

Milbank

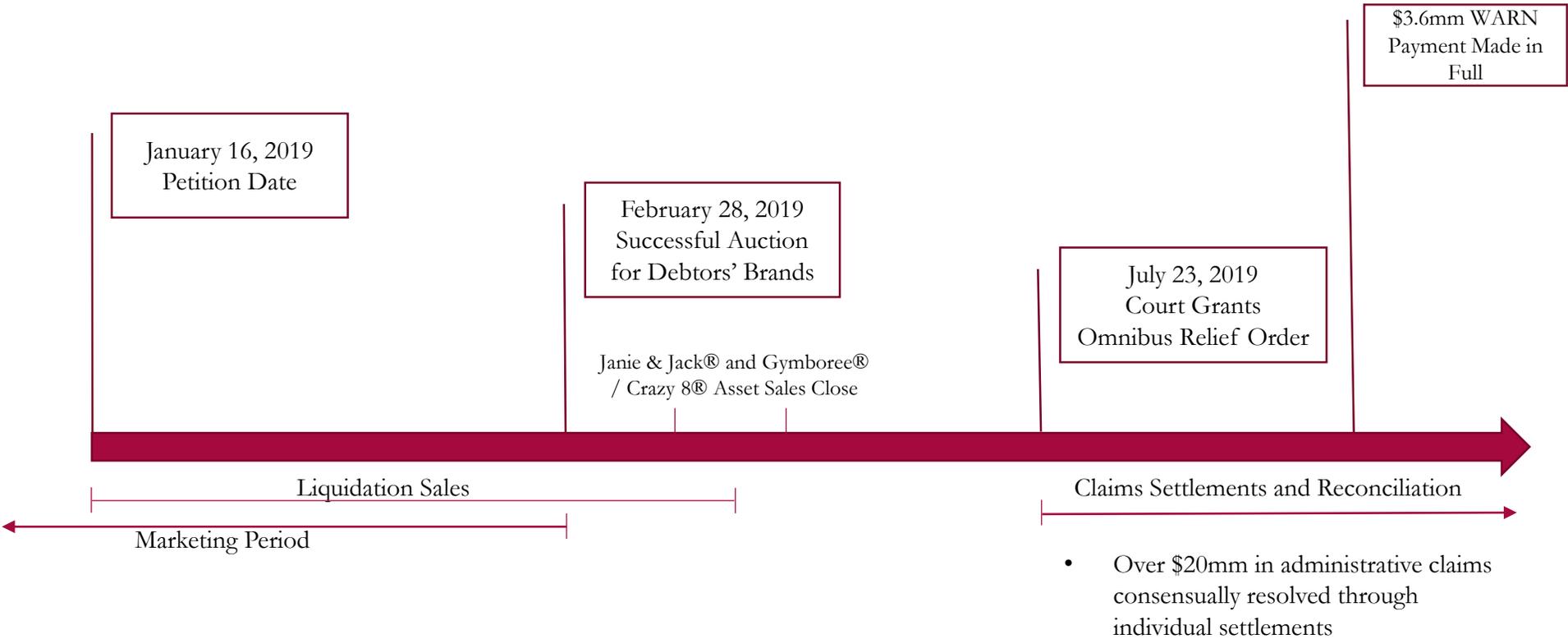
May 27, 2020

**In re Gemstone Solutions, Inc., et al.
Case No. 19-30258 (KLP)**

Confirmation Hearing Presentation

United States Bankruptcy Court for the Eastern District of Virginia
Honorable Keith L. Phillips

Case Trajectory



Case Milestones & Achievements

- Through these cases, the Debtors have achieved several key milestones and preserved and maximized value for their stakeholders by, among other things:
 - **Monetizing inventory** pursuant liquidation and managed promotional sales;
 - Running a **successful auction** for the assets behind the Debtors' three brands;
 - **Preserving jobs** through a going concern sale of the Janie & Jack® business;
 - **Paying stub rent** in full;
 - Honoring employee obligations through **consensual WARN payments**;
 - Mitigating losses to administrative creditors through **over \$20mm in settled 503(b)(9) claims**; and
 - Realizing significant value by **liquidating residual assets**.

