committee sought to employ FTI Consulting, Inc. (“FTI”) to perform financial advisory services pursuant to Bankruptcy Code Sections 328(a) and 1103(a). The Unsecured Creditors Committee selected FTI according to their experience in similarly situated chapter 11 cases and its upstanding reputation as financial advisors. FTI asserted it was disinterested as defined by § 101(14), permitting its retention with court approval under § 1103(b) according to reasonable terms and conditions as required by § 328(a).

FTI would provide financial analyses of SN’s liquidity and of SN’s operational elements dealing with exit strategy, plans of reorganization, claims analysis, and retention and incentive proposals. FTI will minimize to the fullest extent any duplication of services in pursuit of its ultimate goal of maximizing the estate.

368 Id. 23–24.
371 Id. at 3.
372 Id. at 5–6.
373 Id. at 3–5.
374 Id. at 5.
FTI sought compensation through indemnification, reimbursement of actual and necessary expenses, and hourly fees.\textsuperscript{375} FTI sought indemnification under customary terms for financial advisors in Chapter 11 cases, consisting of indemnification for all services related to its representation with defense costs included, except to the extent that it was judicially determined FTI was grossly negligent or participated in willful misconduct or fraud.\textsuperscript{376} Furthermore, FTI requested hourly compensation according to the following standard rates:

- Senior Managing Directors- $725- $1,195;
- Directors/Senior Directors/Managing Directors- $510- $880;
- Consultants/Senior Consultants- $310- $640; and
- Administrative/Paraprofessionals- $145- $275\textsuperscript{377}

The court approved the Unsecured Creditors Committee’s request without modification.\textsuperscript{378}

FTI submitted its first interim application for compensation for the period of September 4, 2019 through November 30, 2019.\textsuperscript{379} FTI sought $2,408,132.50 for 3,576.9 hours of professional services at an average hourly rate of $673.25, and reimbursement for $24,300.75 of actual and necessary expenses.\textsuperscript{380} The court granted FTI’s application for compensation in full as requested.\textsuperscript{381}

\textsuperscript{375} Motion to Employ FTI, supra note 371, 432.pdf at 6–7.
\textsuperscript{376} Id. at 7.
\textsuperscript{377} Id.
\textsuperscript{380} Id. at 2.
\textsuperscript{381} Order Granting First Interim Application of FTI Consulting, Inc., for Compensation for Services and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors for the Period
Investment Banker- Jefferies LLC.

Pursuant to Bankruptcy Code Sections 328(a) and 1103(a), the Unsecured Creditors Committee sought to retain Jefferies LLC (‘Jefferies”) as its investment banker. The Unsecured Creditors Committee selected because of its successful track record in complex financial restructuring and the extensive services it can provide as a full service banking firm with over 3,500 employees. Additionally, elimination of Jefferies’ time-keeping requirements was requested under Bankruptcy Rule 2016(a) due to compensation being based on monthly and transactional fees. The Unsecured Creditors Committee purported Jefferies was disinterested according to its inquiry into potential conflicts, adverse interests, and relation to parties involved in the case. Accordingly, the Unsecured Creditors Committee asserted retention was proper by the powers granted to them under § 1103(a) and due to the reasonable and fair terms and conditions of employment.

Jefferies would provide advice on potential transactions, advise any potential restructuring efforts, assist in debtor-in-possession financing analysis and evaluation, provide


383 Id. at 4.
384 Id. at 3.
385 Id. at 11.
386 Id. at 4–5.
evaluations regarding all financial matters presented, and provide testimony where necessary on matters regarding their services. 387

Compensation was requested in the form of reimbursement for all-out-of-pocket expenses, a monthly fee, a transactional fee, and indemnification provisions. 388 Jefferies requested a monthly fee of $175,000, due and payable on the 4th of each month. 389 Similarly, a transactional fee of $3,500,000 was requested upon confirmation of the plan, with a contingency that if the Unsecured Creditors Committee objects to or does not support such plan, the fee be reduced to $1,750,000. 390 Additionally, Jefferies sought indemnification to the fullest extent of the law for claims related to or arising out of their services. 391 These fees and indemnification provisions were supported as customary and reasonable in the investment banking industry and as found in similarly situated Chapter 11 cases. 392

The court granted the request to employ Jefferies, subjecting fees and expenses to the standard of review set forth in § 330. 393 Additionally, monthly fees would be prorated for any day Jefferies was not employed. 394

Jefferies submitted its first interim fee application for the period of September 4, 2019 through November 30, 2019. 395 Jefferies requested permission for compensation of $544,919.52.

387 Id. at 6.
388 Motion to Retain Jefferies, supra note 383, 433.pdf at 6.
389 Id. at 7.
390 Id.
391 Id. at 10.
392 Id. at 9.
394 Id. at 6.
comprised of $507,500.00 for prorated monthly fees, and $37,419.52 for reimbursement of actual and necessary expenses.\textsuperscript{396} The court granted permission to compensate the $544,919.52 in its entirety, less any amounts already paid on account of fees and expenses.\textsuperscript{397}

**Information Agent- Epiq Corporate Restructuring, LLC.**

Pursuant to Bankruptcy Code § 1103, the Unsecured Creditors Committee requested authorization to employ Epiq Corporate Restructuring, LLC (“Epiq”) as information and noticing agent to carry out the requirements of Bankruptcy Code § 1102.\textsuperscript{398}

Section 1103 provides that a court may authorize employment of one or more agents to represent or perform services for creditors’ committees.\textsuperscript{399} The Unsecured Creditors Committee sought to employ Epiq as an informational and noticing service under §1102(a) to facilitate the services required under § 1102(b)(3).\textsuperscript{400} Section 1102(b)(3) states a committee under §1102(a) shall provide access to information for creditors who hold claims represented by the committee and are not appointed to the committee, shall solicit and receive comments from creditors, and be subject to court order that compels additional reporting or disclosure.\textsuperscript{401}

Employment of Epiq was requested to facilitate the Unsecured Creditors Committee’s obligations under the Bankruptcy Code and to aid in efficient, cost-effective administration of

\textsuperscript{396} Id. at
\textsuperscript{399} Id. at 6.
\textsuperscript{400} Id.
\textsuperscript{401} Id. at 6–7.
the case. Specifically, Epiq would create and maintain a website, provide technology and communication services, and prepare and serve notices and pleadings on behalf of the Unsecured Creditors Committee. Epiq asserted it was disinterested to the best of its knowledge and would continue inquiries on conflicts and disqualifying circumstances.

The Unsecured Creditor’s committee sought to classify Epiq’s services as administrative under § 503(b), thus paid for by the estate and not required to file a fee application. Epiq’s pricing schedule was as follows:

- **Professional Services:**
  - Clerical/Administrative Support- $25- $45;
  - IT/Programming- $65- $85;
  - Case Managers- $70- $165;
  - Consultants/Directors/Vice Presidents- $160- $190;

- **Noticing Rates**
  - Printing- $.10 per image;
  - Personalization/Labels- Waived;
  - Envelopes- Varies by Size;
  - Postage/Overnight Delivery- At cost at Preferred Rates;
  - E-Mail Noticing- Waived;
  - Fax Noticing- $.05 per page;
  - Claim Acknowledgment Letter- $.05 per page;
  - Publication Noticing- Quoted at time of Request

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402 Id. at 3.
403 Id.
404 Motion to Employ Epiq, supra note 399, 500.pdf at 5.
405 Id. at 4; see 11 U.S.C. § 503, https://perma.cc/2GNN-7JFL.
• Data Management Rates
  o Data Storage, Maintenance and Security: $.09 per record/month;
  o Electronic Imaging - $.10 per image; no monthly storage charge;
  o Website Hosting Fee - Waived; and
  o CD-ROM (Mass Document Storage) - $5 per CD

The court granted the Unsecured Creditors Committee’s request to employ Epiq, directing SN to compensate Epiq on a monthly basis as an administrative expense provided that any fees disallowed by the court were not paid as administrative expenses.407

Audit Committee of the Board of Directors of Sanchez.

Prior to the petition, SN’s board of directors established an Audit Committee comprised of disinterested directors, who possessed the exclusive power and authority to review and approve or disapprove transactions of interested directors.408 The Audit Committee retained Richards, Layton, and Finger, P.A. (“Richards Layton”) to provide corporate law advice and assist in the transaction review process.409 The Audit Committee sought to retain Richards Layton as ordinary course professionals post-petition, to continue their prepetition work.410

406 Motion to Employ Epiq, supra note 399, 500.pdf at 3; see id. at Schedule 1- Epiq Corporate Restructuring Standard Services Agreement.
409 Id. at 4.
410 Id. at 5.
Special Counsel- Richards, Layton, & Finger, P.A.

The Audit Committee requested to retain Richards Layton pursuant to Bankruptcy Code §§ 327(e) and 328(a).411

Section 327(e) provides that debtors may employ counsel that has previously represented the debtor for a specified special purpose so long as counsel holds no adverse interests to the debtors and employment is in the best interest of the estate.412 When § 327(e) is invoked, courts generally look to four factors in considering whether to appoint special counsel, whether “(1) the representation is in the best interest of the estate, (2) the attorney represented the debtor in the past, (3) the attorney is for a specific purpose approved by the court other than to represent the debtor in conducting the case, (4) the attorney does not represent or hold an interest adverse to the debtor or the debtor’s estate.”413 The Audit Committee sought to retain Richards Layton as it provided high quality work in the past, was familiar with SN’s operations, and retention was in the best interest of maximizing the estate and protecting the reorganization process.414 Furthermore, after substantial inquiry and search, Richards Layton asserted it was disinterested under § 101(14) and was therefore eligible to be hired under § 327.415

Accordingly, if someone is hired under § 327, § 328(a) requires the terms and conditions to be reasonable and simultaneously Bankruptcy Rule 2014(a) requires specific facts showing the necessity of employment.416 Richards Layton provided expertise in advising special board committees like the Audit Committee, and as demonstrated by its prepetition work, provides

411 Id. at 13–14.
412 Id. at 13.
413 Id. at 14; see In re Woodworkers Warehouse, Inc., 323 B.R. 403, 406 (Bankr. D. Del. 2005).
414 Motion to Employ Richards Layton, supra note 409, 912.pdf at 5–6.
415 Id. at 12–13.
416 Id. at 14.
services that were essential to carrying out the Audit Committee’s purpose.\footnote{Id. at 6–8.} Richards Layton’s compensation requirements were considered standard in the industry, requiring reimbursement for actual and necessary expenses as well as the following hourly rates:

- Directors- $475- $1,125;
- Counsel- $650- $700;
- Associates- $370- $665;
- Document Review Attorneys- $250- $300; and
- Paraprofessionals- $125- $300\footnote{Id. at 9.}

Richard Layton continued performing services for the Audit Committee in the ordinary course of business after the petition date, accumulating $117,953.00 in unpaid fees and expenses.\footnote{Id. at 12.}

The court entered an order authorizing the retention and employment of Richards Layton as requested in the motion\footnote{Order Authorizing the Retention and Employment of Richards, Layton & Finger, P.A. as Special Counsel to the Audit Committee of the Board of Directors of Sanchez Energy Corporation Effective \textit{Nunc Pro Tunc} to the Petition Date 1012.pdf, \textit{In re Sanchez Energy Corp.}, No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 05, 2020) \url{https://perma.cc/9Z9S-E67W}.} The court ordered Richards Layton be reimbursed for the fees and expenses incurred post-petition, instructing they add this amount to the fee application.\footnote{Id. at 3.} There were no fee applications at the time of this paper.

\textbf{DIP financing.}
Prior to the day of petition, SN received prepetition financing of approximately $7.9 million in principal and a $17.1 million undrawn standby letter of credit from the Royal Bank of Canada under a Prepetition Credit Agreement and a Collateral Trust Agreement. Additionally, on February 14, 2018, SN issued $500 million in principal of 7.25% Senior Secured First Lien Notes, secured by Prepetition Collateral consisting of SN’s oil and natural gas properties, 100% of the equity interests of Sn’s Prepetition Debt Guarantors, and substantially off of SN’s other material personal property. SN management team and advisors met to conduct financial forecasts and analysis and concluded in the Koetting Declaration that SN could not operate the business and undergo chapter 11 on Cash Collateral alone because SN did not generate enough cash in the ordinary course of business. Therefore, SN filed a motion for postpetition financing to ensure SN’s liquidity for the short-term of 9 months and to resume drilling.

**DIP Financing Proposal.**

SN requested emergency consideration of the motion pursuant to Bankruptcy Rule 6003 to obtain relief within the first 21 days after commencement of the case. SN stressed that immediate approval of the DIP Facility was crucial to avoid liquidity levels necessary for business operations falling below minimum standards and to resume its drilling program. SN stated that the entering into the DIP Documents was a sound exercise of business judgment made in good faith and at

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422 Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Limited Use of Cash Collateral; (II) Obtaining Postpetition Credit Secured by Senior Liens; (III) Granting Adequate Protection; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief at 16–17, In re Sanchez Energy Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Aug. 12, 2019) [hereinafter DIP Financing Motion], https://perma.cc/W2DW-TXUT.
423 Id. at 17–18.
424 Id. at 20–21.
425 Id. at 21–22, 4.
426 Id. at 36.
427 Id. at 4.
arms-length, consistent with case law requirements to obtain the DIP Facility and Cash Collateral.\textsuperscript{428} SN asserted that its advisors determined that postpetition financing was necessary; and, that it negotiated in good faith in an extensive solicitation process to obtain the financing in the documents, with no other reasonable alternatives possible.\textsuperscript{429}

The postpetition financing arrangement constituted a superpriority, priming, senior secured delayed-draw term loan credit facility in an aggregate principal amount of $350 million, consisting of new money in the amount of $175 million of New Money Facility, $50 million Interim DIP Draw, and $175 million to roll-up obligations under of the Secured Notes.\textsuperscript{430} Under the material terms of the proposed DIP Facility and relevant documents, the borrower would: use the New Money Facility for general corporate and working capital purposes;\textsuperscript{431} repay in full in cash all First-Out Obligations as of the Petition Date and cash collateralizing the Prepetition L/C;\textsuperscript{432} roll-up the obligations under the Secured Notes;\textsuperscript{433} and pay requisite fees.\textsuperscript{434} If approved, SN believed that the DIP Facility would: help the company retain sufficient liquidity for operation of its business until January 2020; provide the company with negotiation flexibility necessary for a successful restructuring; “send a positive and credible message to the Debtors’ workforce”; and allow the company to resume drilling.\textsuperscript{435}

The DIP Credit Agreement also contained typical events of default that were standard in DIP financings, including breach of any Milestone, failure to pay principal and interest due, among

\textsuperscript{428} DIP Financing Motion, supra note 423, at 25.
\textsuperscript{429} Id. at 25–26, 31.
\textsuperscript{430} Id. at 3.
\textsuperscript{431} Id. at 10.
\textsuperscript{432} Id. at 8.
\textsuperscript{433} Id. at 26–27.
\textsuperscript{434} DIP Financing Motion, supra note 423, at 10.
\textsuperscript{435} Id. at 4–5.
other terms. Additionally, pursuant to Bankruptcy Rule 4001(c)(1)(B)(ix), the DIP Credit agreement provided that SN would indemnify the DIP Agent and DIP Lenders from liabilities due to ordinary negligence relating to any proceeding relating to the DIP Credit Agreement.

