UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -v- PLATINUM MANAGEMENT (NY) LLC; PLATINUM CREDIT MANAGEMENT, L.P.; MARK NORDLICHT; DAVID LEVY; DANIEL SMALL; URI LANDESMAN; JOSEPH MANN; JOSEPH SANFILIPPO; and JEFFREY SHULSE, Defendants.	:	No. 16-cv-6848 (BMC)

MEMORANDUM OF MELANIE L. CYGANOWSKI, AS RECEIVER, IN: (I) OPPOSITION TO APPLICATION OF SCHAFER AND WEINER, PLLC FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FROM DECEMBER 19, 2016 THROUGH JUNE 13, 2017; AND (II) SUPPORT OF CROSS-MOTION FOR DISGORGEMENT OF PREVIOUSLY PAID LEGAL FEES

OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
(212) 661-9100

Attorneys for Melanie L. Cyganowski, as Receiver

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Melanie L. Cyganowski, the duly appointed Receiver (the "***Receiver***") of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP ("***PPCO***"), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the "***Receivership Entities***" or "***Platinum***"), through her counsel, Otterbourg P.C., respectfully submits this memorandum in: (i) opposition to the Motion for an Order Granting the Final Application of Schafer and Weiner, PLLC ("***S&W***") for Allowance of Compensation and Reimbursement of Expenses Incurred from December 19, 2016 through June 13, 2017, Dkt. No. 326 (the "***Application***"); and (ii) Support of the Receiver's Cross-Motion for Disgorgement of Legal Fees Previously Paid to S&W. In opposition to the Application, and in support of her Cross-Motion, the Receiver states as follows:

PRELIMINARY STATEMENT

S&W was never retained by the Receiver, and moreover, acted to the detriment of, rather than for the benefit of, this receivership. As a result, S&W is not entitled to the nearly $500,000 in legal fees and expenses it audaciously seeks in its Application, nor is it entitled to retain the nearly $200,000 it arranged to have itself paid, ahead of, and to the detriment of, other creditors and investors, at the onset of this receivership for ***pre-receivership*** work on behalf of Platinum.

At the heart of this dispute is a Purported Participation Agreement (defined below). According to S&W, the intent of the Purported Participation Agreement was to provide funding which at that point Platinum could not, to certain professionals who would protect Platinum's interest in the Arabella Loan (defined below) from potential foreclosure by other creditors by

placing Arabella into bankruptcy. Left unexplained by S&W is: (i) why the professionals who received all of the funding raised by the agreement (including S&W itself) needed that funding when they already had the benefit of a guaranty and amended guaranty from Platinum, purportedly providing the professionals with a first-out participation in Platinum's loan to Arabella; and (ii) why the same result could not have been achieved for substantially less money? The cost to Platinum for the $500,000 which was immediately paid over in its entirety to professionals (including $180,000 of S&W's ***pre-receivership*** fees) was an extraordinary 45% interest in what is now a $20,000,000 outstanding loan.

The reasons for this Court to deny the Application are many, but chief among them are that:

(a) this Court never approved S&W's retention, as required by both Receivership Orders;

(b) S&W's first post-receivership action was to subvert the receivership process by advising the Prior Receiver to enter into a non-ordinary course transaction without Court approval. The sole purpose of that agreement was to pay professionals (including $180,000 in pre-receivership fees to S&W), without Court scrutiny and without subjecting S&W to the same claims adjudication process to which all other creditors will be subjected at the appropriate point in this case;

(c) The ambiguous document drafted by S&W went well beyond its stated purpose. Instead of frugally funding, in a "DIP-like fashion" the bare minimum so that Platinum's borrower's professionals could protect the collateral from threatened foreclosure by another party by seeking bankruptcy protection for Platinum's borrower, the document instead gave nearly two fifths of the fees to S&W, Platinum's own lawyers. Clearly the borrower's lawyers could have, and should have, filed a basic bankruptcy petition for far less than the $500,000 cost of the Purported Participation Agreement;

(d) S&W has conceded that the Purported Participation Agreement it drafted for the Receiver was not as clear as it should have been and contains conflicting provisions. As a result, the Receiver has faced costly litigation before the Arabella Bankruptcy Court; and

(e) to make matters worse, rather than supporting its former client in a contested proceeding to determine the applicability of the Purported Participation Agreement that it carelessly drafted on behalf of the Receivership in its opening days, S&W has aligned itself with Platinum's adversary, not only filing papers taking positions contrary to Platinum's, but flying from Michigan to Ft. Worth, Texas to appear and testify ***against*** Platinum in support of the very

agreement for which it was paid $180,000. To add insult to injury, S&W now seeks nearly a half a million dollars in legal fees and expenses, to compensate it, in part, for drafting the very document that resulted in costly litigation for Platinum.

S&W's outrageous conduct (including first class air travel which it seeks to bill to the receivership) provides ample grounds for not only the denial of its Application for almost $500,000 in additional compensation, but for entry of an order requiring S&W to disgorge the $180,000 in legal fees and expenses it was paid after the onset of this receivership ahead of all other creditors and investors.

For the reasons more fully set forth herein, S&W's Application should be denied, and the Receiver's Cross-Motion for disgorgement should be granted.

BACKGROUND

A. Pre-Receivership Events

1. The Arabella Loan

The services that are the subject of the Application relate to a $16 million loan from PPCO to Arabella Exploration, Inc. ("***AEI***"), a company involved, through its subsidiaries, in oil and gas operations in Texas, advanced in September 2014 in connection with a $45 million credit facility (the "***Arabella Loan***" or "***Loan***"). (Declaration of Bart M. Schwartz in Support of His Application for an Order Authorizing the Arabella Settlement Agreement ("***Schwartz Decl.***"), Dkt. No. 128-1, ¶6; Declaration of Michael E. Baum in Support of the Receiver's Application for an Order Authorizing the Arabella Settlement Agreement ("***Baum I Decl.***"), Dkt. No. 128-2, ¶6) The Loan was secured by all of AEI's assets and guaranteed by AEI's Texas subsidiaries, Arabella Exploration, LLC ("***AEX***") and Arabella Operating, LLC ("***AO***" and, together with AEI and AEX, "***Arabella***" or the "***Arabella Entities***"), which had pledged their assets to PPCO as security. (*Id.*) AEI did not repay any of the sums advanced by PPCO, which declared the Arabella Loan in default in mid-2015. (Baum I Decl. ¶7)

2. PPCO's Retention of S&W

In connection with the default and the bankruptcy filing of its affiliate, Arabella Petroleum Company, LLC ("***APC***"), PPCO retained S&W in August 2015. (Baum I Decl. ¶¶ 3, 12-14) S&W is an 11-attorney bankruptcy boutique law firm located in Bloomfield Hills, Michigan. (Declaration of Michael E. Baum in Support of Schafer & Weiner PLLC's Fee Application ("***Baum II Decl.***"), Dkt. No. 326-6, ¶¶ 1, 5, 6) The record does not reflect who at PPCO found and came to select S&W as counsel, and for what reasons.

3. S&W's Pre-Receivership Work

Although retained in August 2015, the bulk of S&W's pre-receivership work appears to have been performed during the February to June 2016 time period. In February 2016, the Chapter 11 Trustee commenced an adversary proceeding against, among others, PPCO, AEI, AO and AEX, claiming fraudulent conveyance. (Baum I Decl. ¶15) In the months that followed, APC and other parties commenced additional proceedings in the APC bankruptcy proceeding that S&W claims could have impacted PPCO's collateral under the Loan. (*Id.* ¶¶ 17-31) In May 2016, PPCO placed AEI into liquidation proceedings in the Cayman Islands. (*Id.* ¶32-37) S&W appears to have generated substantial bills for work performed during this time period.

4. The Professionals Guaranty

Having been informed in mid-2016 that PPCO was experiencing liquidity problems, S&W prepared a Guaranty for PPCO's execution "in order to reassure (and guaranty) that [S&W and certain other] professionals who were providing services to the Arabella Entities would be paid." (Baum I Decl. ¶39) The Guaranty, executed July 1, 2016, provides that "[t]he Professionals are willing to provide services to assist with the orderly liquidation (and/or reorganization) as detailed above, but only if Platinum provides this Guarantee." (Baum I Decl. Ex. E) It then states: "For good and valuable consideration, and subject to the Recitals,

Guarantor [Platinum Long Term Growth VIII, LLC ("***PLTG***," the PPCO entity that advanced the loan to AEI)] absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Professionals' fees and expenses related to any work performed by the Professionals in connection with the Secured Transaction and the Note Documents." (*Id.*)

Less than two weeks later, for no additional stated consideration, S&W had PPCO execute an Amendment to Guaranty, providing that "Guarantor is securing payment of the Professional Fees under this Guaranty by providing for the benefit of the Professionals a first out participation in Guarantor's security interests under the Secured Transaction, which shall be paid, and become immediately due and payable, if Guarantor either (a) forecloses on any of its Collateral under the Note Documents, or (b) sells or otherwise assigns the Note and Note Agreement." (Baum I Decl. Ex. F)

5. The Founders Foreclosure Action

On December 2, 2016, Founders Oil and Gas Operating, LLC ("***Founders***") commenced a foreclosure action to foreclose on certain working interests owned by AEX in which PPCO also had a lien as security for the Arabella Loan. (Baum I Decl. ¶ 30) S&W advised that "[i]n order to mount an effective defense against the Founders Litigation, action needed to be taken immediately." (*Id.* ¶ 43)

B. <u>The Receivership and Receiver Order</u>

On December 19, 2016, the United States Securities and Exchange Commission (the "***SEC***") commenced this action. Simultaneously with filing the action, the SEC sought and obtained the appointment of Bart M. Schwartz (the "***Prior Receiver***") as receiver of the Receivership Entities pursuant to the terms of a Court order. (Dkt. No. 6. (the "***First Receiver Order***")).

As S&W now acknowledges, paragraph 49 of the First Receiver Order clearly provides:

"Subject to the specific provisions of this Order, the Receiver is authorized to solicit persons and entities ('Retained Personnel') to assist the Receiver in carrying out the duties and responsibilities described in this Order. *The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement*." (Emphasis added.) It further limits the Receiver's authority to transfer, compromise or dispose of Receivership Property, other than real estate, without Court order to transactions in "the ordinary course of business." (*Id.* ¶28)

C. <u>The Purported Sale of the Loan Participation</u>

Shortly after the Prior Receiver was appointed, he "was informed that if th[e] liens were foreclosed [on by Founders], PPCO's interest in the working interests created by the Arabella Loan . . . would have been substantially impaired." (Schwartz Decl. ¶8) He was "advised that there was an immediate need for a minimum of $500,000 to defend Arabella Entities and PPCO against these claims." (*Id.* ¶18) The advice originated from S&W. According to S&W's managing partner, Michael E. Baum ("***Baum***"), "[a]lthough the Receiver Order contained a stay of litigation, I was concerned that arguing that the Founders Litigation was subject to that stay would not have protected PPCO." (Baum I Decl. ¶ 44) Baum "advised the Receiver's staff that defending against the Founders Litigation and putting AEX into bankruptcy required an immediate payment of $500,000 to pay a portion of the receivables owed to the Arabella Professionals and various professionals working for Arabella Entities, and/or to provide retainers for work going forward." (*Id.* ¶ 45) "Because [Baum] understood that PPCO did not have sufficient cash to underwrite the actions [he] believed were urgently necessary to maintain the Arabella Interests for the benefit of PPCO, Mr. Hoebeke [AEI's CRO] and I approached multiple potential parties concerning investing in the Arabella Loan. We found only one party, the

Participating Purchaser, willing to take that risk." (*Id.* ¶48) The party was Craig Bush ("***Bush***"), an attorney and entrepreneur also from Bloomfield Hills, Michigan. (Baum I Decl. Ex. G)

Although framed as advancing PPCO's interest, *S&W* had a substantial self-interest in seeking a loan participant to fund the strategy it had recommended. The "first out participation" that S&W had prepared in the Amendment to Guaranty, and relied on for payment of its outstanding fees, was conditioned on PPCO's foreclosure on its Collateral under the Note Documents or its sale or assignment of the Note and Note Agreement. Those conditions would unlikely ever be satisfied in the event of Founders' foreclosure. On the other hand, PPCO assigning its Note while Founders' foreclosure was delayed would purport to trigger S&W's "first out participation." Baum recently admitted as much on the witness stand in AEX's bankruptcy proceeding in Texas, when he traveled from Michigan to support the transfer of the Receiver's proof of claim in the bankruptcy to the participant:

Q: So just so we're clear. You need the participation agreement, Exhibit G, to be enforced in some measure in order to get your first out under the guarantee, correct?

A. Well, of course. We needed somebody to spend $500,000.

(Transcript of proceedings in AEX's bankruptcy[1] on May 10, 2018 ("***AEX Tr.***"), attached hereto as Exhibit A, at p. 135.)

On December 28, 2016, PLTG and 30294, LLC ("***30294***"), an entity controlled by Bush, entered into a "Participation Agreement" (the "***Purported Participation Agreement***"), the language of which was drafted and negotiated by S&W. The terms (as well as the circumstances) of the Purported Participation Agreement were extraordinary. In return for paying a total of $500,000 (the so-called "***Purchase Price***"), to be paid in S&W's trust account and "to "be used exclusively to fund professional fees," upon any monies recovered on account

[1] *In re Arabella Exploration, LLC*, Case No. 17-40120-Rfn11, United States Bankruptcy Court for the Northern District of Texas (Dallas).

of the Arabella Loan, the balance of which, at the time, was in excess of $20 million, proceeds first went to repay the $500,000 Purchase Price, then to pay all remaining outstanding fees of professionals, then to interest on the "Purchase Price" at 10% per annum, and then, finally, all remaining proceeds were split 45% to 30294 and the remaining 55% to Platinum.

Of the $500,000, $145,000 in total was paid as retainers for bankruptcy firms supposedly needed to put AEX into bankruptcy; the remaining amount, $355,000, was paid to firms that previously provided services to Arabella or PPCO and were purported beneficiaries of the Amendment of Guaranty. Why professionals who had agreed to continue working on the Arabella matter as consideration for a purported "first out participation" in the Amendment of Guaranty required the sale of another participation to pay them cash for their fees has never been explained. The recipient of the single largest payment was S&W, the drafter of the Participation Agreement, which received $180,000 for outstanding *pre-receivership* bills. (Dkt. No. 326-4, at p. 68 of 80)

S&W's time records reflect approximately 30 hours of work between December 19 and December 28, 2018 preparing the eight-page Purported Participation Agreement. (Dkt. No. 326-3) Among the time devoted was a half hour spent by Baum reviewing the Receiver Order, which made clear that his firm would require a Court order in order to be retained and, thus, paid by the Prior Receiver and yet on December 28, obtained $180,000 of receivership funds in a priority over every single investor and creditor of Platinum. (*Id.*)

S&W'S time records reflect no time communicating directly with the Prior Receiver, including to advise him of S&W's self-interest in the transaction. Rather, Baum has indicated that, during this time, "his most senior contact at Platinum" was David Steinberg, a pre-receivership portfolio manager at Platinum whose employment continued after the receivership. (*Id.*, at p. 5 of 80) The time entries of the Prior Receiver and his advisory firm, Guidepost

Solutions, LLC, are corroborative. Only two entries referring to the Purported Participation Agreement appear totaling 8/10 of an hour -- neither recorded until the date of the Purported Participation Agreement, December 28, 2016, and neither recorded by the Prior Receiver. (Dkt. No. 143-5, at pp. 61-62 of 202) Nor do any time entries relating to the Purported Participation Agreement appear in the time records of the Prior Receiver's counsel, Cooley LLP. (Dkt. No. 144-4)

Even with the devotion of approximately 30 hours to the preparation of the Purported Participation Agreement, S&W admittedly prepared a document that, in critical respects, is ambiguous. Indeed, while denominated a Participation Agreement, S&W now denies that the instrument effectuated a sale of a loan participation. Rather, as discussed below, S&W now contends in the AEX bankruptcy case that the instrument effectuated a direct assignment of the Note, giving 30294 direct standing vis-à-vis the borrower. (AEX Tr. at pp. 125-26) On the stand, Baum admitted he did not draft the agreement "clear enough" and that its provisions were "inconsistent." (*Id.*)

In recognition of the extraordinary nature of the Purported Participation Agreement, the Prior Receiver indicated that he intended to seek Court approval of it. In a declaration submitted to the Court on April 25, 2017 in support of the Prior Receiver's application for approval of a settlement in the AEX bankruptcy case (commenced after the creation and funding of the Purported Participation Agreement), the Prior Receiver discussed the Purported Participation Agreement but indicated that he planned to seek separate approval of it, stating: "I provide the information about the Participation Agreement to give the Court the full context of the Arabella Settlement Agreement. However, I am not currently seeking approval of anything other than the Arabella Settlement Agreement. I expect that other Arabella related matters will be the subject of separate applications to this Court." (Schwartz Decl. ¶ 20) Baum, likewise, has acknowledged

that, in the context of a receivership, he could not assert it was ordinary course for PPCO to have entered into the Purported Participation Agreement. (AEX Tr. at 129).

D. The SEC's Objection to, and the Prior Receiver's Decision Not to Retain, S&W

On May 19, 2017, the SEC and Prior Receiver took the unusual step of jointly writing to the Court to disclose certain disagreements between them over the direction of the receivership. (Dkt. No. 142) One area of concern shared by both the SEC and the Prior Receiver, however, related to S&W. In their joint correspondence, the SEC and Prior Receiver wrote:

> The staff has also expressed concern, shared by the Receiver, regarding a potentially conflicted transaction involving an attorney, who has not yet been formally retained, in connection with the Receiver's motion to approve the settlement in the Arabella matter. As the Receiver and the attorney representing the estate in the matter previously described in those motion papers, the attorney introduced an investor to the Receiver who purchased a 45% interest in the Receivership's interest in the Arabella Loan for $500,000 pursuant to a participation agreement entered into shortly after the Receiver was appointed, which was used in part to pay pre-Receivership professional fees and apparently as an escrow for future fees. (Dkt.# 128-1 at p.6; Dkt.#128-2 at pp. 11-15) The Receiver believed that, had he not entered into this agreement, the Receivership Estate could have lost all of the value of the Arabella Loan. (Dkt.#128-2 at 6-7) After the participation agreement was consummated, it was discovered that the collateral for the Arabella Loan potentially included certain "tag-along" rights that the Receiver was not aware of at the time he entered into the agreement that increased the potential value of the Arabella Loan substantially. (Dkt.#128-2 at pp. 15-16) The staff and the Receiver believe that the circumstances surrounding the participation agreement require further scrutiny.

While it since has disclaimed any knowledge of the tag-along rights that purportedly were conveyed *pro rata* in the Purported Participation Agreement to 30294, S&W was intimately involved with the Arabella Loan for the prior year and a half when it drafted and negotiated the Purported Participation Agreement. Its knowledge and understanding of what it was intending for the Prior Receiver to convey in the Purported Participation Agreement has not yet been determined.

Ultimately, the disagreements between the SEC and Prior Receiver did not abate, and the Prior Receiver was replaced by the Receiver. As one of his last official acts, the Prior Receiver filed an application to "retain and pay certain law firms that have provided discrete services to Receivership Entities and portfolio companies owned by Receivership Entities (the 'Limited Scope Professionals') *nunc pro tunc* to the date the Receiver was appointed (the 'Appointment Date') or the date the Limited Scope Professional began to work for the Receiver." (Dkt. No. 183) In light of the SEC's and Prior Receiver's shared concerns, the Prior Receiver decidedly did *not* seek to retain S&W. As the Prior Receiver explained in separate correspondence with the Court: "[O]nce the SEC staff told my counsel that there was no set of circumstances under which the SEC would agree to that retention, I . . . told the attorney that I would not seek to retain him." (Dkt. No. 180) Not only did the Prior Receiver not retain S&W, but he obtained from one of the other professionals (Dan Callahan of Kessler Collins) for whose benefit the Guaranty, Amendment to Guaranty and Purported Participation Agreement were drafted the concessions that "Kessler . . . was not involved in the arrangement or negotiations over the Participation Agreement," that Kessler would apply the $20,000 it received in proceeds of the Participation Agreement to *post*-receivership time charges, and that "Kessler has also agreed to not rely on the Guaranty or the Amendment to the Guaranty for any of its fees." (Dkt. No. 183, ¶¶ 72-73)

E. <u>The Appointment of the Receiver and the Receiver's Non-retention of S&W</u>

On July 6, 2017, the Court relieved the Prior Receiver and appointed the Receiver. (Dkt. No. 216) The Second Amended Order Appointing Receiver (the "***Second Receiver Order***") contains the same provisions regarding Retained Personnel as the First Receiver Order: "Subject to the specific provisions of this Order, the Receiver is authorized to solicit persons and entities ('Retained Personnel') to assist the Receiver in carrying out the duties and responsibilities

described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement." (Dkt. No.276 ¶ 52)

In accordance with the Second Receiver Order, the Receiver filed an application to adopt, in part, the Prior Receiver's application to retain and pay certain limited scope professionals. (Dkt. No. 283) The Receiver sought to retain a total of 19 firms and to pay them, for services rendered and expenses and incurred following the commencement of the receivership, a total $526,768.58. (*Id.*)

F. Recent Proceedings in the AEX Bankruptcy

AEX and AO each filed for chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Northern District of Texas, Case Nos. 17-40120 and 17-41479, on January 8, 2017. On May 17, 2017, S&W, on behalf of PPCO, filed proofs of claim, each in an amount of $20,061,589.04, in both of AEX's (Claim No. 18 in AEX's claims registry) and AO's bankruptcies (Claim No. 7 in AO's claims registry) (together, the "***Claims***"). Notably, the Claims that S&W filed do not recognize any right of 30294 to control, monetize or vote the Claims.

On December 8, 2017, 30294 filed a Notice of Transfer of Claims Other than for Security Pursuant to Bankruptcy Rule 3001(e) in each of AE's and AO's bankruptcy cases (AEX Dkt. No. 300 and AO Dkt. No. 20) (the "***Claims Transfer Notice***"), in which 30294 claims to be a *direct* "creditor and party in interest" in each bankruptcy case and purports to have received a transfer of the Claims, or a portion of Platinum's Claims, to itself. In each bankruptcy, 30294 seeks to have itself substituted entirely in PPCO's place as controller of the Claims.

On December 29, 2017, the Receiver filed an Objection of Platinum Receiver to Notice of Transfer of Claims Other than for Security Pursuant to Bankruptcy Rule 3001(e) (AEX Dkt. No. 325) (the "***Claims Transfer Objection***"). In the Claims Transfer Objection, the Receiver

argued against the propriety of the Claims Transfer Notice, advising the Bankruptcy Court, among other things, that: (a) even assuming it is a participant in the Arabella Loan, 30294 is not a creditor of AEX or AO and thus, is not entitled to hold a direct claim against either debtor; (b) 30294's attempt to splinter a piece of PPCO's claim against AEX and AO for itself constitutes a violation of the restraints imposed by the First and Second Receive Order against actions against Receivership Property; (c) the Receiver disputes the nature, validity and enforceability of the Purported Participation Agreement upon which the Claims Transfer Notice is based; and (d) the Receivership Court is the proper venue for adjudication of 30294's claims.

On May 3, 2018, 30294 filed its Reply to Objection of Platinum Receiver to Notice of Transfer of Claims Other than for Security Pursuant to Bankruptcy Rule 3001(e), Dkt. No. 368 ("***30294's Claims Transfer Reply***"). Strikingly, the next day, S&W filed its own Response to Objection to Notice of Transfer of Claims for Security Pursuant to Bankruptcy Rule 3001(e), in which S&W, describing itself as "former counsel for Bart M. Schwartz" and a creditor of AEX, accused the Receiver of making "misleading statements," providing "false information" and harboring an "apparent bias against any actions taken by the Initial Receiver." S&W then proceeded to undertake to correct "seven factual misrepresentations and misleading statements" of the Receiver (while asserting that the very instruments it drafted supposedly for the benefit of PPCO were "misnamed"), and to "concur[] with the Participant" that "the Participation Agreement nevertheless clearly give the Participant the right, above the Receiver, to transfer the Proof of Claim and substitute its name for that of the Receiver." (AEX Dkt. No. 369)[2]

On May 10, 2018, the Bankruptcy heard legal argument and received testimony regarding

[2] On the same day, S&W's counsel wrote to this Court "seeking leave to file a fee application with regard to services rendered and disbursements incurred by [S&W] in its representation of Platinum and Bart M. Schwartz, its initial receiver." (Dkt. No. 320) In a minute entry, the Court directed that "S&W may file its fee application," but advised all parties "that if this Court finds that any party has filed papers in bad faith, the Court will not hesitate to impose sanctions, including but not limited to attorneys' fees, pursuant to Fed. R. Civ. P. 11."

the Claims Transfer Notice. Two S&W partners traveled from Michigan, Baum as a witness and one of his partners as his counsel, to support 30294 and to oppose the party on whose supposed behalf S&W drafted the Purported Participation Agreement. S&W's conduct in opposing the party on whose behalf it supposedly acted exposes its conflict of interest. S&W's conduct supports the notion that S&W prepared the Purported Participation Agreement to further its own interests at the expense of PPCO's.

The Bankruptcy Court heard from Bush, Baum and Chip Hoebeke (Arabella's chief restructuring officer). Among other concessions that Baum made that undermine its Application during cross-examination were the following:

(a) There are numerous inconsistencies and ambiguities in the Purported Participation Agreement. AEX Tr. 110-11; 121-122; 126.

(b) Baum could not say the Purported Participation Agreement was an ordinary course transaction for the receivership. AEX Trans. 129.

(c) S&W needs the Purported Participation Agreement to be enforced for S&W to obtain its first-out participation under the Guaranty. AEX Trans. 135.

The Arabella Bankruptcy Court reserved ruling on the Claims Transfer Notice, but as of the date hereof, has informed the parties of its intention to issue a ruling during a conference on June 7, 2018.

The Application – seeking fees of $459,729.25 and expenses of $29,197.96 -- addresses none of these matters, all of which S&W is well aware are matters of concern to the SEC, the Receiver and now to the Court.

