

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND
12334992 CANADA INC.**

**FIRST SECURED LENDERS' TRANSCRIPT BRIEF
(Returnable June 10, 2026)**

June 9, 2026

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1.	Transcript of the Cross-Examination of Celeste van Tonder held on June 8, 2026
A	Responses to Under-Advisements from the Cross Examination of Celeste van Tonder at Question 30
B	Responses to Under-Advisements from the Cross Examination of Celeste van Tonder at Question 140

TAB 1



In re: Nunavut Iron Ore, Inc., Baffinland Iron
Mines Corporation and 12334992 Canada Inc.

Celeste van Tonder
on
June 8, 2026

1 Court File No. CL-26-00000219-0000

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4 (COMMERCIAL LIST)

5
6 B E T W E E N:

7
8 IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT

9 ACT, R.S.C. 1985, c. C-36, AS AMENDED

10
11 AND IN THE MATTER OF A PLAN OF COMPROMISE OR
12 ARRANGEMENT OF NUNAVUT IRON ORE, INC., BAFFINLAND
13 IRON MINES CORPORATION AND 12334992 CANADA INC.

14 Applicants

15 -----

16 --- This is the Cross-Examination of CELESTE VAN
17 TONDER, upon her affidavits sworn May 14, 2026,
18 May 20, 2026, June 3, 2026, and June 7, 2026, taken
19 by Array Canada, via Array Canada's Virtual Zoom
20 Platform, on the 8th day of June, 2026.

21 -----

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24 REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

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A P P E A R A N C E S :

DEREK RICCI, Esq., for the Applicants,
& ROBERT NICHOLLS, Esq. and Baffinland Iron
& DYLAN YOUNG, Esq. Mines, LP

DANIEL S. MURDOCH, Esq., Counsel to Oaktree
& MARIA KONYUKHOVA, Esq., Capital Management, L.P.
& BRITTNEY KETWAROO, Esq.,

RYAN C. JACOBS, Esq., Counsel to the Ad Hoc
& TIM PINOS, Esq., Committee of 2026 Senior
Secured Noteholders.

MATTHEW GOTTLIEB, Esq., Counsel for the
& PHILIP UNDERWOOD, Esq., Energy and Mineral Group.

OBSERVING:

JEREMY DACKS, Esq., Counsel for the Monitor.

GEORGE BENCHETRIT, Esq., Counsel for John Calvert,
John Raymond, and Jeff Ball.

EVAN COBB, Esq., Counsel for EDC.

I N D E X

WITNESS: CELESTE VAN TONDER

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* * * The following list of undertakings,
advisements and refusals is meant as a guide only
for the assistance of counsel and no other purpose * * *

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T
and appear on the following pages: (None.)

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:
12:14, 47:24

INDEX OF REFUSALS

The questions/requests refused are noted by R/F
and appear on the following pages: (None.)

INDEX OF EXHIBITS

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NUMBER/DESCRIPTION

PAGE NO.

(None.)

1 -- Upon commencing at 4:05 p.m.

2

3 CELESTE VAN TONDER: AFFIRMED.

4 CROSS-EXAMINATION BY MR. MURDOCH:

5 1 Q. Good afternoon, Ms. van Tonder.

6 A. Good afternoon.

7 2 Q. My name is Dan Murdoch, I am
8 counsel for the First Secured Lenders in this
9 matter. I will have some questions for you today.

10 If at any point you have difficulty
11 hearing me, or if there's any connectivity issues,
12 please don't hesitate to bring that up so that we
13 don't have someone continuing to speak while
14 everybody else isn't hearing.

15 You are the CFO of each of the
16 Applicants in this proceeding?

17 A. That's correct.

18 3 Q. And that includes, Nunavut Iron
19 Ore Inc., 12334992 Canada Inc., and Baffinland Iron
20 Mines Corporation?

21 A. That's correct.

22 4 Q. And you have been CFO to these
23 companies since October of 2023?

24 A. October 2, 2023, correct.

25 5 Q. And what was your position

1 immediately prior to that?

2 A. I was the CFO for Rambler Copper
3 Mines out in Newfoundland for a period of
4 18 months.

5 6 Q. And you have sworn four affidavits
6 in this proceeding, I'll just list them. An
7 initial affidavit sworn May 14, 2026; a second
8 affidavit sworn May 20, 2026; a third affidavit
9 sworn June 3, 2026; and a fourth affidavit sworn
10 June 7, 2026; is that correct?

11 A. Correct.

12 7 Q. Do you have any changes to make to
13 any of those affidavits?

14 A. Not at this time, thank you.

15 8 Q. Do you have those affidavits with
16 you in an accessible format?

17 A. I do.

18 MR. RICCI: Yeah, we do. Just so you
19 know, Dan, we have clean hard copies, I think, of
20 all of the affidavits with the exhibits.

21 You might want to put documents on the
22 screen as well, but if you see paper in front of
23 us, I'm not sure you do, but that's what it is.

24 MR. MURDOCH: Okay, thank you.

25

1 BY MR. MURDOCH:

2 9 Q. Ms. van Tonder, my questioning
3 today on those affidavits will be limited relevant
4 to the hearing scheduled for this Wednesday,
5 June 10th.

6 We reserve the right to cross-examine
7 you further on these affidavits in advance of the
8 hearing scheduled for June 30th, and the parties
9 have been discussing the litigation plan with
10 respect to that.

11 So I just want to make sure that that's
12 understood.

13 MR. RICCI: Yes, that's understood.
14 And we may have submissions to make, or things to
15 say about the scope of any cross-examination,
16 continued cross-examination or further
17 cross-examination of Ms. van Tonder. But I don't
18 propose we get into that right now.

19 MR. MURDOCH: That sounds fine. And
20 given the issues that I see us addressing today, I
21 anticipate that's not going to be an issue for us.

22 BY MR. MURDOCH:

23 10 Q. You understand that you have sworn
24 to tell the truth today, Ms. van Tonder?

25 A. I do.

1 11 Q. Can you please state your full
2 name for the record.

3 A. Celeste van Tonder.

4 12 Q. And you reside in Oakville,
5 Ontario?

6 A. Correct.

7 13 Q. Are you physically located in the
8 Davies offices right now?

9 A. Correct.

10 14 Q. Okay. And you're in the room with
11 Mr. Ricci. Is anybody else in the room with you?

12 MR. RICCI: Yeah, I have two of my
13 colleagues with me in the room as well. Rob
14 Nicholls and Dylan Young.

15 MR. MURDOCH: Sorry, should they be on
16 the appearance form with the court reporter?

17 MR. RICCI: I believe they are.

18 MR. MURDOCH: Are they, okay? I may
19 have missed that, thank you.

20 BY MR. MURDOCH:

21 15 Q. Did you meet with counsel from the
22 Davies firm in preparing for your examination
23 today?

24 A. Yes.

25 16 Q. Did you meet with counsel from any

1 other firm?

2 A. No, just Davies.

3 17 Q. In meeting with the Davies firm,
4 was anyone other than yourself present with them?

5 MR. RICCI: Other than lawyers from
6 Davies, you mean?

7 MR. MURDOCH: Correct.

8 THE WITNESS: No.

9 BY MR. MURDOCH:

10 18 Q. Okay. Did you discuss today's
11 examination, or your preparations for it, with
12 anyone from the Monitor, FTI?

13 A. Apologies. Rephrase the question.

14 19 Q. Did you discuss your preparations
15 for today's examinations with anyone from the
16 Monitor, FTI?

17 A. I did consult with the Monitor in
18 my preparations, correct.

19 20 Q. What was the substance of those
20 communications, and when did they happen?

21 A. Just during the course of the
22 preparation, I -- just to ensure, especially with
23 chronology and fact-checking, just to ensure that I
24 understand -- just to double-check on facts.

25 21 Q. And who from the Monitor did you

1 meet with?

2 A. Well, I had calls with Jeff
3 Rosenberg.

4 22 Q. Okay. And did you discuss your
5 preparation for today's examination with any other
6 directors or officers of the Debtors?

7 A. Um, I did have a conversation with
8 one of our VPs, our executive VPs this morning,
9 just with regards to fact-checking on some of the
10 pre-CCAA filing documentation. I also did fact
11 check one item with my GC.

12 23 Q. Okay. And, sorry, the first
13 individual from the Debtor that you spoke with, who
14 was that individual?

15 A. It's Executive VP of Corporate
16 Development.

17 24 Q. Okay, thank you.

18 Did you exchange any e-mails or text
19 messages with any of the directors or officers of
20 the Applicants with respect to this examination?

21 A. Sorry, please rephrase. Did I
22 exchange any text messages?

23 25 Q. Did you exchange any e-mails or
24 text messages with any of the directors or officers
25 of the Applicants about your preparation for this

1 examination?

2 A. Apart from the GC and executive --
3 I don't believe so. I did receive a text message
4 from our CEO this morning, but other than that --
5 oh, I was in contact just on one specific topic
6 with our executive -- I think he's sales and
7 logistics, and it just had to do with regards to
8 current market conditions.

9 26 Q. And in terms of the -- you had
10 indicated it was an e-mail or text message with the
11 CEO?

12 A. He sent me a text message this
13 morning.

14 27 Q. And what was the substance --

15 A. One not relating to today's trial,
16 but just with regards to additional items. He did
17 mention a cross-motion that was published this
18 morning with regards to -- I'm not sure I can
19 remember... can I check it?

20 MR. RICCI: No, don't check it. Just
21 answer the question as best you can.

22 THE WITNESS: I'm not 100 percent sure,
23 it was during my preparations. I'm not 100 percent
24 sure what the message was about, but it was with
25 regards to documentation that was filed this

1 morning.

2 BY MR. MURDOCH:

3 28 Q. And documentation filed on the
4 Monitor's website this morning?

5 A. I don't think it's on the
6 Monitor's website. I'm unsure about that answer.

7 29 Q. What cross-motion are you
8 referring to?

9 A. As I say, I'm not familiar. I was
10 just prepping on the documentation in front of me.

11 BY MR. MURDOCH:

12 30 Q. Okay. We're going to ask for
13 disclosure of that text message.

14 U/A MR. RICCI: I'll take it under
15 advisement.

16 BY MR. MURDOCH:

17 31 Q. I take it that the cross-motion
18 that you're referring to, is not the Joint
19 Cross-Motion of the Senior Secured Lenders?

20 A. No, that's last week. That was on
21 the 4th of June, no, that's not it.

22 32 Q. Okay. Thank you.

23 So the initial order in this CCAA
24 filing was May 14th, 2026. And you are familiar,
25 Ms. van Tonder, with Oaktree and Hartree being the

1 Applicant's First Secured Lenders as of
2 November 2025, correct?

3 A. That's correct, yes.

4 MR. RICCI: You said "May 14th". I
5 believe the order is May 15th.

6 MR. MURDOCH: May 15th, apologies. I
7 was giving you the application date.

8 BY MR. MURDOCH:

9 33 Q. And you were involved in the
10 decision-making process regarding the selection of
11 the DIP facility?

12 A. I wasn't involved in the
13 preparation of the presentation to the Op Com, who
14 made the ultimate decision of the DIP, the
15 selection of the DIP.

16 34 Q. But you were involved in that
17 decision-making process?

18 A. Evaluation process. The decision
19 was made by the Op Com.

20 35 Q. Yes. And you provided your views
21 on which DIP was preferable, and you provided
22 recommendations to the Op Com?

23 A. I did not provide any direct --
24 what my preference is with regards to the DIP
25 selection. The analysis was done by counsel and by

1 the Monitor, and presented to the Op Com.

2 36 Q. Okay. So you were not responsible
3 for providing a recommendation on the DIP facility?

4 A. No.

5 37 Q. But you reviewed the three DIP
6 proposals submitted?

7 A. I did review, as well as I
8 reviewed the side-by-side presentation that was
9 done by the Monitor and Counsel, in the process of
10 preparing for the Op Com.

11 38 Q. And you'll agree with me that the
12 DIP facility that has been selected by the Op Com,
13 and that is being moved to be authorized by the
14 Debtors, is from the Government of Canada, correct?

15 A. From the Government of Canada
16 represented by the EDC, correct.

17 39 Q. Okay. But EDC being the
18 representative, the lender is in fact the
19 Government of Canada, correct?

20 A. That's correct.

21 MR. RICCI: The documents speaks for
22 themselves, Mr. Murdoch, in terms of who the lender
23 is. It's really a legal question. She's given you
24 her understanding of it.

25 MR. MURDOCH: She's given me an answer.

1 BY MR. MURDOCH:

2 40 Q. And so you'll agree with me, the
3 Government of Canada was not a signatory to the EDC
4 credit facility with the Applicants?

5 MR. RICCI: Do you want to show us what
6 you're talking about?

7 BY MR. MURDOCH:

8 41 Q. Sure. If we go to your first
9 affidavit, Exhibit W. And we'll share this on the
10 screen as well.

11 MR. RICCI: Yeah.

12 So we're looking at the Amending
13 Agreement between Baffinland Iron Ore Mines
14 Corporation, Baffinland Iron Mines LP, and Export
15 Development Canada; that's the document you're
16 talking about?

17 BY MR. MURDOCH:

18 42 Q. Yes. So Ms. van Tonder, I'm
19 showing you your first affidavit. Firstly, you
20 reviewed your first affidavit before swearing it,
21 I trust?

22 A. Correct.

23 43 Q. And your first affidavit, as is
24 the nature in these things, has a large number of
25 exhibits to it. I trust you're familiar with the

1 exhibits that you attached to your affidavit?

2 A. Correct.

3 44 Q. And Exhibit W is the -- it's
4 identified as the fourth amending agreement to the
5 EDC term facility dated November 24, 2025. You're
6 familiar with this document, Ms. van Tonder?

7 A. I am familiar with this document,
8 as opposed to agreed during my tenancy, yeah *ck.

9 45 Q. Would it be correct to say that
10 you would have been involved in the negotiation of
11 this document?

12 A. I am -- I do assist in the
13 negotiations of these, of these documents.
14 However, we do have other parties within the
15 business that are more familiar with regards to
16 security documents and credit facilities.

17 46 Q. Okay. Thank you.

