disclosure statement, they have said we think this is a reasonable value. So, there's no secret anymore as to what Enersys -- as to what Exide thinks the assets are worth. There's no secret as to the fact that they have already agreed to sell subject to Court approval, their assets to a particular buyer.

THE COURT: So then you now have all you need.

MR. LAPOWSKY: What I need -- I don't need anything as a potential buyer. And this gets actually into the third issue, which is Enersys is not competing here against either Exide's internal view of value, or the bank's view of value, the $950 million. It has been made clear to us, and I think to the Court, that their -- we need to get, or the committee needs to get, or some plan proponent needs to get to about a billion two in total value before you can clear the banks. So, what Enersys is looking at as a buyer it recognizes that its pricing decision is completely unrelated to Exide's internal view of its own value, or the bank's view, because there is a huge gap that still needs to be cleared above that before you get to a viable alternative to the plan that's on the table. And unless you get a viable alternative to the plan that's on the table, Exide's hat, the hat it wears as a possible buyer, is completely irrelevant. So, in terms of comparing this --

THE COURT: Enersys's.

MR. LAPOWSKY: And there's -- it's hard, and may I

used the wrong word. In terms of what we are looking for with our hat as a objector, as a plan objector, is anything that would undercut the credibility of the $950 million valuation. And we're not looking for something that would undercut it low, which is what we would be looking for if we were just wearing our buyer hat. I mean, as a buyer, we'd like to say, gee, these guys only think it's worth 700 million. Maybe we'll offer 800 million. That does us -- that is not what we're looking for as a plan objector. What we're looking for is something that impacts the credibility because it's too high, because it goes up above $950 million. As a buyer, that hurts me. But that's what I'm looking for. It's the only thing that's relevant to me.

THE COURT: But what if you find the opposite?

MR. LAPOWSKY: If I find --

THE COURT: And what if confirmation is denied?

MR. LAPOWSKY: If I find -- excuse me.

THE COURT: And what, then, will be the effect on the estate if the alternative that one or more parties want to explore is liquidation?

MR. LAPOWSKY: The -- everything in the disclosure statement leads you to the conclusion that Exide and the banks believe $950 million is the right number, and it's been confirmed by Blackstone through it's internal analysis, three methods of valuation, and also through an exploration of the

private equity market. So, I don't expect that we're going to find that. I think -- and it's not what I'm looking for. But how do I participate in confirmation without being able to explore the credibility on the upside, whether there is anything that indicates a higher value without being able to explore these issues?

THE COURT: See, I think it might be different, Mr. Lapowsky, if -- and I haven't thought this entirely through -- but it might be different if it were the committee standing there at the podium, because Enersys doesn't have a fiduciary obligation to the estate. Enersys doesn't have any interest to concern itself but itself. You know, it only has to look at its own interest. And what Mr. Kleiman -- what I thought I heard Mr. Kleiman say was you can wear as many hats as you like, but there are consequences to that. And you made the choice, and it may -- the choice may turn out to be a great one. It may turn out to be not so great. I mean, it's too early to tell. But it seems to me that there is a legitimate gripe that the debtor has here, and I think at least as far as the Court is concerned, it has as much to do with what might happen after the confirmation hearing as it does now, because if the plan, for whatever reason, and it could be a reason that -- not the reason that's been the one most discussed, and by the way, I have nothing in my mind when I say that. But assuming for the moment the plan doesn't get confirmed, the

debtor would then be in a position where maybe one of the alternatives that it was not aggressively pursuing it now must aggressively pursue. And that is sale of some or all of its assets. And to the extent that it fears, and I think perhaps legitimately, that sharing with an entity that while it is a legitimate objector to the plan may also be a -- not only now, but after -- after this assumed denial of confirmation, a player, that it would be unfairly advantaged and the estate would be unfairly disadvantaged. I see that, if that scenario were to come to pass, as a possibility.

MR. LAPOWSKY: Let me address that, Your Honor, and I'd like to address it in two ways. One is to say that if that was a legitimate concern, and at the end of this argument you remain concerned about that, I think that we can solve the problem with a much less severe approach than the one that the debtor is suggesting. And the less severe approach, I think, would have to do with breaking down into a little finer analysis, what we are talking about in terms of information flow. And if you'd bear with me and let me go through that analysis. Your Honor, as I see it, the -- we break down really into four categories of information. The first category that we've asked for is just historical financial information. Now, historical financial information --

THE COURT: You can't be the only party that's requested that.

MR. LAPOWSKY: No. I'm not the only party that's requested any of this. These requests of mine are duplicative of the committee's requests, and I think Smith's requests. It's just that we're being asked to be treated differently. The historical financial information that I think you need to break down again, and just -- but just into two pieces. There are two major components of the Exide business, one of which is transportation, and that's the car battery business. That's the business that we have said -- that our August 28th letter refers to. There's a whole different segment of the business which we call industrial, which we are a direct competitor in, and we have not expressed any interest at the moment, or at least we expressed interest in very small pieces of that. We were told by Exide that they thought there were significant timing and anti-trust issues associated with anything on the industrial side. So, we are at the moment only proceeding on the transportation side.

Historical information on the -- to give us historical financial information on the transportation side, it seems to me, should not be controversial. We are not a competitor on the transportation side, and we're getting that information, as I understand it, in our due diligence process. So, it's not as if -- and that's not on an attorney's eyes only basis. That information is going to the business people.

THE COURT: Talk to me about the things that are

issues.

MR. LAPOWSKY: The industrial side we are a competitor. There -- but we are not a potential buyer. So there, again, it seems to me we have not chosen to wear two hats. Any information we would get as it relates to the historical financial information about the industrial side I don't see how we can use that to our advantage in the event the plan doesn't confirm and we end up pursuing the transportation side purchase.

THE COURT: And there would be no advantage to Enersys, you also would argue, had there been no Chapter 11? I mean, outside of Chapter 11, I'm assuming Exide would still have argued -- of course there would have not necessarily been an occasion to disclose the information, but I'm assuming Exide would also have argued that that information shouldn't be provided to a competitor.