ARGUMENT

THE APPLICATION SHOULD BE DENIED AND THE CROSS-MOTION FOR DISGORGEMENT SHOULD BE GRANTED

A. S&W Was Never Retained in Accordance with, and Deliberated Obtained the Payment of Fees in Violation of, the First Receiver Order

S&W acknowledges that the Receiver's authority to retain professionals, such as attorneys, is circumscribed by having to obtain the approval of this Court. (Application, ¶5). Yet S&W's retention was never sought nor approved by this Court. To the contrary, both the Prior Receiver and Receiver deliberately determined *not* to engage S&W. Thus, S&W was never engaged in accordance with the First or Second Receiver Order, and is not now entitled to payment of the fees requested in its Application. Rather, S&W – a firm experienced both in bankruptcy and receivership cases – bore the risk of performing work without Court approved-retention.

While the Prior Receiver sought, and this Receiver obtained, leave of this Court to retain nineteen (19) *other* law firms, neither the Prior Receiver nor the Receiver ever sought or obtained leave to retain S&W. That was not an oversight. Because of the serious concerns surrounding the Purported Participation Agreement and S&W's involvement with such agreement (concerns first raised by, and never resolved to the satisfaction of, the SEC), the Receiver (as well as the Prior Receiver) chose not to retain S&W.

S&W was aware of the limits of the Receiver's authority under the First Receivership Order when it agreed to work post-receivership for PPCO. Indeed, S&W's time entries reflect its managing partner's, Baum's, specific review of the First Receiver Order. S&W, with experience in bankruptcy matters (*see e.g.*, Application ¶7), cannot claim ignorance to the possibility of acting on behalf of a debtor, or in this case receivership, and ultimately failing to be retained, and thus paid, for work which pre-dates Court approval of its retention.

Approval of the Application would violate the Receivership Order and the Application should be denied on that basis alone.

Beyond that, S&W's implementation of a transaction in which it received $180,000 for a pre-receivership claim to fees subverted the entire Receivership process with respect to the

evaluation and repayment of pre-receivership claims. Although the Prior Receiver had provided a claims form to creditors, the current Receiver has not yet proposed, much less obtained approval for a claims adjudication process. Despite that, S&W – experienced in bankruptcy and receivership cases – deliberately took advantage of the harried first days of the Receivership to give itself a priority to payment of its pre-receivership fees, fees for which it had already purported to obtain a guaranty and a first out participation from PPCO with respect to the Arabella Loan.

Because S&W's receipt of its pre-receivership fees was not approved by this Court, in accordance with a plan for repayment of pre-receivership obligations or otherwise, and because S&W's retention by the Receiver was in any event, never approved by this Court, its receipt of these fees was improper and S&W should be ordered to disgorge the fees. Indeed, as recognized by S&W, the First Receivership Order required Court approval of the Receiver's retentions of attorneys, and therefore, the payment of its fees (in the form of the pre-receivership fees it was paid in connection with the Purported Participation Agreement) was in violation of the First Receivers Order. A court has the inherent authority to enforce its own orders and this Court should enforce the First Receivership Order by ordering disgorgement of the fees S&W obtained in violation of that order. *Hunt v. Enzo Biochem, Inc.*, 904 F. Supp.2d 337, 344 (S.D.N.Y. 2012).

B. S&W's Advising the Prior Receiver in Connection with the Purported Participation Agreement Gave Rise to a Conflict of Interest and, thus, Militates Denial of the Application and Warrants Disgorgement

S&W violated Michigan Rules of Professional Responsibility 1.8(a) and (f) by drafting the Purported Participation Agreement, counseling the Prior Receiver to execute it, and then benefiting from the resulting transaction, all without advising the Prior Receiver of its conflict of interest.

Under Michigan Model Rule 1.8(a):

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

The existence of the Guaranty, Amended Guaranty, and the lengthy time gap between entry into those agreements and the Purported Participation Agreement, demonstrates that it violates MRPR 1.8(a) because the terms of the Purported Agreement were not fair and reasonable, and the Prion Receiver did not have a reasonable opportunity to seek independent legal counsel. That was especially essential given that the Purported Participation Agreement has been used to give S&W rights under the Guaranty and Amendment of Guaranty. Indeed, S&W appears not to have consulted the Prior Receiver directly at all regarding the risks of the Purported Participation Agreement. S&W was concerned enough about payment of its fees that it obtained the Guaranty and Amended Guaranty in July 2016, but then counseled the Prior Receiver to execute the Purported Participation Agreement in a matter of days in late December of 2016 over the holidays and the infancy of this receivership even though the agreement was superfluous given that the fees of the professionals supposedly needed to protect the Arabella collateral were already purportedly guaranteed and secured by the Guaranty and the Amended Guaranty, with its first-out participation.

Moreover, even accepting as true S&W's claim that the Purported Participation Agreement was necessary to retain counsel to file the Arabella Bankruptcy to prevent foreclosure by another party on the collateral supporting the Arabella Loan, inclusion of S&W's pre-

receivership fees was not a necessary component of that transaction - - if S&W could have waited for payment as it claims, it should have done so, reducing the percentage of the Arabella Loan sold in a firesale fashion by the Prior Receiver.

All that was required to protect Platinum's collateral in the Arabella Loan was the filing of a bankruptcy petition, which could have, at least initially, been accomplished for far less than the $500,000 paid to both Arabella and Platinum's professionals. Indeed, the payment to S&W from the Purported Participation Agreement was for ***pre-receivership*** fees, not for future work in connection with the Arabella Bankruptcy, and thus, could have, and should have waited. On this basis, the Purported Participation Agreement was not fair or reasonable because it took advantage of the nascent state of the Receivership, and forced the sale of a far larger piece of Receivership Property than was necessary to achieve the stated objective of filing bankruptcy papers for Arabella. At minimum, that could have been accomplished without payment of $180,000 of S&W's pre-receivership fees, which were already the subject of the Guaranty and first-out participation.

S&W's actions also violate Michigan Model Rule 1.8(f), which provides:

> A lawyer shall not accept compensation for representing a client from one other than the client unless:
>
> (1) the client consents after consultation;
>
> (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
>
> (3) information relating to representation of a client is protected as required by Rule 1.6.

While Platinum consented to the Participation Agreement by signing the contract, it is not clear from the exhibits attached to Judge Rhodes's Expert Opinion that they consented to the conflict itself, in writing, or that they were given a reasonable opportunity to seek independent

counsel in doing so. Notably, in this case, although payment was technically funneled through Platinum, the transaction was, for all intents and purposes, a payment of S&W's fees by a non-client, in this case 30294. This clearly impacted S&W's independence, because, as set forth in detail below, when a contested matter arose over the Purported Participation Agreement between the Receiver and 30294 before the Arabella Bankruptcy Court, S&W came to 30294's defense, not the Receiver's.

Under Michigan law, a court generally will not enforce a fee agreement resulting from a conflict of interest. *Evans & Luptak, PLC v. Lizza*, 251 Mich. App. 187, 196-197 (2002). Given the clear violations of both Michigan Rule of Professional Responsibility 1.8(a) and (f) evidenced by the Purported Participation Agreement, this Court should not grant the Application, and should order the disgorgement of fees paid to S&W for pre-receivership work. The result would be the same under New York law. *Law Off. of Howard M. File, Esq., P.C. v Ostashko*, 875 N.Y.S.2d 502, 644 (N.Y. App. Div. 2009) ("'[C]ourts as a matter of public policy give particular scrutiny to fee arrangements between attorneys and clients, casting the burden on attorneys who have drafted the retainer agreements to show that the contracts are fair, reasonable, and fully known and understood by their clients'") (citations omitted); *Jay Deitz & Assoc. of Nassau County, Ltd. v Breslow & Walker*, LLP, 59 N.Y.S.3d 443, 505 (N.Y. App. Div. 2017) ("Rule 1.7 (a) (2) of the Rules of Professional Conduct provides that 'a lawyer shall not represent a client if a reasonable lawyer would conclude that . . . there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.' An attorney may not act as both an attorney and a broker in the same transaction where the broker fee is contingent upon the completion of a sale") (citations omitted).

C. S&W's Application Should Be Denied and Its Post-Receivership Receipt of

Pre-Receivership Fees Should Be Denied Because Its Actions Have Harmed the Receivership

One of the factors to consider in approving a fee application is the benefit of the work performed by the applicant to the estate. As S&W concedes, "the amount of compensation to be awarded court-appointed receivers and the professionals that assist them is within the court's discretion" and among other factors to be considered are the benefits conferred on the estate by the professional's service. Application at ¶43, citing *FTC v. Consumer Health Benefits Ass'n* No. 10-cv-3551 (ILG), 2011 WL 5513182, at *1 (E.D.N.Y. 2011). Notably, S&W also recognizes that one of the other factors for a receivership court to consider in weighing a professional's fee application is opposition or acquiescence by the SEC. Application at ¶ 48 citing *SEC v. Byers*, 590 F.Supp.2d 637, 644 (S.D.N.Y. 2008). The SEC opposed the Application.

Here, S&W's service and actions did not benefit the estate, but on balance, were detrimental to the estate, by practically giving away a significant asset of the estate (for its own benefit and not that of the estate), which resulted in litigation and uncertainty regarding the Receivership's interest in the Arabella claims. As a result, the Application should be denied.

1. The Purported Participation Agreement Was Poorly Drafted and Resulted in Litigation

In addition to conceding the ambiguities and inconsistencies of the document for which he now seeks compensation, Baum also conceded that he did not know if the type of transaction represented by the Purported Participation Agreement was within the ordinary course of a receivership, let alone one in its opening days. Arabella Trans. 129. The failure to properly advise the Receiver in this regard is another shortcoming in S&W's service to the Receiver that warrants denial of the Application. Clearly, once the Prior Receiver had time to properly

consider the transaction, he recognized the need to have it approved by this Court. *See* April 25, 2017 Letter (Dkt. 128).

As set forth above, the respective rights of the parties under the Purported Participation Agreement is now the subject of a contested matter before the Arabella Bankruptcy Court, notwithstanding the Receiver's position that the issue is within the exclusive jurisdiction of this Court as resolution of those issues require interpretations of the Receivership Order. In this regard, the Receiver intends to file a declaratory judgment action in the short term seeking a declaration that the Purported Participation Agreement is void *ab initio* because, among other things, it required approval of this Court, and because, it gave rise to a conflict of interest between S&W and its client, the Receiver.

2. S&W Has Advocated Against Platinum

To add insult to injury, rather than supporting its former client in a contested proceeding to determine the applicability of the very inconsistent provisions of the document it foisted upon the prior Receiver in the opening days of this Receivership, S&W has aligned itself with Platinum's adversary, not only filing papers taking positions contrary to Platinum's, but flying from Michigan to Ft. Worth, Texas to appear and testify against Platinum, from whom it now seeks nearly a half a million dollars in legal fees, to compensate it, in part, for drafting a document it concedes was not clear enough and has now given rise to multiple contested matters.

These facts give sufficient cause under both the Michigan Rules of Professional Responsibility and the equitable powers of this Court to deny the Application.

3. The Purported Participation Agreement Required Court Approval

S&W further subverted the receivership process by advising the prior Receiver to execute an agreement that was outside of the ordinary course of the receivership's business solely to provide for the payment of its own professional fees and then drafting a document, which, by

S&W's own admission before a United States Bankruptcy Court, contains numerous inconsistencies, which have resulted in time consuming and costly litigation for the receivership estate. In short, the Purported Participation Agreement was an opportunity for S&W to perform an end run around the Receivership Order's retention requirements and the necessity of awaiting the claims process for payment of pre-receivership fees. S&W's actions at the start of the receivership represent a change in the fee arrangement that previously existed, requiring additional justification especially because S&W purported to acquire an interest in one of its client's assets. S&W's actions in this regard merit denial of the Application and disgorgement of the pre-receivership fees it obtained in connection with the Purported Participation Agreement. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 11-458 (2011) ("Changes in fee arrangements that involve a lawyer acquiring an interest in the client's business, real estate, or other nonmonetary property will ordinarily require compliance with Rule 1.8(a).")

RESERVATION OF RIGHTS

Seemingly conceding the evidentiary inadequacy of its Application, on May 31, 2018, S&W purported to serve a subpoena on Charles Hoebeke, the CRO of Arabella, seeking among other documents, all communications regarding the Purported Participation Agreement and all communications regarding financing or defending the Arabella Loan (the "***Subpoena***"). As explained to S&W's counsel by letter dated June 2, 2018, the Subpoena is improper for several reasons, mainly: (a) S&W is not a party to the Receivership Case, and thus, is without authority under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure (to which the Subpoena inexplicably cites), or otherwise, to issue subpoenas in connection therewith; (b) S&W's issuance of the Subpoena, even if otherwise valid (which it is not), is an indication that the Application was premature, and it would be inequitable to require the Receiver to file her opposition before she is afforded to, just as S&W seeks, take discovery,

including, but not limited to a deposition of the Hon. Steven Rhodes (Ret.), and all S&W attorneys who billed time to work on behalf of Platinum and/or the Receiver; and (c) again assuming the validity of the Subpoena, it improperly purports to require production of documents not reasonably calculated to lead to the discovery of admissible evidence as to the Application and protected under a common-interest privilege agreement to which both the Receiver and Mr. Hoebeke, the target of the Subpoena, are parties.

Even without the benefit of discovery, a cursory examination of the fees and expenses shows they are unreasonable - - among other things, the Application seeks reimbursement for first class airfare, and the total amount of post-receivership legal fees sought ($459,729.25) is an amount not much less than the total of *all* post-receivership fees (of $526,768.58) paid to (19) other limited scope professionals combined (Dkt. #294).

CONCLUSION

For the reasons set forth herein, the Receiver respectfully requests entry of an order: (a) denying S&W's Application; (b) granting the Receiver's Cross-Motion for disgorgement of S&W's legal fees paid by Platinum after the institution of this Receivership; and (c) granting the Receiver such other and further relief as the Court deems appropriate.

Dated: New York, New York
June 5, 2018

OTTERBOURG P.C.

By: */s/ Adam C. Silverstein*
Adam C. Silverstein

230 Park Avenue
New York, New York 10169
Tel.: (212) 661-9100
Fax: (212) 682-6104
asilverstein@otterbourg.com

Attorneys for Melanie L. Cyganowski, as Receiver

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re:	)	Case No. 17-40120-Rfn11
	)	Dallas, Texas
ARABELLA EXPLORATION, LLC,	)	
	)	
Debtor.	)	May 10, 2018
	)	1:31 p.m.
----------	)	

TRANSCRIPT OF HEARING ON

ASSIGNMENT/TRANSFER OF CLAIM - TRANSFER AGREEMENT 3001(e)1
TRANSFEROR: BART M. SCHWARTZ, AS
SEC RECEIVER (CLAIM NO. 18) TO 30294, LLC. TO 30294, LLC (300)

BEFORE THE HONORABLE RUSSELL F. NELMS

UNITED STATES BANKRUPTCY COURT

Transcription Services: eScribers, LLC
7227 North 16th Street
Suite #207
Phoenix, AZ 85020
(973) 406-2250

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE

APPEARANCES:

For the Debtor:	RAYMOND W. BATTAGLIA, ESQ. Law Offices of Ray Battaglia, PLLC 66 Granburg Circle San Antonio, TX 78218
	DAVID A. HALL, ESQ. Miller, Johnson, Snell & Cummiskey, P.L.C. 45 Ottawa Avenue SW Grand Rapids, MI 49503
For Melanie L. Cyganowksi as receiver:	HOWARD C. RUBIN, ESQ. Kessler Collins, P.C. 2100 Ross Avenue Suite 750 Dallas, TX 75201
	ERIK B. WEINICK, ESQ. Otterbourg P.C. 230 Park Avenue New York, NY 10169
For Schafer & Weiner PLLC:	MARK STOUT, ESQ. Padfield & Stout LLP 421 W. Third Street Suite 910 Fort Worth, TX 76102
	MICHAEL E. BAUM, ESQ. JOSEPH K. GREKIN, ESQ. Schafer & Weiner PLLC 40950 Woodward Avenue Suite 100 Bloomfield Hills, MI 48304
For 30294, LLC:	CLAY M. TAYLOR, ESQ. BRANDON J. TITTLE, ESQ. Bonds Ellis Eppich Schafer Jones LLP 420 Throckmorton Street Suite 1000 Fort Worth, TX 76102

(Audio begins mid-sentence)

THE CLERK: -- for the Northern District of Texas is now in session, the Honorable Russell F. Nelms presiding.

THE COURT: Please be seated.

Good afternoon. At 1:30 we have Arabella Exploration, LLC. Let's start by taking appearances, please.

MR. TAYLOR: Clay Taylor and Brandon Tittle of the law firm Bonds Ellis, and we have here with us in the courtroom, Mr. Craig Bush, the principal of 30294, LLC.

MR. RUBIN: Good afternoon, Your Honor. Howard Rubin on behalf of Melanie Cyganowksi, the receiver in New York. And I'd like to introduce Erik Weinick, who is admitted pro hac in this case and will be doing our argument.

MR. WEINICK: Good afternoon, Your Honor. Erik Weinick of Otterbourg P.C. on behalf of Melanie Cyganowksi, receiver of the Platinum entities.

MR. STOUT: Good afternoon, Your Honor. Mark Stout here on behalf of Schafer & Weiner. With me, Your Honor, is Joe Grekin and Mr. Michael Baum. They have both been admitted in this case and appeared before, and I expect that they'll be making the arguments today, and specifically, Mr. Baum may be making any arguments as to stay and whether it's in effect.

MR. BATTAGLIA: Good afternoon, Judge. Ray Battaglia for the debtor, Arabella Exploration. In the courtroom with me today is David Hall of Miller, Johnson, my cocounsel. Chip

Hoebeke, the CRO/manager of the entity is also here.

And subject to the Court agreeing to this, I'd like to give you about a three-minute update before they start because, honestly, at some level, the debtor doesn't have a horse in this particular race. So --

THE COURT: Do you want to start with that then?

MR. BATTAGLIA: Sure. Sure. I'm pleased to announce that just this morning that Mr. Hoebeke has negotiated, along with other parties, the receiver, SEC receiver, and Founders, a settlement of the Founders' litigation. This settlement, which I'm not going to detail the terms today, provides a path forward in the sale of the assets along with the operatorship of the mineral interests.

So I would expect, in the near term, hopefully before the month expires, that you'll have a 9019 motion that deals with that lawsuit, which now is in arbitration, but we'll dismiss all of that litigation and settle it, followed shortly thereafter by a motion to update the sales procedures to accommodate the scheduling provided for in the settlement agreement. And hopefully we'll bring that all before this Court.

The APC bankruptcy estate is aware -- I don't know if they're aware of specific details of where we are today, but they've been apprised of where the settlement is going. So all of the key constituencies generally are aware of the terms

and what's going forward. And I'm just pleased to report that we appear now, after a little over a year, to have a path forward and hopefully bring this case to a successful conclusion.

THE COURT: Thank you.

Okay. Mr. Taylor, do you want to start us off this afternoon?

MR. TAYLOR: Certainly, Your Honor. We're ready to proceed to trial on this contested matter. I'd like to do opening arguments after everybody does any of their announcements and deal with all the housekeeping matters.

THE COURT: Okay.

MR. WEINICK: Your Honor, before we proceed to trial, may I approach?

THE COURT: Yes, um-hum.

MR. WEINICK: Your Honor, I don't know that we're quite ready to go to trial on this matter, and I think, as you may have seen in our papers, we don't believe that this is the proper forum for adjudicating this dispute.

This is a dispute between two nondebtors. It has no impact on this estate; I think you just heard that from debtor's counsel. There's no prejudice to any of the parties by having the receivership court determine the relative rights to a sum certain from this debtor as between 30294 and Platinum. That's what's required and contemplated by the two

receivership orders, both of which contain injunctions and stays against ancillary proceedings, which certainly this qualifies as. And the reason for that is very simple. When you have multiple proceedings about the same issues, you run the risk of inconsistent outcomes, and that's exactly what we have the potential for here.

You may hear later from the Schafer & Weiner firm, who is currently seeking its fees for its work on behalf of Platinum. And the reasons -- the issues that they've put in front of the receivership court, just this past Friday, are inextricably interwoven with the issues that 30294 wants to present to Your Honor, and that is the enforceability of the participation agreement and whether or not it allows 30294 to make a direct claim against this debtor.

We, of course, take the position that they may not make a direct claim against this debtor. They are a participant, perhaps, in Platinum's loan to Arabella. If there is a recovery, which hopefully there will be, they will look to Platinum for that recovery, not to the debtor/borrower directly. That's consistent with participation case law throughout the country.

Again, on a procedural note, this is more from what was originally termed a simple administrative transfer into, as counsel notes, a contested hearing. If there's ambiguity alleged in the governing contract, then that's something that

should be resolved through a wholesome process, not through ad hoc testimony without the benefit of discovery in advance. There are expert reports that have been presented to the Court. Those need to be fleshed out, depositions taken, counter-experts retained and then be deposed as well.

THE COURT: When you say they've been presented to "the court", which court?

MR. WEINICK: To your court as well as the receivership court. This is a report that was sanctioned by the Schafer & Weiner firm, with respect to their involvement, in connection with their request for fees, which stems directly from the participation agreement. There are allegations regarding the actions that they took in that. They obtained an expert report from retired Judge Rhodes in Michigan opining on the propriety of their actions and the propriety of the participation agreement. We, of course, would like an opportunity to question Judge Rhodes and to present our own expert witness.

In addition, the Schafer & Weiner itself -- and they're listed both to appear and advocate for themselves and to testify as witnesses -- they are either our former counsel or our current counsel. Some of their pleadings are actually signed as current counsel to Platinum. And that is a situation that is potentially rife with attorney-client privilege issues, and those should be considered carefully

before they take the stand through either depositions or motions in limine or both.

So there are a number of concerns that we have with proceeding with the taking of testimony and the presentment of evidence today, both because it runs afoul of the two receivership orders, both of which contain very well-founded-in-the-law injunctions and stays against ancillary proceedings, for the reasons that I went through, and also because, as a contested matter, this should be afforded the full discovery that goes with contested matters.

THE COURT: A couple of questions.

MR. WEINICK: Certainly.

THE COURT: When you started off, you mentioned the fact that it's a dispute between two nondebtors. I think you mentioned that it was a -- that you mentioned a jurisdictional defect. Are you saying that it's a defect in bankruptcy jurisdiction, that it doesn't exist over the dispute over the two parties today between the receiver and 30294?

MR. WEINICK: I think there are a couple of levels of that, yes. I think that there is a lack of a bankruptcy dispute because, if anything, resolution of this matter today could result in a negative impact on the debtor. And let me explain what I mean by that. If the claim is allowed to stand, the transfer of the claim is allowed to stand, then 30294 is going to be looking directly to the debtor for

payment of any recoveries.

First of all, that's in conflict with the participation agreement itself with the terms. But the participation agreement itself contains a waterfall that requires certain calculations and certain decisions to be made with respect to amounts of professional fees and whether things that, if you look at the terms of the participation agreement and it's enforceable, that's going to become a burden on the debtor to figure out, as opposed to with a traditional participation, where the obligation, if any, of Platinum to pay 30294 only arises upon realization of a recovery. And when that money comes in, Platinum then distributes it out to the participants, if any, in accordance with the mandated waterfall. So --

THE COURT: Yeah, I'm just trying to determine whether you were saying that there's a Stern v. Marshall type of jurisdictional defect here.

MR. WEINICK: No, I think it's broader than that, Your Honor. It's that the order of the Eastern District Court in New York, which the first order pre-dates the participation agreement and the second order pre-dates the filing of this transfer of claim, both have very specific provisions precluding individuals or entities from instituting actions that may impact the receivership estate. And that's exactly what has happened here.

What the procedure is supposed to be is that individuals or entities that have a claim or have a dispute with a receivership entity, or a claim to receivership property, go to the receivership court, much like approaching a bankruptcy court with an automatic stay, and seek relief from that stay. And either they get their dispute resolved by the receivership court, or perhaps the receivership court says: go back to Texas and go before Judge Nelms; this is properly before him. But the procedure is there so that the receivership court can be the one to interpret its own order.

I mean, one of the issues in this that 30294 wants to present today is whether or not Mr. Schwartz, who's the prior receiver, had authority to enter into this agreement in the first instance. That's an interpretation of the original receivership order. That's appropriately interpreted by the court that issued it.

So the prudent approach would be to have this teed up in front of Judge Cogan in New York, which S&W has started the process in doing that with their pre-motion letter that they filed on Friday. And then Judge Cogan can decide go back to Judge Nelms, or I'm going to decide it, or here's how it's going to go.

There's no prejudice to 30294 in doing that, because their rights, whatever they are under the participation agreement, won't be dissipated by sending this back to New

York for Judge Cogan to preside over it. Their rights are what they are. You're simply being asked to decide are they entitled to file a transfer of claim. And A, because of the receivership order, and B, because of the nature of the participation agreement, they're not permitted to do that. So they don't have standing. And so to go down and have a trial on it this afternoon runs afoul of all of those standards.

THE COURT: And I understand that. Do you also take issue with the procedural posture in which this is brought to me? In other words, it's teed up in the context of a contested matter. Are you also saying that it should have been an adversary proceeding rather than -- assuming that I'm the right court to try it, is it a --

MR. WEINICK: Yes.

THE COURT: Are you saying it's an adversary proceeding as opposed to a contested matter?

MR. WEINICK: I think it should be an adversary proceeding. And it's, in essence, a declaratory judgment action seeking a ruling as to what the rights are of the varied -- A, is it an enforceable document, and if so, what are the respective rights of the parties. And then, only then, do you go to, okay, they can seek a claim against this debtor, which by the way, isn't ripe yet. There haven't been any recoveries. We're a little bit premature. And taking the time to go to New York will not prejudice anyone. As we just

heard from counsel for the debtor, we are, knock wood, a ways away from actually seeing any recoveries. Hopefully they'll be large and make everybody very happy, but we're some months away from that, at minimum.

THE COURT: Thank you.

MR. WEINICK: Thank you, Your Honor.

THE COURT: Mr. Taylor?

MR. TAYLOR: So I'm slightly confused, Your Honor. I will take that as an opening statement. We announced we're ready for trial, and I presume, by making an opening statement, they have also said they're ready for trial.

They, at the one hand, say they haven't had time to do discovery in this matter. We filed a notice of transfer last year. We noticed this hearing after contacting the Court and said the rules contemplate that the Court shall set a hearing after an objection is filed. They filed an objection. That triggers: the court shall set a hearing; it shall issue an order. That initiates a contested proceeding.

I sent out discovery. I was able to get the discovery that I wanted. I sent a subpoena to Mr. Baum. I sent discovery to the debtor and received documents in response to that subpoena, to the subpoena duces tecum. And that's part of the evidence that this Court is going to be asked to consider when we proceed.

