IN THE UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF GEORGIA

NEWNAN DIVISION

IN RE:	.	
	.	
AFH Air Pros, LLC, et al,	.	Docket No. 25-10356-pmb
DEBTOR.	.	
	.	Atlanta, GA
	.	AUGUST 06, 2025
	.	1:00 p.m.

. . . . . .

TRANSCRIPT OF

HEARING BEFORE THE HONORABLE PAUL BAISIER

UNITED STATES BANKRUPTCY JUDGE

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P R O C E E D I N G S

THE COURT CLERK: Good afternoon, parties. My name is (indiscernible) and I'll be calling today's (indiscernible) Today is August 6th, 2025, and the time is now 1 p.m. We're here for the special set hybrid hearing for case number 25-10356 AFH Air Pros, LLC et al. There are two matters on the calendar. Beginning with the first, there is a Chapter 11 plan of liquidation, which was amended and supplemented by Docket number 618, and two, Debtor's Chapter 11 disclosure statement, which was supplemented by Docket 610.

At this moment, I will take appearances of those that are appearing in the courtroom, and then I'll take appearances of those that are appearing via Zoom.

MR. KURZWEIL: Good afternoon. David Kurzweil and Matt Petrie with Greenberg Traurig on behalf of the Debtors.

MR. WILLIAMSON: Good afternoon. Rob Williamson with Scroggins, Williamson, & Ray. With me is Whit Morley from the Latham & Watkins firm, and I believe virtually Ebba Gebisa from Latham & Watkins. We represent the Pre-Petition Lenders, and the DIP Lenders, as well as the Agent.

THE COURT CLERK: Thank you.

MS. HUMNICKY: Anna Humnicky. I'm here with Small Herrin, and we're here on behalf of the Committee, as well as (indiscernible) And on video should be Shirley Cho from

Pachulsky, who is the lead counsel for the Committee.

MR. ADAMS: Good afternoon. Jonathan Adams, on behalf of the United States Trustee.

THE COURT CLERK: Thank you. I'll take appearances of those that are joining us via Zoom.

MS. CHO: Good afternoon, Your Honor, Shirley Cho, Pachulski Stang Ziehl & Jones, with Ms. Humnicky. We're here on behalf of the Official Committee of Unsecured Creditors.

THE COURT CLERK: Thank you. Will anyone else be making an appearance?

MS. REITZEL: Sydney Reitzel, with Verita. We're the Claims Agent for the Debtors.

THE COURT CLERK: Thank you. Will anyone else be making an appearance?

Okay. I'll let His Honor know that we're ready for him to join us.

THE COURT CLERK: All rise.

THE COURT: Please be seated.

THE COURT CLERK: The Court will now come to order.

Good afternoon, Your Honor. Today is August 6th, 2025, the time is now 1:16 p.m. We are here for the 1 p.m. specially set hybrid hearing for case number 25-10356, AFH Air Pros, LLC et al. There are two matters, beginning with

the first, Debtor's Chapter 11 plan of liquidation, and two, Debtor's Chapter 11 disclosure statement.

THE COURT: Good afternoon Mr. Kurtzweil.

MR. KURZWEIL: Good afternoon Your Honor.

May it please the Court, Your Honor may remember that this case was filed on March 16th, 2025, and on March 31st, the United States appointed an Official Committee of Unsecured Creditors who have remained very active in the case since that time. On May 19th, the Court approved the Debtor's sale of substantially all of their operating assets through six separate sales, and consummated the sales, and those are identified on Docket numbers 437, 438, 446, 447, 454, and 507.

At the confirmation process, solicitation procedures was heard by the Court, and on June 23rd, 2025, the Court entered an order approving the disclosure statement on an interim basis, establishing procedures for solicitation and tabulation of votes to accept or reject the plan, approving the form of ballot and solicitation materials, establishing a voting record date, fixing the date, time, and place for hearing the final approval, which was today, and approving related notice, procedures, and deadlines.

The order, among other things, provided for the procedures for solicitation of plan and related notices, and

the Court may remember comments from the Court at that hearing, the form of ballot and solicitation packages. On June 30th of this year, the Debtors claimed the Noticing Agent, Verita, served the solicitation packages and combined hearing notice, and other related notices set forth under the procedures order. On July 14th, the Debtor has filed a certain number of planned supplement documents, including the identity and compensation of Litigation Trustee, the form of litigation trust agreement, and the schedule of assigned causes of action, and that can be found on Docket number 557.

Further, on July 18th, the Debtors filed the additional plan supplement documents, which can be found at Docket number 562.

Your Honor, Now, these supplement, plan supplement documents were further amended. There was an amendment filed yesterday that just clarifies the items. The litigation trust agreement can be found at Docket 16-1. If Your Honor would like, I can briefly just tell the Court those minor amendments that are in there.

THE COURT: Sure.

MR. KURZWEIL: At page 58 of 61, it provides that upon written request -- And these red lines are of course filed with the record, and can be found at Docket 16-1, page 58. And the edited language is upon written request of the

beneficiary, the Litigation Trustee shall provide copy of a monthly report to such beneficiary at the sole expense of the requesting beneficiary. On page 59 of 61, it talks about the fiduciary duties of the Litigation Trustee, and that the fiduciary duties contained in paragraph 315 include, but not limited to a laundry list of fiduciary duties, and it was just listed that it was all inclusive. And then on page 61 of 61, at Docket 616-1, the last sentence of 8.5 was removed, which Your Honor, that sentence was left over from the previous version of negotiations between the parties, and I'd like to thank the U.S. Trustee, Your Honor, for pointing these out. These are in response to comments from the U.S. Trustee, in my understanding, thanks to the U.S. Trustee (indiscernible) with that document.