MR. LAPOWSKY: Of course. But they wouldn't be trying to confirm a one cent plan, either, outside of bankruptcy. That's the only reason we're asking for this, is to address the plan they have proposed. So, with historical financial information, I don't see an issue either on the transportation side or on the industrial side.

THE COURT: Do you agree or disagree with that, Mr. Kleiman?

MR. KLEIMAN: Your Honor, I disagree with that. In

the first instance, although the parties have agreed that the present due diligence process is going to be limited to the transportation business, Mr. Lapowsky and his partners, Stevens & Lee, have made it very clear to us in every opportunity that they could that their potential interest in acquisition of assets of Exide is not limited to the transportation business, and should the opportunity present itself, that they would be interested in exploring a broader perspective. Your Honor, in this hypothetical world that candidly I hope we never see, but were confirmation to be denied, and were Exide put in a position where we had to explore alternatives, it may very well be that we would need to explore those other yet to be started discussions with Enersys regarding the other aspects of the business. So, I think Mr. Lapowsky talks out of two sides of his mouth. When he wants more informal due diligence from Exide, he tells us he's interested in more than just transportation. When he's before you today, he says, you know, all we're looking at is transportation.

MR. LAPOWSKY: But I'm only talking right now about historical financial information. If it turned out -- (A) he's right. We have indicated an interest in a small portion of the industrial side of the business. The major portion of the industrial side of the business we can't touch, and we all agree we can't touch it because of antitrust issues. If, after the plan was denied confirmation, Mr. Kleiman was to come back

to me and say, you know what, tell us what you'd like to do on -- it's the tudor business and the submarine business. If we said we were interested, they would certainly be happy to give us the historical financial information. I mean, I don't see -- again, let's focus on what I'm -- on how I'm trying to break this down. Historical financial information you would give to any potentially interested buyer. So, I don't -- again, I don't see the issue as it relates to the historical financial information.

MR. KLEIMAN: But Your Honor, we're not here this morning talking about their due diligence process. We're talking about their confirmation discovery, and a protective order that's going to be ordered in connection with that confirmation discovery. So, I think the right answer, Your Honor, is that Enersys should not get the industrial information at the present time. That should be excluded by the protective order. And if we find ourselves in that alternate reality where the plan has not been confirmed, and where the parties had expanded the scope of their discussions, then we're obviously free to revisit the issues at that time.

MR. LAPOWSKY: Well, I'm only focusing on the --

THE COURT: Historical financial information on the industrial side should not be provided to Enersys, Mr. Kleiman, because (A) it's not relevant, (B) it's highly confidential, or (C) because its disclosure might Exide later?

MR. KLEIMAN: Well, Your Honor, I think there are two points. Number one, under no circumstances could it be disclosed to Enersys, to the company. At a bare minimum, it would have to be for antitrust reasons on an attorney's eyes only basis. Otherwise I think it would candidly, you know, could very well be illegal for us to disclose non-public information to a competitor in an industry in which -- Mr. Lapowsky and I both agree we compete directly. I think, Your Honor, in terms of, you know, would this harm Exide going forward? I think the answer to that question is also yes, because of the concern that I expressed that Enersys has tossed its hat into the ring as a potential purchaser, and has said that their interest includes at least a portion, and perhaps more than a portion of the industrial business. I think it's very important that we not taint the process. Let's enter a protective order in very short order that deals with the world as it exists today. Right now, Enersys is only looking at the transportation business. Mr. Lapowsky confirmed that for the Court. We're already providing historical financial information on the transportation business to Enersys in that due diligence process. I don't think there's a basis to do further now. In addition to which, Your Honor, I might add that Enersys is not the only party who is opposing confirmation. We do ha ea creditors' committee, and an active member of the creditors' committee, who are going to be in a

position, are going to receive all of this type of information, because they've requested it as well. It's not as though the interests of creditors is not being preserved here.

THE COURT: Although Enersys might be in a unique position among the objectors because they are an industry participant, to add something to that process even though there are other objectors. In any event, go to your second --

MR. LAPOWSKY: And, Your Honor, I just -- just to finish that one up, I've listed to what Mr. Kleiman said. I still don't see were the hypothetical which you posed, which caused you concern, which is the need to sell, and our knowledge of lower offers, is implicated by the historical financial information.

THE COURT: Next point?

MR. LAPOWSKY: The next point, Your Honor, is strategic -- what I'll call strategic information. And in this category, I would include projections, marketing plans, business plans, looking forward types of materials. And again, Your Honor, I would break this down between transportation and industrial. So, on transportation, again, we're not a competitor in the transportation business, so getting the looking forward materials doesn't -- is of no use to us from a competitive standpoint unless we actually bought the assets.

In terms of our buyer hat, again, these types of projections and business plans, they are, to my knowledge,

being provided in connection with the due diligence that is going on right now on the transportation side. And again, we would expect these. From the perspective of our role as a plan objector, we would expect these types of projections at least to confirm or to be consistent with the projections that are attached to the disclosure statement. The reason we want the information, again --

THE COURT: If they're being provided, then there's no dispute.

MR. LAPOWSKY: I think they are. Unless Mr. Kleiman disputes that, I believe they are being provided. I did check this morning with my partner, and I'm told that they are being provided in connection with the due diligence. So, we would like them provided also in connection with the discovery because the due diligence has its -- is limited. What's produced in due diligence cannot be used in litigation, so we have to ask for it again.

MR. KLEIMAN: Your Honor, as it relates to the transportation business, we're prepared to treat Enersys the same way that we're treating the creditors' committee and produce this information, you know, under a protective order. This is not the category that I think we came to talk to the Court about. I think it's the industrial side, the projections related to the industrial side that caused the problem.