The evidence will show in this case, Your Honor, that

indeed we do have a direct claim against the debtor. Both the initial loan documents and the transfer document into 30294 expressly provide for that. I believe Mr. Weinick is somehow concerned with it impacting the receivership estate. The reality is when the receiver divested itself of this interest in the loan, the forty-five percent interest in the loan, he took it out of the receivership estate. It's not estate property. We're not impacting the estate.

Moreover, this entity, Platinum, for which the receiver has appeared in multiple instances before this Court, has filed proofs of claim, has participated in these proceedings, has participated in court-ordered mediations. For them to selectively try to choose as to when this stay and injunction does or does not apply is not appropriate. They can't ask for this Court to grant them certain types of relief but no, we don't want the Court to consider other things, specifically when it's called for under the rules of "the Court shall issue an order".

So I'm confused as to why they need any more time. This expert report that he refers to has been submitted in the witness and exhibit list. It has not actually been offered into evidence at this time. We can take up any of those evidentiary issues. They can assert any attorney-client privilege that they wish to assert with respect to Schafer & Weiner during the course of this hearing. That's what trials

are for.

So I'll reserve the rest of my opening statement if Your Honor would like to decide if indeed we are going to proceed based upon the limited arguments we've had so far.

THE COURT: Well, I'm going to carry these preliminary matters for the purposes of today's hearing. I'm not going to consider it to be a waiver of any rights by virtue of the fact that I'm going to go forward and take evidence on the matter, because I just think it's the more efficient and expedient way to handle this, as opposed to just rule as a preliminary matter. I don't even know what the effect of that would be. Is it a final order? Is it an appealable order? Does somebody choose to appeal? I think it's just best that I go ahead and hear the matter as it's teed up today and consider all of these issues in seriatim when they come up.

MR. TAYLOR: Thank you, Your Honor. We appreciate that. Our client and others have spent significant time and resources paying for this, flying down, preparing for this, and so we appreciate the Court's time.

If I may proceed with a brief opening statement? I'll try to keep it five minutes or less.

May it please the Court. We're here today on a hearing mandated by the Federal Rules of Bankruptcy Procedure 3001. It mandates the Court shall hold a hearing on the notice

of transfer that has been filed and objected to. That is the case here. The rule also provides that the Court shall hold a hearing to determine whether that claim has been transferred. Again, that's why we're here today. It further provides that if the claim has been transferred, that it shall enter an order so indicating that and substituting the transferee for the transferor.

The evidence will show that proof of claim number 18 in the Arabella Exploration case, which we will refer to throughout the course of this hearing as AEX, and proof of claim number 7 in the Arabella Operating Company bankruptcy case, which we will refer to as AOC, and is being jointly administered with this AEX case, have been partially transferred to my client, 30294.

30294 owns a forty-five-percent interest in that loan. It also owns an additional bundle of rights and that's: it gets the first 500,000-dollar out; then professionals are to be paid; then my client is to be paid at ten percent on its initial 500,000-dollar purchase price. Thereafter, the proceeds shall be split fifty-five/forty-five.

It's a simple document. It's entitled a participation agreement. I think Your Honor will hear those words frequently. The reality is that's the title of the document. And what this Court needs to look to is what does the guts of that agreement say. And the guts of that

agreement say that we may directly enforce that note against the debtor.

Moreover, the loan documents, by and between AEX or Arabella and Platinum, also provide that in the event of a default, any holder of the note may directly enforce. And again, the evidence will show this as we move forward.

30294 does indeed bear the initial burden of proof. The evidence we have today will carry that burden. What the evidence will show is the loan documents between Platinum and AEX are transferrable. It obviously contemplated that; the evidence will show that.

The loan documents provided that a holder, upon an event of default, can enforce the obligations under the loan documents directly.

Three, 30294 and Platinum engaged in an arm's-length transaction, each represented by counsel, and fundamentally fair to both parties, given the facts and circumstances then known and existing.

Each party to this transaction -- again, that's Platinum and 30294 -- had authority to enter into that transaction. The transaction was well within the ordinary course of business of Platinum, and therefore the receiver, acting on behalf of Platinum. The receiver had broad overarching powers to act for Platinum under the receivership order.

The transaction allowed 30294 to not only act as the holder after an event of default and enforce the note obligation, but as shown in the participation agreement, was further modified to allow 30294 to directly enforce all of the loan documents as provided for in the participation agreement, which I'll refer to here -- it's the transfer document because it's truly not a participation agreement.

And I think it important to note that Platinum itself, in its objection, says this is not a true participation agreement. And you know what? We agree. They're right; it's not. It's a direct claim.

I believe we've covered the stay issues. I'll move on from that.

We've talked about authority. In sum, the evidence will show that the parties knowingly entered into a sale for a portion of the Platinum loan to AEX. They entered into this transaction, or Platinum did, with full knowledge of the facts that existed, in an arm's-length deal, with full authority to transfer or sell a direct interest in the loan.

The debtor needs to pay 30294 directly upon a disbursement event. The loan documents provide they shall pay directly to any holder. Moreover, the participation agreement or the transfer document also contemplates that.

30294 has consent rights to a sale. They may not be unreasonably withheld, but Platinum is supposed to confer upon

the sale of any of the collateral. They haven't been doing that; that's what the evidence will show. But they are supposed to. Therefore, we need this order entered so that the debtor has clarity of who it has to talk to before it attempts to sell the collateral which, as we just heard an announcement, presumably, is now going to move forward because the Founders litigation hopefully has been settled.

Moreover, in soliciting votes for any plan of reorganization or liquidation, as the case may be, the loan documents themselves, between Arabella and Platinum, provide that the agent, here Platinum, may not act for the holders in voting their claims. The loan documents expressly contemplated a potential bankruptcy filing. Any holder had to be solicited and could vote its own claim. That's precisely why we should have to file and did file our notice of transfer because the debtor has to come solicit our vote.

Moreover, the debtor needs to know whom to pay in what amounts. This will provide clarity to them. The debtor doesn't want to, potentially, be liable to two different parties or one party for incorrectly paying the other. That's another important reason that the debtor needs clarity on this issue, and it does indeed impact the debtor.

We'll reserve all the rest of our argument for closing and are ready to proceed, Your Honor.

THE COURT: So just a quick question here.

MR. TAYLOR: Sure. I'm sorry.

THE COURT: A couple quick questions, Mr. Taylor. So, as I take it, some of the things that you're asking me to do in connection with this is whether or not the first receiver had the authority to enter into the participation agreement to begin with. I take it you want me to answer that in the affirmative.

And the other issues that are associated with the participation agreement itself, and that is there's been the allegation of a conflict of interest, not just a question of the receiver's authority to enter into it, but whether it was in the best interest of the receivership to enter into it because of a conflict of interest. I take it that's something you want me to -- do you want me to determine these things today --

MR. TAYLOR: So --

THE COURT: -- in connection with this hearing?

MR. TAYLOR: Your Honor, I do believe it appropriate that you look at the receivership order that was in place at the time the transaction was entered into and determine whether the receiver had authority to enter into that transaction. We shouldn't have to go to another court to determine that.

The receivership order is clear: he had broad powers, and he exercised those powers, and he rep'd and

warranted in the transfer document that he had the authority. So --

THE COURT: But the receivership order itself --

MR. TAYLOR: It's clear.

THE COURT: -- you gave -- somebody did give the receiver broad authority. And I guess what we're talking about here is whether this transaction is in the ordinary course of business of the receivership or whether it was not.

Does the receivership order itself -- I take it that our current receiver is taking the position that those types of issues need to be resolved in the receivership court itself, and that the receivership order that was entered contemplated these very types of disputes would be resolved there and not here. How do you respond to that?

MR. TAYLOR: So first of all, I would partially disagree with Your Honor as to what the position we're taking. There are three different operative paragraphs within the receivership order that gives a grant of authority to the receiver to do the types of act as he did here.

One of them, paragraph 28 -- we'll get into this in the evidence -- shows that it had to be within the ordinary course. The two other grants of authority are so overarchingly broad. It says that the receiver may take any act that an officer, or managing member, or officer, or board of directors can take, and may do so, and it's valid. There's

no interpreting this in any other way. They have the authority to act.

Now, there is that one part we do hit under paragraph 28 that says it has to be in in the ordinary course. We're prepared to show, and the evidence will show today it was indeed within the ordinary course. We win under any of those three paragraphs.

THE COURT: Well, then does that particular ordinary-course-of-business provision appear surplusage then, in light of the broadness of the other provisions that --

MR. TAYLOR: It -- correct, it just supplements and further explains. That's our position.

As to the alleged conflicts of interest, I don't believe that's properly before this Court today. It may inform this Court as to whether indeed the receiver was entering into this transaction with his eyes wide open, which the evidence will show today that indeed he was. But I don't think that this Court is being asked to or should ultimately determine any conflict of interest.

To the extent that the receivership estate has alleged claims against Schafer & Weiner, they can pursue those and will pursue those, if appropriate. I believe it informs this Court's decision, but it's not ultimately one that this Court need reach to make a decision. Does that answer your question?

THE COURT: Yes, it does. It answers my question insofar as --

MR. TAYLOR: As to what my position is.

THE COURT: -- to what your position is on that, yes.

MR. TAYLOR: I'm sorry. Any other questions that I can --

THE COURT: No.

MR. TAYLOR: Thank you.

THE COURT: Thank you.

MR. WEINICK: Your Honor, may I respond?

THE COURT: Yes. I mean, I take it -- I took your prior statement to be in the nature of why we shouldn't be taking all of this up today. So if you want to make an opening statement relative to matters that you may not have covered previously, then you're free to do so.

I'll let the parties know that I have read the briefs and both the response brief and reply brief.

MR. WEINICK: I'll reserve --

THE COURT: As well as -- I guess it was Mr. Baum's brief; is that it?

MR. TAYLOR: Your Honor, you should have a pleadings notebook. I believe the operative pleadings are -- would be the notice of transfer.

THE COURT: Um-hum.

MR. TAYLOR: The objection was filed there too which

we included in that.

THE COURT: Yes.

MR. TAYLOR: We filed a reply thereto, and then after that, Mr. Baum's firm, Schafer & Weiner, filed a joinder, and we also included that within that --

THE COURT: Right.

MR. TAYLOR: -- pleadings notebook for Your Honor.

MR. WEINICK: Your Honor, just a question --

THE COURT: Sure.

MR. WEINICK: -- or a point of clarification. As counsel just pointed out, the Schafer & Weiner firm has filed a joinder reply, whatever you want to term it. They filed a witness and exhibit list. Just so that we can prepare properly, what is their position this afternoon? Are they here as a witness, or are they advocating or -- I would like to get some clarity from the Court.

THE COURT: Well, I guess we can ask Mr. Baum that question.

MR. TAYLOR: I actually had a few housekeeping matters and was going to address that, if I may, Your Honor.

THE COURT: Okay.

MR. TAYLOR: At the conclusion of -- and before we start evidence, I'd like to go ahead and try to pre-admit those exhibits that we can that there is no dispute over. And I'd like to ask Mr. Rubin and Mr. Weinick if they are amenable

to that, if they could start looking through those.

It was my thought, in addition to that housekeeping matter, that we plan on calling three witnesses. Mr. Hoebeke needs to get going. We're going to call him second because we need to call my client first to tell you what's going on. And then we're going to try to get Mr. Hoebeke out of here.

It was my thought, since there's two parties in support of the Court entering an order allowing and substituting the transferee for the transferor, that during the direct examination of those witnesses that Mr. Grekin, who is here on behalf of Schafer & Weiner, be allowed to ask any questions that he may have also in support, and then we'll move into cross-examination.

I don't believe that the receiver, based upon their witness and exhibit list, is planning on offering any witnesses, and potentially maybe any exhibits, other than the cross-examination and getting those exhibits in via that way. And we believe we hopefully can wrap this up quickly this afternoon in front of Your Honor.

MR. WEINICK: Your Honor, in an effort to be expedient, I guess I will make a blanket objection as to the admissibility and propriety of both the testimony and the documentary evidence, for the reasons I set forth before and I don't want to rehash, because I know Your Honor has said we're going to proceed with taking the evidence. So I will proceed

accordingly.

THE COURT: Okay.

MR. WEINICK: But --

THE COURT: If there's no other objections to -- let's talk about --

MR. WEINICK: Yeah, but I do have a question, and we can take it as we get to them. Things like the Judge Rhodes report or evidence from witnesses that aren't here and available to be cross-examined, I guess we'll cross those bridges when we get to them. And I think Your Honor said we'll cross the bridge of any attorney-client issues when we get to them.

But I'm still not clear on Mr. Baum serving as both an advocate and a witness, and the overlay between the potential conflict issues and the enforceability of the participation agreement.

THE COURT: Well, first of all, let me take your evidentiary objections.

So I take it, Mr. Taylor, that you're offering the exhibits.

MR. TAYLOR: We are offering Exhibits A through KK and would like those admitted into evidence. And LL, we will reserve whether we offer that into evidence and take that up at a later time during the hearing.

THE COURT: Okay. Do you have objections to A

through KK, other than those that you've previously mentioned, which are procedural in nature?

MR. WEINICK: Well, I'd like to know for what purpose they're being admitted, respectively, so that if there are any relevance objections we can deal with them. Perhaps counsel will provide us --

THE COURT: Well, I don't have the answer to that question.

MR. WEINICK: Yeah, I realize that, Your Honor.

MR. TAYLOR: Well, if we need to take these up one by one, we'll do so. I would say that it seems apparent to me that notice of transferred claim appears to be relevant as does the proofs of claim, the loan documents, the receivership orders that we've already talked about. That's A through F. Participation agreement clearly appears to be relevant. The bankruptcy petition, showing when this case was filed, appears to be relevant. What happened in this case and what the debtor needed to do and was funded by my client, which is shown by Exhibits I through -- and as well as the financial condition, I through Z, and shows some of the monetization of assets that was subsequently enabled by my client by having provided this money, is shown in A through Z, and appears to be relevant.

As far as AA through K, it's a series of emails and attachments showing the negotiation and an arm's-length

circumstances under which these negotiations were occurring that shows that they were reasonable, given the facts and circumstances. And that's why we offer AA through KK and therefore appear to be relevant. But if we need to take those up point by point, we certainly can.

MR. WEINICK: Okay, Your Honor. I think it would be best to take them point by point as they come up in counsel's presentation.

THE COURT: All right. We'll do that. I think the best way to proceed is then to permit Mr. Taylor to call his witnesses. If there's an objection to a particular witness testifying, you can lodge that objection at the appropriate time.

And I guess we'll -- there was a response filed by Schafer & Weiner. I've read that response. It's in support of Mr. Taylor's position. But if the question today is what's the nature of their participation today, I don't know the nature of their participation. They may sit like potted plants in the gallery out there, in which event we don't really have to worry about the nature of it. So I guess we'll just take that as it comes as well.

MR. WEINICK: Your Honor, I'd like to ask that the nontestifying witnesses be excused until they're called.

THE COURT: Is there anybody that falls into that

category of --

MR. WEINICK: I'm sorry. Let me say that -- that witnesses who are going to testify be excluded while they're not testifying so that they're not hearing and being influenced by the testimony of the other witnesses.

THE COURT: Understood. So you're invoking the rule --

MR. WEINICK: Yes.

THE COURT: -- that would -- of course it wouldn't apply to party representatives.

Does anybody fall into that category?

MR. TAYLOR: Just a group of one.

MR. WEINICK: And actually, Mr. Hoebeke is not a party to -- he's a party representative, but not a party to this particular dispute, but --

MR. BATTAGLIA: I think I said we don't have a horse in the race, but that doesn't mean we're not a party to the bankruptcy case. We are the debtor. So it's up to the Court, but I don't think we're properly excluded.

THE COURT: Well --

MR. WEINICK: Your Honor, I'll withdraw my request as to Mr. Hoebeke.

THE COURT: Okay. All right. Thank you.

All right. Mr. Taylor, go ahead.

MR. TAYLOR: So is the rule being invoked then, and

Mr. Hoebeke will be --

THE COURT: Well, no, he withdrew his invocation of the rule, but --

MR. WEINICK: No --

THE COURT: Oh, you did not?

MR. WEINICK: Sorry. Only as to Mr. Hoebeke. As to Mr. Baum, I think he should be excluded.

MR. GREKIN: Your Honor, Joseph Grekin, Schafer & Weiner.

Mr. Baum is our party representative. He is the managing partner or one of two of our firm. I submit that he is allowed to stay in the courtroom.

THE COURT: Is the firm itself a party in the case?

MR. GREKIN: No. Apparently Michael doesn't care. So he's perfectly willing to go.

THE COURT: All right. Thank you.

MR. TITTLE: Good afternoon, Your Honor. Brandon Tittle for 30294.

At this time we'd like to call Craig Bush to the stand.

THE COURT: I'm sorry; let me get the name again, please.

MR. TITTLE: My name?

THE COURT: No.

MR. TITTLE: Mr. Craig Bush.

THE COURT: Oh, Mr. Bush, okay.

All right. Mr. Bush, please raise your right hand.

(Witness sworn)

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MR. TITTLE:

Q. Can you please state your name for the record?

A. Craig Bush.

Q. What is your current position at 30294, LLC?

A. I am the managing member.

Q. Can you explain the type of business that 30294, LLC is in?

A. It's an organization, an LLC created to make various investments.

Q. And what kind of work do you do as the managing member of 30294?

A. Assess various investments.

Q. As the managing member, did you negotiate and execute an agreement with Platinum and 30294?

A. I did.

Q. Can you describe the nature of that transaction?

A. Effectively, it was a purchase of forty-five percent of the -- Platinum's interest in a loan agreement.

Q. Mr. Bush, can you please turn to tab D-1 in the exhibit book? Do you recognize that document?

A. I do.
Q. Can you please identify it for the Court?
A. It's the senior secured note agreement between Arabella Exploration and Platinum dated September 2, 2014.
Q. Now, was this document provided to you when 30294 conducted due diligence in determining whether to enter into the sale agreement?
A. It was.
Q. And did you review this document?
A. I did.
Q. And is it part of 30294's business to keep such documents?
A. Yes.
Q. And did you maintain this document in your custody and control?
A. I did.

MR. TITTLE: Your Honor, we offer that Exhibit D-1 be entered into evidence.

MR. WEINICK: Objection, Your Honor. He failed to lay a foundation as to how he received it, from whom, et cetera.

Q. Mr. Bush, who did you receive this document from?
A. My counsel received it from Platinum's counsel.

MR. TITTLE: All right. Your Honor, we'd ask that it be admitted.

MR. WEINICK: No objection.

THE COURT: Okay. D-1 is admitted.

(9/2/14 senior secured note agreement between Arabella Exploration and Platinum was hereby received into evidence as 30294, LLC's Exhibit D-1, as of this date.)

Q. Now, Mr. Bush, did you conduct an analysis as to whether a senior secured note agreement was transferrable?

A. Excuse me. We did.

Q. And what exactly did you do?

A. Reviewed the various note and ancillary documents.

Q. Can you turn to section 2.6 on page 11 of Exhibit D-1? And can you read section 2.6, titled "payments to holders"? Can you read that section silently to yourself?

A. Yes.

Q. What is the importance of section 2.6 to you?

A. It says that payment will be made from the debtor directly to any holder.

Q. Can you now turn to section 7.2(b) on page 36 of Exhibit D-1?

THE COURT: Can you say the page number, please?

MR. TITTLE: That's page 36.

Q. Section 7.2 of the section titled "Remedies". And can you read that section to yourself silently as well?

A. (a) or (b) or what?

Q. 7.2(b).

A. Okay. Yes.
Q. And what is the importance of section 7.2(b)?
A. It provides that the -- any holder may enforce payment.
Q. Okay. Can you now turn to section 8.9(b) on page 43? And can you also read that section silently to yourself as well? It's the last paragraph, starting with "nothing contained".
A. Yes.
Q. And what is the importance of section 8.9(b)?
A. That any holder has a vote on approval -- approval, excuse me, of any plan of reorganization.
Q. And after you reviewed this senior secured note agreement, to you believe it to be freely transferrable?
A. Clearly.
Q. Mr. Bush, can I now have you turn to Exhibit D-2? Do you recognize that document?
A. I do.
Q. Can you please identify it for the Court?
A. It's a deed of trust and security agreement.
Q. Was this document provided to you when 30294 conducted due diligence in determining whether to enter into the sale agreement?
A. It was.
Q. And who did you receive this from?
A. From counsel from Platinum to my counsel.

Q. And did you review this document?
A. Yes.
Q. And is it part of 30294's business to keep such documents?
A. It is.
Q. And did you maintain this document in your custody and control?
A. Yes.
MR. TITTLE: Your Honor, we'd offer Exhibit D-2 into evidence at this time.
MR. WEINICK: No objection.
THE COURT: D-2's admitted.
(Deed of trust and security agreement was hereby received into evidence as 30294, LLC's Exhibit D-1, as of this date.)
Q. Mr. Bush, did you also conduct an analysis of whether the deed of trust was transferable?
A. Yes.
Q. And now can you turn to section 6.9 on page 15 of D-2? That's section 6.9. Can you read that section silently, please?
A. Okay.
Q. What is the importance of section 6.9 to you?
A. It provides that this document is transferrable.
Q. Perfect. Can I have you now turn to Exhibit D-3? Do you recognize that document?

A. I do.
Q. Can you please identify it for the Court?
A. Security and pledge agreement, September 2, 2014, between Arabella and Platinum.
Q. Now, was this document provided to you when 30294 conducted due diligence to determine whether to enter into the sale agreement?
A. It was.
Q. And did you review this document?
A. I --
Q. Oh, sorry. Excuse me. Who did you receive this from?
A. Counsel to counsel.
Q. And did you review this document?
A. I did.
Q. And is it part of 30294's business to keep such documents?
A. It is.
Q. And did you maintain this document in your custody and control?
A. Yes.
MR. TITTLE: All right. At this time we'd offer Exhibit D-3 into evidence.
MR. WEINICK: Other than my overarching objection, no objection to this document.
THE COURT: It's admitted.

(9/2/14 security and pledge agreement between Arabella and Platinum was hereby received into evidence as 30294, LLC's Exhibit D-3, as of this date.)

Q. Mr. Bush, did you conduct an analysis of whether the security and pledge agreement was transferable?

A. We did.

Q. Now can you turn to section 9.6 on page 25 of Exhibit D-3?

A. Counsel, could you repeat the page?

Q. 25. It's titled "successors and assigns".

A. I see that.

Q. Can you also read that section 9.6 to yourself silently, please?

A. Okay.

Q. Now, what is your understanding of section 9.6?

A. Again, it allows for the transfer of this document.

Q. All right. Can you now turn to Exhibit D-4, the last of the loan documents? Do you recognize this document?

A. I do.

Q. And can you please identify it for the Court?

A. It's a guarantee agreement.

Q. Now, was this document also provided to you when 30294 conducted due diligence to determine whether to enter into the sale agreement?

A. It was.

Q. And who did you receive this from?
A. Counsel for Platinum.
Q. And now, did you review this document?
A. We did, yes.
Q. And is it part of 30294's business to keep such documents?
A. It is.
Q. And did you maintain this document in your custody and control?
A. Yes.
MR. TITTLE: Your Honor, we offer Exhibit D-4 into evidence at this time.
MR. WEINICK: No objection, with the same reservation.
THE COURT: D-4 is admitted.
(Guarantee agreement was hereby received into evidence as 30294, LLC's Exhibit D-4, as of this date.)
Q. And like all the other loan documents, did you conduct an analysis as to whether the guarantee was transferable?
A. We did.
Q. Can you turn to section 10 of D-4, and that is on page 3. And can you read that section to yourself silently?
A. Yes.
Q. And what is the importance of section 10 to you?
A. It provides that this agreement is transferable.

Q. Now can I have you turn to Exhibit E? Do you recognize that document?
A. Yes.
Q. Can you please identify it for the Court?
A. It's an order appointing receiver.
MR. TITTLE: Your Honor, we offer Exhibit E into evidence.
THE COURT: Any objection to E?
MR. WEINICK: No, Your Honor.
THE COURT: E is admitted.
(Order appointing receiver was hereby received into evidence as 30294, LLC's Exhibit E, as of this date.)
Q. Mr. Bush, can you tell me the date that this order was entered?
A. It's time-stamped December 19, 2016.
Q. And do you know whether this order was entered prior to the sale agreement?
A. It was.
Q. Now, can you turn to page 12, paragraph 28 of the order?
A. Yes.
Q. And can you read paragraph 12 out loud for the Court?
A. "The receiver may, without further order of this Court, transfer, compromise, or otherwise dispose of any receivership property, other than real estate, in the ordinary course of business, on terms and in the manner the receiver deems most

beneficial to the receivership estate and with due regard to the realization of the true and proper value of such receivership property."

Q. Mr. Bush, did you hire counsel to assist you in negotiating this agreement?

A. Yes.

Q. For the sale agreement, not this agreement?

A. Yeah, correct.

Q. Now, did your counsel explain to you the language in the first receiver order?

A. Yes.

Q. Can you explain what paragraph 28 means to you?

A. I think it's fairly straightforward, in my interpretation; other than selling real estate, the receiver may do what he or she believes is in the best interests of the receivership.

Q. Mr. Bush, did you rely on the language in paragraph 28 when executing the sale agreement?

A. In part, yes.

Q. Mr. Bush, would you please turn with me to Exhibit G, please? Do you recognize that document?

A. I do.

Q. Can you please identify it for the Court?

A. It's entitled "Participation agreement".

Q. And did you review this document?

A. Yes.
Q. Is it part of 30294's business to enter into and to keep such documents?
A. Yes.
Q. And did you maintain this document in your custody and control?
A. Yes.
MR. TITTLE: Your Honor, we offer Exhibit G into evidence.
THE COURT: Any objection to G?
MR. WEINICK: We'll get into what the various provisions mean, but no objection.
THE COURT: Okay. G is admitted.
(Participation agreement was hereby received into evidence as 30294, LLC's Exhibit G, as of this date.)
Q. Mr. Bush, can you explain how the terms of the sale agreement were negotiated?
A. As is customary, I think there were offers made and counteroffers proposed, and ultimately the economics were agreed upon, and then an agreement was drafted.
Q. Now, do each of the parties have their own counsel?
A. Yes.
Q. And each of their counsel discussed with their client and came to what was ultimately the end product, the sale agreement?