SN proposed that, because it was unable to obtain unsecured credit under § 503(b)(1), 364(c) of the Bankruptcy Code would allow superpriority liens, especially first priority liens on its assets. To obtain financing under 364(c), SN had to meet the three-part test as to whether:

(a) the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, i.e., by allowing a lender only an administrative claim;

(b) the credit transaction is necessary to preserve the assets of the estate; and

(c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

SN maintained that it met the requisite test, as well as § 364(d), because other parties would not provide postpetition financing to it, despite their good faith efforts, and that the arrangement with the eventual lender was fair and reasonable.

SN stated that the Secured Notes Parties agreed to the priming liens for the DIP Facility and retaining a senior position with the Prepetition Collateral. Under Bankruptcy Rule 4001(b)(I)(B)(ii) and upon consent of prepetition secured parties, SN proposed that it use the Cash Collateral for general corporate and working capital purposes. Additionally, SN proposed, pursuant to §§ 361, 363(e), and 364(d)(1)(B) of the Bankruptcy Code, to provide adequate protection to the Prepetition Secured parties through:

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436 Id. at 13.
437 Id. at 14.
438 Id. at 29.
439 Id. at 29–30.
440 DIP Financing Motion, supra note 423, at 30.
441 Id. at 30–31.
442 Id. at 10.
among other things, (a) replacement liens, (b) superpriority 507(b) claims, (c) cash payments equal to interest at the non-default rate provided for in the Secured Notes Indenture (subject to recharacterization or other appropriate remedies), (d) continued performance of the Debtors’ obligations to the Hedging Counterparties on account of First-Out Hedging Obligations in the ordinary course of business, and (e) the payment of reasonable and documented fees and expenses of advisors to the Prepetition Secured Parties.443

Pursuant to Bankruptcy Rule 4001(c)(1)(B), SN would pay all reasonable costs and expenses of the DIP Agent, as well as professionals retained by the DIP Agent and the DIP Lenders.444 The payments reimbursed the DIP Lenders for out-of-pocket expenses as well as agency, backstop, commitment, and exit fees.445

SN proposed that the automatic stay under § 362 of the Bankruptcy code be modified to allow the DIP Agent “to take all actions necessary to perfect the DIP Liens and the Adequate Protections Liens,” as a part of the DIP financing arrangement.446

Pursuant to Bankruptcy Rule 4001(c)(1)(B), SN would provide a report showing receipts and an explanation of any material variance to the Approved Budget on every Friday, beginning on August 23, 2019.447 Further, SN’s chief financial officer would provide reasonably detailed explanations upon request.448 Additionally, the agreement contained the following milestones:

(a) obtain entry by the Court of the Final DIP Order within 40 days after the Petition Date;

443 Id. at 33.
444 Id. at 10, 34.
445 Id. at 34.
446 DIP Financing Motion, supra note 423, at 35.
447 Id. at 11.
448 Id.
(b) filing of an Acceptable Plan of Reorganization (as defined in the DIP Credit Agreement) and related disclosure statement within 110 days after the Petition Date;
(c) obtain entry of an order of the Court approving the disclosure statement within 155 days after the Petition Date; and
(d) the effective date of the confirmed Acceptable Plan of Reorganization within 255 days after the Petition Date.\(^{449}\)

The proposal subjected liens and superpriority claims under the DIP facility to a carve-out provision consisting of: requisite fees paid to the Clerk of the Court and to the Trustee under § 1930(a) of the United States Code, reasonable fees up to $50,000 by a chapter 7 trustee under § 726(b) of the Bankruptcy Code, Allowed Professional Fees pursuant to §§ 327, 328, 363, 328, or 1103 of the Bankruptcy Code, and a cap on the Allowed Professional Fees of $5,000,000.\(^{450}\)

**Objection to DIP Financing Motion.**

The Ad Hoc Group of unsecured noteholders objected to SN’s motion for DIP financing, stating that, among other assertions, that there was no emergency need for DIP Financing.\(^{451}\) The Ad Hoc Group justified their position by stating that SN had no need for financing until January 2020, SN’s cash position was forecasted as high as $174 million, the alleged positive message to SN’s workforce did not prove irreparable harm, and SN’s estates were better off without DIP Financing due to the fact that the default rate was lower than the DIP rate.\(^{452}\)

\(^{449}\) *Id.*

\(^{450}\) *Id.* at 12.


\(^{452}\) *Id.* at 7–10.
DIP Financing Interim Order.

The court entered the Interim Order on August 15, 2019.\footnote{Interim Order (I) Authorizing Debtors (A) To Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b), and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) at 1, In re Sanchez Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Aug. 15, 2019) [hereinafter Interim DIP Financing Order], https://perma.cc/ZXP2-N6SA.} The Court found that the DIP Financing, use of Cash Collateral, and the terms of the Adequate Protection and Liens were negotiated in good faith at arm’s length.\footnote{Id. at 11.} The Interim Order authorized SN to continue to use the Prepetition Collateral to preserve the estate and operate the business.\footnote{Id. at 9.} The Interim Order also authorized SN to borrow New Money Loans under the DIP Credit Agreement in an amount not to exceed $50,000,000 and to pay Roll-Up DIP Lenders’ ratable share of $175,000,00.\footnote{Id. at 13–14.} Additionally, the Interim Order authorized the SN to use the proceeds of the DIP Loans as permitted under the DIP Documents for working capital purposes, to discharge First-Out Obligations, to pay fees and expenses, and to provide Adequate Protection.\footnote{Id.}

The Interim order further authorized SN to use Cash Collateral, in accordance with the DIP Budget, so long as the Prepetition Secured Parties received Adequate Protection and the Court further ordered SN’s requested use of the Cash Collateral.\footnote{Id. at 33–32.} Moreover, the Interim Order stated, in accordance with § 364(c)(1) of the Bankruptcy Code, that all DIP Obligations would constitute superpriority claims against SN, and that such claims would have full protection under § 364(e).\footnote{Interim DIP Financing Order, supra note 456, at 20.} The Interim Order also authorized DIP Liens to secure the DIP Obligations as follows: first lien
on unencumbered property pursuant to § 364(c)(2); liens priming prepetition liens pursuant to § 364(d)(1); and junior and senior liens.\footnote{Id. at 20–22.}

The Interim Order further provided a Carve Out for various fees paid to the Clerk of the Court and the U.S. Trustee, as well as Debtor Professionals, Committee Professionals.\footnote{Id. at 23–28.} Pursuant to §§ 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, the Interim Order also granted adequate protection of the Prepetition Secured Parties’ interests in all Prepetition Collateral, including the Cash Collateral, to the extent of the value of their interests in the collateral and any decrease of the Prepetition Collateral.\footnote{Id. at 33–35.}

**DIP Financing Final Order.**

The court entered the Final Order on January 22, 2020.\footnote{Final Order (I) Authorizing Debtors (A) To Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b) at 1, In re Sanchez Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Jan. 22, 2020) [hereinafter Final DIP Financing Order], https://perma.cc/BP32-S5H9.} The Final Order authorized SN to borrow New Money Loans under the DIP Documents in a face amount not to exceed $150 million instead of the $50 million in the Interim Order.\footnote{Id. at 13.} The Final Order also authorized SN to “convert to DIP Obligations constituting Roll-Up Loans under the DIP Documents each Roll-Up DIP Lender’s ratable share” of $50 million, as opposed to $175 million in the Interim Order.\footnote{Id.} Additionally, unlike the Interim Order, the Final Order included authorization of payment of $1 million in fees to counsel of the Unsecured Ad Hoc Group.\footnote{Id.} The Final Order also added that the
Discharge of First-Out Obligations must occur as soon as reasonably practical after the Final Order, not to exceed later than ten business days.\textsuperscript{467}

\textsuperscript{467} Id. at 17.
DIP Budget.

**Sanchez Energy Corporation, et al.**

13 Week Cash Flow

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<td><strong>Net Cash Flow Prior to DIP Financing</strong></td>
<td>$63,987</td>
<td>$(125,686)</td>
<td>$14,381</td>
<td>$(19,367)</td>
<td>$91,459</td>
<td>$(99,462)</td>
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<td></td>
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<tr>
<td>Draw (Repayment) of DIP</td>
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<td>-</td>
<td>50,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Net Cash Flow</strong></td>
<td>$63,987</td>
<td>$(125,686)</td>
<td>$64,381</td>
<td>$(19,367)</td>
<td>$91,459</td>
<td>$(99,462)</td>
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<td><strong>Ending Consolidated Cash Balance</strong></td>
<td>$185,603</td>
<td>$59,917</td>
<td>$124,298</td>
<td>$104,931</td>
<td>$196,391</td>
<td>$96,929</td>
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<td>DIP Availability</td>
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<td>$174,298</td>
<td>$154,931</td>
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<tr>
<td>Total Operating Cash</td>
<td>$185,603</td>
<td>$59,917</td>
<td>$124,298</td>
<td>$104,931</td>
<td>$196,391</td>
<td>$96,929</td>
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Upon filing a Chapter 11 petition case, the automatic stay is imposed under Bankruptcy Code § 362. The automatic stay offers the debtor a “breathing spell” by disallowing continuation of certain claims listed under § 362(a), with exception under § 362(b). The inherent purpose behind the automatic stay is to maintain the debtor’s status quo and permit an attempt to formulate a reorganization plan without constant pressure from creditors or claimants, such that the most effective plan may be created for the debtor and its estate. The stay may be lifted by show of cause. If a motion for relief from stay is brought, the creditor/claimant has the burden to prove cause to lift the stay; if the creditor/claimant does so, the burden of proof is then shifted to the debtor to rebut the creditor’s assertions.
**Motion for Relief from Stay.**

Gavilan Resources, LLC v. Sanchez.

Gavilan Resources, LLC (“Gavilan”) filed a motion for relief from the automatic stay under § 362(d)(1) and Fed. R. Bankr. P. 4001 to allow continuation of its arbitration against debtors SN EF Maverick and SN Energy Corp (collectively “SN”).

Gavilan, SN, and non-debtor affiliate SN EF Unsub LP (“Unsub”) jointly acquired the Comanche Assets in March 2017. The parties negotiated and entered into a joint distribution agreement (“Comanche JDA”), establishing an Operating Committee to jointly operate and manage the Comanche Assets.

The JDA provided for resolution through arbitration, arbitration commenced in February of 2019. Deadlines were established as follows:

- August 30- Deadline to submit rebuttal expert disclosures and reports;
- September 6- Close of all discovery, deadline to submit any additional dispositive motions and deadline to submit any motions seeking to exclude or limit expert testimony;
- September 13- Status Conference;
- October 7- Exchange of pretrial information and deadline to file pre-hearing submission;

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474 *Id.* at 3.

475 *Id.*

476 *Id.* at 5.
• October 10- Deadline to exchange counter-designations by a party opponent of deposition portions for cross examination; and

• October 14-18- Final evidentiary hearing before the arbitrator.\textsuperscript{477}

\textbf{The JDA Default- Gavilan’s Position.}

Gavilan maintained SN defaulted under the JDA by failing to adhere to the operating committee’s 2018 Budget and Work Plan and failing to agree to Gavilan’s right to divide operatorship as contractually agreed upon in the JDA.\textsuperscript{478}

Gavilan stated the arbitration process steadily and substantially progressed as all pleadings had been submitted, substantially all discovery has been completed, and Gavilan already disclosed its experts and provided an export report to SN.\textsuperscript{479} Additionally, Gavilan asserted the JDA preemptively provided for complete resolution and lifting of the stay would allow it to be carried out.\textsuperscript{480}

\textbf{The JDA Default- Sanchez’s Position.}

SN asserted Gavilan had submitted defective theories on SN’s alleged default under the JDA and Gavilan had mischaracterized the scope and status of the arbitration agreement in the JDA.\textsuperscript{481}

\begin{flushright}
\textsuperscript{477} Id.
\textsuperscript{478} Gavilan’s Motion for Relief from Stay, supra note 476, 222.pdf at 5.
\textsuperscript{479} Id.
\textsuperscript{480} Id. at 8.
\end{flushright}
First, Gavilan sent SN a proposal seeking to complete a division of ownership of the Comanche Assets, not a division of operations as allowed by the JDA. SN believed this was an attempt to bait a default under the JDA; thus, SN declined to accept, resulting in Gavilan sending a notice of default for failure to comply with well designs. SN replied, stating Gavilan previously agreed to the new well designs and asserting that all changes improved economic performance and were immaterial under the JDA.

Second, Gavilan refused to renegotiate a new 2019 budget in good faith as required under the JDA. SN sent a notice of default to Gavilan, urging them to engage in negotiation. Gavilan delayed, stating they needed time to secure and analyze more data, of which SN timely supplied and Gavilan further delayed response. Consequently, the deadline for negotiation passed and SN asserted Gavilan was in breach of its duty to engage in good faith negotiation of a new budget.

Additionally, SN stated Gavilan mischaracterized the scope and status of the default arbitration. First, the JDA characterized the default arbitration may only resolve contested defaults under the JDA, rendering an opinion of fault but unable to address any consequences of fault. Continuation of arbitration would not resolve the issue at hand because, even with a determination by the arbitrator, there were a myriad of issues that need resolution.