MR. LAPOWSKY: Okay. So let's then move to the

industrial side. The industrial side strategic information, we are a competitor on the industrial side. We are talking about an attorney's eyes only production, which is the typical way that you handle these types of things where there is an industry competition issue that's presented. And we are fully prepared to handle it that way. We are not a buyer, at the moment, at least. And if we're ever a buyer on the industrial side, it's going to be for small portions of the business. And again, I would say that if we ever do become a buyer, even for a small portion of the industrial business, this strategic information is something that Exide would supply, the same way that it's being supplied right now in connection with the transportation business. So, I see no basis to treat the strategic information on industrial any differently than the historical financial information. The arguments are the same.

MR. KLEIMAN: Well, Your Honor, if I could respond? I think Mr. Lapowsky misunderstands the position that we're taking on this. We have no problem providing Enersys's litigation counsel on an attorney's eyes only basis the so-called strategic information related to the industrial business. I think we, however, go back to the issue that I raised in my opening comments on this subject, which is there needs to be some demarcation between Enersys's litigation counsel and whomever they're going to use in the acquisition. So, if it's Mr. Lapowsky's firm that's going to be on the

litigation side, we're prepared to enter into a protective order that allows this information to be provided to Stevens & Lee on an attorney's eyes only basis.

MR. LAPOWSKY: But what -- I mean, the reason that I focused my comments on what Enersys could do with this information, even though that it's only being produced for attorney's eyes only, is really to address this different lawyer's argument. What would we do that would harm Exide if we had no demarcation between the Stevens & Lee lawyers and we received the strategic information on an attorney's eyes only industrial side basis? So now, the lawyers who would work at Stevens & Lee on a transaction, the plan fails, there's a transaction now coming down. And it involves some portion of industrial. And the lawyers at Stevens & Lee who worked on the plan had access to this strategic information about industrial. It's no different than if Enersys had had it. The answer is that if it were ever to come about that we were going to make an offer for some portion of industrial, this is exactly the kind of information that not only would Exide -- would they provide, they'd want to provide. I mean, no buyer would go forward without this type of information. So, the fact that the Stevens & Lee transactional lawyers had a look at it in October doesn't matter because Enersys, itself, would get the information in November. So, I don't see the -- I hear Mr. Kleiman's words, but I don't understand where it ties back to

the harm, the fundamental harm of Enersys being able to then have enough information to reduce an offer that would otherwise be here, and bring it down here. This category of information doesn't give Enersys that bullet.

MR. KLEIMAN: Well, Your Honor, what really troubles me is what Mr. Lapowsky just said in terms of if we give it to Stevens & Lee, it's just like we gave it to Enersys, because that's entirely what we're trying to avoid happening in this category of strategic information between two of the largest industry players in a particular battery segment. This is probably, from an antitrust standpoint, from an anti-competitive standpoint, among the most horrific scenarios that one could imagine in terms of having to delicately weave our way through the minefield in terms of what, if anything, we could produce, and on what basis.

Your Honor, if we find ourselves in that alternate reality that Mr. Lapowsky described, if we're in a post-plan denial scenario looking at alternatives, we should address those issues then, because the landscape as it relates to this type of information, Your Honor, I would respectfully submit is of the nature that we shouldn't be dealing with it in terms of hypotheticals. We should only be dealing with it in terms of actuals. And right now, there is no dispute, because for confirmation purposes, we've already committed that it could be for a -- that we would provide this information to Enersys's

litigation counsel on an attorney's eyes only basis. Let's deal with what happens later, if we need to.

MR. LAPOWSKY: Your Honor, we're dealing with the hypothetical, because a hypothetical is the only possible reason that Exide would have to treat Enersys differently than anybody else. If we assume that the plan is going to be confirmed, then there's no reason. There will be no sale to Enersys, number one. Number two, I don't know whether Mr. Kleiman is -- I don't understand how he makes the leap that there's a problem because I said giving it to Stevens & Lee now, in the event there were ultimately a sale, would be the same as giving it to Enersys. We obviously would honor the attorney's eyes only restriction. I'm not suggesting that we wouldn't.

MR. KLEIMAN: Your Honor, I want to take great umbrage with Mr. Lapowsky's characterization that we have no reason to provide this information to Enersys.

THE COURT: Mr. Kleiman?

THE COURT: Yes.

THE COURT: It's not necessary, because this is an issue I think on which the parties, based on what I've just heard, now do not have a disagreement. And I think your suggestion is a good one, that there is -- because Exide has agreed to provide the strategic information concerning the industrial side of the business on an attorney's eyes only

basis now, that if there is a problem which results from the possible transactional developments, that will be later, and that will be the appropriate time to deal with any problem Exide might have about the dual representation.

MR. LAPOWSKY: Thank you, Your Honor.

MR. KLEIMAN: Thank you, Your Honor.

MR. LAPOWSKY: So, Your Honor, then, the last -- actually, the third category that I was going to address is valuation type of information. This is -- and I would include two things in this category. One would be internal valuations that Exide has done, and the other would be third-party offers -- other than Enersys. I'm going to put Enersys in a separate category. On the transportation side, Your Honor, the value of Enersys of this information, of the -- of Exide's internal valuations of transportation, and of third parties' valuations of transportation takes us back to where I started, to the big picture analysis. And that, again, that this is not a typical buyer/seller situation. This is not a -- this is a situation where in effect the buyer has already been identified. The price has been set. The -- it's all public knowledge. It's not me selling my house and not wanting third parties to know what I think it's worth, or what somebody else may have offered The target that we are shooting at has nothing whatsoever -- the target as a buyer has nothing whatsoever to do with what Exide may have -- may think these assets are worth. We assume

Exide thinks they're worth $950 million. It has nothing to do with what they've agreed to sell the assets to the bank for. We know what that is. It's $950 million. We want access to information that would undercut the credibility of those conclusions going higher. That doesn't help us as a buyer. It would not be useful to us at all as a buyer if this plan were to fail. So, one of the suggestions I was going to make, if Your Honor continues to have the concern of but what about if the information comes in that it's lower and the plan fails, is if you felt this was necessary, we could talk about limiting our request to any documents or information that reflect a higher value, or higher cash flows than have been disclosed in the disclosure statement. We could -- I think it complicates things. I would rather not go in that direction. But I heard Your Honor's concern on that count, and I think when I said to you, that I thought there were finer distinctions that we could make to address this issue as opposed to taking a sledgehammer approach to it, that I think the debtor wants to take, that was one thing that occurred to me that we could think about.