There were also very minor revisions to the wind down plan, the wind down agreement, which is the plan administration agreement, which can be found at Docket number 616-2. There were two very minor changes to that, Your Honor. Page 20 of 21, it just stated New York law as the choice of law for that agreement, and had been previously blank prior to that time. And on page 21 of 21, I added a notice of audit for counsel for the wind down administrator.

Your Honor, the deadline -- And if the Court

doesn't have any questions on that?

THE COURT: None so far.

MR. KURZWEIL: Okay. The deadline for all holders of claims (indiscernible) plan to cast the ballots July 28th, and the deadline to file objections to the plan was also July 28th. Your Honor, the Debtors filed their confirmation memorandum at Docket 610, outlining the issues before the Court for plan confirmation, as well as responding to the limited objections that were filed to plan confirmation. In addition, a voting declaration was filed, Docket number 607, and set forth in the voting declaration Classes 3 and Class 4 for the only classes entitled to vote, and they voted overwhelmingly to accept the plan.

Your Honor, it may help to provide the Court and parties just a very brief outline of what the plan does, if the Court would like?

THE COURT: Sure.

MR. KURZWEIL: The plan provides for settlement with the Committee, and the Committee settlement is described in the disclosure statement and the committee settlement term sheet, which is attached to the disclosure statement as Exhibit C. The settlement provides for the establishment of a Litigation Trust for the benefit of holders of allowed general unsecured claims, including the pre-petition (indiscernible) claim, and that the Litigation

Trust will be funded with $1 million plus the unused portion of the Debtor in Possession financing budget allocated as the payment of the Committee's professionals. It also provided that certain causes of action of the Debtors, as described in the plan supplement, will be transferred to the Litigation Trust.

Your Honor, the plan also provides for substantive consolidation for voting and distribution purposes. This is set forth in VII(c)(10) in the disclosure statement, and the Debtors believe that substantive consolidation is necessary in this case for the following reasons.

The Debtors used consolidated financial statements, and had a number of intercompany transfers. Although the Debtors maintained records of these intercompany transfers since the petition date, the Debtors did not historically reconcile these transactions of matter that would allow them to determine net balances owed by one Debtor to another Debtor. The second reason is that there is unity of interest, common ownership of subsidiaries, and co-minglings of business functions. The Debtors share a unity of ownership and interest. All the Debtors, except the holdings, are owned and controlled by AirPro Solutions LLC, which is wholly owned by holdings. Many of the Debtors historically share some management services through a centralized corporate office maintained by the Debtor,

AirPro Solutions, which houses accounting, billing and collections, corporate compliance, information technology, and legal and marketing functions.

The third reason for the sub-con request, Your Honor, is for parent and intercompany guarantees on loans. All the Debtors are jointly and separately liable under the pre-petition loan documents and DIP loan documents as either a borrower or a guarantor, and all the Debtors have pledged substantially all their assets as security for their obligations under these documents.

The next reason, Your Honor, is that there would be difficulty in segregating and ascertaining individual assets and liabilities, as discussed in the stalking course -- actually, as discussed in the disclosure statement. The Debtors obtained approval to sell substantially all their assets pursuant to the stalking horse APAs. The proceeds of the sale have been remitted to the (indiscernible) secured parties, to the pre-petition secured parties, except in the amounts necessary to find administration of these Chapter 11 cases, as well as the wind down cash amount, and the Litigation Trust funding (indiscernible) and it would be administratively impossible to segregate and ascertain the individual assets and liabilities to be administered on the sales.

And finally, Your Honor, the (indiscernible)

officers of record, prior to the petition date, each of the Debtors historically had the same executive (indiscernible) and therefore, the Debtor could (indiscernible) the plan, and assert that it's essential for the implementation of the plan.

THE COURT: And there isn't any objection to that?

MR. KURZWEIL: And no one objected to that, Your Honor.

Providing an overview of the plan, Your Honor, first if it would please the Court to turn to approval of the disclosure statement, because that may be the simpler of the matters before the Court today. That was approved on an interim basis by the Court on June 23rd, 2025, at Docket number 477. Your Honor, the disclosure statement contains adequate information as provided in section 11.5 of the Code. There were no objections filed, and therefore we request that the Court approve the disclosure statement on a final basis.

THE COURT: All right. Does anybody wish to be heard with regard to the final approval of the disclosure statement?

MR. ADAMS: Your Honor, very briefly, Jonathan Adams on behalf of the United States Justice. As the Court knows, the United States Trustee did object to the disclosure statement. I believe it was heard on that matter

back in June. Within that objection to the disclosure statement, we did raise certain issues regarding the litigation trust agreement pending when we would receive that, and reserved our rights as to that.

As Mr. Kurzweil has informed the Court, we have now reviewed the litigation trust agreement. We did ask for some minor changes, which the Debtor graciously agreed to. As a result, we can believe those matters are resolved.

So the only remaining issue we have is probably with regard to plan confirmation, and the releases, which we will address more generally later. Thank you.

THE COURT: Thank you. Anyone else? All right.

There being no objections with regard the disclosure statement (indiscernible) the last hearing (indiscernible) so the disclosure statement will be approved on a final basis.

MR. KURZWEIL: Thank you, Your Honor.

