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

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

By: Nathan Cates & Landon Foody

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Sanchez's Pre-Petition History.

The Origin Story of Sanchez Energy Corporation.

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

¹ *History of Sanchez Oil & Gas*, Sanchez Oil & Gas Corp., <https://www.sanchezog.com/about/history/>, <https://perma.cc/3MN8-UXJN>.

² A.R. (Tony) Sanchez, Jr., UNIV. TEXAS SYS. (Jan. 2003), <https://www.utsystem.edu/board-of-regents/former-regents/r-tony-sanchez-jr>, <https://perma.cc/96J2-4NB6>.

³ *Id.*

⁴ *Patricio D. Sanchez*, BLOOMBERG, <https://www.bloomberg.com/profile/person/19167854>, <https://perma.cc/3VYS-769G>.

⁵ Christopher Helman, *Sanchez Energy: A Big Bet on Making American Oil Great Again*, FORBES (Jan. 25, 2017), <https://www.forbes.com/sites/christopherhelman/2017/01/25/sanchez-energy-a-big-bet-on-making-american-oil-great-again/#7b7f341db693>, <https://perma.cc/F3HA-XHXA>.

⁶ Daniel Gilbert, *Sanchez Energy Keeps Close Family Ties*, WALL ST. J. (Nov. 10, 2013), <https://www.wsj.com/articles/no-headline-available-1384118857>, <https://perma.cc/GXN7-S89P>.

⁷ Declaration of Cameron W. George, Executive Vice President and Chief Financial Officer of Sanchez Energy Corporation, In Support of Chapter 11 Petitions and First Day Motions at 5, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Aug. 12, 2019) [hereinafter George Declaration], <https://perma.cc/D8MG-SR5A>.

production subsequently surged to about 16,500 barrels a day from 600 barrels two years prior.⁸ In 2014, SN acquired 100,000 acres from Royal Dutch Shell for \$560 million.⁹ In 2015, the United States saw domestic oil supply cap at 9.6 million barrels per day, and in 2016 it would drop to 8.5 million barrels per day.¹⁰ Despite the lack of production, Tony III remained optimistic and hopeful that newfound efficiency in an otherwise capped market would flip the script. SN partnered with Blackstone Energy Partners on a \$3.2 billion deal to acquire leases from Anadarko Petroleum in the EFS, adjacent to the land purchased from Shell.¹¹ This move secured SN's control of nearly 600,000 acres in one of America's biggest oil fields, nearly 950 net producing wells, and over 2,125 specifically identified potential future drilling locations.¹² SN's footprint extended beyond the EFS into south Louisiana and even part of Mississippi, including 34,000 acres in the Tuscaloosa Marine Shale ("TMS").¹³ Despite well costs and commodity prices, SN believed that the TMS has significant future development potential.¹⁴

Assets and Prepetition Capital Structure.

SN held assets in the Eagle Ford Shale (466,000 gross acres), which included the Catarina Assets (106,00 acres in Dimmit, La Salle, and Webb counties), the Comanche Assets (318,000 acres adjoining the Catarina Assets), the Maverick Assets (89,000 acres in Dimmit, Frio, La Salle, and Zavala counties), and the Palmetto Assets (7,600 acres in Gonzales county).¹⁵ SN also held

⁸ Daniel Gilbert, *Sanchez Energy Keeps Close Family Ties*, WALL ST. J. (Nov. 10, 2013), <https://www.wsj.com/articles/no-headlineavailable-1384118857>, <https://perma.cc/GXN7-S89P>.

⁹ *Id.*

¹⁰ Christopher Helman, *Sanchez Energy: A Big Bet on Making American Oil Great Again*, FORBES (Jan. 25, 2017), <https://www.forbes.com/sites/christopherhelman/2017/01/25/sanchez-energy-a-big-bet-on-making-american-oil-great-again/#7b7f341db693>, <https://perma.cc/F3HA-XHXA>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ George Declaration, *supra* note 7, at 8–14, <https://perma.cc/D8MG-SR5A>.

assets in the TMS, as well as various shared services agreements with SOG that provide SN with an employee workforce for SN's daily operations.¹⁶

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

Events Leading to Chapter 11 Filing.

Sanchez's Version of Events.

The decline and volatility in commodity prices from 2014 to 2016 wreaked havoc on SN and other oil & gas companies. In 2014, oil prices dropped from \$100 per barrel to only \$26 per barrel in February 2016.¹⁹ SN took numerous actions to keep the company afloat, such as changing operational strategies, reducing overhead structure, and disposing of assets to obtain cash.²⁰ Then, in 2018, SN sought the services of Moelis & Company, as well as Akin Gump Strauss Hauer & Feld LLP and Alvarez & Marsal North America, LLC for restructuring advice.²¹ SN also appointed

¹⁶ *Id.* at 15–17.

¹⁷ *Id.* at 18.

¹⁸ *Id.*

¹⁹ *Id.* at 26.

²⁰ *Id.* at 27.

²¹ George Declaration, *supra* note 7, at 29, <https://perma.cc/D8MG-SR5A>.

independent directors to evaluate SN's options of various sales, financings, recapitalizations, and reorganization transactions.²²

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

The Media's Take on Sanchez's Financial Struggles.

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

²² *Id.* at 30.

²³ Globe Newswire, *Sanchez Entergy Reports First-Quarter 2019 Financial and Operating Results*, GLOBENEWSWIRE (May 8, 2019), <https://www.globenewswire.com/news-release/2019/05/08/1819175/0/en/Sanchez-Energy-Reports-First-Quarter-2019-Financial-and-Operating-Results.html>, <https://perma.cc/ES4S-GTBP>. On the March 31, 2019 balance sheet, oil and natural gas properties were impaired. *Id.*

²⁴ Alexander Gladstone, *Sanchez Energy Files for Bankruptcy, Casualty of Commodity Price Volatility*, WALL ST. J. PRO: BANKRUPTCY (Sep. 9, 2019), <https://www.wsj.com/articles/sanchez-energy-files-for-bankruptcy-casualty-of-commodity-price-volatility-11565624989>, <https://perma.cc/R25K-LLE4>.

²⁵ *Id.*

²⁶ *Sanchez Energy Takes Action to Strengthen Balance Sheet and Support Long-Term Strategy*, SANCHEZ ENERGY CORP. (Aug. 11, 2019), <http://investor.sanchezenergycorp.com/news-releases/news-release-details/sanchez-energy-takes-action-strengthen-balance-sheet-and-support>, <https://perma.cc/CF3E-2EZQ>.

²⁷ Jim Bloom, *Sanchez Energy Corporation (OTCMKTS:SNEC) Facing Long Term Uncertainties*, INSIDER FIN. (Feb. 27, 2019), <https://insiderfinancial.com/sanchez-energy-corporation-otcmktsnec/177832/>, <https://perma.cc/KX4T-295E>. SN had hoped that that the new drilling projects would help its stock price "bounce back" to at least \$2 per share, instead of the abysmal \$0.20 per share figure. *Id.*

interest payments and obligations to shareholders loomed over head.²⁸ Consequently, SN engaged Moelis & Co. to provide financial advisory services. SN had not made an annual profit since 2013 and posted a \$9.7 million loss on \$1 billion of revenue in 2018.²⁹ By August 2019, 26 U.S. oil and gas producer filed for bankruptcy; twenty-eight producers filed in all of 2018.³⁰ According to media analysts, the failure of drillers, like SN, was due to the companies' inability to service debt and secure new funding. Indeed, the drillers financed growth by becoming highly levered and betting on higher oil prices. Analysts, however, disagree with SN's analysis that falling crude prices were to blame for the current round of bankruptcies because barrel prices had doubled since 2016 to about \$60/barrel. Instead, analysts cite the fact that many of the drillers, like SN, took on debt in 2016 due to the oil slump and the payments on maturities payments proved too high.

Additionally, some have expressed corporate governance concerns because SN operates like a family-run firm.³¹ SOG, which manages operations for SN, employs both Sanchez Jr. (Chairman) and Sanchez III (Chief Executive). SN obtained assets from businesses operated by other members of the Sanchez family. For example, SN purchased drilling rights to 40,000 acres in Mississippi from Sanchez Resources LLC, run by Eduardo Sanchez, at a price of \$2,500/acre (a price higher than the \$144/acre paid by Goodrich Petroleum Corporation to acquire a nearby land only one month earlier).³² Some questioned the purchase in the TMS since the company

²⁸ *Id.*

²⁹ Sergio Chapa, *Sanchez Energy Files for Chapter 11 Bankruptcy*, HOUSTON CHRON. (Aug. 11, 2019), <https://www.houstonchronicle.com/business/energy/article/Sanchez-Energy-files-for-Chapter-11-bankruptcy-14297152.php>, <https://perma.cc/54CL-2WFH>.

³⁰ Rebecca Elliott & Christopher M. Matthews, *Oil and Gas Bankruptcies Grow as Investors Lose Appetite for Shale*, WALL ST. J. (Aug. 30, 2019), <https://www.wsj.com/articles/oil-and-gas-bankruptcies-grow-as-investors-lose-appetite-for-shale-11567157401>, <https://perma.cc/9KPJ-MKJ2>.

³¹ Daniel Gilbert, *Sanchez Energy Keeps Close Family Ties*, WALL ST. J. (Nov. 10, 2013), <https://www.wsj.com/articles/no-headline-available-1384118857>, <https://perma.cc/GXN7-S89P>.

³² Daniel Gilbert, *Sanchez Energy Keeps Close Family Ties*, WALL ST. J. (Nov. 10, 2013), <https://www.wsj.com/articles/no-headline-available-1384118857>, <https://perma.cc/GXN7-S89P>.

planned to spend a mere 6% of its capital in the project.³³ Moreover, SN's corporate charter allows executives and family-controlled companies to compete with the business, posing many fiduciary duty concerns for shareholders.³⁴ Because the executives were in a position of information both in SN and in the other businesses, the grant of competition could have allowed the executives to do something that was not in the company's best interest.

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

Filing of Chapter 11 Petition.

The once third-most active driller listed \$2.1 billion in assets and \$2.8 billion in debt and filed for bankruptcy in Houston.³⁵

First Day Motions.

On August 11, 2019 ("The Petition Date"), SN filed a Voluntary Petition for Non-Individuals Filing for Bankruptcy in the United States Bankruptcy Court for the Southern District of Texas (the "Voluntary Petition").³⁶ SN then filed its First Day Motions with the court; these motions can be grouped into three categories: 1) Orders Facilitating the Administration of

³³ *Id.*

³⁴ *Id.*

³⁵ Sergio Chapa, *Sanchez Energy Files for Chapter 11 Bankruptcy*, HOUSTON CHRON. (Aug. 11, 2019), <https://www.houstonchronicle.com/business/energy/article/SanchezEnergy-files-for-Chapter-11-bankruptcy-14297152.php>, <https://perma.cc/54CL-2WFH>.

³⁶ Voluntary Petition NonIndividual 1.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 11, 2019) [hereinafter Voluntary Petition], <https://perma.cc/984P-L2MA>.

the Estate; 2) Orders that Smooth Day to Day Operations; and 3) Substantive Orders.³⁷ Many First Day Motions were filed as Emergency Motions under Federal Rule of Bankruptcy Procedure 6003,³⁸ whereby the court may grant Interim and Final Relief following the commencement of the case to the, “extent that relief is necessary to avoid immediate and irreparable harm”³⁹

Administration of the Estate.

Joint Administration.

SN, along with its ten affiliates (collectively “SN”), submitted an emergency motion for joint administration, asking the court to maintain one filing and one docket for SN, as well as requiring one disclosure statement filing and one reorganization plan filing for all.⁴⁰ Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, if “two or more petitions are pending in the same court by or against . . . a Debtor and an affiliate, the court may order a joint administration of the estates.”⁴¹ Further, the Southern District of Texas Bankruptcy Court’s Local Rule 1015-1 provided for joint administration of a debtor and its affiliates’ cases.⁴² SN sought joint administration to provide administrative convenience, as many motions, hearings, and orders will affect all the Debtors equally, and independent filings would result in higher

³⁷ MICHAEL L. BERNSTEIN & GEORGE W. KUNEY, BANKRUPTCY IN PRACTICE 273–274 (Charles J. Tabb ed., 5th ed. 2015).

³⁸ Hereinafter, a “Bankruptcy Rule.”

³⁹ Fed. R. Bankr. P. 6003.

⁴⁰ Debtors Emergency Motion for entry of an order (I) Directing Joint Administration of Related Chapter 11 Cases; and (I) Granting Related Relief 2.pdf at 3, *In Re Sanchez Energy Corp.*, No. 1934508 (Bankr. S.D. Tex.R. Filed Aug. 11, 2019) [hereinafter Motion for Joint Administration] <https://perma.cc/984P-L2MA>.

⁴¹ *Id.* at 7.

⁴² Motion for Joint Administration, *supra* note 40, 2.pdf at 7.

costs without any benefit to the cases.⁴³ In supporting this motion, SN asserted joint administration would not adversely affect any related party as they only wanted administrative, not substantive, consolidation.⁴⁴ The court granted SN's motion.⁴⁵

Designation of Complex Chapter 11 Case.

Following the motion for joint administration, SN filed a motion for designation as a complex Chapter 11 case due to the debtors having over ten million in debt, over fifty interested parties, and due to claims against the Debtor being publicly traded.⁴⁶ The court granted SN's motion.⁴⁷ This designation applies special rules, including: notifying interested parties of complex Chapter 11 designation within fourteen days, a master list of parties who must receive notice of motions or pleadings including the thirty largest unsecured creditors, filing of an official form for a noticing agent, requirement of any motion seeking relief within fourteen days to be labeled "emergency," ninety-day bar date for proofs of claims by entities and 180 days for governmental units, and various other rules.⁴⁸ Complex Chapter 11 designation provides the debtor with procedures and special rules that lessen the burden of massive cases through consolidated filings, preset timing periods, and hardline dates that provide predictability and support efficiency.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Order (I) Directing Joint Administration of Related Chapter 11 Cases and (II) Granting Related Relief 27.pdf at 4, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) <https://perma.cc/BCM7-4W7W>.

⁴⁶ Notice of Designation of Complex Chapter 11 Bankruptcy Case 3.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 11, 2019), <https://perma.cc/YQT9-HFXL>.

⁴⁷ Order Granting Complex Chapter 11 Bankruptcy Case Treatment 28.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) <https://perma.cc/H9HY-96SK>.

⁴⁸ S.D. TEX. PROCEDURES FOR COMPLEX CHAPTER 11 CASES (2020), <https://perma.cc/Y3PJ-QAGM>.

Claims and Noticing Agent.

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

Consolidated Creditors.

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

⁴⁹ Debtor's Emergency Application for entry of an order appointing Prime Clerk LLC as Claims, Noticing, and Solicitation Agent for the Debtors *Nunc Pro Tunc* to the Petition Date 13.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) <https://perma.cc/4PX4-C793>.

⁵⁰ *Id.* at 3.

⁵¹ Order Appointing Prime Clerk LLC as the Claims, Noticing, and Solicitation Agent for the Debtors *Nunc Pro Tunc* to the Petition Date 78.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 13, 2019) <https://perma.cc/5WXE-ANU2>.

⁵² Debtor's Emergency Motion for entry of an order (I) Authorizing Consolidated Creditor Lists;(II) Authorizing Redaction of Certain Personal Identification Information; (III) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Case; and (IV) Granting Related Relief 4.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 11, 2019), <https://perma.cc/A7EH-P8YZ>.

⁵³ *Id.* at 3.

⁵⁴ Order (I) Authorizing Consolidated Creditors List; (II) Authorizing Redaction of Certain Personal Identification Information; (III) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11

Extension for Filing Schedule.

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

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

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

Cash Management System.

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

Case; and (IV) Granting Related Relief 102.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 13, 2019), <https://perma.cc/G979-A8BM>.

⁵⁵ Debtor's Emergency Motion for Entry of an Order (I) Extending Time to File (A) Schedule of Assets and Liabilities, (B) Schedules of Current Income and Expenditures, (C) Schedules of Executory Contracts and Unexpired Leases, (D) Statements of Financial Affairs, and (E) Rule 2015.3 Financial Reports; (II) Waiving the Requirement to File a List of Equity Security Holders; and (III) Granting Related Relief 5.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 11, 2019) [hereinafter Motion for Extension], <https://perma.cc/DUX3-XB2J>.

⁵⁶ *Id.* at 6–7.

⁵⁷ *Id.* at 7–9.

⁵⁸ Order (I) Extending Time to File (A) Schedule of Assets and Liabilities, (B) Schedules of Current Income and Expenditures, (C) Schedules of Executory Contracts and Unexpired Leases, (D) Statements of Financial Affairs, and (E) Rule 2015.3 Financial Reports; (II) Waiving the Requirement to File a List of Equity Security Holders; and (III) Granting Related Relief 98.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 13, 2019) <https://perma.cc/9ML8-JJPE>.

⁵⁹ Debtors Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to continue to (A) Operate their Cash Management System and Maintain Existing Bank Accounts, (B) Maintain Existing Business Forms, and (C) Perform Intercompany Transactions; and (II) Granting Related Relief 11.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) <https://perma.cc/L3EA-YRNN>.

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

Day-to-Day Operations.

Utility Services.

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

⁶⁰ *Id.* at 12.

⁶¹ *Id.*

⁶² *Id.* at 13–14.

⁶³ *Id.* at 21.

⁶⁴ Final Order (I) Authorizing the Debtors to continue to (A) Operate their Cash Management System and Maintain Existing Bank Accounts, (B) Maintain Existing Business Forms, and (C) Perform Intercompany Transactions and (II) Granting Related Relief 637.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Nov. 25, 2019) <https://perma.cc/L3EA-YRNY>.

⁶⁵ Debtor’s Emergency Motion for Entry of an Order (I) Approving Debtor’s Proposed Adequate Assurance of Payment for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services; (III) Approving Debtor’s Proposed Procedures for Resolving Additional Assurance Requests; and (IV) Granting Related Relief 8.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) [hereinafter Motion for Adequate Assurance] <https://perma.cc/CMG9-J5EE>.

would owe approximately \$48,000 in utility services.⁶⁶ As adequate assurance, SN offered to deposit \$47,357 into a segregated bank account within fourteen days of the proposed order.⁶⁷ Furthermore, SN filed with the court Adequate Assurance Procedures in hopes of streamlining any additional need for adequate assurance in the future.⁶⁸

Uninterrupted utility services are vital to any reorganization, thus the Bankruptcy Code provides a debtor with protection against discontinuance of utility services through § 366 of the Code.⁶⁹ In an effort for fairness, the Code also requires a debtor to provide “adequate assurance” to the utility companies in a manner that is “satisfactory.”⁷⁰ Here, the court deemed the initial deposit satisfying the amount due within fourteen days “satisfactory,” along with SN’s liquidity moving forward to assure future payments in the ordinary course of business.⁷¹ Further, the court deemed SN’s efforts to provide adequate assurance and future proposed adequate assurance as acceptable and granted their motion.⁷²

Substantive Orders- Pre-Petition Obligations.

Pre-Petition Taxes and Fees.

SN filed an emergency motion seeking authority to pay pre-petition taxes and fees.⁷³ SN summarized these taxes and fees as follows:

⁶⁶ *Id.* at 5.

⁶⁷ *Id.*

⁶⁸ *Id.* at 6.

⁶⁹ *Id.* at 8.

⁷⁰ *Id.*

⁷¹ Motion for Adequate Assurance, *supra* note 66, 8.pdf at 9–10.

⁷² Order (I) Approving Debtor’s Proposed Adequate Assurance of Payment for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services; (III) Approving Debtor’s Proposed Procedures for Resolving Additional Assurance Requests; and (IV) Granting Related Relief 109.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 13, 2019) <https://perma.cc/SGB7-M9TE>.

⁷³ Debtor’s Emergency Motion for Entry of an Order (I) Authorizing the Payment of Certain Prepetition Taxes and Fees; and (II) Granting Related Relief 6.pdf, *In Re Sanchez Energy Corp.*, No. 19–34508 (Bankr. S.D. Tex.R. Filed Aug. 11, 2019) [hereinafter Motion to Pay Prepetition Taxes and Fees] <https://perma.cc/C7HT-ZB8P>.

- Sales, Use, and Excise Taxes- \$4.3 million accrued as of Petition Date, \$2.3 million due within 21 days;
- Income Taxes- \$17,000 accrued as of petition date, \$2,200 due within 21 days;
- Franchise Taxes- \$50,000 accrued as of petition date, \$0 due within 21 days;
- Property Taxes- \$32.2 million accrued as of petition date, \$0 due within 21 days;
- Severance Taxes- \$19.7 million accrued as of petition date, \$9.6 million due within 21 days; and
- Environmental and Business Fees- \$0 accrued as of petition date, \$0 due within 21 days.
- Approximate Total- \$56.3 million accrued as of petition date, \$12 million due within 21 days.⁷⁴

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

Taxes and Fees that may not be Property of the Estate.

⁷⁴ *Id.* at 5.

⁷⁵ Motion to Pay Prepetition Taxes and Fees, *supra* note 74, 6.pdf.

⁷⁶ *Id.* at 9–11.

SN stated that many of the taxes and fees owed by the Debtor were not property of the estate due to 26 U.S.C. §7501 and Texas’s Tax Code § 111.016(a).⁷⁷ Essentially, these statutes state that any person holding money to be taxed by another person holds said money in a trust for the benefit of the state and is liable for the full amount, plus accrued penalties and interest.⁷⁸ Additionally, in accordance with Bankruptcy Code § 541, SN argued that the Debtors may not have possessed legal or equitable interests in the trust account holding such money, and therefore, the court should permit them to pay these monies to the taxing authorities as they become due.⁷⁹

Taxes and Fees that may be Entitled to Special Treatment.

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

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

⁷⁷ *Id.* at 9–10.

⁷⁸ *See, e.g.*, 26 U.S.C. §7501 <https://perma.cc/W9BB-4J98> ; Tex. Tax Code §111.016(a) <https://perma.cc/PR5G-Z4HZ>.

⁷⁹ Motion to Pay Prepetition Taxes and Fees, *supra* note 74, 6.pdf at 9–10.

⁸⁰ *Id.* at 10–11.

⁸¹ *Id.* at 10.

⁸² *Id.*

⁸³ *Id.*

Bankruptcy courts authorizing payments when necessary to protect the estate base their decisions in Bankruptcy Code sections 363(b), 1107(a), and 105(a).⁸⁴ Section 363(b) of the Bankruptcy Code permits payment of prepetition obligations where there is a sound business purpose, subject to court approval.⁸⁵ Section 363(b) along with § 1107(a), prescribing the rights, powers, and duties of Debtor in Possession, support these payments as an exercise of the Debtor’s sound business judgement as the Debtor in Possession “[has an] implied duty . . . to ‘protect and preserve the estate, including an operating business’ going-concern value.”⁸⁶ Finally, Section 105(a) states the “[Court] may issue any order, process, or judgement that is necessary or appropriate to carry out the provision of [the Bankruptcy Code].”⁸⁷ These sections of the Code provide the statutory authority to allow payment of these taxes and fees as a sound exercise of business judgement and as necessary to avoid additionally liability that may result from non-payment.⁸⁸

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

⁸⁴ *Id.* at 11.

⁸⁵ Motion to Pay Prepetition Taxes and Fees, *supra* note 74, 6.pdf at 11; *see* 11 U.S.C. §363(b).

⁸⁶ *Id.* at 11; *See In re CEIRoofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. at 497).

⁸⁷ Motion to Pay Prepetition Taxes and Fees, *supra* note 74, 6.pdf at 11–12.

⁸⁸ *Id.* at 12.

⁸⁹ Order (I) Authorizing Payment the Payment of Certain Prepetition Taxes and Fees; and (II) Granting Related Relief 110.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 13, 2019)

<https://perma.cc/X7A2-ZHUF>.

Payment of Prepetition Compensation Obligations.

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

Shared Services Arrangement.

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

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

⁹⁰ Debtor's Emergency Motion for Entry of Interim and Final Orders Authorizing Continued Performance of Obligations Under Shared Services Arrangement 10.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) [hereinafter Motion Authorizing Performance of Shared Services] <https://perma.cc/ER59-LL9G> ; Debtor's Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Payment of Certain Prepetition Compensation Obligations; (II) Authorizing Payment of Postpetition Compensation Obligations in the Ordinary Course of Business; and (III) Granting Related Relief 9.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) [hereinafter Motion Authorizing Compensation Obligations] <https://perma.cc/K3GP-MXA2>.