On the industrial side, Your Honor, in terms of valuation, internal or third party, again, we are not a buyer, and we are talking about attorney's eyes only distribution. And at some point, Your Honor, there does have to be a balance between our rights as an objector to have the information that we need to address the plan, and what, in a perfect world, you

might say Exide, if it was not in bankruptcy, or there were some other circumstance that we were dealing with, might have the right to do. And there is a balance there. And I think that if we address it the way that I'm suggesting, that it is a fair balance.

THE COURT: Okay.

MR. LAPOWSKY: The last category, Your Honor, is one where I am prepared to make a suggestion that I think might actually meet with some agreement. I had suggested it to Mr. Riemer this morning, but it was the first time I had mentioned it to him, so he had no reaction, and I didn't expect that he would have a reaction. But in terms of the Enersys offer, there was, I think, a legitimate concern raised, and that is, you know, we're giving you due diligence, we're analyzing what you're doing, maybe on a day-by-day basis. You know, to the extent that what we're doing is not privileged, for instance, it's an internal communication within Exide, you know, are we going to have to start copying you on every document that's created going forward? And that is clearly unworkable, and it's not something that I think we need. And my suggestion, Your Honor, is that in order to address, on some reciprocal basis, the issues that are created by the particular expression of interest that Enersys has on the table, that we kind of take the whole thing out of bounds. In other words, they don't have to tell me anything about their internal analysis of what we're

doing. They don't have to disclose to me anything about their strategy of how to respond the Enersys expression of interest. By the same token, we would not have to provide them with any information about the expression of interest, or how we're moving forward, because remember, this is a dynamic process. We're receiving information every day, and we're going to be -- not want to have the same question that I posed for them, which is if the CEO and the CFO of Exide decide to exchange an e-mail about something they saw in the data room, are we going to have to copy them on it? And we don't want to have to be doing that either. So -- and I don't think it's actually that relevant. In other words, the August 28th expression of interest was made on public information only. We had no segment information yet on transportation. We made assumptions as to how the public information which was consolidated would break out if we were looking at just transportation. I don't -- if we went no further, let's put it this way, than the August 28th letter, I think it would be a completely irrelevant -- completely irrelevant to value at the October 21st hearing. We would need to get beyond that. So, I'm suggesting that the entire existing Enersys August 28th letter, what led up to it, what's happened since then, be put on the side and each of us agree that we're not seeking anything as it relates to that.

THE COURT: Mr. Kleiman? Mr. Riemer?

MR. KLEIMAN: Your Honor, I think that's a perfectly

reasonable approach on that particular issue.

THE COURT: Okay.

MR. LAPOWSKY: So, Your Honor, I think, then, that would leave us with the -- well, why don't I -- I'm not sure, actually now, because I wasn't taking notes as I spoke, where we've agreed and where we are -- where we have issues as it relates to the specific categories.

THE COURT: Well, it seems to me that using your categories, assuming the debtor is agreeing that's the way to categorize them, they're providing you with strategic and historical financial information on an attorney's eyes only basis with respect to the transportation line, but not with respect to the industrial line. Is that correct?

MR. LAPOWSKY: In terms of what they've agreed to do?

THE COURT: Yes.

MR. LAPOWSKY: Yes, I think Mr. Kleiman said that he saw a problem both with historic and with strategic as it relates to the industrial side.

THE COURT: Okay.

MR. KLEIMAN: And, Your Honor, I can extend that into, you know, this valuation. Again, you know, hearkening back to my opening comments, it's completely unfair to the debtors to have to turn over to Stevens & Lee third-party offers and internal evaluations of the business, and then expect us to negotiate in some arm's length fashion with that

same group of lawyers over a potential transaction for those very same assets.

MR. LAPOWSKY: But we're talking now about industrial.

MR. KLEIMAN: But, Mr. Lapowsky, you're not prepared to state for the Court that your client is not potentially interested in industrial acquisitions.

MR. LAPOWSKY: Well, I -- I -- yes, Your Honor?

THE COURT: And I -- well, you did acknowledge that your client, at least at one time, had expressed an interest in at least some of the industrial side of the --

MR. LAPOWSKY: A small part of industrial.

THE COURT: And I see no harm, frankly, in requiring disclosure of historical and strategic information on both lines on an attorney's eyes only basis. I would -- the parties have agreed, on your last point, and the only other open point is valuation. And --

MR. LAPOWSKY: And that breaks down, Your Honor, between internal and -- transportation and industrial, and internal and third-party offers.

THE COURT: I understand. And I will tell you, since Enersys has chosen to wear the hat of an interested bidder, I am not going to require that that information be turned over to Enersys on any basis. And in addition to that, there are other objectors who are going to raise valuation objections as I

hear, so I think that argument, at least based upon the counsel I see sitting before me, will be raised and will be well argued. So I don't think the process loses anything by it. And if the parties want to fashion a protective order that includes these rulings, I'll act upon it.

MR. KLEIMAN: Your Honor, may I make one additional request as it relates to the historic and the strategic? Your Honor, I understand your that in your ruling you're crafting a balance amongst the -- in light of the difficulties posed by Enersys wearing two hats here. In order to, again, preserve the integrity of the market process that Exide is committed to engage in, I would like to ask the Court to consider whether the Court would require Stevens & Lee to maintain an ethical wall inside its firm as between the lawyers who are engaged in the confirmation litigation and the lawyers who are advising Enersys in connection with the potential acquisition. My understanding, and this is simply based on the correspondence and who's attended what meetings and what hearings, is that there are a group of lawyers who have been engaged in the bankruptcy process, and Mr. Lapowsky has led that group. And Mr. Lapowsky's partner, I believe it's Mr. Horenza, my apologizes if I got the pronunciation wrong, has been the one who has dealt with us on the corporate side. Your Honor, I think it's important to maintain, even if it is merely on an ethical wall basis within Stevens & Lee that division so that

we can feel confident we are dealing with Enersys on a fair basis on the due diligence process, because the requests that are made in the due diligence process may be different than the requests that are made on a discovery basis. In doing so, Your Honor, I'm not asking, at this point, that Enersys be required to request separate counsel. I'm merely asking Enersys to draw that line inside its firm between the very two different interests that Enersys is exploring, while still having the benefit of using the lawyers that Enersys has chosen.