A. There were several iterations, but yes.
Q. And was it your opinion that the terms of the sale agreement were negotiated at arm's length?
A. Yes.
Q. Can you turn to paragraph M on page 3, please? It's at the top of the page. Do you mind reading paragraph M out loud, please?
A. "Platinum acknowledges and agrees that the purchase price shall be used exclusively to fund professional fees and by its signature to this agreement authorizes" --
Q. Wait, wait, wait. Excuse me. That's paragraph O. Can you read paragraph M, please?
THE COURT: No, no, no, no.
A. No.
Q. Paragraph M.
A. M as in Mary?
Q. That's what I said.
A. I'm sorry. I heard --
THE COURT: Everybody's hearing Nancy.
THE WITNESS: I heard N.
MR. TITTLE: Everyone's hearing Nancy? Excuse me, Your Honor. M.
A. M; you'd like me to read the entire paragraph?
Q. M, yes.
A. Okay.

Q. Can you please read M?
A. Yes. "Participation purchaser has offered to purchase forty-five percent of Platinum's interest into and under the note, note documents, and secured loan, in exchange for 500,000 dollars plus any future advances made by participation purchaser, in its discretion, to fund professional fees and costs, purchase price. The purchase price shall accrue interest at ten percent per annum, the interest. Platinum agrees that participation purchaser will receive forty-five percent of any monies recovered by Platinum relating to the notes, note documents, and secured loan, the participation."
Q. And what is your understanding of paragraph M?
MR. WEINICK: Your Honor, can we hold that question for one moment? I apologize. It occurs to me that page 3 of 8 of what's been marked as Exhibit G does not contain initials at the bottom of the page, unlike the other, and just there are different copies of the participation agreement floating around in various exhibits. I want to make sure we're all using the same one.
MR. TAYLOR: May I address that, Your Honor, because it was confusing me too. The copies that I received, and the parties ended up sending back and forth, they were all initialed at one time, but somebody, at some point in time, it got fed into a document reader for a PDF, or at least this is what appears to have happened. And the bottom got cut off so

you couldn't see the whole thing. So for this page we had to use the Word document that wasn't signed so that you could see the whole thing for completeness. And that is my understanding of why it looks like that. It could be --

MR. WEINICK: If I may, can we do a substitution?

MR. TAYLOR: Sure.

MR. TITTLE: Yeah.

Q. Can you read this section M again for the Court?

A. Sure. "Participation purchaser has offered to purchase forty-five percent of Platinum's interest into and under the note, note documents, and secured loan, in exchange for 500,000 dollars plus any future advances made by participation purchaser, in its discretion, to fund professional fees and costs, purchase price. The purchase price shall accrue interest at ten percent per annum, the interest. Platinum agrees that participation purchaser will receive forty-five percent of any monies recovered by Platinum relating to the notes, note documents, and secured loan, the participation."

Q. And what is your understanding of paragraph M?

A. That describes what my entity was acquiring.

Q. And did you pay the purchase price of 500,000 dollars?

A. Yes.

Q. How was that paid?

A. By check.

Q. And who did you send the check to?

A. Schafer & Weiner.
Q. And do you know what approximate time that check was sent?
A. It actually wasn't sent; it was hand delivered.
Q. And do you know what date that occurred, approximate date?
A. I can't recall whether it was the last week of 2016 or the first week of 2017, that time frame.
Q. Can you now turn to section 12A on page 6? And can you read that --
A. I should be using this, right?
Q. Yeah, we can go back to using the original.
MR. TITTLE: Right, we can use the original now for the one --
MR. TAYLOR: Well, that's going to be marked and offered so --
MR. TITTLE: Okay.
MR. TAYLOR: -- you need to use that one.
Q. Can you read section 12A out loud, please?
A. "Each party hereby certifies and warrants to each counterparty that: 1) it has read and understands and is in full concurrence with the provisions contained within this agreement; 2) the individual executing this agreement for that party has the necessary authority to bind that party; and 3) it has entered into and executed this agreement voluntarily

and with full knowledge of its significance, meaning, and binding effect."

Q. What is the importance of section 12A to you?

A. It assures both parties that the person signing the document has the requisite authority to do so and bind -- bind each party.

Q. Did you negotiate that paragraph 12A be included in the sale agreement?

A. Yes. Initially it was not in the proposed agreement, and through my counsel we inserted that provision.

Q. Without the addition of paragraph 12A, would you have executed the agreement?

A. No.

Q. Can you now turn to section 9 on page 5, please? Can you please read that section out loud?

A. "Nothing in this agreement will be construed to limit or restrict Platinum from, in any way, exercising any rights or remedies arising from and under the note or note documents. Contemporaneously, Platinum authorizes participation purchaser, who shall have the same rights and powers as Platinum under the note documents, to enforce the note or note documents as Platinum's agent, including, but not limited to exercising any rights or remedies arising from the note or note documents or as provided for under applicable law."

Q. What is the importance of paragraph 9 to you?

A. It allows us to enforce the terms of the note and note documents.
Q. Did you know at the time that you entered into discussions with them whether they were also discussing or talking with other parties?
A. That's what I was told, yes.
Q. In your initial communications with Platinum, did they send you a proposed sale document?
A. Yes.
Q. And do you know whether it was substantially in the form of an attachment to the email which is marked as Exhibit AA?
MR. TAYLOR: That should be in binder 2 of 2, Your Honor. They just got too large.
Q. Now, we're not offering this into evidence at this time, but we wanted you to see -- do you recognize the attachment to Exhibit AA?
A. Yes.
Q. Can you turn to section 10 in this document? And that is on page 4. Can you read out loud section 10 of this agreement?
A. "Nothing in this agreement will be construed to limit or restrict Platinum from, in any way, exercising any rights or remedies arising from the note or note documents. TCA shall have no right to enforce the note or note documents, including, but not limited to exercising any rights or

remedies arising from the note or note documents or as provided for under applicable law. All rights, remedies, privileges, et cetera, with respect to the note may only be exercised by Platinum without any requirement or consent or approval by TCA."

MR. WEINICK: Your Honor, before counsel continues, if the witness is going to read sections of an unadmitted document into the record, I think we should have the document itself presented and offered into evidence.

MR. TITTLE: What we're really trying to do at this point is to explain a prior provision that was in his own loan doc -- or his agreement that was later modified to what it is currently, and that's all we're using it for at this time.

THE COURT: Well, I still agree that if it's going to be read into the record then it needs to be admitted into the record.

MR. TITTLE: All right.

Q. Well, we'll backtrack then, and what we'll ask then is did you negotiate, when you were entering into the sale agreement, to revise what is now paragraph 9 of your sale agreement? And I'll wait until you get --

A. Yes, that provision was negotiated.

Q. Can you explain how paragraph 9 was revised in the sale agreement?

A. Instead of giving Platinum sole authority to enforce any

of the note or note documents, that -- that exclusivity was removed.

Q. Can you now turn to section 5 of page 4 of the sale agreement? I'm sorry --

THE COURT: Could you give us an exhibit number on that that you're referring to? You said that -- you referred to the sale agreement.

MR. TITTLE: It was a draft that was entered into by another party, and that's -- it was attached to an exhibit, and it's AA.

THE COURT: Okay. I'm sorry. I had a little bit of difficulty following this so --

MR. TITTLE: Do you need a larger --

THE COURT: So you're talking about -- the first reference is to Exhibit AA, and then there's a reference to an exhibit that's a document that's appended to it --

MR. TITTLE: Um-hum.

THE COURT: -- the participation agreement. And so you're referring as to what page on that one?

MR. TITTLE: It was section 10 -- paragraph 10 in that document.

THE COURT: Okay.

MR. TITTLE: Do you have that?

MR. WEINICK: Your Honor, if I may, when counsel is referring to the sale agreement, is he referring to Exhibit G,

the participation agreement, or is he referring --

MR. TITTLE: Yes. I was merely using Exhibit AA as an example of a draft that he previously had with the sale agreement.

THE COURT: Okay.

MR. TITTLE: It was identical to the sale agreement that they negotiated at the very beginning when they were in discussions.

THE COURT: Okay.

Q. Okay. So we're now at section 5 of the sale agreement, page 4. Can you please read section 5 out loud, please?

A. The entire section?

THE COURT: Again, I'm sorry; is there only one sale agreement, because -- or tell me which exhibit number where --

MR. TITTLE: On the --

THE COURT: -- you refer to the sale agreement.

MR. TITTLE: The sale agreement we're using as Exhibit G.

THE COURT: Okay. All right. So Exhibit G. And I'm sorry, you're referring him to which paragraph, please?

MR. TITTLE: 5 of page 4.

THE COURT: Okay. Go ahead.

Q. Can you start with "for clarity", and read that sentence, please, out loud? It's the second sentence.

A. "For clarity, Platinum retains the right to manage,

perform, and enforce the terms of the note, and to exercise and to enforce all privileges and rights exercisable by it thereunder, in its sole and unfettered discretion, including the right to amendment of. However, notwithstanding the above, Platinum agrees that any settlement or sale regarding any and all collateral or the sale of any and all collateral under the note documents is subject to participation purchaser's consent which shall not be unreasonably withheld."

Q. And what is the importance of section 5 to the sale agreement?

A. So that I would be kept in the loop as far as sale of assets and given the chance to express an opinion.

Q. All right. Can you turn to section 6 on that same page?

A. Yes.

Q. And can you read that section beginning with the second sentence, "moreover"?

A. "Moreover, the participation purchaser and Platinum further agree that all communication regarding any settlement or sale of any and all collateral under the note documents shall be open and continuous for the participation purchaser and his counsel such that participation purchaser and his counsel are kept fully apprised of each step of any litigation process involving any and all of the collateral under the note documents regardless of whether in state or federal court proceedings."

Q. Now, has Platinum ever consulted with you in connection with 30294's rights and powers under the notes?

MR. WEINICK: Objection. Relevance, Your Honor.

MR. TITTLE: Well, it's relevant because they never contacted 30294 when filing the proof of claim, and therefore we've had to take our own steps to enforce the rights that he's clearly owed under the sale agreement, including filing the notice of transfer.

MR. TITTLE: I think, Your Honor, that goes to whether or not the agreement, if it's enforceable, has been breached, not whether there is an enforceable right to file a proof of claim.

THE COURT: Well, I understand, but I'll overrule the objection.

MR. TITTLE: Okay.

Q. Can you --

A. I have not been consulted with respect to the sale of any of the assets.

Q. Can you now turn to section 12H on page 7 of the sale agreement? Can you read the first two sentences out loud, under that section?

A. "This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. All provisions, covenants and representations of the note documents remain in full force and effect except as modified

by this agreement which shall prevail in the event of any conflict between them."

Q. And what is your understanding of section 12H?

A. This is an integration clause which indicates that this agreement, the four squares are the only agreement.

Q. And would you turn to Exhibits B and C?

MR. TITTLE: We'd like to offer these into evidence, EMT proofs of claim.

MR. WEINICK: Counsel, these were pulled directly from the docket?

MR. TITTLE: That's correct.

MR. WEINICK: No objection, Your Honor.

THE WITNESS: Excuse me, where are they located in that binder?

Q. B and C, B as in boy.

A. Thank you.

THE COURT: B and C are admitted.

(EMT proofs of claim was hereby received into evidence as 30294, LLC's Exhibits B and C, as of this date.)

Q. Mr. Bishop, you reviewed the proofs of claim that were filed in the claim registry of AEX and AOC?

A. Yes.

Q. Do these proofs of claim accurately reflect the total claim as reflected in the note documents?

A. I believe so.

Q. Do you know who prepared the proofs of claim?
A. I believe Mr. Baum.
Q. Is it your understanding that Platinum is allowed to vote on behalf of the entire claim that's listed in the proof of claim?
A. I believe we're entitled to vote as well.
Q. Is Platinum allowed to prove the sale of any collateral without your consent?
A. No.
Q. Has there been prior sales of the collateral?
A. To my knowledge, yes.
Q. Do you have any knowledge of any future or pending sales or settlements?
A. Yes.
Q. And can you explain what future sale or settlement is taking place?
A. I think Mr. Battaglia describe for everyone the settlement that was reached in principle this morning with founders.
Q. Has Platinum ever tried to get your consent for such sales?
A. No.
Q. Did this further exacerbate your need to file the notice of transfer?
A. Yes.

Q. And did you file the notice of transfer with the court?

A. Yes.

MR. TITTLE: Pass the witness.

THE COURT: Mr. Bush, could we get you to speak into that mic?

THE WITNESS: Oh, I'm sorry.

THE COURT: I'm having a hard time picking you up.

THE WITNESS: Sorry.

THE CLERK: That's okay.

MR. TITTLE: Pass the witness.

MR. GREKIN: Your Honor, I have just a few --

MR. WEINICK: Your Honor, I would object to counsel questioning the witness. They're not a party to this dispute.

MR. GREKIN: Actually, Your Honor, I strenuously disagree with that. We are a party to this dispute. We're a party to this dispute in at least two or three ways.

First of all, I think we're a party to the agreement that's in dispute. I know one of the parties that is purportedly to be paid under this agreement are professionals, we are one of those professionals in that agreement. If we are disputing the meaning of this agreement, I think we are a party to this dispute. We have rights under this agreement just like Mr. Bush's entity, and just like the receiver.

In addition, I would say that it would be somewhat ironic if we were excluded from asking questions when we were

a -- I'll put it delicately, a somewhat central topic in the receiver's brief, and we are not allowed to respond at all. The receiver accuses us of doing untoward things, it seems to me that even if we weren't part of this agreement, we ought to be able to ask questions.

Finally, Your Honor, I would say that we performed work in this bankruptcy for the receiver, they are not paying us. And they are not paying us, in part, because they refused to litigate this particular agreement or anything in front of the New York court. And now they will not even allow me to ask questions here. I think as a result, since I'm a party to this agreement, I ought to be able to ask questions. I do not have very many.

MR. WEINICK: Your Honor, may I respond?

THE COURT: Yes.

MR. WEINICK: Your Honor, first of all, they're not a signatory to the agreement that's at issue here.

Second of all, the -- many of the issues that counsel just brought up are exactly why, and I don't want to rehash the original argument why this should be in front of Judge Cogan, which it is. They're complaining that their grievances aren't being heard. They're complaining that they don't like the way they've being described in papers. Well, Judge Cogan has ordered the receivership to respond to their letter this Monday. And that process will start to play out immediately.

And they are current and their former counsel, depending which of their papers they look at. So I think it's highly inappropriate that they come into court seeking their fees in the receivership court for the work that they did on our behalf in this bankruptcy. And then come into this bankruptcy court and seek to undermine the receivership estate. They filed a pleading in response to our objection, that doesn't make them a party. Just because they may be -- there are professional fees mentioned in the participation agreement, doesn't make them a party to the agreement. Doesn't give them the right to ask questions of a witness.

THE COURT: Are those professional -- are there professional fees yet to be paid under the participation agreement, or have they been paid in full?

MR. WEINICK: Are you asking counsel or me?

THE COURT: No.

MR. GREKIN: We have not been paid, Your Honor.

THE COURT: Okay.

MR. WEINICK: All right.

THE COURT: I find that Schafer & Weiner is a party-in-interest as defined by Section 1109(b) of the Bankruptcy Code.

MR. GREKIN: Thank you, Your Honor.

DIRECT EXAMINATION

BY GREKIN:

Q. Good afternoon, Mr. Bush.

A. Good afternoon.

Q. How did you learn about the opportunity to purchase a participation in the Arabella loan?

A. A friend of a friend.

Q. Was it from Schafer & Weiner?

A. No.

Q. Who did you negotiate the basic business terms initially of the participation agreement with?

MR. WEINICK: Objection, Your Honor. What's the relevance of this line of questioning?

MR. GREKIN: Your Honor --

MR. WEINICK: It's whether or not there's an enforceable agreement, and whether or not it should be -- allow 30294 to file a direct claim against this debtor.

MR. GREKIN: Your Honor, I'm responding to a particular section of counsel's brief. Which says that, in fact, my firm negotiated this participation agreement with Mr. Bush's entity, and accused us of having a conflict as a result. And, in addition, said that the participation agreement should not be enforced because of that conflict. That's their argument that I am responding to directly here. Because none of those statements are true.

THE COURT: I don't see myself resolving this whole

question about conflict of interest. But it was raised in the objection to the transfer. So I'll overrule the objection.

MR. GREKIN: Thank you, Your Honor.

Q. Who did you negotiate the initial business terms with, Mr. Bush?

A. I believe Mr. Hoebeke.

Q. It wasn't with Michael Baum?

A. Correct.

Q. When was the first time you met Mr. Baum?

A. When I handed him a 500,000 dollar check.

Q. And that was after the participation agreement was signed, I presume?

A. Correct.

Q. When you entered into -- I guess counsel's calling it the sale agreement, so I will as well. When you entered into the sale agreement did you understand that the money you were paying would be used to pay professionals?

A. Of course.

Q. And, in fact, that's -- you read Exhibit G in paragraph N, it was a mistake, but it says it in there, doesn't it?

A. It does.

Q. And did you negotiate for that?

A. That was part of the result of the negotiations, yes.

Q. Did you believe that this was necessary, or would you have rather had the money go to Platinum?

A. No, the entire purpose of funding this was to fund the professionals so that the bankruptcy could -- excuse me, so that they company could preserve its assets.

Q. Without funding the professionals the assets may well have been lost?

A. They certainly would have.

MR. WEINICK: Objection, calls for speculation.

THE COURT: I'll sustain that objection.

MR. WEINICK: Okay.

THE COURT: Go ahead.

Q. At the time was it your opinion that if -- that the professionals -- excuse me, let me try again. At the time was it your thought that if this money wasn't paid to the professionals the assets might have been lost?

A. Correct.

Q. Would you have purchased the participation if the money had all gone to Platinum and the professionals had remained unpaid?

A. No.

Q. You were present at the mediation with APC, were you not?

A. I was.

MR. WEINICK: Objection, leading.

MR. GREKIN: I can rephrase.

MR. WEINICK: Okay.

MR. GREKIN: It's not a big deal.

Q. Are you familiar with the mediation that took place between several parties, including APC?

A. As a matter of fact I attended that.

Q. Thank you. And did you observe the professionals and how they acted at that mediation?

A. Yes.

Q. Do you think the professionals paid with the money you spent on the participation, did a good job protecting the collateral?

A. I believe so.

MR. GREKIN: That's all I have, Your Honor.

THE COURT: Other questions for Mr. Bush?

MR. WEINICK: Before my cross-examination, Your Honor?

THE COURT: Yes. Okay, go right ahead.

CROSS-EXAMINATION

BY MR. WEINICK:

Q. Sir, do you have Exhibit G handy?

A. Yes.

Q. I'd like to turn your attention to page 7, item 12(d). Can you read that to yourself, please?

A. I'm sorry, 12(d), yes.

Q. 12(d), it begins "This agreement shall be governed."

A. Yes, thank you. Yes.

Q. You've chosen to ignore that -- you understand what that

provision means, correct?

A. I do.

Q. Okay. You've chosen to ignore that provision in pursuing the action in this court today, correct?

A. We're not in Michigan.

Q. Sir, can you look at the first receivership order, please?

A. Which exhibit is that, please?

THE COURT: I'm sorry, what Exhibit, counsel?

MR. WEINICK: Exhibit E.

A. Yes.

Q. And can you turn to page 11 of that exhibit? I'll draw your attention to the section entitled "Stay of Litigation," do you see that?

A. I do.

Q. Have you read that before today?

A. I'm sure I have.

Q. Did you see that before entering into the participation agreement, Exhibit G?

A. Yes.

Q. Do you understand --

A. Was it an E, I'm sorry, you mean?

Q. Exhibit G, the participation agreement?

A. Did I see that?

Q. Did you see the "Stay of Litigation" section of the

receivership order prior to entering into the participation agreement?

A. I believe so.

Q. Now, your counsel asked you about paragraph 28, you've seen that, correct?

A. Correct.

Q. And you explained that -- your counsel explained to you that under that provision the receiver had the authority to enter into the transaction, correct?

A. No, I don't think I explained it. My counsel asked what my opinion was.

Q. No, I'm sorry. Your counsel -- your deal counsel, the counsel --

A. Oh, okay.

Q. -- at the time of entering into the participation agreement. What was that counsel's name?

A. Sean Fitzgerald.

Q. Did Mr. Fitzgerald explain to you what paragraph 28 meant, correct?

A. I don't recall specifically, he may have.

Q. Okay. And counsel -- you don't recall if counsel told you that the transaction itself might be challenged as exceeding the scope of the receivership's authority, do you?

A. No, there was no such discussion.

Q. Now, you just testified as to attending the mediation

session in the spring of 2017, do you recall that, correct?

A. Yes.

Q. You're aware that the settlement that arose out of that mediation had to be approved by several courts, correct?

A. I believe so.

Q. It had to be approved by this court, correct?

A. Perhaps.

Q. It had to be approved by the other Arabella bankruptcy court?

A. Yeah, I'm not certain exactly which courts, but, yes.

Q. Okay. Are you aware that it was approved by the receivership court?

A. No, but that makes sense.

Q. Makes sense because it was a nonordinary course transaction, correct?

A. No. I don't know what an ordinary course transaction is.

Q. Now, turning your attention back to Exhibit G, which is the participation agreement, you testified that paragraph 9 allows you to enforce your rights under the agreement, correct?

A. Yes.

Q. And you specifically asked that that paragraph be included, correct?

A. Correct.

Q. Now, there are certain other provisions that conflict

with that, are there not?

A. Not that I'm aware of.

Q. Okay. Well, let's take a look. Paragraph 3 of Exhibit G, "Platinum acknowledged" -- should be "acknowledges, and agrees that the participation by the participation purchaser simultaneously confers upon participation purchaser forty-five percent of the rights and interest in the note documents, including without limitation the note and any guarantee or any collateral or security given for the note or any guarantee." See that?

A. I do.

Q. And have I read that fairly accurately?

A. Yes.

Q. That doesn't transfer title in the collateral to you, does it?

MR. TITTLE: Objection, as asking. Calls for legal conclusion.

MR. WEINICK: His direct examination was full of requests for legal conclusions.

THE COURT: Well, to the extent -- that's true. The direct called for his opinions on these -- with these provisions, I think it was phrased, why is that important to you? What is the importance of that to you? So I guess we could phrase it the same way, what's the importance of this particular provision to this witness. So I'll overrule the

objection.

A. If I understand your question, why this is important to me, is it references the forty-five percent I am purchasing from Platinum.

Q. But it's not your opinion that this transfer's title to you, does it?

A. I guess I'm not sure what title to a note --

Q. Okay.

A. -- how you confer title to a note.

Q. Let's turn to paragraph 5. Now, you testified -- you have it, sir?

A. I do.

Q. Okay. You testified that you specifically requested that paragraph 9 be excluded -- be included, correct?

A. In its final form, yes.

Q. You didn't request that the second sentence of paragraph 5 be excluded, did you?

A. Apparently not.

Q. Now you testified about the reason for your consent being required were Platinum try to settle the collateral, correct?

A. I'm sorry?

Q. You testified about your consent being important so that you can be kept in the loop and express and opinion, correct?

A. Correct.

Q. But it wasn't so that you could manage the collateral

yourself, correct?

A. Correct.

Q. That right remained with Platinum, correct?

A. Yes.

Q. Now, paragraph 6, the middle sentence says, "Moreover the participation purchaser in Platinum further agree that all communication regarding any settlement or sale of any and all collateral under the note document shall be open and continuous with the participation purchaser and his counsel, such that the participation purchaser and his counsel are kept fully apprised of each step of any litigation process involving any and all of the collateral under the note documents, regardless of whether in state or federal court proceedings," correct?

A. Correct.

Q. And the reason that that was included was so you could be kept in the loop, correct?

A. Yes.

Q. And the reason you couldn't -- you had to be kept in the loop was because you couldn't have those conversations directly with Arabella, could you?

A. I had no communications with Arabella, that's correct.

Q. Now, going back to paragraph 9, the paragraph that you asked to be included.

A. Yes.

Q. The first sentence of that says, "Nothing in this agreement will be construed to limit or restrict Platinum from in any way exercising any rights or remedies arising from and under the note or note documents," correct?

A. Yes.

Q. So that means Platinum can, for example, file a proof of claim, correct?

A. Yes.

Q. On the entirety of the note documents, correct?

A. Yes. As could I.

Q. You're entitled to file a proof of claim on the entirety of the note --

A. I don't know the proof of claim, but I'm entitled to same rights under the note and note documents, yes.

Q. As to the entirety of the outstanding balance?

A. I'm not sure about that.

Q. The transfer of claim that you filed purported to transfer the entirety of the proof of claims to you, you understand that, correct?

A. I do now.

MR. TITTLE: Objection, Your Honor. That misstates the evidence -- grossly misstates the evidence.

THE COURT: We can -- I'll have to hold that for argument, because I don't know whether it does or not.

MR. WEINICK: We'll come back to that.

Q. Could you take a look at paragraph 8 of Exhibit G, please?

A. Yes.

Q. "Furthermore participation purchaser acknowledges that it is not relying on any opinions, representations, warranties, or advice of Platinum or its agents on entering into this agreement," correct?

A. Yes.

Q. Okay. You didn't request that that sentence be deleted, correct?

A. Apparently not.

Q. Apparently not. But you testified that it was important to you that paragraph 12(a) be included, correct?

A. Correct.

Q. These paragraphs are seemingly at odds with each other, aren't they?

A. I don't think warranties in this provision are referring to warranties made in the document.

Q. Representations --

A. Same.

Q. Participation purchasers acknowledges not relying on any representations of Platinum are taken, correct?

A. That wouldn't make very much sense. You have representations and warranties and then you have a provision that says not relying on representations and warranties.

Q. That's what's included in the document that you signed, correct?

A. Probably should have said prior.

Q. Did you read this document carefully before you signed it?

A. I read the document.

MR. WEINICK: Just one moment, Your Honor.

(Pause)

MR. WEINICK: Your Honor, no further questions at this time.

REDIRECT EXAMINATION

BY MR. TITTLE:

Q. First, let's turn to paragraph 9, again, on Exhibit G. Can you read that sentence out loud starting with "contemporaneously?"

A. "Contemporaneously Platinum authorizes participation purchaser who shall have the same rights and powers as Platinum under the note documents to enforce the note documents as Platinum's agent including, but not limited to, exercising any rights or remedies arising from the note or note documents, or as provided for under applicable law."

Q. Now, when you read "including but not limited to" was it your understanding of this provision that it included all rights that Platinum had?