May it please the Court, I'd like to now turn to the plan. Your Honor, there are seven classes of creditors under the plan. The first two classes, Class 1 and Class 2, are unimpaired, and aim to accept the plan. Classes 5, 6, and 7 are impaired, and deemed to reject. And there remains two voting classes, Class 3 and Class 4, the ballots received overwhelmingly carried the votes (indiscernible) classes. Class 3 is a pre-petition secured claim, which is

impaired, and Class 4 is the general unsecured claim, which is also impaired.

Your Honor, the voting tabulation is embodied in the declaration of Sydney Reitzel, which can be found at Docket number 607. Ms. Reitzel is on the video. I'd like to proffer her testimony and her declaration (indiscernible)

THE COURT: (indiscernible) as set forth on the declaration?

MR. KURZWEIL: Yes, Your Honor.

THE COURT: Which you said is at Docket 607. All right. Does anybody have any objection to accepting Ms. Reitzel's declaration as her affirmative testimony? She is available for cross-examination, should that be necessary.

Hearing no objection, it is admitted.

MR. KURZWEIL: Your Honor, if Ms. Reitzel was called to testify, she would testify that Verita was appointed as an administrative advisor, and also authorized to assist the Debtors with soliciting, receiving, and reviewing, determining the validity of, and tabulating balance tests on, and planning by holds, claims, and voting classes that the Court established June 23rd, 2025 as the record date for determining which holds the claims (indiscernible) vote, that the only claims of Classes 3 and 4 were entitled to vote on the plan.

She would further testify that Verita prepared

tabulation votes, which are attached to the declaration as Exhibits A through C, that in review of the ballots (indiscernible) with respect to Class 3, the pre-petition (indiscernible) secured claims, two parties voted both to accept the plan in the total amount of $9,280,000. And therefore 100% of those voting (indiscernible) except for the Chapter 11 plan.

With respect to Class 4, general unsecured claims, she would testify that 21 Creditors voted, 17 Creditors voted, and 4 Creditors rejected. Therefore, 80.95% (indiscernible) With respect to the amount, $128,338,786.84 voted. Of that, $128,056,589.05 accepted. And therefore, an amount 99.78% accepted the plan.

I would also like to point out to the Court that two votes in Class 4 were not counted. These two are in addition to the 21. One ballot was not signed, and one was (indiscernible) late. However if they were included, they would not have changed the outcome.

I would like to offer the declaration of Sydney Reitzel into evidence. And Ms. Reitzel is available for cross-examination.

THE COURT: (indiscernible)

MR. KURZWEIL: Yep, I think we're good.

THE COURT: I think we're good.

MR. KURZWEIL: Your Honor, I would like to turn

now to the plan (indiscernible) the Bankruptcy Code. I have Mr. Heath, the CRO, in the Court room. Mr. Hede and his --

THE COURT: Can I ask you something (indiscernible) before we move on?

MR. KURZWEIL: Yes. Sure.

THE COURT: A couple of things, maybe one thing (indiscernible) might be helpful with.

First, and to satisfy my own curiosity, so I noticed in the stipulation and your writing tabulation that the pre-petition Secured Creditors (indiscernible) a $9 million secured claim. I would have thought we could close six sales, and (indiscernible) all the proceeds. Where does the $9 million claim come from?

MR. KURZWEIL: Your Honor, there are still assets and cash in the Estate. They have agreed to a treatment that whatever's left over, that's not used in winding down the Estate, and didn't go to the Litigation Trust, would go to the pre-petition Secured Lenders. There's money from deposits for various insurance. Other funds, you know, may come in as does in a case, and that's why the claim is out there. Certainly, if it's not collected, they have agreed that they're okay with that.

THE COURT: Very good. So it's sort of the cats and dogs of assets that remain after all the sales?

MR. KURZWEIL: That's correct, Your Honor.

THE COURT: And the other (indiscernible) question is that I didn't see in the declaration or the charts attached to it -- It shows how many people voted, but it didn't show me how many ballots got sent out to start with. Looking at the numbers, it looked like a couple hundred, based on the (indiscernible) the numbers of the ballot that voted were included in the (indiscernible) they ran through about 200.

MR. KURZWEIL: Your Honor, it will take me one minute (indiscernible) I have that number, Your Honor.

Your Honor, there were 198 in Class 4, and 56 nonvoting notices went out.

THE COURT: You said 196?

MR. KURZWEIL: 198, and 56.

THE COURT: Okay. Thank you.

MR. KURZWEIL: Your Honor, the declaration of Mr. Hede, the CRO, can be found at Docket number 611. If called to testify, Mr. Hede would testify that he is the senior manager director of Accordion Partners, and head of Accordion's turnaround and restructuring practice. He would further testify that he has over 30 years of financial and operational restructuring experience in both the United States and Australia. He would further testify that Accordion has been a financial advisor for the Debtors since March 2024, and that he has served as Chief Restructuring

Officer of the Debtors since September 2024. He would further testify that he is familiar with the provisions of Debtor's second amended Chapter 11 plan for liquidation, and the disclosure statement and all facts (indiscernible) and his declaration are based on his personal knowledge, belief, and understanding of discussions (indiscernible) advisors, and agents.

Mr. Hede would testify that the Committee's settlement is in the best interest of the Debtors, their estates and the Creditors, and should be approved in connection with confirmation of plan. And Mr. Hede would further testify that the plan satisfies each mandatory requirement of the Code for confirmation, that the plan complies with the applicable provisions of Section 1129(a)(1), and that the plan properly classifies claims of interest as required in Sections 1122, and that the class is of equal treatment, and is required also in section 1123.