THE COURT: All right. Mr. Lapowsky? Before you say anything, I'm going to test you.

MR. LAPOWSKY: All right.

THE COURT: And I'm going to test you by asking you to answer this question with a one word response.

MR. LAPOWSKY: Is it a bankruptcy question?

(Laughter)

THE COURT: No.

MR. LAPOWSKY: All right.

THE COURT: Would you agree to the suggestion that Mr. Kleiman is making?

MR. LAPOWSKY: No.

THE COURT: Okay. I will not order that you do so at this point because I think it's premature; but I tell you that with the following caveat, that if the situation develops such that the issue becomes -- Exide brings the issue to me on a

motion, or through some other appropriate way, in which it claims that Enersys's participation as a prospective buyer is -- well, the law firm that's -- that your position is compromised, to use a generic word, as a result of your dual role at this stage, I will consider it at that time. And if you fail to take the steps that Mr. Kleiman is suggesting now, and I'm not saying that you should or you shouldn't, or that if a motion gets filed later I would rule in favor of the debtor, but if it comes up later, I will not hear or give weight to the defense, well, Your Honor, you didn't stop me the first time that Exide asked.

MR. LAPOWSKY: That would have been my best argument. No, I would not intend to make that argument, Your Honor.

THE COURT: Okay.

MR. RIEMER: Your Honor, could I brief one other mater that relates to the Enersys discussion you just had, and that is to avoid any accusation that I misled Enersys's counsel. In all our discussions, we always said if we could get to a concept of putting everything at Akin, Gump subject to resolution of protective order issues, we had no concern with them looking at stuff there. We had very different views on how this was going to come out. He thought, I'm sure, in all good faith, that Your Honor was going to rule that he could see everything that have requested. We thought something different, and Your Honor's ruling is what it is. But I know

have a client who I think is going to say to me the Court entered some helpful rulings, but we've got our competitor and our adversary's law firm looking at documents, and we're not there, and how do we know that the things he is seeing are really the things that the Court has allowed him to see, and not other things? And so, I need to work through with my client whether we -- with regard to Enersys, and I don't think it can be for some part of it, because I think some o these are materials that other people have requested. So I just want to make sure everyone understands we have to work through whether we have to create a workroom at Kirkland & Ellis.

THE COURT: Well --

MR. RIEMER: That duplicates the one at Sonenschein.

THE COURT: The notion that I think counsel might better take the opportunity to confer outside of my presence, see if those can be worked out first is a good one.

MR. RIEMER: Okay.

MR. ZENSKY: I was going to touch on that issue as well, Your Honor. So, we'll caucus amongst ourselves.

THE COURT: Okay.

MR. LAPOWSKY: Thank you, Your Honor.

THE COURT: All right. I know that we have not finished our business yet here today, but in order to give you my undivided attention, I need to take a five-minute break.

MR. RIEMER: Of course.

THE COURT: So, let's take a brief recess, after which I will return.

MR. RIEMER: Thank you, Your Honor.

(Recess)

THE CLERK: All rise.

(Pause)

THE CLERK: Be seated. Court is now in session.

THE COURT: Okay. What is left?

MR. RIEMER: Your Honor, here's what I have left. And I've tried to survey others. Enersys counsel tells me he wants to spend more time -- this is not me -- clarifying Your Honor's order on the Enersys protective order issue. That's something he wants to take up with you.

THE COURT: Okay.

MR. RIEMER: On our side, we want to talk about a deadline procedure for getting the protective order in place, just to set that in motion, and perhaps schedule a call on that. And as Your Honor mentioned, a call on other discovery issues. What I was going to suggest was a Tuesday call on the discovery -- I'm sorry, on the protective order, with the parties submitting their positions before that, if we're unable to come to agreement, and a Thursday or Friday call on other discovery issues. In particular, the deposition issue, I expect, is going to be facing us, even based on some correspondence that I've learned about while we've been here

this morning about lack of coordination among different committee lawyers on depositions. But we'll deal with that issue next week.

There are four issues with regard to document requests served on my client as to which I have been able to obtain agreement with some but not all of the lawyers on the other side that really do greatly affect the scope. I am hesitant to go through particular issues like that, but these are ones that are big in terms of the swing and scope of the search. And while I had hoped I could resolve them with everybody, in particular Mr. Meyerhoff, we weren't able to. And so, we'll defer to the Court's wishes on how to handle that. But that's the list of what I have. R2's counsel asked me to tell you that he has some matters pertaining to discovery directed at him he wants to raise. And there were what sounded like a couple of one minute items, I don't want to speak for anybody on my left side, from others that they would describe more accurately and precisely than I would. But that's my understanding of what's left.

THE COURT: Let's recap the things I think we have done. The scheduling order form will be presented to me when --

MR. ZENSKY: Because of the short time today, it will probably have to wait until Monday.

THE COURT: Okay. So that will be Monday.

MR. ZENSKY: So everyone can see it.

THE COURT: And the protective order concerning all but Enersys will be submitted when?

MR. RIEMER: Your Honor, we'd be prepared to -- if they -- we sent something out last night. If they can get us comments on Monday, what we'd like to do is just -- we can confer with them on Monday, and submit something to the Court on Tuesday. If there are issues, the Court will resolve them. And I think we can do the same thing with the text of an Enersys order.

THE COURT: Okay. But Mr. Lapowsky wanted to be heard further on that?

MR. RIEMER: That's what he told me. I hope Mr. Kleiman is still on.