⁹¹ Motion Authorizing Performance of Shared Services, *supra* note 91, 10.pdf at 4-5.

⁹² *Id.* at

⁹³ *Id.* at 5-10.

⁹⁴ *Id.* at 11-13.

⁹⁵ *Id.* at 14

⁹⁶ Motion Authorizing Performance of Shared Services, *supra* note 91, 10.pdf at 12-13.

In support, SN cited Bankruptcy Code §363I(1), providing a debtor in possession “may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without a notice or a hearing.”⁹⁷

Additionally, SN asserted §363(b) allows SOG’s employment as it was a sound exercise of business judgement.⁹⁸ Section 363(b) mirrors §363(c), except that it allows actions outside the ordinary course of business, after notice and a hearing, if it is deemed an exercise of sound business judgement.⁹⁹ SN stated “[i]f the Debtors were not permitted to continue performing under the SOG Agreements, the Debtors would be forced to cease operations as they seek to attract, hire, train, and retain an entirely new workforce and replicate all of the services provided by SOG”¹⁰⁰

The court issued an interim and final order authorizing, but not directing SN to continue their Shared Services Arrangement with SOG in the ordinary course of business and further authorized SN to use estate property to fund the agreement as was consistent with prepetition practices.¹⁰¹

Payment of Independent Contractors and Non-Executive Directors.

In the ordinary course of business SN employs Independent Contractors and Non-Executive Directors to assist in essential aspects of their business operation.¹⁰² SN requested

⁹⁷ *Id.* at 14; *see* 11 U.S.C. § 363(c)(1) <https://perma.cc/G24V-ELJD>.

⁹⁸ *Id.* at 16–17; *see* 11 U.S.C. § 363(b); <https://perma.cc/G24V-ELJD>.

⁹⁹ Motion Authorizing Performance of Shared Services, *supra* note 91, 10.pdf at 16–17.

¹⁰⁰ *Id.* at 17.

¹⁰¹ Interim Order Authorizing Debtors to Continue Performance of Obligations under Shared Services Arrangements 108.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) <https://perma.cc/MCM5-FNU8>; Final Order Authorizing Debtors to Continue Performance of Obligations under Shared Services Arrangement 733.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Dec. 12, 2019) <https://perma.cc/BZ36-P6DN>.

¹⁰² Motion Authorizing Compensation Obligations, *supra* note 91, 9.pdf at 5–7.

allowance to continue employment of these professionals as consistent with prepetition practices. SN estimated an average monthly cost of \$110,000 for their Independent Contractors, with current accrued and unpaid amounts of \$140,000 of which \$97,000 will become payable in the ordinary course of business during the first 21 days following the petition.¹⁰³ Non-executive director compensation was estimated to be \$140,000 paid at the beginning of each month, with no accrued and unpaid amounts outstanding.¹⁰⁴

Analogous to the support offered for the Shared Services Arrangements, SN asserted Bankruptcy Code § 363(b) as support for their motion.¹⁰⁵ Retention of these Independent Contractor and Non-Executive Director's services was essential to success of SN's ongoing business and preservation of their business' going-concern value.¹⁰⁶ The court issued an interim and final order, authorizing but not directing SN to continue paying these prepetition compensation obligations.¹⁰⁷

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.* at 7.

¹⁰⁵ *Id.* at 7–9.

¹⁰⁶ *Id.* at 7.

¹⁰⁷ Interim Order (I) Authorizing Payment of Certain Prepetition Compensation Obligations; (II) Authorizing Payment of Postpetition Compensation Obligations in the Ordinary Course of Business; and (III) Granting Related Relief 108.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 13, 2019), <https://perma.cc/59DE-GPUC> ; Final Order (I) Authorizing Payment of Certain Prepetition Compensation Obligations; (II) Authorizing Payment of Postpetition Compensation Obligations in the Ordinary Course of Business; and (III) Granting Related Relief 348.pdf, *In Re Sanchez Energy Corp.*, No. 1934508 (Bankr. S.D. Tex.R. Filed Sept. 9, 2019), <https://perma.cc/MJ8T-AF6B>.

**Payment to Holders of Mineral and Other Interest, Joint-Interest Billings,
and Cash Calls.**

SN's oil and natural gas exploration and production ("E&P") business relied on lease agreements under which SN was obligated to remit percentages of their net revenue from production to said leaseholders.¹⁰⁸ SN contracted to pay Royalties and Lease obligations to the holders of Mineral and Other Interests in their E&P operation on the Comanche Assets, Catarina Assets, Maverick Assets, and Palmetto Assets.¹⁰⁹ SN estimated an aggregate cost of approximately \$710 million per year for royalties and lease obligations owed to the holders of mineral and other interest.¹¹⁰ There was an outstanding balance of \$75 million, of which \$36 million would become due within the first 21 days.¹¹¹ SN sought authorization to pay up to \$45 million to the holders of Mineral and other Interests in the interim.¹¹²

Similarly, SN marketed oil and natural gas production on behalf of certain Non-Operating Working Interest in their Palmetto and TMS Assets, which on average cost approximately \$1.2 billion yearly.¹¹³ SN estimated approximately \$74 million would become due within the first 21 days; and, due to the unpredictability of the payments, it petitioned the court to approve up to \$93 million in payment in the interim period.¹¹⁴

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

¹⁰⁹ *Id.* at 4-9.

¹¹⁰ *Id.* at 9-10.

¹¹¹ *Id.*

¹¹² *Id.* at 10.

¹¹³ *Id.*

¹¹⁴ Motion Authorizing Payment of Mineral Lease Obligations, *supra* note 111, 7.pdf at 10.

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

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

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

¹¹⁵ *Id.* at 11.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Motion Authorizing Payment of Mineral Lease Obligations, *supra* note 111, 7.pdf at 12–13.

¹²¹ *Id.* at 12; 11 U.S.C. § 541, <https://perma.cc/NP77-JF5A>.

¹²² *Id.* at 12; *see also MCZ, Inc. v. Andrus Res., Inc.*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987).

receiving such funds.¹²³ Consequently, it held no equitable interest and therefore believed these proceeds were not property of the estate.¹²⁴

Like relief requested in other motions, SN supported its request to pay these prepetition and ongoing post-petition debts with Bankruptcy Code §§ 105(a) and 363(b).¹²⁵ Payment of these expenses was necessary to preserve and protect the estate because they were inherent in production and sale of oil and natural gas.¹²⁶ Accordingly, there existed a sound business purpose for their payment because payment was fundamental to the continuation of their business and effectuation of their reorganization plan.¹²⁷ According to §105(a) the court has the power to carry out provisions of the Bankruptcy Code; and, SN argued the court should carry out the provisions of § 363(b) as this payment was necessary to reassure the holders of these Interests of its ability to continue operating under Chapter 11 and to avoid costs associated with disputes resulting from non-payment.¹²⁸

The court entered an order authorizing but not directing SN to pay prepetition amounts owed to the holders of Mineral and Other Interest, Non-Operating Interests, JIBs, and Cash Calls in the ordinary course of business on a prepetition and post-petition basis.¹²⁹

¹²³ *Id.* at 13.

¹²⁴ *Id.*

¹²⁵ *Id.* at 13–14; *supra* note 111, 11 U.S.C. § 363(b), <https://perma.cc/G24V-ELJD>; 11 U.S.C. §105(a), <https://perma.cc/X99P-MRC4>.

¹²⁶ Motion Authorizing Payment of Mineral Lease Obligations, *supra* note 111, 7.pdf at 13–14.

¹²⁷ *Id.* at 14.

¹²⁸ *Id.* at 15–16.

¹²⁹ Order (I) Authorizing Payment of (A) Obligations Owed to Holders of Mineral and Other Interests and Non-Op Working Interests, (B) Joint-Interest Billings, and (C) Cash Calls and (II) Granting Related Relief 139.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 15, 2019), <https://perma.cc/S5QB-K6NF>.

Payment of Business Expenses, Various Claims, and Outstanding Orders.

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

Operating Expenses.

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

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

¹³¹ *Id.* at 12.

¹³² *Id.* at 13.

¹³³ *Id.* at 7.

¹³⁴ *Id.* at 7.

¹³⁵ *Id.* at 8.

¹³⁶ Motion Authorizing Payments of Expenses and Claims, *supra* note 133, 14.pdf at 8.

¹³⁷ *Id.*

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

Marketing Expenses.

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

Shipping and Warehouse Claims.

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

¹³⁸ *Id.* at 8–9.

¹³⁹ *Id.* at 9.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 9–10.

¹⁴² Motion Authorizing Payments of Expenses and Claims, *supra* note 133, 14.pdf at 10.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 9–10.

¹⁴⁵ *Id.* at 10–11.

Approximately \$10 million in Shipping and Warehouse claims have been paid in the last twelve months, and SN estimates that \$800,000 will become due in the 21 following the petition.¹⁴⁶ As such, SN requested authority to pay up to \$1 million in prepetition amounts due and to continue paying prepetition claims in the ordinary course of business as they come due post-petition.¹⁴⁷

Payment of 503(b)(9) Claims.

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

Payment of Outstanding Orders.

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

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 11–12.

¹⁴⁸ Motion Authorizing Payments of Expenses and Claims, *supra* note 133, 14.pdf at 12.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*; see 11 U.S.C. § 503, <https://perma.cc/KBF3-XSAZ>.

¹⁵¹ Motion Authorizing Payment of Expenses and Claims, *supra* note 133, 14.pdf at 12.

¹⁵² *Id.* at 12–13.

¹⁵³ *Id.* at 13.

disruption to SN's ongoing business.¹⁵⁴ According to Bankruptcy Code §503(b), orders delivered after the petition day are afforded administrative expense priority.¹⁵⁵ SN sought an order granting administrative priority to all undisputed obligations arising from acceptance of these goods and authority to pay these obligations as they come due in the ordinary course of business.¹⁵⁶

Relief.

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

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

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*; see 11 U.S.C. § 503, <https://perma.cc/KBF3-XSAZ>.

¹⁵⁶ Motion Authorizing Payment of Expenses and Claims, *supra* note 133, 14.pdf at 13.

¹⁵⁷ *Id.* at 13–14.

¹⁵⁸ *Id.*; see e.g. Tex. Prop. Code Ann. §56.002 <https://perma.cc/8V2H-AQSZ>; La. Rev. Stat. Ann § 9:4862 <https://perma.cc/RZK8-CW4>; Miss. Code Ann. § 85-7-131, <https://perma.cc/8NUN-E8KC>; see also 11 U.S.C. §362, <https://perma.cc/24LR-WJ2Q>.

¹⁵⁹ Motion Authorizing Payment of Expenses and Claims, *supra* note 133, 14.pdf at 13–14.

¹⁶⁰ *Id.* at 15.

¹⁶¹ *Id.* at 15–16; *supra* note 133, 11 U.S.C. § 363(b) <https://perma.cc/G24V-ELJD>; 11 U.S.C. §105(a), <https://perma.cc/X99P-MRC4>.

Regarding the § 503(b)(9) claims, SN believed it was in the best interest of the company and reorganization plan to pay these claims prior to confirmation to continue its relations with these creditors.¹⁶² Bankruptcy Code § 503(b)(9) affords these creditors administrative priority status; meaning, their claims will be paid in full upon confirmation of the plan.¹⁶³ SN requested to pay these obligations prior to confirmation as it will not result in unequal treatment of their claims and will merely accelerate their payment.¹⁶⁴

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

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

¹⁶² *Id.* at 17–18.

¹⁶³ 11 U.S.C. § 503, <https://perma.cc/KBF3-XSAZ> .

¹⁶⁴ Motion Authorizing Payment of Expenses and Claims, *supra* note 133, 14.pdf at 19.

¹⁶⁵ *Id.* at 20–21; 11 U.S.C. § 503, <https://perma.cc/KBF3-XSAZ>.

¹⁶⁶ Motion Authorizing Payment of Expenses and Claims, *supra* note 133, 14.pdf at 20.

¹⁶⁷ Order (I) Authorizing the Payment of (A) Operating Expenses, (B) Marketing Expenses, (C) Shipping and Warehousing Claims, (D) 504(b)(9) Claims, and (E) Outstanding Orders; and (II) Granting Related Relief 14.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 15, 2019) <https://perma.cc/J4CQ-GN9Y>.

Transfers of Beneficial Ownership and Declaration of Worthlessness of Stock.

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

¹⁶⁸ Debtor’s Emergency Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of Beneficial Ownership and Declarations of Worthlessness with Respect to Common Stock and Preferred Stock; and (II) Granting Related Relief 12.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 12, 2019) [hereinafter Motion for Hearing and Procedure for Stock Change], <https://perma.cc/3SY2-FEKY>.

¹⁶⁹ *Id.* at 5; see I.R.C. § 382 (1986), <https://perma.cc/D2HC-JLM6>.

¹⁷⁰ Motion for Hearing and Procedure for Stock Change, *supra* note 171, 12.pdf at 5–6.

¹⁷¹ *Id.* at 7.

¹⁷² *Id.*

¹⁷³ *Id.* at 13; 11 U.S.C. § 541, <https://perma.cc/NP77-JF5A>.

362(a)(3).¹⁷⁴ Any act that constitutes a change in ownership would limit SN’s usage of the NOLs and be considered an act to control property of the estate.¹⁷⁵ SN’s proposed procedures minimally affected shareholder’s ability to use their stock, only affecting those with enough stock to cause a change in ownership.¹⁷⁶ Implementation of these procedures will minimally affect shareholders whilst providing an enormous benefit to the estate and allow flexibility in operating the business going forward.¹⁷⁷ The court granted SN’s emergency motion first on an interim basis, then on a final basis authorizing its proposed procedures to monitor and control its stock.¹⁷⁸

Application to Retain Professionals.

Sanchez.

Lead Counsel: Akin Gump Strauss Hauer & Feld LLP.

SN requested the court approve its retention of Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”) as Lead Counsel through its chapter 11 proceedings under Bankruptcy Code §§ 327(a) and 328(a).¹⁷⁹

¹⁷⁴ Motion for Hearing and Procedure for Stock Change, *supra* note 171, 12.pdf at 13–14; 11 U.S.C § 362 <https://perma.cc/S6A2-YJZT>.

¹⁷⁵ Motion for Hearing and Procedure for Stock Change, *supra* note 171, 12.pdf at 13–15.

¹⁷⁶ *Id.* at 14–15.

¹⁷⁷ *Id.* at 14.

¹⁷⁸ Interim Order (I) Approving Notification and Hearing Procedures for Certain Transfers of Beneficial Ownership and Declarations of Worthlessness with Respect to Common Stock and Preferred Stock; and (II) Granting Related Relief 107.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Aug. 13, 2019), <https://perma.cc/2KTN-SSXN>; Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of Beneficial Ownership and Declarations of Worthlessness with Respect to Common Stock and Preferred Stock; and (II) Granting Related Relief 350.pdf, *In Re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Sept. 19, 2019), <https://perma.cc/5KW8-9LQ5>.

¹⁷⁹ Debtor’s Application to Employ Akin Gump Strauss Hauer & Feld LLP As Counsel to the Debtors and Debtor–in-Possession 268.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Sept. 6, 2019) [hereinafter Motion to Employ Akin Gump]; <https://perma.cc/FYU4-ABPR>; *see* 11 U.S.C. § 327 <https://perma.cc/L8RD-CZM9>; *see also* 11 U.S.C. § 328 <https://perma.cc/P7K3-BP6T>.

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

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

¹⁸⁰ Motion to Employ Akin Gump, *supra* note 182, 268.pdf at 13–14.

¹⁸¹ Supplemental Declaration of Ira S. Dizengoff in Support of the Debtor’s Application to Employ Akin Gump Strauss Hauer & Feld LLP as Counsel to the Debtors and Debtor in Possession 661.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Dec. 3, 2019) [hereinafter Declaration of Ira Dizengoff], <https://perma.cc/SWT7-RDH7>.

¹⁸² 11 U.S.C. § 101(14), <https://perma.cc/WNR2-4J3J>.

¹⁸³ 11 U.S.C. § 1107(b), <https://perma.cc/B43R-65QP>.

¹⁸⁴ Declaration of Ira Dizengoff, *supra* note 184, 661.pdf at 13; *see* 11 U.S.C. § 327, <https://perma.cc/L8RD-CZM9>.

¹⁸⁵ *See* 11 U.S.C. § 328(a), <https://perma.cc/P7K3-BP6T>; *see also* 11 U.S.C. § 327 <https://perma.cc/L8RD-CZM9>.

¹⁸⁶ Fed. R. Bankr. P. 2014, <https://perma.cc/U8EM-H9LH>.

the largest reorganizations in the last decade.¹⁸⁷ Additionally SN believed Akin Gump was uniquely situated to assist in their reorganization due to their familiarity and understanding of SN's business through their previous employment.¹⁸⁸

The scope of Akin Gump's employment covers virtually every aspect of a Chapter 11 reorganization: advising on rights/powers as debtor in possession; preservation and protection of the estate; seeking approval of debtor in possession financing; advising on sale of assets and tax matters; preparing pleadings, motions, and all other necessary legal services in connection with their Chapter 11 case.¹⁸⁹ SN proposed an arrangement with Akin Gump's standard hourly rates, stating these rates were consistent with rates charged in previous chapter 11 matters:

- Partners: \$925-\$1,755;
- Counsel: \$710-\$1,420;
- Associates: \$510-\$975; and
- Paraprofessionals: \$100-\$435.¹⁹⁰

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

- Ira S. Dizengoff (Partner, Financial Restructuring). \$1,550;
- James Savin (Partner, Financial Restructuring), \$1,475; and
- Marty L. Brimmage, Jr. (Partner, Litigation), \$1,425.¹⁹¹

¹⁸⁷ Declaration of Ira Dizengoff, *supra* note 184, 661.pdf at 4.

¹⁸⁸ *Id.* at 5.

¹⁸⁹ *Id.* at 7–8.

¹⁹⁰ *Id.* at 9.

¹⁹¹ *Id.*

Along with these hourly rates, the arrangement proposed Akin Gump would bill for actual and necessary costs and expenses incurred in carrying out its legal services.¹⁹² These services include, but were not limited to, photocopying services, printing, delivery charges, filing fees, postage, and fees associated with computer research time.¹⁹³

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

The court approved SN's motion for employment of Akin Gump, authorizing the proposed scope of services and requiring interim and final fee application to be filed with the court as set forth in §§ 330 and 331.¹⁹⁵ Section 330 requires a detailed filing of billed hours with descriptions of work performed and all expenses being charged, the court then reviews this fee application to determine the reasonable amount of compensation owed.¹⁹⁶ The court required this to ensure the estate was only paying what was reasonable and owed, to protect the estate to the fullest extent possible from wasting funds.

SN filed its first interim fee application with the court, requesting permission to pay Akin Gump for services from August 11, 2019 through November 30, 2019.¹⁹⁷ Since the petition date, Akin Gump filed three monthly statements with the court detailing their work.¹⁹⁸ In total, Akin

¹⁹² *Id.* at 10.

¹⁹³ Declaration of Ira Dizengoff, *supra* note 184, 661.pdf at 11.

¹⁹⁴ *Id.* at 11–12.

¹⁹⁵ Order Authorizing Employment of Akin Gump Strauss Hauer & Feld LLP As Counsel to the Debtors and Debtors-in-Possession 268.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Oct. 1, 2019) <https://perma.cc/RRC7-PSPA>; *see* 11 U.S.C. § 330 <https://perma.cc/2QJN-PCXB>; *see also* 11 U.S.C. § 331 <https://perma.cc/9C4R-N4C4>.

¹⁹⁶ *See* 11 U.S.C. § 330 <https://perma.cc/2QJN-PCXB>.

¹⁹⁷ First Interim Fee Application of Akin Gump Strauss Hauer & Feld LLP for Allowance and Payment of Fees and Expenses as Counsel to the Debtors for the Period from August 11, 2019 through November 30, 2019 840.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/2Q4B-C8C6>.

¹⁹⁸ *Id.* 4–5.

Gump requested payment of \$10,951,912.50 for their services.¹⁹⁹ Akin Gump requested \$10,499,440.50 for 11,361 hours of professional work, averaging \$924.17 per hour.²⁰⁰ Additionally, it requested \$452,472.00 for 1,264.1 hours of paraprofessional work, averaging \$357.94 per hour.²⁰¹ Finally, reimbursement of \$453,054.89 for actual and necessary expenses was requested.²⁰² The court entered an order approving SN's first interim fee application for allowance of payment to Akin Gump in full as requested in the application.²⁰³

Co-Counsel and Conflicts Council- Jackson Walker LLP.

SN requested the court approve retention of Jackson Walker LLP ("Jackson Walker") as co-counsel and conflicts counsel to assist Akin Gump in the proceedings.²⁰⁴ Jackson Walker was a Texas-based law firm with seven offices in the state and over 400 attorneys.²⁰⁵

Following § 327(a) and Rule 2014(a) SN sought to employ Jackson Walker as it was a disinterested person with no adverse interest, whose aid is necessary to facilitate an efficient Chapter 11 reorganization.²⁰⁶ SN believed employment of Jackson Walker was necessary due to its experience in complex Chapter 11 cases, its extensive knowledge of Local Rules, and history

¹⁹⁹ *Id.* at 1.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Order Approving First Interim Fee Application of Akin Gump Strauss Hauer & Feld LLP for Allowance and Payment of Fees and Expenses as Counsel to the Debtors for the Period from August 11, 2019 through November 30, 2019 924.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Feb. 12, 2020) <https://perma.cc/468L-7BPA>.

²⁰⁴ Application of Debtors and Debtors-in-Possession to Retain Jackson Walker LLP as Co-Counsel and Conflicts Counsel for the Debtors and Debtors-in-Possession 269.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Sept. 6, 2019) [hereinafter Motion to Employ Jackson Walker] <https://perma.cc/8C4Z-QTSD>.

²⁰⁵ <https://www.jw.com/>

²⁰⁶ *Id.* at 7–8; see 11 U.S.C. § 327 <https://perma.cc/L8RD-CZM9>; see also Fed. R. Bankr. P. 2014 <https://perma.cc/U8EM-H9LH>.

of practice before this court.²⁰⁷ Jackson Walker asserted it was a disinterested person pursuant to § 101(14) as it does not represent any client with a material adverse interest to the estate as shown in the Kopel Declaration.²⁰⁸

To avoid duplicative work and establish a division of services, Jackson Walker provided the scope of its services be primarily focused on local rules, practices, and procedures within the Fifth Circuit, reviewing and commenting on proposed pleadings, and providing legal services on any matters Akin Gump may have conflicts with.²⁰⁹ Furthermore, Jackson Walker proposed rates consistent with prior Chapter 11 cases and billing of reasonable expenses related to their legal services:

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

The court granted SN's motion to employ Jackson Walker as Co-Counsel and Conflicts Counsel according to the terms in the motion and requiring interim and final fee application to be filed with the court as set forth in §§ 330 and 331.²¹⁰

SN filed its first interim fee application and requested permission to pay Jackson Walker for its previous three months of employment.²¹¹ In total, Jackson Walker's professional fees totaled \$779,620.50 for 1317.9 hours of actual professional work at an average rate of 591.56 per

²⁰⁷ Motion to Employ Jackson Walker, *supra* note 207, 269.pdf at 7.

²⁰⁸ *Id.* at 7–8, 13–15.

²⁰⁹ *Id.* at 3–4.

²¹⁰ Order Granting the Application of Debtors and Debtor-in-Possession to Retain Jackson Walker LLP as Co-Counsel and Conflicts Counsel for Debtors and Debtors-in-Possession 416.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Oct. 1, 2019) <https://perma.cc/P3KS-9GPA>; *see* 11 U.S.C. § 330 <https://perma.cc/2QJN-PCXB>; *see also* 11 U.S.C. § 331 <https://perma.cc/9C4R-N4C4>.

²¹¹ Jackson Walker LLP's First Interim Fee Application for Allowance and Payment of Fees and Expenses as Co-Counsel to the Debtors for the Period from August 11, 2019 through November 30, 2019 841.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/GL25-E3AU>.

hour, and 109.3 hours of paraprofessional work at an average of 187.44 per hour.²¹²

Additionally, Jackson Walker requested reimbursement for \$61,867.43 of actual and necessary expenses.²¹³ On February 11, 2020, SN filed a Certificate of No Objection;²¹⁴ and, the Court subsequently entered a Final Order, granting the fee application, consisting of the same terms as the Proposed Order.²¹⁵

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

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

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

²¹² *Id.* at 1.