18 And if we just scroll down a bit in
19 this document, just so that we can see. There's a
20 schedule to this, a schedule to this document, if
21 you go --

22 MR. RICCI: Sorry to interrupt. Just
23 so you're aware, we're working with the hardcopy.
24 But I don't see anything on the screen in case it's
25 important that other people see what you're

1 referring to.

2 MR. MURDOCH: Okay. Why don't we go
3 off the record for a second.

4 MR. RICCI: Sure.

5 -- OFF THE RECORD DISCUSSION --

6 MR. MURDOCH: Let's go back on the
7 record.

8 BY MR. MURDOCH:

9 47 Q. Okay. So I'm going to take you,
10 actually, to the next page, which is application
11 record page 1552. This is Annex A to the Amending
12 Agreement, and this is the Credit Agreement dated
13 as of October 7, 2022 among Baffinland Iron Mines
14 Corporation and Baffinland Iron Mines LP as
15 Borrowers, and Export Development Canada as Lender;
16 do you see that, Ms. van Tonder?

17 A. I do, yes.

18 48 Q. And that was entered into prior to
19 your time at the company, correct?

20 A. Correct.

21 49 Q. But I trust you nevertheless are
22 familiar with this document, correct?

23 A. I have -- I have, I have knowledge
24 about this document, yes.

25 50 Q. And so if we go back up to the

1 first page of this exhibit. This is the Amending
2 Agreement dated as of November 24, 2025. Again,
3 with the same parties.

4 And you'll agree with me, both on the
5 original Credit Agreement and on this Amending
6 Agreement, the lending party is Export Development
7 Canada, correct?

8 A. Yes.

9 51 Q. And if we go to the signature page
10 on the Amending Agreement, which is -- if we scroll
11 to the top of that, just to the top of that page
12 you'll see where -- can we see what the application
13 record page number is there?

14 MS. KETWAROO: 1549.

15 MR. MURDOCH: It's not showing up on my
16 screen.

17 BY MR. MURDOCH:

18 52 Q. So it will be application
19 page 1550. You'll see there that it's signed by
20 James Babbitt, a Principal; and Daniel DiFillippo,
21 as Senior Associate at Export Development Canada,
22 correct?

23 A. Correct.

24 53 Q. And so the lender under this
25 agreement was not the Government of Canada as

1 represented by EDC, but was EDC itself, correct?

2 MR. RICCI: Just give your
3 understanding.

4 THE WITNESS: That is my understanding
5 of the documents, yeah, that's my understanding.

6 BY MR. MURDOCH:

7 54 Q. Thank you. We can take that down,
8 Brittney.

9 Ms. van Tonder, your third affidavit,
10 which is the one that you swore on June 3rd of
11 2026, that was put forward to support the Debtors'
12 Motion for the Second Amended and Restated Initial
13 Order, correct?

14 A. Second, correct.

15 55 Q. Yeah, and I'll --

16 A. Yes.

17 56 Q. I probably won't refer to it much,
18 but if I do, I'll call it the "SARIO", which seems
19 to be a term that people use. And you'll agree
20 with me that a key component of the SARIO is the
21 approval of the full Government of Canada DIP,
22 correct?

23 A. Please allow me one second.

24 (Witness reviews document).

25 MR. RICCI: Is there a particular part

1 of the affidavit you want to direct us to, just to
2 help expedite things?

3 MR. MURDOCH: Well, not really. I
4 mean, really, I'm asking for a confirmation that a
5 key component of what is being sought by the
6 Debtors on the Second Amended and Restated Initial
7 Order is authorization to enter into the Government
8 of Canada DIP.

9 I would have thought that was a
10 straightforward question, but I'm looking for an
11 answer on it.

12 MR. RICCI: I think it might be a
13 terminology issue --

14 THE WITNESS: Yes.

15 MR. RICCI: -- because you're calling
16 it the Government of Canada DIP, that's not a term
17 we use. That's your term, because I think you're
18 trying to play some word games between EDC and the
19 Government of Canada. We call it the "EDC DIP" and
20 the "EDC proposal," that might be what the issue
21 is.

22 THE WITNESS: Correct. It requests to
23 approve the EDC proposal as a DIP facility to allow
24 the Debtors to meet their CCAA proceedings. It's
25 referred to as the "EDC proposal".

1 BY MR. MURDOCH:

2 57 Q. Again, I'm not trying to play
3 games here. I think we already went through the
4 Government of Canada's role in that, and the EDC is
5 only the representative.

6 But in any event, I think I have your
7 answer that the key component of the SARIO, whether
8 we call it the EDC DIP, or the Government DIP, the
9 key component of the SARIO from the perspective of
10 the Debtors, and the third affidavit that you
11 swore, is looking for authorization of that DIP,
12 correct?

13 A. Correct.

14 58 Q. And if we turn to paragraph 50 of
15 your third affidavit.

16 MR. RICCI: 5-0?

17 MR. MURDOCH: Correct. We'll put it on
18 the screen as well.

19 BY MR. MURDOCH:

20 59 Q. You set out here in paragraph 50
21 that: "The Debtor selected the EDC proposal for
22 the following reasons..."

23 And these are described elsewhere in
24 your affidavit as well. And I'm not trying to
25 suggest to you that this is the only place that you

1 deal with it.

2 But you'll agree with me -- if we
3 scroll down here -- loosely speaking, you've put
4 forward eight grounds on which you say that the DIP
5 proposal from the government, or from EDC, is
6 superior to the DIP -- the DIP proposal that was
7 put forward by the Senior Secured Lenders, correct?

8 A. The DIP proposals were considered
9 on various aspects of terms provided. It was
10 presented to the Op Com, and the items that we've
11 noted in their affidavit is a summary of why, from
12 a business perspective, from business judgment, the
13 company decided that the EDC proposal is the
14 superior of that, correct.

15 60 Q. Okay. You know, and I think that
16 answered my question, and I'm not trying to tie you
17 to specific numbers. But loosely speaking, you set
18 out about eight things where you say that the
19 selected DIP proposal is superior to the full DIP
20 proposal from the Senior Secured Lenders, correct?

21 A. Correct.

22 61 Q. And on the next day after -- we
23 can take that down, Brittney.

24 On the next day, after you swore this
25 affidavit, June 4th, 2026, the Senior Secured

1 Lenders served a Joint Notice of Cross-Motion for
2 approval of their DIP proposal, correct?

3 A. Please restate that. On the 4th
4 of June...

5 62 Q. On the 4th of June, the next day,
6 the Senior Secured Lenders served a Joint Notice of
7 Cross-Motion for approval of their DIP proposal,
8 correct?

9 MR. RICCI: Do you know the timing of
10 it?

11 THE WITNESS: I do know that on the 4th
12 of June there was a cross-motion served by the
13 secured lenders, on the 4th of June.

14 BY MR. MURDOCH:

15 63 Q. Okay, thank you. And you reviewed
16 that motion record when it was received?

17 A. I don't believe that I reviewed
18 that document prior to the Court date of the 4th of
19 June.

20 64 Q. Okay. Well let's get back to that
21 then.

22 So on June 5th -- so if it helps to
23 have the days. Your affidavit was sworn on the
24 Wednesday, June 3rd?

25 A. Correct.

1 65 Q. Cross-motion was served on the
2 Thursday, June 4th; and there was a hearing
3 scheduled for June 5th. And you understand that
4 the parties reached agreement on an adjournment of
5 the June 5th hearing, subject to certain issues
6 being dealt with. And that's been now scheduled to
7 June 10th, correct?

8 A. That's my understanding of the
9 timeline, yes.

10 66 Q. And you were involved with the
11 company, or the Debtors' decision to agree to that
12 adjournment?

13 A. Not necessarily part of the
14 decision for that. That was the Monitor and
15 Counsel that dealt with that.

16 67 Q. Okay. So not something that you
17 were directly involved in. But following the
18 adjournment, you swore your fourth affidavit on
19 June 7th, 2026, correct?

20 A. Correct.

21 68 Q. And if we look at paragraph 4 of
22 your fourth affidavit...

23 A. Yes?

24 69 Q. You say here that you are swearing
25 this affidavit in response to the Joint

1 Cross-Motion brought by the -- I'll refer to the
2 Senior Secured Lenders.

3 MR. RICCI: Well, that's not what it
4 says. But, okay.

5 MR. MURDOCH: Okay. I mean, we don't
6 need to spend time accusing each other of word
7 games, but I don't think "Senior Secured Lenders"
8 is a particularly controversial term.

9 BY MR. MURDOCH:

10 70 Q. But in any event, it was served by
11 Oaktree/Hartree, and the ad hoc group of the Senior
12 Secured Noteholders; correct, Ms. van Tonder?

13 A. (Witness reviews document).

14 That's correct. According to my
15 knowledge, yes.

16 71 Q. And for purposes of today, I'm
17 going to refer to those as the "Senior Secured
18 Lenders"; is that fine with you?

19 A. That's correct.

20 72 Q. Okay. And so in swearing this
21 affidavit in response to that Joint Cross-Motion,
22 is it safe to say that by that point you had
23 reviewed the motion record, the Joint Cross-Motion
24 record?

25 A. I had reviewed the cross-motion

1 with my counsel during the review and preparation
2 of this meeting. So I'm aware of the reasons for
3 the cross-motion as stated in this document.

4 73 Q. Sorry. I just would like to
5 understand that.

6 So you reviewed the Joint Cross-Motion
7 record with your counsel in preparation for the
8 examination today?

9 A. I did review it in summary,
10 correct.

11 74 Q. In summary, in preparation for
12 today?

13 A. Yeah.

14 75 Q. And what day was that on?

15 A. Yesterday.

16 76 Q. Yesterday. And was it a review
17 that you conducted prior to swearing this
18 affidavit?

19 A. Correct.

20 77 Q. Okay. And when you say you
21 reviewed it in summary, did you review the Notice
22 of Motion?

23 MR. RICCI: Just hang on. She just
24 said she reviewed it with her counsel, so I'm going
25 to stop it there. I'm worried about getting into

1 issues that are privileged. She gave you her
2 answer what she reviewed with counsel.

3 MR. MURDOCH: Your position is that her
4 review of the Joint Cross-Motion is privileged?

5 MR. RICCI: My position is the details
6 of the meeting between counsel and Ms. van Tonder,
7 that we now know occurred yesterday, prior to her
8 swearing the affidavit, is privileged. The
9 contents of that meeting are privileged, yes.

10 MR. MURDOCH: I don't believe I asked
11 anything about the contents of the meeting. I
12 simply asked whether she reviewed the Notice of
13 Motion.

14 MR. RICCI: I'm not quite sure that's
15 how you put it at first, but I'm fine with that
16 narrow question.

17 BY MR. MURDOCH:

18 78 Q. Ms. van Tonder, did you review the
19 Notice of Motion?

20 A. I did not read the motion word by
21 word, I was in consultation with counsel to
22 understand the requirements of the motion.

23 79 Q. Okay. Did you review the
24 affidavit of Mr. Gordon that was included with the
25 motion record?

1 A. I don't believe I did.

2 80 Q. Okay. Thank you.

3 And in swearing this affidavit on
4 June 7th, sort of four days after the third
5 affidavit that you swore, is it correct to say that
6 you swore this to address the issues that would be
7 dealt with at the hearing that's now been
8 rescheduled for June 10th?

9 A. That is my understanding, correct.

10 81 Q. Okay. And if we go to
11 paragraph 11 of your fourth affidavit, you say here
12 that the Joint Cross-Motion is to approve what you
13 refer to as the "inferior DIP proposal".

14 And so when you say that you are
15 referring to this "inferior DIP proposal from the
16 Senior Secured Lenders," I trust you're referring
17 to the full DIP proposal for \$300 million; is that
18 correct?

19 A. The DIP proposal would be in
20 total, which is the 300 million DIP proposal.

21 82 Q. Okay. And then you continue to
22 say that in the alternative -- or that they're
23 seeking, "or, in the alternative, a stand-alone
24 interim bridge DIP."

25 Now, you understand that the Senior

1 Secured Lenders, in addition to their full DIP
2 proposal, had put forward the option of an interim
3 bridge facility; is that correct?

4 MR. RICCI: Put forward where?

5 MR. MURDOCH: Well, I'm just referring
6 to what she's referring to in her affidavit. Is it
7 her understanding that there was an interim bridge
8 facility that was put forward?

9 THE WITNESS: To my knowledge, the
10 interim DIP budget was proposed in the EDC. And an
11 interim bridge was proposed in the Oaktree/Hartree
12 facility, the Secured Lenders.

13 BY MR. MURDOCH:

14 83 Q. So I'd like to understand that.
15 So you then in paragraph 12, say:

16 "As I explain below, the
17 proposed interim bridge would be
18 value-destructive..."

19 And so in referring to a "proposed
20 interim bridge," I understand that, and correct me
21 if I'm wrong, but I understand that to be referring
22 to an approval of an interim bridge, without
23 approval of the full DIP by either party, correct?

24 A. Did not obtain a financially
25 viable DIP that supports the business throughout

1 the SISP process and, essentially, through to
2 December of 2027, is what we believed to be
3 value-destructive. Purely on the facts that the
4 company has got a great urgency to stabilize the
5 company, as well as be in the position to unlock
6 opportunity and wealth for all our stakeholders.

7 An interim DIP, regardless of the
8 provider, does not provide us with the ability to
9 stabilize the company post the four weeks, which
10 could have incremental effects on our business.

11 84 Q. Right. And so what you're
12 expressing concern about here is the approval of an
13 interim bridge, without the approval at the same
14 time on Wednesday of the full DIP; is that right?

15 A. We specifically referred to
16 paragraph 12?

17 85 Q. Referring to paragraph -- well,
18 paragraph 12 is where it starts. But we're talking
19 about this interim bridge.

20 The concerns that you're expressing,
21 starting here in paragraph 12, are your concerns
22 with respect to the approval of an interim bridge
23 without the accompanying approval of the full DIP?

24 A. I agree, yes.

25 86 Q. Thank you. And if we sort of take

1 a look at the balance of your affidavit. And, you
2 know, you've got it before you, so we can scroll
3 through, but it's probably easiest to have you look
4 at your own version of that.

5 Am I correct in reading your affidavit,
6 to show that paragraphs 16 to 27 of your fourth
7 affidavit, is focused on your evidence as to the
8 concerns that you see with this type of an interim
9 bridge?