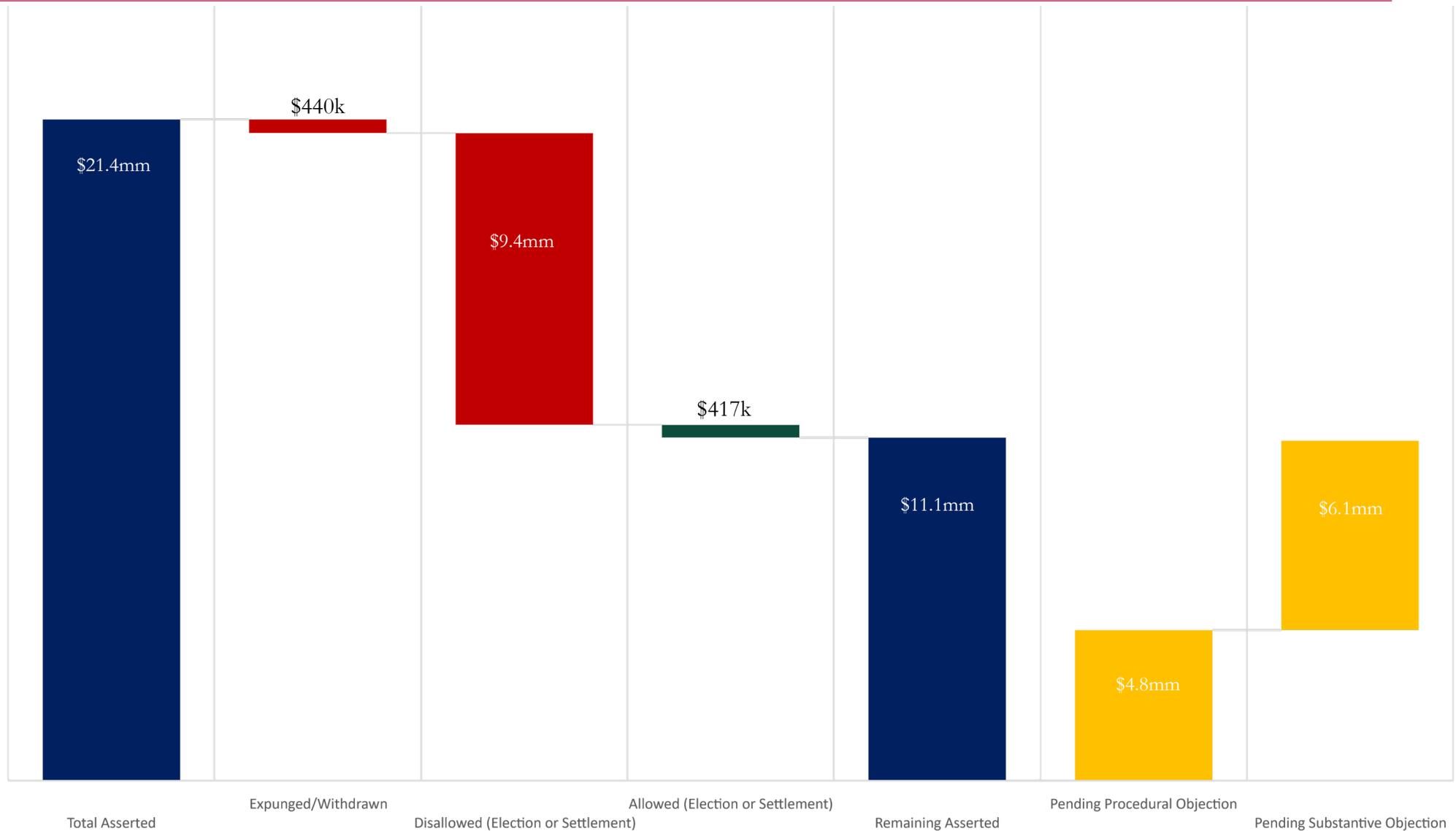
Key Terms of Debtors' Plan

- **Administrative Claim Settlements.** The Plan is premised on a consensual settlement of Administrative Claims pursuant to which each holder thereof shall receive, at its election, either:
 - Payment in cash equal to 60% of the allowed amount of the Administrative Claim; or
 - An upfront payment in cash equal to 32.5% of the allowed amount of the Administrative Claim *plus* an additional deferred amount up to 57.5% of the allowed amount of the Administrative Claim.
- **Equitization of DIP Claims.** The new equity interests in the Reorganized Debtors will be issued to the holder the New Money DIP Claims in full satisfaction of the DIP claims.
- **Exit Facility.** The Plan Sponsor will provide a \$10mm exit facility to fund the Reorganized Debtors' general corporate expenses and/or the Debtors' purchase of a controlling interest in Certified Art and Collectibles.
- **Reorganized Debtors' Operations.** Following the occurrence of the Effective Date, the Reorganized Debtors will operate Certified Art and Collectibles, administer the Plan, and continue to monetize the Debtors' remaining assets, which will fund additional recoveries to holders of Administrative Claims electing deferred treatment under the Plan.