A. Yes.

Q. And that you were getting tran -- that they were transferring you all rights with respect to that forty-five percent?

A. Correct.

Q. And that forty-five percent would include title?

A. Yes.

Q. And that forty-five percent would have allowed you file a proof of claim for that forty-five percent?

A. Yes.

Q. And would you have entered into this agreement if it was just an indirect interest?

A. No.

Q. Can you turn to Exhibit 1? It's actually Exhibit A, I'm sorry. On paragraph 4 on page 2 --

A. Yes.

Q. -- can you start with the second sentence -- I'm sorry, third sentence, "Pursuant to?"

A. "Pursuant to the agreement the participation purchaser received among other things forty-five percent of Platinum's interest into and under the note documents and secured loan."

Q. And can then you read the second sentence as well?

A. The immediately following sentence?

Q. Yes.

A. "In particular Platinum and the participation purchaser also agreed that upon any recovery made to satisfy the

obligations of the note documents such recoveries would be paid for the participation purchaser as follows: 1) 500,000 dollars, 2) interest at ten percent per annum of 500,000 dollars, and 3) it's forty-five percent interest in the note, note documents, and secured loan, which would be paid pro rata in relation to Platinum's remaining fifty-five percent interest."

Q. Now, your bankruptcy counsel that you hired prepared this document which you reviewed, and in your opinion did this say that you were -- that you had a right in the forty-five percent of the note?

A. Yes.

Q. Let's see --

MR. TITTLE: I think that's it, Your Honor.

MR. WEINICK: Two brief questions, if I may, Your Honor?

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. GREKIN:

Q. Mr. Bush, at the time this participation agreement was signed, were you aware that there was a cash shortage at Platinum?

A. Yes.

MR. WEINICK: Objection, assumes facts not in evidence.

THE COURT: I'm sorry, I didn't hear the question. State the question again.

Q. I said, Mr. Bush, at the time the participation was signed were you aware that there was a cash shortage at Platinum?

MR. WEINICK: Objection, relevance. Objection, facts not in evidence.

THE COURT: I'll overrule the objections.

A. Yes.

Q. And as a result of that knowledge, were you completely confident that Platinum was going to be able to provide adequate resources to sufficiently protect the collateral?

A. It seemed apparent that they would not be able to protect the collateral absent an infusion of cash.

Q. Did that have any relationship to your desire to be allowed rights to control the defense of the collateral under the participation agreement?

A. Yes.

Q. Thank you.

RECROSS-EXAMINATION

BY MR. WEINICK:

Q. Mr. Bush, can you turn to Exhibit, please?

A. Yes.

Q. Can you look at the first unnumbered paragraph right under the title "Participation Agreement," you see that?

A. Yes, I do.

Q. It defines -- it says 30294, LLC, a Michigan Limited Liability Company, and it defines it as the participation purchaser, do you see that?

A. I do.

Q. Did your transaction counsel explain to you why your entity was defined as the participation purchaser?

A. I don't think we ever had that conversation.

Q. You didn't ask him, did you?

A. I don't recall, so no.

Q. You didn't have any conversations about --

MR. TITTLE: Objection, this is attorney-client privilege.

MR. WEINICK: Well, it's been -- on direct asked him many questions about what his deal counsel told him and conversations that they had.

THE COURT: I'll overrule the objection.

Q. You testified before to prior counsel that it was important to you that you had direct control, correct?

A. Correct.

Q. You've ever been involved in a participation before?

A. I have not.

Q. Did you take any steps to determine what the difference was between a participation purchaser and a purchaser?

A. I did not.

Q. Thank you.

THE COURT: Mr. Bush, and I'm just going to your understanding with respect to your rights under this agreement. In executing this agreement and taking it to be a direct interest as opposed to an indirect interest, did you assume that you had the right to directly enforce your rights against the collateral itself? For example, if you felt that your forty-five percent interest wasn't protected, did you have a right to do any types -- take any types of remedies with respect to foreclosure, or collection, against collateral? I mean, it also collateralized the other fifty-five percent, right, but could you -- could you directly then pursue collection efforts against the collateral itself, without any type of consultation from the fifty-five percent owner?

THE WITNESS: Candidly, Your Honor, I don't know that I contemplated that at the time. This deal was brought to me roughly the 22nd of December, and I signed the purchase agreement on the 28th of December, Christmas falling in between. And there was very little time to do due diligence, candidly, to think that I thought through all these things would be a misstatement.

THE COURT: Believe me, I appreciate that interest. People don't normally think about these kind of things until they go bad anyway, so I hear you. Okay, thank you.

THE WITNESS: Okay, Your Honor.

THE COURT: Any other questions?

All right. Thank you, Mr. Bush, you may step down.

MR. TAYLOR: Your Honor, we would like to call Michael Baum. If I could step out in the hallway and go retrieve him?

THE COURT: Yes, that's fine.

THE CLERK: Come forth and be sworn.

MR. TAYLOR: Your Honor, he is a licensed attorney before this court.

(Witness sworn)

THE COURT: Thank you.

THE WITNESS: You're welcome.

DIRECT EXAMINATION

BY MR. TAYLOR:

Q. Now, Mr. Baum, I know you're more used to being on this side of the microphone, but please also project your voice. The court reporter's been having a little bit of trouble picking up some of this. So if you'll be sure to speak into the microphone.

A. I apologize in advance.

Q. Mr. Baum, my name is Clay Taylor, I represent 30294. We've met before, correct?

A. Yes.

Q. Could you state your full name for the record, please?

A. My name is Michael E. Baum, B as in boy, A-U-M as in Michael.

Q. And how are you employed?

A. I am managing partner of the law firm Schaefer & Weiner.

Q. Could you give the Court a very brief background on yourself and your legal educational background, and professional career?

A. I was admitted to the bar in the State of Michigan in 1978. For about ten years I worked at a rabbinical college. I was ahead of the college there. For about a year after that I was general counsel to a pharmaceutical -- not really -- a retail prescription company, Knight Drugs. And after that, the last thirty years I've been with Schaeffer & Weiner. Approximately thirty years.

Q. Are you members of a professional organization or memberships within the Eastern District of Michigan?

A. I am a member of the ABA, the ABI, the State Bar of Michigan, some local bankruptcy bars. And I'm also the chairman or co-chair of the mediation counsel for the Eastern District of Michigan. And I am also the co-chair -- chair, it's an emeritus co-chair, of the Rules Committee -- of the Local Rules Committee for the Eastern District of Michigan Bankruptcy Court in each case.

Q. And you've been involved in this case for some amount of time? And by this case, I mean the Arabella expiration case,

for some amount of time, correct?

A. Yes.

Q. Could you explain your role in this case?

A. We were retained by Platinum shortly after -- I think it was shortly after or just before, I don't remember, the bankruptcy filing of APC, or Arabella Petroleum, which was filed in San Antonio, I think it was -- excuse me, in Austin. It was in Austin. And we were retained -- after that bankruptcy was filed by Platinum in anticipation of what they expected to be a fraudulent conveyance lawsuit.

Q. During the course of your representation of Platinum were you involved in the solicitation of --

A. Excuse me -- excuse me.

THE WITNESS: I don't if this is proper, Your Honor, am I allowed to ask something, before I hear this question, from my counsel?

THE COURT: Sure.

THE WITNESS: Thank you.

MR. GREKIN: Very briefly, Your Honor. I would like to clarify that any objections --

THE COURT: Yeah, we need to hear you next to the microphone.

MR. GREKIN: I apologize, I'm not used to not being heard, I've got a pretty substantial voice.

I'd just like to clarify any -- because counsel for

the receiver has actually mentioned it a few times. I'd like to clarify any objections on the basis of attorney-client privilege, it seems to me must be made by the receiver's counsel. It's not Schaefer & Weiner's responsibility to do that. I just wanted to clarify that for this Court.

Q. Let me back up a second.

A. That's what I wanted to ask to be put on the record.

Q. Let me back up here a second. Mr. Baum, you're here under a subpoena today; is that correct?

A. Yes.

Q. Were you involved in the solicitation and negotiation, or at least observed, those solicitations and negotiations of 30294 and Platinum transaction?

A. I was not involved in the solicitation of them, I was involved after the deal had been agreed to by the so -- the business people involved, I'll characterize them as that. I was involved in the negotiation with their attorney, Mr. Sean Fitzgerald, in negotiating the final terms of what is called the participation agreement.

Q. And Platinum asked you and Mr. Hoebeke to reach out to any contacts you may have to potentially purchase some or all of their note; is that correct?

A. On numerous occasions, as early as June of 20 -- beginning as early as June of 2016.

Q. Did you represent a party in the 30294/Platinum

transaction?

A. I -- we represented Platinum.

Q. Okay. Who is the receiver at that time?

A. Well, Mr. Bart Schwartz was appointed as the receiver at about the same time.

Q. If you'll flip with me to Exhibit E in the large notebook in front of you.

A. Yes, I have it.

Q. This order was entered on December 19th; is that correct?

A. Yes.

MR. TAYLOR: Your Honor, I believe this has previously been admitted into evidence.

Q. What was the date of the sale agreement between 30294 and Platinum?

A. That's difficult to answer directly. It was signed by both parties, I've seen the participation agreement, on December the 28th. But we were instructed not to release it or not to make it go effective until they had an opportunity to consult with counsel, as to whether or not they could or could not do it, or whether or not it should be done.

Q. And when you say "they" explain who "they" is?

A. It was my understanding that Guidepost, I don't know who at Guidepost was actually consulting. I don't know. But I received an email --

MR. WEINICK: Your Honor, I'm going to object to this

point, he's about to talk about deliberations between himself and the receiver about the enforceability of the document, and whether or not approval needed to be sought by the receivership court.

MR. TAYLOR: Your Honor, may I respond?

THE COURT: Yes.

MR. TAYLOR: That question quite simply has not been asked.

THE COURT: I didn't think that question had been asked yet either. Are you just putting counsel on notice that --

MR. WEINICK: Yeah, I didn't want to wait too long before the horse is out of the barn so to speak. So I apologize if I interrupted your questioning, counsel, but I thought that's where you were going.

THE COURT: Okay, go ahead.

MR. WEINICK: And I guess if Your Honor could just counsel the witness, as he would counsel his own clients, to take an even longer pause before answering questions, because I may be interposing objections.

THE WITNESS: I'll be happy to do that, Your Honor.

THE COURT: That's fine.

BY MR. TAYLOR:

Q. Okay. I believe you were saying that -- you were explaining who "they" was when you asked "they" asked you to

hold signatures in trust after December 28th so that they could consult with their counsel. And I asked you to explain who "they" was. And then you started saying -- you started telling me something about Guidepost. Why don't you continue from there?

MR. WEINICK: Your Honor, that was exactly the concern, that was exactly the question I thought we were getting at. I mean, if the question is just who is Guidepost, that's fine. But if we're about to get into why and what the discussions were, I have great concerns about attorney-client privilege.

MR. TAYLOR: I'll try to be very specific.

BY MR. TAYLOR:

Q. You said "they" asked for more time and then you said Guidepost came back to you. Who's Guidepost? This Court may not be familiar with who Guidepost is?

A. Guidepost is a -- I think a financial advisory group, that's the best that I know them. But it is the business group that Bart Schwartz heads. Mr. Bart Schwartz heads. So when he was pointed as a receiver, it is my understanding that he retained Guidepost as a professional to provide him assistance.

Q. So you could take direction from Guidepost for Bart Schwartz; is that correct?

A. I was under that impression, yes.

Q. Okay. And so Guidepost told you to hold the document for a while on behalf of Bart Schwartz. And you did so, so they had another week to consider its implications; is that correct?

A. I held the document for a week.

Q. Okay. Nonetheless --

A. An approximate week.

Q. -- this receivership order shown as Exhibit G, was the receivership order in place when that document was released from trust; is that correct?

A. Did you mean Exhibit E or G?

Q. I'm sorry, E.

MR. WEINICK: I'm sorry, which document was released from trust? And I don't think that we've laid a foundation that the document was released in trust.

THE COURT: Yes, which document are you referring to when you talk about a document held in trust? Is it the participation agreement, Exhibit G?

Q. Exhibit G was signed on December 28th; is that correct?

A. It is dated December 28th.

Q. And that was the document that you asked -- you were asked to hold in trust for approximately a week; is that correct?

A. I was asked not to release it or make it effective for about a week.

Q. Okay. But, ultimately, you were given that authority to release it; is that correct?

A. Yes.

Q. And the receivership order that was in place was indeed Exhibit -- make sure I'm saying this right -- E; is that correct?

A. Yes. Yes.

Q. Okay. Your firm prepared and filed the proofs of claim in the AEX and AOC cases that are shown as Exhibits A and B in the binder before you; is that correct?

A. I know that our firm prepared them. I know that they were signed by the receiver. And I don't remember if we actually filed them, or if our local counsel filed them.

Q. But ultimately, Platinum filed these proofs of claim, they were signed by the receiver in these cases; is that correct?

A. Yes.

Q. You helped prepare these proofs of claim at the receiver's direction, correct?

A. Yes.

Q. As we previously established they were assigned by the receiver; is that correct?

A. Yes.

Q. Could you turn with me -- I believe you have Exhibit E in front of you somewhere. Turn with me to paragraph 3, shown on

page 2. And could you just read paragraph 3 to yourself. Am I correct in summarizing that this paragraph provides that the receiver shall have all the powers that any officers, directors, or other controlling members of the receivership entities previously had?

MR. WEINICK: Your Honor, I'm going to object to asking the receiver's own attorney to opine on the implications and the contours of the receivership order.

THE COURT: Are you asking for an opinion or just asking what --

MR. TAYLOR: I didn't ask for an opinion, I just asked what it said. And I asked if I summarized it correctly. If we want -- if we need to read it out loud that the receiver --

MR. WEINICK: The document's in evidence. I mean, it says what it says. I mean, my preference again would be for Judge Cogan to interpret it, not Mr. Baum, but --

THE COURT: Well, as -- if the question is is counsel summarizing correctly what a particular provision of this order says, I don't find that to be an inappropriate question. The witness can always agree that it says that or doesn't say that. It doesn't necessarily call for his opinion. So I'll overrule the objection.

BY MR. TAYLOR:

Q. Did I summarize that correctly, Mr. Baum?

A. Could you summarize it again, please?

Q. Does this generally say that the receiver has all the powers of the former controlling people of the receivership entities and steps into their shoes?

A. Yes.

Q. Would you go with me to paragraph 6(e) of Exhibit E. This also allows the receiver to have the following general powers and duties, and then it goes onto part (e). And what does paragraph 6(e) say, and allow the receiver to do?

A. I'll read it. "To take any action which prior to the entry of this order could have been taken by the officers, directors, managers, managing members, and general unlimited partners and agents of the receivership entities."

Q. And what does 6(g) say?

A. 6(g) reads: "To take such action as necessary and appropriate for the preservation of receivership property, or to prevent the dissipation or concealment of receivership property."

Q. Mr. Baum, while you were stepped out in the hallway we previously gone over paragraph 28, which gives -- of the same exhibit. It gives the receiver some additional authority. But that just supplements the authorities that were previously given in paragraph 6; is that correct?

MR. WEINICK: Your Honor, we're coming close to --

THE COURT: Same objection to this one.

MR. WEINICK: Thank you, Your Honor.

MR. TAYLOR: We'll move on, Your Honor.

Q. In negotiating the drafting of 30294 transaction with Platinum, 30294 was represented; is that correct?

A. I negotiated that with Mr. Sean Fitzgerald, counsel, at that time.

Q. He was counsel for 30294?

A. Yes.

Q. And you sent him a proposed draft document and the redlines were exchanged; is that correct?

A. That is my recollection.

Q. Okay. Why did Platinum reach out to Chip Hoebeke and say we need you to sell some or all of a portion of our note?

A. I can only tell you --

MR. WEINICK: Objection.

THE WITNESS: Sorry.

MR. WEINICK: Objection, calls for disclosure of attorney-client communications.

MR. TAYLOR: Your Honor, he was reaching out to a third party, Mr. Chip Hoebeke, to ask him to solicit buying --

THE COURT: That may be so, but I take it that the basis from which this witness would know that was because he had that conversation with his client.

MR. WEINICK: That's right, Your Honor. And the fact of the conversation is fine, but the why is not fine.

THE COURT: Understand. Okay, I'll sustain that objection.

BY MR. TAYLOR:

Q. Platinum did ask you to reach out and coordinate with Mr. Hoebeke to solicit any the interest in buying some or all of the note; is that correct?

MR. WEINICK: Same objection, and leading.

THE COURT: Would you restate that question, Mr. Taylor, I'm not sure I followed it. Would you state that again?

MR. TAYLOR: Sure.

Q. Platinum instructed you to coordinate with Mr. Hoebeke in soliciting interest in purchasing some or all of its loan with AEX; is that correct?

MR. WEINICK: Objection, leading.

THE COURT: Well, it is leading, I'll sustain the objection.

Q. Did Platinum ask you to work with Mr. Hoebeke on soliciting any interest in purchasing part of its loan?

MR. WEINICK: No objection.

A. There being no objection, the answer is yes. Platinum reached out to Mr. Hoebeke and to myself, if I recall --

Q. Without disclosing how much they valued their collateral during this time, did Platinum conduct an internal valuation of their collateral?

MR. WEINICK: I think the fact of their internal deliberations could constitute work-product and attorney-client privilege, Your Honor.

THE COURT: So the question is does this witness know whether they conducted such a valuation?

MR. TAYLOR: Correct. Not what the outcome was, not what the number was, but did they do it. And what's the relevance --

THE COURT: And how do you know that, except that it was part of a communication.

MR. TAYLOR: I'm not asking him to disclose the communication, which is what the key point is.

MR. GREKIN: Your Honor, if I may. I think this is somewhat a moot issue. I believe this was disclosed in public pleading in New York.

THE COURT: I'm sorry, what was disclosed in the public pleading?

MR. GREKIN: The fact that he is asking about was disclosed in public pleading, the fact that there was an investigation about the value of this collateral, was in a public pleading in New York. I don't think it's attorney-client privilege at this point, because once you put it in a public pleading, you waive whatever privilege you had.

MR. TAYLOR: Mr. Schwartz did file a declaration in the New York proceeding, stating not only that an internal

valuation was conducted, but stating what that number was.

THE COURT: I recall somebody mentioning it in the reply or response, maybe that was -- you're -- okay. It's out there.

MR. WEINICK: I'll stand at the relevance objection, Your Honor. I don't know where this is going.

MR. TAYLOR: Your Honor, it's relevant because there's been question whether this was a good faith arm's length transaction. The fact of whether they conducted a -- an assessment of what their collateral value was in light of the facts and circumstances, and knowledge then existing is certainly relevant to this Court.

THE COURT: Well, I'll overrule the objection. But this with the parties' understanding that I'm not going to be resolving this good faith issue today. I mean, that's -- I think that's -- if there was an absence of good faith, or a presence of good faith, I just don't know that that's what I should be doing. I mean, I'm trying to put this in perspective of today's hearing, because I understand that there's some issue respecting this -- it's pending in another court. And it's the receivership court. And so I'm trying to determine -- I'll ask this question again, Mr. Taylor. Is this something that you want me to resolve today part and parcel of the assignment, or what role does it play today?

MR. TAYLOR: What it impacts is is whether -- my -- I

think you should and are able to reach whether my client was a good faith purchaser. Whatever may have been going on by and between Schaeffer & Weiner, and it's client, I don't think there's anything untoward happen, but that's the purview of another court. I don't think this Court need reach that. But it is relevant as to whether Bart Schwartz had some knowledge and, at least, conducted a due diligence, and dealt with my client in an arm's length transaction. I don't think you need to reach the good faith, or what happened between Schaeffer & Weiner and Platinum.

MR. WEINICK: Your Honor, I don't know how you could reach one without the other. If there was lack of authority, if there was lack of understanding on the part of one party, the good faith of the other party is irrelevant, there's no meeting of the minds, there's no valid and enforceable agreement. If there's no valid and enforceable agreement, there's no -- there's no claim against this debtor by 30294. Putting that issue aside, I mean maybe a narrow issue for Your Honor, if we can even get there, is what rights -- assuming the participation agreement is valid and enforceable does that given a participant the right to make a direct claim against the debtor. That's a narrow issue, but I think that's putting the cart before the horse.

I think that all of these issues with Schaeffer & Weiner, and with Mr. Schwartz's understanding, are under the

purview of the receivership court, they can be decided their promptly, and then we can return here with that result and Your Honor can be guided accordingly.

MR. TAYLOR: Your Honor --

MR. WEINICK: I think we're seeing here the difficulty of trying to parse out what Schaeffer & Weiner concedes in their private letter to Judge Cogan are intertwined issues.

MR. GREKIN: Your Honor, if I may briefly respond to that.

First of all, I think these come under issues that are relevant to the issues you need to decide, but they are not the actual issue you need to decide. I think you need to consider them, but I don't think you need to come to a decision for them. I think they provide background and useful information for you in advising you of that decision.

I think that's particularly true because opposing counsel concentrated on them in his brief. I think those issues need to be responded to. I would note that opposing counsel concentrated on those issues in his brief prior to stating in his brief that the New York court ought to be deciding them anyway.

I do have one more thing I think we ought to mention here, Your Honor, which is sort of an elephant in the room, which is that the receiver has had every opportunity to bring

these issues in front of the New York court. We've been begging them to do it for eight months or something, and they've refused over, and over, and over again. For them to come in here and say well now, Your Honor, it's not a proper venue to decide this, we can have this decided in New York any day now, is quite frankly, it's misleading.

I suspect that if Your Honor doesn't decide this issue, whether or not this agreement is enforceable, and whether the transfer is enforceable, I suspect that we'll be waiting another year or two while the receiver just decides not to. I would note that no party but the receiver has the right to file things in front of the New York courts. And despite the fact that we've asked them to do so, they have not.

So I think there's two reasons you need to allow this. The first one is it informs you -- it's not the issue you need to decide, but it informs you about the issue you need to decide. And, in addition, the receiver's had every chance. They've decided they don't want to decide it anywhere. They've participated in this case, it's about time we went forward with this issue too.

MR. WEINICK: Your Honor, may I respond?

THE COURT: Yes.

MR. WEINICK: We participated in this case vis-a-vis the debtor. We haven't participated in this case vis-a-vis

Mr. Baum, or vis-a-vis 30294, and that's an important distinction. We haven't consented, we haven't waived the injunction or the stay that's contained in the receivership order.

In terms of it not being brought up as promptly as the Schaefer & Weiner firm would like, receiver has faced a Herculean task and had to prioritize the tons of issues before. The first of which was stabilizing all of the assets that came under her purview, and making sure that they, like the Arabella one, weren't lost to tons of other interests that were chomping at them and claiming them.

We focused on monetization. We're not turning towards more of the administrative part of the case, and it's a perfectly appropriate time to turn towards Schaeffer & Weiner's concerns in the enforceability of the participation agreement, so that we can come back and deal with it now.

Also, as I said in my opening, Your Honor, in terms of the proof of claim, until this morning a recovery in this case wasn't even on the horizon. So it wasn't a pressing issue. They brought it up. We're happy to move it forward. Judge Cogan has ordered that it move forward. We're to respond to their pre-motion letter this Monday, that will get it moving. There is a status conference on the 24th of May before Judge Cogan. These issues will move.

MR. TAYLOR: Your Honor, we started with an objection

to relevance, and I think we certainly wandered well afar from anything that is relevant before Your Honor as to the myriad of issues that may be before the receivership court. And that's exactly why we need this Court decide this issue.

THE COURT: Well, I'm -- what's the nature of the issue that's going to be the subject of the status conference on the 24th?

MR. GREKIN: I can answer that, Your Honor.

The issue that's being decided at the status conference is our fee application. We have asked the Court to see whether we can schedule the fee application. And when Mr. Baum gives me that look he understands, and I was going to follow up. You see, we can't file the fee application in New York, only the receiver can file our fee application. We asked for a pre-motion conference to discuss the fact that the receiver has refused to do so. That is the only issue that is up at the pre-motion conference, whether or not someone will our fee application. And the Court -- it really has only tangentially to do with the participation agreement. We've asked for fees and we've asked for an amount.

MR. WEINICK: Actually, Your Honor, if I may point Your Honor to the letter itself that was filed --

MR. TAYLOR: Objection, it's not in evidence, Your Honor.

MR. WEINICK: Well, it's rebuttal to -- first of all,

the Judge can take judicial notice --

THE COURT: I just want to know what -- Judge Cogan, I just want to know what he's going to be taking up. I mean, that --

MR. WEINICK: Actually, Your Honor, as a technical matter in the interest of full disclosure, the agenda for the status conference is set about a week or so in advance. But we have no problem advocating that the pre-motion letter be taken up. And I believe, based on Judge Cogan's order, that we respond by this Monday, that's his intention is to take it up.

MR. GREKIN: I did not read that this way. I believe that the pre-motion letter was very specific. The only thing --

THE COURT: Okay. Again, you're going to have to be close to a microphone.

MR. GREKIN: I apologize, Your Honor. Stranger in a strange land.

I believe, Your Honor, that the only thing at issue at the pre-motion conference is whether or not we are allowed to file our fee application.

THE COURT: Well, I think the one thing that I can resolve today is the issue what's the nature of this interest. Is it a direct interest, or is it an indirect interest? And if it's a -- this direct interest that allows a separate

exercise a price by 30294 that's one thing. If it's something else, then that's another thing.

Judge Cogan, is that his name?

MR. WEINICK: Yes, Your Honor.

THE COURT: As a judge I can tell you -- I'm sure -- I come in here and hear all the time that this matter's before another judge, he knows a lot about it, it's teed up. The judge is ready to go resolve that. But knowing judges, and being a judge, I can tell you I'm always fine with another judge resolving. I welcome another judge resolving one issue, so that I can take it off my table -- my plate.

MR. WEINICK: But, Your Honor, respectfully, Judge Cogan has an order before him that specifically says I'm going to decide matters relating to this receivership.

MR. GREKIN: That's --

MR. WEINICK: Excuse me, counsel.

MR. GREKIN: I apologize, I thought you were done. Go ahead.

MR. WEINICK: Specifically enjoins ancillary proceedings such as this. So it's not that he may or may not want to get to this, it may or may not be that he would prefer Your Honor to decide it, but it's up to him to tell us that. It's up to him to lift the stay, lift the injunction, so that the parties can come before Your Honor on this issue. That's clear from the receivership order.

THE COURT: Go ahead, sir.

MR. GREKIN: No, it's not. In fact, the opposite is clear from the receivership order. The receivership order specifically stays ancillary proceedings, including bankruptcy proceedings. Under that order had the receiver wished to stay the proceeding they would have had to stay this entire bankruptcy. They've had every opportunity to do that.