10 A. Correct. It's page 5 B is where
11 we commit to that occurring.

12 87 Q. Okay. And then if we go further,
13 paragraphs 28 to 39 of your fourth affidavit, these
14 are focused on your evidence as to why you say that
15 the DIP process was fair and reasonable, correct?

16 A. Correct.

17 88 Q. And then continuing on, paragraphs
18 40 to 45 of your fourth affidavit, are focused on
19 your evidence as to why the full amount of the EDC
20 DIP being at least 400 million, will be required in
21 the fullness of time over the length of the CCAA
22 proceeding, correct?

23 A. The 400 million is what is
24 indicated in the cash flows as a requirement until
25 December of 2027.

1 89 Q. Okay, thank you.

2 And that is the end of your fourth
3 affidavit. So I want to go to the Notice of
4 Cross-Motion. We'll share our screen with that.

5 MR. RICCI: I've got a hardcopy as
6 well.

7 BY MR. MURDOCH:

8 90 Q. So this is the Notice of Joint
9 Cross-Motion that was served on June 4th. And if
10 we scroll down, you'll see here that this
11 cross-motion seeks, firstly, an order on an
12 adjournment, which was addressed on Friday,
13 correct?

14 A. Correct.

15 91 Q. And then paragraph 1 (b), as in
16 "boy" that:

17 "If the Debtors require interim
18 financing before the disposition of
19 the DIP Motion, authorizing the
20 Debtors (as defined below) to enter
21 into the Senior Secured Lenders' DIP
22 (as defined below)..."

23 Do you see that?

24 A. Give me a second. (Witness
25 reviews document).

1 Noted.

2 92 Q. If we continue, you can see the
3 last ground of relief, sub (c), simply talks about
4 scheduling a case conference; do you see that?

5 A. (Witness reviews document).

6 Oh, "hearing the week of June 8th..."
7 noted.

8 93 Q. So you'll agree with me that in
9 this joint notice -- or Notice of Joint
10 Cross-Motion, there's only one DIP that the Senior
11 Secured Lenders seek authorization for the Debtors
12 to enter into, correct?

13 A. According to my read, the
14 requirement is to enter into the Secured Lenders'
15 DIP.

16 [Reporter intervened for clarification
17 purposes]

18 A. I noted that from what's on the
19 screen, "B", the read of the paragraph states that
20 there's an expectation that we will enter into the
21 Senior Secured Lenders' DIP.

22 94 Q. If we go down to paragraphs 9 and
23 10 of this Notice of Cross-Motion, you'll see here
24 the description and definition of the Senior
25 Secured Lenders' DIP is the DIP commitment provided

1 on May 30, 2026. You're familiar with that,
2 Ms. van Tonder?

3 A. (Witness reviews document).

4 Paragraph 10, that there's no
5 commitment fee other than interest payable if it is
6 unsuccessful?

7 95 Q. So I'm just directing you to
8 paragraphs 9 and 10 for the description.

9 So you understand and you recall --

10 A. Yes, correct.

11 96 Q. -- that there was a commitment
12 provided -- let me just get the question in a
13 revised form so that it's clear.

14 So on May 25, 2025, the Senior Secured
15 Lenders submitted a commitment on \$300 million of
16 DIP financing, correct?

17 A. Correct.

18 97 Q. And then on May 30, 2026, the
19 Senior Secured Lenders submitted a revised DIP
20 commitment, that was also for \$300 million,
21 correct?

22 A. Correct.

23 98 Q. And so your understanding, reading
24 this here, and the defined term, "Senior Secured
25 Lenders' DIP," that is a reference to the

1 \$300 million DIP, correct?

2 A. That's correct.

3 99 Q. And so recognizing now that the
4 Joint Cross-Motion is to authorize the Debtors to
5 enter into the Senior Secured Lenders full DIP, you
6 understand that there isn't any alternative relief
7 for the interim bridge that you're referring to,
8 correct?

9 A. There's no alternative relief for
10 the 110 million, it can only be the Senior
11 Secured...

12 100 Q. Right. The motion is for the
13 Senior Secured, but it's for the Senior Secured DIP
14 of 300 million, not for the interim bridge,
15 correct?

16 A. It's for the full 300 million.

17 101 Q. Yes, thank you.

18 I'd like to go now to paragraph 76 of
19 your third affidavit. And you indicate here in
20 your first sentence of paragraph 76, you
21 acknowledge what you call here the "Oaktree
22 Proposal", which I think is what I've been
23 referring to as the "Senior Secured Lenders' DIP"
24 offers a modestly lower headline interest rate,
25 correct?

1 A. The proposals received that
2 indicated that that proposal had a slightly lesser
3 interest rate.

4 102 Q. Okay. And looking only for the
5 period from now until, let's say, June 30, when we
6 have another hearing date scheduled, in that period
7 of time, you'll agree with me that the cost of the
8 EDC or government DIP, and the Senior Secured
9 Lender DIP, would be practically the same, correct?

10 A. Well, in the absence of the actual
11 calculations to my disposal right now, it would be
12 a guess.

13 103 Q. So sitting here today, you can't
14 speak to sort of the relative cost of the two DIP
15 proposals between now and June 30th?

16 A. Well, I don't have the actual
17 calculations before me, in front of me, to make a
18 specific determination as to what the difference in
19 cost would be.

20 104 Q. Okay. And I wasn't really looking
21 for a specific determination, just a general
22 recognition that the cost of the two would be very
23 similar in the grand scheme of things; is that
24 something you're prepared to agree to?

25 A. I think there's various aspects to

1 take into account with regards to the two -- in the
2 interim period, it's not necessarily the interest
3 rate, but commitment fees, et cetera. So, again, I
4 do not have the exact calculation in front of me.

5 105 Q. Okay. And then skipping to the
6 last sentence of paragraph 76, you state that:

7 "The several (not joint)
8 liability structure and broad
9 syndication rights further
10 compounded the uncertainty of
11 available funding."

12 You see that?

13 A. Correct.

14 106 Q. Now, I think your testimony
15 earlier was that as CFO, you were involved,
16 although maybe not the most involved person at the
17 Debtors, but you were involved in the negotiation
18 of the \$183 million credit facility between Oaktree
19 and Hartree, correct?

20 A. Not tremendously involved. Again,
21 there are more prominent people within the business
22 that do the negotiations. Again, myself and my
23 team do support the teams that negotiate, but
24 technically they do not take a lead on the
25 negotiations of the Oaktree and Hartree facility.

1 107 Q. Okay. But you are familiar with
2 Oaktree and Hartree as the First Secured Lenders of
3 the Debtors?

4 A. Correct.

5 108 Q. And you understand sitting here
6 today, that the Debtors have procured 750 million
7 from Oaktree and Hartree on the one hand, and the
8 senior notes on the other, leading up to and prior
9 to the commencement of this CCAA?

10 A. In combination, the outstanding
11 debt due to Oaktree/Hartree on the notes, correct.
12 Up until filing.

13 109 Q. And so the company, or the Debtors
14 have not had an issue in terms of procuring
15 750 million from the Debtors who are being proposed
16 by the Senior Secured Lenders to put forward the
17 DIP financing, correct?

18 A. Oaktree/Hartree I can confirm
19 not -- I was not involved with the notes, it was
20 before my tenure as CFO. I believe the comment to
21 be, according to my knowledge, I believe the
22 comment to be correct.

23 110 Q. Okay. I appreciate you may not
24 have been involved. But certainly as CFO, you were
25 familiar with the company's debt structure,

1 correct?

2 A. Correct.

3 111 Q. You are familiar with the concept
4 of a "Fronting Lender"?

5 A. No. Fronting Lender?

6 112 Q. Yes.

7 A. Can you please explain to me. If
8 you don't mind, just elaborate on that.

9 113 Q. Let me take you to Exhibit I of
10 Mr. Gordon's affidavit from the Joint Cross-Motion
11 record.

12 And Exhibit I is -- it starts with an
13 e-mail. We saw the reference to this earlier in
14 the Notice of Motion. But Exhibit I starts with an
15 e-mail from the Stikeman office attaching a letter
16 from the firm and the updated DIP proposal from the
17 Senior Secured Lenders.

18 I'm happy to show you a bigger part of
19 the exhibit if you need, but you have the hardcopy
20 there, so you may not need that.

21 So this is a document, I trust you're
22 familiar with, Ms. van Tonder?

23 A. Sorry, specifically which one?

24 114 Q. The May 30 updated DIP proposal
25 from the Senior Secured Lenders.

1 A. Oh, the actual proposal by
2 Oaktree/Hartree, correct.

3 115 Q. Yes. And so this is -- if we
4 scroll up to the bottom of page 1, perhaps,
5 Brittney. Sorry. Page 1 of that DIP proposal
6 where you were just at.

7 Sorry, give us a moment to find the
8 spot. So the bottom of page 1, so scroll down.

9 So you'll see here, paragraph 6 this
10 is --

11 MR. RICCI: Sorry, just hang on. We're
12 catching up to you. We're at the e-mail still, so
13 we're catching up to you.

14 MR. MURDOCH: No problem. I thought
15 you were ahead of me.

16 MR. RICCI: No, no, not this time.
17 Sorry about that.

18 Okay, we have the first page of the DIP
19 facility proposal with us now.

20 MR. MURDOCH: Perfect.

21 BY MR. MURDOCH:

22 116 Q. And so you'll see here, bottom of
23 the page, paragraph 6 sets out who the DIP Lenders
24 are; do you see that?

25 A. Uhm-hmm.

1 117 Q. These are the lenders that you are
2 referring to in the last sentence of paragraph 76
3 of your third affidavit that we just looked at; in
4 terms of your concerns about the joint and several
5 aspect?

6 A. It relates to the -- yup, and it
7 also relates to the fact that the EDC was one
8 party, and the Oaktree/Hartree proposal came from
9 different, from different lenders.

10 118 Q. Okay. And so if we scroll down to
11 page 2, where this definition of DIP Lender
12 continues.

13 You will see here, the second paragraph
14 -- or the first full paragraph, I think, has a
15 definition of a "Fronting Lender".

16 "An institution acceptable to
17 the Required DIP Lenders shall act
18 as Fronting Lender pursuant to which
19 the Fronting Lender shall fund each
20 advance on behalf of the DIP Lenders
21 and subsequently assign such funded
22 DIP Loans to the DIP Lenders
23 pursuant to arrangements agreed by
24 the Fronting Lender and each of the
25 DIP Lenders." [As read]

1 Do you see that?

2 A. Correct.

3 119 Q. And it says here:

4 "The Fronting Lender shall be a
5 DIP Lender, for all purposes herein
6 so long as the Fronting Lender holds
7 commitments in respect of the DIP
8 Facility or any DIP Loans."

9 Do you see that?

10 A. That's correct.

11 120 Q. Now, is this concept of a Fronting
12 Lender something you're familiar with?

13 A. I'm familiar with the concept.

14 121 Q. You're familiar with the concept?

15 A. (Witness nods).

16 122 Q. So you understand that under --

17 MR. RICCI: Sorry. Just so the record
18 is clear, the witness was nodding. You have to
19 vocalize your answer so the court reporter can
20 record it in the transcript.

21 THE WITNESS: I said, I am now
22 comfortable with the concept.

23 BY MR. MURDOCH:

24 123 Q. You're now comfortable with the
25 concept?

1 A. Yes.

2 124 Q. I guess my question was, were you
3 previously familiar with the concept until we just
4 read it now?

5 A. I would say, no.

6 125 Q. Okay. And so sort of prior to
7 going through it now, you didn't understand that a
8 single institution would be appointed as a fronting
9 lender and the Debtors would only have to deal with
10 that one institution?

11 A. My response that in the evaluation
12 by counsel and the Monitor, it was noted that the
13 various parties within the process of the
14 Oaktree/Hartree brings in additional risk and was
15 presented to the Op Com as part of the evaluation.

16 126 Q. And it's your evidence that that's
17 something that was identified by the Monitor?

18 A. Monitor and Counsel.

19 127 Q. Okay. Are you familiar with that
20 concept of a Fronting Lender with being the one
21 institution that the Debtor needs to deal with, is
22 a common structure for corporate debt including the
23 Debtors's own corporate debt?

24 A. (Witness reviews document).

25 Agreed.

1 128 Q. Okay. Thank you.

2 MR. MURDOCH: Off the record.

3 -- OFF THE RECORD DISCUSSION --

4 -- RECESS TAKEN AT 4:57 P.M. --

5 -- UPON RESUMING AT 5:03 P.M. --

6 MR. MURDOCH: Ms. van Tonder, thank you
7 very much for your time today. Those would be my
8 questions.

9 -- OFF THE RECORD DISCUSSION --

10 MR. PINOS: On the record.

11 CROSS-EXAMINATION BY MR. PINOS:

12 129 Q. Good afternoon, Ms. van Tonder.

13 My name is Tim Pinos, I am counsel for the Ad Hoc
14 Committee of Senior Noteholders. And I just want
15 to ask a few more questions to supplement what
16 Mr. Murdoch asked of you.

17 You'll recall Mr. Murdoch asking you
18 about the headline interest rate in each of the
19 Senior Secured Lenders' DIP proposal, and the
20 Government/EDC DIP proposal?

21 A. Correct. Yes.

22 130 Q. And you admitted that the headline
23 interest rate in the Senior Secured Lenders'
24 proposal was less than the headline interest rate
25 in the Government/EDC DIP proposal?

1 A. That's correct.

2 131 Q. And Mr. Murdoch asked you
3 questions about the impact of that on the cost of
4 funding, interim funding for Baffinland, for the
5 period we're talking about until, approximately,
6 June 30th; do you remember that?

7 A. Yes.

8 132 Q. And you said you hadn't -- didn't
9 have the calculations in front of you; do you
10 remember saying that?

11 A. That's correct.

12 133 Q. Have you done those calculations?

13 A. We have done -- the Monitor has
14 done calculations on the various proposals and the
15 costing of the CCAA calculations have been
16 administered by our Monitor.

17 So calculations have been done, and
18 have been shared with the company in principle.
19 The company provided the more corporate-related
20 cash flows for the consideration of the debt, but
21 the actual cost per term sheet was done by the
22 Monitor and not by my own team.

23 134 Q. Did you review those calculations
24 for their accuracy?