He would further testify that the plan provides for and satisfies the applicable provisions of Section 1129(a)(2), and that the disclosure statement was approved on a (indiscernible) basis prior to solicitation, that the plan complies with Section 1125, and that each holder of the claim received a disclosure statement prior to voting, that the plan is proposed in good faith, and not by any means forbidden by law, thereby complying with Section 1129(a)(3),

that the plan provides the payment of professional fees and expenses subject to court approval, therefore complying with Section 1129(a)(4,) that the plan discloses in the plan supplement the identity of the Plan Administrator and Litigation Trustee, and therefore complies with Section 1129(a)(5), that there is no governmental regulatory approval of rate changes, and therefore no need to comply with 1129(a)(6), that the plan is in the best interest of Creditors, as each member will receive more than they would in a (indiscernible) and therefore complies with 1129(a)(7), that impaired classes of Class 3 and 4 voted to accept the plan, and other impaired classes were deemed to reject. However, the plan is not confirmable because the plan does not discriminate unfairly to those classes, and therefore, the plan complies with Section 1129(a)(8), that the plan complies with the statutory mandate and treatment of administrative priority tax claims under 1129(a)(9), that at least one impaired class of claims has accepted the plan, excluding insiders, and therefore the plan is compliant with 1129(a)(10), that the plan is feasible, and not likely to be followed by a need for further financial authorization, therefore complying with 1129(a)(11), that the plan provides payment of all fees required under 28 U.S.C. Section 1930, and therefore complying with 1129(a)(12).

Further, that sections 1129(a)(13) through (16) of

the Bankruptcy Code do not apply in this case.

He would further testify that the plan complies with other provisions of Section 1129(c)(3) because there's only one proposed plan, and not multiple plans, and the purpose of the plan is not to avoid taxes or the applicable application of Section 5 of the Security Act of 1933.

And finally, Your Honor, this is not a small business case, and therefore 1129(e) does not apply.

Mr. Hede would further testify that with respect to the releases contained in the plan, he believes the third party releases are necessary, permissible, and consistent with the applicable provisions of the Bankruptcy Code, that the Debtor release is an essential component of the plan, and constitutes a sound exercise of the Debtors' business judgment, given that the plan presents a fully integrated and comprehensive liquidation of Debtor's assets (indiscernible) the claims to the Litigation Trust for potential recovery to holders of general unsecured claims.

He would further testify that the third-party release is appropriate because it's consensual, and complies with the plan's solicitation procedures, providing Creditors the opportunity to opt out of granting the third-party release by checking the opt-out box on the applicable ballot or opt-out form, and that consideration was supplied to those parties receiving their notice.

And Your Honor, I would like to offer the declaration of Mr. Hede, which can be found at Docket number 611 into evidence, and he is in the courtroom (indiscernible) requesting cross-examination.

THE COURT: All right. Does anybody object to the Court accepting Mr. Hede's affirmative testimony by declaration? He is here in the courtroom, and available for cross-examination.

Hearing no objections, it's admitted.

MR. KURZWEIL: Thank you, Your Honor.

THE COURT: Does anybody wish to cross-examine Mr. Hede?

THE COURT: No takers.

MR. KURZWEIL: Your Honor, there were two objections filed to the plan. The first was filed by C&A, which are the providers of the Debtor's insurance, and we believe that has been resolved, and the resolution can be found in language contained in the proposed confirmation order, which is at Docket number 613, Exhibit -- paragraph 82, on page 31, and provides for the plan injunction, and specifically carves out C&A from the plan injunction.

Your Honor, additionally, further on in that same paragraph, there's a further provision for the avoidance of doubt, and notwithstanding anything could change or the contrary with the plan or the confirmation order, C&A shall

retain all rights of set-off or recruitment under its policies, program agreements, and applicable law regardless of when the applicable debt is and credit is accrued. And therefore, Your Honor, I believe that we have resolved C&A's objections.

THE COURT: All right. Anybody here or online from C&A?

MS. WRIGHT: Good afternoon, Your Honor. Hannah Wright, on behalf of CNA, and I can confirm that our objection is resolved with that language.

THE COURT: Okay. Thank you very much.

MR. KURZWEIL: With that, Your Honor, I'll turn to the other main objection, which is the U.S. Trustee's objection to the third-party release.

Your Honor, we believe third-party release is consensual, and that the U.S. Trustee's objection should be overruled. We spelled out some of our arguments in presentations and a brief that was filed with the Court, which I incorporated therein. But basically, Your Honor, the U.S. Trustee objects to the releases on three grounds, that the third-party release is an improper, non-consensual release that cannot be included in a Chapter 11 plan under the Supreme Court's decision in Harrington (indiscernible) Secondly, that the plan includes an improper injunction to enforce the third-party release. And thirdly, that the plan

improperly deems the third-party release to be a settlement.

Your Honor, we believe that all of these arguments fail because the U.S. Trustee's objection is premised in large part on Purdue Pharma, in which the Supreme Court held that the Bankruptcy Code does not allow non-consensual third-party releases in Chapter 11 plans. And as the U.S. Trustee observes in his objection, the Supreme Court did not express a view on what qualifies as a consensual release. The U.S. Trustee asked this Court to apply State Contract Law in evaluating whether the third-party release is consensual. However, this Court has previously recognized Federal Bankruptcy Law rather than State Contract Law controls whether releasing parties have consented to the third-party release to the context of a Chapter 11 plan.

Consensual releases, Your Honor, are permitted in Chapter 11 plans under Section 105(a) and 1123(b)(6), and courts look at various factors to determine whether the opt-out process in a particular case is acceptable. Courts will consider whether affected parties received clear and prominent notice and explanation of the releases, including whether such recipient of an opt-out form would understand the opt-out mechanism, the scope of the release claims, and the identity of the released parties.