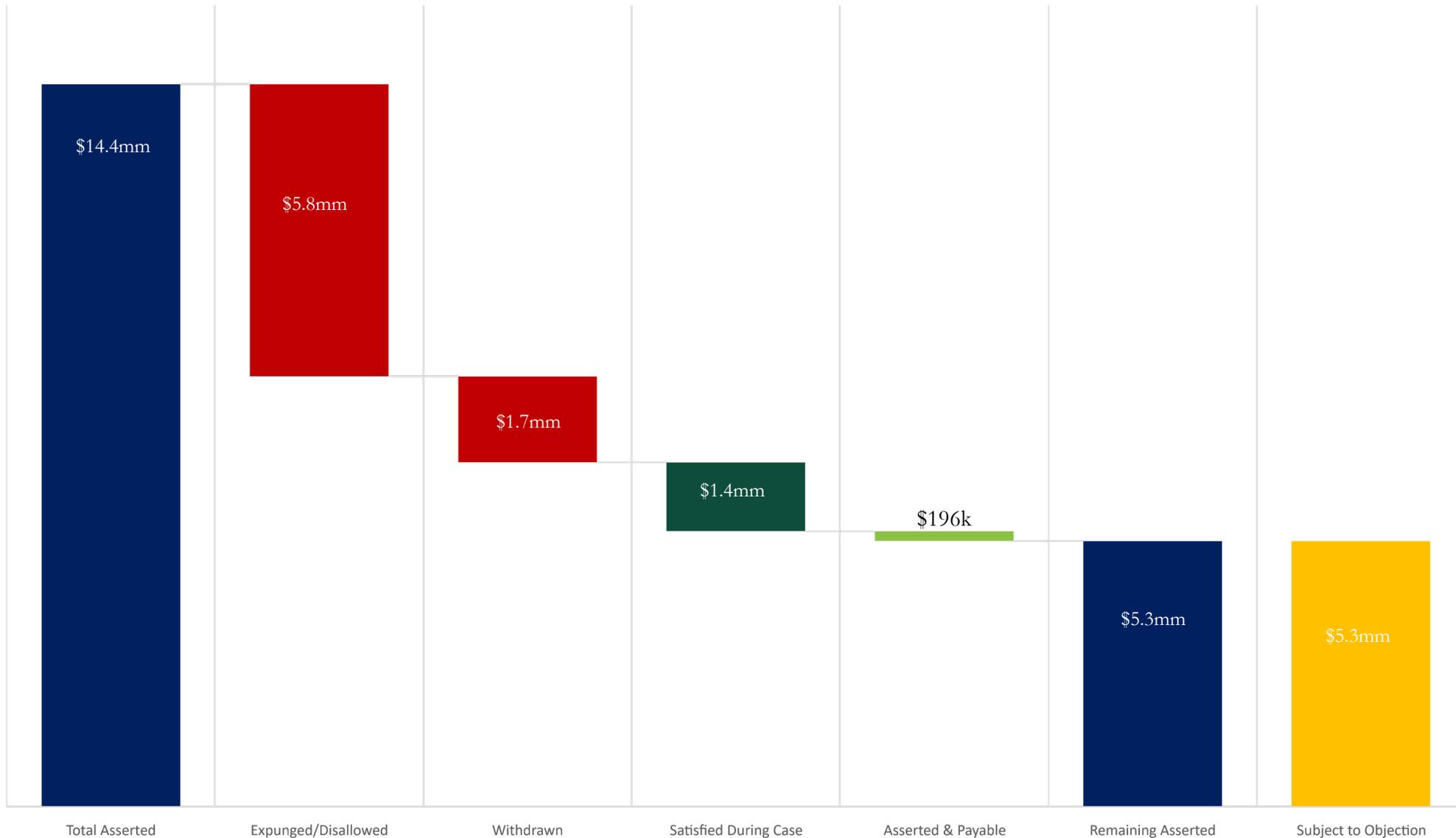
503(b)(9) Claims Walkdown



Administrative Claims Walkdown



Priority Claims Walkdown



Classification & Voting Results

Class	Designation	Treatment	Voting Status
1	Prepetition ABL Claims	Impaired	Entitled to Vote
2	Other Secured Claims	Unimpaired	Deemed to Accept/ Not Entitled to Vote
3a	General Unsecured Claims	Impaired	Deemed to Reject/ Not Entitled to Vote
3b	Deficiency Claims	Impaired	Entitled to Vote
4	Intercompany Claims	Impaired	Deemed to Reject/ Not Entitled to Vote
5	Interests in Gemstone Solutions	Impaired	Deemed to Reject/ Not Entitled to Vote
6	Interests in Subsidiary Debtors	Either (i) Unimpaired or (ii) Impaired	Either (i) Deemed to Accept/Not Entitled to Vote or (ii) Deemed to Reject/Not Entitled to Vote

Class	Accepting Votes
1	100%
3b	100%

Confirmation Requirements

The Plan satisfies all of the requirements of Section 1129 of the Bankruptcy Code

<p>§ 1129(a)(1)</p>	<ul style="list-style-type: none"> The Plan complies with the applicable provisions of the Bankruptcy Code, including properly classifying claims under § 1122. <ul style="list-style-type: none"> All claims in the same class are substantially similar. The Plan’s classification scheme classifies claims based upon each claim’s legal nature and entitlements, taking into account