MR. LAPOWSKY: Your Honor, really, it's not so much on the ruling, it's how they would apply to some particular requests.

MR. RIEMER: I'm sorry to interrupt, but could we just make sure Mr. Kleiman is still on, because again, he's the one who really has the --

THE COURT: Mr. Kleiman, are you still there?

MR. KLEIMAN: Yes, I am, Your Honor.

MR. RIEMER: Thank you, Your Honor.

THE COURT: Wonderful.

MR. LAPOWSKY: Your Honor, I understood the ruling,

and then when I sat down to look at the particular document requests that we've made, I realized that, you know, it may not be abundantly clear to us exactly how the ruling applies to the particular requests. And it might be helpful to just maybe take one or two of them, maybe we can frame.

THE COURT: Just one or two of them.

MR. LAPOWSKY: Well, my request Number 9, Your Honor, requests documents related to determination of the total enterprise value, which is a defined term. It's the nine-fifty that was in the disclosure statement, including documents supporting the valuation by the Blackstone Group. That was the valuation that was referred to in the plan -- in the disclosure statement. When I presented the category to Your Honor, I had talked about internal valuations and third party offers, and I did not -- and this was not intentional, I just realized it as I sat down to read the request itself, I did not include the Blackstone valuation in any of the categories that I had created. The Blackstone valuation is the -- is obviously the valuation that the debtor is relying on for plan confirmation purposes. So my question to Your Honor is what rights did you intend for Enersys to have to explore into that $950 million valuation?

THE COURT: Well, Mr. Kleiman, it seems to me that is going to be the subject of something that's presented at confirmation, and maybe ought not to be excluded from my

ruling.

MR. KLEIMAN: Your Honor, let me address that briefly. I understand the basis of Mr. Lapowsky's concern, but I think this goes back to the balancing that Your Honor concluded was necessary consistent with the points that we raised that in light of the fact that Enersys is in a unique position by virtue of their voluntarily putting themselves into the process as a purchaser, and in light of the fact that the creditors' committee does stand to represent the interests of all creditors, I understood Your Honor's ruling to be that valuation materials, both internal and external, were in the excluded category for the reason that we wanted to preserve a market process. The Blackstone internal valuation is not just a valuation of the company as a whole. It's a valuation of the company's business plan. It's a valuation of the transportation business, and the industrial business. And, you know, what's in the disclosure statement, what is already public, is the top line. It's the summary. But were we forced to turn over the underlying detail, that would be information which, in the hands of a prospective purchaser, would taint the market process, and would very much call into question the legitimacy of that process going forward.

THE COURT: Well, I just want to correct one thing. Now, Mr. -- and this is why I asked whether everyone agreed to the characterizations that Mr. Lapowsky had -- as he framed

them. In the valuation, he talked about asking for internal and third party offers, internal analysis and third parties offers. I don't consider Blackstone to be internal, at least in toto. But my thought is that anything that's going to be -- and I don't know what the debtor is going to present, but it wouldn't surprise me if the debtor presented a representative of Blackstone to testify at the confirmation hearing, and in connection with that, offered perhaps some written materials or other documentary evidence that Blackstone had prepared, or had a hand in preparing. I don't see any reason to deny that to Enersys.

MR. KLEIMAN: Understood, Your Honor. As long as we can agree that would be on an attorney's eyes only basis under the terms of the protective order, given the competitive sensitivities.

MR. LAPOWSKY: That's always been the assumption.

THE COURT: All right.

MR. LAPOWSKY: So, on the Blackstone valuation, we would get the same thing that everybody else is getting? Is that where we are? Or are we someplace different than that?

THE COURT: Mr. Kleiman?

MR. KLEIMAN: Your Honor, based on your comments, that's my understanding.

THE COURT: Okay.

MR. LAPOWSKY: And then, just one other example, and

then the rest of them I think we'll just try to work out ourselves. My Request 10 asks for documents related to the solicitation of private equity investors and potential buyers, including documents relating to their identity, how they were selected, how they -- how bids were received, factors considered in evaluating the bids. This, to me, straddles your ruling. You clearly are telling me that I can't have what they offered, that you consider that out of bounds, and I understand that. There's a separate issue in terms of the -- at least in terms of the private equity process that's described in the disclosure statement. I would like to know how people were selected, who was selected, without knowing what they ultimately indicated in terms of an offer, or even an expression of interest. But just who they were and how they were selected, both for private equity and buyers. And that one, it seems to me, your ruling would not exclude me from. But I could see it being argued between me and Mr. Kleiman.

THE COURT: Mr. Kleiman?

MR. KLEIMAN: Well, Your Honor, the difficulty that I have is that I am not even -- I'm not sure how Mr. Lapowsky draws the line. I'm not sure how we answer a discovery request that attempts to elicit information as to, you know, how we decided to proceed down the path with certain purchasers without disclosing the fact that, you know, information relating to, you know, their bids to us, their comments to us,

their valuations with us.

THE COURT: Well, I do, because I think the question really, from a confirmation standpoint, is designed to flush out whether there were flaws in the process to test its validity. So I don't see the harm, assuming you omit the details that Mr. Lapowsky recited in disclosing that information. And if there's a dispute about the level of detail, I'll resolve it.

MR. LAPOWSKY: And if there's value indications in something that's otherwise going to be produced, I think it can just be redacted.

MR. KLEIMAN: Just so that I understand that what Your Honor has asked us to produce with respect to the private equity bids are details relating to the process that was conducted but not the substance of any of the bid discussions.

MR. LAPOWSKY: Not -- well, he asked you, Your Honor, not me.

THE COURT: The short answer is yes.

MR. LAPOWSKY: My view is I would not be seeing any value information, but I would see the rest.

MR. KLEIMAN: Well, Your Honor, that's a little different than what I just stated.

THE COURT: It is a little different, Mr. Kleiman, and I think I'd be willing to characterize it more in the lines of what you just said. And then, to the extent Mr. Lapowsky

thinks he's being shorted on that, I'm sure he'll come back to me.