²¹³ *Id.*

²¹⁴ Certificate of No Objection, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Feb. 11, 2020), <https://perma.cc/H5QL-KFSP>.

²¹⁵ Order Granting Jackson Walker LLP’s First Interim Fee Application for Allowance and Payment of Fees and Expenses as Co-Counsel to the Debtors for the Period From August 11, 2019 Through November 30, 2019, No. 19-34508 (Bankr. S.D. Tex.R. Filed Feb. 12, 2020), <https://perma.cc/4S74-FDN2>.

²¹⁶ Debtor’s Emergency Motion for Entry of an Order (I) Authorizing (A) Retention of M-III Advisory Partners, LP and (B) Designation of Mohsin Y. Meghji as Chief Restructuring Officer; and (II) Granting Related Relief 593.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bankr. S.D. Tex.R. Filed Nov. 11, 2019) [hereinafter Motion to Employ M-III] <https://perma.cc/GL25-E3AU>.

²¹⁷ *Id.* at 14; see 11 U.S.C. § 363 <https://perma.cc/G24V-ELJD>.

²¹⁸ Motion to Employ M-III, *supra* note 217, 593.pdf at 14–15.

²¹⁹ *Id.* at 4–5.

Committee selected Mr. Meghji's due to his experience in: (i) developing and implementing business plans; (ii) developing and executing turnaround strategies; (iii) planning and implementing financial and operation restructurings and debt reorganizations; (iv) financial modeling; (v) managing negotiations with stakeholders; (vi) stabilizing business operations; and (vii) improving and managing liquidity.²²⁰ The compensation terms of M-III as advisory partner were set according to their standard hourly rates along with reimbursement of reasonable out-of-pocket expenses incurred through their services:

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

Furthermore, SN acknowledged that § 327(a) does not govern M-III's retention but asserted that M-III was a disinterested person according to § 110(14) nonetheless.²²¹ M-III disclosed connections with creditors and potential parties in interest but asserted it held no materially adverse interest to SN's estate and no conflict of interest will arise.²²²

Objections.

²²⁰ *Id.* at 6–8.

²²¹ *Id.* at 13; *see* 11 U.S.C. § 330 <https://perma.cc/2QJN-PCXB>; 11 U.S.C. § 101(14) <https://perma.cc/WNR2-4J3J>.

²²² Motion to Employ M-III, *supra* note 217, 593.pdf at 13.

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

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

Reply.

²²³ Ad Hoc Group of Unsecured Noteholders’ Objection to the Debtor’s Motion for Entry of an Order (I) Authorizing (A) Retention of M-III Advisory Partners, LP and (B) Designation of Mohsin Y. Meghji as Chief Restructuring Officer; and (II) Granting Related Relief 668.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 05, 2019) [hereinafter Objection to M-III] <https://perma.cc/Y49J-J55B>.

²²⁴ *Id.* at 6.

²²⁵ *Id.* at 7–8.

²²⁶ *Id.* at 11–13.

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

²²⁸ *Id.* at 9–10.

²²⁹ *Id.* at 12–14.

SN structured its reply in four parts: (1) Selection Process and Business Judgement; (2) Special Committee and its Fiduciary Duties; (3) Support of Mr. Meghji as CRO; and (4) Objections against Unsecured Noteholders and Unsecured Creditor’s Committee (“Creditors Committee”) Preferred Candidate.²³⁰

(1) Selection Process and Business Judgement.

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

(2) Special Committee and its Fiduciary Duties

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

(3) Support of Mr. Meghji as CRO

²³⁰ Debtors Reply in Support of Emergency Motion for Entry of an Order (I) Authorizing (A) Retention of M-III Advisory Partners, LP and (B) Designation of Mohsin Y. Meghji as Chief Restructuring Officer; and (II) Granting Related Relief 687.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 05, 2019) [hereinafter Motion to Retain M-III] <https://perma.cc/TM86-YDDH>.

²³¹ *Id.* at 9.

²³² *Id.*

²³³ *Id.* at 10–12.

²³⁴ *Id.*

²³⁵ *Id.*

The Special Committee selected Mr. Meghji because he fulfilled their criteria of: (1) extensive experience as a CRO involving complicated transactions; (2) disinterestedness and independence from all parties; (3) and reputation as a successful consensus builder in complex, contentious cases.²³⁶

(4) Objections against Creditors Committee's Preferred Candidate

The Special Committee rejected the Creditors Committee's candidate due to: lack of experience as CRO compared to Mr. Meghji; lack of experience in dealing with potential conflicts and related party transaction in complex Chapter 11 cases; lack of experience as consensus builder; concerns arising from candidates inability to answer interview questions; and concerns regarding the candidates reputation in other chapter 11 cases.²³⁷ Overall, the Creditors Committee's selection lacked Mr. Meghji's experience and track record, and importantly lacked the ability to be a strong consensus builder.²³⁸

The court entered an order authorizing SN to retain M-III and designate Mr. Meghji as the CRO.²³⁹ To avoid the Creditors Committee's concern, the court provided the CRO with the explicit right to request the Special Committee conduct an investigation on any prepetition transaction with affiliate parties and access to unredacted copies of all information pertaining to the investigation.²⁴⁰ Thus far, no fee applications have been filed.

²³⁶ Motion to Retain M-III, *supra* note 231, 687.pdf at 18–19.

²³⁷ *Id.* at 18–20.

²³⁸ *Id.* at 20–21.

²³⁹ Order Authorizing Debtors to (I) Retain M-III Advisory Partners, LP; (II) Designate Mohsin Y. Meghji as Chief Restructuring Officer; and (III) Granting Related Relief 704.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 09, 2019) <https://perma.cc/J9UH-HTXU>.

²⁴⁰ *Id.* at 5.

Special Counsel to the Special Committee- Ropes & Gray LLP.

Pursuant to Bankruptcy Code §§ 327(e) and 328(a), SN requested the court grant permission to employ and retain Ropes & Gray LLP (“Ropes & Gray”) as special counsel to assist the Special Committee in its investigation on any potential causes of action against SN.²⁴¹

Section 327(e) provides that debtors may employ counsel that has previously represented the debtor for a specified special purpose so long as counsel holds no adverse interests to the debtors and employment is in the best interest of the estate.²⁴² When § 327(e) is invoked, courts generally look to four factors in considering whether to appoint special counsel, whether “(1) the representation is in the best interest of the estate, (2) the attorney represented the debtor in the past, (3) the attorney is for a specific purpose approved by the court other than to represent the debtor in conducting the case, (4) the attorney does not represent or hold an interest adverse to the debtor or the debtor’s estate.”²⁴³

Retention of Ropes & Gray was in the best interest of the estate to facilitate the Special Committee’s to their investigation in connection with the chapter 11 case.²⁴⁴ Ropes & Gray had extensive experience and knowledge in restructuring representation as well as assisting special committees in dutifully carrying out their fiduciary duties during investigations.²⁴⁵ The scope of Ropes & Gray’s services was specifically to assist the Special Committee in any legal matters

²⁴¹ Debtor’s Application for Entry of an Order Authorizing the Retention and Employment of Ropes & Gray LLP as Special Counsel to the Special Committee of the Board of Directors of Sanchez Energy Corporation Effective *Nunc Pro Tunc* to the Petition Date 272.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 06, 2019) [hereinafter Motion to Employ Ropes & Gray] <https://perma.cc/MTE2-6EYN>; see 11 U.S.C. § 328 <https://perma.cc/P7K3-BP6T>; see also 11 U.S.C. § 327 <https://perma.cc/L8RD-CZM9>.

²⁴² *Id.* at 13.

²⁴³ *Id.* at 13; see *In re Woodworkers Warehouse, Inc.*, 323 B.R. 403, 406 (Bankr. D. Del. 2005).

²⁴⁴ Motion to Employ Ropes & Gray, *supra* note 242, 272.pdf at 5.

²⁴⁵ *Id.* at 5–6.

involving the restructuring or investigation process, and to advise it of its fiduciary duties and powers.²⁴⁶

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

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

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

²⁴⁶ *Id.* at 6–7.

²⁴⁷ *Id.* at 11.

²⁴⁸ *Id.* at 11.

²⁴⁹ *Id.* at 12; 11 U.S.C. § 101(14) <https://perma.cc/WNR2-4J3J>.

²⁵⁰ Motion to employ Ropes & Gray, *supra* note 242, 272.pdf at 13–14.

²⁵¹ *Id.*; *see* 11 U.S.C. § 328 <https://perma.cc/P7K3-BP6T>.

²⁵² Motion to Employ Ropes & Gray, *supra* note 242, 272.pdf at 7–9.

- Paraprofessionals: \$205- \$480

Objections.

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

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

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

²⁵⁴ *Id.* at 1-3.

²⁵⁵ *Id.* at 4.

²⁵⁶ *Id.* at 4-5.

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

²⁵⁸ *Id.* at 3-4; see 11 U.S.C. § 1106, <https://perma.cc/HSC5-M25F>.

²⁵⁹ Unsecured Creditors Committee's Objection, *supra* note 258, 407.pdf at 4-5.

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

Reply.

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

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

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

²⁶⁰ *Id.* at 6–8.

²⁶¹ *Id.* at 3.

²⁶² *Id.* at 9.

²⁶³ Unsecured Creditors Committee's Objection, *supra* note 258, 407.pdf at 9–10.

²⁶⁴ Omnibus Reply of the Special Committee of the Board of Directors of Sanchez Energy Corporation to Limited Objections to Retention of Ropes & Gray LLP as Special Counsel 482.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 21, 2019) [hereinafter Special Committee Omnibus Reply]

<https://perma.cc/4HMQ-PU6D>.

²⁶⁵ *Id.* at 4–6.

²⁶⁶ *Id.* at 5–7.

(2) The objection that a debtor could investigate estate claims was baseless.

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

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

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

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

²⁶⁸ *Id.* at 10.

²⁶⁹ Special Committee Omnibus Reply, *supra* note 265, 482.pdf at 10–12.

²⁷⁰ *Id.* at 12.

²⁷¹ *Id.* at 13.

executive's compensation was outside of its scope of investigation.²⁷² Thus, the compensation approval had no bearing on the Special Committee's independence.²⁷³

The court granted SN's motion to retain and employ Ropes & Gray as requested, with the addition that all fee applications would be subject to review under Bankruptcy Code § 330.²⁷⁴

Restructuring Advisor- Alvarez & Marsal North America, LLC.

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

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

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ Order Authorizing the Retention and Employment of Ropes & Gray LLP as Special Counsel to the Special Committee of the Board of Directors of Sanchez Energy Corporation Effective *Nunc Pro Tunc* to the Petition Date 398.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 26, 2019) <https://perma.cc/2MTK-6SJU>.

²⁷⁵ Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Alvarez & Marsal North America, LLC as Restructuring Advisor for the Debtors, *Nunc Pro Tunc* to the Petition Date 270.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 09, 2019) [hereinafter Application to Retain Alvarez] <https://perma.cc/E7FA-YVD8>.

²⁷⁶ *Id.* at 4.

²⁷⁷ *Id.*

²⁷⁸ *Id.* at 10–11.

²⁷⁹ *Id.* at 10.

§328 allows employment of professionals on reasonable terms and conditions, including on retainer.²⁸⁰ Alvarez & Marsal's terms and conditions for retention were reasonable and customary for cases of this size and complexity, therefore SN asserted their retention was qualified under § 328.²⁸¹

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

- Restructuring:
 - Managing Directors: \$875- \$1,100;
 - Directors: \$675- \$875;
 - Analysts/Associates: \$400- \$650;
- Case Management Services:
 - Managing Directors: \$825- \$950;
 - Directors: \$650- \$800; and
 - Analysts/Associates: \$400- \$600

²⁸⁰ Application to Retain Alvarez, *supra* note 276, 270.pdf at 10–11.

²⁸¹ *Id.*

²⁸² *Id.* at 6–7.

Additionally, SN agreed to indemnify and hold harmless Alvarez & Marsal in connection with the services.²⁸³ Prior to the petition, SN provided a \$250,000 retainer for Alvarez & Marsal's services, the unapplied retainer shall apply to the court's final approved fee amount.²⁸⁴

The court granted SN's motion on a final basis, authorizing the retention of Alvarez & Marsal as restructuring advisors and approving the terms and conditions of their engagement as set out.²⁸⁵

SN filed a first interim fee application requesting permission to pay Alvarez & Marsal for work performed from August 12, 2019 through November 20, 2019.²⁸⁶ In total, SN requested to pay \$4,165,634.00 for 6,930.5 hours of professional services at an average hourly rate of 601.06.²⁸⁷ Additionally, SN requested permission to pay \$123,538.06 to reimburse Alvarez & Marsal for actual and necessary expenses incurred.²⁸⁸ The court entered an order authorizing SN to pay Alvarez & Marsal \$4,289,172.06, the total of professional services plus reimbursement of actual and necessary expenses.²⁸⁹

²⁸³ *Id.* at 10.

²⁸⁴ *Id.* at 9.

²⁸⁵ Order Authorizing the Retention and Employment of Alvarez & Marsal North America LLC as Restructuring Advisor for the Debtors, Effective *Nunc Pro Tunc* to the Petition Date 413.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 01, 2019) <https://perma.cc/6TEW-VD3Q>.

²⁸⁶ First Interim Fee Application of Alvarez & Marsal North America, LLC as Restructuring Advisor for the Debtors and Debtors in Possession for the Period from August 12, 2019 through and including November 20, 2019 930.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 12, 2020) <https://perma.cc/5CHZ-FQ8Z>.

²⁸⁷ *Id.* at 2.

²⁸⁸ *Id.*

²⁸⁹ Order Granting First Interim Fee Application of Alvarez & Marsal North America, LLC as Restructuring Advisor for the Debtors and Debtors in Possession for the Period from August 12, 2019 through and including November 20, 2019 850.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 18, 2020) <https://perma.cc/R2ZW-AHE7>.

Financial Advisor & Investment Banker- Moelis & Company LLC.

SN petitioned the court to authorize employment of Moelis & Company LLC (“Moelis”) as financial advisor and investment banker in their Chapter 11 reorganization.²⁹⁰ Moelis had extensive experience in assisting with reorganization and restructuring in the energy sector, with a lengthy list of successful cases under their belt.²⁹¹ Moelis was selected due to its knowledge of SN’s case, its proven skills in investment banking and financial advisory services, and its success with similarly situated debtors in complex Chapter 11 cases.²⁹² Moelis would continue to assist SN in analyzing its operations and financial conditions, analyzing restructuring alternatives and capital transactions, and advising and negotiating in connection with creditors and potential financiers.²⁹³ SN requested permission to retain Moelis pursuant to Bankruptcy Code §§ 327(a), 328(a), and 1107(b).²⁹⁴

Sections 327(a) and 328(a) work in conjunction, allowing SN to employ professional persons under reasonable terms and conditions (§ 328(a)) so long as they do not hold an adverse interest to the estate and are disinterested (§ 327(a)).²⁹⁵ The terms and conditions proposed by Moelis operate in three sectors: first, the monthly fee of \$150,000 payable in advance each month; next the restructuring fee of \$10,000,000 upon closing of the case; and third, the capital transaction fee under which Moelis will receive four percent of the aggregate gross amount of

²⁹⁰ Debtors Application for Entry of an Order (I) Authorizing the Retention and Employment of Moelis & Company LLC as Financial Advisor and Investment Banker for the Debtors, *Nunc Pro Tunc* to the Petition Date; (II) Waiving Certain Time-Keeping Requirements; and (III) Granting Related Relief 271.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 06, 2019) [hereinafter Motion to Employ Moelis] <https://perma.cc/Q56H-2GRZ>.

²⁹¹ *Id.* at 4.

²⁹² *Id.* at 6.

²⁹³ *Id.*

²⁹⁴ *Id.* at 15.

²⁹⁵ *Id.*

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

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

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

²⁹⁶ Motion to Employ Moelis, *supra* note 291.pdf at 8–9.

²⁹⁷ *Id.* at 10.

²⁹⁸ *Id.* at 18.

²⁹⁹ *Id.* at 13; *see id.* at 35–36.

³⁰⁰ *Id.* at 14; *see* Amended Declaration of Bassam J. Latif in Support of the Debtor's Application for Entry of an Order (I) (I) Authorizing the Retention and Employment of Moelis & Company LLC as Financial Advisor and Investment Banker for the Debtors, *Nunc Pro Tunc* to the Petition Date; (II) Waiving Certain Time-Keeping Requirements; and (III) Granting Related Relief 461.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 14, 2019) [hereinafter Latif Declaration] <https://perma.cc/VXE2-QHQM>.

³⁰¹ Latif Declaration, *supra* note 301, 461.pdf at 12–13.

³⁰² Motion to Employ Moelis, *supra* note 291, 271.pdf at 14.

³⁰³ Order (I) Authorizing the Retention and Employment of Moelis & Company LLC as Financial Advisor and Investment Banker for the Debtors, *Nunc Pro Tunc* to the Petition Date; (II) Waiving Certain Time-Keeping Requirements; and (III) Granting Related Relief 495.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 21, 2019) [hereinafter Order Authorizing Moelis] <https://perma.cc/S8DM-EQ8A>.

possession financing rolled up or refinance.³⁰⁴ Second, no capital transaction fees could be earned upon conversion of debtor in possession financing into exit financing, unless new capital was raised in connection with such conversion.³⁰⁵ Third, the capital transaction fees resulting from existing creditors, stakeholders, or equity holders shall be reduced by 50%.³⁰⁶ Fourth, capital transaction fees may only be earned on debtor in possession financing if approved on a final basis by the court.³⁰⁷ Finally, 50% of transaction fees from new parties shall be applied to the restructuring fee of \$10,000,000 provided that the restructuring fee does not reach zero.³⁰⁸ Compensation will be granted according to the Engagement Letter, as modified by this order, after review pursuant to § 330.³⁰⁹ Accordingly, the monthly fee of \$150,000 would be prorated for any day in which Moelis was not employed.³¹⁰

The first interim fee application was submitted, seeking authorization to pay Moelis for professional services and actual and necessary expenses from August 11, 2019 through November 30, 2019.³¹¹ Moelis's fees totaled \$490,000, \$150,00 per month prorated for August, and its actual and necessary expenses incurred totaled \$392,000 for the period.³¹² The court entered an order permitting SN to pay the fees and expenses in total.³¹³

³⁰⁴ *Id.* at 2.

³⁰⁵ *Id.*

³⁰⁶ *Id.* at 2–3.

³⁰⁷ *Id.* at 3.

³⁰⁸ Order Authorizing Moelis, *supra* note 304, 495.pdf at 3.

³⁰⁹ *Id.* at 4.

³¹⁰ *Id.* at 6.

³¹¹ First Interim Fee Application of Moelis & Company LLC for Compensation for Professional Services Rendered and Actual and Necessary Expenses as Investment Banker to the Debtors from August 11 through November 30, 2019 842. Pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/6EUY-U9Q3>.

³¹² *Id.* at 1.

³¹³ First Interim Fee Application of Moelis & Company LLC for Compensation for Professional Services Rendered and Actual and Necessary Expenses as Investment Banker to the Debtors from August 11 through November 30, 2019 926.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/M3U8-6N52>.

Audit & Tax Consulting- KPMG LLP.

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

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

³¹⁴ Debtor’s Application for Entry of an Order Authorizing Retention and Employment of KPMG LLP to Provide Audit and Tax Consulting Services for the Debtors *Nunc Pro Tunc* to the Petition Date 283.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 10, 2019) [hereinafter Application to Retain KPMG] <https://perma.cc/VP8G-ZQQL>.

³¹⁵ *Id.* at 11.

³¹⁶ *Id.*

³¹⁷ *Id.* at 12.

³¹⁸ *Id.* at 4–5.

³¹⁹ Application to Retain KPMG, *supra* note 315, 283.pdf at 5.

³²⁰ *Id.*

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

As described in the engagement letter, KPMG and SN agreed to a fixed fee of \$1,026,000 for audit services, of which \$436,000 was paid prepetition and with the remaining balance paid in five monthly installments of \$118,000.³²³ Additionally, KPMG and SN agreed to a fixed fee of \$25,000 to \$125,000 for each comfort letter and \$25,000 for each consent letter.³²⁴ Also, KPMG would provide hourly services charged at a rate reduced by approximately 41% for audit services and 30% for tax services at the following rates:

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

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

³²¹ *Id.* at 5–6.

³²² *Id.* at 6.

³²³ *Id.* at 7.

³²⁴ *Id.*

- Senior Associates: \$435- \$575;
- Associates: \$320- \$350; and
- Paraprofessionals: \$180-280³²⁵

Generally, KPMG did not keep detailed time records in connection with their services; accordingly, SN requested permission for KPMG to file time keeping records with the court in half hour increments as opposed to the customary one-tenth hour increments³²⁶ Additionally, as compensation, SN agreed to indemnification provisions with respect to services provided by KPMG.³²⁷

The court approved SN's motion to retain KPMG subject to modification by the order.³²⁸ KPMG would not be entitled to indemnification for services other than described in the engagement letter, unless approved by the court.³²⁹ SN would not be obliged to indemnify KPMG if it judicially determined the issue arose due to bad faith, gross negligence, or willful misconduct, arose from a breach of contractual obligations, or was settled prior to a judicial determination.³³⁰ Furthermore, KPMG would submit interim and final fee applications subject to review pursuant to § 330.³³¹

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

³²⁵ Application to Retain KPMG, *supra* note 315, 283.pdf at 9.

³²⁶ *Id.* at 10.

³²⁷ *Id.* at 12.

³²⁸ Order Authorizing the Retention and Employment of KPMG LLP to Provide Audit and Tax Consulting Services for the Debtors *Nunc Pro Tunc* to the Petition Date 426.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 03, 2019) <https://perma.cc/HRN5-JXHV>.

³²⁹ *Id.* at 2.

³³⁰ *Id.*

³³¹ *Id.* at 4.

expenses.³³² The court entered an order, granting the first interim fee application and awarding KPMG a total of \$450,940.53.³³³

Special Litigation Counsel- Gibbs & Bruns LLP.

SN requested permission to retain Gibbs & Bruns LLP (“Gibbs & Bruns”) as special litigation counsel in connection with the Comanche Joint Development Agreement Dispute (“Comanche JDA”) and Terra Dispute.³³⁴ SN employed Gibbs & Bruns prior to the petition date to serve as lead counsel in their dispute with Gavilan Resources, LLC (“Gavilan”).³³⁵ The Comanche JDA Dispute began February 18, 2019 when Gavilan filed an arbitration demand on SN for allegedly defaulting under their Comanche JDA.³³⁶ SN served Gavilan with counterclaims and defenses, an evidentiary hearing was set for October 14, 2019.³³⁷ In the Terra Dispute, SN, as plaintiffs, filed causes of action for misappropriation of trade secrets, breach of fiduciary duties, aiding and abetting breach of fiduciary duty, breach of contract, and violation of the Harmful Access by Computer Act.³³⁸ The defendants sought to dismiss the case, but the court denied their motion and held it had the sole intent of delaying the proceedings; the defendants were appealing this ruling.³³⁹

³³² First Interim Fee Application of KPMG LLP for Compensation for Services Rendered and Reimbursement of Expenses as Auditor and Tax Consultant to the Debtors from August 11 through November 30, 2019 843.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/934W-DK4W>.

³³³ Order Granting First Interim Fee Application of KPMG LLP for Compensation for Services Rendered and Reimbursement of Expenses as Auditor and Tax Consultant to the Debtors from August 11 through November 30, 2019 927.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 12, 2020) <https://perma.cc/D7N5-W5F5>.

³³⁴ Debtor’s Application for entry of an Order Authorizing the Retention and Employment of Gibbs & Bruns LLP as Special Litigation Counsel to the Debtors *Nunc Pro Tunc* to the Petition Date 284.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 10, 2019) [hereinafter Motion to Employ Gibbs] <https://perma.cc/2YZ5-L9PV>.

³³⁵ *Id.* at 4–5.

³³⁶ *Id.* at 5.

³³⁷ *Id.* at 6.

³³⁸ *Id.*

³³⁹ Motion to Employ Gibbs, *supra* note 335, 284.pdf at 6.

Bankruptcy Code § 327(e) provides that with court approval, SN may employ an attorney, who has represented it in the past, for a specified special purpose so long as it is in the best interest of the estate and the attorney holds no adverse interest to the debtor or estate in the matter at hand.³⁴⁰ Retention under § 327(e) differs from §327(a) as it only requires the attorney possess no conflicts of interest.³⁴¹ Additionally, SN sought to employ Gibbs & Bruns on reasonable terms and conditions as allowed under § 328(a).³⁴²

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

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

- Partners: \$1250- \$445;
 - Robin C. Gibbs: \$1,250;
 - Sam W. Cruse III: \$565;
 - Brice Wilkinson: \$445;
- Counsel: \$430- 305;
 - Jorge Gutierrez: \$400;

³⁴⁰ *Id.* at 13; *see* 11 U.S.C. § 327, <https://perma.cc/L8RD-CZM9>.