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482 Id. at 6.
483 Id. at 8.
484 Id.
485 Id. at 9.
486 Id. at 8.
487 Id. at 9.
488 Objection to Gavilan’s Motion for Relief from Stay, supra note 485, 292.pdf. at 9.
489 Id.
490 Id. at 2.
491 Id.
492 Id. at 3.
Second, Gavilan grossly mischaracterized the status of the arbitration because pleadings were not closed, discovery was ongoing, depositions had yet to be taken, hearing preparations were still required, and a final decision, that was appealable in state court, had yet to be made.\footnote{Objection to Gavilan’s Motion for Relief from Stay, \emph{supra} note 485, 292.pdf at 3.} Furthermore, Gavilan was not prejudiced from the stay, even with a favorable ruling a transfer of operatorship would not be effectuated for a substantial period of time.\footnote{\textit{Id.}}

**Motion to Lift Stay- Gavilan’s Argument.**

Gavilan sought relief from the automatic stay by show of cause under § 362(d) of the Bankruptcy Code.\footnote{\textit{Id.} at 6.} Gavilan relied on the twelve-factor test from \textit{Xenon Anesthesia}\footnote{In re \textit{Xenon Anesthesia of Tex., PLLC}, 510 B.R. 106, 112 (Bankr. S.D. Tex. 2014); see also In re \textit{U.S. Brass Corp.}, 176 B.R. 11, 13 (Bankr. E.D. Tex. 1994) (Not all factors are relevant, all factors do not carry equal weight, and one factor may be sufficient for cause to lift stay).}, a test relied upon by courts in the Fifth Circuit.\footnote{Gavilan’s Motion for Relief from Stay, \emph{supra} note 485, 222.pdf at 6–7.} Gavilan formulated its argument to show cause into two arguments, utilizing six \textit{Xenon} factors.\footnote{\textit{Id.} at 7–8.}

**Relief Will Result in Complete Resolution of the Issues.**

Gavilan supported this assertion in two parts: first, preparation for arbitration was substantially completed, and second, the arbitrator may swiftly enter a resolution that would result in transfer of operatorship or no finding of default.\footnote{\textit{Id.} at 8.} Relief would allow Gavilan and SN
to complete their findings on the timeline set out by the arbitrator and result in a determination of fault within fifteen days of October 18th.\textsuperscript{500}

\textbf{Judicial Economy and the Balance of Harms All Weigh in Favor of Lifting the Automatic Stay, and the Arbitration Will Not Interfere with the Bankruptcy Case or Prejudice the Interest of Other Creditors.}

Gavilan referenced the substantial time already consumed by the arbitration preparation, the arbitrator’s familiarity with the allegations and evidence, and the close proximity of existing deadlines demonstrate the parties have the ability to reach a timely and efficient resolution.\textsuperscript{501}

Gavilan asserted a balancing test considering benefits to the party and harm/interference with the ongoing bankruptcy favors lifting of the stay.\textsuperscript{502} Specifically, Gavilan stated adjudication of the Comanche Assets this early in the Chapter 11 case would benefit the estate by providing certainty in relation to SN’s estate assets.\textsuperscript{503} The burden of lifting the stay was minimal, would impose no additional burden on SN’s counsel, and would not interfere with the determination of the Chapter 11 case.\textsuperscript{504}

\textbf{Motion to Lift Stay- Sanchez’s Objection.}

SN filed an objection to Gavilan’s request for relief from stay, stating, there was no cause to lift the stay under the default arbitration and the court could hear and decide the dispute between Gavilan and SN.\textsuperscript{505}

\textsuperscript{500} Id. at 8–9.
\textsuperscript{501} Gavilan’s Motion for Relief from Stay, supra note 485, 222.pdf at 9.
\textsuperscript{502} Id. at 10.
\textsuperscript{503} Id.
\textsuperscript{504} Id. at 10–11.
\textsuperscript{505} Id. at 11–21.
There is No Cause to Lift the Stay with Regard to the Default Arbitration.

SN asserted Gavilan failed to make an initial showing of cause; therefore, its motion should be denied. SN focused heavily on the automatic stay’s purpose, providing a “breathing spell,” so the primary focus remained on the reorganization and confirmation of a plan. SN stated Gavilan heavily down-played the amount of time and expense the arbitration would require; furthermore, SN stated there was no harm to the acquisition of debtor-in-possession financing or the estate by the pending arbitration.

Additionally, lifting the stay would require substantial resources poured into the arbitration. Although SN has retained special counsel for the arbitration, it would require Akin Gump to devote time to oversee the progress of the arbitration and analyze the affects it would have on the reorganization. The arbitration would result in distracting from reorganization, fundamentally opposite of the purpose of the automatic stay.

Lifting of the stay and allowing continued arbitration would impermissibly interfere SN’s rights in the bankruptcy, such as SN’s ability to assume or reject leases, administration of property of the estate, right to avoid preferential transfer that Gavilan alleges occurred prepetition, and right to determine allowance of claims against such asset. Furthermore, the balance of harms did not weigh in favor of lifting the automatic stay.

With the stay in place, the operation of the Comanche Assets continued with all parties

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506 Gavilan’s Motion for Relief from Stay, supra note 485, 292.pdf at 13.
507 Id. at 14.
508 Id.
509 Id. at 15.
510 Id.
511 Id.
512 Gavilan’s Motion for Relief from Stay, supra note 485, 292.pdf at 16.
513 Id. at 16–17.
contributing to the operation.\textsuperscript{514} The operatorship dispute would not result in any new outcome, each party would still contribute the same amount and receive the same amount, and the only change was who controlled the operations.\textsuperscript{515}

Regarding judicial economy, SN asserted the prepetition timeline established could no longer be followed.\textsuperscript{516} The timeline would have to be reestablished, the court move dates, and a full appeal process completed by either party after the resolution of the state or federal case.\textsuperscript{517} Judicial economy was not served by lifting the stay and it should not be a relevant factor.\textsuperscript{518}

\textbf{This Court May Hear and Decide the Dispute Between Gavilan and the Debtors.}

Courts often deny motions to lift stay when concerning arbitration agreements due to the conflict it has within the Bankruptcy Code.\textsuperscript{519} The court in \textit{Hemphill}\textsuperscript{520} noted the importance of leaving the disposition of significant assets to the bankruptcy courts and not a non-judicial body that has little expertise in bankruptcy.\textsuperscript{521} The bankruptcy court was the appropriate location for resolution as it had the knowledge to decide the matter as an arbitrator would, as well as knowledge of the implications in bankruptcy and the power to render a decision beyond the scope of the arbitrator’s powers.\textsuperscript{522}

\textsuperscript{514} \textit{Id.} at 17.
\textsuperscript{515} \textit{Id.} at 17.
\textsuperscript{516} \textit{Id.} at 20.
\textsuperscript{517} \textit{Id.}
\textsuperscript{518} Gavilan’s Motion for Relief from Stay, \textit{supra} note 485, 292.pdf at 20.
\textsuperscript{519} \textit{Id.} at 22–23.
\textsuperscript{520} \textit{In re Hemphill Bus Sales, Inc.}, 259 B.R. 865 (Bankr. E.D. Tex. 2001).
\textsuperscript{521} Gavilan’s Motion for Relief from Stay, \textit{supra} note 485, 292.pdf at 22.
\textsuperscript{522} \textit{Id.}
Miramar Holdings LP (“Miramar”) joined Gavilan. Miramar urged the court to consider the parties affected beyond Gavilan and the resulting harm to their mineral rights.523 SN’s objection was joined by the Secured Noteholders and the Unsecured Creditors Committee, highlighting the harm to the reorganization and potential harm to the estate and creditors.524

**Motion to Lift Stay- Gavilan’s Omnibus Reply.**

Gavilan replied to SN’s objection in two parts: first, the court should defer to the contractually agreed arbitration because it was a non-core matter under the Bankruptcy Code; and second, there was no reason to delay the arbitration because its resolution would provide certainty to the Chapter 11 case.525

**As a Non-Core Matter under the Bankruptcy Code, the Court Should Defer to the Contractually Agreed Arbitration.**

Gavilan stated under Fifth Circuit case law, the bankruptcy court had limited authority to refuse to enforce a valid and binding arbitration agreement.526 Gavilan cited *In re Gandy*, stating a bankruptcy court must grant a party’s request to enforce arbitration unless “the underlying nature of a proceeding derives exclusively from the powers of Bankruptcy Code and the

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526 Id. at 3
arbitration of the proceedings conflicts of the Code.” 527 The arbitration dispute was a prepetition matter of state law breach of contract, and therefore, was a non-core matter in the bankruptcy case, therefore the test was failed and the court has no grounds to refuse to lift stay for arbitration. 528

There is No Reason to Further Delay Arbitration because the Arbitration will Provide Certainty and the First Meaningful Step forward in these Chapter 11 Cases.

Gavilan replied to SN’s assertion that the arbitration would result in significant distraction and waste, stating there was only one remaining employee requested for deposition and SN’s special counsel billed for their work on the arbitration. 529 Similarly, Gavilan believed resolution of the arbitration would give clarity to the status of the asset when dealing with potential purchaser of the lease. 530 Gavilan also stated the certainty provided by the arbitration would benefit the reorganization by allowing SN to more effectively consider assumption or rejection of leases, sale of assets, and proper evaluation of the estate’s assets. 531

Gavilan v. Sanchez- Resolution.

SN and Gavilan consented to the waiver of their arbitration rights and the court opened an adversary proceeding to resolve the conflict. 532 The court established a new timeline, with

527 In re Gandy, 229 F.3d 489, 495 (5th Cir. 2002) (stating both prongs must be satisfied in order to refuse a valid, contractually agreed upon arbitration).
528 Id. at 5–6.
529 Id. at 7.
530 Id. at 8.
531 Gavilan’s Omnibus Reply, supra note 542, 724.pdf at 9.
discovery deadlines of February 21, a pre-trial conference on March 3, and trial commencing March 9.\textsuperscript{533}

\textbf{Lawsuits}

\textbf{The Personal Injury Plaintiffs v. Sanchez.}

SN faced two motions for relief from stay concerning personal injury lawsuits from plaintiffs Marco Valdez (“Marco”) and Ricardo Fernandez (“Fernandez”) (collectively “Personal Injury Plaintiffs”).\textsuperscript{534} Marco was injured while welding a pipe on SN’s property, when a support brace failed causing the pipe to fall and pin Marco against the ground.\textsuperscript{535} Fernandez was injured on SN’s property when, through negligence of SN’s employee, pipe slipped and collided with Fernandez causing seriously injury to his face, shoulders, and neck.\textsuperscript{536}

\textbf{Personal Injury Plaintiffs’ Argument.}

The Personal Injury Plaintiffs, separately but uniform in substance, filed for relief from stay under § 362(d)(1) of the Bankruptcy Code.\textsuperscript{537} The Personal Injury Plaintiffs cited \textit{In re Samshi Homes}, where the court relied on a three-prong test to determine whether a stay should be lifted.\textsuperscript{538} The court first considers whether any great prejudice to either the bankruptcy estate or the debtor will result in prosecution of the lawsuit, second whether the hardship to the non-

\textsuperscript{533} Id. at 5.
\textsuperscript{535} Marco’s Motion for Relief from Stay, \textit{supra} note 554, 246.pdf at 7.
\textsuperscript{536} Fernandez Motion for Relief from stay, \textit{supra} note 554, 410.pdf at 3.
\textsuperscript{537} Id.
\textsuperscript{538} Id. at 3; \textit{see In re Samshi Homes, LLC}, 2011 Bankr. LEXIS 3414, p. 3 (Bankr. S.D. Tex. Sept. 6, 2011).
debtor party by the continuation of the automatic stay outweighs the hardship of the debtor, and third whether the creditor has probability of success on the merits of his/her case.539

First, SN’s insurance policy will cover the extent of recovery and therefore SN’s estate will not be interfered with nor will other creditors be prejudiced.540 Second, because recovery was limited to the extent of SN’s insurance coverage, SN will not face any hardship.541 Conversely, the Personal Injury Plaintiffs face significant hardship if the stay was not lifted due to the pending financial burden due to his injuries.542

**Sanchez’s Objection.**

SN filed an objection against the Personal Injury Plaintiff’s motions for relief from stay, stating relief should be denied because SN may be financially burdened by defending in state court, the action would improperly interfere with the Chapter 11 case, and the balance of harms weighed heavily against lifting the stay.543

**Lifting the Automatic Stay in the State Court Action May Financially Burden the Debtors with Defense Costs.**

SN stated, due to the potential liability being unknown and the extensive claims Fernandez asserted, it was possible the insurance coverage would be exceeded; and, SN would be required to deplete its own policies, threatening creditors with claims against its policies.544 Additional potential claims against SN’s insurance policies meant it could exhaust the policy

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539 Fernandez Motion for Relief from Stay, *supra* note 554, 410.pdf at 3.
540 *Id.*
541 *Id.* at 4.
542 *Id.*
544 *Id.* at 13.
coverage, likely resulting in financial burden to SN as property of the estate must be used to cover the judgement costs.\textsuperscript{545}

**Lifting the Stay Would Interfere Impermissibly with these Chapter 11 Cases.**

SN believed the state court action would require considerable time, resources, and effort to complete as much discovery has yet to take place.\textsuperscript{546} The automatic stay functions to allow the debtor to devote their full efforts to the reorganization, and lifting it would require SN and its advisors to deviate from the reorganization and focus attention on this matter.\textsuperscript{547} The case will require constant attention and potentially large amounts of estate resources if the insurer does not cover costs of litigation.\textsuperscript{548} Additionally, lifting of the stay may encourage additional petitions the court, potentially implicating massive amounts of resources.\textsuperscript{549}

**The Balance of Harms to the Debtors, Creditors, and Valdez Weighs Heavily Against Lifting the Stay.**

If SN was forced to defend the state court action it would distract its full attention from the complicated Chapter 11 case and the restructuring efforts.\textsuperscript{550} The time-consuming discovery and pre-trial matters would redirect valuable resources away from the restructuring.\textsuperscript{551} The uncertainty of the insurer coverage, the potential harm/distraction that would plague the restructuring efforts, and the Personal Injury Plaintiffs suffering no immediate harm from the stay remaining supported denial of their motion.\textsuperscript{552}

\textsuperscript{545} Id. at 14.
\textsuperscript{546} Id.
\textsuperscript{547} Id.
\textsuperscript{548} Id. at 12.
\textsuperscript{549} Sanchez’s Objection to Fernandez, supra note 590, 668.pdf at 13.
\textsuperscript{550} Id.
\textsuperscript{551} Id. at 14.
\textsuperscript{552} Id.
Personal Injury Plaintiffs v. Sanchez - Resolution.

SN and the Personal Injury Plaintiffs agreed to a resolution of the motions for relief from the stay.\textsuperscript{553} The Personal Injury Plaintiffs agreed to waive any right to seek recovery against the debtors or their estates and to limit recovery solely to the proceeds of the insurance policies, and agreed not to assert any claim against the debtor on account of the accident.\textsuperscript{554}

Dimension Energy Services, LLC v. Sanchez.

On or about December 26, 2017 Dimension Energy Services, LLC (“Dimension Energy”) filed a state court lawsuit against SN for breach of contract, fraud, quantum meruit, Prompt Pay Act Violations, foreclosure of liens against the project, and alter ego.\textsuperscript{555} Dimension Energy filed a notice of removal on September 5, 2019, SN answered and filed a motion for remand.\textsuperscript{556} The bankruptcy court ordered the lawsuit be remanded to the state court in Harris County Texas.\textsuperscript{557}

Dimension Energy’s Argument.