Evidence of consent, rather than whether the release is necessary or appropriate, is an appropriate plan

provision (indiscernible) contract appears to be a touchstone for determining whether a creditor can be bound by a release. Under this standard, the Court has previously applied -- under this standard, which the Court has previously applied including consensual third-party releases, the releasing parties in these Chapter 11 cases have consented to these third-party releases. The third-party release, with an opportunity to opt out, is consensual and satisfies the standard for approval in this district. First, holders of claims that voted to accept the plan have indicated their express consent to third-party release by voting to accept the plan. Second, parties that have voted to reject the plan, but did not act out have likewise consented to the third-party release. The balance approved and considered by the Court solicitation procedures provide clear and conspicuous notice of the third-party release, and indicate that such parties would be deemed to have consented to the third-party lease if they vote to reject the plan, and did not opt out (indiscernible) the third-party release.

By voting to reject the plan but not checking the conspicuous opt-out box, such parties have communicated consent to grant the third-party release. Third parties that either receive a ballot and abstained from voting, or receive a notice of non-voting status and opt-out form in each case but did not opt out of granting the third-party

release are presumed to have consented to granting the third-party release. The balance of notices of non-voting status each provide a clear and conspicuous notice of the third-party release, and that such parties should be deemed to have consented to the third-party release unless they have timely completed and submitted the opt-out form, or otherwise objected to the third-party release.

However, consistent with this Court's holding ability, the plan includes an (indiscernible) presumption that failure to timely act out of the third-party release constitutes consent of the third-party release, specifically Article X(d) of the plan (indiscernible) Any holder of a claim of interest could not return a ballot or opt out (indiscernible) form, or to the whole file an objection to a third-party release that relieves its individual circumstances related to its ability to return a ballot or opt out of an (indiscernible) the third-party release, or to object to the third-party release are such that should not be deemed by consent (indiscernible) third-party release as a result of such failure, and here is the operative portion of it, Your Honor, may seek relief from the Bankruptcy Court to exercise its right and claims free of a third-party release by rebutting the presumption that's failing to return a ballot or opt out (indiscernible) opting out of the third-party release, or to object to the third-party release

should be deemed to represent its consent to the third-party release.

And therefore, as requested by the Court, Your Honor, all parties have recourse to come before the Court should they feel that they have been appropriately -- or treated inappropriately. This same standard, Your Honor, would all apply in this particular case.

Further, Your Honor, the (indiscernible) releases were supported by the major constituents of this case under the plan, and were accepted by a majority of the Creditors and members voting (indiscernible) Each of the (indiscernible) factors are present, and further support the third parties in this case. The opt out mechanism here is clear and conspicuous,, the form of ballot was revised prior to solicitation to include comments recommended by the Court and comments by U.S. Trustee. The opt out mechanism is relatively simple and easy to understand. The Creditor is not (indiscernible) vote on a plan, but provided a notice of non-voting status that included an opt-out form with clear instructions for opting out of granting the third-party release. The released parties (indiscernible) fiduciary parties provide substantial consideration under the support of the plan or affiliate such parties. First, the releases (indiscernible) are limited to certain current directors and offices that have contributed to the debt's restructuring

and (indiscernible) efforts. Additionally, the pre-petition agent and pre-petition lender, DIP agent and SIP lenders have provided substantial consideration, including providing the DIP facility, and by agreeing to fund a litigation trust, the wind-down amount, and all of that for potential recovery of Unsecured Creditors.

The planning committees -- the plan (indiscernible) settlement were a product of significant negotiation among the Debtors and their primary stakeholders, including their Secured Lenders, and they support the plan and the third-party releases. Your Honor, the third-party release is an equal part of the plan, and is specifically contemplated by, and provided for in the (indiscernible) settlement. The Creditors affected by the third-party release are received in consideration in exchange for granting the third-party release, including the funding of the Litigation Trust and the funding of the wind down cash amount.

Your Honor, accordingly, the third-party release is clear and conspicuous, properly noticed, justified in the facts, and is consensual under applicable law, and the Debtors respectfully request that the third-party release under the plan be approved.

Your Honor, the U.S. Trustee also objected in that the plan injunction is not appropriate. In doing so, they

premised it (indiscernible) that the Bankruptcy Code permits injunctions in support of non-consensual third-party releases only in a (indiscernible) cases. However, in this case, the third-party release under the (indiscernible) is consensual, and the plan injunction is the primary mechanism for enforcing the plan, including the third-party release, and it's used to prevent Creditors from taking actions in violation of the plan. Because the third-party release in this case is consensual, the Court can approve the injunction as a means to effectuate the plan, and as a means to enforce the third-party release.

And finally, Your Honor, the third-party -- they object because the third-party release they say is not an appropriate settlement of the Bankruptcy Rule 9019. Your Honor, nothing in Bankruptcy Rule 9019 permits Bankruptcy Courts to force non-Debtors who have not consented to release -- I'm sorry, Your Honor. I have a mistake. They assert that nothing in Bankruptcy Rule 9019 permits Bankruptcy Courts to force non-Debtors who have not consented to release their rights to sue other non-Debtors under applicable state law. This argument, Your Honor, is also prefaced on the incorrect presumption that releasing parties have not consented. However, as we previously discussed, the releases in parties are consensual, and therefore could be included in the settlement.