25 A. I don't think I've been privy to

1 the detail, the detail Monitor calculations.

2 135 Q. So you accepted -- you merely
3 received what the Monitor gave you in terms of the
4 total cost of the -- under the two DIP scenarios?

5 A. Just give me a second.

6 Sorry, please just give me that comment
7 again. We...

8 136 Q. Yes. You indicated that you
9 received calculations of the relative costs of the
10 financing under the two DIP proposals from the
11 Monitor, correct?

12 A. What we have received from the
13 Monitor is a presentation on the impact of the
14 various costs of the different term sheets. It was
15 presented to the company as well as to the Op Com.

16 The impact of those costs was to
17 indicate the impact of the costs, as well as the
18 stretch and the reach of the various DIPs.

19 So I did not receive those calculations
20 directly from the Monitor. I was, however, within
21 a meeting where those impacts were presented by the
22 Monitor.

23 137 Q. And when you say "impacts", and
24 "stretches", and "reaches", were those numbers
25 presented, or words describing the relative

1 impacts, stretches and reaches?

2 A. It was presented to the company in
3 a visual to indicate the draws and the impact of
4 the costs.

5 138 Q. So there was an analysis with
6 numbers as to the relative costs between the two
7 DIP proposals?

8 A. Well, the graphs indicated that it
9 applied, the costing structure of the various DIPs
10 received, and assisting it according to the similar
11 draws that would be required by the company, where
12 the company, how far the company can reach the CCAA
13 process within the different term sheets.

14 139 Q. So you got information about the
15 cost associated with each draw, including the
16 application of the interest rates for the relevant
17 periods?

18 A. It's the interest rates, and I
19 believe it's the commitment fees. It also affected
20 the various advisory costs as indicated in the term
21 sheets.

22 140 Q. Right. And can you produce that
23 for me?

24 U/A MR. RICCI: We'll take that under
25 advisement.

1 MR. PINOS: Thank you.

2 BY MR. PINOS:

3 141 Q. I'd like to move on to another
4 point. Ms. van Tonder, I'd like to refer you --
5 and maybe Ms. Ketwaroo can assist, because I'm
6 unable to use the device I've got to share screens.

7 First, without sharing anything, I'd
8 just like to ask you about what's been referred to
9 as your third affidavit by Mr. Murdoch. That's the
10 affidavit you initially filed in support of DIP
11 financing.

12 A. Yes.

13 142 Q. Yes. And I take it -- how long
14 have you been working in Canada?

15 A. March of 2022.

16 143 Q. Okay. And I take it, that prior
17 to this, you hadn't been involved in any other CCAA
18 proceeding?

19 A. I actually have. I have been
20 involved in a CCAA process with Rambler Copper
21 Mines.

22 144 Q. That's the copper mine in
23 Newfoundland you referred to, I believe?

24 A. That's correct.

25 145 Q. Okay. So this is your second CCAA proceeding?

1 A. Correct.

2 146 Q. Okay. And in the first CCAA
3 proceeding, was there DIP financing proposed and
4 approved by the court?

5 A. Yes.

6 147 Q. So, in that proceeding, you would
7 have first learned about what DIP financing was and
8 its availability under the CCAA?

9 A. I'm not an expert but I am
10 familiar with, yes.

11 148 Q. That's right. And you'll agree
12 with me that under the statute, CCAA, that DIP
13 financing is referred to as "interim financing"?

14 MR. RICCI: Hang on. We're talking
15 about statutes now, Counsel?

16 BY MR. PINOS:

17 149 Q. Well, do you understand that DIP
18 financing is intended to be interim financing?

19 MR. RICCI: Just maybe rephrase your
20 question so it's a question answerable by a lay
21 witness who's not a lawyer.

22 MR. PINOS: Sure, sure.

23 MR. RICCI: Thank you.

24 BY MR. PINOS:

25 150 Q. In terms of your understanding of

1 what DIP financing is, is it your understanding
2 that DIP financing is intended to be interim
3 financing for the insolvent company?

4 A. My understanding of DIP financing
5 is to fund the business, to proceed through the
6 CCAA process, and have the ability to enter into a
7 constructive SISP process.

8 151 Q. Or some other kind of
9 restructuring; is that fair? Is that part of your
10 understanding?

11 A. Well, Sale and Investment
12 Solicitation Process is what I'm familiar with.

13 152 Q. And will you agree that DIP
14 funding is meant to support the company during the
15 period leading up to the restructuring or the SISP,
16 or whatever is done to ultimately restructure the
17 company?

18 A. According to my knowledge, that's
19 correct.

20 153 Q. Right. And that, by definition,
21 it is intended to be interim financing?

22 A. To be honest, I can't really
23 comment because I'm not really aware -- I'm not
24 really familiar with the phrase of "interim
25 financing." I am aware of the ranking of the DIP

1 financing. But interim in the sense that it will
2 assist the company now and the restructuring and
3 that being interim...

4 154 Q. You'll agree with me that that's
5 your understanding?

6 A. In principle, I can support the
7 comment.

8 155 Q. Right. But your understanding is
9 simply that DIP financing is not in and of itself
10 financing that implements the restructuring of a
11 company? It supports the company while it is
12 restructuring, correct?

13 A. Supports the company... Again, in
14 principle, I can agree with the concept that it
15 funds the business during the process of a CCAA
16 process.

17 156 Q. Okay, I'll accept that. Perhaps
18 we could refer you to -- and, Ms. Ketwaroo, if you
19 can pull it up -- paragraph 24 of your latest
20 fourth affidavit.

21 A. Paragraph 24?

22 157 Q. Yes.

23 A. Okay.

24 158 Q. In the first sentence of
25 paragraph 24, you state that, quote:

1 "The Debtors need to be able to
2 credibly tell their employees that
3 the financing obtained through the
4 CCAA process is not 'interim' or
5 'temporary'." [As read]

6 Do you see that?

7 A. Yeah. Yes.

8 159 Q. Now, will you agree with me that
9 telling an employee that the CCAA financing is not
10 interim is wrong and misleading?

11 A. No, I don't believe -- I believe
12 the term "interim" refers to the fact that if we
13 obtain an interim DIP and I only have committed
14 funding for my business for a full week period, I
15 am not in a position where I can retain employees,
16 I am not in a position where I can recruit
17 employees for our season that is to commence in
18 eight weeks. I do not have the stability to -- I
19 do not have a stability with an interim DIP to
20 provide stabilization in the business. So I do
21 believe that my wording of "interim" or "temporary"
22 does not relate to the same as "interim financing"
23 as you referred to.

24 160 Q. But you'll agree with me that the
25 DIP proposal of the Senior Secured Lenders was for

1 \$300 million?

2 A. Yeah, I do believe that the
3 heading actually refers to "an interim bridge DIP
4 does not remedy employee uncertainty." So
5 therefore the essence of this portion notes that I
6 require not an interim DIP, I need a full DIP
7 approved by the Court, with urgency.

8 161 Q. And that full DIP in and of itself
9 is also interim financing. It's just that your
10 runway is a bit longer, correct?

11 A. I just want to digest the
12 question. Do I agree that the -- that the DIP
13 financing is interim finance? Is that your
14 question?

15 162 Q. Yes, that is.

16 A. Well, I agree that the DIP funding
17 received, in essence a full DIP budget received,
18 allows the company to operate during the SISP
19 process until such time that a SISP process has
20 been effectively implemented, sure. The DIP
21 funding would then be fit for the purpose of the
22 CCAA process.

23 I still relate that the word "interim"
24 in my wording in the affidavit is relating to a
25 messaging that the company has sufficient funding

1 while we're in this process.

2 163 Q. Okay. So, Ms. van Tonder, you'll
3 agree with me, though, that the DIP proposal of the
4 EDC and the government has an end date?

5 A. It's indicated with the maturity,
6 correct.

7 164 Q. Yes. And the DIP funding proposal
8 of the Senior Secured Lenders has an end date?

9 A. It has a different maturity
10 profile, but as well an end date, correct.

11 165 Q. Yes. And neither of those DIP
12 facilities guaranteed the completion of a SISP or a
13 restructuring using a SISP, do they?

14 A. Apologies, neither Oaktree and
15 Hartree, or the EDC facility, guarantees a
16 successful SISP?

17 166 Q. Yeah.

18 A. I struggle --

19 MR. RICCI: I'm having a hard time with
20 that question, too, Counsel. Can you maybe break
21 it down?

22 MR. PINOS: Well, you said -- well, it
23 flows directly from the witness's answer earlier,
24 that the purpose of the DIP funding is to keep the
25 company going until the successful completion of a

1 SISP.

2 BY MR. PINOS:

3 167 Q. And my question is simply, neither
4 of those DIP facilities covenant to stay in place
5 until there is a successful SISP, correct?

6 A. Well, to -- I struggle with the
7 relevance between the choice of a DIP and the
8 success of a SISP. But, to my knowledge --

9 168 Q. Well, it was your answer,
10 Ms. van Tonder, but I'm just asking -- I'm trying
11 to clarify.

12 MR. RICCI: Sorry, Counsel.

13 Finish your answer.

14 THE WITNESS: To my knowledge, the cash
15 flows presented to the DIP, the various DIP
16 parties, was only speculate -- or only spec'd up
17 until December of 2027, which automatically would
18 have led the eye to believe that it's a 12 plus 6
19 to get to December of '27.

20 To my knowledge, there has not been
21 conversations with regards to an extension post the
22 December 2027, as the company hasn't provided any
23 data for the DIP parties to actually consider post
24 that process. So, successful or not, I do not
25 believe that that topic has been addressed.

1 MR. PINOS: Okay.

2 Thank you, Ms. van Tonder. Those are
3 all my questions.

4 THE WITNESS: Thank you.

5 MR. RICCI: Thank you, Counsel.

6 MR. GOTTLIEB: I might as well ask if
7 there's anybody else that's going to be asking
8 questions but me.

9 -- OFF THE RECORD DISCUSSION --

10 MR. GOTTLIEB: Why don't we go on the
11 record.

12 CROSS-EXAMINATION BY MR. GOTTLIEB:

13 169 Q. I am, I should say, Matthew
14 Gottlieb, and counsel to EMG in this proceeding.
15 I've read your material, obviously. You're
16 vice-president and CFO of the Applicants, correct?

17 A. That's correct.

18 170 Q. And you've held those positions
19 since October 2023, correct?

20 A. Correct.

21 171 Q. And you've been actively engaged
22 in discussions and negotiations regarding the
23 Applicant's financial circumstances, correct?

24 A. Correct.

25 172 Q. And that includes the DIP

1 negotiations that have taken place since the
2 filing, correct?

3 A. I have not necessarily been
4 involved in the negotiations. I have been involved
5 in presentation to DIP Lenders, answering
6 questions, facilitating the process, but I was not
7 directly involved in the negotiating. That was a
8 process that was led by the Monitor and Counsel.

9 173 Q. Okay. My understanding from the
10 material is that you were in, I'll say, a minimum
11 of 14 meetings with DIP Lenders, correct?

12 A. Correct --

13 174 Q. And I saw that -- sorry, I didn't
14 mean to interrupt. Please go ahead.

15 A. Well, you should complete your
16 sentence.

17 175 Q. Okay. Thank you.

18 And I use that phraseology as you were
19 involved in those discussions. That's fair; you
20 were in the room for at least 14 meetings, correct?

21 A. Yes. Absolutely, I was involved.
22 I did have numerous meetings with all parties
23 included. When I refer to negotiations, I refer to
24 I did not negotiate interest rates or terms,
25 et cetera. I provided information. I did do

1 detailed discussions with regards to numbers,
2 that's in the DIP budget. So presentation and
3 information, absolutely. Negotiating and reverting
4 back post those DIP term sheets, that's Monitor and
5 Counsel.

6 176 Q. You were in the room where these
7 discussions took place?

8 A. In the discussions.

9 177 Q. Perfect. And the goal of the
10 Applicants was to get a DIP loan with the overall
11 best terms for the Applicant, correct?

12 A. That's correct.

13 178 Q. And that obviously includes the
14 best financial terms that could be received,
15 correct?

16 A. Correct.

17 179 Q. And from the record, I
18 understand -- I don't think there's any dispute in
19 this -- that the Applicant sent out a letter to the
20 proposed DIP Lenders on May 15, right?

21 A. Solicitation letters were sent to
22 parties, noting that those had to be under NDA at
23 the time of the -- well, there was a
24 pre-solicitation process, and on the 15th of May,
25 obviously, the post-CCAA solicitation process

1 started.

2 180 Q. Perfect.

3 A. So information could only be
4 shared with parties that were currently, or after
5 the 15th of May, under NDA.

6 181 Q. Okay, perfect. So that formal
7 letter went out on May 15th, correct?

8 A. The pre-CCAA solicitation, yeah,
9 yeah.

10 182 Q. Okay. Perfect. Thank you. And
11 originally, the Applicants required responses
12 within five days, correct? By May 20th?

13 A. The original deadline for
14 submissions were 20 May.

15 183 Q. And that was extended five more
16 days to May 20th, correct? Or May 25th, I
17 apologize.

18 A. Yes. The 15 then was the filing,
19 20 was the original. It was extended until
20 May 25th for initial term sheet submission.

21 184 Q. And then there were discussions
22 that took place, and the bidders were each asked to
23 deliver their final and best offer by May 30th,
24 correct?

25 A. Correct. There were interactions

1 with the various parties in between in that period,
2 issues lists were provided by the Monitor and
3 Counsel back to the proposed parties, and final
4 expectation was 30 May; I think it was 3:00 p.m.

5 185 Q. That was for a DIP of
6 \$300 million, correct?

7 A. It wasn't indicated \$300 million
8 in the second term sheet that was circulated. The
9 original term sheet that was provided did have a
10 300 million, but it didn't have a term; it didn't
11 indicate a maturity in the very first -- in the
12 initial term sheet that was circulated.

13 We received the -- when the first term
14 sheets were received -- or the second iteration of
15 the term sheet was sent, there was an indication
16 that the DIP requirements is a 12 plus 6, or
17 18-month period.

18 The Monitor -- so, the second letter
19 did have the 300 million in brackets, with a
20 footnote at the bottom of the term sheet and said:
21 Please consider the correct quantum of the DIP that
22 is required in relation to the cash flow that you
23 have received until December of 2027.