Dimension Energy sought relief from the automatic stay for cause under Bankruptcy Code §362(d)(1).\textsuperscript{558} The significant number of claims and counter claims by and against SN supported the state court’s right to hear the claims.\textsuperscript{559} Dimension Energy stated the bankruptcy court remanded the proceedings to state court because it found the state court was the proper

\textsuperscript{554} Id. at 2–3.
\textsuperscript{556} Id. at 3.
\textsuperscript{557} Id.
\textsuperscript{558} Id. at 4.
\textsuperscript{559} Id.
court to adjudicate various state law claims. For these reasons, good cause existed to lift the automatic stay pursuant to §362(d) and allow adjudication of the case.

**Dimension Energy v. Sanchez-Resolution.**

Dimension Energy and SN agreed to an order by the court. The order stated the automatic stay be modified to permit continued action to judgement or other resolution, provided that any efforts to collect remain subject to jurisdiction in the bankruptcy court.

**Sanchez v. Terra Energy Partners, LLC, Benjamin Reynolds, Mark Mewshaw, Wes Hobbs.**

On March 24, 2016 SN and non-debtors SOG and Sanchez Production Partners LP (collectively “SN”) filed suit in state court against Terra Energy Partners, LLC, Benjamin Reynolds, Mark Mewshaw, and Wes Hobbs (collectively “Defendants”). SN alleged misappropriation of trade secrets, breach of fiduciary duties, aiding and abetting breach of fiduciary duties, and breach of contract concerning former employees wrongfully downloading and taking SN’s trade secrets and highly confidential information to their new employer Terra Energy Partners, LLC. Defendants filed an interlocutory appeal on October 2018, staying the

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560 Dimension’s Relief from Stay, supra note 610, 856.pdf at 4.
561 Id.
563 Id. at 2.
564 Debtor’s Motion to Proceed in the State Court Action and Interlocutory Appeal, or in the Alternative, Motion to Lift the Automatic Stay 975.pdf, In re Sanchez Energy Corp., No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 18, 2020) [hereinafter Debtor’s Motion to Lift Stay] https://perma.cc/3AVS-R5VY.
565 Id. at 2.
state court proceedings until resolution of the appeal. Defendants filed a notice of bankruptcy on September 12, 2019, prompting the appellate court to stay the appeal pursuant to the automatic stay.

**Sanchez’s Argument.**

SN asserted application of the automatic stay was improper and the automatic stay should not apply to suits brought by SN, only to suits brought against SN. Although the interlocutory appeal was brought by the Defendants, SN holds because it brought the initial action any subsequent proceedings were not against the debtor and therefore not subject to the automatic stay.

Additionally, SN believed even if the automatic stay applies, there was cause to lift the stay under § 362(d). SN asserted cause existed to lift stay because it would allow pursuit of up to $100 million in damages that would become property of the estate. Moreover, SN’s retained Gibbs & Bruns on a contingency fee basis, and SN will incur no costs in litigating the matters. Substantially all work had been completed on the state court matter, and little attention would be required concerning the interlocutory appeal as it would be several months before it was on the docket.

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566 Id. at 3–4.
567 Id. at 4.
568 Id. at 4–5.
569 Id. at 5–6; see Freeman v. Commissioner of Internal Revenue, 799 F.2d 1091, 1092-93 (5th Cir. 1986) (stating subsequent proceedings stemming from an initial suit brought by the debtor are not against the debtor within the meaning of the automatic stay).
570 Debtor’s Motion to Lift Stay, supra note 619, 975.pdf at 6.
571 Id. at 7.
572 Id.
573 Id. at 8.

On March 16, 2020, the court entered a stipulation and agreed order, lifting the automatic stay and permitting the action to continue in state court.\textsuperscript{574}

Adversary Proceedings.


SN filed a complaint against Royal Bank of Canada, Wilmington Savings Fund Society, FSB, & Wilmington Trust, National Association (collectively “Defendants”) on March 10, 2020.\textsuperscript{575} The Defendants provided financing to SN but failed to create or perfect liens in certain properties of SN.\textsuperscript{576} Defendants also made material errors and omissions in preparing and filing deeds of trust, affecting the lien attachment and status of the lien.\textsuperscript{577} In the two months preceding the petition date, Defendants attempted to perfect these liens by filing Correction Instruments (“Correction Instruments”).\textsuperscript{578} In doing so, Defendants unilaterally crossed out certain leases and added new descriptions of leases and recording information, resulting in material and non-material changes to the newly submitted versions.\textsuperscript{579}

\textsuperscript{574} Stipulation and Agreed Order Resolving the Debtor’s Motion to Proceed in the State Court and Interlocutory Appeal, or in the Alternative, Motion to Lift the Automatic Stay 1047.pdf, No. 19-34508 (Bank. S.D. Tex.R. filed Mar. 10, 2020) \url{https://perma.cc/RBK3-TVBY}.


\textsuperscript{576} Id. at 2.

\textsuperscript{577} Id.

\textsuperscript{578} Id.

\textsuperscript{579} Id. at 3.
SN submitted eleven counts in their complaint against the Defendants, employing the Bankruptcy Code’s avoidance powers to maximize property of the estate.\textsuperscript{580}

\textbf{Section 547(b) Preference Avoidance.}

In June and July of 2019, Defendants filed Correction Instruments attempting to perfect its lien property (“Shared Collateral”) of SN’s.\textsuperscript{581} On behalf of the Defendants, Cinco Energy Management Group (“Cinco”) made material and non-material changes to the original deeds of trust in their Correction Instruments without involving SN.\textsuperscript{582} Per Texas Property Code § 5.029(b), correction instruments involving material corrections must be “(1) executed by each party to the recorded original instrument of conveyance. . . .”\textsuperscript{583} SN asserted because the Defendants undertook these corrections without involving SN, they were invalid as a matter of law.\textsuperscript{584} If found to be valid, SN purported these attempts at creation and perfection of liens were transfers within the meaning of § 101(54) of the Bankruptcy Code, and thus, were avoidable transfers under §§ 544(a)(3) and 547.\textsuperscript{585}

SN asserted these Correction Instruments were voidable preference transfers per Bankruptcy Code § 547.\textsuperscript{586} Avoidance under § 547 is proper if the a transfer of interest of the debtors property is made: (1) to or for the benefit of a creditor; (2) for or on account of an antecedent debt owed by the debtor before such transfer was made; (3) made while the debtor was insolvent; (4) made on or within 90 days before the filing of the petition; and (5) enables

\textsuperscript{580} Id. at 4–6.
\textsuperscript{581} Sanchez v. RBC, supra note 631, 1026.pdf at 10.
\textsuperscript{582} Id. at 12.
\textsuperscript{583} Id., https://perma.cc/UM7A-DWLK.
\textsuperscript{584} Sanchez v. RBC, supra note 631, 1026.pdf at 12–13.
\textsuperscript{586} Id. at 15.
such creditor to recover more than such creditor would receive if the case were a Chapter 7 case, the transfer had not been made, and such creditor received payment of such debt to the extent provided by the provisions of this title.\textsuperscript{587}

First, Cinco filed the Correction Instruments to perfect the Shared Collateral liens for the Defendants.\textsuperscript{588} Second, Cinco made the Correction Instrument transfers on account of the Defendant’s antecedent debt owed by SN to the Defendants.\textsuperscript{589} Third, the transfer was made at the time SN’s liabilities exceeded its assets, rendering it insolvent.\textsuperscript{590} Fourth, the Correction Instrument transfer was made within 90 days before the petition date.\textsuperscript{591} Finally, the transfer enabled the Defendants to receive more than they would if the case were a chapter 7, more than if the transfer had not been made, and the Defendants received payment to the extent provided by the provisions of chapter 11.\textsuperscript{592} Therefore, SN asserted the transfers were avoidable pursuant to § 547.\textsuperscript{593}

\textbf{Declaratory Judgement Avoiding Correction Instruments.}

SN stated, following Tex. Prop. Code § 5.029, the Correction Instruments were void by law because a material change was made unilaterally, without the consent of SN.\textsuperscript{594} Changes were made to the deeds of trust including adding and removing material elements such as county of location.\textsuperscript{595} Additionally the correction were made by an individual who lacked personal knowledge of the deed of trust and its intent, someone who was not party to the original

\textsuperscript{587} Id.
\textsuperscript{588} Id.
\textsuperscript{589} Id.
\textsuperscript{590} Id.
\textsuperscript{591} Sanchez v. RBC, supra note 631, 1026.pdf at 15.
\textsuperscript{592} Id.
\textsuperscript{593} Id. at 16.
\textsuperscript{594} Id.
\textsuperscript{595} Id.
transaction.\textsuperscript{596} This lack of personal knowledge violated Tex. Prop. Code § 5.028, which allows immaterial changes to be made by a non-party who has personal knowledge of the relevant facts concerning the deed of trust.\textsuperscript{597} Accordingly, SN requested a declaration stating the Correction Instruments did not create or perfect any liens as the material changes invalidate the corrections and any purportedly perfected liens were avoided under Bankruptcy Code § 544.\textsuperscript{598}

**Declaratory Judgment Avoiding Underlying Invalid Deeds of Trust and Liens.**

The failure of the Defendants to properly perfect the underlying liens permits usage of Bankruptcy Code § 544(a)(3).\textsuperscript{599} Section 544(a)(3) allows the trustee to avoid any transfer of property that is voidable by a hypothetical bona fide purchaser of value who could perfect such transfer.\textsuperscript{600} Because the lien has not been perfected, and therefore, has not been recorded properly, the trustee may act as if it were a purchaser who properly could perfect a lien, giving superior title over the non-perfected lien holder.\textsuperscript{601} SN requested a declaration stating the deeds of trust have not been perfected and were avoidable under § 544(a)(3).\textsuperscript{602}

**Lien Avoidance in Favor of Debtors as Bona Fide Purchaser and Hypothetical Lien Creditor- Underlying Invalid Deeds of Trusts and Liens.**

SN stated the Defendants held no security interests or failed to perfect their security interest via the Correction Instruments.\textsuperscript{603} The Uniform Commercial Code and applicable state

\textsuperscript{596 Id.}
\textsuperscript{597 Id., https://perma.cc/22LN-A6X3.}
\textsuperscript{598 Sanchez v. RBC, supra note 631, 1026.pdf at 16.}
\textsuperscript{599 Id. at 17.}
\textsuperscript{600 Id.}
\textsuperscript{601 Id.}
\textsuperscript{602 Sanchez v. RBC, supra note 631, 1026.pdf at 17.}
\textsuperscript{603 Id.}
recording statutes require a validly recorded mortgage or deed of trust be submitted in each county the land is located to perfect a security interest, the Defendants failed to satisfy this. As a result, SN was entitled to avoid such transfer pursuant to §§ 544(a)(1), 544(a)(2), and 544(a)(3). Sections 544(a)(1) and 544(a)(2) were analogous to § 544(a)(3) in that SN may avoid the transfer because they were able to acquire a superior status to the Defendants in the property; therefore, the Bankruptcy Code permits avoidance of the transfers.

**Constructive Fraudulent Transfer.**

SN requested the court allow avoidance of the Correction Instruments as constructively fraudulent transfers under § 548(a)(1)(B) and recovery and preservation of the amounts avoided for the estate under §§ 550 and 551.

Section 548(a)(1)(B) states a trustee may avoid a transfer made (1) on or within two years of the petition date, (2) where the debtor received less than equivalent value on the exchange, and (3) where the debtor was insolvent on the date of such transfer or became insolvent as a result of the transfer, or (4) where the debtor was left with unreasonably small capital, or (5) where the debtor incurred or reasonably believed they would incur debts that would be beyond their ability to pay as they became due. Here, SN believed the transfer was made on or after August 11, 2017, it did not receive equivalent value or fair consideration in the exchange for the Correction Instruments, and they satisfy (3),(4), or (5) above.

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604 Id. at 17–18.
605 Id. at 18.
606 Id.
608 Sanchez v. RBC supra note 631, 1026.pdf at 19.
609 Id.
Accordingly, SN requested §§ 550 and 551 apply, whereby SN may recover the value of the transfer for the benefit of the estate from the initial transferee and preserve the benefit for the estate.\footnote{Id. at 18–19.}

**Lien Avoidance in Favor of Debtors as Bond Fide Purchaser and Hypothetical Lien Creditor- Unencumbered Property.**

SN sought to avoid any purported liens on property set forth in schedule D ("Unencumbered Property") of this motion, as they were not subject to any recorded mortgages, deeds of trust, or other lien documents.\footnote{Id. at 5; Id. at 19.} As such, the property was not subject to valid liens and the property is unencumbered by liens under Tex. Prop. Code §§ 13.001 and 13.002.\footnote{Id. at 5; see TEX. PROP. CODE § 13.001, https://perma.cc/KM4J-SRC4; TEX. PROP. CODE §13.002, https://perma.cc/2BZM-MX5X.} As a result of the invalid liens and unencumbered status, SN requested the court permit avoidance under §§ 541(a)(1), 541(a)(2), and 544(a)(3).\footnote{Id. at 19; see 11 U.S.C. § 544, https://perma.cc/H843-TPBZ.}

Section 541 provides property of the estate is comprised of all property where the debtor holds legal or equitable interest and all interest of the debtor in community property, no matter where the property may be located and by whomever held.\footnote{Sanchez v. RBC supra note 631, 1026.pdf at 19.} SN held legal or equitable interest in all the Unencumbered Properties due to the invalid or unperfected liens.\footnote{Id.}

**Declaratory Judgement with Respect to Unencumbered Property.**

SN stated the court should declare the Unencumbered Properties were unencumbered by valid, perfected liens under Bankruptcy Rule 7001(2).\footnote{Id. at 20; see Fed. R. Bankr. P., https://perma.cc/Q3YT-7SUL.} The Defendant’s failure to timely or
properly record liens on the Shared Collateral rendered the property unencumbered as of law, and the court should issue a declaration reflecting this.617

**Declaratory Judgement with Respect to Deposit Accounts.**

SN motioned the court to issue a declaratory judgement stating SN’s master bank accounts (“Deposit Accounts”) were unencumbered.618 The security agreements within the deeds of trust explicitly state the Deposit Accounts were excluded assets, not permitting attachment of a security interest or lien.619 SN also stated even if Defendants establish some of the net revenue in the Deposit Accounts were encumbered, Uniform Commercial Code § 9-315(b)(2) prohibited encumbrance, unless there was identification of the proceeds through a tracing method.620 SN sought a declaration, stating the proceeds in the Deposit Accounts were unencumbered to the extent the Defendants could not trace the proceeds under applicable methods upheld by law.621

**Declaratory Judgement with Respect to Terra Commercial Tort Claim.**

On March 24, 2016 SN filed a tort lawsuit alleging the Defendants misappropriated trade secrets, breached fiduciary duties, aided and abetted breach of fiduciary duty claims, and breach of contract concerning former employees wrongfully downloading and taking the plaintiff’s trade secrets and highly confidential information.622 SN’s claims included a commercial tort claim which the Defendants sought to perfect.623 Perfection of a commercial tort claim is only accomplished by filing a financiering statement specifically identifying the claims subject to the security interest.624 SN stated the Defendant’s financing statements nor the security agreement

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617 Sanchez v. RBC supra note 631, 1026.pdf at 20.
618 Id. at 14; id. at 20.
619 Id. at 14.
620 Id. at 14; see UCC § 9-315, https://perma.cc/6PDN-E9AT.
622 Id. at 21.
623 Id.
specifically identify the state court action, rendering their lien unperfected. Additionally, if the courts found there were liens, SN sought to avoid the liens under § 544(a)(3) as a bona fide purchaser of value who can obtain a superior title.