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

³⁴² *Id.* at 13.

³⁴³ *Id.* at 7.

³⁴⁴ *Id.*

³⁴⁵ *Id.* at 8.

- Associates: \$425- \$345; and
- Paraprofessionals: \$210- \$125

In connection, Gibbs & Bruns would seek reimbursement for actual, documented expenses in connection with their representation, including retention of experts and professionals.³⁴⁶

SN sought authorization to compensate Gibbs & Bruns via contingency agreement for work performed under the Terra Dispute.³⁴⁷ Gibbs & Bruns, at the time of settlement or resolution, would receive 12.5% of the gross sum if resolved before the appeal, 17.5% if resolved before the selection of a jury, and 35% if resolved after a jury was selected.³⁴⁸ Gibbs & Bruns would be responsible for all litigation expenses and not include time records in its monthly fee statements, rather it would include a summary of the services rendered when it seeks payment of the contingency fee.³⁴⁹

The court granted SN's motion to retain Gibbs & Bruns as special litigation counsel, authorizing each respective compensation method.³⁵⁰ There were no fee applications at the time of this paper.

³⁴⁶ Motion to Employ Gibbs, *supra* note 335, 284.pdf at 9–10.

³⁴⁷ *Id.* at 10.

³⁴⁸ *Id.* at 11.

³⁴⁹ *Id.*

³⁵⁰ Order Authorizing the Retention and Employment of Gibbs & Bruns LLP as Special Litigation Counsel to the Debtors 439.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 07, 2019) <https://perma.cc/3M5W-FXQG> .

Official Committee of Unsecured Creditors.

Counsel- Milbank LLP.

The Unsecured Creditors Committee sought to employ Milbank LLP (“Milbank”) as counsel due to its successful record of accomplishment in representing creditor’s committees in complex Chapter 11 cases.³⁵¹

The Unsecured Creditors Committee constituted a § 1102 committee; meaning, it had the power, with court approval, to authorize employment of one or more attorneys or professionals to represent or perform services on their behalf under § 1103.³⁵² Milbank asserted it was disinterested as defined by § 101(14) and without adverse conflicts of interest.³⁵³

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

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

³⁵¹ Application of the Official Committee of Unsecured Creditors for Entry of an Order Authorizing the Retention of Milbank LLP as Counsel, Effective as of August 29, 2019 405.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 27, 2019) [hereinafter Motion to Employ Milbank] <https://perma.cc/77QG-DXJQ>.

³⁵² *Id.* at 8; see 11 U.S.C. §1102, <https://perma.cc/5MF8-6Z8A>; see also 11 U.S.C. § 1103, <https://perma.cc/3SVJ-7UR6> .

³⁵³ Motion to Employ Milbank, *supra* note 352, 405.pdf at 6.

³⁵⁴ *Id.* at 5.

- Paralegals- \$260- \$360³⁵⁵

The court approved the Unsecured Creditors Committee's request, authorizing retention of Milbank as counsel and requiring applications for compensation subject to §§ 330 and 331 of the code.³⁵⁶

Milbank submitted its first fee application for the period of August 29, 2019 through November 30, 2019.³⁵⁷ Milbank requested \$4,541,639.50, consisting of 5,112.30 hours of professional services for \$4,447,441.50 at an average hourly rate of \$869.95, 308.6 hours of paraprofessional service for \$94,198.00 at an average hourly rate of \$305.24, and \$158,886.66 for reimbursement of actual and necessary expenses.³⁵⁸ The court ordered payment of interim compensation in the amount of \$4,700,526.16, authorizing full payment for services and expenses that include \$158,886.66 held back from prior fee applications.³⁵⁹

Co-Counsel- Locke Lord, LLP.

The Unsecured Creditors Committee sought to employ Locke Lord, LLP ("Locke Lord") as co-counsel and to the extent necessary, conflicts counsel during the chapter 11 case.³⁶⁰ Locke

³⁵⁵ *Id.* at 7.

³⁵⁶ Order Authorizing the Retention of Milbank LLP as Counsel to the Committee, Effective as of August 29, 2019 492.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 21, 2019) <https://perma.cc/T3N9-CUF8>.

³⁵⁷ First Interim Application of Milbank LLP, as Co-Counsel to the Official Committee of Unsecured Creditors, for the Period from August 29, 2019 through November 30, 2019 845.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/Y7H9-PHLR>.

³⁵⁸ *Id.* at 6–7.

³⁵⁹ Order Granting First Application of Milbank LLP for Allowance of Compensation from August 29, 2019 through November 30, 2019 931.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 12, 2020) <https://perma.cc/GXW2-QYAZ>.

³⁶⁰ Application for Order Authorizing the Employment and Retention of Locke Lord, LLP as Co-Counsel for the Official Committee of Unsecured Creditors of Sanchez Energy Corporation, *ET AL.*, Effective as of August 29, 2019 406.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 27, 2019) <https://perma.cc/8JFP-J83Q>.

Lord was selected due to its experience in complex Chapter 11 cases and importantly, its extensive practice before this court and their knowledge of the local rules.³⁶¹

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

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

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

Locke Lord submitted its first fee application for the period of August 29, 2019 through November 30, 2019.³⁶⁷ Locke Lord requested compensation for \$695,186.00, comprised of 868.3

³⁶¹ *Id.* at 3–4.

³⁶² *Id.* at 3.

³⁶³ *Id.* at 6.

³⁶⁴ *Id.* at 4–5.

³⁶⁵ *Id.* at 7.

³⁶⁶ Order Authorizing the Employment and Retention of Locke Lord LLP as Co-Counsel to the Official Committee of Unsecured Creditors of Sanchez Energy Corporation, *ET AL.*, Effective as of August 29, 2019 594.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 21, 2019) <https://perma.cc/68K9-HJBZ>.

³⁶⁷ First Interim Application of Locke Lord LLP as Co-Counsel to the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses 874.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 23, 2020) <https://perma.cc/T9MB-4ZF4>.

hours of professional services for \$648,329.00 at an average hourly rate of \$746.66, 185.70 hours of paraprofessional service for \$46,857.00 at an average hourly rate of \$252.33, and \$7,875.12 for actual and necessary expenses.³⁶⁸ The court authorized interim compensation in the amount of \$695,186.00, plus \$139,037.20 in fees held back from prior fee statements.³⁶⁹

Financial Advisor- FTI Consulting, Inc.

The Unsecured Creditors Committee sought to employ FTI Consulting, Inc. (“FTI”) to perform financial advisory services pursuant to Bankruptcy Code Sections 328(a) and 1103(a).³⁷⁰ The Unsecured Creditors Committee selected FTI according to their experience in similarly situated chapter 11 cases and its upstanding reputation as financial advisors.³⁷¹ FTI asserted it was disinterested as defined by § 101(14), permitting its retention with court approval under § 1103(b) according to reasonable terms and conditions as required by § 328(a).³⁷²

FTI would provide financial analyses of SN’s liquidity and of SN’s operational elements dealing with exit strategy, plans of reorganization, claims analysis, and retention and incentive proposals.³⁷³ FTI will minimize to the fullest extent any duplication of services in pursuit of its ultimate goal of maximizing the estate.³⁷⁴

³⁶⁸ *Id.* 23–24.

³⁶⁹ Order Approving First Interim Fee Application of Locke Lord LLP as Co-Counsel to the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses for the Period from August 29, 2019 through November 30, 2019 972.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 18, 2020) <https://perma.cc/X6ZQ-R9PB>.

³⁷⁰ Application for Approval Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order under Section 1103 of the Bankruptcy Code Authorizing Employment of and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to September 4, 2019 432.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Nov. 06, 2019) [hereinafter Motion to Employ FTI] <https://perma.cc/2P7U-QAHC>.

³⁷¹ *Id.* at 3.

³⁷² *Id.* at 5–6.

³⁷³ *Id.* at 3–5.

³⁷⁴ *Id.* at 5.

FTI sought compensation through indemnification, reimbursement of actual and necessary expenses, and hourly fees.³⁷⁵ FTI sought indemnification under customary terms for financial advisors in Chapter 11 cases, consisting of indemnification for all services related to its representation with defense costs included, except to the extent that it was judicially determined FTI was grossly negligent or participated in willful misconduct or fraud.³⁷⁶ Furthermore, FTI requested hourly compensation according to the following standard rates:

- Senior Managing Directors- \$725- \$1,195;
- Directors/Senior Directors/Managing Directors- \$510- \$880;
- Consultants/Senior Consultants- \$310- \$640; and
- Administrative/Paraprofessionals- \$145- \$275³⁷⁷

The court approved the Unsecured Creditors Committee's request without modification.³⁷⁸

FTI submitted its first interim application for compensation for the period of September 4, 2019 through November 30, 2019.³⁷⁹ FTI sought \$2,408,132.50 for 3,576.9 hours of professional services at an average hourly rate of \$673.25, and reimbursement for \$24,300.75 of actual and necessary expenses.³⁸⁰ The court granted FTI's application for compensation in full as requested.³⁸¹

³⁷⁵ Motion to Employ FTI, *supra* note 371, 432.pdf at 6–7.

³⁷⁶ *Id.* at 7.

³⁷⁷ *Id.*

³⁷⁸ Order Authorizing Retention of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors 563.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 21, 2019).

³⁷⁹ First Interim Application of FTI Consulting, Inc., for Compensation for Services and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors for the Period from September 4, 2019 through November 30, 2019 846.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/944S-Q487>.

³⁸⁰ *Id.* at 2.

³⁸¹ Order Granting First Interim Application of FTI Consulting, Inc., for Compensation for Services and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditors for the Period

Investment Banker- Jefferies LLC.

Pursuant to Bankruptcy Code Sections 328(a) and 1103(a), the Unsecured Creditors Committee sought to retain Jefferies LLC (“Jefferies”) as its investment banker.³⁸² The Unsecured Creditors Committee selected because of its successful track record in complex financial restructuring and the extensive services it can provide as a full service banking firm with over 3,500 employees.³⁸³ Additionally, elimination of Jefferies’ time-keeping requirements was requested under Bankruptcy Rule 2016(a) due to compensation being based on monthly and transactional fees.³⁸⁴ The Unsecured Creditors Committee purported Jefferies was disinterested according to its inquiry into potential conflicts, adverse interests, and relation to parties involved in the case.³⁸⁵ Accordingly, the Unsecured Creditors Committee asserted retention was proper by the powers granted to them under § 1103(a) and due to the reasonable and fair terms and conditions of employment.³⁸⁶

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

from September 4, 2019 through November 30, 2019 932.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 12, 2020) <https://perma.cc/W2GZ-HZVU>.

³⁸² Application of the Official Committee of Unsecured Creditors of Sanchez Energy Corporation, *ET AL.*, for Entry of an Order Authorizing the Committee to Retain and Employ Jefferies LLC as Investment Banker Pursuant to 11 U.S.C. §§ 328(a) and 1103(a) *Nunc Pro Tunc* to September 4, 2019 433.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 04, 2019) [hereinafter Motion to Retain Jefferies] <https://perma.cc/J3AF-XWMC>.

³⁸³ *Id.* at 4.

³⁸⁴ *Id.* at 3.

³⁸⁵ *Id.* at 11.

³⁸⁶ *Id.* at 4–5.

evaluations regarding all financial matters presented, and provide testimony where necessary on matters regarding their services.³⁸⁷

Compensation was requested in the form of reimbursement for all-out-of-pocket expenses, a monthly fee, a transactional fee, and indemnification provisions.³⁸⁸ Jefferies requested a monthly fee of \$175,000, due and payable on the 4th of each month.³⁸⁹ Similarly, a transactional fee of \$3,500,000 was requested upon confirmation of the plan, with a contingency that if the Unsecured Creditors Committee objects to or does not support such plan, the fee be reduced to \$1,750,000.³⁹⁰ Additionally, Jefferies sought indemnification to the fullest extent of the law for claims related to or arising out of their services.³⁹¹ These fees and indemnification provisions were supported as customary and reasonable in the investment banking industry and as found in similarly situated Chapter 11 cases.³⁹²

The court granted the request to employ Jefferies, subjecting fees and expenses to the standard of review set forth in § 330.³⁹³ Additionally, monthly fees would be prorated for any day Jefferies was not employed.³⁹⁴

Jefferies submitted its first interim fee application for the period of September 4, 2019 through November 30, 2019.³⁹⁵ Jefferies requested permission for compensation of \$544,919.52,

³⁸⁷ *Id.* at 6.

³⁸⁸ Motion to Retain Jefferies, *supra* note 383, 433.pdf at 6.

³⁸⁹ *Id.* at 7.

³⁹⁰ *Id.*

³⁹¹ *Id.* at 10.

³⁹² *Id.* at 9.

³⁹³ Order Authorizing the Official Committee of Unsecured Creditors of Sanchez Energy Corporation, *ET AL.*, for Entry of an Order Authorizing the Committee to Retain and Employ Jefferies LLC as Investment Banker Pursuant to 11 U.S.C. §§ 328(a) and 1103(a) *Nunc Pro Tunc* to September 4, 2019 564.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Nov. 05, 2019) <https://perma.cc/KEH4-YN66>.

³⁹⁴ *Id.* at 6.

³⁹⁵ First Interim Fee Application of Jefferies LLC, as Investment Banker to the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses for the Period from September 4, 2019 through November 30, 2019 848.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/2DVQ-55JD>.

comprised of \$507,500.00 for prorated monthly fees, and \$37,419.52 for reimbursement of actual and necessary expenses.³⁹⁶ The court granted permission to compensate the \$544,919.52 in its entirety, less any amounts already paid on account of fees and expenses.³⁹⁷

Information Agent- Epiq Corporate Restructuring, LLC.

Pursuant to Bankruptcy Code § 1103, the Unsecured Creditors Committee requested authorization to employ Epiq Corporate Restructuring, LLC (“Epiq”) as information and noticing agent to carry out the requirements of Bankruptcy Code § 1102.³⁹⁸

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

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

³⁹⁶ *Id.* at

³⁹⁷ Order Approving First Interim Fee Application of Jefferies LLC, as Investment Banker to the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses for the Period from September 4, 2019 through November 30, 2019 929.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 12, 2020) <https://perma.cc/T2DS-EK3Y>.

³⁹⁸ Application of Official Committee of Unsecured Creditors for Entry of Order Approving Retention and Employment of Epiq Corporate Restructuring, LLC as Information Agent for the Committee, Effective September 24, 2019 500.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 22, 2019) [hereinafter Motion to Employ Epiq] <https://perma.cc/DN8B-2SBP>.

³⁹⁹ *Id.* at 6.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.* at 6–7.

the case.⁴⁰² Specifically, Epiq would create and maintain a website, provide technology and communication services, and prepare and serve notices and pleadings on behalf of the Unsecured Creditors Committee.⁴⁰³ Epiq asserted it was disinterested to the best of its knowledge and would continue inquiries on conflicts and disqualifying circumstances.⁴⁰⁴

The Unsecured Creditor's committee sought to classify Epiq's services as administrative under § 503(b), thus paid for by the estate and not required to file a fee application.⁴⁰⁵ Epiq's pricing schedule was as follows:

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

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

⁴⁰² *Id.* at 3.

⁴⁰³ *Id.*

⁴⁰⁴ Motion to Employ Epiq, *supra* note 399, 500.pdf at 5.

⁴⁰⁵ *Id.* at 4; *see* 11 U.S.C. § 503, <https://perma.cc/2GNN-7JFL>.

- Data Management Rates
 - Data Storage, Maintenance and Security: \$.09 per record/month;
 - Electronic Imaging- \$.10 per image; no monthly storage charge;
 - Website Hosting Fee- Waived; and
 - CD-ROM (Mass Document Storage)- \$5 per CD⁴⁰⁶

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

Audit Committee of the Board of Directors of Sanchez.

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

⁴⁰⁶ Motion to Employ Epiq, *supra* note 399, 500.pdf at 3; *see id.* at Schedule 1- Epiq Corporate Restructuring Standard Services Agreement.

⁴⁰⁷ Order Authorizing the Official Committee of Unsecured Creditors of Sanchez Energy Corporation, *ET AL.*, to Retain and Employ Epiq Corporate Restructuring, LLC as Information Agent Effective September 24, 2019 591.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Nov. 15, 2019) <https://perma.cc/Y7LZ-937K>.

⁴⁰⁸ Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Richards, Layton & Finger, P.A. as Special Counsel to the Audit Committee of the Board of Directors of Sanchez Energy Corporation Effective *Nunc Pro Tunc* to the Petition Date 912.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 07, 2020) [hereinafter Motion to Employ Richards Layton] <https://perma.cc/6BN9-GWXY>.

⁴⁰⁹ *Id.* at 4.

⁴¹⁰ *Id.* at 5.

Special Counsel- Richards, Layton, & Finger, P.A.

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

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

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

⁴¹¹ *Id.* at 13–14.

⁴¹² *Id.* at 13.

⁴¹³ *Id.* at 14; *see In re Woodworkers Warehouse, Inc.*, 323 B.R. 403, 406 (Bankr. D. Del. 2005).

⁴¹⁴ Motion to Employ Richards Layton, *supra* note 409, 912.pdf at 5–6.

⁴¹⁵ *Id.* at 12–13.

⁴¹⁶ *Id.* at 14.

services that were essential to carrying out the Audit Committee's purpose.⁴¹⁷ Richards Layton's compensation requirements were considered standard in the industry, requiring reimbursement for actual and necessary expenses as well as the following hourly rates:

- Directors- \$475- \$1,125;
- Counsel- \$650- \$700;
- Associates- \$370- \$665;
- Document Review Attorneys- \$250- \$300; and
- Paraprofessionals- \$125- \$300⁴¹⁸

Richard Layton continued performing services for the Audit Committee in the ordinary course of business after the petition date, accumulating \$117,953.00 in unpaid fees and expenses.⁴¹⁹

The court entered an order authorizing the retention and employment of Richards Layton as requested in the motion⁴²⁰ The court ordered Richards Layton be reimbursed for the fees and expenses incurred post-petition, instructing they add this amount to the fee application.⁴²¹ There were no fee applications at the time of this paper.

DIP financing.

⁴¹⁷ *Id.* at 6–8.

⁴¹⁸ *Id.* at 9.

⁴¹⁹ *Id.* at 12.

⁴²⁰ Order Authorizing the Retention and Employment of Richards, Layton & Finger, P.A. as Special Counsel to the Audit Committee of the Board of Directors of Sanchez Energy Corporation Effective *Nunc Pro Tunc* to the Petition Date 1012.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 05, 2020) <https://perma.cc/9Z9S-E67W>.

⁴²¹ *Id.* at 3.

Prior to the day of petition, SN received prepetition financing of approximately \$7.9 million in principal and a \$17.1 million undrawn standby letter of credit from the Royal Bank of Canada under a Prepetition Credit Agreement and a Collateral Trust Agreement.⁴²² Additionally, on February 14, 2018, SN issued \$500 million in principal of 7.25% Senior Secured First Lien Notes, secured by Prepetition Collateral consisting of SN's oil and natural gas properties, 100% of the equity interests of SN's Prepetition Debt Guarantors, and substantially off of SN's other material personal property.⁴²³ SN management team and advisors met to conduct financial forecasts and analysis and concluded in the Koetting Declaration that SN could not operate the business and undergo chapter 11 on Cash Collateral alone because SN did not generate enough cash in the ordinary course of business.⁴²⁴ Therefore, SN filed a motion for postpetition financing to ensure SN's liquidity for the short-term of 9 months and to resume drilling.⁴²⁵

DIP Financing Proposal.

SN requested emergency consideration of the motion pursuant to Bankruptcy Rule 6003 to obtain relief within the first 21 days after commencement of the case.⁴²⁶ SN stressed that immediate approval of the DIP Facility was crucial to avoid liquidity levels necessary for business operations falling below minimum standards and to resume its drilling program.⁴²⁷ SN stated that the entering into the DIP Documents was a sound exercise of business judgment made in good faith and at

⁴²² Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Limited Use of Cash Collateral; (II) Obtaining Postpetition Credit Secured by Senior Liens; (III) Granting Adequate Protection; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief at 16–17, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Aug. 12, 2019) [hereinafter DIP Financing Motion], <https://perma.cc/W2DW-TXUT>.

⁴²³ *Id.* at 17–18.

⁴²⁴ *Id.* at 20–21.

⁴²⁵ *Id.* at 21–22, 4.

⁴²⁶ *Id.* at 36.

⁴²⁷ *Id.* at 4.

arms-length, consistent with case law requirements to obtain the DIP Facility and Cash Collateral.⁴²⁸ SN asserted that its advisors determined that postpetition financing was necessary; and, that it negotiated in good faith in an extensive solicitation process to obtain the financing in the documents, with no other reasonable alternatives possible.⁴²⁹

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

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

⁴²⁸ DIP Financing Motion, *supra* note 423, at 25.

⁴²⁹ *Id.* at 25–26, 31.

⁴³⁰ *Id.* at 3.

⁴³¹ *Id.* at 10.

⁴³² *Id.* at 8.

⁴³³ *Id.* at 26–27.

⁴³⁴ DIP Financing Motion, *supra* note 423, at 10.

⁴³⁵ *Id.* at 4–5.

other terms.⁴³⁶ Additionally, pursuant to Bankruptcy Rule 4001(c)(1)(B)(ix), the DIP Credit agreement provided that SN would indemnify the DIP Agent and DIP Lenders from liabilities due to ordinary negligence relating to any proceeding relating to the DIP Credit Agreement.⁴³⁷

SN proposed that, because it was unable to obtain unsecured credit under § 503(b)(1), 364(c) of the Bankruptcy Code would allow superpriority liens, especially first priority liens on its assets.⁴³⁸ To obtain financing under 364(c), SN had to meet the three-part test as to whether:

- (a) the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- (b) the credit transaction is necessary to preserve the assets of the estate; and
- (c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.⁴³⁹

SN maintained that it met the requisite test, as well as § 364(d), because other parties would not provide postpetition financing to it, despite their good faith efforts, and that the arrangement with the eventual lender was fair and reasonable.⁴⁴⁰

SN stated that the Secured Notes Parties agreed to the priming liens for the DIP Facility and retaining a senior position with the Prepetition Collateral.⁴⁴¹ Under Bankruptcy Rule 4001(b)(1)(B)(ii) and upon consent of prepetition secured parties, SN proposed that it use the Cash Collateral for general corporate and working capital purposes.⁴⁴² Additionally, SN proposed, pursuant to §§ 361, 363(e), and 364(d)(1)(B) of the Bankruptcy Code, to provide adequate protection to the Prepetition Secured parties through:

⁴³⁶ *Id.* at 13.

⁴³⁷ *Id.* at 14.

⁴³⁸ *Id.* at 29.

⁴³⁹ *Id.* at 29–30.

⁴⁴⁰ DIP Financing Motion, *supra* note 423, at 30.

⁴⁴¹ *Id.* at 30–31.

⁴⁴² *Id.* at 10.

among other things, (a) replacement liens, (b) superpriority 507(b) claims, (c) cash payments equal to interest at the non-default rate provided for in the Secured Notes Indenture (subject to recharacterization or other appropriate remedies), (d) continued performance of the Debtors' obligations to the Hedging Counterparties on account of First-Out Hedging Obligations in the ordinary course of business, and (e) the payment of reasonable and documented fees and expenses of advisors to the Prepetition Secured Parties.⁴⁴³

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

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

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

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

⁴⁴³ *Id.* at 33.

⁴⁴⁴ *Id.* at 10, 34.

⁴⁴⁵ *Id.* at 34.

⁴⁴⁶ DIP Financing Motion, *supra* note 423, at 35.

⁴⁴⁷ *Id.* at 11.

⁴⁴⁸ *Id.*

- (b) filing of an Acceptable Plan of Reorganization (as defined in the DIP Credit Agreement) and related disclosure statement within 110 days after the Petition Date;
- (c) obtain entry of an order of the Court approving the disclosure statement within 155 days after the Petition Date; and
- (d) the effective date of the confirmed Acceptable Plan of Reorganization within 255 days after the Petition Date.⁴⁴⁹

The proposal subjected liens and superpriority claims under the DIP facility to a carve-out provision consisting of: requisite fees paid to the Clerk of the Court and to the Trustee under § 1930(a) of the United States Code, reasonable fees up to \$50,000 by a chapter 7 trustee under § 726(b) of the Bankruptcy Code, Allowed Professional Fees pursuant to §§ 327, 328, 363, 328, or 1103 of the Bankruptcy Code, and a cap on the Allowed Professional Fees of \$5,000,000.⁴⁵⁰

Objection to DIP Financing Motion.