Your Honor, in discussions with the U.S. Trustee, they also raised the concern that there were parties who accepted the plan, yet voted to opt out of the release in violation of the instruction of the plan, offering that as some type of indication that parties may have misunderstood the instruction of the plan. Your Honor, that has come up in many cases before, and even as the Court sided in the (indiscernible) case in the footnote, that happened in Purdue Pharma, where parties voted to accept the plan, yet in violation of the instructions voted to opt out. Your Honor, that's no indication that parties didn't understand what was going on, as most parties did, and parties were smart enough to read and vote on the plan, they were certainly smart enough to read and understand the ballot. Certainly that happens every day, that parties understand that they need to drive the speed limit of 55 on the highway, yet parties don't do that. So that's not any indication that there was any misunderstanding here.

But again in this case, we went to great lengths throughout the case (indiscernible) proceeding to incorporate every party's comments to this, and took all the Court's comments at the solicitation procedures hearing, certainly listened to any suggestions by other parties of the case, and they were all appropriate. And for those reasons, Your Honor, we believe that the third-party release

was clear, unambiguous, easy to follow, and consensual, and for these reasons we would request the Court to confirm (indiscernible)

THE COURT: With the releases (indiscernible)

MR. KURZWEIL: With the releases (indiscernible)

THE COURT: So let me ask you some questions about that. I know you've talked a lot -- or you've talked a lot about my prior decision on this issue (indiscernible) If you go towards the end, you will find the official findings, which express, I guess, my desire, concern, whatever you might want to call it, the third party release is not (indiscernible) commonplace, where you're used to a (indiscernible) or procedural routine, but instead should be uncommon, and meet certain procedural requirements (indiscernible) here, it should be justified under the particular circumstances of the case.

And then, if you go on to (indiscernible) paragraph five -- I'm sorry, six, and you read this I think too, the Creditors effected by the release are receiving substantial consideration in exchange for the release, and that the release is an integral part of the plan and settlement on which it's based. And maybe that's where I'm having a little trouble, because I'm trying to figure out exactly what substantial consideration the Unsecured Creditors in this case are getting from the plan.

MR. KURZWEIL: Surely, Your Honor --

THE COURT: That they wouldn't be getting -- In this case, they sold all the assets, there are presumably some litigation claims that somebody thinks have some value. The structure we've set up, I think I may have even anticipated it when we started this case, and so I'm not exactly clear what results of negotiation, or what changes negotiations resulted in, other than what I might have otherwise anticipated in terms of the --

So help me find the substantial consideration that's at least (indiscernible) the releases are integral to the settlement.

MR. KURZWEIL: (indiscernible) very good question, and this is one (indiscernible) Your Honor.

Firstly, to start off with, it's important to understand who is getting these releases. It's a very narrow group of parties. It's the DIP lenders, there's one officer, Brian Smith who was disclosed, who was the chief operating officer of the Debtor prior to and through these Chapter 11 cases, and then it's the CRO and Mr. Hirsch, Your Honor, and Mr. Hirsch was the appointee designation, designated appointee to the board by PIMCO, who took these cases through the Chapter 11 proceedings.

So first of all, we're dealing with a very, very narrow group. So when you take into account consideration

(indiscernible) falls on this. Secondly, Your Honor, as the Court just pointed out, the Court is correct, the Secured Creditor has a blank lien and all of the assets. So the Secured Creditor could have come, had a 363 sale, sold everything, and dismissed the case, converted the case. A lot of the cases could have been handled, but for going through a plan. That would have left the Estate with very little funds to operate or wind down with. Instead, the Debtor and the Committee negotiated for a responsible wind down, which will --

THE COURT: I'm sorry, the wind down was mostly the resolution for that $9 million of assets I was asking about before, which is all going to go to the Lenders. And then the litigation, should it occur and be successful, as I understand it about 70% of the proceeds of that are also going to go to the Lenders. So how are those two contributions doing anything but advancing the gains of the Lenders?

MR. KURZWEIL: First, Your Honor, the amount of assets is grossly less than $9 million. That's the amount --

THE COURT: Well, whatever it is (indiscernible) that sort of takes the wind out of the case.

MR. KURZWEIL: Unless you convert the case. You could just convert the case to a Chapter 7. This case could

have been converted when the last sale closed, and we could have -- The DIP order provided that a Creditor -- that the Trustee gets $50,000, and would have to deal with everything that's left over. And between the last sale closing 45 days ago, 60 days ago and now, there was a tremendous amount of administrative work that had to be performed to get to this point.

Secondly, Your Honor, there would have been no funding for the Litigation Trust on that. There was no requirement --

THE COURT: I understand. But the Lender is getting 70% of whatever it is that they ever recover. Right? So presumably, they put $1 million (indiscernible) because they think there's some valuable litigation here that's worth more than $1 million.

MR. KURZWEIL: Well, you know, I can't presume to know what they thought as to why they did it. Whether they believe there are valid claims or not there is something different. But they were requested to do that by the Committee, and they were requested to do it through a lot of requests that were discussed as part of that. And the fact they did do it, and they did it in reliance of these plan provisions to get what they lobbied for, Your Honor, there were very sophisticated parties involved in this case. The Committee was represented by a very sophisticated,

nationally respected law firm, the Lenders are respected by a very sophisticated national and international law firm, and the parties thought that this was the best way to proceed.