24 So it also noted that the cash flow
25 that you received had certain costs not included.

1 For example, the KERP was not included in those
2 costs. So, from a DIP proposal perspective, there
3 was a bracketed amount for an 18-month term, and a
4 cash flow, I do believe. And that is where 400
5 million quantum from the EDC did arise because that
6 was more in line with the 18-month cash flow that
7 was presented.

8 186 Q. I could have made this a lot
9 simpler if I would have used the word "minimum."
10 Then the DIP that was being called for by the
11 Applicants was for a minimum of 300 million, fair?

12 I'm not trying to trick you. It was
13 for a DIP of an amount in the range of \$300 million
14 or more?

15 MR. RICCI: I think the witness has
16 given you a pretty detailed answer of her
17 understanding of what the quantum that was
18 requested was.

19 BY MR. PINOS:

20 187 Q. I guess my point was,
21 Ms. van Tonder, is that it was for a big number?
22 300, 400 million is a big number for the
23 Applicants, right?

24 A. Regardless of the three or the
25 four, it's a large number, correct.

1 188 Q. At the time the final bids were
2 asked for, there were, as you say, ongoing
3 discussions with the various proposed DIP Lenders,
4 correct?

5 A. Correct.

6 189 Q. And you would have liked to have
7 had a little bit more time, if you could have, to
8 get a DIP in place, correct?

9 A. I believe under normal
10 circumstances time was of the essence. We needed
11 to get into court. We indicated from the start
12 that the 5th of June is the date that we would -- I
13 mean, we even delayed it from the 25th.

14 So the urgency of funds had to be taken
15 into account. So walk it back from the 5th of
16 June, still allow Op Com to review. The 30th was
17 just unfortunately -- it was just unfortunately the
18 draft date then to allow process to follow to get
19 us into court.

20 190 Q. I'm not actually having that
21 debate with you, Ms. van Tonder, at all. I'm
22 simply saying it would have been nice if you would
23 had more time, if you would have had the luxury of
24 more time to continue discussions with the proposed
25 DIPs, fair?

1 A. I do believe -- well, from my
2 perspective, my personal perspective, we had
3 in-depth discussions with anyone. We were
4 available. We did send out -- via the counsel, we
5 sent issues. We reverted back to everyone in due
6 course. Everyone received everything at the same
7 time. So, yes, maybe in a perfect world, maybe
8 there was an extra day in this --

9 191 Q. Ms. van Tonder, you won't concede
10 for me that you would have preferred to have more
11 than just 15 days to deal with the 300 to
12 \$400 million loan? Your view is that you would not
13 agree that you would like to have had more time?
14 Is that your evidence, that you wouldn't have liked
15 to have had more time? Or will you concede for me
16 that it would have been nice to have more time
17 before you entered into a \$300 million or
18 \$400 million loan?

19 A. I feel -- it's a subjective
20 question as to my preference. There was a
21 pre-solicitation process that was --

22 192 Q. Ms. van Tonder, I'm asking for
23 you --

24 MR. RICCI: Sorry. Sorry. Sorry.

25 MR. GOTTLIEB: I'm asking for her to

1 answer my question.

2 MR. RICCI: She's trying to answer your
3 question. You just started interrupting her. So
4 I'm going to ask that you not do that, and let the
5 witness finish answering her question and then you
6 can ask your next question. Thank you.

7 MR. GOTTLIEB: Sure.

8 THE WITNESS: There was a pre-DIP
9 Solicitation Process as well that commenced as
10 early as the 30th of April, where the Monitor had
11 engaged with various parties. Some did not even
12 provide term sheets in the end.

13 So, on the 30th of April, they were
14 contacted with NDAs to indicate that the company is
15 planning or could potentially be planning for a
16 CCAA process. Parties, different parties,
17 responded definitely during that initial 15 days.
18 So really, in essence, if there was all
19 interactive, it might not have even been the
20 15 days, but more relating from the 30th of April
21 to the 30th of May. So there is a pre-DIP
22 Solicitation Process that was attempted with
23 various of the DIP Lenders.

24 So I just want to note that it wasn't
25 just necessarily the 15 days that we referred to,

1 but there was an additional 15 days prior to that,
2 where FTI did reach out to various lenders.

3 BY MR. GOTTLIEB:

4 193 Q. Ms. van Tonder, will you concede
5 for me that it would have been nice to have more
6 time than you had, the 15 days since you sent out
7 the formal letter? The answer is "yes" or "no."
8 Will you concede that more time would have been
9 better, or will you not concede more time would
10 have been better?

11 A. I believe that the process, as
12 robust and under pressure it was, I believe that
13 the process was fair, and I believe it was
14 transparent. And as hectic the timelines it was, I
15 believe that governance was in place for this
16 process.

17 194 Q. So notwithstanding that you say it
18 was hectic, you won't concede that more time would
19 have been better; is that your answer?

20 MR. RICCI: I let you go three times,
21 Mr. Gottlieb. I think at the fourth time I'm going
22 to stop and ask you to move on.

23 MR. GOTTLIEB: Well, that's what
24 happens when the witness won't answer the question,
25 Mr. Ricci. We're allowed to come back and get the

1 answer. And you wouldn't be able to make that
2 objection in court, as you know.

3 So, if you're going to stop me now on
4 that, that's fine. But I don't have an answer to
5 the question because she won't answer it. But
6 that's fine.

7 MR. RICCI: You have an answer. You
8 have three answers. I just --

9 MR. GOTTLIEB: I do have an answer.

10 MR. RICCI: -- it's not the answer you
11 wanted, that's all.

12 MR. GOTTLIEB: I do have an answer,
13 just not to the question I asked. But that's a
14 different story, so we'll deal with that elsewhere
15 as we do.

16 MR. RICCI: That's by the beholder.

17 BY MR. GOTTLIEB:

18 195 Q. The company considered, with the
19 Monitor, three proposals for the DIP loan, correct?

20 A. Correct.

21 196 Q. One from EDC, one from IRH, and
22 one from the noteholders, including the other
23 lenders, correct?

24 A. That's correct. Oaktree and
25 Hartree with the ad hoc, yes, correct.

1 197 Q. Thank you very much. And with the
2 assistance of the Monitor, each bid was evaluated
3 in accordance with its terms, correct?

4 A. Correct.

5 198 Q. And as you said to Mr. Murdoch,
6 they were compared to one another?

7 A. They were analyzed and presented
8 side by side to allow the Op Com to analyze and
9 come to a conclusion.

10 199 Q. Okay. And the IRH bid had more
11 favourable interest rate and cost features than the
12 other two bids that were being considered, correct?

13 A. To my knowledge, that is correct.
14 However, there was a concern with regards to
15 securing the funding within Canada. And the
16 Monitor noted that that risk --

17 200 Q. Ms. van Tonder, do you know the
18 question I just asked you?

19 MR. RICCI: Sorry. Sorry. Just finish
20 your answer.

21 THE WITNESS: According to my
22 knowledge, they had had favourable terms, yes.

23 BY MR. GOTTLIEB:

24 201 Q. Okay, so my question was whether
25 or not you were aware that the IRH bid had more

1 favourable interest rate and cost features. You
2 were aware of that, correct?

3 A. Yes.

4 202 Q. Okay. That's what my question
5 was.

6 A. Okay.

7 203 Q. And as we understand it, the
8 IRH bid was excluded based on a recommendation of
9 the Monitor regarding certainty of ability to get
10 access to funds, correct?

11 A. That's correct.

12 204 Q. And at no time did the Monitor or
13 the company go back to IRH and make suggestions as
14 to how to bridge that gap to make sure funds would
15 be available, correct?

16 A. According to my knowledge, they --
17 IRH was also contacted on the second turn of term
18 sheets. They were also provided with the issues
19 list noted, and according to my knowledge, the
20 final term sheet could not remedy that risk.

21 205 Q. Ms. van Tonder, I'm not sure if
22 you misunderstood my question.

23 I said: To your knowledge, at no time
24 did the Monitor or the company go back to IRH and
25 suggest how that gap could be bridged, how that

1 problem could be solved, considering that it had
2 superior interest rate and cost features? At no
3 time did the Monitor applicant go and say, "Here's
4 how we can bridge that gap," correct?

5 A. I was not involved in the
6 discussions that the Monitor had with IRH, so I was
7 not privy to the conversation as to how they bridge
8 or how they negotiated the -- how to facilitate
9 that concern. I'm also not -- to my knowledge, I
10 do not -- I believe you mentioned it's the Monitor
11 or the company. According to my knowledge, the
12 company weren't in the process of negotiating the
13 term sheets with the IRH.

14 206 Q. The company was excluded from
15 negotiating the terms with the proposed DIP
16 Lenders?

17 A. So, after the receipt of the
18 return to the DIP Lenders with the issues list,
19 that was done by Monitor and Counsel. The company
20 was not involved in that, in the issues list in the
21 -- that phase of the documentation. I personally
22 was not involved, and to my knowledge no one from
23 the company was specifically involved in those
24 conversations.

25 207 Q. I see. And you were in meetings

1 where there were discussions with IRH about the
2 possibility of it proposing the DIP, correct?

3 A. Correct.

4 208 Q. And at no time during those
5 meetings were any suggestions given to IRH about
6 how to bridge the gap so that the Monitor would be
7 comfortable with the certainty of funds from IRH,
8 correct?

9 A. I do not recall being -- I do not
10 recall being in a conversation with regard to the
11 security of funds. I can't recall that.

12 209 Q. Okay. And no other reason was
13 given to reject the IRH proposal, aside from the
14 uncertainty of availability of funds, correct?

15 A. As I recall, that was the main,
16 the biggest concern with regards to the IRH
17 proposal.

18 210 Q. And what was the question
19 regarding the certainty of availability of funds?
20 Why was that an issue?

21 A. They could not place the quantum
22 in a Canadian bank account. It would always have
23 been kept, I guess, offshore.

24 211 Q. Okay. And given the fact that the
25 terms, from a financial point of view, regarding

1 the interest rate and cost features of IRH were
2 superior to the others, you'll agree with me that
3 it would be worth the while to have more time to
4 discuss that with IRH, correct? To see if that
5 bridge could be gapped?

6 A. Give me a second. I guess, in a
7 perfect world, time is a luxury. I'm not sure how
8 to respond to that.

9 212 Q. Well, time is a luxury so it would
10 be good to have a little more time to discuss with
11 IRH. That's not complicated, correct? That's
12 fair, Ms. van Tonder?

13 A. I don't want the essence of time
14 to discredit the process that --

15 213 Q. I'm actually -- ma'am, I'm not
16 debating with you on the process; I haven't talked
17 process once. You keep bringing up process. I
18 don't.

19 So that's why I'd like you to stick to
20 my question which, given the fact that it's
21 superior in terms of the interest rate and the cost
22 features, you agree with me that it would be good
23 to have more time to see if you could bridge the
24 gap with IRH? That would be useful, that would be
25 good, fair?

1 A. Fair.

2 214 Q. Okay. I just want to go to your
3 second affidavit, if I could. I apologize, it's
4 the June 7th affidavit, I think it's the fourth
5 affidavit; I call it the second, okay?

6 And I'm going to ask you -- I'm going
7 to ask Mr. Underwood if he can -- unless you have
8 it there.

9 A. I have it in front of me.

10 215 Q. Okay. We should probably bring it
11 up so everyone can see it. I'm going to page 4,
12 which is paragraph 15. We'll just bring it up,
13 ma'am.

14 A. I've got it.

15 216 Q. Paragraph 15. I can't read that
16 for the life of me. Okay, I just want to go to the
17 top of paragraph 15. So it says there:

18 "Contrary to the suggestion of
19 the Objecting Bidder in the
20 cross-motion, approval of the full
21 DIP Facility does not entrench EDC
22 or confer upon it any advantage over
23 other parties."

24 Do you see that?

25 A. Correct.

1 217 Q. Okay. Now, therefore, you say
2 EDC is not embedded, correct? It's not entrenched,
3 using your words, for the interim period, correct?

4 A. Correct.

5 218 Q. And you say EDC doesn't get an
6 advantage over other parties, correct?

7 A. I believe that to be correct.

8 219 Q. And that is the intention,
9 therefore, of what's supposed to happen during the
10 time period from this Wednesday, the 10th, until
11 the motion is fully heard on the 30th, correct?

12 A. That's correct.

13 220 Q. Okay. And therefore the goal is
14 during that 21-day period to get the best DIP
15 possible for the company, even if it is not the EDC
16 DIP, correct?

17 A. I'm not a hundred percent familiar
18 with the process going forward in the 21 days from
19 Wednesday going forward.

20 221 Q. Okay. But when you were swearing
21 that in your affidavit, you were attempting to tell
22 the Court that EDC is not entrenched, and the fact
23 that it's there now doesn't give it an advantage
24 over every other party, and the goal is to get the
25 best DIP for the company during that period,

1 correct?

2 A. Correct.

3 222 Q. Okay. I'd like to just take a
4 three-minute break, Mr. Ricci, if that's okay.

5 MR. RICCI: Sure, of course.

6 MR. GOTTLIEB: Thanks very much. We'll
7 come back on the record. If we're not done, very
8 close to.

9 MR. RICCI: Okay.

10 -- RECESS TAKEN AT 5:44 P.M. --

11 -- UPON RESUMING AT 5:46 P.M. --

12 MR. GOTTLIEB: Okay, we'll go back on
13 the record.

14 BY MR. GOTTLIEB:

15 223 Q. So, Ms. van Tonder, we talked
16 about the 21-day period. During that time period,
17 therefore, given that the goal is to get the best
18 DIP during that period, you expect that the Monitor
19 and the company will be able to negotiate with
20 other potential DIP Lenders during that period,
21 correct?

22 A. Give me one second.

23 224 Q. Okay.

24 A. Paragraph 15 does state in my
25 affidavit:

1 "Nothing prevents a DIP
2 facility from being replaced by
3 another facility if an
4 objecting bidder is ultimately
5 successful."

6 So I agree with your comment.

7 225 Q. And the company and the Monitor
8 are allowed to negotiate with anyone during this
9 period, including the objecting bidder, not limited
10 to the objecting bidder, correct?

11 A. To be honest, I can't -- I have no
12 knowledge of the process of who can be -- who can
13 be included in the process over the next 21 days.