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

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.* at 12.

⁴⁵¹ Objection to Motion for Authority to Obtain Postpetition Credit and Reservation of Rights of Ad Hoc Group of Unsecured Noteholders Concerning Debtors' Other First Day Pleadings at 7, *In re Sanchez Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Aug. 13, 2019), <https://perma.cc/K2QG-KSKZ>.

⁴⁵² *Id.* at 7–10.

DIP Financing Interim Order.

The court entered the Interim Order on August 15, 2019.⁴⁵³ The Court found that the DIP Financing, use of Cash Collateral, and the terms of the Adequate Protection and Liens were negotiated in good faith at arm's length.⁴⁵⁴ The Interim Order authorized SN to continue to use the Prepetition Collateral to preserve the estate and operate the business.⁴⁵⁵ The Interim Order also authorized SN to borrow New Money Loans under the DIP Credit Agreement in an amount not to exceed \$50,000,000 and to pay Roll-Up DIP Lenders' ratable share of \$175,000,00.⁴⁵⁶ Additionally, the Interim Order authorized the SN to use the proceeds of the DIP Loans as permitted under the DIP Documents for working capital purposes, to discharge First-Out Obligations, to pay fees and expenses, and to provide Adequate Protection.⁴⁵⁷

The Interim order further authorized SN to use Cash Collateral, in accordance with the DIP Budget, so long as the Prepetition Secured Parties received Adequate Protection and the Court further ordered SN's requested use of the Cash Collateral.⁴⁵⁸ Moreover, the Interim Order stated, in accordance with § 364(c)(1) of the Bankruptcy Code, that all DIP Obligations would constitute superpriority claims against SN, and that such claims would have full protection under § 364(e).⁴⁵⁹ The Interim Order also authorized DIP Liens to secure the DIP Obligations as follows: first lien

⁴⁵³ Interim Order (I) Authorizing Debtors (A) To Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b), and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) at 1, *In re Sanchez Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Aug. 15, 2019) [hereinafter Interim DIP Financing Order], <https://perma.cc/ZXP2-N6SA>.

⁴⁵⁴ *Id.* at 11.

⁴⁵⁵ *Id.* at 9.

⁴⁵⁶ *Id.* at 13–14.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.* at 33–32.

⁴⁵⁹ Interim DIP Financing Order, *supra* note 456, at 20.

on unencumbered property pursuant to § 364(c)(2); liens priming prepetition liens pursuant to § 364(d)(1); and junior and senior liens.⁴⁶⁰

The Interim Order further provided a Carve Out for various fees paid to the Clerk of the Court and the U.S. Trustee, as well as Debtor Professionals, Committee Professionals.⁴⁶¹ Pursuant to §§ 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, the Interim Order also granted adequate protection of the Prepetition Secured Parties' interests in all Prepetition Collateral, including the Cash Collateral, to the extent of the value of their interests in the collateral and any decrease of the Prepetition Collateral.⁴⁶²

DIP Financing Final Order.

The court entered the Final Order on January 22, 2020.⁴⁶³ The Final Order authorized SN to borrow New Money Loans under the DIP Documents in a face amount not to exceed \$150 million instead of the \$50 million in the Interim Order.⁴⁶⁴ The Final Order also authorized SN to “convert to DIP Obligations constituting Roll-Up Loans under the DIP Documents each Roll-Up DIP Lender’s ratable share” of \$50 million, as opposed to \$175 million in the Interim Order.⁴⁶⁵ Additionally, unlike the Interim Order, the Final Order included authorization of payment of \$1 million in fees to counsel of the Unsecured Ad Hoc Group.⁴⁶⁶ The Final Order also added that the

⁴⁶⁰ *Id.* at 20–22.

⁴⁶¹ *Id.* at 23–28.

⁴⁶² *Id.* at 33–35.

⁴⁶³ Final Order (I) Authorizing Debtors (A) To Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b) at 1, *In re Sanchez Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Jan. 22, 2020) [hereinafter Final DIP Financing Order], <https://perma.cc/BP32-S5H9>.

⁴⁶⁴ *Id.* at 13.

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.* at 16.

Discharge of First-Out Obligations must occur as soon as reasonably practical after the Final Order, not to exceed later than ten business days.⁴⁶⁷

⁴⁶⁷ *Id.* at 17.

DIP Budget.

Sanchez Energy Corporation, et al.

13 Week Cash Flow

	Jan 24 '20	Jan 31 '20	Feb 7 '20	Feb 14 '20	Feb 21 '20	Feb 28 '20
	1	2	3	4	5	6
(\$ in 000s)	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Cash & Cash Equivalents - Beginning	\$ 121,616	\$ 185,603	\$ 59,917	\$ 124,298	\$ 104,931	\$ 196,391
Cash Receipts						
Gross Production Receipts	104,376	45,371	-	-	105,154	34,715
JIB Receipts & Cash Calls	12,064	6,081	28,327	13,311	12,566	-
Total Cash Receipts	\$ 116,440	\$ 51,452	\$ 28,327	\$ 13,311	\$ 117,720	\$ 34,715
Cash Disbursements						
Capex	(10,517)	(10,517)	(9,831)	(9,831)	(9,831)	(9,831)
Lease Operating Expense	(2,960)	(2,960)	(2,631)	(2,631)	(2,631)	(2,631)
Gathering, Marketing, Transportation	(1,508)	(13,180)	-	-	(6,017)	(7,970)
Royalties & Working Interest Payments	(29,862)	(83,070)	(955)	-	-	(105,891)
Production & Ad Valorem Tax	(6,167)	(9,483)	-	-	(5,931)	-
G&A / Other	(668)	(4,212)	(429)	(2,125)	(429)	(2,603)
Operating Cash Disbursements	\$ (51,683)	\$ (123,422)	\$ (13,846)	\$ (14,587)	\$ (24,838)	\$ (128,926)
Total Operating Cash Flow	\$ 64,757	\$ (71,970)	\$ 14,481	\$ (1,276)	\$ 92,882	\$ (94,212)
Financing and Restructuring Related Disbursements						
Interest & Fees	(370)	(18,718)	-	(17,916)	(1,022)	-
Draw (Repayment) of Principal	-	(25,000)	-	-	-	-
Restructuring Costs	(400)	(9,998)	(100)	(175)	(400)	(5,250)
Net Cash Flow Prior to DIP Financing	\$ 63,987	\$ (125,686)	\$ 14,381	\$ (19,367)	\$ 91,459	\$ (99,462)
Debt						
Draw (Repayment) of DIP	-	-	50,000	-	-	-
Total Net Cash Flow	\$ 63,987	\$ (125,686)	\$ 64,381	\$ (19,367)	\$ 91,459	\$ (99,462)
Ending Consolidated Cash Balance	\$ 185,603	\$ 59,917	\$ 124,298	\$ 104,931	\$ 196,391	\$ 96,929
DIP Availability	-	100,000	50,000	50,000	50,000	50,000
Ending Consolidated Liquidity	\$ 185,603	\$ 159,917	\$ 174,298	\$ 154,931	\$ 246,391	\$ 146,929
Memo: Cash Excluding SNEFM						
Total Operating Cash	\$ 185,603	\$ 59,917	\$ 124,298	\$ 104,931	\$ 196,391	\$ 96,929
SN EF Maverick Cash Balance	78,799	8,369	25,968	28,151	102,919	18,244
Liquidity less SN EF Maverick Cash	\$ 106,804	\$ 51,548	\$ 98,330	\$ 76,780	\$ 93,471	\$ 78,685

Mar 6 '20	Mar 13 '20	Mar 20 '20	Mar 27 '20	Apr 3 '20	Apr 10 '20	Apr 17 '20	Total
7	8	9	10	11	12	13	
Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Weeks 1 - 13
\$ 96,929	\$ 99,112	\$ 87,702	\$ 179,279	\$ 99,338	\$ 89,722	\$ 72,410	\$ 121,616
-	-	104,245	35,436	-	-	-	429,298
20,442	400	10,288	-	18,004	400	9,118	131,001
\$ 20,442	\$ 400	\$ 114,534	\$ 35,436	\$ 18,004	\$ 400	\$ 9,118	\$ 560,299
(7,343)	(7,343)	(7,343)	(7,343)	(7,343)	(9,185)	(9,185)	(115,445)
(2,246)	(2,246)	(2,246)	(2,246)	(2,246)	(2,770)	(2,770)	(33,214)
(5,421)	-	(5,812)	(1,600)	(11,377)	-	(4,322)	(57,207)
(931)	-	-	(96,892)	(5,726)	-	-	(323,327)
-	-	(5,703)	-	-	-	-	(27,284)
(2,219)	(2,046)	(350)	(2,046)	(828)	(1,997)	(429)	(20,380)
\$ (18,159)	\$ (11,635)	\$ (21,455)	\$ (110,128)	\$ (27,520)	\$ (13,953)	\$ (16,706)	\$ (576,857)
\$ 2,283	\$ (11,235)	\$ 93,079	\$ (74,691)	\$ (9,516)	\$ (13,553)	\$ (7,588)	\$ (16,558)
-	-	(1,102)	-	-	-	-	(39,128)
-	-	-	-	-	-	-	(25,000)
(100)	(175)	(400)	(5,250)	(100)	(3,759)	(400)	(26,508)
\$ 2,183	\$ (11,410)	\$ 91,577	\$ (79,941)	\$ (9,616)	\$ (17,312)	\$ (7,988)	\$ (107,194)
-	-	-	-	-	-	50,000	100,000
\$ 2,183	\$ (11,410)	\$ 91,577	\$ (79,941)	\$ (9,616)	\$ (17,312)	\$ 42,012	\$ (7,194)
\$ 99,112	\$ 87,702	\$ 179,279	\$ 99,338	\$ 89,722	\$ 72,410	\$ 114,422	\$ 114,422
50,000	50,000	50,000	50,000	50,000	50,000	-	-
\$ 149,112	\$ 137,702	\$ 229,279	\$ 149,338	\$ 139,722	\$ 122,410	\$ 114,422	\$ 114,422
\$ 99,112	\$ 87,702	\$ 179,279	\$ 99,338	\$ 89,722	\$ 72,410	\$ 114,422	\$ 114,422
26,369	19,473	95,940	30,890	26,169	18,558	14,661	14,661
\$ 72,743	\$ 68,229	\$ 83,339	\$ 68,447	\$ 63,552	\$ 53,852	\$ 99,760	\$ 99,760

Bankruptcy Transactions.

Automatic Stay.

Upon filing a Chapter 11 petition case, the automatic stay is imposed under Bankruptcy Code § 362.⁴⁶⁸ The automatic stay offers the debtor a “breathing spell” by disallowing continuation of certain claims listed under § 362(a), with exception under § 362(b).⁴⁶⁹ The inherent purpose behind the automatic stay is to maintain the debtor’s status quo and permit an attempt to formulate a reorganization plan without constant pressure from creditors or claimants, such that the most effective plan may be created for the debtor and its estate.⁴⁷⁰ The stay may be lifted by show of cause. If a motion for relief from stay is brought, the creditor/claimant has the burden to prove cause to lift the stay; if the creditor/claimant does so, the burden of proof is then shifted to the debtor to rebut the creditor’s assertions.⁴⁷¹

⁴⁶⁸ 11 U.S.C. § 362 <https://perma.cc/2JGA-YYUX>.

⁴⁶⁹ *In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1146 (5th Cir. 1987).

⁴⁷⁰ 3 COLLIER ON BANKRUPTCY ¶ 362.03 (16th ed. 2019).

⁴⁷¹ *In re Mosher*, 578 B.R. 765, 772 (Bankr. S.D. Tex. 2017).

Motion for Relief from Stay.

Gavilan Resources, LLC v. Sanchez.

Gavilan Resources, LLC (“Gavilan”) filed a motion for relief from the automatic stay under § 362(d)(1) and Fed. R. Bankr. P. 4001 to allow continuation of its arbitration⁴⁷² against debtors SN EF Maverick and SN Energy Corp (collectively “SN”).⁴⁷³

Gavilan, SN, and non-debtor affiliate SN EF Unsub LP (“Unsub”) jointly acquired the Comanche Assets in March 2017.⁴⁷⁴ The parties negotiated and entered into a joint distribution agreement (“Comanche JDA”), establishing an Operating Committee to jointly operate and manage the Comanche Assets.⁴⁷⁵

The JDA provided for resolution through arbitration, arbitration commenced in February of 2019.⁴⁷⁶ Deadlines were established as follows:

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

⁴⁷² *Gavilan Resources, LLC v. SN EF Maverick, LLC, et al.*, NO. 01-19-0000-5228, American Arbitration Association).

⁴⁷³ Gavilan Resources, LLC’s Motion for Relief from the Automatic Stay to allow Completion of Arbitration 222.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Aug. 23, 2019) [hereinafter Gavilan’s Motion for Relief from Stay] <https://perma.cc/6NT2-T9JQ>.

⁴⁷⁴ *Id.* at 3.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.* at 5.

- October 10- Deadline to exchange counter-designations by a party opponent of deposition portions for cross examination; and
- October 14-18- Final evidentiary hearing before the arbitrator.⁴⁷⁷

The JDA Default- Gavilan's Position.

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

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

The JDA Default- Sanchez's Position.

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

⁴⁷⁷ *Id.*

⁴⁷⁸ Gavilan's Motion for Relief from Stay, *supra* note 476, 222.pdf at 5.

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.* at 8.

⁴⁸¹ Objection of the Debtors to Gavilan Resources, LLC's Motion for Relief from the Automatic Stay to allow Completion of Arbitration 292.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sep. 12, 2019) {hereinafter Objection to Gavilan's Motion for Relief from Stay} <https://perma.cc/GK63-9PSS>.

⁴⁸² First, Gavilan sent SN a proposal seeking to complete a division of ownership of the Comanche Assets, not a division of operations as allowed by the JDA.⁴⁸³ SN believed this was an attempt to bait a default under the JDA; thus, SN declined to accept, resulting in Gavilan sending a notice of default for failure to comply with well designs.⁴⁸⁴ SN replied, stating Gavilan previously agreed to the new well designs and asserting that all changes improved economic performance and were immaterial under the JDA.⁴⁸⁵

Second, Gavilan refused to renegotiate a new 2019 budget in good faith as required under the JDA.⁴⁸⁶ SN sent a notice of default to Gavilan, urging them to engage in negotiation.⁴⁸⁷ Gavilan delayed, stating they needed time to secure and analyze more data, of which SN timely supplied and Gavilan further delayed response.⁴⁸⁸ Consequently, the deadline for negotiation passed and SN asserted Gavilan was in breach of its duty to engage in good faith negotiation of a new budget.⁴⁸⁹

Additionally, SN stated Gavilan mischaracterized the scope and status of the default arbitration.⁴⁹⁰ First, the JDA characterized the default arbitration may only resolve contested defaults under the JDA, rendering an opinion of fault but unable to address any consequences of fault.⁴⁹¹ Continuation of arbitration would not resolve the issue at hand because, even with a determination by the arbitrator, there were a myriad of issues that need resolution.⁴⁹²

⁴⁸² *Id.* at 6.

⁴⁸³ *Id.* at 8.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.* at 9.

⁴⁸⁶ *Id.* at 8.

⁴⁸⁷ Objection to Gavilan's Motion for Relief from Stay, *supra* note 485, 292.pdf. at 9.

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.* at 2.

⁴⁹¹ *Id.*

⁴⁹² *Id.* at 3.

Second, Gavilan grossly mischaracterized the status of the arbitration because pleadings were not closed, discovery was ongoing, depositions had yet to be taken, hearing preparations were still required, and a final decision, that was appealable in state court, had yet to be made.⁴⁹³ Furthermore, Gavilan was not prejudiced from the stay, even with a favorable ruling a transfer of operatorship would not be effectuated for a substantial period of time.⁴⁹⁴

Motion to Lift Stay- Gavilan's Argument.

Gavilan sought relief from the automatic stay by show of cause under § 362(d) of the Bankruptcy Code.⁴⁹⁵ Gavilan relied on the twelve-factor test from *Xenon Anesthesia*⁴⁹⁶, a test relied upon by courts in the Fifth Circuit.⁴⁹⁷ Gavilan formulated its argument to show cause into two arguments, utilizing six *Xenon* factors.⁴⁹⁸

Relief Will Result in Complete Resolution of the Issues.

Gavilan supported this assertion in two parts: first, preparation for arbitration was substantially completed, and second, the arbitrator may swiftly enter a resolution that would result in transfer of operatorship or no finding of default.⁴⁹⁹ Relief would allow Gavilan and SN

⁴⁹³ Objection to Gavilan's Motion for Relief from Stay, *supra* note 485, 292.pdf at 3.

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.* at 6.

⁴⁹⁶ *In re Xenon Anesthesia of Tex., PLLC*, 510 B.R. 106, 112 (Bankr. S.D. Tex. 2014); *see also In re U.S. Brass Corp.*, 176 B.R. 11, 13 (Bankr. E.D. Tex. 1994) (Not all factors are relevant, all factors do not carry equal weight, and one factor may be sufficient for cause to lift stay).

⁴⁹⁷ Gavilan's Motion for Relief from Stay, *supra* note 485, 222.pdf at 6–7.

⁴⁹⁸ *Id.* at 7–8.

⁴⁹⁹ *Id.* at 8.

to complete their findings on the timeline set out by the arbitrator and result in a determination of fault within fifteen days of October 18th.⁵⁰⁰

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

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

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

Motion to Lift Stay- Sanchez's Objection.

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

⁵⁰⁰ *Id.* at 8–9.

⁵⁰¹ Gavilan's Motion for Relief from Stay, *supra* note 485, 222.pdf at 9.

⁵⁰² *Id.* at 10.

⁵⁰³ *Id.*

⁵⁰⁴ *Id.* at 10–11.

⁵⁰⁵ *Id.* at 11–21.

There is No Cause to Lift the Stay with Regard to the Default Arbitration.

SN asserted Gavilan failed to make an initial showing of cause; therefore, its motion should be denied.⁵⁰⁶ SN focused heavily on the automatic stay's purpose, providing a "breathing spell," so the primary focus remained on the reorganization and confirmation of a plan.⁵⁰⁷ SN stated Gavilan heavily down-played the amount of time and expense the arbitration would require; furthermore, SN stated there was no harm to the acquisition of debtor-in-possession financing or the estate by the pending arbitration.⁵⁰⁸

Additionally, lifting the stay would require substantial resources poured into the arbitration.⁵⁰⁹ Although SN has retained special counsel for the arbitration, it would require Akin Gump to devote time to oversee the progress of the arbitration and analyze the affects it would have on the reorganization.⁵¹⁰ The arbitration would result in distracting from reorganization, fundamentally opposite of the purpose of the automatic stay.⁵¹¹

Lifting of the stay and allowing continued arbitration would impermissibly interfere SN's rights in the bankruptcy, such as SN's ability to assume or reject leases, administration of property of the estate, right to avoid preferential transfer that Gavilan alleges occurred prepetition, and right to determine allowance of claims against such asset.⁵¹²

Furthermore, the balance of harms did not weigh in favor of lifting the automatic stay.⁵¹³ With the stay in place, the operation of the Comanche Assets continued with all parties

⁵⁰⁶ Gavilan's Motion for Relief from Stay, *supra* note 485, 292.pdf at 13.

⁵⁰⁷ *Id.* at 14.

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.* at 15.

⁵¹⁰ *Id.*

⁵¹¹ *Id.*

⁵¹² Gavilan's Motion for Relief from Stay, *supra* note 485, 292.pdf at 16.

⁵¹³ *Id.* at 16–17.

contributing to the operation.⁵¹⁴ The operatorship dispute would not result in any new outcome, each party would still contribute the same amount and receive the same amount, and the only change was who controlled the operations.⁵¹⁵

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

This Court May Hear and Decide the Dispute Between Gavilan and the Debtors.

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

⁵¹⁴ *Id.* at 17.

⁵¹⁵ *Id.* at 17.

⁵¹⁶ *Id.* at 20.

⁵¹⁷ *Id.*

⁵¹⁸ Gavilan's Motion for Relief from Stay, *supra* note 485, 292.pdf at 20.

⁵¹⁹ *Id.* at 22–23.

⁵²⁰ *In re Hemphill Bus Sales, Inc.*, 259 B.R. 865 (Bankr. E.D. Tex. 2001).

⁵²¹ Gavilan's Motion for Relief from Stay, *supra* note 485, 292.pdf at 22.

⁵²² *Id.*

Miramar Holdings LP (“Miramar”) joined Gavilan. Miramar urged the court to consider the parties affected beyond Gavilan and the resulting harm to their mineral rights.⁵²³ SN’s objection was joined by the Secured Noteholders and the Unsecured Creditors Committee, highlighting the harm to the reorganization and potential harm to the estate and creditors.⁵²⁴

Motion to Lift Stay- Gavilan’s Omnibus Reply.

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

As a Non-Core Matter under the Bankruptcy Code, the Court Should

Defer to the Contractually Agreed Arbitration.

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

⁵²³ See Miramar Holdings LP’s Joinder to Gavilan Resources, LLC’s Motion for Relief from the Automatic Stay to Allow Completion of Arbitration 317.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sep. 16, 2019) <https://perma.cc/QXD2-XZUU>.

⁵²⁴ The Secured Notes Ad Hoc Group’s Limited Joinder to Objection of the Debtors to Gavilan Resources, LLC’s Motion for Relief from the Automatic Stay to Allow Completion of Arbitration 670.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 05, 2019) <https://perma.cc/HA9D-S5MB> ; see Joinder of Official Committee of Unsecured Creditors to Debtor’s Objection to Gavilan Resources, LLC’s Motion for Relief from the Automatic Stay to Allow Completion of Arbitration 673.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 05, 2019) <https://perma.cc/8749-F8Y5>.

⁵²⁵ Gavilan Resources, LLC’s Omnibus Reply in Support of the Motion for Relief from the Automatic Stay to Allow Completion of Arbitration 724.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 10, 2019) [hereinafter Gavilan’s Omnibus Reply] <https://perma.cc/GQ43-79AT>.

⁵²⁶ *Id.* at 3

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

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

Gavilan replied to SN’s assertion that the arbitration would result in significant distraction and waste, stating there was only one remaining employee requested for deposition and SN’s special counsel billed for their work on the arbitration.⁵²⁹

Similarly, Gavilan believed resolution of the arbitration would give clarity to the status of the asset when dealing with potential purchaser of the lease.⁵³⁰ Gavilan also stated the certainty provided by the arbitration would benefit the reorganization by allowing SN to more effectively consider assumption or rejection of leases, sale of assets, and proper evaluation of the estate’s assets.⁵³¹

Gavilan v. Sanchez- Resolution.

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

⁵²⁷ *In re Gandy*, 229 F.3d 489, 495 (5th Cir. 2002) (stating both prongs must be satisfied in order to refuse a valid, contractually agreed upon arbitration).

⁵²⁸ *Id.* at 5–6.

⁵²⁹ *Id.* at 7.

⁵³⁰ *Id.* at 8.

⁵³¹ Gavilan’s Omnibus Reply, *supra* note 542, 724.pdf at 9.

⁵³² Stipulation and Agreed Order Consensually Resolving Gavilan’ Motion to Modify Automatic Stay 885.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 27, 2020) <https://perma.cc/XH55-SAZA>.

discovery deadlines of February 21, a pre-trial conference on March 3, and trial commencing March 9.⁵³³

Lawsuits

The Personal Injury Plaintiffs v. Sanchez.

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

Personal Injury Plaintiffs’ Argument.

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

⁵³³ *Id.* at 5.

⁵³⁴ Marco Valdez’s Motion for Relief from Stay 246.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Aug. 130, 2019) [hereinafter Marco’s Motion for Relief from Stay] <https://perma.cc/XW7Q-XF9P>; see also Motion for Relief from Automatic Stay 410.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 30, 2019) [hereinafter Fernandez Motion for Relief from Stay] <https://perma.cc/RB2P-GUNZ>.

⁵³⁵ Marco’s Motion for Relief from Stay, *supra* note 554, 246.pdf at 7.

⁵³⁶ Fernandez Motion for Relief from stay, *supra* note 554, 410.pdf at 3.