In fact, under the order, the receiver is responsible if this Court is violating that order, and going forward with the proceeding, not intentionally. But if this Court is going forward with an ancillary proceeding, under paragraph 23 of that order, counsel is required to report to the New York court immediately that something is going on, and take steps to stop the proceeding.

In addition, the entire bankruptcy proceeding under that order, under paragraph 25, must be stayed.

Counsel and the receiver have had every opportunity to do that, and they have not. There is not a thing, not a word in that order, that allows counsel to stay a particular issue in the proceeding. The proceeding is stayed, or it is not stayed. This proceeding is not stayed. The receiver has been involved for sixteen months.

MR. WEINICK: Your Honor, the receivership order doesn't require staying this entire bankruptcy procedure -- proceeding, just this particular contested

matter, because it goes after specifically -- it's a specific attempt by 30294 to adjudicate what is and what isn't receivership property, what is and what isn't the receiver's rights under that property. And as far as -- and as far as whose obligation and whose burden it is, it's on the burden of the person seeking to get out from that injunction, to get out from under that stay, to go to the receivership court and seek relief from it. And, certainly, we think that that's what appropriate here.

THE COURT: Okay. Counsel, I'm going to take a ten-minute break.

THE CLERK: All rise.

(Recess from 3:42 p.m. until 3:59 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. Parties, we seem to be wrestling over the issue of -- is it Judge Gogan? I want to make sure I get his name right.

MR. WEINICK: Judge Cogan. C-O-G-A-N.

THE COURT: Oh. Cogan. Okay. I see his initials here, but I don't see his name. Okay.

MR. WEINICK: Brian M. Cogan.

THE COURT: Okay. So the question seems to be what did Judge Cogan mean when he signed this order? Now, I can only speak from my own experience, and that is there's two times when I have a specific intent when it comes to an order

of mine. One is when I draft the order myself. I know what I intended when I draft the order myself.

Second, sometimes I'm asked to break the tie between two competing forms of order. Typically speaking, at the end of a hearing I ask one party or the other to draft the order, circulate it by the other. They can't agree on what I said, they bring two forms of order to me, and I decide which one is correct.

But with respect to every other order that comes before me, the fact of the matter is that I don't have any specific intent at all. Parties typically negotiate the forms of order, regardless of whether they're agreed order to begin with or they become agreed as to form because I've told the parties to go and do that.

So as long as they submit that order to me, and they're not goring the ox of somebody who's not involved in the dispute, I'm going to sign that order without having a specific intent as to what the provisions are.

So when it comes to this SEC order, I doubt very serious that Judge Cogan had any specific intent when it came to a dispute like this. If you raise the issues of authority and the nature of the interest and where those issues are to be resolved if someone files bankruptcy, in all likelihood Judge Cogan is not going to be deciding what he meant at all. He's going to be deciding what the SEC meant when it drafted

this order, probably with little to no input from the opposing parties.

So to suggest that Judge Cogan put the yellow police tape around these issues and said no one else should cross that line, I simply don't buy it. But I could be wrong. And if I am wrong, he will tell me that I am wrong.

But here's where we are today. If I rule that Mr. Schwartz had no authority, or that he did have such authority but he gave 30294 nothing more than a participation with no direct rights to participate, then Platinum's current receiver is going to agree that I have all the jurisdiction, all the Stern power, and Judge Cogan's full authority to rule on this matter. And 30294 will not be heard to say otherwise in Judge Cogan's court.

Now, if I rule for 30294, then Platinum gets to go back to Judge Cogan and say that I got it completely wrong.

Either way, I don't find any harm to Platinum by just going ahead and resolving these issues about authority and the nature of this interest, so --

And, by the way, if we have this hearing today and it goes the way of 30294, Platinum goes back to Judge Cogan and says I didn't have any right to do the things that I'm doing here today because violation of his order, and he agrees with them, I'm not going to take that personally, any more than I would take an appeal of my order today, my ruling today,

personally.

I do know this, though. If I was to rule for Platinum today, and there was an appeal, one of the issues up on appeal is not going to be whether I had the authority, the power, the jurisdiction to resolve this dispute. So at least we can get that out of the way.

Let's see where we go from here.

Okay, Mr. Taylor?

BY MR. TAYLOR:

Q. Mr. Baum, could you flip with me --

MR. TAYLOR: I'm going to withdraw the -- I believe there was a pending question. I'm going to withdraw that question, Your Honor, and move on.

THE COURT: Okay.

Q. Will you flip with me to Exhibit AA, Mr. Baum? This is an email from you to Mr. Hoebeke. Is that correct?

A. Yes.

Q. Okay. And there's an attachment to this email. Is that correct?

A. Yes.

Q. Okay. What is this document that you sent to Mr. Hoebeke via this email?

A. As I was allowed to testify, Mr. Hoebeke and I were instructed to find some party or entity to purchase a participation in these agreements. I reached out to a few

people, but there were two people that I recall. One was this offshore company, TCA Global Credit Master Fund, and it was a company that my son, through where he's employed, was affiliated with, and I reached out through him to them in an effort to see whether or not they would be interested in participating or purchasing in the loans.

MR. TAYLOR: Your Honor, we move for admission of Exhibit AA.

THE COURT: Is there any objection to AA?

MR. WEINICK: Relevance, Your Honor.

MR. TAYLOR: Your Honor, we're getting to that. I believe, if I may speak as to what the evidence is about to show for relevance?

THE COURT: Okay.

MR. TAYLOR: I believe we're going to compare and contrast this agreement that was attached as AA, which is a form promulgated by Schafer & Weiner to kickstart negotiations with any potentially interested parties, and this was the form they were working off of. And this was substantially the document that was sent to 30294.

And if you compare and contrast some very specific provisions, specifically paragraphs 5 and 9 of the 30294 agreement with paragraphs 6 and 10 there was -- one paragraph was deleted -- Your Honor's going to find that there's some very marked differences in those documents.

Here, it's very clear when the TCA -- and I say here, and I'm pointing at the TCA document as it's at Exhibit AA. It's the attachment to the email. It's very clear that this was our participation agreement. Platinum was the only party that can enforce it.

It's very clear also that if you go look at the 30294 agreement, paragraphs 5 and 9, that there were very different rights that were given or specifically negotiated. And so that's the relevance.

THE COURT: Okay. I'll overrule the objection. AA is admitted for that purpose.

(Email from Mr. Baum to Mr. Hoebeke with participation agreement attached was hereby received into evidence as 30294's Exhibit AA, as of this date.)

BY MR. TAYLOR:

Q. So, Mr. Baum, you just heard all that I said. So I think it would be helpful for both Your Honor and Mr. Baum if you could flip to Exhibit G, which is the 30294 agreement.

A. There is a loose copy sitting here.

Q. So that is actually the true exhibit -- what's been entered into evidence -- so if you'll use that one.

A. Okay. It's easier.

Q. Okay. So first of all, do you recognize these two documents, and were these documents that were maintained by your firm? And I'll direct you to look at the lower left-hand

corner of these documents.

A. If you're referring to the Worldox number, which is down in the bottom, these are our Worldox numbers that we use. These two documents were prepared in, at least originally, by our firm.

Q. And was this the form of a "participation agreement", and I use -- I put those in air quotes -- "participation agreement" that was sent to 30294. Was this the form that was initially sent out to them?

A. It -- okay. The -- we have on our system forms of a participation agreement. There was probably one form in what we would call in our system a forms file which was used as a basis to create both Exhibit AA and this participation agreement, which is now Exhibit G.

Q. Fair enough.

A. I don't think G comes from AA, but they both come probably from the same form.

Q. So they probably have a common ancestor, if you will.

A. That would be a way to characterize them.

Q. Okay. So let's turn to page 4 of 8 of Exhibit G.

A. Yeah, the one that's missing.

Q. And let's -- it's missing, did you say?

MR. TAYLOR: May I approach the witness, Your Honor?

THE COURT: Yes.

A. Okay.

Q. Will you compare and contrast paragraph 5 of the 30294 agreement with paragraph 6 of the TCA agreement? First of all, may I ask, is that, for purposes of numbering, it does appear that that's substantially the same paragraph with certain differences. Is that correct?

MR. WEINICK: Objection. Leading.

THE COURT: Sustained.

Q. Mr. Baum, do paragraphs 5 and 6 appear to be similar to you in certain ways?

A. They absolutely are similar. They both have the same first two words and the same last words. It -- they're basically the same paragraph with --

Q. Okay.

A. -- some changes, I think.

Q. And I want to focus specifically on the second sentence there, beginning with "For clarity". Let's start with the TCA agreement, Exhibit AA. Could you go ahead and read that sentence, beginning with "For clarity"?

A. "For clarity" -- out loud?

Q. Yes.

A. "For clarity, Platinum retains the right to manage, perform and enforce the terms of the note and to exercise and enforce all privileges and rights exercisable by it thereunder in its sole and unfettered discretion, including the right to amend the note."

Q. Okay. So now let's turn over to the 30294 agreement at Exhibit G. And that sentence starts out exactly the same, doesn't it?

A. Correct.

MR. WEINICK: Objection. Leading.

THE WITNESS: I'm sorry.

THE COURT: Oh, it is, but I'm going to let that one stay.

Q. But is there any differences, Mr. Baum?

A. There is a phrase in the sentence that has been inserted in paragraph 5.

Q. Okay. And what is the phrase that has been inserted? Could you read that?

A. "Notwithstanding the above, Platinum agrees that any settlement or sale regarding any and all collateral or the sale of any and all collateral under the note documents is subject to participation purchaser's consent, which shall not be unreasonably withheld."

Q. Okay. So that was a negotiated difference between these two documents, and 30294 negotiated this difference. Is that correct?

A. I'm there. Okay. That was negotiated between Sean Fitzgerald (ph.) and myself.

Q. Now, let's --

A And me.

Q. -- turn to paragraphs 9 and 10, 9 of the 30294 agreement and 10 of Exhibit AA, the TCA agreement. Again, I'm going to ask you to first just read both of them silently. And do these appear to be the same paragraph, at least the way that they start out?

A. The first sentence is the same.

Q. Okay. Could you explain to the Court what's different --

A. The next --

Q. -- 9 and 10?

A. The next two sentences are clearly different. In the TCA proposal TCA had no rights, and in the next sentence, "All rights, remedies or privileges with respect to the note may only be exercised by Platinum without any requirement for consent or approval by TCA."

Paragraph 9, on the other hand, was changed to say. "Contemporaneously, Platinum authorizes participation purchaser, who shall have the same rights and powers as Platinum under the note documents to enforce the note or note documents as Platinum's agent, including, but not limited to, exercising any rights or remedies arising from the note or note documents, or as provided for under applicable law."

Q. Thank you. Did Platinum have the ability or desire to advance any more funds into Arabella on or about December of 2016?

MR. WEINICK: Objection. Compound objection. Calls

for attorney-client interactions.

THE COURT: You want to respond to that, Mr. Taylor?

MR. TAYLOR: Your Honor, I have obtained, and we can walk through -- I was trying to avoid going through each and every exhibit in the interests of time, but it was clearly communicated between counsel Michael Baum and Chip Hoebeke that they didn't have any funds that disclosed to third parties, and therefore there is no attorney-client privilege.

MR. GREKIN: Your Honor, I would add that --

THE COURT: Could you come forward, please?

MR. GREKIN: I, you know, if he --

THE COURT: I'm sorry.

MR. GREKIN: I apologize.

THE COURT: We're not in the twenty-first century when it comes to sound technology in this courtroom, so I apologize for that.

MR. GREKIN: No, the apology is mine, Your Honor. You have warned me.

I would add, Your Honor, that this information is included in Mr. Schwartz's declaration in front of the New York court.

THE COURT: I'll overrule the objection as to privilege.

BY MR. TAYLOR:

Q. Did Platinum have the ability or desire to advance any

more funds into the Arabella loan in the November/December, 2016 time frame?

MR. WEINICK: Objection. The compound nature hasn't been corrected.

THE COURT: I'll overrule the objection.

A. I'm a witness. I don't know if I'm allowed to ask a question, but are we speaking about Platinum or are we speaking about the receiver?

Q. We're speaking about Platinum acting through the receiver.

A. The receiver stated, as my partner said, that there was no money, and there was an unwillingness to put any more money in Arabella.

Q. Okay.

A. That has been said.

Q. Was it important in late 2016 that funds be put into Arabella?

A. Arabella -- let's identify the parties. This debtor, AEX, was facing a foreclosure that had been started by Founders. Platinum and the receiver were not party to that lawsuit. Arabella Exploration needed counsel to defend that lawsuit.

If Founders would have foreclosed, the likelihood of our -- I mean our is my former client and this estate -- of having any assets to administer would have been, in our

opinion at the time, lost. Nobody was willing to step up and defend AEX without getting a -- without getting a commitment for funds.

We had no choice, we felt, but to file a Chapter 11 for AEX, and for reasons we also felt very strongly that we needed to file a Chapter 15. And so it was necessary to spend money. Both Chip and I spent whatever time we could to find somebody to buy a participation.

I found one person. That person was willing to offer 400,000 dollars. Chip found 30294, Craig -- Mr. Bush, found Mr. Bush, who I never knew, never met, had never heard of, who paid 500. The person I found was willing to pay 400,000 for a 50 percent interest. The result was that Mr. Bush purchased -- 30294, his LLC -- purchased 45 percentages.

I believe, and as I understand it, the reason why it went from fifty to forty-five percent is based upon the inconsistency in this participation document between paragraph O and paragraph 4. Paragraph 4 provides that all the professional fees after the 500,000 dollar investment are divided 55 percent to be paid by the receiver, and 45 percent coming out of Mr. Bush's portion. Paragraph 4 was not changed consistent with paragraph O, and therefore, I mean, I think it was all intended at the time that the professional fees that had accrued prior to the receivership would come off of the receivership side, and the professional fees that would be

from that day forward for all of the professionals, would be paid shared. Which professionals? That would be the professionals that were part of --

MR. TAYLOR: Your Honor, I'm going to interrupt my own witness and --

THE COURT: All right.

MR. TAYLOR: -- and object to this last portion of comparing and contrasting paragraph O to paragraph 4 as being nonresponsive to the question I asked.

MR. WEINICK: Your Honor, he may not like the answer he got, but let the witness continue it.

THE WITNESS: Let's hope it --

THE COURT: Well, I'll sustain the objection to nonresponsiveness but obviously -- well, I'll just sustain the objection to nonresponsiveness.

Q. Mr. Baum, the urgent nature of needing funds is described in Exhibit FF. Could you turn with me to that email that was sent from Chip Hoebeke to yourself and David Steinberg? Who is David Steinberg?

A. He was one of my three client contacts at Platinum.

Q. And when was this email sent?

A. December the 8th.

Q. And this was before the receiver was appointed, correct?

A. Yes.

Q. And at that point David Steinberg was an authorized

representative of Platinum. Is that correct?

A. Yes.

MR. TAYLOR: Your Honor, we move for admission of Exhibit FF.

THE COURT: Any objection to FF?

MR. WEINICK: No, Your Honor.

UNIDENTIFIED SPEAKER: There goes that discussion.

THE COURT: FF is admitted.

(Email from Mr. Hoebeke to Mr. Baum and Mr. Steinberg was hereby received into evidence as 30294's Exhibit FF, as of this date.)

Q. Could you read the first two sentences out loud of that email from Chip to David and yourself?

A. "The reason for the sudden urgency is that Founders has filed a lawsuit. I think Michael forwarded this to you regarding the unpaid JIBs and the AFEs and is looking to foreclose on the working interest. At this point, we have strung out all the attorneys that we have had represent the LLCs, and they are unwilling to work without some of the past due invoices being paid and a path for the future invoices to be paid. Without cash in the next few weeks, we will not even be able to file a response to the lawsuit on behalf of the LLCs. Without a response, there will likely be a default judgment entered granting Founders the requested relief, and they will own the working interests without having to pay

another dime. Michael and I have a conference call with Steve O'Connell (ph.)" --

MR. WEINICK: Your Honor, may I interrupt the reading for one moment? I should have objected to this. There is a common interest between the Arabella estate and the receiver with respect to the Founders litigation. And so I would tentative--

THE WITNESS: It's been settled.

MR. WEINICK: To the extent this is discussing those positions, it would fall under their common interest and privilege.

MR. TAYLOR: Your Honor, this was disclosed through a third party. I don't believe that you've heard of any joint defense agreement that was entered into. It hasn't been offered by Mr. Weinick, and while he may assert that, these are different parties discussing something and sent to third parties. There's no privilege.

MR. WEINICK: No, the parties to the joint defense common interest agreement are the Arabella estate, two out -- the three Arabella estates and the receivership. And Mr. Hoebeke can testify to that.

MR. TAYLOR: And the receivership, which was not in -- Your Honor, that, kind of, proves the point that there was no receivership at that point on December 8th.

MR. WEINICK: Is the receiver standing in the shoes

of Platinum?

MR. TAYLOR: Your Honor --

MR. WEINICK: If it's asserting this privilege. It's the receiver's privilege to assert on behalf of Platinum.

MR. TAYLOR: There's no joint defense agreement before this Court. He asserts there's one. I haven't seen it.

THE COURT: I'll overrule the objection.

BY MR. TAYLOR:

Q. Michael, thank you. So the fear was -- that Chip is describing -- is that Founders was going to foreclose on all of its interests because of the lawsuit it filed?

A. Yes.

Q. And you couldn't get an attorney to answer -- to even file an answer without getting more funds into the Arabella entities?

A. I never spent any time looking for an attorney to answer that, but that's what I understood from Chip.

Q. Okay. This is the same Founders that Mr. Battaglia just represented to the Court. It appears this litigation is at an end if we're finally going to monetize these assets.

A. Yes.

Q. Is that correct?

A. I understand it's now been settled. That's what I heard.

Q. And that was made possible because there was some funding

made available by my client.

A. The settlement this morning?

MR. WEINICK: Objection. Calls for speculation.

MR. TAYLOR: Withdrawn, Your Honor.

Q. Turn to Exhibit CC. This is an email from you to David Steinberg with a cc to Chip Hoebeke. And there you ask Mr. Steinberg, "You need to make up your mind. Do you want to pay us 400 and let us try to save it? Yes or no? There's no time." It goes on. And then in the end it says, "There's no time anymore to simply delay a decision." This is dated December 8th, 2016.

Why were you telling Mr. Steinberg there's no time to delay a decision?

MR. WEINICK: Objection. It calls for attorney's impressions as to why he gave advice to a client.

THE COURT: I'll overrule it.

Q. Why were you telling him there's no time anymore to simply delay a decision?

A. Because we were facing the imminent foreclosure of -- in the lawsuit from Founders.

Q. In fact, there is an attachment to this email. Is that correct?

A. Yes. That was the lawsuit.

Q. Okay. And within that lawsuit Founders request foreclosure of the Founders mineral lien on the property on

which it attaches.

A. Yes.

Q. Is that correct?

A. Yes.

MR. TAYLOR: Your Honor, we move for admission of Exhibit FF.

THE COURT: FF?

MR. WEINICK: Objection to --

THE COURT: FF?

MR. TAYLOR: I'm sorry. CC.

THE WITNESS: Thank you very much.

THE COURT: Any objection to CC?

MR. WEINICK: The same objections as before, Your Honor.

THE COURT: CC is admitted.

(Email from Mr. Baum to Mr. Steinberg was hereby received into evidence as 30294's Exhibit CC, as of this date.)

Q. What business was Platinum in?

A. Platinum was in the business of making high-interest loans and taking equity positions in many of their other positions. I understand they had different aspects or different units.

They were also in the insurance business, where they would buy life insurance policies.

Q. Thank you. And you've been a bankruptcy attorney for

over thirty years. Is that correct?

A. Yes. No. Slightly less than.

Q. Slightly less than.

A. I mean practicing bankruptcy.

Q. And you've either represented such funds or dealt with other such funds during the course of that career.

Is that correct?

MR. WEINICK: Objection. Vague. I don't know what he means by "such funds".

THE COURT: Okay. I'll sustain the objection.

Q. And during the course of your career have you dealt with venture capital funds or private equity funds that are similar to Platinum?

A. It is not something we regularly do, but we have represented such funds in the past, and are representing such funds currently today.

Q. In your opinion and based upon your experience, is selling a part or all of a -- of its loan in the ordinary course of a fund like Platinum?

A. It is something that we see happening all the time with these funds.

MR. TAYLOR: I have no further questions, Your Honor.

MR. GREKIN: Your Honor, I will not endeavor to grill my partner for very long.

DIRECT EXAMINATION

BY MR. GREKIN:

Q. Afternoon, Mr. Baum.

A. Did you think that entering the participation agreement was a mistake by the receiver?

A. Absolutely --

MR. WEINICK: Objection. Calling for his mental impressions and the advice that he gave to his client and why.

MR. GREKIN: I'm not calling for the advice he gave to his client at all, Your Honor. In fact, I'm not referring to that. I just want to know at the time that the participation agreement was entered, whether he thought it was a mistake.

THE COURT: Okay. I'll overrule the objection.

A. I absolutely thought it was a smart thing to do and a good thing to do.

Q. Why?

A. Because in my closeness to the assets that were involved, and after hearing reports from the liquidator, the managers, and everything else, there was a sense that there would be a pot of gold at the end of the rainbow and that these assets had value.

The original loan was sixteen million dollars. Somebody had performed due diligence. There was value here. And it was just a question of having the liquidity to maintain the value. And in order to maintain that value, it needed some

liquidity. And I believe that selling those assets, as we were selling a portion of the note, as Chip and I were instructed to do by Platinum, was a smart move, and it was a good move, and we sit here today, in hindsight, it was an excellent move.

Q. Did anyone ever express a willingness to purchase a participation on terms better than the participant eventually agreed to?

A. No.

Q. To your knowledge.

A. I am not aware of any -- anyone. The only one that I was aware of was the person I contacted, who offered 400 for 50 percent.

Q. And one final question. Were you ever, during the negotiations of this agreement, under the impression that the receiver did not have the requisite power to enter into what we have called the participation agreement?

A. It --

MR. WEINICK: Objection. Calls for his impression about the scope of his own client's authority.

THE COURT: Well, this is the type of question, parties, that -- it's, kind of, one of those things that I kind of get the impression that Mr. Baum wouldn't have done this if he didn't think that it was a good idea or if his client didn't have the authority.

MR. GREKIN: Withdrawn, Your Honor.

THE COURT: So do I sustain it or do I overrule it? I don't know. I'm used to suits --

MR. GREKIN: Fair enough. I withdraw the question, and I have nothing further.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. WEINICK:

Q. Mr. Baum, we just heard you testify about your decades of experience, correct?

A. Yes.

Q. And you're experienced in bankruptcy?

A. Yes.

Q. And you're experienced in receiverships?

A. We do do receiverships as well. I personally have only been involved in two other receiverships -- three others. Maybe four. Some local state court receiverships, two -- one federal receivership that we've been doing, and there may have been an earlier one that I remember. Federal. Two previous federal receiverships.

Q. Was this prior to or after the Platinum receivership?

A. Prior to.

Q. How many years prior?

A. The one was many, many years prior, and the other one is contemporary. It's still going on.

Q. You're careful in your work, correct?

A. I'd like to be.

Q. Like to be. Hum.

A. I'd like to think I am.

Q. You drafted the participation agreement, correct?

A. If you want me to say I drafted it, I will take responsibility for it. It was drafted at my direction.

Q. You made certain it was clear before it was signed, correct?

A. Not as clear as I should have, no. There are a few inconsistencies in it.

Q. There are several inconsistencies, correct?

A. Only two that I know of.

Q. Well, one of them is paragraph 4 versus O, correct?

A. Yes.

Q. That you testified to.

A. That's one. I take responsibility for that one. That one I drafted. I changed it in O. I forgot to change it in paragraph 4.

Q. And as you see it, what is the other inconsistency?

A. That we didn't change one of the earlier paragraphs to be consistent with what we negotiated, which was in paragraph 9.

Q. And the inconsistencies between paragraph 9 and which paragraph?

A. I -- the one you pointed out in your brief, and I think

it's paragraph 5. Am I right?

Q. Right. And the inconsistency you're pointing to is the language that talks about Platinum's sole and unfettered discretion, correct, to continue to manage the loan, versus the add-in that you described in paragraph 9?

A. Correct. And notwithstanding the add-in.

Q. And you would agree that the additional language in paragraph 5 about 30294's consent, that doesn't, in and of itself, give 30294 the right to make a direct claim against the Arabella estate, correct?

A. Absolutely not. I can explain it, the two differences, if you want me to, but this is cross.

Q. All right. In paragraph 6 of Exhibit G --

A. Yes?

Q. The language that requires 30294 to be kept in the loop, to paraphrase, correct?

A. And requires payment of their professional fees as well. A shared arrangement.

Q. They need to be kept in the loop, because they can't go directly to the borrower, correct?

MR. TAYLOR: Objection, Your Honor. Totally assumes facts not in evidence. Misstates the evidence.

THE COURT: No, I'm going to allow the witness to express his opinion on this. I'll overrule the objection.

A. Can I explain the difference?

Q. Is it possible to have the question --

A. I mean, it was a yes or no.

Q. I think there's a --

THE COURT: I've overruled the objection. I understood the question. Maybe not exactly. The question wasn't phrased this way, but when -- did 30294 have the ability to go directly to the borrower?

THE WITNESS: Only if paragraph 9 would be invoked, which is -- under paragraph 9, if they would say I'm invoking paragraph 9, and now I have that right, they would have had the right to do so. That is how it was meant to be, that they would have the right whenever they exercised that right, or wanted to exercise that right, but as long as they haven't exercised their rights under paragraph 9, then they would -- they were willing to allow to work with them.

Paragraph 9 should have been more artfully expressed directly in paragraph 5 and 6 to avoid that inconsistency.

Q. And so now, instead, you have a situation where Platinum filed this proof of claim and 30294 is trying to usurp that proof of claim, correct?

A. Well, forty-five percent of it.

Q. That's not what their transfer said, is it?

A. I didn't -- I didn't read the transfer.

Q. You prepared the proof of claim that Platinum filed, correct?

A. My office did. I think I saw it before we sent it over to Mr. Schwartz.

Q. And your office wouldn't have sent it for filing if it wasn't within Platinum's authority to file the proof of claim, correct?

A. Correct.

Q. There's nothing in the participation agreement in Exhibit G that precluded Platinum from filing the proof of claims, correct?