14 226 Q. Other than -- during the 21 days?

15 A. Yeah, I'm not -- I'm not familiar
16 with whether or not all proposed bidders can be
17 contacted during the next 21 days.

18 227 Q. Okay. But you're comfortable that
19 they can speak with and deal with the objecting
20 bidder, correct?

21 A. Correct.

22 228 Q. Okay. So you don't know what the
23 company has agreed to allow or not allow during
24 this period?

25 A. From a negotiation perspective?

1 229 Q. Yes.

2 A. Again, those processes are run by
3 the Monitor and the counsel, and the company is not
4 -- doesn't keep those conversations.

5 230 Q. So you don't know?

6 A. I would say I'm not a hundred
7 percent familiar with how the next process is going
8 to unfold.

9 231 Q. Okay. So the goal that we talked
10 about is to get the best DIP possible for the
11 company during this period.

12 So, Ms. van Tonder, if a potential
13 lender comes back with a proposal that was better
14 than EDC and the objecting bidder in every way,
15 you'll agree with me the company should be able to
16 discuss that and negotiate with that offeror during
17 that period, correct?

18 A. Logically, I would agree with
19 that.

20 232 Q. Okay. All right. And that would
21 be in the best interests of the Applicants to get
22 the best deal, correct?

23 A. Best deal is definitely in the
24 best interest of the Applicant, yes.

25 MR. GOTTLIEB: Perfect. Okay. Those

1 are... One second. Just give me one second, I
2 apologize, Ms. van Tonder. I don't apologize to
3 Mr. Ricci, just you.

4 Ms. van Tonder, Mr. Ricci, thank you
5 very much for your time. Those are all my
6 questions.

7 MR. RICCI: All right. Just one or
8 two points by way of re-examination, Ms. van
9 Tonder.

10 RE-EXAMINATION BY MR. RICCI:

11 233 Q. Mr. Gottlieb asked you some on
12 questions about whether it would have been useful
13 to have more time to discuss with IRH questions
14 about their proposal. Do you recall that?

15 A. I do recall the question.

16 234 Q. My question for you is, to what
17 extent, if at all, was the DIP Solicitation Process
18 applied differently to IRH as compared to the other
19 participants in the DIP Solicitation Process?

20 MR. GOTTLIEB: Mr. Ricci, I'll just say
21 that question couldn't possibly be more leading.
22 But I will -- I'll just say that I object to the
23 question, but that's all I can say about that.

24 MR. RICCI: All right. Well, I
25 disagree.

1 BY MR. RICCI:

2 235 Q. So go ahead and answer the
3 question.

4 A. Okay. I do believe that we did
5 place a detailed description in the affidavit -- in
6 my affidavit, there's a detailed description of the
7 process that was followed since the commencement of
8 the CCAA process.

9 The DIP Solicitation Process, I believe
10 I've used the word "fair, robust and transparent"
11 and that all parties were treated the same.
12 Everyone was given the same timelines. Not
13 everyone signed on the same day. I refer back to
14 my comment of NDAs being provided. So certain
15 parties might have had -- well, since the NDA is
16 the commencement of that process, for when people
17 started the process, but there wasn't more time or
18 less time from one party to another. There wasn't
19 information shared with one that wasn't shared with
20 the other. And yet, as part of this process, we
21 did receive three initial proposals and three final
22 proposals. So the fact that we had three proposals
23 to consider in such a short period of time, I still
24 do believe that the process was effective.

25 236 Q. To your knowledge, what were the

1 participants in the DIP Solicitation Process told
2 about the possibility of negotiations after a
3 successful DIP proposal was selected by the
4 company?

5 MR. MURDOCH: What is this
6 re-examination question relating to?

7 MR. RICCI: This is a re-examination of
8 Mr. Gottlieb's questions about the process that he
9 just went to, and the witness' answer to my question.

10 MR. GOTTLIEB: I didn't ask about the
11 process at all, Mr. Ricci. I object to the
12 question on, one, it's misleading, and two, it goes
13 into an area not examined on.

14 MR. RICCI: It's not leading. Let me
15 try it a different way to see if I can address your
16 collective concerns.

17 BY MR. RICCI:

18 237 Q. Do you recall Mr. Gottlieb asked
19 you questions about what would happen in the 21-day
20 period that we're now in concerning the different
21 proposals?

22 A. Uhm-hmm.

23 238 Q. And he asked you about whether it
24 might be in the best interests of the company to
25 discuss those terms with some of the participants

1 in the DIP Solicitation Process; do you recall that?

2 A. Yes.

3 239 Q. To what extent were discussions
4 had, to your knowledge, with participants in the
5 DIP Solicitation Process about what would happen
6 after a successful bid was arrived at by the company?

7 A. So I do recall being in
8 conversations where it was noted that the 30 May
9 would be the full and final best deal presented by
10 various lenders and that the term sheet will not be
11 retraded post that final submission, as the Monitor
12 at that point in time believed that it would bring --
13 discredit the process by re-going back to things
14 the entire time. And then it was made clear that
15 that 30 May date was effectively your full, final
16 and last chance to bid.

17 MR. RICCI: All right, thank you.

18 Those are my questions.

19 MR. GOTTLIEB: Thanks, Mr. Ricci.

20 Thanks again, Ms. van Tonder.

21

22 -- Examination adjourned at 6:05 P.M.

23

24

25

1 REPORTER'S CERTIFICATE

2
3 I, JUDITH M. CAPUTO, RPR, CSR, CRR,
4 Certified Shorthand Reporter, certify;

5 That the foregoing proceedings were
6 taken before me at the time and place therein set
7 forth, at which time the witness was put under oath
8 by me;

9 That the testimony of the witness
10 and all objections made at the time of the
11 examination were recorded stenographically by me
12 and were thereafter transcribed by myself and at my
13 direction;

14 That the foregoing is a true and
15 correct transcript of my shorthand notes so taken.

16
17 Dated this 9th day of June, 2026.

18
19
20 

21 ARRAY CANADA

22 PER: JUDITH M. CAPUTO, RPR, CSR, CRR

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< Z >
Zoom 1:19

TAB A

8:51



Jowdat

Today 12:44 PM

Here now. Good luck.

Saw EDC submission. They have opened up an avenue re 2027 by saying they are providing \$400M because company will lose more money in 2027. Watch out for cross on this.

HY bondholders are obviously in part confused part panick selling mode. GS is quoting \$65. Basically market saying after EDC's \$400M and Oaktee's \$180M, the secured creditors are only getting \$422 (as against \$650M face). Basically EV of \$1B is what market is assuming.

I hear they are all "shocked" by how much company is bleeding in cash. This partly explains the clamour for CRO.

Ultimately, we need a settlement with Oaktree/HY on this DIP and Approved Cash flows. With everyone fighting it will be hard to even get \$1B EV.



Text Message • RCS



TAB B



Baffinland Iron Mine DIP Term Sheet Summary

**Draft – For Discussion Purposes Only and Subject to Change
Privileged & Confidential**

DIP Term Sheet Summary

Term Sheet Summary		EDC	IRH	Oaktree Hartree + Ad Hoc Group
DIP Lender				
Facility Amount		\$400M Revolving Facility (Finished Product Funding Scenario) \$475M Revolving Facility (Finished Product Non-Funding Scenario)		\$300M Delayed Draw Term Facility
DIP Advance		- Advances shall be made in 2-week intervals (at least 1 business day notice) - Bridge Advances will be limited to \$110M during 4-week period from Second ARIO		- Initial advance of \$70M - Subsequent advances to be made in amounts greater than \$20M with at least 3 business days advance request. - Bridge Advances will be limited to \$110M during 4-week period from Second ARIO
Maturity Date		Earliest of: (a) demand date following Event of Default (b) 1-year after 2nd ARIO (extendable by 6 months) (c) closing of a Restructuring Transaction (d) date on which CCAA Proceedings are terminated		Earliest of: (a) conversion from CCAA into BIA (b) occurrence of Event of Default (c) closing of a Transaction (d) 1 year after 2nd ARIO (extendable by 2 x 3-month extensions each)
Pre-Approved Steensby Capex		- Approved Cash Flow must exclude Excess Expansion and Exploration Expenses (no Pre-Approved Steensby Capex, only what is necessary to preserve existing assets and Authorizations) Assumption: \$20M Steensby Capex and \$10M Exploration Capex		- \$20M Steensby Capex and \$10M Exploration Capex
Other		- Borrower entitled to prepay any amounts under the DIP Facility without penalty and re-borrow amounts up to Facility Amount - If Borrower holds Excess Cash (defined as in excess of \$20M), the Excess Cash will be used to prepay the DIP Facility - SISP acceptable to DIP Lender and FA to conduct the SISP will be selected prior to June 30, 2026 - DIP Lender be provided opportunity to comment on all CCAA Court materials - DIP Lender to consent to all contract modifications		- Explicitly allow Royalty payments to be paid - Best efforts to implement a hedging program - Second ARIO approving Term Sheet, granting DIP Charge, granting stay for until at least Sep. 30, 2026 - KERP required by June 5, 2026 - SISP to start no more than 3 months from Second ARIO; Round 1 bids no later than 6 months after Second ARIO; Site visits complete by October 31, 2026; Final deadline no later than 12 months after commencement

1. “EDC” throughout this report represents the Term Sheet provided by His Majesty in Right of Canada (the “DIP Lender”), as represented by EDC. For greater certainty, funding for the DIP Facility is provided by the Government of Canada.

DIP Term Sheet Summary (continued)

Term Sheet Summary		EDC	IRH	Oaktree Hartree + Ad Hoc Group
DIP Lender		EDC	IRH	Oaktree Hartree + Ad Hoc Group
Interest and Fees:				
Interest Rate	Citibank prime rate of 6.75% + 4.75% = 11.50%			Adjusted Term SOFR (3.66%+0.1%) + 7.00% = 10.76%
Default Rate	Interest Rate + 2%			Interest Rate + 2%
Facility Fee	2% x Facility Amount = \$8M			3% x Facility Amount = \$9M
Standby Fee	1.5% x average daily Unused Commitment <i>- Assumption: Finished Product Funding Scenario elected immediately</i>			–
Other Fee	Extension Fee: 1% x Facility Amount = \$4M			Extension Fee: 2% x DIP loan balance o/s
Other:				
Costs and Expenses	Borrower to pay reasonable third-party costs and expenses, including: 1) BMO Capital Markets (financial advisor); 2) Norton Rose (counsel to EDC); 3) Goodmans (counsel to Govt of Canada) <i>- Assumption for comparison purposes: \$1M per month total fees</i>			Borrower to pay reasonable third-party costs and expenses (through Deemed Draws which are not assumed to count towards the \$300M facility), including: 1) Stikeman Elliott; 2) Paul Weiss LLP; 3) Financial Advisor; 4) Akin Gump LLP; 5) Cassels LLP; 6) Houlihan Lokey <i>- Assumption for comparison purposes: \$1M per month total fees</i>
DIP Charge	DIP Charge shall rank ahead of all charges other than: 1) Admin Charge of \$5M 2) D&O Charge of \$20.4M			DIP Charge shall rank ahead of all charges other than: 1) Admin Charge of \$5M 2) D&O Charge of \$20.4M
Reporting:				
Cash Flows	- Borrower to provide updated cash flow forecast no more than once per calendar month - Borrower to provide variance report on the second to last business day of every fourth week covering preceding four weeks ("Testing Period") and on a cumulative basis - Permitted Variance being 10% of aggregate net cash flows, cumulative basis.			- Borrower to provide updated cash flow forecast from time to time - Borrower to provide updated cash flow forecast and variance report on Monday of every fourth calendar week - Permitted Variance includes (i) actual receipts are not less than 90% of projected receipts and (ii) actual disbursements are not more than 110% of projected disbursements, both for the Testing Period and cumulative period - Borrower to provide a business plan within 3 months of Initial Order

DIP Term Sheet Cost Comparison

DIP Term Sheet Comparison - Including Pre-Approved Steensby Capex per Term Sheets 1-Jun-26

Figures in USD \$ millions

	EDC	IRH	Oaktree / Hartree + Ad Hoc Group
Facility Size	400.0		300.0
Month DIP Facility is exceeded	n/a		Aug-2027
<i>12-Month Facility Comparison (i.e. to May 31, 2027)</i>			
Interest Costs	23.7		22.6
Facility Fee	8.0		9.0
Standby Fee [1]	2.6		–
Illustrative Professional Fees	12.0		12.0
Total Interest and Fees	46.3		43.6
DIP Financing Ending Balance [2]	260		275
Excess Availability (Shortfall) [3]	143		46
<i>Effective Annual Cost (excl. professional fees)</i>	<i>16%</i>		<i>15%</i>

- Standby Fee calculated under the Finished Product Funding Scenario for EDC (i.e. \$400M Facility Amount). If the Finished Product Non-Funding Scenario arises, or the election of Finished Product Funding Scenario does not occur until the outside date of August 31, 2026, approximately \$300,000 of incremental standby fees would accrue and be payable based on the increased Facility Amount of \$475M.
- DIP Financing Ending Balance includes principal advances plus accrued paid-in-kind fees
- Excess Availability (Shortfall) is the undrawn principal amount on each DIP Facility

DIP Term Sheet Cost Comparison

DIP Term Sheet Comparison - Including Pre-Approved Steensby Capex per Term Sheets 1-Jun-26

<i>Figures in USD \$ millions</i>	EDC	IRH	Oaktree / Hartree + Ad Hoc Group
Facility Size	400.0		300.0
Month DIP Facility is exceeded	n/a		Aug-2027
18-Month Facility Comparison (i.e. to November 30, 2027)			
Interest Costs	42.8		41.0
Facility Fee	8.0		9.0
Standby Fee [1]	3.0		–
Extension Fee	4.0		12.5
Illustrative Professional Fees	18.0		18.0
Total Interest and Fees	75.8		80.4
DIP Financing Ending Balance [2]	397		408
Excess Availability (Shortfall) [3]	10		(69)
Effective Annual Cost (excl. professional fees)	14%		15%

- Standby Fee calculated under the Finished Product Funding Scenario for EDC (i.e. \$400M Facility Amount). If the Finished Product Non-Funding Scenario arises, or the election of Finished Product Funding Scenario does not occur until the outside date of August 31, 2026, approximately \$300,000 of incremental standby fees would accrue and be payable based on the increased Facility Amount of \$475M.
- DIP Financing Ending Balance includes principal advances plus accrued paid-in-kind fees
- Excess Availability (Shortfall) is the undrawn principal amount on each DIP Facility