⁵³⁷ *Id.*

⁵³⁸ *Id.* at 3; see *In re Samshi Homes, LLC*, 2011 Bankr. LEXIS 3414, p. 3 (Bankr. S.D. Tex. Sept. 6, 2011).

debtor party by the continuation of the automatic stay outweighs the hardship of the debtor, and third whether the creditor has probability of success on the merits of his/her case.⁵³⁹

First, SN's insurance policy will cover the extent of recovery and therefore SN's estate will not be interfered with nor will other creditors be prejudiced.⁵⁴⁰ Second, because recovery was limited to the extent of SN's insurance coverage, SN will not face any hardship.⁵⁴¹

Conversely, the Personal Injury Plaintiffs face significant hardship if the stay was not lifted due to the pending financial burden due to his injuries.⁵⁴²

Sanchez's Objection.

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

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

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

Additional potential claims against SN's insurance policies meant it could exhaust the policy

⁵³⁹ Fernandez Motion for Relief from Stay, *supra* note 554, 410.pdf at 3.

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.* at 4.

⁵⁴² *Id.*

⁵⁴³ Objection of the Debtors to Ricardo Fernandez's Motion for Relief from the Stay 688.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 05, 2019) [hereinafter Sanchez's Objection"] <https://perma.cc/6X2V-59HX>.

⁵⁴⁴ *Id.* at 13.

coverage, likely resulting in financial burden to SN as property of the estate must be used to cover the judgement costs.⁵⁴⁵

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

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

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

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

⁵⁴⁵ *Id.* at 14.

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.*

⁵⁴⁸ *Id.* at 12.

⁵⁴⁹ Sanchez's Objection to Fernandez, *supra* note 590, 668.pdf at 13.

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.* at 14.

⁵⁵² *Id.*

Personal Injury Plaintiffs v. Sanchez- Resolution.

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

Dimension Energy Services, LLC v. Sanchez.

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

Dimension Energy’s Argument.

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

⁵⁵³ Stipulation and Agreed Order Resolving Ricardo Fernandez’s Motion for Relief from the Stay 728.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 12, 2019) <https://perma.cc/U84Z-TNTJ>.

⁵⁵⁴ *Id.* at 2–3.

⁵⁵⁵ Dimension Energy Services, LLC’s Motion for Relief for the Automatic Stay 856.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 21, 2020) [hereinafter Dimension’s Relief from Stay] <https://perma.cc/C5FD-E95U>.

⁵⁵⁶ *Id.* at 3.

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.* at 4.

⁵⁵⁹ *Id.*

court to adjudicate various state law claims.⁵⁶⁰ For these reasons, good cause existed to lift the automatic stay pursuant to §362(d) and allow adjudication of the case.⁵⁶¹

Dimension Energy v. Sanchez- Resolution.

Dimension Energy and SN agreed to an order by the court.⁵⁶² The order stated the automatic stay be modified to permit continued action to judgement or other resolution, provided that any efforts to collect remain subject to jurisdiction in the bankruptcy court.⁵⁶³

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

On March 24, 2016 SN and non-debtors SOG and Sanchez Production Partners LP (collectively “SN”) filed suit in state court against Terra Energy Partners, LLC, Benjamin Reynolds, Mark Mewshaw, and Wes Hobbs (collectively “Defendants”).⁵⁶⁴ SN alleged misappropriation of trade secrets, breach of fiduciary duties, aiding and abetting breach of fiduciary duties, and breach of contract concerning former employees wrongfully downloading and taking SN’s trade secrets and highly confidential information to their new employer Terra Energy Partners, LLC.⁵⁶⁵ Defendants filed an interlocutory appeal on October 2018, staying the

⁵⁶⁰ Dimension’s Relief from Stay, *supra* note 610, 856.pdf at 4.

⁵⁶¹ *Id.*

⁵⁶² Stipulation and Agreed Order Resolving Dimension Energy, LLC’s Motion for Relief from the Automatic Stay 933.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 12, 2020) <https://perma.cc/643C-9UNS>.

⁵⁶³ *Id.* at 2.

⁵⁶⁴ Debtor’s Motion to Proceed in the State Court Action and Interlocutory Appeal, or in the Alternative, Motion to Lift the Automatic Stay 975.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 18, 2020) [hereinafter Debtor’s Motion to Lift Stay] <https://perma.cc/3AVS-R5VV>.

⁵⁶⁵ *Id.* at 2.

state court proceedings until resolution of the appeal.⁵⁶⁶ Defendants filed a notice of bankruptcy on September 12, 2019, prompting the appellate court to stay the appeal pursuant to the automatic stay.⁵⁶⁷

Sanchez's Argument.

SN asserted application of the automatic stay was improper and the automatic stay should not apply to suits brought by SN, only to suits brought against SN.⁵⁶⁸ Although the interlocutory appeal was brought by the Defendants, SN holds because it brought the initial action any subsequent proceedings were not against the debtor and therefore not subject to the automatic stay.⁵⁶⁹

Additionally, SN believed even if the automatic stay applies, there was cause to lift the stay under § 362(d).⁵⁷⁰ SN asserted cause existed to lift stay because it would allow pursuit of up to \$100 million in damages that would become property of the estate.⁵⁷¹ Moreover, SN's retained Gibbs & Bruns on a contingency fee basis, and SN will incur no costs in litigating the matters.⁵⁷² Substantially all work had been completed on the state court matter, and little attention would be required concerning the interlocutory appeal as it would be several months before it was on the docket.⁵⁷³

⁵⁶⁶ *Id.* at 3–4.

⁵⁶⁷ *Id.* at 4.

⁵⁶⁸ *Id.* at 4–5.

⁵⁶⁹ *Id.* at 5–6; *see Freeman v. Commissioner of Internal Revenue*, 799 F.2d 1091, 1092-93 (5th Cir. 1986) (stating subsequent proceedings stemming from an initial suit brought by the debtor are not against the debtor within the meaning of the automatic stay).

⁵⁷⁰ Debtor's Motion to Lift Stay, *supra* note 619, 975.pdf at 6.

⁵⁷¹ *Id.* at 7.

⁵⁷² *Id.*

⁵⁷³ *Id.* at 8.

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

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

Adversary Proceedings.

Sanchez v. Royal Bank of Canada, Wilmington Savings Fund Society, FSB, & Wilmington Trust, National Association.

SN filed a complaint against Royal Bank of Canada, Wilmington Savings Fund Society, FSB, & Wilmington Trust, National Association (collectively “Defendants”) on March 10, 2020.⁵⁷⁵ The Defendants provided financing to SN but failed to create or perfect liens in certain properties of SN.⁵⁷⁶ Defendants also made material errors and omissions in preparing and filing deeds of trust, affecting the lien attachment and status of the lien.⁵⁷⁷ In the two months preceding the petition date, Defendants attempted to perfect these liens by filing Correction Instruments (“Correction Instruments”).⁵⁷⁸ In doing so, Defendants unilaterally crossed out certain leases and added new descriptions of leases and recording information, resulting in material and non-material changes to the newly submitted versions.⁵⁷⁹

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

⁵⁷⁵ Sanchez Energy Corp., *et al.*, v. Royal Bank of Canada, Wilmington Savings Fund Society, FSB and Wilmington Trust, National Assoc. 1026.pdf, No. 19-34508 (Bank. S.D. Tex.R. filed Mar. 10, 2020) [hereinafter Sanchez v. RBC] <https://perma.cc/Q8VS-42S2>.

⁵⁷⁶ *Id.* at 2.

⁵⁷⁷ *Id.*

⁵⁷⁸ *Id.*

⁵⁷⁹ *Id.* at 3.

SN submitted eleven counts in their complaint against the Defendants, employing the Bankruptcy Code’s avoidance powers to maximize property of the estate.⁵⁸⁰

Section 547(b) Preference Avoidance.

In June and July of 2019, Defendants filed Correction Instruments attempting to perfect its lien property (“Shared Collateral”) of SN’s.⁵⁸¹ On behalf of the Defendants, Cinco Energy Management Group (“Cinco”) made material and non-material changes to the original deeds of trust in their Correction Instruments without involving SN.⁵⁸² Per Texas Property Code § 5.029(b), correction instruments involving material corrections must be “(1) executed by each party to the recorded original instrument of conveyance. . . .”⁵⁸³ SN asserted because the Defendants undertook these corrections without involving SN, they were invalid as a matter of law.⁵⁸⁴ If found to be valid, SN purported these attempts at creation and perfection of liens were transfers within the meaning of § 101(54) of the Bankruptcy Code, and thus, were avoidable transfers under §§ 544(a)(3) and 547.⁵⁸⁵

SN asserted these Correction Instruments were voidable preference transfers per Bankruptcy Code § 547.⁵⁸⁶ Avoidance under § 547 is proper if the a transfer of interest of the debtors property is made: (1) to or for the benefit of a creditor; (2) for or on account of an antecedent debt owed by the debtor before such transfer was made; (3) made while the debtor was insolvent; (4) made on or within 90 days before the filing of the petition; and (5) enables

⁵⁸⁰ *Id.* at 4–6.

⁵⁸¹ Sanchez v. RBC, *supra* note 631, 1026.pdf at 10.

⁵⁸² *Id.* at 12.

⁵⁸³ *Id.*, <https://perma.cc/UM7A-DWLK>.

⁵⁸⁴ Sanchez v. RBC, *supra* note 631, 1026.pdf at 12–13.

⁵⁸⁵ *Id.* at 13; *see* 11 U.S.C. § 101(54) (a transfer means creation of a lien or retention of title as security interest) <https://perma.cc/WNR2-4J3J>; 11 U.S.C. § 544, <https://perma.cc/WX28-PVVV> ; 11 U.S.C. § 547, <https://perma.cc/57N5-FBH3>.

⁵⁸⁶ *Id.* at 15.

such creditor to recover more than such creditor would receive if the case were a Chapter 7 case, the transfer had not been made, and such creditor received payment of such debt to the extent provided by the provisions of this title.⁵⁸⁷

First, Cinco filed the Correction Instruments to perfect the Shared Collateral liens for the Defendants.⁵⁸⁸ Second, Cinco made the Correction Instrument transfers on account of the Defendant's antecedent debt owed by SN to the Defendants.⁵⁸⁹ Third, the transfer was made at the time SN's liabilities exceeded its assets, rendering it insolvent.⁵⁹⁰ Fourth, the Correction Instrument transfer was made within 90 days before the petition date.⁵⁹¹ Finally, the transfer enabled the Defendants to receive more than they would if the case were a chapter 7, more than if the transfer had not been made, and the Defendants received payment to the extent provided by the provisions of chapter 11.⁵⁹² Therefore, SN asserted the transfers were avoidable pursuant to § 547.⁵⁹³

Declaratory Judgement Avoiding Correction Instruments.

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

⁵⁸⁷ *Id.*

⁵⁸⁸ *Id.*

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.*

⁵⁹¹ Sanchez v. RBC, *supra* note 631, 1026.pdf at 15.

⁵⁹² *Id.*

⁵⁹³ *Id.* at 16.

⁵⁹⁴ *Id.*

⁵⁹⁵ *Id.*

transaction.⁵⁹⁶ This lack of personal knowledge violated Tex. Prop. Code § 5.028, which allows immaterial changes to be made by a non-party who has personal knowledge of the relevant facts concerning the deed of trust.⁵⁹⁷ Accordingly, SN requested a declaration stating the Correction Instruments did not create or perfect any liens as the material changes invalidate the corrections and any purportedly perfected liens were avoided under Bankruptcy Code § 544.⁵⁹⁸

Declaratory Judgment Avoiding Underlying Invalid Deeds of Trust and Liens.

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

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

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

⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.*, <https://perma.cc/22LN-A6X3>.

⁵⁹⁸ Sanchez v. RBC, *supra* note 631, 1026.pdf at 16.

⁵⁹⁹ *Id.* at 17.

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.*

⁶⁰² Sanchez v. RBC, *supra* note 631, 1026.pdf at 17.

⁶⁰³ *Id.*

recording statutes require a validly recorded mortgage or deed of trust be submitted in each county the land is located to perfect a security interest, the Defendants failed to satisfy this.⁶⁰⁴ As a result, SN was entitled to avoid such transfer pursuant to §§ 544(a)(1), 544(a)(2), and 544(a)(3).⁶⁰⁵ Sections 544(a)(1) and 544(a)(2) were analogous to § 544(a)(3) in that SN may avoid the transfer because they were able to acquire a superior status to the Defendants in the property; therefore, the Bankruptcy Code permits avoidance of the transfers.⁶⁰⁶

Constructive Fraudulent Transfer.

SN requested the court allow avoidance of the Correction Instruments as constructively fraudulent transfers under § 548(a)(1)(B) and recovery and preservation of the amounts avoided for the estate under §§ 550 and 551.⁶⁰⁷

Section 548(a)(1)(B) states a trustee may avoid a transfer made (1) on or within two years of the petition date, (2) where the debtor received less than equivalent value on the exchange, and (3) where the debtor was insolvent on the date of such transfer or became insolvent as a result of the transfer, or (4) where the debtor was left with unreasonably small capital, or (5) where the debtor incurred or reasonably believed they would incur debts that would be beyond their ability to pay as they became due.⁶⁰⁸ Here, SN believed the transfer was made on or after August 11, 2017, it did not receive equivalent value or fair consideration in the exchange for the Correction Instruments, and they satisfy (3),(4), or (5) above.⁶⁰⁹

⁶⁰⁴ *Id.* at 17–18.

⁶⁰⁵ *Id.* at 18.

⁶⁰⁶ *Id.*

⁶⁰⁷ *Id.* at 18–19; *see* 11 U.S.C § 548, <https://perma.cc/NN7U-BG2T>; 11 U.S.C § 550, <https://perma.cc/AHL7-DECV>; 11 U.S.C. § 551 <https://perma.cc/5LS9-KFDQ>.

⁶⁰⁸ *Sanchez v. RBC supra* note 631, 1026.pdf at 19.

⁶⁰⁹ *Id.*

Accordingly, SN requested §§ 550 and 551 apply, whereby SN may recover the value of the transfer for the benefit of the estate from the initial transferee and preserve the benefit for the estate.⁶¹⁰

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

SN sought to avoid any purported liens on property set forth in schedule D (“Unencumbered Property”) of this motion, as they were not subject to any recorded mortgages, deeds of trust, or other lien documents.⁶¹¹ As such, the property was not subject to valid liens and the property is unencumbered by liens under Tex. Prop. Code §§ 13.001 and 13.002.⁶¹² As a result of the invalid liens and unencumbered status, SN requested the court permit avoidance under §§ 541(a)(1), 541(a)(2), and 544(a)(3).⁶¹³

Section 541 provides property of the estate is comprised of all property where the debtor holds legal or equitable interest and all interest of the debtor in community property, no matter where the property may be located and by whomever held.⁶¹⁴ SN held legal or equitable interest in all the Unencumbered Properties due to the invalid or unperfected liens.⁶¹⁵

Declaratory Judgement with Respect to Unencumbered Property.

SN stated the court should declare the Unencumbered Properties were unencumbered by valid, perfected liens under Bankruptcy Rule 7001(2).⁶¹⁶ The Defendant’s failure to timely or

⁶¹⁰ *Id.* at 18–19.

⁶¹¹ *Id.* at 5; *Id.* at 19.

⁶¹² *Id.* at 5; *see* TEX. PROP. CODE § 13.001, <https://perma.cc/KM4J-SRC4>; TEX. PROP. CODE §13.002, <https://perma.cc/2BZM-MXSX>.

⁶¹³ *Id.* at 19; *see* 11 U.S.C. § 544, <https://perma.cc/H843-TPBZ>.

⁶¹⁴ Sanchez v. RBC *supra* note 631, 1026.pdf at 19.

⁶¹⁵ *Id.*

⁶¹⁶ *Id.* at 20; *see* Fed. R. Bankr. P., <https://perma.cc/Q3YT-TSUL>.

properly record liens on the Shared Collateral rendered the property unencumbered as of law, and the court should issue a declaration reflecting this.⁶¹⁷

Declaratory Judgement with Respect to Deposit Accounts.

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

Declaratory Judgement with Respect to Terra Commercial Tort Claim.

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

⁶¹⁷ Sanchez v. RBC *supra* note 631, 1026.pdf at 20.

⁶¹⁸ *Id.* at 14; *id.* at 20.

⁶¹⁹ *Id.* at 14.

⁶²⁰ *Id.* at 14; *see* UCC § 9-315, <https://perma.cc/6PDN-E9AT>.

⁶²¹ Sanchez v. RBC *supra* note 631, 1026.pdf at 20—21.

⁶²² *Id.* at 21.

⁶²³ *Id.*

⁶²⁴ *Id.* at 21; *see* UCC § 9-108, <https://perma.cc/X7L7-YVJR>; UCC § 9-203, <https://perma.cc/G6SY-MGNM>.

specifically identify the state court action, rendering their lien unperfected.⁶²⁵ Additionally, if the courts found there were liens, SN sought to avoid the liens under § 544(a)(3) as a bona fide purchaser of value who can obtain a superior title.⁶²⁶

Recovery of Avoided Transfers.

Pursuant to Bankruptcy Code § 550, SN sought to recover the transfers avoided in this motion under §§ 544, 547, and 548.⁶²⁷ SN was entitled to recover, for the benefit of the estate, value from the initial transferee of the transfer or the entity for whose benefit the transfer was made.⁶²⁸

Disallowance of Claims.

SN requested the court order any further claims by the Defendants were disallowed until the Defendants have paid the debtor the value of any transfer avoided.⁶²⁹

Motion to Establish Omnibus Claims Objection Procedures.

To complete the claims reconciliation process as efficiently and effectively as possible, SN sought to establish procedures for claim objections.⁶³⁰ Bankruptcy Rule 3007(c) permits approval of additional procedures for omnibus claim objections.⁶³¹ SN requested approval to object to claims on the following grounds:

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

⁶²⁵ Sanchez v. RBC, *supra* note 631, 1026.pdf at 22.

⁶²⁶ *Id.* at 22.

⁶²⁷ *Id.* at 22.

⁶²⁸ *Id.*

⁶²⁹ *Id.*

⁶³⁰ Debtor’s motion for Entry of an Order Approving Omnibus Claims Objection Procedures and Filing of Substantive Omnibus Claims Objections 807.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 10, 2020) [hereinafter Motion to Establish Objection Procedures] <https://perma.cc/C59P-ZBTN>.

⁶³¹ *Id.* at 7–8.; *see* Fed. R. Bankr. P., <https://perma.cc/H6BH-JL2J>.

- Were incorrectly or improperly classified;
- Were filed against non-Debtors or were filed against multiple Debtors;
- Fails to specify a Debtor against whom the claim is asserted;
- Have been satisfied by payment in full on account of such claims from a party that is not a Debtor; or
- Have been satisfied by one or more of the Debtor's insurers.⁶³²

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

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

Appointment of Examiner.

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

⁶³² Motion to Establish Claims Procedures, *supra* note 687, 807.pdf at 6.

⁶³³ *Id.* at 8–9.

⁶³⁴ Order Approving Omnibus Claims Objection Procedures and Filing of Substantive Omnibus Claims Objections 898.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 31, 2020) <https://perma.cc/SW29-K5SQ>.

⁶³⁵ Order Directing the Appointment of an Examiner 735.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 12, 2019) <https://perma.cc/56DJ-4Y8A>.

⁶³⁶ Notice of Appointment of Chapter 11 Examiner 796.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 08, 2020) <https://perma.cc/CB2W-MFYK>.

⁶³⁷ *Id.*

(“Goldin”).⁶³⁸ On the same day, SN submitted to the court a motion seeking to approve appointment of Goldin as Chapter 11 examiner.⁶³⁹

The Secured Notes Ad Hoc Group (“Secured Notes Group”) filed a statement concerning the appointment of Goldin as examiner.⁶⁴⁰ The Secured Notes Group did not object to the appointment of Goldin, their concern laid with the scope of Goldin’s appointment.⁶⁴¹ Due to the significant amount of investigation undergone and currently being performed, the Secured Notes Group requested the court consider the scope and budget for the examiner’s work.⁶⁴² The Secured Notes Group asked the court to take into consideration whether the examiner would be tasked to review the investigations currently being conducted or take lead on those investigations along with his work as examiner.⁶⁴³ The Secured Notes Group requested this to avoid duplicative work and billing in the appointment of the Chapter 11 examiner.⁶⁴⁴

The Unsecured Creditor Committee filed a statement in response to SN’s application to approve appointment of Goldin as Chapter 11 examiner.⁶⁴⁵ The Unsecured Creditors Committee was concerned with Goldin’s experience in the oil and gas industry.⁶⁴⁶ Goldin acknowledged such lack of experience and stated he would associate himself with other professionals to

⁶³⁸ *Id.*

⁶³⁹ Expedited Application of the United States Trustee for Order Approving Appointment of Chapter 11 Examiner 797.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 08, 2020) <https://perma.cc/9Y95-748E>.

⁶⁴⁰ The Secured Notes Ad Hoc Group’s Statement in Response to the Expedited Application of the United States Trustee for Order Approving Appointment of Chapter 11 Examiner 836.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/M4MC-JEW9>.

⁶⁴¹ *Id.* at 3.

⁶⁴² *Id.* at 4.

⁶⁴³ *Id.*

⁶⁴⁴ *Id.*

⁶⁴⁵ Statement of Official Committee of Unsecured Creditors in Response to Expedited Application of the United States Trustee for Approving Appointment of Chapter 11 Examiner 839.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 17, 2020) <https://perma.cc/GZ64-8U8G>.

⁶⁴⁶ *Id.* at 2–3.

supplement his knowledge.⁶⁴⁷ Hiring of other professional subjects the estate to additional expense, as such the court ordered the examiner could not retain professionals without good cause.⁶⁴⁸ The Unsecured Creditors Committee requested the court determine the requirements of the positions and assess the benefit of appointing an examiner who may require professional assistance or undergoing another appointment process.⁶⁴⁹

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

SN filed a motion seeking to procedures for interim compensation and reimbursement of expenses for retained professionals.⁶⁵⁰ SN sought to implement the following procedures for requesting interim compensation and reimbursement of expenses:

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

⁶⁴⁷ *Id.*

⁶⁴⁸ *Id.* at 2.

⁶⁴⁹ *Id.* at 3.

⁶⁵⁰ Debtor's Motion for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals 273.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Sept. 06, 2019) <https://perma.cc/H9X6-E3HU>.

- If a fee statement recipient files an objection, the recipient has until the objection deadline to consensually resolve the dispute with the retained professional, if no resolution is achieved after 14 days or before the objection deadline, the retained professional may file an objection with the court;
- Each retained professional may submit its first monthly fee statement no earlier than October 5, 2019, and will cover and include up to September 30, 2019;
- Beginning with the period ending November 30, 2019 and at three-month intervals thereafter, each retained professional who has filed monthly fee statements may file with the court an interim fee application seeking payment and reimbursement for the three-month period;
- The Debtors shall request the Court schedule a hearing on interim fee application once every three months or at intervals deemed appropriate;
- The pendency of an objection does not prohibit a retained professional from seeking future compensation and reimbursement; and
- Neither (i) the payment of or failure to pay interim compensation and reimbursement procedures nor (ii) filing or failure to file an objection shall bind any party with respect to final allowance of applications for compensation and reimbursement.⁶⁵¹

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

⁶⁵¹ *Id.* at 4–6.

⁶⁵² *Id.* at 7;

and a hearing, the Court may award reasonable compensation and expense reimbursement to a professional retained under §§ 327 or 1103.⁶⁵³ SN sought to enable it to closely monitor the costs of administering these Chapter 11 cases and to accurately forecast cash flows that account for the amount and timing of such costs.⁶⁵⁴

The court entered an order granting SN's request.⁶⁵⁵ Furthermore, the court stated failure to timely file an interim fee application shall result in ineligibility to receive further monthly payment of fees and reimbursement until such fee application was filed.⁶⁵⁶

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

In the ordinary course of business, SN employed 19 ordinary course professionals that provided services unrelated to the Chapter 11 case.⁶⁵⁷ SN asserted these 19 professionals were not “professionals” whose retention must be approved by the court under § 327 as their services do not relate to the Chapter 11 case.⁶⁵⁸ As such, SN requested permission to pay the ordinary course professionals without formal application.⁶⁵⁹ Accordingly, if the ordinary course

⁶⁵³ *Id.*

⁶⁵⁴ *Id.* at 8.

⁶⁵⁵ Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals 414.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 01, 2019) <https://perma.cc/JDZ2-K65M>.