There was consideration, and I think we're talking about the amount of consideration. There's no issue but that there was substantial consideration made. Whether there are any claims or not that would be released, that investigation was certainly reviewed by the Committee. If that was their purview, to understand what would be paid for the release, but they agreed to it. I don't think that the consideration was just limited to the $1 million that's going to the Litigation Trust, because this (indiscernible) I can get the exact amount (indiscernible)

THE COURT: (indiscernible) last year you described the wind downs, don't worry about what is says on the wind down agreement because that's (indiscernible) Secured Creditor. I'm pretty sure (indiscernible)

MR. KURZWEIL: And it is, Your Honor, but they got to this point by being responsible. Your Honor, the case could have been converted 45 days ago, and (indiscernible) work performed in dealing with Creditors that weren't just dumped on the Chapter 7 Trustee. The Secured Creditor may have been better off by converting the case, and taking all the money --

THE COURT: They can't convert the case if I don't say so. But you may recall (indiscernible)

MR. KURZWEIL: Okay. But -- Well, Your Honor, they would have to consent (indiscernible) cash collateral to pay those items. I think what we have here is a Lender that was completely responsible in doing this, and going through this process, and they did that in reliance on the benefit of their volume (indiscernible) Committee, and the benefit of that volume was this third-party release.

Your Honor, one of the things that I noticed that wasn't mentioned in a lot of these decisions that we've read on releases was the bankruptcy concept of finality, and -- which is one of the most important things that we have when we go through bankruptcy cases. That's why everything is centered around in one court, we want the Court to review everything, and when the order is entered, the matter has been resolved, and nobody has to look over their shoulder. And that's (indiscernible) the case, as the Court will know, and plan confirmation.

In reaching an agreement, an agreement to provide consideration, the parties who provide that consideration are also entitled to that finality. Otherwise, why would anybody ever agree to anything? Why would you agree, as we all know as counsel, to settle a few things without settling as much as you can? Because parties will keep coming back.

THE COURT: Well, you're making an argument for why you should have one of these in every case, which is precisely where I had no desire to be.

MR. KURZWEIL: Your Honor, I can only speak about this case. And what we've gone through, as pointed out earlier in another hearing, a lot of what goes on does not come before the Court, and the Court does not see all the negotiations that go on behind --

THE COURT: (indiscernible) for example in (indiscernible) I saw the results of the negotiations, you know, $10 million in cash, a $20 million DIP that was forgiven, restructuring of a lot of real estate lease obligations and such. And that's a slightly larger case than this one, but not substantially larger.

And in this case, what I think I see is $1 million, which is being spent primarily for the benefit of the Secured Creditors, because again, if there is any recovery, they're taking most of it (indiscernible) maybe they didn't waive any part of their claim, they didn't subordinate any part of their claim to recovery by the other creditors first or anything. They just funded the potential litigation, which if it goes anywhere, they're (indiscernible)

MR. KURZWEIL: Well, Your Honor, they would be entitled to 100% of everything. They -- Don't fault them --

Your Honor, you're faulting a lender for having a large deficiency claim. By saying they're getting all of it, it's because the assets weren't sufficient to pay the secured claim in full. They don't have any less rights than another Unsecured Creditor. But what they did have was a court order, Your Honor, that gave them the rights to all the preference recoveries, that gave them the rights to all the (indiscernible) actions of all these claims, they would get -- they had a super priority claim, and they had the right to get paid first.

And Your Honor, they could have had insisted that this be liquidated, and everything go to the Lenders. And so that DIP order (indiscernible)

THE COURT: And how much different would that be for not very many Unsecured Creditors (indiscernible) the plan?

MR. KURZWEIL: It depends what the recovery is. Your Honor, I'm sure that nobody cares more about wishing they received more, and the deficiency claim was less than the $100-plus million that it is. Just because they're getting a larger share of that doesn't mean they should be punished for that, and somehow saying it's only for their benefit. They're an equal Unsecured Creditor, and they agreed to give up their collateral.

Your Honor, there was no other Creditor who

offered to give up any of their collateral for (indiscernible) No one else came forward and said I'll fund the Litigation Trust, I'll fund it to pursue the protections. And therefore, because they set out to do this, and they agreed to share that on a pro rate basis, and they were hurt so bad so they happened to have a large claim, that shouldn't be (indiscernible) Secure Lender. mean, they should be admired for doing that, for acting responsibly. Because what they could have done is said (indiscernible) liquidate everything, and give me all the money, and the Unsecured Creditors aren't entitled to anything. They didn't have to (indiscernible) further called out for the Unsecured Creditors Committee to pursue anything else like this. They could have just funded litigation, and took everything, you know, everything on their own.

And this particular case would not have that resolution, would not have that resolution but for an overall settlement. And that was insisted upon by the parties up to that settlement, and that was negotiated over weeks, maybe even longer, between the Creditors Committee, and the Lenders and the Debtors.

Your Honor, I won't go into settlement discussions, but there were times when those discussions completely broke down, and we had to get the parties back.

We didn't necessarily get a mediator. We talked internally about seeing if we needed a mediator to get to there. But parties ultimately agreed, and that was essential to them putting in the money to make this work.

Now, if the Committee wants to give us -- the Committee wants to give back all the assets to the lender, and give that money back and not have any of the benefit of that, I have (indiscernible) and ask them if they want that. I don't think the Committee is ready to do that because they fought so hard for that, but they can't take the benefits of this and not have the burdens of it.

And additionally, Your Honor, notwithstanding the Court's comment here, which is completely understandable and I'm very sensitive to, the Committee supports this -- to this. And no party other than the U.S. Trustee filed an objection to this at all. So I mean (indiscernible) there wasn't any other Creditors who were concerned enough for the Committees to say that that shouldn't be an essential part of the plan.