MR. KLEIMAN: And just to clarify, Your Honor, the process discovery would be on an attorney's eyes only basis.

THE COURT: Mr. Lapowsky?

MR. LAPOWSKY: Everything is on attorney's eyes only. I mean, we reserve the right, Your Honor, to come back and ask you to expand it, or to ask them first. But without that, it's attorney's eyes only.

THE COURT: I understand. Okay.

MR. LAPOWSKY: Thank you, Your Honor.

MR. ROLL: Your Honor, excuse me. As Mr. Riemer indicated earlier, R2's counsel has some things to say about some of the discovery directed to them. I think it would be helpful just to tee that up for me to say something, and I think I need to say this in the discharge of my duty as agent's counsel in any event. As Your Honor knows, we filed on the agent's behalf what we called an omnibus objection to the discovery requests. As a result of the Court's rulings today, some of the comments made by the Court the other day, and discussions with counsel for the committee, and Smith Management, and Enersys, the issues raised in that omnibus objection have been resolved at least to this point, to our satisfaction.

I wanted to make it clear, and have it clearly stated

on the record, though, that as Mr. Weisfelner so emphatically said the other day, Shearman & Sterling does not represent R2, so the agent was not acting on behalf of R2 in those discussions. Mr. Berman, who is counsel for R2, was not a part of those discussions that I had on behalf of the agent with counsel for the committee, or Enersys, or Smith Management. So -- and yet, R2 did -- excuse me, did make it clear the other day that it was, in effect, adopting a number of the objections we had made in our omnibus objection. So, I just thought it important to say that to eliminate any -- in advance, any argument that the committee or the other parties might make that R2 was somehow precluded from still raising objections they want to raise by reason of our having spoken separately with all those folks.

THE COURT: Very well.

MR. BERMAN: Good afternoon, Your Honor. With regard to -- Mr. Roll properly points out that we were not a party to any of the meet and confers. I've spoken to committee counsel this morning about the plan valuation subpoena. I'll use that word for lack of a better term. And we are going to meet and confer, and try to work out the issues regarding those document requests. Presumably we'll be able to do so, and do so fairly quickly. And if not, we'll ask for your intervention quickly. I don't anticipate a problem with that.

I do anticipate a problem with the requests we

received from Smith Management on many different fronts. They are wildly over broad. They are terribly burdensome. They duplicate what's sought in both the 2004, for which they're not a party, and are actually represented by the committee in doing that. They duplicate the plan valuation subpoenas, and they are a problem on many different fronts. I've not had a meet and confer with them either. And perhaps it's premature for me to catalog to you today all of the problems with their request, that maybe I need to talk with them first and then get back to you. But there are a multitude of problems.

THE COURT: Well, I think the Rules require that.

MR. BERMAN: They do. But I wanted to let you know I have not had the chance to do that with them. I'm always optimistic I can work it out. But there are bigger problems with that. There are also issues, just to sensitize the Court, as to the right of Smith to participate in depositions going to the 2004, as well as other requests Smith's counsel has made to me. Again, I will try to work all of those out. Whatever we can't work out we'll tee up for you as quickly as possible.

THE COURT: Very well.

MR. BERMAN: Thank you.

MR. STRATTON: Good afternoon, Your Honor. David Stratton for the committee. You had asked us on Tuesday for a status report today on the negotiation of the 2004 order. We circulated a draft order to R2's counsel on Tuesday -- I'm

sorry, Wednesday. Yesterday we discussed their comments. I think we are making a great deal of progress. There's one document request where they have redrafted the scope of the request. I have to look at that yet. I'm always a little reluctant to have the object of discovery writing my discovery for me, but hopefully we'll be able to agree on that. We have sent them a protective order that's based on the Enersys Exide protective order, and hopefully we'll be able to use that for any confidential or highly confidential documents. So that is the status report on that. I expect -- I hope -- perhaps I should say I hope to be able to submit the 2004 order to the Court. I'm going to say Monday. I doubt if it will get finished today. The other matter I wanted to give the Court an update on is the -- what I call the bidder order, our motion to permit the committee to share confidential information with third parties. We have circulated a draft of that. I think we are awaiting comments from debtor's counsel and again, there, I hope, we'll be able to submit something Monday.

MR. KLEIMAN: Your Honor, this is Mr. Kleiman. Just to address that very last point, we did finally receive the draft order from committee's counsel last night. There are, unfortunately, some substantial items from Your Honor's comments that are missing from it. I'm actually working on that this morning, and I do hope to get a draft to committee's counsel back before the end of the day. If we can be

reasonable about the approach that Your Honor tried to strike -- the balance that Your Honor tried to strike in that process, then I think Mr. Stratton's comments that set a Monday target is indeed feasible.

THE COURT: All right. And just a reminder that the forms of order should be e-filed and then under certification, and then a copy sent to me at my chambers e-mail address. I don't think we need to put everyone through the task of hand deliveries in this situation. Go ahead.

MR. SILFEN: Your Honor, I just want to confirm that by virtue of my silence, I did not agree with counsel for R2's statements, except to the extent that we have not had a meet and confer other than their request to have relief from the deadlines which I have consensually agreed to. I will note that I think it's clear at this point that Your Honor has demonstrated -- has allowed our entitlement to discovery, and that I hope we don't move into a direction that we have an issue as to whether we're entitled or not entitled.

MR. BERMAN: The one issue about Smith's participation in discovery, Your Honor, that perhaps we have tee'd up now is whether or not they're permitted to participate in the 2004 depositions. To my knowledge, that's never been -- you've never approved that they have the right to ask questions in the 2004, which is not generally open to the public. Committee -- counsel will be doing it. I don't see that they

have a right to do that.

THE COURT: Well, I've never been asked to rule on the issue in connection with Smith. Well, would you agree that if Smith had made its own request, it would be entitled to 2004 relief?

MR. BERMAN: If Smith had made its own 2004 requests, we would have objected to it.

THE COURT: But there would have been nothing, per se, which would have disqualified them form seeking such relief. You would argue that under the circumstances it's inappropriate or unnecessary for one or more reasons, I take it?