⁶⁵⁶ *Id.* at 4.

⁶⁵⁷ Debtor's Motion for Entry of an Order Authorizing the Retention and Compensation of Certain Professionals Used in the Ordinary Course of Business Effective *Nunc Pro Tunc* 277.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Aug. 09, 2019) <https://perma.cc/8EK9-XXVZ>.

⁶⁵⁸ *Id.* at 7-8.

⁶⁵⁹ *Id.* at 5.

professional requests compensation in excess of the applicable fee cap they must file with the court a notice of fees in excess of the fee cap and detail the nature of the services.⁶⁶⁰

The court granted SN's request, stating nothing within the order prohibited the United States Trustee from seeking a determination from the Court requiring a separate retention application under § 327 or altering the fee cap.⁶⁶¹

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

SN sought an order to enlarge the period within which they may remove actions under 28 U.S.C. § 1452 and Bankruptcy Rule 9027 through and including March 8, 2020.⁶⁶² Bankruptcy Rule 9006(b)(1) permits extension of the Rule 9027 period by show of cause.⁶⁶³ SN has diligently worked since the petition date to ensure an efficient reorganization process, but due to the complexity and large scale of the case they request an extension to avoid waiving these rights.⁶⁶⁴ SN respectfully requested an extension as the large scale of the case requires more time.⁶⁶⁵

The court granted SN's request for extension to and including March 8, 2020.⁶⁶⁶

⁶⁶⁰ *Id.*

⁶⁶¹ *Id.*

⁶⁶² Debtor's Motion for Entry of an Order Extending Period within which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure 436.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 07, 2019) [hereinafter Motion to Extend] <https://perma.cc/42DN-FUVK>; 28 U.S.C. § 1452 <https://perma.cc/L5YC-YZWF> ; Fed. R. Bankr. P. <https://perma.cc/B9CR-D2UG>.

⁶⁶³ *See* Fed. R. Bankr. P. 9006 <https://perma.cc/W8SM-CP8Q>; Motion to Extend, *supra* note 719, 436.pdf at 5.

⁶⁶⁴ *Id.*

⁶⁶⁵ *Id.* at 6.

⁶⁶⁶ Order Extending Period within which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure 562.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Nov. 06, 2019) <https://perma.cc/PB8R-QFKY>.

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

SN sought an order to establish the date the Bankruptcy Court enters the record date (“Record Date”) as the effective date for notice and sell-down procedures for trading in certain claims.⁶⁶⁷ In SN’s previous motion, the court granted its request to determine the NOLs were property of the estate.⁶⁶⁸ SN could require certain substantial claimholders to sell-down their claims to the extent necessary to qualify under IRC§ 382(l)(5) in order to utilize their NOLs.⁶⁶⁹ IRC § 382(l)(5) requires 50% or more of the stock of a company be held by qualified creditors upon emergence from a Chapter 11 reorganization.⁶⁷⁰ If within the record date, a holder of 5% of stock increases their ownership by more than fifty percentage points over the lowest percentage stockholder and the reorganization finalizes, an ownership change will occur.⁶⁷¹ This would result in the loss of a substantial percentage of NOLs that could be used to offset taxable income.⁶⁷² Establishing a record date would give notice to creditors of the stock holding period § 382 affects and allow SN to determine whether or not a sell-down will be necessary.⁶⁷³ Holders of more than 4.5% stock may be required to sell-down a portion of the stock to qualified creditors, only if necessary, to qualify for the NOL requirement under § 382.

This request was made pursuant to the prior ruling that the NOL were property of the estate under § 541.⁶⁷⁴ SN controls property of the estate, and as such should be permitted to

⁶⁶⁷ Debtor’s Motion for Entry of an Order Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Certain Claims against the Debtor’s Estates 434.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 04, 2019) [hereinafter Motion to Establish Record Date] <https://perma.cc/UA6M-KHZJ>.

⁶⁶⁸ *Id.* at 7.

⁶⁶⁹ *Id.* at 8; see 11 U.S.C. § 382 <https://perma.cc/BA5Q-VMNV>.

⁶⁷⁰ Motion to Establish Record Date, *supra* note 723, 434.pdf at 7; see Treas. Reg. § 1.382-9(d) (a “qualified creditor” is generally a creditor who held its claim for 18 months prior to the petition date or who has held a claim against the debtor in the ordinary course of business since the claim arose.).

⁶⁷¹ Motion to Establish Record Date, *supra* note 723, 434.pdf at 7–8.

⁶⁷² *Id.* at 7

⁶⁷³ *Id.* at 8.

⁶⁷⁴ *Id.* at 11.

control the NOLs in order to maximize the recovery of the estate.⁶⁷⁵ SN did not seek to exercise control over the NOLs, it requested a Record Date for the potential sell-down procedures if it were required to preserve usage of the NOLs.⁶⁷⁶

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

Motion to Set Bar Dates for Filing of Proof of Claim and Amended Bar Date.

SN sought to establish a Claims Bar Date ("Claims Bar Date") pursuant to Bankruptcy Rule 3003.⁶⁷⁸ Setting of the bar date was crucial to the reorganization to allow SN and its professionals to adequately assess the estates condition.⁶⁷⁹ Furthermore, SN requested the court set a bar date for claims arising from the rejection of executory contracts and unexpired leases, 30 days from notice of the rejection.⁶⁸⁰ Additionally, SN requested a bar date for claims affected by amended schedules, 30 days from notice of amendment.⁶⁸¹

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

⁶⁷⁵ *Id.* at 10.

⁶⁷⁶ *Id.* at 11.

⁶⁷⁷ Order Establishing a Record Date for Notice and Sell-Down Procedures for Trading Certain Claims Against the Debtor's Estates 566.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 24, 2019) <https://perma.cc/PH4B-PNLG>.

⁶⁷⁸ See Fed. R. Bankr. P. ;Debtor's Motion for Entry of an Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9); (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date; (III) Approving the Form of and Manner for Filing Proofs of Claims, Including Section 503(b)(9) Requests; and (IV) Approving Notice of Bar Dates 520.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Oct. 24, 2019) [hereinafter Motion for Bar Dates] <https://perma.cc/U96L-YUHZ>.

⁶⁷⁹ *Id.* at 4.

⁶⁸⁰ *Id.* at 6.

⁶⁸¹ *Id.*

⁶⁸² *Id.* at 15.

going-concern of the debtor and maximizing property of the estate for the creditors.⁶⁸³ These dates provided SN with certainty regarding the estate, claims against the estate, and forecasting and analyzing for the reorganization.⁶⁸⁴ The Record Bar date was reasonable and appropriate as SN would provide adequate notice to any and all interested parties to preserve due process.⁶⁸⁵

The court granted SN's order, setting the bar date for all non-governmental units on or before January 10, 2020.⁶⁸⁶

Motion to Quash and For a Protective Order Barring Deposition of Antonio Sanchez III.

SN sought to prohibit deposition of Antonio Sanchez III ("Tony III") concerning the appoint of Mr. Meghji as Chief Restructuring Officer.⁶⁸⁷ Under Federal Rules of Bankruptcy 9014 and 7026, a court may issue a protective order for good cause pursuant to the Federal Rules of Civil Procedure Rule 26.⁶⁸⁸ A deposition against Tony III would provide no insight into the hiring of Mr. Meghji, as Tony III neither attended nor participated in any of the Special Committee's actions in selecting a chief restructuring officer.⁶⁸⁹ SN believed the objecting parties would point toward Tony III's conversation with the candidates for the CRO position as a

⁶⁸³ *Id.* at 16.

⁶⁸⁴ Motion for Bar Dates, *supra* note 735, 520.pdf at 16.

⁶⁸⁵ *Id.* at 17.

⁶⁸⁶ Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9); (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date; (III) Approving the Form of and Manner for Filing Proofs of Claims, Including Section 503(b)(9) Requests; and (IV) Approving Notice of Bar Dates 617.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Nov. 21, 2019) <https://perma.cc/UB8L-4RQZ>.

⁶⁸⁷ Debtor's Emergency Motion to Quash and for a Protective Order Barring the Deposition of Antonio R. Sanchez, III 612.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Nov. 20, 2019) [hereinafter Motion to Quash] <https://perma.cc/TFA4-8CX6>.

⁶⁸⁸ *See* Fed. R. Bankr. P. <https://perma.cc/2ZYV-6XE7>; *see also* Fed. R. Bankr. P. <https://perma.cc/HT7J-3JUF>.

⁶⁸⁹ Motion to Quash, *supra* note 744, 612.pdf at 8.

basis for deposition.⁶⁹⁰ This would open the door to deposing anyone involved in SN's business and therefore was not sufficient grounds.⁶⁹¹

Unsecured Creditors Committee's Objection.

The Unsecured Creditors Committee asserted deposition of Tony III was required because he was the only member of management who met with the CRO candidates and who advised the Special Committee of his opinions.⁶⁹² Deposition of Tony III would reveal his impressions from meeting with the candidates, and as a high level member of management this will give significant insight into the candidates and his assessment of the candidates.⁶⁹³ Additionally, the deposition was critically important to understand the CRO's scope of work and required qualifications in dealing with a complex Chapter 11 case such as this.⁶⁹⁴ There were no additional docket entries on this matter at the time of this paper.

Motion to Extend Exclusivity Period to File Chapter 11 Plan.

⁶⁹⁰ *Id.* at 8.

⁶⁹¹ *Id.*

⁶⁹² Official Committee of Unsecured Creditor's Opposition to Debtor's Emergency Motion to Quash and for a Protective Order Barring the Deposition of Antonio R. Sanchez III 618.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Nov. 20, 2019) <https://perma.cc/Z6EV-DFDS>.

⁶⁹³ *Id.*

⁶⁹⁴ *Id.*

SN motioned the court for an order to extend the exclusivity period for filing a Chapter 11 plan and soliciting acceptance.⁶⁹⁵ The filing period would expire on December 9, 2019 and the solicitation period on February 7, 2020.⁶⁹⁶ Section 1121 of the Bankruptcy Code permits extension of this period for cause.⁶⁹⁷ SN believed the large and complex nature of its Chapter 11 case requires this extension.⁶⁹⁸ SN had approximately 3 billion in outstanding debt obligations, a large complex corporate structure with thousands of stakeholders, and numerous active parties participating in the reorganization.⁶⁹⁹ Additionally, SN made substantial progress in the reorganization, its request for extension came out of necessity, not to make up for insignificant attention to the case.⁷⁰⁰ SN notes creditors would not be pressured by the extension, SN continued to pay its obligations as they come due and requested this extension to best formulate a plan for the creditors.⁷⁰¹ This extension was in the best interest of all parties, it would allow more efficient work performed on the filing of a plan and would prevent the drain on time and resources that occurs when multiple parties were placed on the same task in a rush.⁷⁰²

Unsecured Noteholders' Statement.

The Unsecured Noteholders did not object to SN's request for extension but offered the court recommendations to ensure the extension was used most effectively and efficiently.⁷⁰³ The Unsecured Noteholders believed appointment of an examiner, a CRO and the removal of

⁶⁹⁵ Debtor's Motion for Entry of an Order to Extend Their Exclusivity Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof 694.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 06, 2019) [hereinafter Motion to Extend Exclusivity Period] <https://perma.cc/8FED-6SPX>.

⁶⁹⁶ *Id.* at 9.

⁶⁹⁷ See 11 U.S.C. § 1121 <https://perma.cc/5BGS-WEVR>; *Id.* at 9–10.

⁶⁹⁸ *Id.*

⁶⁹⁹ *Id.* at 11–12.

⁷⁰⁰ *Id.* at 13.

⁷⁰¹ Motion to Extend Exclusivity Period, *supra* note 752, 694.pdf at 15.

⁷⁰² *Id.* at 15–16.

⁷⁰³ Ad Hoc Group for Unsecured Noteholder's Statement Regarding Debtor's Motion for Entry of an Order to Extend their Exclusivity Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof 769.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Dec. 06, 2019) <https://perma.cc/4Y4M-GDGV>.

conflicted corporate governance would improve the administration of this case.⁷⁰⁴ Additionally, the Unsecured Noteholders requested SN sue to avoid liens asserted by secured noteholders.⁷⁰⁵

The court granted SN's request for extension to and through March 9, 2020 for the plan date and May 8, 2020 for the solicitation date.⁷⁰⁶ No note of the Unsecured Noteholder's statement was added to the order.⁷⁰⁷

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

SN again petitioned the court to extend their period to file their Chapter 11 plan until June 8, 2020 and extend their solicitation period until August 6, 2020.⁷⁰⁸ According to § 1121, as cited in their previous request for extension, an extension was permitted by showing of cause.⁷⁰⁹ SN's argument mirrors its previous argument, adding that no party in interest has proposed a beneficial alternative to the restructuring process at hand.⁷¹⁰ SN continually acted as an honest broker for all parties in interest, acting in good faith to negotiate with key stake holders to formulate a plan that will benefit all parties.⁷¹¹ No parties would be prejudiced by an extension, rather the stability and predictability a centralized process maintained by SN will continue to benefit all parties.⁷¹²

Unsecured Noteholder's Objection.

⁷⁰⁴ *Id.* at 2.

⁷⁰⁵ *Id.*

⁷⁰⁶ Order Extending the Exclusive Period for the Debtors to File a Chapter 11 Plan and Solicit Acceptances Thereof 800.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Jan. 08, 2020) <https://perma.cc/W4HU-DUGF>.

⁷⁰⁷ *Id.*

⁷⁰⁸ Debtor's Second Motion for Entry of an Order to Extend Their Exclusivity Period to File Chapter 11 Plan 998.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 26, 2020) <https://perma.cc/XW3B-STGV>.

⁷⁰⁹ *Id.* at 11.

⁷¹⁰ *Id.* at 18.

⁷¹¹ *Id.*

⁷¹² *Id.*

The Unsecured Noteholders objected to SN's second motion to extend based on a lack of meaningful negotiation and engagement.⁷¹³ In SN's previous motion, they stated they planned to engage with key creditor constituents to advance their plan, the Unsecured Noteholders stated no meaningful engagement has occurred.⁷¹⁴ Furthermore, SN failed to advance litigation against the Secured Noteholders concerning lien avoidance actions.⁷¹⁵ This litigation concerned approximately 80% of SN's encumbered properties, resolution was imperative because these assets make up a large percentage of their total enterprise value that directly affects their ability to satisfy the terms of their DIP financing.⁷¹⁶ Resolution of these actions should occur prior to any confirmation proceedings, the Unsecured Noteholders respectfully object to the second extension.⁷¹⁷

Secured Noteholders Statement.

The Secured Noteholders advocated a brief extension to the period, to allow SN's continuation of the meaningful negotiations they had taken part in and to limit further expenses a long extension would bring.⁷¹⁸ The Secured Noteholders requested the court disregard the Unsecured Noteholder's objection concerning the lien avoidance actions, as they have no relevance to the current motion and seek to attack the DIP Lenders who were now primary stakeholders in the reorganization.⁷¹⁹ The Secured Noteholders held an extension to April 30,

⁷¹³ Ad Hoc Group of Unsecured Noteholder's Objection to Debtors' Second Motion to Extend Exclusivity Period to File Chapter 11 Plan and Solicit Acceptances 1061.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 20, 2020) <https://perma.cc/S9CA-SE7S>.

⁷¹⁴ *Id.* at 2.

⁷¹⁵ *Id.*

⁷¹⁶ *Id.* at 4.

⁷¹⁷ *Id.* at 5.

⁷¹⁸ Statement of the Secured Noteholders Ad Hoc Group Regarding Debtor's Second Motion ofr Entry of an Order to Extend their Exclusivity Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof 1088.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 24, 2020) <https://perma.cc/Q4V7-YEUM>.

⁷¹⁹ *Id.* at 5.

2020 to file and June 30, 2020 to solicit acceptances was warranted to enable negotiations concerning a reorganization.⁷²⁰

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

SN submitted a second motion to extend the period to remove actions under 28 U.S.C. 1452 and Federal Rules of Bankruptcy Procedure 9027.⁷²¹ This motion is identical to the motion above.⁷²² The court granted SN's second motion, extending the time to and through July 6, 2020.⁷²³

Secured Noteholder's Emergency Motion to Suspend Interim Compensation.

The economic impact of Covid-19 and the Russian-Saudi oil wars warrant change to SN's current compensation orders for retained professionals.⁷²⁴ The macroeconomic impact of these events substantially altered SN's liquidity and prospects of reorganization and caused SN to default on its DIP Credit Agreement.⁷²⁵ Now more than ever, the economics inside of SN matter; as such, the Secured Noteholders requested the court modify SN's interim compensation order pursuant to § 105(a), the courts power to modify orders.⁷²⁶ At the outset, no checks and

⁷²⁰ *Id.*

⁷²¹ Debtor's Second Motion for Entry of an Order Extending Period within which the Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure 913.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Feb. 02, 2020) [Second Motion to Extend Exclusivity] <https://perma.cc/5MHY-2ZB9>.

⁷²² Second Motion to Extend Exclusivity, *supra* note 778, 913.pdf at 4.

⁷²³ Order Further Extending the Period Within Which Debtors May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure 1009.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 04, 2020) <https://perma.cc/4HLS-ZUL4>.

⁷²⁴ Emergency Motion of the Secured Notes Ad Hoc Group for Entry of an Order Suspending Interim Compensation Order 1099.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 27, 2020) <https://perma.cc/92NZ-3D8S>.

⁷²⁵ *Id.* at 7–8.

⁷²⁶ *Id.* at 8.

balances on SN's interim compensation order were warranted, but it became imperative to review these compensation requests as over \$65 million has been spent on professional fees.⁷²⁷ The Secured Noteholders did not wish to eliminate compensation, but rather, subject it to review as it was no longer equitable to allow unvetted compensation payments.⁷²⁸ There were no further entries on this matter at the time of this paper.

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

The Unsecured Creditors Committee objected to SOG's request for payment of indemnity obligations as it was not indemnification provided for under the Shared Services Agreement.⁷²⁹ Specifically, SOG requested payment of indemnification totaling over \$500,000 relating to multiple transactions, the objected transactions were for the Shared Services Agreement totaling \$380,911.94 and Mark Flynn/Kevin Langen's litigation costs totaling \$187,192.58.⁷³⁰

The Shared Services Agreement provides indemnification for SOG in matters directly related to SN, the indemnification's purpose was to protect SN by allowing SOG to employ attorneys to defend SN's interests.⁷³¹ Presently, SOG attempted to employ the indemnification provision for repayment of SN's investigation into SOG.⁷³²

Additionally, SOG sought indemnification for litigation expenses with no direct relation to SN.⁷³³ SN was neither party to the two disputes nor has SOG provided evidence they were

⁷²⁷ *Id.*

⁷²⁸ *Id.*

⁷²⁹ Objection of the Official Committee of Unsecured Creditors to Sanchez Oil and Gas Corporation's February 27, 2020 Request for Payment of Indemnity Obligations 1042.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 13, 2020) <https://perma.cc/P4D3-7FZB>.

⁷³⁰ *Id.* at 5.

⁷³¹ *Id.* at 7.

⁷³² *Id.* at 7–8.

⁷³³ *Id.* at 8.

directly related to it.⁷³⁴ SOG provided the Unsecured Creditors Committee seven days to investigate the matter, but denied a follow up request for more time; accordingly, the Unsecured Creditors Committee asserted the request should be denied.⁷³⁵ **NO FURTHER ENTRIES**

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

Pursuant to Bankruptcy Code §§ 1103(c)(2) and 1109(b), the Unsecured Creditors Committee motioned for leave, standing, and authority to prosecute claims on behalf of SN.⁷³⁶ Section 1103(c)(2) authorizes official committees to investigate the acts of the Debtor(SN), and § 1109(b) permits the committee to be heard on any issue concerning the chapter 11 reorganization.⁷³⁷ The Fifth Circuit permits standing to prosecute claims where the claims are colorable and the Debtor has unjustifiably refused to pursue the claims.⁷³⁸

The Unsecured Creditors Committee sought to prosecute colorable claims relating to the Catarina Assets, specifically concerning a potentially avoidable transaction disguised as a sale-leaseback transaction.⁷³⁹ Additionally, the committee sought to prosecute claims related to breaches of fiduciary duties concerning the Catarina Assets, and breaches of fiduciary duty, avoidable transfers, and excessive compensation.⁷⁴⁰ SN unjustifiably refused to prosecute all of

⁷³⁴ *Id.* at 9.

⁷³⁵ *Id.* at 10.

⁷³⁶ Motion of the Official Committee of Unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtor’s Estate and Related Relief 1032.pdf, *In re Sanchez Energy Corp.*, No. 19-34508 (Bank. S.D. Tex.R. Filed Mar. 13, 2020) [Unsecured Creditor’s Motion to Prosecute] <https://perma.cc/HB7C-CJ64>.

⁷³⁷ 11 U.S.C. §1103, <https://perma.cc/ZM4B-D3MA>; 11 U.S.C. § 1109, <https://perma.cc/3U9A-CSRQ>.

⁷³⁸ See *LA. World Exposition*, 858 F.2d 1391, 1397 (5th Cir. 1987) (committee may assert causes of action on behalf of the Debtor when the Debtor is unwilling); Motion to Prosecute, *supra* note 863, 1032.pdf at 16.

⁷³⁹ *Id.* at 18–19; The Unsecured Creditors Committee believed the sale-leaseback transaction is an avoidable transfer where the Debtor was insolvent, did not receive reasonably equivalent value, and took on more debts than it could repay. Sanchez’s subsidiary benefits greatly from the transfer and Sanchez refuses to prosecute, therefore the committee seeks to prosecute as well as prosecute for breach of fiduciary duty for the sale-leaseback.

⁷⁴⁰ *Id.* at 20–24.

these claims despite the Unsecured Creditors Committee's demands; as such, the committee seeks exclusive authority to prosecute and settle these claims.⁷⁴¹

Unsecured Creditors Committee's Motion to Prosecute Claims.

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

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

⁷⁴¹ *Id.* at 30–31.

⁷⁴² Docket 875, <https://perma.cc/R9DX-FF6U>. On February 14, 2020, the Ad Hoc Group filed a Joinder as well; the Ad Hoc Group agreed that the proposed claims were colorable and that they should be promptly adjudicated. *See* Ad Hoc Group of Unsecured Noteholders' Joinder to the Motion of the Official Committee of Unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors' Estates and for Related Relief, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 14, 2020) [hereinafter Ad Hoc Group Joinder to Prosecute Claims], <https://perma.cc/87CU-KMSV>.

⁷⁴³ Motion of the Official Committee of Unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors' Estates and for Related Relief at 3, 15, *In re* Sanchez Energy Corp., No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Jan. 24, 2020) [hereinafter Unsecured Creditor Claims Motion], <https://perma.cc/R9DX-FF6U>.

⁷⁴⁴ *Id.* at 3–4.

⁷⁴⁵ *Id.* at 15.

action, the Committee has derivative standing to pursue the cause of action, with leave of the Court.⁷⁴⁶ The Committee continued:

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

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

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

⁷⁴⁶ *Id.* at 16.

⁷⁴⁷ *Id.*

⁷⁴⁸ *Id.* at 17.

⁷⁴⁹ Unsecured Creditor Claims Motion, *supra* note 871, at 18.

⁷⁵⁰ *Id.* at 18–20.

⁷⁵¹ *Id.* at 20.

⁷⁵² *Id.* at 21.

Last, the Committee argued that if the Correction Affidavits' filing was proper, the perfection of a lien was avoidable as a preferential transfer under § 547 of the Bankruptcy Code.⁷⁵³ A transfer was preferential if the transfer was:

(1) to or for the benefit of a creditor; (2) for or on account of antecedent debt; (3) made while the debtor was insolvent; (4) within 90 days before the date of the filing of the bankruptcy petition; (5) that enabled the creditor to receive more than it would otherwise have received if the transfer had not been made and the case proceeded under chapter 7.⁷⁵⁴

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

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

⁷⁵³ *Id.* at 22.

⁷⁵⁴ *Id.*

⁷⁵⁵ Unsecured Creditor Claims Motion, *supra* note 871, at 22.

⁷⁵⁶ *Id.* 22–23.

⁷⁵⁷ *Id.* at 23.

⁷⁵⁸ *Id.*

⁷⁵⁹ *Id.* at 23–27.

⁷⁶⁰ *Id.* at 24–26.

unduly delayed by pursuit of claims and the value of \$446.5 million, even if there was only a small chance of success, cut in favor of pursuit of the claims.⁷⁶¹

Thus, the Committee reasoned that the Court should authorize the Committee to pursue the Proposed Claims.⁷⁶²

The Ad Hoc Group's Request for Time Extension.