A. Correct.

Q. And you testified that your instructions from Platinum were to find a participant, correct?

A. Yes.

Q. And the document you drafted was intended to comply with those instructions, correct?

A. To find somebody to buy into the loan? Yes.

Q. To find a participant for the loan.

A. Are you using the word participant the way it's being magically used over here by the attorneys or just to find somebody to buy into the loan? I'm using the word participant as -- very loosely. I think the actual word -- but it doesn't matter. I don't recall a conversation from last June of 2016, but as I understood it, find somebody to put money into this loan and buy a piece of us.

I think that you're using the word participant in a legal

sense. I never used it in a legal sense. I still don't understand it as a legal sense the way you and Mr. Taylor are disputing it. Somebody here was buying a piece of this note.

Q. You don't understand what participant means in a legal sense, but you drafted a document that's labeled "Participation Agreement", and you gave it to your client to sign, and you're seeking hundreds of thousands of dollars of fees for that work?

A. Let me explain. You're using the word participant different than Mr. Taylor is using the word participant relative to this participation agreement. So I don't want to get into that dispute.

Obviously I know what a participant is in the regular sense, and I know what a participant is a la In re AutoStyle in the Sixth Circuit, which is the kind of participation agreement that we were trying to emulate. That's the one we do all the time, and those are called participation agreements.

Q. Where the participant has no direct right to go against the borrower. That remains with the lead agent, correct?

A. Sometimes, yes. Sometimes, no. In the AutoStyle case, I don't recall what -- I know the attorneys there. I don't recall which way they have written it. We've seen them go both ways.

Q. But your intent -- you labeled this as a participation as

the way you understood a participation to be, correct?

A. Which could go both ways.

Q. Right. But you didn't draft it clear enough to make that distinction, did you?

A. I thought we did in paragraph 9. But it's not.

Q. But you had the remainder language in paragraph 5, correct?

A. You are correct. It is in -- there's no question that there is -- they're not consistent.

Q. And paragraph 6, likewise, is inconsistent with paragraph 9, correct?

A. Correct.

Q. Right. So 5 and 6 militate in favor of Platinum maintaining control in accordance with the traditional role of a lead and a participant, correct?

A. Yes.

Q. And paragraph 9 is the outlier, correct?

A. Paragraph 9 says something very different than paragraph 5 and 6 implies. No question about it. That's fact.

Q. Did S&W receive a retainer when it started working for Platinum?

A. To the best --

MR. GREKIN: Objection. Relevance.

THE COURT: Say it again. Say the question again.

MR. WEINICK: The question was if S&W had -- Schafer

and Weiner had received a retainer from Platinum prior to commencing work for Platinum.

THE COURT: Yes. And what is relevant to that?

MR. WEINICK: The relevance is they put the professional fees at stake here, how vital it was to get them paid so they can continue to -- they could save the Arabella collateral. And they talk about the pinch that Platinum found itself in and that Arabella found itself in, and really what this was was a play for professional fees.

MR. GREKIN: Oh, I withdraw my objection. I'll let Mr. Baum talk about that.

A. It wasn't our fees that were the problem. Our fees were not the problem. We were willing to wait. We had an agreement from June that paid all of the professionals pro rata. The surcharge agreement and the amendment to the surcharge agreement or the carve-out, whatever you want to call it, what has been labeled the guarantee or the amendment to the guarantee, signed by Platinum in June, is what gave priority to all the professionals, not this participation agreement.

They already have -- every professional in this room -- every single one in this room is included in a surcharge that Platinum agreed to in July. This agreement just changed instead of you paying a hundred percent of the surcharge, you pay fifty-five of it, and he pays forty-five of it.

We did not need fees. Mr. Hoebeke needed his firm to be paid, because he was appointed by this court as the CRO. If he would have been owed money, he would have had to waive it.

Mr. Battaglia was not going to file a Chapter 11 unless he got a retainer. Mr. Forsche (ph.) was not going to file a Chapter 15 unless he got a retainer. Your local counsel, Kessler Collins, was not going to go forward unless they got a retainer. Steve O'Connell was not going to go forward as the oil and gas person unless he got a retainer.

When the 500,000 dollars was put on the table, it was divided pro rata by everybody. We actually took less than what we were intended to.

This agreement did not pay anybody. We were willing to wait. We were willing to rely on the surcharge.

Q. You testified that you thought that the professional fees were necessary, because there was a danger of foreclosure on Arabella, because the asset value was very low, correct?

A. There was a danger of foreclosure. I don't know what the asset value being very low means.

Q. You need to bring in a participant because there wasn't enough value in the estate to find other kind of financing.

A. There was no willingness to provide any cash towards this asset. So there was no liquidity, or there was no money available from your predecessor or from you to fund this Arabella -- protecting this Arabella asset.

Q. Right. And you testified before words to the effect that someone had to have done diligence on this, right?

A. No. I think the testimony was that Mr. Schwartz said in his declaration that he had done diligence on it.

Q. You never saw that diligence, right?

A. I just saw the result. There was -- you want to know what I was told the result was? No?

Q. No. You didn't dig into the diligence yourself, correct?

A. Whatever due diligence they had to value the asset? No, I did not.

Q. And you missed the tagalong rights, correct? You didn't advise your client that tagalong rights existed, correct?

A. I did not know about the tagalong rights until January 6th, and I've already disclosed to your partner my opinion of those tagalong rights and what value they may have had to this estate. And I'm happy to disclose that here if you want.

Q. Your counsel asked if you see sales like this all the time in connection with funds like Platinum. Do you remember that?

A. Claims being bought and portions of claims being bought, yeah. I mean, yeah, it happens all the time.

Q. It happens all the time in receiverships?

A. I can't say that. I've only been involved in three receiverships. I can't say that. I've never -- I don't think I ever saw it --

Q. To clarify. So the same form from your system was used to create Exhibits AA and G, correct?

A. It appears that way, yes. I think so.

Q. And that was the form that you sent to your son's company to try to get them --

A. No, my son's company -- no, no, no, no. It was a -- my company works -- my son, at that time, worked at a financial advisor, and he had had dealings with this TCA Global offshore, and he introduced me to that company. He had a contact there, so that was it. There was no affiliation at all with my son. He had just done some business for them.

Q. And it's your position -- you're advocating that Exhibit G constitutes an assignment, not a participation, correct?

A. Am I going to say something now that's a legal conclusion when I say assignment versus participation? I mean, I haven't -- what --

Q. Well, you're a lawyer. You're testifying due to your role as a lawyer for my client. And you've filed a reply in response to our objection to the transfer of claim. So is it your position, legal or otherwise, that Exhibit G is an assignment as opposed to a participation?

A. The answer is in my discussions with Sean Fitzgerald that's what it was supposed to be.

Q. Sir, can you turn --

A. The use of the word assignment, I'm not sure. Okay.

Q. In the binder that your partner prepared, this is witness and exhibit list of Schafer & Weiner.

A. I don't have that in front of me.

MR. GREKIN: Nor are those documents admitted into evidence, Your Honor.

MR. WEINICK: Well, they're about to be.

MR. GREKIN: Really?

A. Can I --

UNIDENTIFIED SPEAKER: Do you have another copy of that binder?

A. Can I talk about this last question that I answered, because I want to just --

Q. No, you've answered it to my satisfaction.

A. Okay. Because I don't think I was accurate.

MR. WEINICK: May I approach the witness, Your Honor?

THE COURT: Yes.

Q. Can you turn to Exhibit -- to tab 5 in the binder, please? And take a moment to familiarize yourself.

A. I'm familiar with this document.

Q. You've seen this document before today?

A. Yes.

Q. Okay. Is this a document that you provided to your counsel for use in today's hearing?

A. And this is a document that we -- that our firm prepared for today's hearing, yes.

Q. Okay. And it's a document that's been in your firm's files since you first obtained it?

A. Yeah, I think. I mean, this is the amendment to the guarantee. Correct, yes.

Q. And when did you first see the amendment to the guarantee?

A. This would have been in July of 2016.

Q. You've maintained a copy of that in your firm's files since then?

A. Yes. I'm sure we did.

MR. WEINICK: Your Honor, I'd move to admit Exhibit 5, the amendment to the guarantee, as listed on the Schafer & Weiner witness and exhibit list.

THE COURT: Any objection to 5?

MR. TAYLOR: Your Honor, I may be dense, and I have an objection as to relevance. Maybe his questions will reveal the magic lamp here, so at this time I state an objection to relevance.

MR. GREKIN: Your Honor, I have a rather unusual objection, which is that I think that if Exhibit 5 is admitted 4 and 6 should also be admitted since they're really part of all the same transaction.

MR. WEINICK: I'm happy to concede to that.

MR. GREKIN: Well, fair enough.

THE COURT: 4. Okay. So now you're offering 4, 5

and 6?

MR. WEINICK: Yes, Your Honor.

THE COURT: And the relevance is what?

MR. WEINICK: The relevance I'll get to in one moment, if you'll permit me a few questions.

THE COURT: Okay. Then I'll defer ruling until I've -- until you've satisfied the relevance objection.

MR. WEINICK: Certainly. And would Your Honor like me to lay the same foundation for 4 and 6 as I did for 5?

THE COURT: There's no objection. Well, I don't know. Are you going to have objections to 4 and 6?

MR. TAYLOR: Your Honor, same objection. I presume that his next questions might, again --

THE COURT: Okay.

MR. TAYLOR: -- reveal that to me.

THE COURT: Yes. If you would establish relevance.

MR. WEINICK: Certainly.

BY MR. WEINICK:

Q. Mr. Baum, can you turn to paragraph 2 of the guarantee amendment? That's on page 3 of 4.

A. Yes.

Q. You see it's labeled, "Security for Guarantee"?

A. Yes.

Q. Okay. Can you read that to yourself?

A. Yes.

Q. You've had an ample opportunity to read it?

A. Yes.

Q. What is your understanding of paragraph 2?

A. Basically, that we were given a -- akin to a surcharge or a carveout, however you want to call it, from either the assets or a sale of the note for all of the professionals, which is more -- described more in Exhibit 6.

Q. Would, in other words, describing that be a first out?

A. It was a surcharge, a 506(c) surcharge for a carveout.

Q. Okay. And what were the conditions that had to be met for this surcharge to be activated?

A. Well, it had to be -- it was approved as part of a budget, and it accrued, and -- and --

Q. Well, back up.

A. I mean -- I mean what --

Q. You're at Roman --

A. It has -- number one, it has been approved as part of the budget in accordance with the forbearance agreement.

Q. Well, what about (a) and (b) of that provision?

A. It happens upon a foreclosure, or it happens on a sale with a note. So it was a surcharge against the assets as well as against the sale of the note.

Q. Right. And as far as you know, there's been no foreclosure on the collateral, correct?

A. Correct.

Q. All right. And you're advocating that there be -- that it was an assignment, not a participation, so you can get your first out, correct?

A. It was acknowledged in the assignment that this is still valid.

Q. But you need it to be categorized as an assignment in order for your first out to be triggered, correct?

A. No, no, no. The 500,000 dollars, which was a sale of the note, whether or not that sale of the note was an assignment or a participation, that 500,000 dollars was to be paid pursuant to this carveout.

What the participant bought is of no consequence to this, because when the 500,000 dollars was transferred, that is money that they -- or proceeds that they received for a portion of their note, and whether or not that note was fully assigned or not fully assigned, that 500,000 dollars belonged pro rata, according to the forbearance agreement in number -- Exhibit 6 -- to everybody. It's paragraph 2(d), as in David.

Q. So just so we're clear. You need the participation agreement, Exhibit G, to be enforced in some measure in order to get your first out under the guarantee, correct?

A. Well, of course. We needed somebody to spend 500,000 dollars.

UNIDENTIFIED SPEAKER: One moment, Your Honor.

THE COURT: So did you want to reoffer 4, 5 and 6?

MR. WEINICK: Oh, yes. Thank you, Your Honor.

MR. TAYLOR: Your Honor?

MR. WEINICK: I would move to admit 4, 5 and 6.

MR. TAYLOR: I withdraw any objection, Your Honor.

THE COURT: I guess it's Schafer & Weiner Exhibit 4, 5 and 6 are admitted.

(Guarantee agreement was hereby received into evidence as Schafer & Weiner's Exhibit 4, as of this date.)

(Amendment to the Guarantee was hereby received into evidence as Schafer & Weiner's Exhibit 5, as of this date.)

(Forbearance agreement was hereby received into evidence as Schafer & Weiner's Exhibit 6, as of this date.)

MR. WEINICK: No further questions from this witness at this time, Your Honor.

MR. TAYLOR: All right. Your Honor, at this time we'd like to release Mr. Baum from his subpoena, ask him to step down, and since --

UNIDENTIFIED SPEAKER: Keep -- stay in the courtroom or not.

MR. GREKIN: I was going to ask a couple.

MR. TAYLOR: Oh, you. I'm sorry. Go ahead. I apologize.

MR. GREKIN: Not too much. I was going to ask him, though.

If I may, Your Honor? I guess I'm last up.

You don't get released quite yet.

REDIRECT EXAMINATION

BY MR. GREKIN:

Q. Mr. Baum, it was mentioned in cross about missing the tagalong rights. Did we miss the tagalong rights?

A. Absolutely not.

Q. Can you explain why not?

A. We found out about them about five -- on the day that we were given authority, a few hours before, an hour before, we were given authority to release the document.

I communicated with Chip, and I asked Chip, what is this? Chip said he didn't know. We were under the impression that it had little or no value. And even -- and even as much as a week later it -- we heard different and varying reports as to what it was or was not worth. And we ultimately did some research on it, and we had an opinion as to what it was worth.

Q. And what was that opinion, Mr. Baum?

MR. WEINICK: I've got no objection. Go ahead.

UNIDENTIFIED SPEAKER: Erik.

Q. Mr. Baum, there's no pending objection.

THE COURT: There's no objection.

Q. What was that opinion?

MR. WEINICK: I'm sorry. Can I have the question --

MR. GREKIN: Yes.

MR. WEINICK: -- read back?

MR. GREKIN: Okay.

UNIDENTIFIED SPEAKER: It was --

THE COURT: It was to -- as to his opinion of the value of the tagalong, right?

THE WITNESS: There's no objection?

MR. GREKIN: No objection.

A. He said so.

Q. What was your opinion?

A. They were worthless to this estate.

Q. Because they belonged to somebody else, right?

A. Correct.

Q. And in fact, Mr. Baum, what was -- despite that fact, what was the result of mediation in terms of the people who got money from the tagalong rights?

A. There was a sharing arrangement that was reached among the parties which allowed some of that cash to move in favor of this estate, and in return for giving up a larger portion of that cash a larger portion of the hard assets were moved to this estate.

Q. Now, Mr. Baum, I was a little confused when you were talking about paragraphs 9 and paragraphs 5 of Exhibit G. And that is, again, the participation agreement. Were you saying that you think that 30294 -- did I get that right, 294 -- were you saying that you think that 30294 does or does not have the right to do what it is trying to do in this hearing?

A. I believe that under paragraph 9 they have that right.

Q. Finally, I heard you testify about the document entitled "Guarantee" out of Schafer & Weiner's exhibit, and I wanted to ask you. It sounded to me like receiver's counsel was suggesting that you pushed for the sale of a participation in order to get paid. Is that the case?

A. Absolutely not.

MR. GREKIN: Nothing further, Your Honor.

THE COURT: Any follow-up?

MR. TAYLOR: Nothing further, Your Honor.

THE COURT: I have a question. So under paragraph 9, according to your understanding, Mr. Baum, when we talk about the participation purchaser having the same rights and powers under the note documents to enforce the note or note documents, now, are you talking about -- you said that they could, quote, "exercise their rights under paragraph 9". Are you saying that they could exercise their rights with respect to one hundred percent of the interest or to only forty-five percent of the interest?

THE WITNESS: Forty-five percent of the interest. It was the -- it was -- unartfully, I think what was intended there is -- as I recall my discussions at that time with counsel, it was that the right to take action and to stand up and say I want to take care of my own forty-five percent was given to him when he wanted to exercise it.

And until he does, there would be cooperation. We would be talking with each other. You'd let me know if you want to settle. I won't unreasonably withhold it. Because if you end up getting forty-five here and fifty-five here, then it's no longer giving consent unreasonable. It's the opportunity to say hey, I'm going to just keep my part. It creates a war.

So the intent was that as long as you're doing it, keep me informed, but if I don't -- if, you know, if you're -- I don't like it, then I have the right to move for my forty-five. That's what it --

THE COURT: So to your understanding how --

THE WITNESS: That's my recollection of what it should say.

THE COURT: How does one exercise its rights as to forty-five percent as to an undivided one hundred percent of the collateral?

THE WITNESS: He does that by transferring the claim.

THE COURT: Well, assuming he -- I mean, when you say he transfers the claim, are you talking about Mr. Bush?

THE WITNESS: Yes. He files the notice of a transfer of claim. And in this way he would own forty-five percent of every dollar that comes out, subject to the waterfall expenses.

THE COURT: Well, I understand that. I understand

that once the money starts flowing, and you exercise your right as to the forty-five percent, but if you want to take a more active role with respect to the collateral, how do you do that?

THE WITNESS: It's a good question. I don't know. Sitting here, I don't know.

THE COURT: Okay. All right. Any other questions? All right. Thank you. And Mr. Baum is released, I think.

MR. TAYLOR: Right. Yes, he is, and therefore I ask that he be allowed to stay in the courtroom if he so desires, as he is not going to be recalled. His testimony will no longer be influenced.

THE COURT: That's fine with me.

UNIDENTIFIED SPEAKER: And I make take --

THE COURT: We'd like to call Mr. Hoebeke to the stand.

(Witness sworn)

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MR. TAYLOR:

Q. Mr. Hoebeke, my name's Clay Taylor. I represent 30294. We've obviously met before. Could you state your full name for the record?

A. Charles Leonard Hoebeke, II, often called Chip so as not to confuse me with my father.

Q. And how are you employed?

A. I am currently the court-appointed chief restructuring officer of Arabella Exploration and Arabella Operating Company.

Q. And how did you get placed into your role? The shortest version possible.

A. The shortest version possible is Platinum exercised certain rights on the loan documents to vote their -- the Arabella Exploration, Inc. parent companies' voting rights to replace the manager of two LLCs underneath it, substituting myself in for Jason Hoisager.

That was challenged subsequently in the Cayman court. The Cayman court ratified it as part of the filing of provisional liquidation, and eventually, when the provisional liquidators became full liquidators, they were in power as part of the liquidation order to official retain me.

So there's, depending on which side of the argument, you'll lean on several false starts, but eventually everyone conceded.

Q. And was Arabella in pretty desperate financial straits when you took over?

A. Arabella was in desperate financial straits. We were unable to pay even the payroll and payroll taxes for the last payroll of the entity.

There was one last bit of cash. It was not exactly the

circumstance that I was led to believe I was coming into.

Q. Okay. And eventually Arabella Exploration filed for bankruptcy. Is that correct?

A. Yes, sir.

MR. TAYLOR: And, Your Honor, I would like the Court to take judicial notice of Exhibit H-1, 2 and 3, which is the petition that was filed in this case, and the date, it was filed on January 8th. And there was a statement of compensation for both Mr. Battaglia and for Mr. Hall of Miller, Johnson, that they were both paid various retainers that were funded from the proceeds that were -- eventually came from 30294.

We can go through this in more painstaking detail, but I'm trying to finish, as I know it is past 5 o'clock, and people probably want to go home. So I ask the Court to take judicial notice of those documents and those facts.

THE COURT: Any --

MR. WEINICK: Your Honor, I have no problem with taking judicial notice of documents, but the conclusion as to the tracing of funds, I haven't --

MR. TAYLOR: It actually says it in Miller, Johnson. It does not in Mr. Battaglia's. But those are the facts. I don't think they're in dispute here.

MR. WEINICK: Can you just point me to the provision, so I can look at it for --

MR. TAYLOR: Sure. H-3. Go there. And again, I think -- it's not in Mr. Battaglia's. It's in -- on number 3 or H-3.

MR. WEINICK: I have no problem with that, Your Honor.

THE COURT: All right. I will hold judicial notice, Exhibits H-1, H-2, and H-3.

BY MR. TAYLOR:

Q. Mr. Hoebeke, at the time that AEX filed, did it have any cash?

A. No, sir.

Q. Did it have accounts receivable?

A. Yes, sir.

Q. Were those accounts receivable collectible?

A. They were still outstanding.

Q. Still outstanding. So would that -- so therefore the answer would be at least they have not been collected in a year and a half.

A. That is correct. They are the subject of the Founders' dispute.

Q. Did you file schedules with this bankruptcy eventually?

A. We did.

MR. TAYLOR: Your Honor, we ask that the Court take judicial notice of Exhibit L, which are the schedules that were involved in this case that indicate there was no cash at

the time of the filing, and there was accounts receivables, but they were of dubious amount or ability to collect, and that is reflected in the schedules.

MR. WEINICK: Except for the word "dubious", I have no problem.

THE COURT: I'll judicially notice L. If "dubiousness" appears on the face of it, then so be it.

Q. And, in fact, for at least the first five or six months, this estate still had no cash in it. Is that correct?

A. Correct.

Q. And it filed monthly operating reports reflecting that. Is that correct?

A. Correct.

MR. TAYLOR: Your Honor, we ask the Court to take judicial notice of the MORs Q, R, S, (sic) U, V, and W of the exhibit notebook that reflect that there is little to minimal cash, below 5,000 dollars, within the estate during those time frames.

MR. WEINICK: No objection.

THE COURT: I'll notice Q, R, S, T, U, V, and W.

Q. In fact, Mr. Hoebeke, how'd you pay U.S. Trustee fees?

A. My firm, Rehmann, advanced the U.S. Trustee fees.

Q. Okay. So eventually, in December, how did Arabella Exploration even get any cash to be able to file for bankruptcy relief?

A. December 2016?

Q. Yes.

A. Okay.

Q. I'm sorry. I should have been more clear. December 2016.

A. In late December of 2016 there was an agreement entered into between Mr. Bush's company and Platinum. 500,000 dollars was paid into Schafer & Weiner trust accounts, expense account, some sort of account, and those proceeds were used to make the disbursements in early January.

Q. Okay. And why was there such a pressing need to file for -- for AEX to file for bankruptcy during this time frame?

A. There was originally a need, even before the Founders lawsuit, it was the Arabella Petroleum adversary.

In this case we had a number of creditors -- Platinum, Arabella, Founders -- all of whom wanted to get everything and remove the ability of any other creditors to get out of it. So APC was trying to foreclose. Founders, in early December, sent an offer for ten million dollars, and the next day filed a state court lawsuit seeking to foreclose at that point in time.

We had been advised by all the counsels in the case that no one was willing to answer that, because they didn't want to be stuck in the case. I reached out to a number of law firms like Magasset (ph.), Barnes & Thornburg, Holland & Knight,

some local firms, and at that point no one without cash was willing to answer that or do anything else.

Q. And so a default judgment would have been taken as an answer and they filed -- or bankruptcy filed.

A. Again, there was no counsel officially representing me at that point, but the unofficial counsel that I received from a variety of people was that was what was going to happen.

Q. And Founders asserted an operator's lien for unpaid JIBs, amongst other causes of action, and sought to foreclose upon the majority of the Arabella assets. Is that correct?

A. They were focusing on AFEs, but JIBs along with it.

Q. Okay. So, in fact, they filed a motion for relief shortly after this bankruptcy was filed seeking relief from the automatic stay to pursue that action. Is that correct?

A. They did.

MR. TAYLOR: Your Honor, we ask the Court to take judicial notice of Exhibit I. That was a motion for relief filed by Founders shortly after this bankruptcy filing.

MR. WEINICK: No objection.

THE COURT: I is noticed.

Q. And you also talked about APC, the fraudulent transfer suit. They also filed a motion for relief from the stay shortly after the bankruptcy was filed. Is that correct?

A. Yes, sir.

MR. TAYLOR: And, Your Honor, if you would take

judicial notice of Exhibit P, Your Honor, and that is the motion for relief from stay filed by the APC trustee.

MR. WEINICK: No objection.

THE COURT: P is noticed.

Q. With the funds that were advanced to you prior to the filing of the bankruptcy and in this bankruptcy case, you were ultimately able to respond to these motions for relief. Is that correct?

A. Yes.

Q. And explain what happened with the APC trustee and where that stands today. And I know in as short a time frame as possible.

A. I will be brief. The Court approved the settlement, so is, I think, aware of this. In February or so of 2017, in this court and Judge Davis's court there was the understanding that is -- there was disputes over tagalong rights. There's adversary on other things. And the matter was referred to Judge Mott for mediation. That took place in March of 2017. Judge Mott did a very good job getting everyone down to the table.

To be candid, he expressed an interest in knowing who our successors would be when we retired if we wanted to litigate this, so that he could keep the case going, or we could mediate it that day. And he put us through a very good mediation, and we were able to get what we thought was a

successful settlement, which was approved in this court, Judge Davis's court, a Grand Cayman court, and the New York Receivership Court.

Q. Okay. And so that was successfully concluded and now you have a means to -- when you monetize assets, to actually have those flow to the estate without being hung up in the APC bankruptcy, correct?

A. We were able to relieve that particular adversary via that means.

Q. And Founders, again, this Court has been advised prior to the start of this hearing that that is essentially settled between AEX and Founders.

A. We agreed on terms this morning. We are very optimistic the attorneys will properly capture them, and we will be bringing a motion for the settlement to the courts, various courts, soon.

Q. In addition to the APC action and the Founders action, there was, indeed, for some, danger that Platinum itself could foreclose upon the assets at any time. Is that correct?

A. Yes.

Q. Okay. In fact, there was numerous other legal matters pending at the time that you filed. Is that correct?

A. There were a half dozen state court actions, most of which weren't necessarily seeking to foreclose but seeking their various relief.

Q. And those are all listed in the statement of financial affairs. Is that correct?

A. I believe so.

MR. TAYLOR: And, Your Honor, those are all listed in Exhibit M, and we've asked the Court to take judicial of the numerous suits and actions that were pending at the time that this case was filed.

MR. WEINICK: No objection.

THE COURT: M is noticed.

Q. So you used this cash to pay Mr. Battaglia's firm to be able to file, to pay Miller, Johnson to be able to file this case, as well as to pay various other professionals. Is that correct?

A. Yes.

Q. And do you believe that you've received some value and -- been able to make good use of those funds?

A. Yes.

Q. How?

A. As described, prior to filing bankruptcy we had a number of parties who were each seeking to get all of the assets for significantly less value than what they were worth.