**Recovery of Avoided Transfers.**

Pursuant to Bankruptcy Code § 550, SN sought to recover the transfers avoided in this motion under §§ 544, 547, and 548. SN was entitled to recover, for the benefit of the estate, value from the initial transferee of the transfer or the entity for whose benefit the transfer was made.

**Disallowance of Claims.**

SN requested the court order any further claims by the Defendants were disallowed until the Defendants have paid the debtor the value of any transfer avoided.

**Motion to Establish Omnibus Claims Objection Procedures.**

To complete the claims reconciliation process as efficiently and effectively as possible, SN sought to establish procedures for claim objections. Bankruptcy Rule 3007(c) permits approval of additional procedures for omnibus claim objections. SN requested approval to object to claims on the following grounds:

- Fails to specify the asserted claim amount (other than “liquidated”);

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626 *Id.* at 22.
627 *Id.* at 22.
628 *Id.*
629 *Id.*
Were incorrectly or improperly classified;

• Were filed against non-Debtors or were filed against multiple Debtors;

• Fails to specify a Debtor against whom the claim is asserted;

• Have been satisfied by payment in full on account of such claims from a party that is not a Debtor; or

• Have been satisfied by one or more of the Debtor’s insurers. 632

SN believed implementation of these procedures would provide greater certainty in administering the objection process, promote consensual relation of claims objections, and reducing the cost, time, and delay of prosecuting claims objection. 633

The court approved SN’s motion to establish omnibus claims objection procedures as requested.634

Appointment of Examiner.

On December 12, 2019, in response to a petition from the Unsecured Noteholders,635 the Bankruptcy Court ordered the appointment of an Examiner for this Chapter 11 case.636 The court instructed the United States Trustee, SN, the Unsecured Noteholders, the Secured Notes Ad Hoc Group and the Unsecured Creditors Committee work in conjunction to select a candidate for Examiner.637 On January 8, 2020, the United States Trustee appointed Harris J. Goldin

632 Motion to Establish Claims Procedures, supra note 687, 807.pdf at 6.
633 Id. at 8–9.
637 Id.
On the same day, SN submitted to the court a motion seeking to approve appointment of Goldin as Chapter 11 examiner.

The Secured Notes Ad Hoc Group ("Secured Notes Group") filed a statement concerning the appointment of Goldin as examiner. The Secured Notes Group did not object to the appointment of Goldin, their concern laid with the scope of Goldin’s appointment. Due to the significant amount of investigation undergone and currently being performed, the Secured Notes Group requested the court consider the scope and budget for the examiner’s work. The Secured Notes Group asked the court to take into consideration whether the examiner would be tasked to review the investigations currently being conducted or take lead on those investigations along with his work as examiner. The Secured Notes Group requested this to avoid duplicative work and billing in the appointment of the Chapter 11 examiner.

The Unsecured Creditor Committee filed a statement in response to SN’s application to approve appointment of Goldin as Chapter 11 examiner. The Unsecured Creditors Committee was concerned with Goldin’s experience in the oil and gas industry. Goldin acknowledged such lack of experience and stated he would associate himself with other professionals to

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638 Id.
641 Id. at 3.
642 Id. at 4.
643 Id.
644 Id.
646 Id. at 2–3.
supplement his knowledge. Hiring of other professional subjects the estate to additional expense, as such the court ordered the examiner could not retain professionals without good cause. The Unsecured Creditors Committee requested the court determine the requirements of the positions and assess the benefit of appointing an examiner who may require professional assistance or undergoing another appointment process.

Motion Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals.

SN filed a motion seeking to procedures for interim compensation and reimbursement of expenses for retained professionals. SN sought to implement the following procedures for requesting interim compensation and reimbursement of expenses:

- On or after the 5th day of each month, the Retained Professional may submit an application for compensation and reimbursement of expenses for the work performed and expenses incurred in the prior month;
- Each fee statement recipient will have until 4:00 p.m. on the 14th of each month following filing of a fee application to object to such application;

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647 Id.
648 Id. at 2.
649 Id. at 3.
If a fee statement recipient files an objection, the recipient has until the objection deadline to consensually resolve the dispute with the retained professional, if no resolution is achieved after 14 days or before the objection deadline, the retained professional may file an objection with the court;

Each retained professional may submit its first monthly fee statement no earlier than October 5, 2019, and will cover and include up to September 30, 2019;

Beginning with the period ending November 30, 2019 and at three-month intervals thereafter, each retained professional who has filed monthly fee statements may file with the court an interim fee application seeking payment and reimbursement for the three-month period;

The Debtors shall request the Court schedule a hearing on interim fee application once every three months or at intervals deemed appropriate;

The pendency of an objection does not prohibit a retained professional from seeking future compensation and reimbursement; and

Neither (i) the payment of or failure to pay interim compensation and reimbursement procedures nor (ii) filing or failure to file an objection shall bind any party with respect to final allowance of applications for compensation and reimbursement.651

This motion was made pursuant to Bankruptcy Code § 331, which states any professional retained under §§ 327 or 1103 may submit applications to the Court for interim compensation and reimbursement of expenses as provided under § 330.652 Section 330 states that after notice

651 Id. at 4–6.
652 Id. at 7;
and a hearing, the Court may award reasonable compensation and expense reimbursement to a professional retained under §§ 327 or 1103. The SN sought to enable it to closely monitor the costs of administering these Chapter 11 cases and to accurately forecast cash flows that account for the amount and timing of such costs.

The court entered an order granting SN’s request. Furthermore, the court stated failure to timely file an interim fee application shall result in ineligibility to receive further monthly payment of fees and reimbursement until such fee application was filed.

Motion Authorizing Compensation of Certain Professionals Used in the Ordinary Course of Business.

In the ordinary course of business, SN employed 19 ordinary course professionals that provided services unrelated to the Chapter 11 case. SN asserted these 19 professionals were not “professionals” whose retention must be approved by the court under § 327 as their services do not relate to the Chapter 11 case. As such, SN requested permission to pay the ordinary course professionals without formal application. Accordingly, if the ordinary course

653 Id.
654 Id. at 8.
656 Id. at 4.
658 Id. at 7-8.
659 Id. at 5.
professional requests compensation in excess of the applicable fee cap they must file with the court a notice of fees in excess of the fee cap and detail the nature of the services.\footnote{Id.}

The court granted SN’s request, stating nothing within the order prohibited the United States Trustee from seeking a determination from the Court requiring a separate retention application under § 327 or altering the fee cap.\footnote{Id.}

\textbf{Motion to Extend Period to Remove Action Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure.}


Bankruptcy Rule 9006(b)(1) permits extension of the Rule 9027 period by show of cause.\footnote{See Fed. R. Bankr. P. 9006 \https://perma.cc/W8SM-CP8Q\; Motion to Extend, \textit{supra} note 719, 436.pdf at 5.}

SN has diligently worked since the petition date to ensure an efficient reorganization process, but due to the complexity and large scale of the case they request an extension to avoid waiving these rights.\footnote{Id.}

SN respectfully requested an extension as the large scale of the case requires more time.\footnote{Id. at 6.}

Motion to Establish Record Date for Notice and Sell-Down Procedure,

SN sought an order to establish the date the Bankruptcy Court enters the record date (“Record Date”) as the effective date for notice and sell-down procedures for trading in certain claims. In SN’s previous motion, the court granted its request to determine the NOLs were property of the estate. SN could require certain substantial claimholders to sell-down their claims to the extent necessary to qualify under IRC§ 382(l)(5) in order to utilize their NOLs. IRC § 382(l)(5) requires 50% or more of the stock of a company be held by qualified creditors upon emergence from a Chapter 11 reorganization. If within the record date, a holder of 5% of stock increases their ownership by more than fifty percentage points over the lowest percentage stockholder and the reorganization finalizes, an ownership change will occur. This would result in the loss of a substantial percentage of NOLs that could be used to offset taxable income. Establishing a record date would give notice to creditors of the stock holding period § 382 affects and allow SN to determine whether or not a sell-down will be necessary. Holders of more than 4.5% stock may be required to sell-down a portion of the stock to qualified creditors, only if necessary, to qualify for the NOL requirement under § 382.

This request was made pursuant to the prior ruling that the NOL were property of the estate under § 541. SN controls property of the estate, and as such should be permitted to

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668 Id. at 7.
669 Id. at 8; see 11 U.S.C. § 382 https://perma.cc/BA5Q-VMNV.
670 Motion to Establish Record Date, supra note 723, 434.pdf at 7; see Treas. Reg. § 1.382-9(d) (a “qualified creditor” is generally a creditor who held its claim for 18 months prior to the petition date or who has held a claim against the debtor in the ordinary course of business since the claim arose.).
671 Motion to Establish Record Date, supra note 723, 434.pdf at 7–8.
672 Id. at 7
673 Id. at 8.
674 Id. at 11.
control the NOLs in order to maximize the recovery of the estate.\textsuperscript{675} SN did not seek to exercise control over the NOLs, it requested a Record Date for the potential sell-down procedures if it were required to preserve usage of the NOLs.\textsuperscript{676}

The court granted SN’s motion, deeming the Record Date adequate and sufficient such that if a sell-down was necessary, claimholders would have an appropriate opportunity for notice and a hearing.\textsuperscript{677}

\textbf{Motion to Set Bar Dates for Filing of Proof of Claim and Amended Bar Date.}

SN sought to establish a Claims Bar Date (“Claims Bar Date”) pursuant to Bankruptcy Rule 3003.\textsuperscript{678} Setting of the bar date was crucial to the reorganization to allow SN and its professionals to adequately assess the estates condition.\textsuperscript{679} Furthermore, SN requested the court set a bar date for claims arising from the rejection of executory contracts and unexpired leases, 30 days from notice of the rejection.\textsuperscript{680} Additionally, SN requested a bar date for claims affected by amended schedules, 30 days from notice of amendment.\textsuperscript{681}

Section 3003 allows the court to fix dates for proof of claims by show of cause.\textsuperscript{682} SN stated setting the bar date would promote the twin purposes of bankruptcy, preserving the on-

\begin{thebibliography}{99}
\bibitem{675} Id. at 10.
\bibitem{676} Id. at 11.
\bibitem{678} See Fed. R. Bankr. P. ;Debtor’s Motion for Entry of an Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9); (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date; (III) Approving Form of and Manner for Filing Proofs of Claims, Including Section 503(b)(9) Requests; and (IV) Approving Notice of Bar Dates 520.pdf, \textit{In re Sanchez Energy Corp.}, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 24, 2019) [hereinafter Motion for Bar Dates] \url{https://perma.cc/U96L-YUHZ}.
\bibitem{679} Id. at 4.
\bibitem{680} Id. at 6.
\bibitem{681} Id.
\bibitem{682} Id. at 15.
\end{thebibliography}
going-concern of the debtor and maximizing property of the estate for the creditors. These dates provided SN with certainty regarding the estate, claims against the estate, and forecasting and analyzing for the reorganization. The Record Bar date was reasonable and appropriate as SN would provide adequate notice to any and all interested parties to preserve due process. The court granted SN’s order, setting the bar date for all non-governmental units on or before January 10, 2020.

Motion to Quash and For a Protective Order Barring Deposition of Antonio Sanchez III, SN sought to prohibit deposition of Antonio Sanchez III (“Tony III”) concerning the appoint of Mr. Meghji as Chief Restructuring Officer. Under Federal Rules of Bankruptcy 9014 and 7026, a court may issue a protective order for good cause pursuant to the Federal Rules of Civil Procedure Rule 26. A deposition against Tony III would provide no insight into the hiring of Mr. Meghji, as Tony III neither attended nor participated in any of the Special Committee’s actions in selecting a chief restructuring officer. SN believed the objecting parties would point toward Tony III’s conversation with the candidates for the CRO position as a

683 Id. at 16.
684 Motion for Bar Dates, supra note 735, 520.pdf at 16.
685 Id. at 17.
686 Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9); (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date; (III) Approving the Form of and Manner for Filing Proofs of Claims, Including Section 503(b)(9) Requests; and (IV) Approving Notice of Bar Dates 617.pdf, In re Sanchez Energy Corp., No. 19-34508 (Bank. S.D. Tex.R. Filed Nov. 21, 2019) https://perma.cc/UB8L-4RQZ.
689 Motion to Quash, supra note 744, 612.pdf at 8.
basis for deposition. This would open the door to deposing anyone involved in SN’s business and therefore was not sufficient grounds.

**Unsecured Creditors Committee’s Objection.**

The Unsecured Creditors Committee asserted deposition of Tony III was required because he was the only member of management who met with the CRO candidates and who advised the Special Committee of his opinions. Deposition of Tony III would reveal his impressions from meeting with the candidates, and as a high level member of management this will give significant insight into the candidates and his assessment of the candidates. Additionally, the deposition was critically important to understand the CRO’s scope of work and required qualifications in dealing with a complex Chapter 11 case such as this. There were no additional docket entries on this matter at the time of this paper.

**Motion to Extend Exclusivity Period to File Chapter 11 Plan.**


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690 *Id.* at 8.
691 *Id.*
693 *Id.*
694 *Id.*
SN motioned the court for an order to extend the exclusivity period for filing a Chapter 11 plan and soliciting acceptance. The filing period would expire on December 9, 2019 and the solicitation period on February 7, 2020. Section 1121 of the Bankruptcy Code permits extension of this period for cause. SN believed the large and complex nature of its Chapter 11 case requires this extension. SN had approximately 3 billion in outstanding debt obligations, a large complex corporate structure with thousands of stakeholders, and numerous active parties participating in the reorganization. Additionally, SN made substantial progress in the reorganization, its request for extension came out of necessity, not to make up for insignificant attention to the case. SN notes creditors would not be pressured by the extension, SN continued to pay its obligations as they come due and requested this extension to best formulate a plan for the creditors. This extension was in the best interest of all parties, it would allow more efficient work performed on the filing of a plan and would prevent the drain on time and resources that occurs when multiple parties were placed on the same task in a rush.

Unsecured Noteholders’ Statement.