The Motion filed by the Committee was scheduled for hearing on February 20, 2020 and the Ad Hoc Group had a deadline of February 14, 2020 to respond to the Motion.⁷⁶³ Pursuant to Bankruptcy Local Rule 9013-1(i), the Ad Hoc Group requested an extension for a Response Deadline to February 28, 2020 and to reset the hearing date for March 10, 2020 because the Committee submitted a Supplemental Standing Motion with a revised Complaint two days before the Response Deadline.⁷⁶⁴ The Ad Hoc Group stated that the Revised Complaint asserted new allegations and causes of action not in the original complaint, specifically:

- a. A Declaration that the Noteholders have no lien on the Debtors' Deposit Accounts, or alternatively, an order seeking avoidance of any lien on proceedings from

⁷⁶¹ Unsecured Creditor Claims Motion, *supra* note 871, at 24–26.

⁷⁶² *Id.* at 28.

⁷⁶³ Secured Notes Ad Hoc Group's Emergency Motion to Extend the Response Deadline and Reset Hearing With Respect to the Official Committee of Unsecured Creditors' Motion for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors' Estates and Related Relief at 2, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 13, 2020) [hereinafter Ad Hoc Group Extension to Respond Motion], <https://perma.cc/Y4D6-EF5W>. Wilmington Savings Fund Society, as successor indenture trustee, and Wilmington Trust National Association, as collateral trustee, jointly submitted a joinder to the Ad Hoc Group's Motion, stating agreement with the Ad Hoc Group's arguments and requested additional time for review and response. *See* Joint Joinder of Wilmington Savings Fund Society, FSB and Wilmington Trust, National Association in Support of Secured Notes Ad Hoc Group's Emergency Motion to Extend the Response Deadline and Reset Hearing with Respect to the Official Committee of Unsecured Creditors' Motion for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors' Estates and Related Relief, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 13, 2020) [hereinafter Joint Joinder to Extension], <https://perma.cc/UKD9-4EX2>.

⁷⁶⁴ Ad Hoc Group Extension to Respond Motion, *supra* note 891, at 3.

encumbered assets that the Noteholders failed to trace by a method permitted under law (the “Deposit Claim”);

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

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

SN’s Objection.

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

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

⁷⁶⁵ *Id.*

⁷⁶⁶ Order Regarding Emergency Motion to Extend Deadlines, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 18, 2020) [hereinafter Order Regarding Deadline Extension for Claims], <https://perma.cc/U54M-ED46>.

⁷⁶⁷ Debtors’ Objection to Motion of the Official Committee of unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors’ Estates and for Related Relief, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 14, 2020) [hereinafter SN Objection to UCC Claims], <https://perma.cc/8636-9A4J>. The Indenture Trustee and the Collateral Trustee joined in SN’s opposition to the Committee’s Motion. *See* Joint Joinder of Wilmington Savings Fund Society, FSB and Wilmington Trust, National Association in Support of Debtors’ Opposition to the Motion of the Official Committee of Unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors’ Estates and for Related Relief, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 14, 2020), <https://perma.cc/NHZ8-U58C>.

⁷⁶⁸ SN Objection to UCC Claims, *supra* note 894, at 7.

⁷⁶⁹ *Id.* at 8.

because unlike the referenced case, here, SN had stated a clear intention to bring all viable claims not resolved.⁷⁷⁰

Next, SN argued that pursuing claims through plan negotiations as its primary option was not unjustified, but a reasonable business judgment.⁷⁷¹ SN stated that a consensual resolution of claims with a plan of reorganization was preferable, if possible, and in the best interests of the estates because it would avoid unnecessary cost, delay, and uncertainty of litigation.⁷⁷²

Moreover, SN stressed that consensual resolution had been its primary goal for the duration of case as evidenced by the fact that SN provided business plans and terms sheets to stakeholders that detailed plans for negotiations and reorganization issues. Additionally, SN argued, the Committee could not show that attempts to achieve consensual resolution of claims through reorganization plans constituted an unjustifiable refusal to pursue claims because the Committee cannot show that the likely benefit to the estates by granting the Committee's Standing Motion outweighs the costs of relief.⁷⁷³

The Committee's Reply to SN's Objection.

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

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

⁷⁷⁰ *Id.* at 9.

⁷⁷¹ *Id.* at 10.

⁷⁷² *Id.*

⁷⁷³ *Id.* at 10–11.

⁷⁷⁴ Reply of the Official Committee of Unsecured Creditor to the Debtors' Objection to the Committee's Motion for Leave, Standing, and Authority to Prosecute Claims and the Secured Notes Ad Hoc Group's Joinder in Support, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 19, 2020) [hereinafter UCC Reply], <https://perma.cc/G4LG-MC5E>.

⁷⁷⁵ *Id.* at 2.

negotiations.⁷⁷⁶ Additionally, the Committee expressed displeasure over the “glacial progress” of SN and demanded no further delay in resolution of the claims.⁷⁷⁷

Next, the Committee argued that the Standing Motion was not premature because it was critical for all stakeholders that the claims be pursued quickly due to the March 9 plan-filing milestone.⁷⁷⁸ Moreover, the Committee stated that it was not possible to formulate a plan before it was clear whether the Collateral Trustee had a perfected security interest.⁷⁷⁹ Additionally, the Committee re-emphasized that SN’s lack of meaningful progress to settle the claims further demonstrated the timing of the Standing order was justified.⁷⁸⁰ Last, the Committee argued that it was the proper party to bring the claims because it was the unsecured creditors’ interests that were primarily at stake.⁷⁸¹

Order of Resolution.

On February 20, 2020, the Court ordered a resolution resolving the Committee’s Standing Motion.⁷⁸² The Court ordered that:

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

⁷⁷⁶ *Id.* at 4.

⁷⁷⁷ *Id.*

⁷⁷⁸ *Id.* at 5–6.

⁷⁷⁹ *Id.* at 6.

⁷⁸⁰ UCC Reply, *supra* note 902, at 6.

⁷⁸¹ *Id.* at 7. The remainder of the objection constituted the Committee’s response to the joinder of the First Lien Group, pertaining to whether the claims were colorable

⁷⁸² Order Resolving Committee’s Standing Motion (ECF No. 875 and Related ECF Nos.), *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 20, 2020) [hereinafter Resolution of Unsecured Creditor Claims], <https://perma.cc/TB2D-4BGB>.

2. If the Debtors do not file a lien challenge complaint by 11:59 p.m. on March 10, 2020, the exclusive right to file a lien challenge complaint against the Collateral Trustee (to be filed on behalf of the Estate) will vest without further court order with the Official Committee of Unsecured Creditors.
3. The Challenge deadline for the filing of any lien challenge complaint under paragraph 2 is extended through 11:59 p.m. on March 13, 2020.
4. The authorization in paragraph 2 vests standing with the Committee to bring the lien challenge complaint in accordance with this Order.
5. ECF No. 875 and ECF No. 939 are abated.
6. If the Debtors file a Motion under Fed. R. Bankr. 9019 by 11:59 p.m. on March 10, 2020, any adversary proceeding commenced as a result of any lien challenge complaint will be abated pending a ruling on the 9019 Motion.⁷⁸³

The Committee Makes Another Motion to Pursue Claims.

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

⁷⁸³ *Id.* at 1–2.

⁷⁸⁴ Motion of the Official Committee of Unsecured Creditors for Leave, Standing, and Authority to Prosecute Claims on Behalf of the Debtors' Estates and for Related Relief at 2, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Mar. 13, 2020) [hereinafter UCC Motion to Prosecute Claims], <https://perma.cc/K726-MD24>.

⁷⁸⁵ *Id.*

⁷⁸⁶ *Id.*

stated that the same standard seen in the previous Motion had been met—colorable claim and unjustifiable refusal by the debtor in possession.⁷⁸⁷ The Proposed Complaints, among other claims, included:

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

⁷⁸⁷ *Id.* at 15–30.

- Breach of fiduciary duty against Antonio R. Sanchez, III (“Tony III”) in connection with (*redacted*);
- Breach of fiduciary duty against certain of the Proposed Defendants in connection with allowing SN to enter into and continue a lease participation agreement between SN and SOG with respect to a ranch in Kenedy County, Texas (the “Ranch”); and
- Breach of contract against SOG in connection with SOG’s failure to perform its obligations under a services agreement between SOG and SN.⁷⁸⁸

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

⁷⁸⁸ *Id.* at 2–3.

⁷⁸⁹ *Id.* at 15.

⁷⁹⁰ UCC Motion to Prosecute Claims, *supra* note 912, at 15–31.

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

⁷⁹² *Id.* 28–29.

unreasonable.⁷⁹³ The Committee stated that Courts “look to whether the interests of creditors are left unprotected as a result of the refusal and where the refusal impairs the interests of an estate and its creditors, the Court must consider that refusal unjustified.”⁷⁹⁴ Here, the Committee argued, the numerous claims would benefit the estates, resolve critical issues, and would provide tens or hundreds of millions of dollars to the estates.⁷⁹⁵ Thus, the Committee concluded, the potential recovery for the unsecured creditors substantially outweighed any costs related to prosecuting the claims.⁷⁹⁶ Finally, the Committee argued that it should have exclusive authority to settle the claims because the Committee’s ability to litigate the claims would be compromised if SN retain any right to propose settlements due to an “improper settlement dynamic” that may be detrimental to the estates and creditors.⁷⁹⁷ We must wait for further development on this matter as there has not been an objection or an order on this Motion to date.

Unexpired Leases and Executory Contracts.

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

On October 22, 2019, SN filed a Motion for Entry of an Order Authorizing Rejection of the Shell Sublease Agreement Effective Nunc Pro Tunc to the Date Hereof.⁷⁹⁸ On October 31, 2016, and as the sublessee, SN executed a sublease as the sublessee of office space on the 31st

⁷⁹³ *Id.* at 29.

⁷⁹⁴ *Id.* at 29–30.

⁷⁹⁵ *Id.* at 30.

⁷⁹⁶ UCC Motion to Prosecute Claims, *supra* note 912, at 30.

⁷⁹⁷ *Id.* at 31.

⁷⁹⁸ Docket No. 504, <https://perma.cc/QE6A-K2J3>.

floor of 1000 Main Street, Houston, Texas with Shell Oil Company as landlord.⁷⁹⁹ SN argued that it was always intended to be the sublessee under the Shell Sublease Agreement because SN signed the sublease, was the notice party under the agreement, and utilized the sublease premises.⁸⁰⁰ Therefore, SN concluded, the Shell Sublease was an unexpired lease of which SN had the ability to reject pursuant to § 365(a) of the Bankruptcy Code.⁸⁰¹ SN stated that, in its business judgment, it no longer needed the office space, and if the Court authorized SN to reject the Shell sublease, SN would save approximately \$95,000 per month or \$7 million for the remaining term of the sublease.⁸⁰²

Additionally, SN stated that there remained some certain personal property, such as furniture, fixtures, and equipment, on the premises.⁸⁰³ SN argued that the burden of removing, marketing and selling the property would have exceeded the value of the property; thus, SN maintained that abandoning such property was appropriate and in the best interests of SN and the estates.⁸⁰⁴

In support of its Motion, SN argued that § 365(a) of the Bankruptcy Code provided that a debtor in possession may, in accordance with the business judgment standard, reject any executory contract or unexpired lease in order to relieve the estate of burdensome agreements not completely performed.⁸⁰⁵ SN argued that rejection of the sublease was appropriate and well within its business

⁷⁹⁹ Debtors' Motion for Entry of an Order Authorizing Rejection of the Shell Sublease Agreement Effective Nunc Pro Tunc to the Date Hereof at 4, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Oct. 22, 2019) [hereinafter Shell Sublease Motion], <https://perma.cc/QE6A-K2J3>.

⁸⁰⁰ *Id.* at 5.

⁸⁰¹ *Id.*

⁸⁰² *Id.*

⁸⁰³ *Id.* 5–6.

⁸⁰⁴ *Id.* at 6.

⁸⁰⁵ Shell Sublease Motion, *supra* note 927, at 6.

judgment and in the best interest of the estates because the sublease would impose an ongoing financial obligation on SN and yet no benefit.⁸⁰⁶

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

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

On November 14, 2019, no objections were filed in response to the Motion; thus, SN filed a Certificate of No Objection with a Proposed Order.⁸¹² An Order from the Court authorizing rejection of the Shell Sublease Agreement, with the same terms as the Proposed Order, followed on November 15, 2019.⁸¹³

⁸⁰⁶ *Id.* at 7.

⁸⁰⁷ *Id.* at 8.

⁸⁰⁸ *Id.*

⁸⁰⁹ *Id.*

⁸¹⁰ *Id.* at 9.

⁸¹¹ Shell Sublease Motion, *supra* note 927, at 9.

⁸¹² Certificate of No Objection, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Oct. 27, 2019) [hereinafter Shell Sublease No Objection], <https://perma.cc/633Y-SBQW>.

⁸¹³ Order Authorizing Rejection of the Shell Sublease Agreement Effective Nunc Pro Tunc to the Date Hereof, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Nov. 15, 2019), <https://perma.cc/MH3T-9B7A>.

**Debtors' Motion for Entry of an Order Authorizing Rejection of the
Cornerstone Master Agreement Effective Nunc Pro Tunc to the Date Hereof.**

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

On September 28, 2018, SN entered into a master agreement with Cornerstone OnDemand, Inc. for human capital management software and related services.⁸¹⁵ The agreement permitted SN the right to use software programs and required Cornerstone to provide support services, such as software hosting and delivery, technical support, monitoring, maintenance, and security.⁸¹⁶ Under the agreement, Cornerstone invoiced SN annually for the upcoming year for services; and, on November 1, 2018, SN paid \$41,261 for the first year.⁸¹⁷ An invoice for the second year of \$45,378.01 was due on October 28, 2019.⁸¹⁸

SN argued that it no longer needed the products or services under the Cornerstone Master Agreement and authorization to reject the agreement would have saved SN and its estates \$90,000.⁸¹⁹ The analysis was similar to the arguments set forth in the Shell Sublease Motion with respect to SN's bases for relief.⁸²⁰

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

⁸¹⁵ *Id.* at 4.

⁸¹⁶ *Id.*

⁸¹⁷ *Id.*

⁸¹⁸ *Id.*

⁸¹⁹ *Id.*

⁸²⁰ Cornerstone Lease Motion, *supra* note 942, at 5–7. An exception is, here, in this motion there is no abandonment of personal property because this agreement pertains to software and services.

On November 20, 2019, the Court ordered authorization for rejection of the Cornerstone Master Agreement with the same terms as the Proposed Order in the Motion.⁸²¹

SN's Motion to Extend Time to Assume or Reject Unexpired Leases of Nonresidential Property.

On December 6, 2019, pursuant to § 365(d)(4) of the Bankruptcy Code, SN filed a motion to extend the time period in which SN must assume or reject unexpired leases of nonresidential real property by 90 days in order to continue to evaluate the Unexpired Leases.⁸²² SN stated that it was party to over 2,000 Unexpired Leases, including commercial office space, surface leases, easements, and rights of way, and oil and gas leases; and, SN had not yet determined which Unexpired Leases may be assumed or rejected as part of its restructuring strategy.⁸²³

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

- a. Whether the lease is the debtor's primary asset;
- b. Whether the debtor has had sufficient time to intelligently appraise its financial situation and potential value of its assets in terms of the formulation of a plan of reorganization;
- c. Whether the lessor continues to receive rent for the use of property;

⁸²¹ Order Authorizing Rejection of the Cornerstone Master Agreement Effective Nunc Pro Tunc to the Date Hereof, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Nov. 20, 2020), <https://perma.cc/AWU5-4CAJ>.

⁸²² Debtors' Motion for Entry of an Order Extending the Time Within Which the Debtors Must Assume or Reject Unexpired Leases of Nonresidential Real Property, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Dec. 6, 2019), [hereinafter SN's Motion for Time Extension to Assume or Reject Unexpired Leases] <https://perma.cc/4A4X-WL4E>.

⁸²³ *Id.* at 4.

- d. Whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;
- e. Whether the case is exceptionally complex and involves a large number of leases;
- f. Whether the debtor has failed or is unable to formulate a plan when it has had sufficient time to do so; and
- g. Any other factors bearing on whether the debtor has had a reasonable amount of time in which to decide whether to assume or reject the lease.⁸²⁴

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

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

⁸²⁴ *Id.* at 5–6.

⁸²⁵ *Id.* at 6.

⁸²⁶ *Id.*

⁸²⁷ *Id.*

⁸²⁸ SN's Motion for Time Extension to Assume or Reject Unexpired Leases, *supra* note 950, at 7.

⁸²⁹ *Id.*

⁸³⁰ *Id.*

since SN had performed postpetition obligations, SN's occupation of the premises would not damage the lessors, and a lessor may request of the Court an earlier date for SN to assume or reject its lease.⁸³¹

On January 31, 2020, SN filed a Certificate of No Objection to the Motion and included a Proposed Order.⁸³² On February 3, 2020, the Court ordered the extension of time to assume or reject unexpired leases to March 9, 2020.⁸³³ The Order contained the same provisions as the Proposed Order.

On February 28, 2020, SN filed a Motion seeking entry of an order approving three stipulations between it and landlords regarding extension of time for SN to assume or reject certain unexpired leases of nonresidential real property.⁸³⁴ SN was a party to three unexpired leases, including the 28th, 29th, and 30th floors in the 1000 Main building on 1000 Main Street, Houston, Texas 7702; Suite 301 at 11503 NW Military Highway, San Antonio, Texas 78231; and the premises at 4674 US Highway 277, Carrizo Springs, Texas 78834.⁸³⁵ SN stated that it was still evaluating whether assumption or rejection of the leases were in the best interests of the estates; and, therefore, SN needed additional time to make its decision.⁸³⁶ While the Court had already granted a 90-day extension to March 9, 2020, pursuant to stipulations, SN and the landlords of the respective properties agreed to further extension of time to assume or reject the leases to the earlier

⁸³¹ *Id.* at 8.

⁸³² Certificate of No Objection, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Jan. 31, 2020), <https://perma.cc/G742-ZJVS>.

⁸³³ Order Extending the Time Within Which the Debtors Must Assume or Reject Unexpired Leases of Nonresidential Real Property, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 3, 2020), <https://perma.cc/WD6A-P59C>.

⁸³⁴ Debtors' Motion for Entry of an Order Approving Stipulations Extending the Time Within Which the Debtors Must Assume or Reject Certain Unexpired Leases of Nonresidential Real Property, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Feb. 28, 2020), <https://perma.cc/Q5V6-6FEE>.

⁸³⁵ *Id.* at 3.

⁸³⁶ *Id.*

of June 30, 2020 and the effective date of a confirmed plan of reorganization.⁸³⁷ SN argued that under § 365(d)(4)(B)(ii), even though the Court had previously provided a time extension to assume or reject unexpired leases, the Court may grant a subsequent extension “upon prior written consent of the lessor in each instance.”⁸³⁸ Here, SN argued, the landlords for each lease has given prior written consent via stipulations; thus, SN concluded that extension of time was proper.⁸³⁹ On March 24, 2020, SN filed a Certificate of No Objection;⁸⁴⁰ and, the Court entered an Order consisting of the same terms as the Proposed Order.⁸⁴¹

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

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

⁸³⁷ *Id.*

⁸³⁸ *Id.* at 4.

⁸³⁹ *Id.*

⁸⁴⁰ Certificate of No Objection, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Mar. 24, 2020), <https://perma.cc/H2AC-GX5T>.

⁸⁴¹ Order Approving Stipulations Extending the Time Within Which the Debtors Must Assume or Reject Certain Unexpired Leases of Nonresidential Real Property, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Mar. 24, 2020), <https://perma.cc/6N9R-QJXF>.

⁸⁴² Debtors’ Motion for Entry of an Order Authorizing Rejection of Lease Participation Agreement Effective Nunc Pro Tunc to the Date Hereof, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Jan. 3, 2020), [hereinafter Motion to Reject Lease Participation Agreement], <https://perma.cc/6YAV-5947>.

⁸⁴³ *Id.* at 5. SOG leased the property from the John G. and Marie Stella Kennedy Memorial Foundation under a separate agreement. *Id.*

where SN was responsible for 90% of expenses and SOG was responsible for the remaining 10%.⁸⁴⁴ Both SN and SOG had termination rights under the agreement.⁸⁴⁵ Historically, SOG had paid all expenses under the agreement and SN reimbursed SOG through joint-interest billing monthly.⁸⁴⁶ To date, SN had reimbursed SOG for \$13.6 million in expenses under the agreement.⁸⁴⁷ SN's CRO, in working to redevelop SN's business plan, evaluated certain executory contracts and unexpired leases and concluded that rejecting the Lease Participation Agreement was in the best interests of SN and the estates.⁸⁴⁸

SN argued that rejection of the agreement constituted a sounder exercise of its reasonable business judgment and that deeming rejection of the agreement as of the Motion filing date was appropriate in the same manner of previous motions to reject unexpired leases.⁸⁴⁹

On January 28, 2020, the Court ordered, under the same terms as the Proposed Order, that the Lease Participation Agreement be rejected as of the date the Motion was filed.⁸⁵⁰

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

On March 6, 2020, SN filed an Omnibus Motion for Entry of an Order Authorizing (I) Assumption of Unexpired Leases of Non-Residential Real Property and (II) Granting Related Relief.⁸⁵¹ The motion followed the February 3 Order Extending Time Within Which the Debtors

⁸⁴⁴ *Id.*

⁸⁴⁵ *Id.* at 6.

⁸⁴⁶ *Id.*

⁸⁴⁷ *Id.*

⁸⁴⁸ Motion to Reject Lease Participation Agreement, *supra* note 968, at 6.

⁸⁴⁹ *See id.* at 7–10.

⁸⁵⁰ Order Authorizing Rejection of Lease Participation Agreement Effective Nunc Pro Tunc to the Date Hereof, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Jan. 28, 2020), <https://perma.cc/ZPT2-Y363>.

⁸⁵¹ Docket No. 1016, <https://perma.cc/S4RX-3EF9>.

Must Assume or Reject Unexpired Leases of Nonresidential Real Property, where the Court authorized SN to assume any unexpired lease of nonresidential real property under § 365(d)(4) of the Bankruptcy Code through March 9, 2020.⁸⁵²

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

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

⁸⁵² Omnibus Motion for Entry of an Order Authorizing (I) Assumption of Unexpired Leases of Non-Residential Real Property and (II) Granting Related Relief at 4, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Mar. 3, 2020) [hereinafter Assumption of Unexpired Leases Motion], <https://perma.cc/S4RX-3EF9>.

⁸⁵³ *Id.* SN included Schedule 1 to identify the Unexpired Leases.

⁸⁵⁴ *Id.* 4–5.

⁸⁵⁵ *Id.* at 5.

⁸⁵⁶ *Id.* at 6–7.

⁸⁵⁷ *Id.*

⁸⁵⁸ Assumption of Unexpired Leases Motion, *supra* note 978, at 7.

⁸⁵⁹ *Id.* at 8.

On April 21, 2020, the Court ordered, under the same terms as the Proposed Order, that the Unexpired Leases be assumed.⁸⁶⁰

Sanchez Energy Corporation- The Future

The Ideal Scenario

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

The Reality

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

⁸⁶⁰ Order Authorizing (I) Assumption of Unexpired Leases of Non-Residential Real Property and (II) Granting Related Relief at 4, *In re Sanchez Energy Corp.*, No. 19-34508 (MI) (Bankr. S.D. Tex. Filed Apr. 21, 2020), <https://perma.cc/NW3H-YWTH>.

due to decreased consumption and inability to move/store product, the futures for price per barrel of oil hit an all-time low, \$(-)35.20.⁸⁶¹ The E&P industry suffered from the drastic drop in oil prices as Russia and Saudi Arabia duel over the oil industry, resulting in many companies like SN struggling to stay profitable and out of bankruptcy. As the war wages on and the global economy fights to find balance during the quarantine of COVID-19, prospects of E&P companies successful business ventures and successful reorganizations dwindle.

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

⁸⁶¹ Catherine Ngai et al., *Oil Plunges Below Zero for First Time in Unprecedented Wipeout*, BLOOMBERG (Apr. 20, 2020) <https://www.bloomberg.com/news/articles/2020-04-19/oil-drops-to-18-year-low-on-global-demand-crunch-storage-woes>, <https://perma.cc/YM34-8PZ7>.