the relative priority among claims and interests. The deemed substantive consolidation of the Debtors’ estates is appropriate. The Plan satisfies § 1123 of the Bankruptcy Code, including the Plan’s release and exculpation provisions. 	<p>Conf. Brief ¶¶ 2-32, 94-101 Kimmins Decl. ¶¶ 9-16 Plan Arts. II, III</p>
<p>§ 1129(a)(2)</p>	<ul style="list-style-type: none"> The Plan complies with the applicable provisions of the Bankruptcy Code, including the disclosure and solicitation requirements set forth in §§ 1125 and 1126. <ul style="list-style-type: none"> The Disclosure Statement was held to contain adequate information. The Debtors distributed solicitation packages to Holders of Claims and Interests pursuant to the solicitation procedures. 	<p>Conf. Brief ¶¶ 33-39</p>
<p>§ 1129(a)(3)</p>	<ul style="list-style-type: none"> The Plan was proposed in good faith and the Debtors have negotiated a Plan that provides for meaningful recoveries for the Debtors’ administrative and priority creditors. 	<p>Conf. Brief. ¶¶ 40-41 Kimmins Decl. ¶ 6</p>
<p>§ 1129(a)(4)</p>	<ul style="list-style-type: none"> The only category of Claims that falls within the ambit of § 1129(a)(4) is the Fee Claims. All Fee Claims will only be paid after they are Allowed by this Court. 	<p>Conf. Brief ¶¶ 42-43 Plan Art. II.A.1.d</p>