The Unsecured Noteholders did not object to SN’s request for extension but offered the court recommendations to ensure the extension was used most effectively and efficiently. The Unsecured Noteholders believed appointment of an examiner, a CRO and the removal of

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695 Debtor’s Motion for Entry of an Order to Extend Their Exclusivity Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof 694.pdf, In re Sanchez Energy Corp., No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 06, 2019) [hereinafter Motion to Extend Exclusivity Period] https://perma.cc/8FED-6SPX.
696 Id. at 9.
698 Id.
699 Id. at 11–12.
700 Id. at 13.
701 Motion to Extend Exclusivity Period, supra note 752, 694.pdf at 15.
702 Id. at 15–16.
conflicted corporate governance would improve the administration of this case. Additionally, the Unsecured Noteholders requested SN sue to avoid liens asserted by secured noteholders. The court granted SN’s request for extension to and through March 9, 2020 for the plan date and May 8, 2020 for the solicitation date. No note of the Unsecured Noteholder’s statement was added to the order.

Second Motion to Extend Exclusivity Period to File Chapter 11 Plan.
SN again petitioned the court to extend their period to file their Chapter 11 plan until June 8, 2020 and extend their solicitation period until August 6, 2020. According to § 1121, as cited in their previous request for extension, an extension was permitted by showing of cause. SN’s argument mirrors its previous argument, adding that no party in interest has proposed a beneficial alternative to the restructuring process at hand. SN continually acted as an honest broker for all parties in interest, acting in good faith to negotiate with key stakeholders to formulate a plan that will benefit all parties. No parties would be prejudiced by an extension, rather the stability and predictability a centralized process maintained by SN will continue to benefit all parties.

Unsecured Noteholder’s Objection.

704 Id. at 2.
705 Id.
707 Id.
709 Id. at 11.
710 Id. at 18.
711 Id.
712 Id.
The Unsecured Noteholders objected to SN’s second motion to extend based on a lack of meaningful negotiation and engagement.\footnote{Ad Hoc Group of Unsecured Noteholder’s Objection to Debtors’ Second Motion to Extend Exclusivity Period to File Chapter 11 Plan and Solicit Acceptances 1061.pdf, In re Sanchez Energy Corp., No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 20, 2020) \url{https://perma.cc/S9CA-SE7S}.} In SN’s previous motion, they stated they planned to engage with key creditor constituents to advance their plan, the Unsecured Noteholders stated no meaningful engagement has occurred.\footnote{\textit{Id.} at 2.} Furthermore, SN failed to advance litigation against the Secured Noteholders concerning lien avoidance actions.\footnote{\textit{Id.}} This litigation concerned approximately 80% of SN’s encumbered properties, resolution was imperative because these assets make up a large percentage of their total enterprise value that directly affects their ability to satisfy the terms of their DIP financing.\footnote{\textit{Id.} at 4.} Resolution of these actions should occur prior to any confirmation proceedings, the Unsecured Noteholders respectfully object to the second extension.\footnote{\textit{Id.} at 5.}

\textbf{Secured Noteholders Statement.}

The Secured Noteholders advocated a brief extension to the period, to allow SN’s continuation of the meaningful negotiations they had taken part in and to limit further expenses a long extension would bring.\footnote{Statement of the Secured Noteholders Ad Hoc Group Regarding Debtor’s Second Motion ofr Entry of an Order to Extend their Exclusivity Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof 1088.pdf, In re Sanchez Energy Corp., No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 24, 2020) \url{https://perma.cc/Q4V7-YEUM}.} The Secured Noteholders requested the court disregard the Unsecured Noteholder’s objection concerning the lien avoidance actions, as they have no relevance to the current motion and seek to attack the DIP Lenders who were now primary stakeholders in the reorganization.\footnote{\textit{Id.} at 5.} The Secured Noteholders held an extension to April 30,
2020 to file and June 30, 2020 to solicit acceptances was warranted to enable negotiations concerning a reorganization.\footnote{Id.}


Secured Noteholder’s Emergency Motion to Suspend Interim Compensation.

The economic impact of Covid-19 and the Russian-Saudi oil wars warrant change to SN’s current compensation orders for retained professionals.\footnote{Emergency Motion of the Secured Notes Ad Hoc Group for Entry of an Order Suspending Interim Compensation Order 1099.pdf, In re Sanchez Energy Corp., No. 19-34508 (Bank. S.D. Tex. R. Filed Mar. 27, 2020) https://perma.cc/92NZ-3D8S.} The macroeconomic impact of these events substantially altered SN’s liquidity and prospects of reorganization and caused SN to default on its DIP Credit Agreement.\footnote{Id. at 7–8.} Now more than ever, the economics inside of SN matter; as such, the Secured Noteholders requested the court modify SN’s interim compensation order pursuant to § 105(a), the courts power to modify orders.\footnote{Id. at 8.} At the outset, no checks and

\footnote{Id. at 8.}
balances on SN’s interim compensation order were warranted, but it became imperative to review these compensation requests as over $65 million has been spent on professional fees. The Secured Noteholders did not wish to eliminate compensation, but rather, subject it to review as it was no longer equitable to allow unvetted compensation payments. There were no further entries on this matter at the time of this paper.

**Unsecured Creditors Committee’s Objection to SOG’s Feb. 27 Request for Payment of Indemnity Obligations.**

The Unsecured Creditors Committee objected to SOG’s request for payment of indemnity obligations as it was not indemnification provided for under the Shared Services Agreement. Specifically, SOG requested payment of indemnification totaling over $500,000 relating to multiple transactions, the objected transactions were for the Shared Services Agreement totaling $380,911.94 and Mark Flynn/Kevin Langen’s litigation costs totaling $187,192.58.

The Shared Services Agreement provides indemnification for SOG in matters directly related to SN, the indemnification’s purpose was to protect SN by allowing SOG to employ attorneys to defend SN’s interests. Presently, SOG attempted to employ the indemnification provision for repayment of SN’s investigation into SOG.

Additionally, SOG sought indemnification for litigation expenses with no direct relation to SN. SN was neither party to the two disputes nor has SOG provided evidence they were

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727 *Id.*
728 *Id.*
730 *Id.* at 5.
731 *Id.* at 7.
732 *Id.* at 7–8.
733 *Id.* at 8.
directly related to it. SOG provided the Unsecured Creditors Committee seven days to investigate the matter, but denied a follow up request for more time; accordingly, the Unsecured Creditors Committee asserted the request should be denied. NO FURTHER ENTRIES

Unsecured Creditors Committee’s Motion for Leave, Standing, and Authority to Prosecute Claims.

Pursuant to Bankruptcy Code §§ 1103(c)(2) and 1109(b), the Unsecured Creditors Committee motioned for leave, standing, and authority to prosecute claims on behalf of SN. Section 1103(c)(2) authorizes official committees to investigate the acts of the Debtor(SN), and § 1109(b) permits the committee to be heard on any issue concerning the chapter 11 reorganization. The Fifth Circuit permits standing to prosecute claims where the claims are colorable and the Debtor has unjustifiably refused to pursue the claims.

The Unsecured Creditors Committee sought to prosecute colorable claims relating to the Catarina Assets, specifically concerning a potentially avoidable transaction disguised as a sale-leaseback transaction. Additionally, the committee sought to prosecute claims related to breaches of fiduciary duties concerning the Catarina Assets, and breaches of fiduciary duty, avoidable transfers, and excessive compensation. SN unjustifiably refused to prosecute all of

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734 Id. at 9.
735 Id. at 10.
738 See LA. World Exposition, 858 F.2d 1391, 1397 (5th Cir. 1987) (committee may assert causes of action on behalf of the Debtor when the Debtor is unwilling); Motion to Prosecute, supra note 863, 1032.pdf at 16.
739 Id. at 18–19; The Unsecured Creditors Committee believed the sale-leaseback transaction is an avoidable transfer where the Debtor was insolvent, did not receive reasonably equivalent value, and took on more debts than it could repay. Sanchez’s subsidiary benefits greatly from the transfer and Sanchez refuses to prosecute, therefore the committee seeks to prosecute as well as prosecute for breach of fiduciary duty for the sale-leaseback.
740 Id. at 20–24.
these claims despite the Unsecured Creditors Committee’s demands; as such, the committee seeks exclusive authority to prosecute and settle these claims.\textsuperscript{741}

**Unsecured Creditors Committee’s Motion to Prosecute Claims.**

On January 24, 2020, the Official Committee of Unsecured Creditors filed a Motion of the Official Committee of Unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors’ Estates and for Related Relief.\textsuperscript{742} Pursuant to §§ 105(a), 1103(c)(5), and 1109(b) of the Bankruptcy Code, the Committee sought authorization to prosecute causes of action on behalf of the Debtors’ estates to avoid liens related to four oil and gas leases held by the Collateral Trustee under the Collateral Trust Agreement.\textsuperscript{743} The Committee stated that avoiding the liens would “yield hundreds of millions of dollars of recovery for general unsecured creditors.”\textsuperscript{744}

The Committee asserted that the filing for chapter 11 reorganization created an estate and that the property of the estate included all causes of action, such as the avoidance of a lien.\textsuperscript{745} Further, the Committee argued that when the debtor in possession refused to pursue causes of

\textsuperscript{741} Id. at 30–31.
\textsuperscript{742} Docket 875, https://perma.cc/R9DX-FF6U. On February 14, 2020, the Ad Hoc Group filed a Joinder as well; the Ad Hoc Group agreed that the proposed claims were colorable and that they should be promptly adjudicated. See Ad Hoc Group of Unsecured Noteholders’ Joinder to the Motion of the Official Committee of Unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors’ Estates and for Related Relief, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 14, 2020) [hereinafter Ad Hoc Group Joinder to Prosecute Claims], https://perma.cc/87CU-KMSV.
\textsuperscript{743} Motion of the Official Committee of Unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors’ Estates and for Related Relief at 3, 15, In re Sanchez Energy Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Jan. 24, 2020) [hereinafter Unsecured Creditor Claims Motion], https://perma.cc/R9DX-FF6U.
\textsuperscript{744} Id. at 3–4.
\textsuperscript{745} Id. at 15.
action, the Committee has derivative standing to pursue the cause of action, with leave of the Court.\textsuperscript{746} The Committee continued:

Derivative standing should be granted where, as here, (1) the official committee presents a colorable claim; (2) the debtors unreasonably refuse to prosecute such claim; and (3) the official committee obtains permission from the court to initiate the action on behalf of the estate.\textsuperscript{747}

The Committee argued that its claim was colorable because the claims raised a serious question on the merits and had a possibility of success.\textsuperscript{748} Moreover, the liens on the Challenged Leases were not perfected when the April 2018 Deeds of Trust were filed because a lienholder perfects its lien on real property by providing notice to third parties.\textsuperscript{749} The Committee stated that there was insufficient actual, constructive, and inquiry notice because there was no accurate reference to the recordation of the Challenged Leases and a hypothetical buyer would have had no way of determining from the April 2018 Deeds of Trust whether the Challenged Leases were subject to a lien.\textsuperscript{750}

The Committee stated that it also had a colorable claim because the Correction Affidavits did not create or perfect a lien on the Challenged Leases because were invalid under Texas law.\textsuperscript{751} The Correction Affidavits were invalid because they were filed with material changes without consent of any party to the April 2018 Deeds of Trust, or alternatively, the affiant did not have personal knowledge of any non-material changes.\textsuperscript{752}

\textsuperscript{746} Id. at 16.
\textsuperscript{747} Id.
\textsuperscript{748} Id. at 17.
\textsuperscript{749} Unsecured Creditor Claims Motion, supra note 871, at 18.
\textsuperscript{750} Id. at 18–20.
\textsuperscript{751} Id. at 20.
\textsuperscript{752} Id. at 21.
Last, the Committee argued that if the Correction Affidavits’ filing was proper, the perfection of a lien was avoidable as a preferential transfer under § 547 of the Bankruptcy Code.\textsuperscript{753} A transfer was preferential if the transfer was:

(1) to or for the benefit of a creditor; (2) for or on account of antecedent debt; (3) made while the debtor was insolvent; (4) within 90 days before the date of the filing of the bankruptcy petition; (5) that enabled the creditor to receive more than it would otherwise have received if the transfer had not been made and the case proceeded under chapter 7.\textsuperscript{754}

The Committee argued that all of the elements were satisfied.\textsuperscript{755} First, the perfection of a lien constitutes a transfer and the transfer was made for the benefit of the First Lien Noteholder or was made on account of the debt owed to the First Lien Noteholders.\textsuperscript{756} Also, SN was insolvent during the 90-day period because SN filed for bankruptcy 46 days after the Correction Affidavits.\textsuperscript{757} Last, if the Correction Affidavits perfected the liens, then the value of the collateral would have increased by hundreds of millions of dollars.\textsuperscript{758}

The Committee also asserted that SN unjustifiably refused to pursue colorable claims, and therefore, the Committee should receive derivative standing.\textsuperscript{759} The Committee argued that because SN made empty promises to continue to investigate claims and to take action implies unreasonable inaction that shows a lack of interest in pursuing the claims.\textsuperscript{760} Further, the Committee stated that the refusal was unjustified because the bankruptcy cases would not be

\textsuperscript{753} Id. at 22.
\textsuperscript{754} Id.
\textsuperscript{755} Unsecured Creditor Claims Motion, supra note 871, at 22.
\textsuperscript{756} Id. 22–23.
\textsuperscript{757} Id. at 23.
\textsuperscript{758} Id.
\textsuperscript{759} Id. at 23–27.
\textsuperscript{760} Id. at 24–26.
unduly delayed by pursuit of claims and the value of $446.5 million, even if there was only a small chance of success, cut in favor of pursuit of the claims.\footnote{Unsecured Creditor Claims Motion, \textit{supra} note 871, at 24–26.}

Thus, the Committee reasoned that the Court should authorize the Committee to pursue the Proposed Claims.\footnote{\textit{Id.} at 28.}

\textbf{The Ad Hoc Group’s Request for Time Extension.}

The Motion filed by the Committee was scheduled for hearing on February 20, 2020 and the Ad Hoc Group had a deadline of February 14, 2020 to respond to the Motion.\footnote{Secured Notes Ad Hoc Group’s Emergency Motion to Extend the Response Deadline and Reset Hearing With Respect to the Official Committee of Unsecured Creditors’ Motion for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors’ Estates and Related Relief at 2, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 13, 2020) [hereinafter Ad Hoc Group Extension to Respond Motion], \url{https://perma.cc/Y4D6-EF5W}. Wilmington Savings Fund Society, as successor indenture trustee, and Wilmington Trust National Association, as collateral trustee, jointly submitted a joinder to the Ad Hoc Group’s Motion, stating agreement with the Ad Hoc Group’s arguments and requested additional time for review and response. \textit{See} Joint Joinder of Wilmington Savings Fund Society, FSB and Wilmington Trust, National Association in Support of Secured Notes Ad Hoc Group’s Emergency Motion to Extend the Response Deadline and Reset Hearing with Respect to the Official Committee of Unsecured Creditors’ Motion for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors’ Estates and Related Relief, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 13, 2020) [hereinafter Joint Joinder to Extension], \url{https://perma.cc/UKD9-4EX2}.}
Pursuant to Bankruptcy Local Rule 9013-1(i), the Ad Hoc Group requested an extension for a Response Deadline to February 28, 2020 and to reset the hearing date for March 10, 2020 because the Committee submitted a Supplemental Standing Motion with a revised Complain two days before the Response Deadline.\footnote{Ad Hoc Group Extension to Respond Motion, \textit{supra} note 891, at 3.} The Ad Hoc Group stated that the Revised Complaint asserted new allegations and causes of action not in the original complaint, specifically:

\begin{itemize}
  \item A Declaration that the Noteholders have no lien on the Debtors’ Deposit Accounts, or alternatively, an order seeking avoidance of any lien on proceedings from
\end{itemize}
encumbered assets that the Noteholders failed to trace by a method permitted under law (the “Deposit Claim”);  

b. Avoidance of the Noteholders’ liens on the Holdsworth Lease (the “Holdsworth Lease Claim”).⁷⁶⁵  

On February 18, 2020, the Court ordered that: the original Motion remained set for hearing on February 20, the amended Motion was not set for hearing on February 20, and that the Committee was granted leave to file a motion requesting consideration of its amended Motion, but the Court would not hear the amended Motion on February 20.⁷⁶⁶

**SN’s Objection.**

On February, 14, 2020, SN objected to the Committee’s Standing Motion, and the Ad Hoc Group’s Joinder in support thereof, regarding prosecution of claims.⁷⁶⁷ SN’s objection rested on the argument that the Committee could not meet its burden of showing that derivative standing was timely or appropriate because SN had not unjustifiably refused to bring the claims.⁷⁶⁸

First, SN argued that it had not refused to pursue the claims directly or indirectly; rather, SN was pursuing the claims through negotiations and investigation of valid claims.⁷⁶⁹ SN stressed that the case to which the Committee cited as authority had no relation to this case.