DIP Term Sheet Comparison

DIP Term Sheet Comparison - Including Pre-Approved Steensby Capex per Term Sheets 1-Jun-26

Figures in USD \$ millions

As at: 6/26/2026 7/31/2026 8/28/2026 Sep-26 Oct-26 Nov-26 Dec-26 Jan-27 Feb-27 Mar-27 Apr-27 May-27 Jun-27 Jul-27 Aug-27 Sep-27 Oct-27 Nov-27 Dec-27

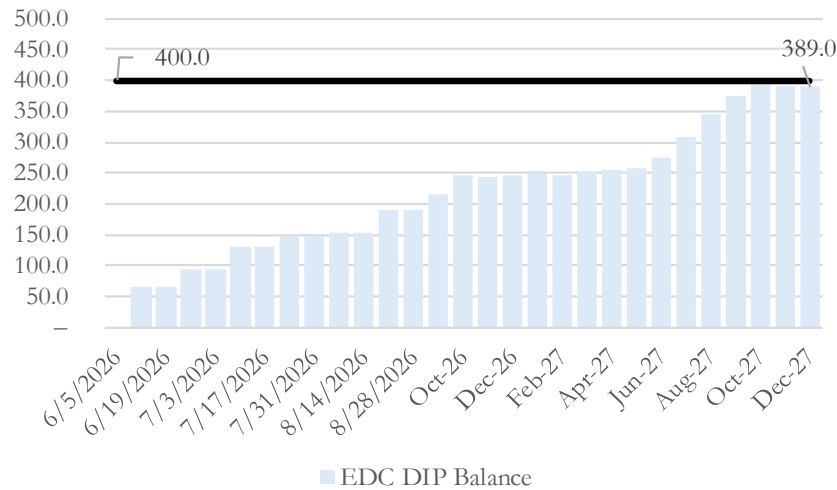
DIP Financing Principal Amount of Aggregate Advances

	6/26/2026	7/31/2026	8/28/2026	Sep-26	Oct-26	Nov-26	Dec-26	Jan-27	Feb-27	Mar-27	Apr-27	May-27	Jun-27	Jul-27	Aug-27	Sep-27	Oct-27	Nov-27	Dec-27
EDC	95	146	190	216	248	245	246	248	245	251	254	257	274	309	344	374	393	390	389
IRH	[REDACTED]																		
OT/HT/AHG	95	141	179	204	234	234	234	234	234	234	234	254	254	286	319	349	369	369	369

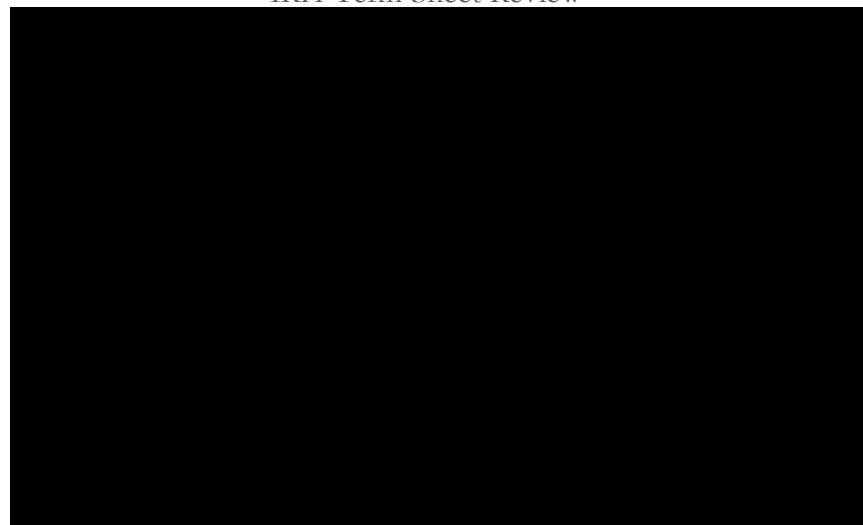
Excess Availability (Shortfall) Facility Size

	Facility Size	6/26/2026	7/31/2026	8/28/2026	Sep-26	Oct-26	Nov-26	Dec-26	Jan-27	Feb-27	Mar-27	Apr-27	May-27	Jun-27	Jul-27	Aug-27	Sep-27	Oct-27	Nov-27	Dec-27
EDC	400	305	254	210	184	152	155	154	152	155	149	146	143	126	91	56	26	7	10	11
IRH	[REDACTED]	[REDACTED]																		
OT/HT/AHG	300	205	159	121	96	66	66	66	66	66	66	66	46	46	14	(19)	(49)	(69)	(69)	(69)

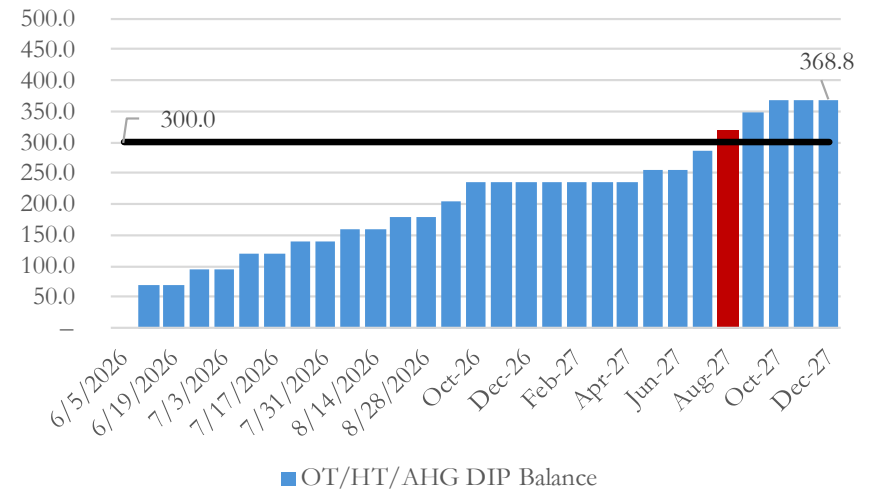
EDC Term Sheet Review



IRH Term Sheet Review



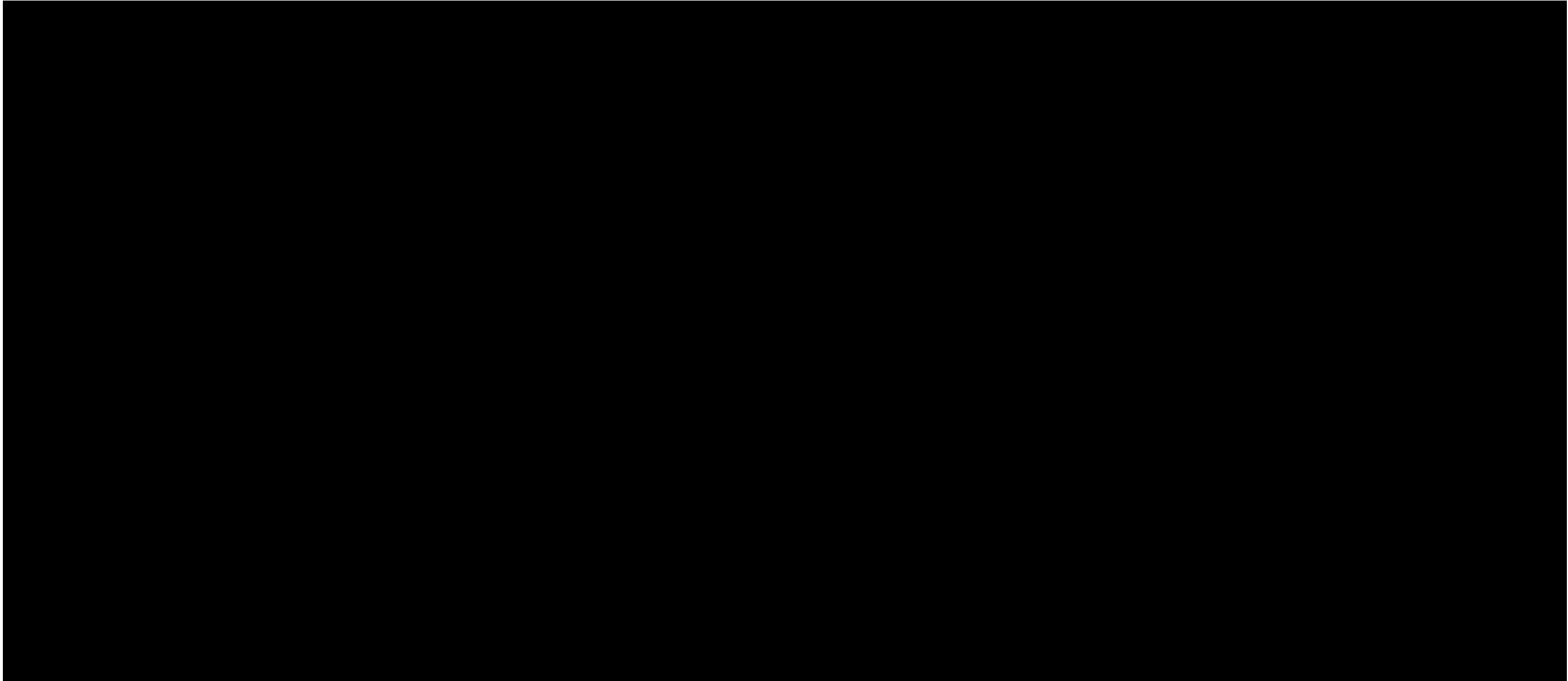
OT/HT/AHG Term Sheet Review



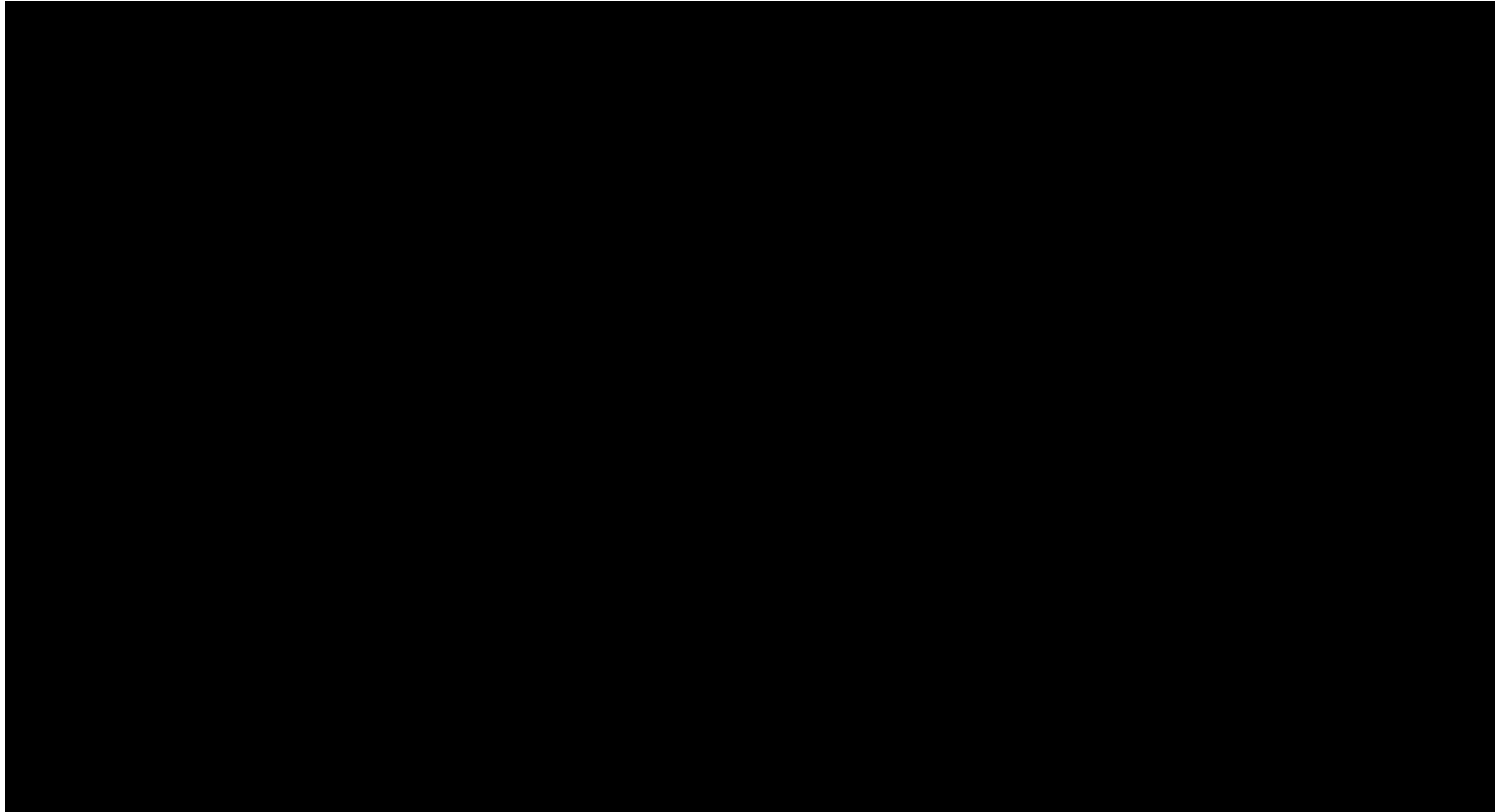
2. **Professional Fees:** Note EDC and IRH professional fees are paid in cash and therefore included in principal amount of aggregate advances, while OT/HT/AHG professional fees are assumed to be paid by the DIP Lender as a Deemed Draw, but do not impact the principal amount of aggregate advances under the OT/HT/AHG DIP Facility.