Confirmation Requirements

§ 1129(a)(5)	<ul style="list-style-type: none"> The Plan discloses that the Reorganized Debtors' board will be comprised of three members whose identities have been disclosed in the Plan Supplement. The proposed directors and officers of the Reorganized Debtors have significant knowledge and business and industry experience, are competent, and will provide the Reorganized Debtors both with continuity and insight into running their business. 	<p>Conf. Brief ¶¶ 44-46 Plan Art. III.B Plan Supplement Exhibit F</p>
§ 1129(a)(6)	<ul style="list-style-type: none"> No rate changes require governmental approval. 	<p>Conf. Brief ¶ 47</p>
§ 1129(a)(7)	<ul style="list-style-type: none"> In a hypothetical chapter 7 liquidation scenario, none of the Debtors' other creditors would receive any distribution because the Debtors would have to satisfy the claims of the DIP Lenders in full. The Plan, if confirmed, makes recoveries possible for at least some of the Debtors' other creditors. 	<p>Conf. Brief ¶¶ 48-51</p>
§ 1129(a)(8)	<ul style="list-style-type: none"> The Plan meets the "cramdown" requirements of § 1129(b) and may be confirmed despite non-compliance with § 1129(a)(8). 	<p>Conf. Brief ¶¶ 52-53</p>
§ 1129(a)(9)	<ul style="list-style-type: none"> § 1129(a)(9) is satisfied in each case: <ul style="list-style-type: none"> The Holders of Allowed Priority Tax Claims will be paid in accordance with § 1129(a)(9). Holders of Administrative Claims that have entered into Individual Administrative Claim Settlements have "agreed to a different treatment" of their Administrative Claims than payment in full. The Plan gives a choice to the remaining Holders of Administrative Claims, to either (i) agree to the terms of the Plan Administrative Claim Settlement or (ii) opt-out of such settlement. 	<p>Conf. Brief ¶¶ 54-57, 90-93 Plan Art. II.A.1</p>

Confirmation Requirements

§ 1129(a)(10)	<ul style="list-style-type: none"> Both Impaired Classes (Class 1 and Class 3b) overwhelmingly voted to accept the Plan. 	Conf. Brief ¶ 58
§ 1129(a)(11)	<ul style="list-style-type: none"> The Plan is feasible because: <ul style="list-style-type: none"> The Debtors will be in a position to meet their obligations under the Plan and will be able to conduct the business of Certified Art and Collectibles without the need for further financial reorganization; and Feasibility is not determined by the ability to satisfy conditions precedent to consummation. 	Conf. Brief ¶¶ 59-61, 77-78 Kimmins Decl. ¶ 7
§ 1129(a)(12)	<ul style="list-style-type: none"> All fees payable pursuant to 28 U.S.C. § 1930 shall be paid in full by the Debtors. 	Conf. Brief ¶¶ 62-63
§ 1129(a)(13)-(16)	<ul style="list-style-type: none"> These provisions do not apply to the Plan. 	Conf. Brief ¶ 64
§ 1129(b)	<ul style="list-style-type: none"> The Plan satisfies the cramdown requirements <ul style="list-style-type: none"> The Plan does not unfairly discriminate because with respect to any of the classes deemed to reject the Plan because the claims and interests in each class are legally distinct in their respective legal nature from claims and interests in all other classes. All similarly situated claims and interests will receive substantially similar treatment under the Plan. The Plan is fair and equitable as to the holders of claims and interests in each of Classes 3a, 4, 5 and 6 as no claims or interests, as applicable, junior to those in each such class will receive or retain any property under the Plan on account of such junior claims or interests 	Conf. Brief ¶¶ 65-72
§§ 1129(c)-(e)	<ul style="list-style-type: none"> §§ 1129(c)-(e) are inapplicable because the purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act. No governmental unit or any other party has requested the Court decline to confirm the Plan on such grounds. 	Conf. Brief ¶ 73 Kimmins Decl. ¶ 8