MR. BERMAN: I would argue that they would not be entitled to take 2004 when the committee is empowered to do it, much like your rule that I shouldn't be bringing the adversary proceeding when the committee was doing it.

THE COURT: Well, there were other reasons, too.

MR. BERMAN: I know that, Your Honor. But what I'm saying is that I would have opposed on many different levels any sort of 2004 that Smith brought, and I don't think they have the right to participate in the proceeding, whereas I believe committee counsel does. And that's what you've ruled.

THE COURT: Well then, I don't think it's tee'd up for today, and I'm not going to order it from the bench today. If there is a desire to participate, Mr. Silfen, in light of

the objection, it's got to be raised by motion, and I'll hear it on an expedited basis. When are the depositions to begin taking place?

MR. SILFEN: Your Honor, I'll just note that Your Honor will recall we did join in with the request for 2004. And in any event, we have to serve discovery requests within the contested matter, which essentially seeks the same information. What I suggested to counsel is rather than having them doing it twice, just let us do it at the 2004. That's why I think it's important. I think the Rules are designed to have a meet and confer so we don't waste Your Honor's time. And I suspect that we should do that before we spend any more time before Your Honor.

MR. BERMAN: That's fine, Your Honor.

THE COURT: Very well.

MR. STRATTON: To answer Your Honor's question, we have not yet scheduled depositions, either for R2 either under our subpoena, or in the 2004 matter.

THE COURT: Okay. Thank you. What's left?

MR. RIEMER: Your Honor, unless anyone else has anything, the only thing I know of --

THE COURT: The scheduling.

MR. RIEMER: Yes. The only thing I know of is the four issues I mentioned. If Your Honor wants to do them now, that affect the scope of our production, and second, the

scheduling of whatever caller -- calls we would have next week tied to the submission of protective orders and other discovery issues.

THE COURT: Okay. How long -- I don't know, it's hard to tell. I mean, should we take a lunch break now? Do you want to come back after lunch? Or do you just want to plow through? I'm willing to sit --

MR. RIEMER: Your Honor, I'd -- I think there are going to be people in this room who would prefer that we don't take a lunch break if we can, because people, I know, are concerned about getting back. A number of people have expressed that to me. So I'm happy to do whatever Your Honor, wants, but I also, you know, understand the desire of the folks in the room who need to get going.

THE COURT: All right. Does anyone have an objection to us just pressing forward until we're finished here? All right. I hear no response.

MR. RIEMER: Okay. You want to do the scheduling issues first, or the --

THE COURT: Certainly. That's fine.

MR. RIEMER: Okay. The two scheduling issues I'd raised with the Court, it seems to me it might make sense to have two calls next week, and I realize I'm asking a lot of the Court's time. But one to deal with any issues, I would hope on both protective orders so we could -- and my goal, we're trying

to produce stuff on Wednesday, and you know, in a perfect world you like to tell your clients the protective orders have been entered. We have nothing in writing with anyone but the two sets of lawyers for the committee controlling confidentiality, and that's just an attorney's eyes only letter. So, I really do think the issues on the order we tackled to some detail today, and I'm frankly hoping there won't be any other issues. But I think having a deadline and having a call has a salutary effect on the process.

THE COURT: Okay. So, you're suggesting Tuesday for anything on the scheduling order?

MR. RIEMER: I was going to -- actually, on the protective order.

THE COURT: Yes. On the protective order.

MR. RIEMER: I can't imagine there's anything left on the scheduling order. I sure hope not. But we can take that up at the same time if there is.

THE COURT: Okay. We'll do it by telephone conference at 10:00 on September 30th.

MR. RIEMER: All right.

THE COURT: Okay. And --

MR. SILFEN: May I make a suggestion? I don't know Your Honor's availability given that it's a holiday weekend, and that the -- some of the parties may not first look at the protective order until Monday morning. It may more productive

to have, if Your Honor is available on Tuesday afternoon, so at least the parties can have some time to have meaningful discussion.

THE COURT: Tuesday afternoon is my -- my Chapter 13 list starts at 1:00. And if you've ever seen one of those in this district, you would know there was no room for anything else on Tuesday afternoons.

MR. RIEMER: My hope is that the parties can talk Monday and say there are no issues, and we just tell you that the orders are ready to be signed.

THE COURT: I mean, I could push it to 11:00 in the morning on Tuesday, if that would be of any help.

MR. SILFEN: I think that's fine. And I really will do our best.

THE COURT: Okay. 11:00, Tuesday the 30th, for protective order matters. And --

MR. RIEMER: And then I was also going to suggest --

THE COURT: Call in to my chambers number.

MR. RIEMER: Okay.

THE COURT: Because the courtroom will be otherwise occupied.

MR. RIEMER: And then I was also going to suggest a call -- I think the Court had suggested that counsel call later in the week for other open discovery issues. By Friday I expect we'll be dealing with deposition lists and so forth.

And so whether Thursday or Friday, it seems to me, there may be other issues. Obviously, if the parties don't see any, we can let you know.

MR. LAPOWSKY: Your Honor, I am in Court down in Delaware on Thursday afternoon, 2:00. So if we may, Thursday morning, or all day Friday would be fine.

THE COURT: Yes. I have pre-trial conferences in the morning, so let's do Friday. Friday at 10:00?

UNIDENTIFIED SPEAKER: Is that the 3rd?

THE COURT: October 3rd.

MR. RIEMER: Thank you, Your Honor.

THE COURT: And that will be -- you can call the courtroom number on that one.

MR. RIEMER: Okay.

MR. MEYERHOFF: I'm sorry. What time was that, Your Honor?

THE COURT: 10:00 in the morning. Friday, October 3rd. Okay.

MR. RIEMER: I will try to do these very quickly. They come up lots of places, but I can use one set of discovery requests for illustrative purposes.

THE COURT: Okay.

MR. RIEMER: The committee's third set of document requests, that I think have the adversary caption. I have a notebook that have those as Tab 40 that I can give Your Honor.