== Cash Flow Details

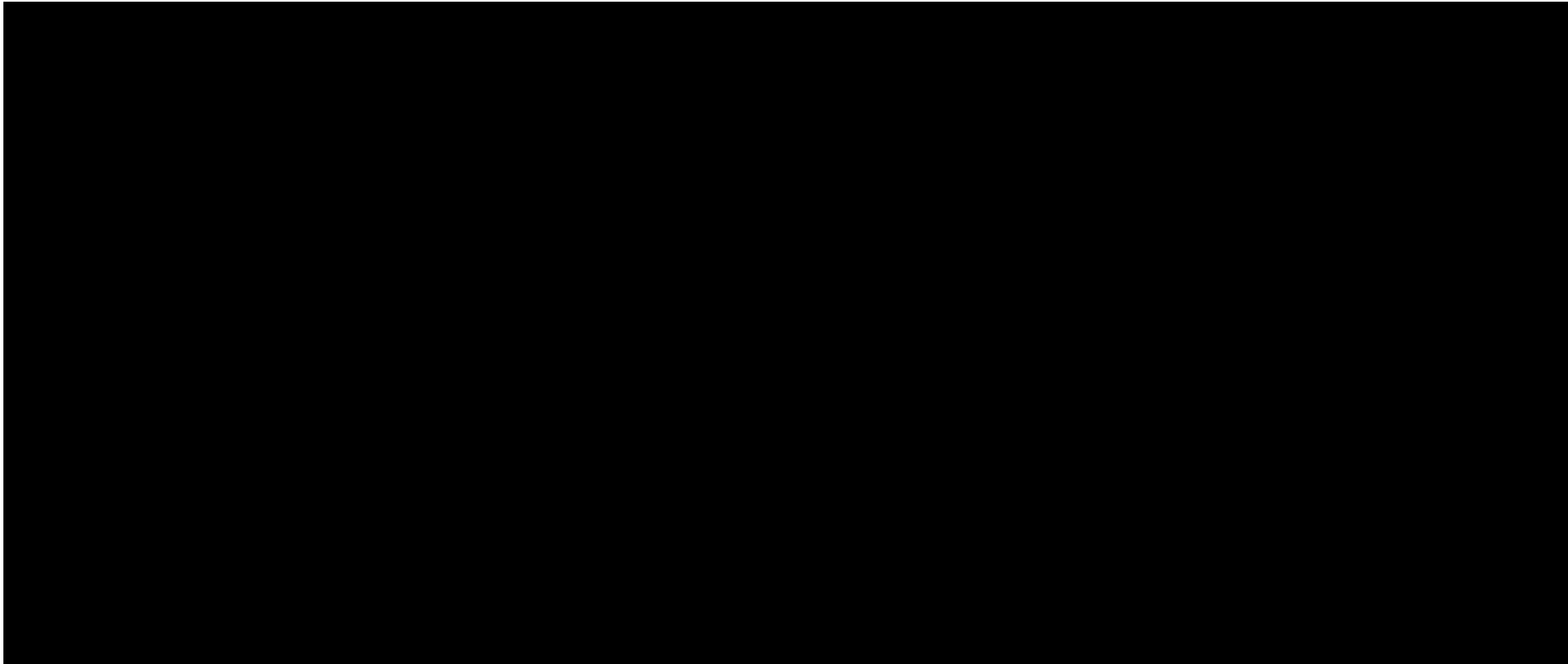
EDC Cash Flow Forecast Details 2026



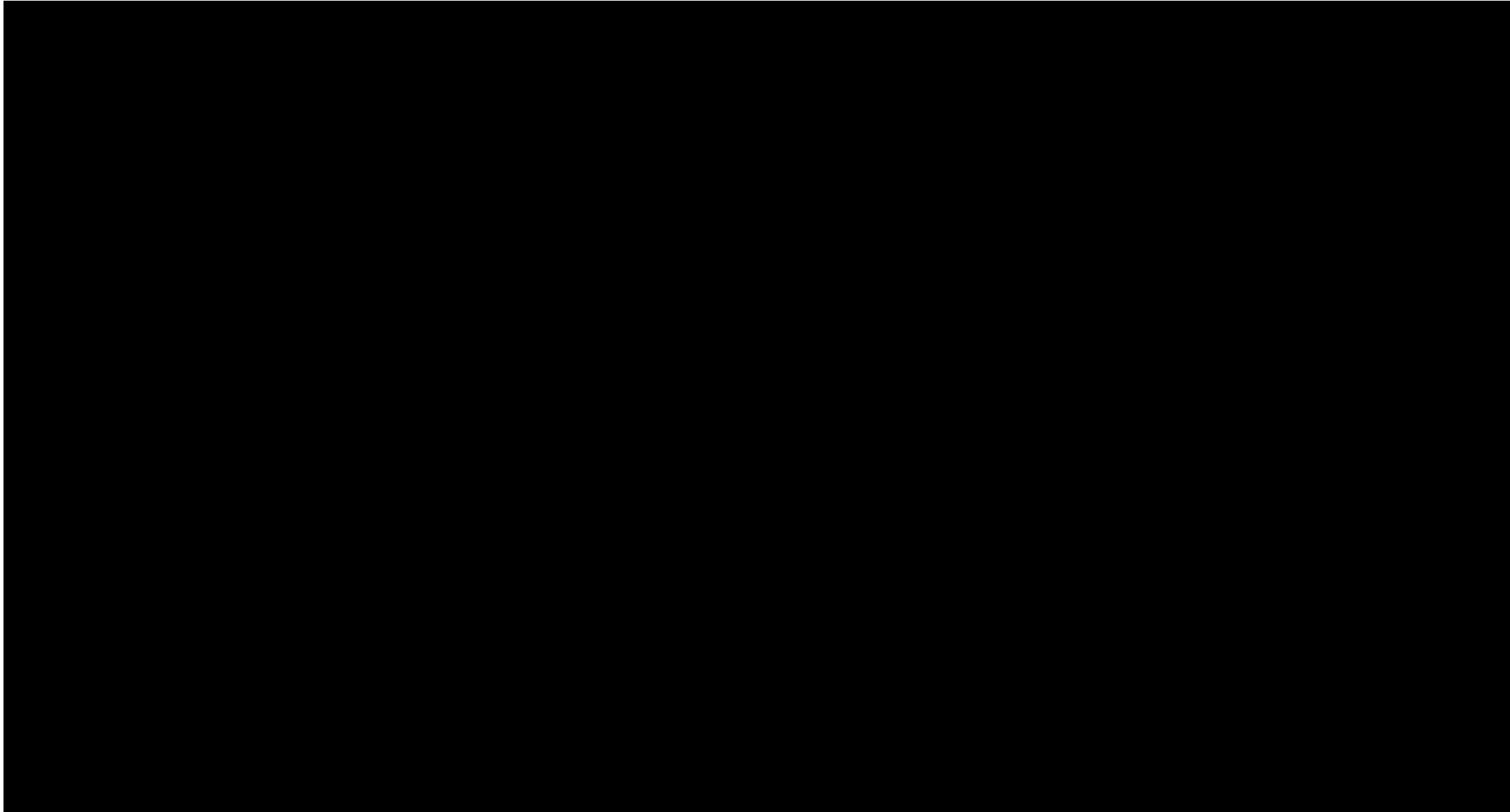
EDC Cash Flow Forecast Details 2027



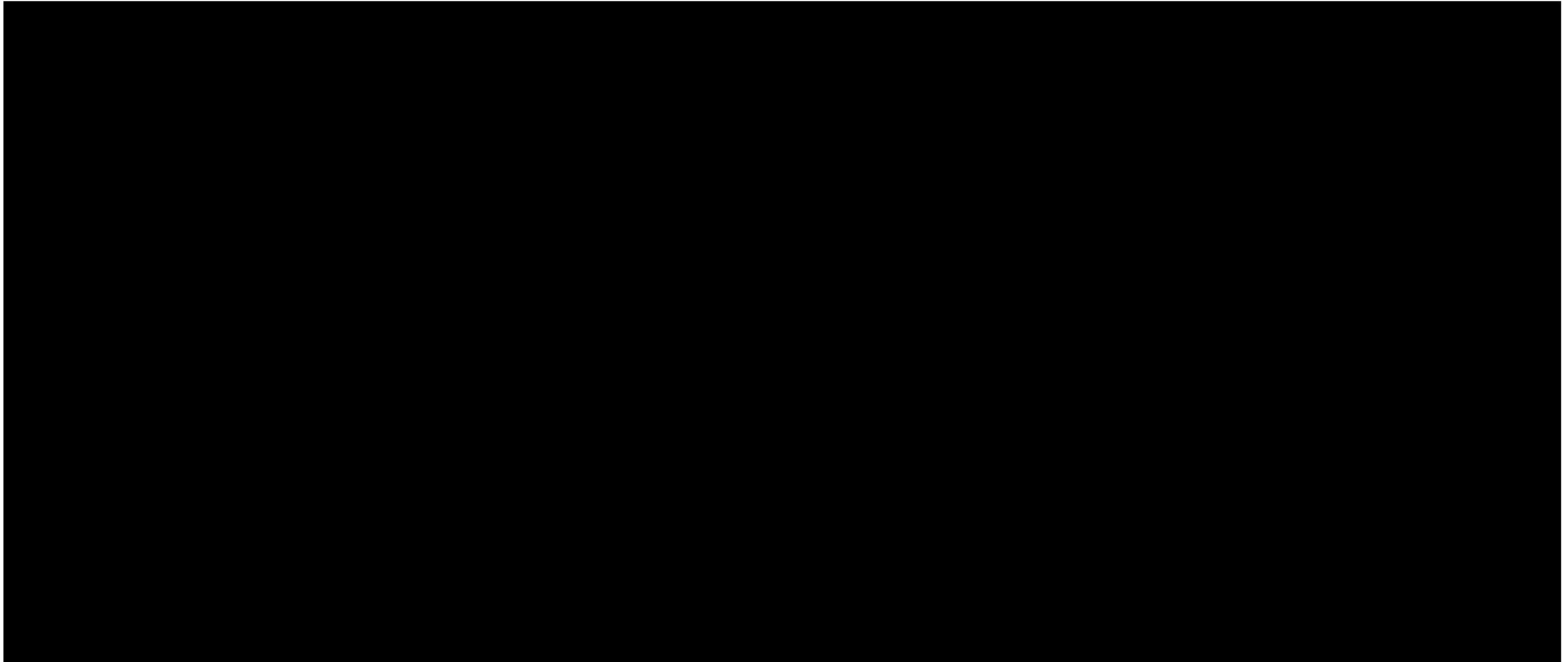
IRH Cash Flow Forecast Details 2026



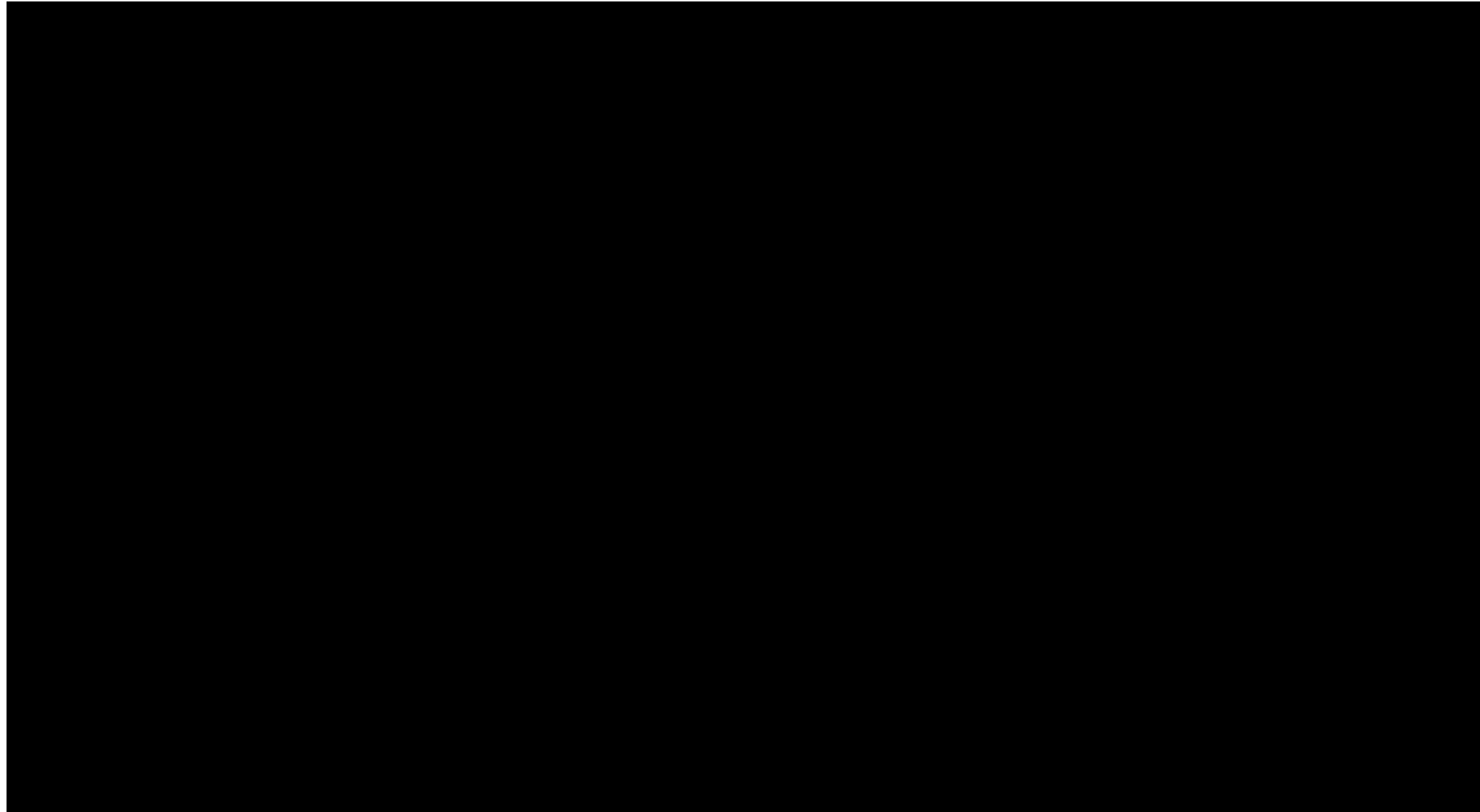
IRH Cash Flow Forecast Details 2027



OT/HT/AHG Cash Flow Forecast Details 2026



OT/HT/AHG Cash Flow Forecast Details 2027





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OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES
CORPORATION AND 12334992 CANADA INC

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