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⁷⁶⁵ *Id.*  
⁷⁶⁹ *Id.* at 8.
because unlike the referenced case, here, SN had stated a clear intention to bring all viable claims not resolved.\textsuperscript{770}

Next, SN argued that pursuing claims through plan negotiations as its primary option was not unjustified, but a reasonable business judgment.\textsuperscript{771} SN stated that a consensual resolution of claims with a plan of reorganization was preferable, if possible, and in the best interests of the estates because it would avoid unnecessary cost, delay, and uncertainty of litigation.\textsuperscript{772} Moreover, SN stressed that consensual resolution had been its primary goal for the duration of case as evidenced by the fact that SN provided business plans and terms sheets to stakeholders that detailed plans for negotiations and reorganization issues. Additionally, SN argued, the Committee could not show that attempts to achieve consensual resolution of claims through reorganization plans constituted an unjustifiable refusal to pursue claims because the Committee cannot show that the likely benefit to the estates by granting the Committee’s Standing Motion outweighs the costs of relief.\textsuperscript{773}

\textbf{The Committee’s Reply to SN’s Objection.}

On February 19, 2020, the Committee responded to SN’s objection.\textsuperscript{774} The Committee argued that the Standing Motion should be granted because SN had not brokered a consensual plan of reorganization and had not meaningfully pursued the claims.\textsuperscript{775}

First, the Committee stated that SN had not meaningfully pursued the claims because, contrary to SN’s assertions of disclosure, the Committee had not been informed of

\begin{flushleft}
\textsuperscript{770} Id. at 9.  \\
\textsuperscript{771} Id. at 10.  \\
\textsuperscript{772} Id.  \\
\textsuperscript{773} Id. at 10–11.  \\
\textsuperscript{774} Reply of the Official Committee of Unsecured Creditor to the Debtors’ Objection to the Committee’s Motion for Leave, Standing, and Authority toProsecute Claims and the Secured Notes Ad Hoc Group’s Joiner in Support, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 19, 2020) [hereinafter UCC Reply], \url{https://perma.cc/G4LG-MC5E}.  \\
\textsuperscript{775} Id. at 2.
\end{flushleft}
negotiations. Additionally, the Committee expressed displeasure over the “glacial progress” of SN and demanded no further delay in resolution of the claims.

Next, the Committee argued that the Standing Motion was not premature because it was critical for all stakeholders that the claims be pursued quickly due to the March 9 plan-filing milestone. Moreover, the Committee stated that it was not possible to formulate a plan before it was clear whether the Collateral Trustee had a perfected security interest. Additionally, the Committee re-emphasized that SN’s lack of meaningful progress to settle the claims further demonstrated the timing of the Standing order was justified. Last, the Committee argued that it was the proper party to bring the claims because it was the unsecured creditors’ interests that were primarily at stake.

**Order of Resolution.**

On February 20, 2020, the Court ordered a resolution resolving the Committee’s Standing Motion. The Court ordered that:

1. The Debtors retain the exclusive right to file a lien challenge complaint in an adversary proceeding, brought on behalf of the Estate, in this Court against the Collateral Trustee (as defined in the Motion filed at ECF No. 875) through 11:59 p.m. on March 10, 2020.

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776 Id. at 4.
777 Id.
778 Id. at 5–6.
779 Id. at 6.
780 UCC Reply, supra note 902, at 6.
781 Id. at 7. The remainder of the objection constituted the Committee’s response to the joinder of the First Lien Group, pertaining to whether the claims were colorable
782 Order Resolving Committee’s Standing Motion (ECF No. 875 and Related ECF Nos.), In re Sanchez Energy Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 20, 2020) [hereinafter Resolution of Unsecured Creditor Claims], https://perma.cc/TB2D-4BGB.
2. If the Debtors do not file a lien challenge complaint by 11:59 p.m. on March 10, 2020, the exclusive right to file a lien challenge complaint against the Collateral Trustee (to be filed on behalf of the Estate) will vest without further court order with the Official Committee of Unsecured Creditors.

3. The Challenge deadline for the filing of any lien challenge complaint under paragraph 2 is extended through 11:59 p.m. on March 13, 2020.

4. The authorization in paragraph 2 vests standing with the Committee to bring the lien challenge complaint in accordance with this Order.

5. ECF No. 875 and ECF No. 939 are abated.

6. If the Debtors file a Motion under Fed. R. Bankr. 9019 by 11:59 p.m. on March 10, 2020, any adversary proceeding commenced as a result of any lien challenge complaint will be abated pending a ruling on the 9019 Motion.783

The Committee Makes Another Motion to Pursue Claims.

On March 13, 2020, the Committee demanded that the Special Committee of the Debtors’ Board of Directors pursue certain claims, but the Special Committee did not bring the claims.784 The Committee argued that the Special Committee’s failure to timely act and the deadline for SN to file a chapter 11 plan constituted an unjustifiable refusal to act.785 Therefore, the Committee made another Motion to pursue the claims.786

783 Id. at 1–2.
785 Id.
786 Id.
stated that the same standard seen in the previous Motion had been met—colorable claim and unjustifiable refusal by the debtor in possession.787 The Proposed Complainants, among other claims, included:

- Recharacterization of a purported sale-leaseback transaction between SN and SNMP (described and defined below as the Catarina Arrangement) as a disguised financing arrangement pursuant to applicable state law;
- In the alternative, avoidance of the Catarina Arrangement as a constructively fraudulent transfer pursuant to section 544 of the Bankruptcy Code and applicable state law;
- Breach of fiduciary duty against certain of the Proposed Defendants in connection with the approval of the Catarina Arrangement and the Catarina Gathering Agreement Amendment (as defined below);
- Avoidance of payments made as a result of increased rates payable for water and gas delivered through the gathering system subject to the Catarina Arrangement as constructively fraudulent transfers pursuant to sections 548 and 544 of the Bankruptcy Code and applicable state law;
- Avoidance of the Carnero Sale (as defined below) as a constructively fraudulent transfer pursuant to section 544 of the Bankruptcy Code and applicable state law;
- Avoidance of excessive compensation payments made by SN to certain Sanchez family members as constructive fraudulent transfers under sections 548 and 544 of the Bankruptcy Code and applicable state law;

787 Id. at 15–30.
- Breach of fiduciary duty against Antonio R. Sanchez, III (“Tony III”) in connection with (redacted);

- Breach of fiduciary duty against certain of the Proposed Defendants in connection with allowing SN to enter into and continue a lease participation agreement between SN and SOG with respect to a ranch in Kenedy County, Texas (the “Ranch”); and

- Breach of contract against SOG in connection with SOG’s failure to perform its obligations under a services agreement between SOG and SN.\(^\text{788}\)

The Committee requested that the Court grant it standing to initiate and prosecute the proposed claims and exclusive authority to settle the claims pursuant to §§ 1103(c)(5) and 1109(b) of the Bankruptcy Code.\(^\text{789}\) The Committee asserted, as in the previous Motion, that the claims were colorable and that SN unjustifiably refused to pursue the claims.\(^\text{790}\) First, the Committee argued that the claims were colorable because the Committee could show that “a sufficient likelihood of success to justify the anticipated delay and expense.”\(^\text{791}\) Next, the Committee argued that SN unjustifiably refused to pursue the claims because, despite the Special Committee’s assertion that it was “continuing to assess and evaluate the claims,” the Special Committee had failed to bring any claims against the parties for nearly a year.\(^\text{792}\) The Committee asserted that the Special Committee’s inaction implies refusal because the inaction was

\(^{788}\) Id. at 2–3.

\(^{789}\) Id. at 15.

\(^{790}\) UCC Motion to Prosecute Claims, supra note 912, at 15–31.

\(^{791}\) Id. 17–28. The ten claims were: recharacterization of the Catarina Arrangement; claim to avoid the Catarina Arrangement; claim that SN Board breached its fiduciary duties in connection with the Catarina Arrangement; claim to avoid the Catarina Gathering Agreement Amendment and related payments; claim that Catarina Midstream breached the Catarina Gathering Agreement Amendment; claim that the SN board breached its fiduciary duties in connection with approval of the Catarina Gathering Agreement Amendment; claim to avoid the Carnero Sale; claim to avoid excessive compensation paid to Sanchez family members and Gerald Willinger; claim that Sanchez III breached his fiduciary duties; and the claim that Sanchez III and the SN Board breached their fiduciary duties in allowing Sanchez Energy to enter into the Lease Participation Agreement. See id.

\(^{792}\) Id. 28–29.
The Committee stated that Courts “look to whether the interests of creditors are left unprotected as a result of the refusal and where the refusal impairs the interests of an estate and its creditors, the Court must consider that refusal unjustified.” Here, the Committee argued, the numerous claims would benefit the estates, resolve critical issues, and would provide tens or hundreds of millions of dollars to the estates. Thus, the Committee concluded, the potential recovery for the unsecured creditors substantially outweighed any costs related to prosecuting the claims. Finally, the Committee argued that it should have exclusive authority to settle the claims because the Committee’s ability to litigate the claims would be compromised if SN retain any right to propose settlements due to an “improper settlement dynamic” that may be detrimental to the estates and creditors. We must wait for further development on this matter as there has not been an objection or an order on this Motion to date.

**Unexpired Leases and Executory Contracts.**

**Debtors’ Motion for Entry of an Order Authorizing Rejection of the Shell Sublease Agreement Effective Nunc Pro Tunc to the Date Hereof.**

On October 22, 2019, SN filed a Motion for Entry of an Order Authorizing Rejection of the Shell Sublease Agreement Effective Nunc Pro Tunc to the Date Hereof. On October 31, 2016, and as the sublessee, SN executed a sublease as the sublessee of office space on the 31st

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793 *Id.* at 29.
794 *Id.* at 29–30.
795 *Id.* at 30.
796 UCC Motion to Prosecute Claims, *supra* note 912, at 30.
797 *Id.* at 31.
floor of 1000 Main Street, Houston, Texas with Shell Oil Company as landlord. SN argued that it was always intended to be the sublessee under the Shell Sublease Agreement because SN signed the sublease, was the notice party under the agreement, and utilized the sublease premises. Therefore, SN concluded, the Shell Sublease was an unexpired lease of which SN had the ability to reject pursuant to § 365(a) of the Bankruptcy Code. SN stated that, in its business judgment, it no longer needed the office space, and if the Court authorized SN to reject the Shell sublease, SN would save approximately $95,000 per month or $7 million for the remaining term of the sublease.

Additionally, SN stated that there remained some certain personal property, such as furniture, fixtures, and equipment, on the premises. SN argued that the burden of removing, marketing and selling the property would have exceeded the value of the property; thus, SN maintained that abandoning such property was appropriate and in the best interests of SN and the estates.

In support of its Motion, SN argued that § 365(a) of the Bankruptcy Code provided that a debtor in possession may, in accordance with the business judgment standard, reject any executory contract or unexpired lease in order to relieve the estate of burdensome agreements not completely performed. SN argued that rejection of the sublease was appropriate and well within its business

800 Id. at 5.
801 Id.
802 Id.
803 Id. 5–6.
804 Id. at 6.
805 Shell Sublease Motion, supra note 927, at 6.
judgment and in the best interest of the estates because the sublease would impose an ongoing financial obligation on SN and yet no benefit.\textsuperscript{806}

Next, SN argued that under §§ 105(a) and 365(a) of the Bankruptcy Code, rejection of the Shell Sublease effective as of the Motion filing date was appropriate, due to the equities of the case.\textsuperscript{807} SN asserted that without a retroactive date of rejection, SN faced unnecessary administrative expenses with no benefit because SN had already vacated and no longer required use of the premises.\textsuperscript{808} SN added that the landlord would not be prejudiced because it would receive notice of the rejection.\textsuperscript{809}

Last, SN argued that § 504(a) of the Bankruptcy Code permitted a debtor to abandon any personal property remaining at the premises that was burdensome to the estate or that was of inconsequential value and benefit to the estate.\textsuperscript{810} Further, SN contended, the right to abandon property was generally unrestricted unless abandonment violated laws designed to protect public health and safety or the property posed an imminent threat to public welfare—neither of which applied in this case.\textsuperscript{811}

On November 14, 2019, no objections were filed in response to the Motion; thus, SN filed a Certificate of No Objection with a Proposed Order.\textsuperscript{812} An Order from the Court authorizing rejection of the Shell Sublease Agreement, with the same terms as the Proposed Order, followed on November 15, 2019.\textsuperscript{813}

\begin{itemize}
\item \textsuperscript{806} Id. at 7.
\item \textsuperscript{807} Id. at 8.
\item \textsuperscript{808} Id.
\item \textsuperscript{809} Id.
\item \textsuperscript{810} Id. at 9.
\item \textsuperscript{811} Shell Sublease Motion, supra note 927, at 9.
\item \textsuperscript{813} Order Authorizing Rejection of the Shell Sublease Agreement Effective Nunc Pro Tunc to the Date Hereof, \textit{In re} Sanchez Energy Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Nov. 15, 2019), \url{https://perma.cc/MH3T-9B7A}.
\end{itemize}
Debtors’ Motion for Entry of an Order Authorizing Rejection of the Cornerstone Master Agreement Effective Nunc Pro Tunc to the Date Hereof.