Summary of Objections to Debtors' Plan and Debtors' Responses

Objecting Party	Objection(s) Raised	Debtors' Response to Objection
United States Trustee [Docket No. 1557]	The Emergence Benefit Programs fail to meet the requirements of 11 U.S.C. § 503(c), rendering the Amended Plan unconfirmable pursuant to 11 U.S.C. §1129(a)(1).	As set forth more fully in the Confirmation Brief, the Plan complies with section 503(c) of the Bankruptcy Code because any amounts due and owing under the Emergence Benefits Programs are obligations of the <i>Reorganized Debtors</i> and not subject to section 503(c) or the purview of the Bankruptcy Court.
United States Trustee [Docket No. 1557]	The Amended Plan fails to meet the requirements of 11 U.S.C. § 1129(a)(9) because administrative claimants who are not being paid in full should not be deemed to consent to a reduced amount of their claims.	<p>Holder's who do not opt-out of Plan Administrative Claim Settlement become a Plan Administrative Claim Settlement Claimants.</p> <p>This structure is appropriate and supported by applicable law. Recent cases have held that a creditor's failure opt out of a claim settlement structure may be treated as consent to such settlement.</p> <p>We note that the United States Trustee's objection on this point in connection with the Disclosure Statement was overruled.</p>
Lim Line [Docket No. 1562]	The plan cannot be consummated under section 1129(a)(11) unless there is confirmation that the Disputed Administrative Claims Reserve will be sufficiently funded to pay the full amount of Lim Line's Administrative Claim.	As set forth more fully in the Confirmation Brief, Lim Line misstates the feasibility requirements of the Bankruptcy Code. Lim Line also overstates the amount of its Administrative Claim.
United States Trustee [Docket No. 1557] The Landlords [Docket No. 1565]	The proposed third-party releases and exculpation clauses are overbroad.	As set forth more fully in the Confirmation Brief, the third-party releases and exculpation provisions are appropriately tailored in accordance with Fourth Circuit law and are substantial similar to third-party releases approved in this Court and others.

Summary of Objections to Debtors' Plan and Debtors' Responses

Objecting Party	Objection(s) Raised	Debtors' Response to Objection
<p>Oracle Credit Corporation (Affiliate of Oracle America, Inc.) [Docket No. 1556]</p> <p>RNOT LLC [Docket No. 1558]</p> <p>Lim Line [Docket No. 1562]</p>	<p>These parties object to, and affirmatively opt out of, the Plan's third-party release provisions.</p>	<p>As set forth more fully in the Confirmation Brief, the third-party release provisions are appropriately tailored in accordance with Fourth Circuit law and are substantially similar to third-party releases approved in this Court and others.</p>
<p>The Landlords [Docket No. 1565]</p>	<p>The Landlords object to any injunction or releases affecting their ability to properly assert claims that have yet been billed under their leases, affecting their setoff and recoupment rights, as well as their ability to assert appropriate defenses or bring claims against the Debtors, their successors, or any appropriate third parties that may be unknown at this time due to the continuing use of occupancy of leased premises.</p>	<p>To the extent that the Landlords timely asserted claims that are Allowed Administrative Claims, the relevant provisions do not affect their setoff and recoupment rights.</p>
<p>Certain Taxing Entities [Docket No. 1560]</p>	<p>Certain Texas Tax entities object to the Plan to the extent that it provides for disparate treatment of similarly situated taxing entity creditors. Specifically, Certain Texas Tax entities believe that they are secured creditors under Class 2, have not been paid, and otherwise object to their treatment.</p>	<p>Objection addressed in Confirmation Order.</p>