By entering into the bankruptcy and the automatic stay we obtained relief from those actions in exchange for the opportunity for those folks to pursue their claims in an orderly fashion, and all of them having the ability to come

into court and have their -- have their day, as opposed to one particular group in one particular case getting all the marbles at that point, if you will.

Q. From June forward did Platinum ask you to canvas the market to identify potential partners and a transaction with it to take them out from their loan position, either in whole or in part?

A. It was clear early on that Platinum was not prepared to provide any cash towards this endeavor, and they did, essentially, suggest to us that we were on our own, and that we should go out and feel free to bring opportunities to them.

When the Cayman liquidation was filed, and there's a public notice that goes out all over the place, that generated a lot of phone calls from people who were interested in buying all sorts of things, buying the assets and potentially buying Platinum's position in all sorts of different ways. So there was a flurry there.

As time went on, and cash needs became more urgent, in November or so of 2016 I received a call from David Steinberg instructing, or asking us to go and be a little bit more creative and see what we could do. Perhaps, you know, we were, you know, initially we were trying to get full value, and we just weren't having any success, primarily because they heard of the APC adversary brought on the assets.

As we moved on, you know, the situation became more and

more dire, and they were open to less attractive offers.

Q. Mr. Hoebeke, thank you for that. Is it important for you to know whom you need to discuss to consent to the sale of any collateral, use cash collateral, or to file a plan of liquidation or reorganization, whose vote you need to solicit?

A. Yes.

Q. We've discussed this participation agreement between 30294 and Platinum. You're aware that 30294 has consent rights to any sale. Is that correct?

A. I am aware the document indicates that.

Q. Okay. Could you turn with me to Exhibit D-1, specifically page 43? Section 8.9(b), the last paragraph, could you read that out loud?

A. That "Nothing contained herein". That paragraph?

Q. Correct.

A. "Nothing contained herein shall be deemed to authorize the administrative agent to authorize or consent to or accept or adopt on behalf of any holder any plan of reorganization, arrangement, adjustment or composition affecting the obligations or the rights of any holder or to authorize the administrative agent to vote in respect of the claim of any holder in any such proceeding."

Q. So based upon that paragraph, when you file any plan of reorganization or liquidation, you need to solicit the 30294 vote, correct?

MR. WEINICK: Objection. Calls for a legal conclusion.

THE COURT: I'll let the witness testify as to his opinion.

A. My honest opinion is the Court's going to tell me.

THE COURT: That's as good as any.

Q. You're aware that 30294 asserts the right that it is to be paid directly from Arabella?

A. I am.

Q. You, as an estate professional, certainly don't want to have two parties making a claim for the same payment, correct?

A. I would like to have a clear cash collateral and confirmation hearing.

Q. Okay. And you don't want to have to file any sort of interpleader action, do you?

A. No, sir.

Q. Okay.

MR. TAYLOR: I don't have any further questions, Your Honor.

MR. WEINICK: Just a moment, Your Honor.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: I'll wait for him to clear.

UNIDENTIFIED SPEAKER: Sorry.

MR. WEINICK: He's going to do it.

THE COURT: Yes, go ahead.

DIRECT EXAMINATION

BY MR. GREKIN:

Q. Afternoon, Mr. Hoebeke. Who introduced the participant to the opportunity to purchase a participation in the Arabella loan?

A. Sean Fitzgerald introduced Craig Bush to me, who introduced Craig to Platinum, Schafer & Weiner.

Q. How many other people and entities did you contact about purchasing the participation?

A. I contacted a lot of different folks about different ways of finding financing. You know, I can't say I called anyone and said hey, would you like to be a participant? You know, I -- I had folks who were interested in buying the whole thing. I had liquidation funders, who were interested in funding, again, especially before the Founders lawsuit, I had liquidation funders who were interested in financing the adversary against APC. I had oil and gas entities who wanted, who were at least contemplating buying some or all of the Platinum position to credit bid for the assets, if they could get that to work in a futurely contemplated 363 sale.

There's a wide variety of things. There was -- in that November to, kind of, December 20th time frame -- there was better than twenty people who I would say I walked through a full due diligence with, many more people who called who went away fairly quickly. But there was a number of people that we

talked to entirely, and we worked our way down.

But the TCA group came in. They were not acceptable to Platinum, so that was fine. As we worked our way down towards the deadline to respond to Founders, we were really down to two parties.

Q. Anybody ever offer, to your knowledge, clearly better terms to fund this -- to fund with the participation agreement you ended up funding?

A. No one who put anything in writing.

Q. Did you think it was likely that if you kept searching you'd find somebody with better terms?

MR. WEINICK: Objection. Calls for speculation.

THE COURT: Overruled.

MR. GREKIN: I mean, I suppose it does, but it seems like a proper question to me.

Q. And go ahead, Mr. Hoebeke.

A. We're talking, at this point, between Christmas and New Year's with a January 7th response deadline. At that point I had done a lot of canvassing and felt like we were up against -- that we had to not only reach an agreement, we had to paper an agreement. There was a new receiver involved. As a matter of fact, one of the other events that took place at that time is the Black Elk bankruptcy court issued a global TRO, which enjoined Platinum or the proceeds from Platinum from being distributed. So in addition to all the normal

problems of trying to get a deal like this done that fast, we also had to then get the trustee for Black Elk to sign off on using these proceeds.

So there was a lot of stuff. I didn't, and I still don't think at that point in time we could do them there. Had that response date been a week later, I think things might have different, but it wasn't.

Q. Given the circumstances, did you believe that the terms of the participation agreement were unfair to the receiver?

A. The receiver had indicated that they didn't feel like they were in the business of investing in speculative assets. Okay? So that being said, they had taken off the table the thought that they would put cash into this. So at this point in time, we were down to two offers or losing the assets.

And, you know, in a perfect world, was it the best deal that I would have loved to have done? No. Under the circumstances, it was the best deal that we were offered, and it was a take it or leave it, and, you know, they took it.

Q. At the time the participation agreement was signed, how long had you been the person operating AEX and AO?

A. Again, depending on which gambit to installment was successful, I began between May of 2016 and July of 2016, so I would have been there five or six months, depending on that.

Q. At that point, other than the borrower who had defaulted under the loan in the first place, was there anyone other than

you with the knowledge necessary to take these two entities in the bankruptcy proceedings?

A. I am sure Jason Hoisager would indicate he would have been able to. Other than Jason and I, though, I don't think anybody had the institutional knowledge about the operation. Not that they couldn't have gotten up to speed with some time, but in that time, in that compressed time, probably not.

Q. Is your firm owed money for your services at the time a participation agreement was signed?

A. 30294

Q. Would your firm have agreed to continue to perform the services necessary to file and manage AEX and AO in a bankruptcy if you had not been paid at least some of the money the firm was owed?

A. No, primarily because we wouldn't have been disinterested, and so we would have been disqualified anyway.

Q. Did you observe the professionals, other than yourself, who were paid with money from the participation agreement and how they comported themselves in the future months of these bankruptcies?

A. Yes.

Q. Did you feel that they did a good job?

A. Yes.

MR. GREKIN: No further.

MR. WEINICK: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MR. WEINICK:

Q. Mr. Hoebeke, counsel asked you if someone other than yourself or Mr. Hoisager, as you volunteered him, could have gotten up to speed sufficiently to take over for you in the compressed time frame. Do you recall that?

A. I do.

Q. Okay. Do you recall when the receiver was appointed in New York?

A. It was in that time frame.

Q. It was in that time frame. And he had to get up to speed on more than just Arabella, correct?

A. Absolutely.

Q. In fact, his estate, as you understand it, is much more diverse and large than the Arabella estate, correct?

A. Yes, sir.

MR. WEINICK: Nothing further, Your Honor.

MR. TAYLOR: Nothing further from me, Your Honor.

THE COURT: Mr. Grekin?

MR. GREKIN: Nothing from me, Your Honor.

THE COURT: You may step down.

THE WITNESS: All right.

MR. BATTAGLIA: Your Honor, my primary purpose may have ended, so I may sneak out the back, and I just ask the Court to allow me.

THE COURT: That's fine. You're excused.

Mr. Taylor?

MR. TAYLOR: Your Honor?

MR. WEINICK: Your Honor, may we have a moment before he begins his close, if that's what he's about to do?

THE COURT: I was about to find out whether Mr. Taylor had even rested or not.

MR. WEINICK: Oh.

THE COURT: That was my --

MR. WEINICK: I apologize.

MR. TAYLOR: We do indeed rest. We would ask if we could move into closing arguments, which I promise to keep mine below two minutes, Your Honor.

(Pause)

UNIDENTIFIED SPEAKER: Okay.

THE COURT: An order as well as this, right?

MR. WEINICK: Yes. So, Your Honor, to the extent they haven't already been admitted, we'd like to admit the first and second receivership orders. The first order appears as Exhibit A to my binder, which is -- as part of the exhibits for May 10th.

MR. TAYLOR: It's E and F in 30294's exhibits, and I believe that E is in, but we have no objection to F coming in either.

THE COURT: Okay.

MR. WEINICK: So, and -- yes, and in addition, Your Honor, Exhibit --

THE COURT: Now, let me make sure I've got --

MR. WEINICK: Sure.

THE COURT: -- the correct binder here. I have -- I have a lot of money here.

So it's Platinum E that we're talking about here?

MR. WEINICK: No. Platinum 1-A is the second amended order.

MR. TAYLOR: Yes, or we could just use 30294's -- it we use -- it might be easier just to use mine, because I have it in mine also, and that's Exhibit F.

THE COURT: Okay. F is admitted. Okay. So they're both part of it now.

(Second order appointing receiver was hereby received into evidence as 30294's Exhibit F, as of this date.)

MR. WEINICK: Yes. Okay. Now, in my binder, Your Honor, Exhibit 3, which is the Schafer & Weiner pre-motion letter to Judge Cogan, which was filed on the docket in the New York receivership, I'd ask that you take judicial notice of that.

MR. GREKIN: Objection as to relevance, Your Honor.

THE COURT: On Platinum Exhibit 3?

MR. WEINICK: Yes.

MR. GREKIN: Yes, Your Honor.

THE COURT: Okay. Let's -- did you want to respond to that?

MR. WEINICK: Sure, Your Honor. The letter is when Schafer & Weiner is requesting a pre-motion conference to have their case addressed by a court. It talks about the issues relating to the entry into the participation agreement.

THE COURT: I'll overrule the objection. That's admitted.

(Schafer & Weiner's pre-motion letter to Judge Cogan was hereby received into evidence as Schafer & Weiner's Exhibit 3, as of this date.)

MR. WEINICK: And we would also like to move Exhibit 1-C in our binder, which is the letter submitted to the receivership court by the SEC and the prior receiver.

THE COURT: Any objection to that?

MR. GREKIN: Your Honor, if we're going to admit that we'd like to admit our response to that letter.

THE COURT: Where is that, counsel?

MR. GREKIN: We haven't brought that document. I think it's unfair and also not relevant to hear about what's been filed.

THE COURT: Okay. Am I going to admit --

MR. WEINICK: Your Honor, as Mr. Baum points out, it's a filed document. They've referenced it during Mr. Baum's testimony.

THE COURT: I'll overrule it.

MR. WEINICK: And I have no problem with the response coming in as well.

THE COURT: All right. Well, 1-C is admitted, so if you want to -- if you've got -- if you can identify your response then I'll gladly admit that as well.

(Letter submitted to the receivership court by the SEC and the prior receiver was hereby received into evidence as Schafer & Weiner's Exhibit C-1, as of this date.)

MR. WEINICK: Sure.

MR. GREKIN: I would very much like to supplement the record with the response, Your Honor.

THE COURT: Oh, you don't have that yet. Okay.

MR. GREKIN: I appreciate the --

THE COURT: All right.

MR. GREKIN: -- the opportunity. Thank you.

MR. WEINICK: And, Your Honor, just for clarity exhibit in my binder, Exhibit B, which was filed on the New York docket on April 25th, this is the letter by the prior receiver seeking approval of the Arabella settlement that was testified to by, I believe, two witnesses today, if not all three. Again, it's a publicly filed document, which you may take judicial notice of.

MR. TAYLOR: Your Honor, 30294 does not have any objection to that coming in.

MR. WEINICK: Thank you.
THE COURT: Which is it again, please?
MR. WEINICK: Certainly, Your Honor. In my binder, the Platinum binder, it's Exhibit 1-B.
THE COURT: Any objection to 1-B?
MR. GREKIN: Your Honor, the only objection would be if we filed a response to that, I would like to be able to supplement the record with the response,
THE COURT: Sure. Because I --
MR. GREKIN: Thank you.
THE COURT: I'll admit it. You can supplement the record.
(Letter by the prior receiver seeking approval of the Arabella settlement was hereby received into evidence as Schafer & Weiner's Exhibit 1-B, as of this date.)
MR. GREKIN: Thank you very much, Your Honor.
MR. TAYLOR: So, Your Honor, we rest.
THE COURT: And Platinum?
MR. WEINICK: Your Honor, I'll stand on my earlier objections made at the onset of today's session.
THE COURT: Okay. Mr. Taylor?
MR. TAYLOR: Your Honor, I believe the evidence is clear. I believe that the Court is very well aware of the issues that are before it. So I'm not going to belabor the points. I believe they've been hit upon in arguments and on

various objections. They were voiced here in our papers, et cetera.

I think Your Honor made one interesting point, an observation that I wanted to try to clear up, or at least provide my input on how this document is supposed to be read.

The reason, in my opinion, that paragraph 9 is drafted as it is is 30294 does, indeed, have direct rights. And first of all, as provided for in the very note documents by and between Arabella and Platinum, and it says, "In the event of a default", and we talked about it at some length, "In the event of a default any holder may enforce the right."

And the only way that any holder -- my client or any other person they might have sold a portion of the loan to -- could have enforced those rights is to enforce against all the collateral. And then it would have had to follow the waterfall, as established here in this document entitled the "Participation Agreement" but which, in reality, gave them legal rights beyond a mere participation agreement, because it did allow -- not only in the note documents is there allowed for direct enforcement in the event of a default, which there certainly was an event of default that had occurred and was continuous in occurring at the time that the participation agreement was entered into.

Moreover, then paragraph 9 allows them to, as Mr. Baum put it, exercise their rights and step in. It's my

reading of the document that the only way, and I think this Court has to construe the whole document together, is that they were allowed to enforce it against a hundred percent of the collateral, and then it would follow us through the waterfall, which was established within the participation agreement.

I mean, it makes logical sense. It's the only way to try to combine all of these phrases together in a way that, to me, makes any logical sense.

THE COURT: So let's use a bankruptcy example here. So in the event of credit bidding under Section 363 -- there's a Section 363 sale. The lender is about to credit bid. What do they get to credit bid? Their forty-five percent or a hundred percent of the debt?

MR. TAYLOR: So if we were -- in a state court action I would say they could go forth and foreclose. If we were credit bidding in this particular situation, I think we could only credit bid, because that's up to forty-five percent. But invoking per normally, because that's all the debt that we would hold.

But if we were acting as Platinum's agent here, absent being voted down, which there are provisions of how they could be voted down within the note documents themselves, that they could do whatever the administrative agent could do under the note document. And under the note documents the

administrative agent could do anything they wanted, unless the majority of the noteholders told us that they didn't want that to happen in certain events. And it's very -- there's a long section within that. So we could do whatever the administrative agent could do.

Now, they could probably vote us down if we were attempting to bid a hundred percent, and they didn't want to own these working interests in these wells. Maybe they don't think they're as good as were -- they might be able to vote us down. But we could at least initiate that action and force them to that choice.

I have one other point, and I got to admit it escapes me right now, Your Honor. So with that being said, I think it's quite clear we did own a direct claim against this debtor, this participation agreement. It's clear in that respect that we were able to exercise our right.

This Court is mandated by the Rules and case law to therefore enter an order to clarify these rights. And I stalled just long enough to remember what my other point was.

I'm slightly confused, and I just want to clear up any confusion. Maybe this is my drafting error, but the notice of transfer of claims that we're here on -- that's Exhibit A -- was never admitted into evidence, but I think the Court could take judicial notice, as what we're here to decide on, I mean, it's, I thought, really, really clear. It says

the agreement is attached, and it provides and says -- it says what the waterfall agreement is, and it says that we own its forty-five percent interest in the note, its being 30294, which would be pro rata in relation to Platinum's remaining fifty-five percent interest. And in our relief requested and our reply to their objection, it's very clear. We just want you to enter an order substituting us in as the forty-five percent owner, plus our other bundle of goodies of rights that they have to follow this waterfall, which, look, is it the simplest waterfall ever, and you can just cut it up? No. But is Mr. Hoebeke and the other estate professionals able to figure this out and route the money the way it's supposed to go? Yes, they are.

And look. They're going to ask and submit a disbursement sheet, and I betcha get an order from you, either via a plan of reorganization or a liquidation and/or maybe on the 363 sale. I don't know how they plan on doing it.

But this is a rocket scientist. This is the science. They can figure that out. And I'll give them -- and we're saying so.

THE COURT: Thank you.

MR. GREKIN: Your Honor, I'll be brief. I think brother counsel covered a lot of the issues that I was going to speak to. But I did want to mention something that he didn't mention. And I think it's important.

The receiver filed its objection to this transfer, and the objection relied on a bunch of allegations that I think during this hearing have been proven to be incorrect. And we went over those allegations in our brief and told you why they were incorrect. But I think, and I know that you've read everything, and I'm not going to go over everything again. But I think if you went back and looked at our brief and then compared it to the testimony today, you'll see that, in fact, this testimony played out exactly matching what we put in our brief, and that it is exactly the opposite of what the receiver put in her brief.

And the reason I think that's important is because I think that the factual predicate for at least some of the receiver's objections were based on those facts, which today have not been borne out.

And I think it is worth considering that if those facts are not there, first of all, this participation agreement is enforceable. And second of all, the way this participation agreement was supposed to be interpreted is the way that everyone in this courtroom who testified said it was supposed to be interpreted. There was no person who testified who said that there was -- that participation agreement was supposed to be interpreted the way the receiver is arguing it should.

And, quite frankly, that's how we decide stuff in

trials. People testify, and you make decisions based on that testimony.

As a result, I think your decision here is clear. Thank you, Your Honor.

MR. WEINICK: Your Honor putting aside counsel's request that you vindicate his client's honor, which is exactly what we're not here today to do, what the testimony we heard today clarified is that you have an ambiguous agreement that has conflicting terms. And so how do you harmonize that?

Well, you look at the weight of the terms and how they outweigh the outlier, and then, as Your Honor has noted, that outlier creates its own circus of problems.

Mr. Hoebeke said, in response to your question, I want clarity. Well, if you enforce the agreement the way it's labeled as a participation agreement, then, again, presuming it's enforceable for the reasons we said at the beginning, one person gets paid, the lead lender. They receive the funds. They put it through the waterfall. Clarity is there for the debtor.

Again, as I said at the beginning, this decision should not -- this is a dispute between two nondebtors. It doesn't have to involve the debtor.

We heard from Mr. Bush that he doesn't know what ordinary course means, and we heard from Mr. Baum that he doesn't know what ordinary course means in the context of the

receivership. But again, I know Your Honor used the yellow tape example, but whether Judge Cogan wrote it, whether the SEC wrote it, it's up to Judge Cogan to decide whether or not, in the first instance, this is an enforceable agreement, irrespective of what Mr. Bush may have intended when he entered into it.

Mr. Baum concedes we have an inartful document, so how do you reform it? You would reform it in the way that imposes the least prejudice on the parties to it. And the way to achieve that is by keeping Platinum as the lead agent, keeping Platinum as the party that can file the proof of claim, and keeping and reserving 30294's rights to come after Platinum if Platinum doesn't comply with the terms of the agreement. Not to go after the debtor. Not to file a proof of claim in the bankruptcy that raises all kinds of issues.

THE COURT: Now, this least prejudice point, is that a matter of Michigan law that we interpret it to impose the least prejudice on the parties.

MR. WEINICK: I think the general cannon of contract interpretation in most estates, and I don't have the Michigan cases in front of me, I will concede, is that you try to not make things superfluous. You try to harmonize the agreement. But the overwhelming verbiage in this agreement says, and it's labeled as such, participation agreement. Lead agent has the rights to enforce -- has -- keep the participant informed.

Can get -- needs to get consent.

But it doesn't say the opposite. We had testimony on that, right? It's not that the participant can go out and turn the world upside down and foreclose directly or take over the entirety of the bankruptcy claim itself.

And so, again, if Your Honor's looking to harmonize what are conflicting terms in the document, that's the way that I would suggest that you do it. Because again, it preserves all of 30294's rights and remedies against Platinum.

And bear in mind, Platinum is in a receivership. Melanie Cyganowksi is a fiduciary of that Court. Any monies that come in from Arabella are going to go into the receivership accounts. They're not going to be disbursed absent appropriate orders that they do so or compliance with the terms or agreement with that party. She's just not going to do that. She sat on the same bench that Your Honor is sitting on.

THE COURT: I have a question for you.

MR. WEINICK: Yes?

THE COURT: And I ask this not because I know the answer to it, because, in fact, I don't know the answer to it. I generally speaking know what the answer is in bankruptcy, but let's say you have something in bankruptcy, and you have a provision here that arguably makes 30294 a creditor. And they've got this particular agreement that sets forth their

rights, and in that agreement there's a provision that says that if you don't do certain things, then we get to take over the note, do whatever we want to do.

Some might argue that that -- well, let's talk about specifically paragraph 9, participation agreement.

MR. WEINICK: Yes.

THE COURT: Certainly it's a -- absent bankruptcy, it's a binding contractual agreement, but once bankruptcy is filed it's like all other contractual agreements, and it creates a debtor-creditor relationship that may render that particular provision not enforceable.

MR. WEINICK: What? I'm sorry? Go ahead.

THE COURT: It was just to say that, for example, the participation agreement gives -- let's say the amount at issue here is a million dollars. And as a result of this participation agreement 30294 now has a claim of 450,000 dollars against the receiver.

But a lot of the specific provisions of a participation agreement such as this may otherwise be invalidated in bankruptcy. You have your monetary claim, but your right to take over the collateral, sell collateral, that's nothing more than an unsecured claim in bankruptcy.

One might argue that. And I'm wondering how that's treated under receivership law, whether there's similar treatment of the specific provisions under receivership law as

there are under bankruptcy law.

MR. WEINICK: There are similar treatments of pre-receivership claims against the receivership estate. And there are some analogies between bankruptcy and receivership. But what I'd point out, and I think Your Honor is clear on this, this is a contract between two nondebtors

THE COURT: I understand.

MR. WEINICK: Right.

THE COURT: I get that.

MR. WEINICK: Yes.

THE COURT: But I'm saying that in the receivership --

MR. WEINICK: Right.

THE COURT: Assuming this was -- Judge Cogan was actually ruling on this, I mean, would you be entitled to go to Judge Cogan and say -- it's an interesting provision, but -- and it might have been valid absent the receivership -- but in light of the receivership, it's not an enforceable provision.

MR. WEINICK: I think it's unenforceable irrespective of bankruptcy, irrespective of receivership, because you have the other provisions and the other accepted in the case law role of a lead versus a participant. And --

THE COURT: No, I understand all that.

MR. WEINICK: Yes.

THE COURT: But I'm just isolating it as to receivership law. That's all I'm asking.

MR. WEINICK: I can't speak to that standing here, but I'd be happy to report --

THE COURT: Yes, I don't -- as I said, I don't know the answer to that either. I mean, it would be -- it would be a good question, even under bankruptcy law, but I have no -- I have absolutely no idea what the answer to that is under the receivership law.

MR. WEINICK: What I would ask, Your Honor, I think Your Honor understands the receiver's position. I would ask that the Court reserve ruling on the narrow issue that's before it as to whether or not there's an entitlement by 30294 to submit a direct proof of claim for its forty-five percent.

Again, we've heard that there's some time before there's going to be any distribution. We are going to be before the receivership court on a number of issues, and it may well be that the receivership court says now go let Judge Nelms interpret the propriety of the agreement, whether the receiver had the authority to enter into it, and everything having to do with it. That's for Judge Nelms to decide. And that may well be.

But I think, given that there's no real exigency to making a determination as to 30294's ability to file a proof of claim or transfer the claim, whether it's a hundred percent

or forty-five percent, we ask you to reserve ruling until we can get guidance from the receivership court.

MR. WEINICK: Thank you.

THE COURT: Thank you. Anything else?

MR. TAYLOR: Your Honor, just two brief points that came up. One is leave -- counsel's representation to the Court was that Mr. Hoebeke needs clarity, so we should just pay it all to the administrative agent, and he should disburse it.

I don't think the Platinum receiver even understands his own loan documents between Platinum and AEX. Arabella was never supposed to pay the administrative agent and it goes out. It's really clear. It's in Section 2.6 of Exhibit D-1.

They pay the holders. They pay directly to whoever is the holders of the notes. And that could be one. It could be two. It started off as all Platinum, but there's various holders that are contemplated if we walk through how this was a transferable set of documents. This contemplated being able to be transferable. And they're supposed to pay the holders, not the administrative agent. These are defined parties. Or holder.

So that's precisely what we're getting at here. We do have some direct rights. We're not asking that we be allowed to file a proof of claim for everybody. We're asking the Court to enter an order which substitutes the transferee,

or the transferor, up to the extent that we bought it. And that's all that we're asking for.

Only to answer Your Honor's question regarding how does receivership law impact this, and you had, kind of, a bankruptcy analogy. I would submit to the Court that while an interesting question is not one that this Court may reach, and here's the reason why.

The receiver himself entered into this transaction after the receivership, so it's not like there was some contractual agreement that then went into a receivership court. It's the transaction was entered into after the receivership was started. So I'm not sure that analogy holds.

THE COURT: You're right about that. It's a good point.

Okay, parties. Thank you for your presentations, today's parties. I'll take this -- I'll deliberate on this matter, and I'll get back to the parties when I'm ready to give you a ruling, and I'll allow everyone to participate in the ruling via telephonic. So thank you for your participation.

IN UNISON: Thank you, Your Honor.

UNIDENTIFIED SPEAKER: Thank you for letting us go late, Your Honor.

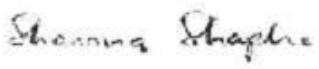
THE CLERK: All rise.

(Whereupon these proceedings were concluded at 5:51 p.m.)

I N D E X

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

I, Sharona Shapiro, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



SHARONA SHAPIRO, CET-492	May 17, 2018
AAERT Certified Transcriber	DATE

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