On October 27, 2019, filed a Motion for authorization to reject the Cornerstone Master Agreement.\textsuperscript{814}

On September 28, 2018, SN entered into a master agreement with Cornerstone OnDemand, Inc. for human capital management software and related services.\textsuperscript{815} The agreement permitted SN the right to use software programs and required Cornerstone to provide support services, such as software hosting and delivery, technical support, monitoring, maintenance, and security.\textsuperscript{816} Under the agreement, Cornerstone invoiced SN annually for the upcoming year for services; and, on November 1, 2018, SN paid $41,261 for the first year.\textsuperscript{817} An invoice for the second year of $45,378.01 was due on October 28, 2019.\textsuperscript{818}

SN argued that it no longer needed the products or services under the Cornerstone Master Agreement and authorization to reject the agreement would have saved SN and its estates $90,000.\textsuperscript{819} The analysis was similar to the arguments set forth in the Shell Sublease Motion with respect to SN’s bases for relief.\textsuperscript{820}

\textsuperscript{814} Debtors’ Motion for Entry of an Order Authorizing Rejection of the Cornerstone Master Agreement Effective Nunc Pro Tunc to the Date Hereof, \textit{In re Sanchez Energy Corp.}, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Oct. 27, 2019) [hereinafter Cornerstone Lease Motion], \url{https://perma.cc/EZ6B-AW4P}.

\textsuperscript{815} \textit{Id.} at 4.

\textsuperscript{816} \textit{Id.}

\textsuperscript{817} \textit{Id.}

\textsuperscript{818} \textit{Id.}

\textsuperscript{819} \textit{Id.}

\textsuperscript{820} Cornerstone Lease Motion, \textit{supra} note 942, at 5–7. An exception is, here, in this motion there is no abandonment of personal property because this agreement pertains to software and services.
On November 20, 2019, the Court ordered authorization for rejection of the Cornerstone Master Agreement with the same terms as the Proposed Order in the Motion.\footnote{Order Authorizing Rejection of the Cornerstone Master Agreement Effective Nunc Pro Tunc to the Date Hereof, \textit{In re Sanchez Energy Corp.}, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Nov. 20, 2020), \url{https://perma.cc/AWU5-4CAJ}.}

\textbf{SN’s Motion to Extend Time to Assume or Reject Unexpired Leases of Nonresidential Property.}

On December 6, 2019, pursuant to § 365(d)(4) of the Bankruptcy Code, SN filed a motion to extend the time period in which SN must assume or reject unexpired leases of nonresidential real property by 90 days in order to continue to evaluate the Unexpired Leases.\footnote{Debtors’ Motion for Entry of an Order Extending the Time Within Which the Debtors Must Assume or Reject Unexpired Leases of Nonresidential Real Property, \textit{In re Sanchez Energy Corp.}, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Dec. 6, 2019), [hereinafter SN’s Motion for Time Extension to Assume or Reject Unexpired Leases] \url{https://perma.cc/4A4X-WL4E}.} SN stated that it was party to over 2,000 Unexpired Leases, including commercial office space, surface leases, easements, and rights of way, and oil and gas leases; and, SN had not yet determined which Unexpired Leases may be assumed or rejected as part of its restructuring strategy.\footnote{\textit{Id.} at 4.}

SN asserted that under § 365(d)(4)(B)(i) of the Bankruptcy Code, Courts may grant an extension of time to assume or reject unexpired leases for cause based upon an analysis of various factors, including:

a. Whether the lease is the debtor’s primary asset;

b. Whether the debtor has had sufficient time to intelligently appraise its financial situation and potential value of its assets in terms of the formulation of a plan of reorganization;

c. Whether the lessor continues to receive rent for the use of property;
d. Whether the debtor’s continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;

e. Whether the case is exceptionally complex and involves a large number of leases;

f. Whether the debtor has failed or is unable to formulate a plan when it has had sufficient time to do so; and

g. Any other factors bearing on whether the debtor has had a reasonable amount of time in which to decide whether to assume or reject the lease.824

SN maintained that the weighing of the factors constituted cause and favored granting the extension.825

First, SN stated that the Unexpired Leases were critical to its ongoing operations and, therefore, were important assets of the estates.826 Indeed, SN argued, oil and gas leases were a key component of ongoing operations for exploration and production companies like SN.827 Second, SN argued that it needed more time to work towards the development of its reorganization strategy.828 SN stated that evaluation of the potential value of the Unexpired Leases to the restructuring and negotiations required more time; and, that not granting the Motion would have had a substantial negative impact on the reorganization and SN’s ability to maximize value of the estates.829 Third, SN asserted that this chapter 11 case was large and complex given the significant amount of tasks SN must address and the complexities of SN’s business.830 SN concluded that extending the § 365(d)(4) deadline was appropriate also because: lessors would not be prejudiced

824 Id. at 5–6.
825 Id. at 6.
826 Id.
827 Id.
828 SN’s Motion for Time Extension to Assume or Reject Unexpired Leases, supra note 950, at 7.
829 Id.
830 Id.
since SN had performed postpetition obligations, SN’s occupation of the premises would not
damage the lessors, and a lessor may request of the Court an earlier date for SN to assume or reject
its lease.\textsuperscript{831}

On January 31, 2020, SN filed a Certificate of No Objection to the Motion and included a
Proposed Order.\textsuperscript{832} On February 3, 2020, the Court ordered the extension of time to assume or
reject unexpired leases to March 9, 2020.\textsuperscript{833} The Order contained the same provisions as the
Proposed Order.

On February 28, 2020, SN filed a Motion seeking entry of an order approving three
stipulations between it and landlords regarding extension of time for SN to assume or reject certain
unexpired leases of nonresidential real property.\textsuperscript{834} SN was a party to three unexpired leases,
including the 28\textsuperscript{th}, 29\textsuperscript{th}, and 30\textsuperscript{th} floors in the 1000 Main building on 1000 Main Street, Houston,
Texas 7702; Suite 301 at 11503 NW Military Highway, San Antonio, Texas 78231; and the
premises at 4674 US Highway 277, Carrizo Springs, Texas 78834.\textsuperscript{835} SN stated that it was still
evaluating whether assumption or rejection of the leases were in the best interests of the estates;
and, therefore, SN needed additional time to make its decision.\textsuperscript{836} While the Court had already
granted a 90-day extension to March 9, 2020, pursuant to stipulations, SN and the landlords of the
respective properties agreed to further extension of time to assume or reject the leases to the earlier

\textsuperscript{831} Id. at 8.
\textsuperscript{832} Certificate of No Objection, \textit{In re} Sanchez Energy Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Jan. 31,
\textsuperscript{833} Order Extending the Time Within Which the Debtors Must Assume or Reject Unexpired Leases of
Nonresidential Real Property, \textit{In re} Sanchez Energy Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 3,
\textsuperscript{834} Debtors’ Motion for Entry of an Order Approving Stipulations Extending the Time Within Which the Debtors
Must Assume or Reject Certain Unexpired Leases of Nonresidential Real Property, \textit{In re} Sanchez Energy Corp., No.
\textsuperscript{835} Id. at 3.
\textsuperscript{836} Id.
of June 30, 2020 and the effective date of a confirmed plan of reorganization.\textsuperscript{837} SN argued that under § 365(d)(4)(B)(ii), even though the Court had previously provided a time extension to assume or reject unexpired leases, the Court may grant a subsequent extension “upon prior written consent of the lessor in each instance.”\textsuperscript{838} Here, SN argued, the landlords for each lease has given prior written consent via stipulations; thus, SN concluded that extension of time was proper.\textsuperscript{839} On March 24, 2020, SN filed a Certificate of No Objection;\textsuperscript{840} and, the Court entered an Order consisting of the same terms as the Proposed Order.\textsuperscript{841}

\textbf{Debtors’ Motion for Entry of an Order Authorizing Rejection of Lease Participation Agreement Effective Nunc Pro Tunc to the Date Hereof.}

On January 3, 2020, SN sought entry of an order authorizing it to reject the Lease Participation Agreement between SN and SOG.\textsuperscript{842} Since January 1, 2014, SN has been party to Lease Participation Agreement with SOG, which provided SN the right to use ranch land of 73,652.32 acres for promotional and team-building purposes, such as hunting, fishing, grazing, and other recreational activities.\textsuperscript{843} The parties split expenses under the KMF Lease Agreement, but SN was responsible for 100\% of the first $5 million in capital expenditures under the Lease Participation Agreement; and, remaining expenses were subject to the ratio for sharing expenses

\textsuperscript{837} Id.
\textsuperscript{838} Id. at 4.
\textsuperscript{839} Id.
\textsuperscript{842} Debtors’ Motion for Entry of an Order Authorizing Rejection of Lease Participation Agreement Effective Nunc Pro Tunc to the Date Hereof, \textit{In re} Sanchez Energy Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Jan. 3, 2020), [hereinafter Motion to Reject Lease Participation Agreement], \texttt{https://perma.cc/6YAV-5947}.
\textsuperscript{843} Id. at 5. SOG leased the property from the John G. and Marie Stella Kennedy Memorial Foundation under a separate agreement. Id.
where SN was responsible for 90% of expenses and SOG was responsible for the remaining 10%. Both SN and SOG had termination rights under the agreement. Historically, SOG had paid all expenses under the agreement and SN reimbursed SOG through joint-interest billing monthly. To date, SN had reimbursed SOG for $13.6 million in expenses under the agreement. SN’s CRO, in working to redevelop SN’s business plan, evaluated certain executory contracts and unexpired leases and concluded that rejecting the Lease Participation Agreement was in the best interests of SN and the estates.

SN argued that rejection of the agreement constituted a sounder exercise of its reasonable business judgment and that deeming rejection of the agreement as of the Motion filing date was appropriate in the same manner of previous motions to reject unexpired leases.

On January 28, 2020, the Court ordered, under the same terms as the Proposed Order, that the Lease Participation Agreement be rejected as of the date the Motion was filed.

Omnibus Motion for Entry of an Order Authorizing (I) Assumption of Unexpired Leases of Non-Residential Real Property and (II) Granting Related Relief.

On March 6, 2020, SN filed an Omnibus Motion for Entry of an Order Authorizing (I) Assumption of Unexpired Leases of Non-Residential Real Property and (II) Granting Related Relief. The motion followed the February 3 Order Extending Time Within Which the Debtors

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844 Id.
845 Id. at 6.
846 Id.
847 Id.
848 Motion to Reject Lease Participation Agreement, supra note 968, at 6.
849 See id. at 7–10.
Must Assume or Reject Unexpired Leases of Nonresidential Real Property, where the Court authorized SN to assume any unexpired lease of nonresidential real property under § 365(d)(4) of the Bankruptcy Code through March 9, 2020.852

SN was a party to over 2,000 unexpired oil and gas leases in Texas, Louisiana, and Mississippi, including: surface leases, easements, rights of way, and other surface access agreements.853 SN sought assumption under § 365(a) and (d)(4) of the Bankruptcy Code on the basis that the Unexpired Leases were essential to SN’s business operations.854 Additionally, SN maintained that the assumption of the unexpired lease was “critical to their operations and represents a sound exercise of their business judgment” in accordance with § 365(a) of the Bankruptcy Code.855

SN stated that it was not aware of any outstanding obligations under the Unexpired Leases that would not be satisfied in the ordinary course of business because SN had satisfied all undisputed prepetition obligations.856 Thus, SN asserted, there were no outstanding defaults, no cure amounts relating to the Unexpired Leases, and no provision of adequate assurance was required to comply with § 365(b)(1)(A) of the Bankruptcy Code.857 SN asserted compliance with Bankruptcy Rule 6006(e) on the basis that it did not seek to assign, but merely to assume, all of the Unexpired Leases in the Motion.858 SN also requested waiver from Bankruptcy Rule 6006(f) to avoid the limitation to 100 unexpired leases to avoid administrative burdens and confusion.859

853 Id. SN included Schedule 1 to identify the Unexpired Leases.
854 Id. 4–5.
855 Id. at 5.
856 Id. at 6–7.
857 Id.
858 Assumption of Unexpired Leases Motion, supra note 978, at 7.
859 Id. at 8.
On April 21, 2020, the Court ordered, under the same terms as the Proposed Order, that the Unexpired Leases be assumed.860

**Sanchez Energy Corporation- The Future**

**The Ideal Scenario**

SN entering its Chapter 11 petition looking to outlast the drop in oil prices, reconfigure its debts, its assets, its management, and its future. Through its reorganization SN would streamline its operations, cutting unnecessary costs and efficiently structuring its management and operations to become profitable even through the oil price drop and even more so as the prices begin to rise. With its advantageous DIP Lending and new capital infusion SN would leverage itself to become cash flow positive and rise in the E&P industry once again. Ideally, as SN confirmed its reorganization plan it would begin the uphill ascent into profitability, but the Ideal Scenario is quickly outpacing SN as the world E&P market struggles through the Russian-Saudi Oil War and COVID-19.

**The Reality**

SN steadily progressed through the reorganization process, but turbulence soon followed. Not only has SN been hit hard by COVID-19 and the Russian-Saudi Oil War, but the entire world and especially the E&P industry. Amidst plummeting oil prices, the world market was devastated as shutdowns and quarantines seemingly encompassed the globe. SN’s reorganization centered around efficient restructuring of their assets and intercompany management, but at its core the fulcrum of its reorganization was reliant on the price per barrel of oil. As of April 20,

due to decreased consumption and inability to move/store product, the futures for price per barrel of oil hit an all-time low, $(-)35.20. The E&P industry suffered from the drastic drop in oil prices as Russia and Saudi Arabia duel over the oil industry, resulting in many companies like SN struggling to stay profitable and out of bankruptcy. As the war wages on and the global economy fights to find balance during the quarantine of COVID-19, prospects of E&P companies successful business ventures and successful reorganizations dwindle.

SN’s reorganization hoped to outlast the drop in oil prices and emerge in an upward swinging market. The prospects of weathering this storm seemingly grow slimmer and slimmer as the industry plummets and global economy suffer. SN may plead for forbearance by its creditors in admittedly hard times, coming as a result of unexpected events. As SN’s debts become due, its creditors look for payment, and its overall economic health worsens, reorganization grows more difficult to achieve and the hopeful recovery of creditors follows. Creditors who lose faith in the hopeful long-term repayment of their obligations may seek shorter term, lower value satisfaction especially as everyone attempts to survive this pandemic. Forced liquidation or a debt-equity swap could be in SN’s future as creditors grow weary and fearful, only time will tell as the future is more unpredictable than ever.

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