Your Honor, we believe that that's the only way that this goes forward, and the only way that you can get a Creditor to contribute consideration is to offer them something. And maybe in some cases you don't need that consideration for a case to go forward. Maybe in some cases, there are unencumbered assets. But the amount versus

scope of release in balancing both of those out, and maybe we can see the Courts' view if it was a very, very widespread release, but it's not (indiscernible) and therefore, Your Honor --

THE COURT: Well, I don't know who else in this case would get a release, I mean, to be frank.

MR. KURZWEIL: (indiscernible) and we'll cave it out of that. They are not -- this is not -- The only insiders who received a release which was discussed with the parties was the Chief Operating Officer, Brian Smith, the CRO, and Mr. Hirsch. And that was openly and notoriously discussed with all parties. No other insider has received any release in this case.

So it is a much more narrowly tailored release than you have (indiscernible) Your Honor, each case is different, and we're very sensitive to the Court's comments, and discussed it -- by prepping for today. But we do believe the circumstances of this particular case warranted it, and certainty further considerations (indiscernible)

THE COURT: All right. Thank you.

MR. WILLIAMSON: Good afternoon, Your Honor. If I may be heard for a moment on the release issue? Ronald Williamson, representing the pre-petition Lenders, the Dip Lender, and the Agent.

Your Honor, just to reiterate what Mr. Kurzweil

said, I think -- and I understand the optics of the paperwork that's before the Court, and the $1 million stands out, and the balance of the $850,000 reserve that's set up by Committee professionals. And that is part of the consideration that my client is providing weekly as part of the release, and was a material component of our agreement to do the deal, which was negotiated, of course, with the Creditors Committee, representing the Creditor body in this case. But there's a lot more value, we believe, to the considerations being provided by my clients.

For one thing (indiscernible) It hasn't been quantified exactly today. The amount of the DIP claim, my understanding is right now, currently around $11 million. And based on the analysis of the cash on hand, and what they potential wind down expense are, we're looking at receiving somewhere around $4 million of the cash from the wind down funds are on hand right now, which is somewhere -- I don't know the exact amount. But by the time they do the wind down, and the expenses are paid, we're looking at maybe receiving somewhere around $4 million. So there's going to be a pretty --

THE COURT: Is that from the DIP lender, or is that (indiscernible) the pre-petition claim (indiscernible) reference to the DIP claim anywhere.

MR. WILLIAMSON: That's the DIP -- I think that's

the DIP claim. That's the DIP claim. That's the loan that's secured, has the super priority, otherwise that's going to receive the first dibs on any net recoveries on the preference claims, and other causes of action.

And so we're thinking, in our view, that's probably likely to be about a $7 million give as additional consideration that's being provided to this process in order to make this happen, and hopefully provide some return for the Unsecured Creditors. I understand --

THE COURT: (indiscernible) part of the pan, or I guess -- I thought I read these documents, and (indiscernible)

MR. WILLIAMSON: I believe that's a correct assessment. I mean --

MR. KURZWEIL: Under the stipulation, the voting stipulation of the division between what is remaining in the wind down and what's going to the Litigation Trust, the number is I believe $9 million (indiscernible)

THE COURT: And part from the (indiscernible) the pre-petition secured claim, isn't it?

MR. KURZWEIL: Your Honor, dollars are fungible, so --

THE COURT: Sure. But I would imagine the DIP got paid off by (indiscernible)

MR. KURZWEIL: Your Honor, the DIP has not been

paid off. The DIP is still outstanding. The pre-petition -- - The Lenders have the ability to apply for (indiscernible) and the DIP is not paid off. They agreed to take the -- that whatever was left over from the wind down assets would be applied to that claim.

THE COURT: And then what happens to the rest of them?

MR. KURZWEIL: They don't get paid anything out. So there's a large shortfall.

THE COURT: And that's my understanding of how this is going to apply to the pre-petition secured claim as the Lenders (indiscernible) the documents.

MR. WILLIAMSON: (indiscernible) thus the -- And the fact of the matter is the deficiency balance, the reason why the DIP Lender, or the pre-petition Lender is going to have, you know, a large percentage of the interest in the Creditor Trust is, of course, because they have a huge deficiency claim in the case. We don't know that that's necessarily relevant. That doesn't diminish the other considerations being provided to the Estate. And likewise, the remaining portion of the unsecured debt, the benefit will constitute the other beneficiaries of the Trust. Standard benefits (additionally we think from the (indiscernible) are going to be pursued by the Litigation Trust, and we think this is a more efficient way and a

better way to maximize (those recovering.

And sure, it could benefit my client, and we hope it does benefit my client, but you know, the rising tide lifts all boats, and we're hopeful that this will lift everybody's boats, for all the beneficiaries that are in that pool. We think under the circumstances that the consideration that's being provided, this is a significant benefit, and we do think it meets the need standards. We don't think this is the ordinary case that is going to come before you, Your Honor, so we understand the concern that the Court expressed (indiscernible) and has expressed here today (indiscernible) commonplace. But I don't think this is the commonplace case that we're going to see frequently before the Court.

It is different circumstances and different facts from (indiscernible) we certainly think that the consideration my client is providing, and relied upon in order to get the deal done with the community of the Debtors in this case, and frankly move this through pretty quickly, and even though there's been a lot of administrative expenses incurred, everybody has moved this efficiently and quickly as they could to try to get to the point where hopefully, we can start generating some return for the Unsecured Creditors.

We do support the plan, and the releases in the

plan, and the Debtors request that the Court approve the plan with the releases. If for some reason the releases are not approved, I can't say exactly what that looks like at that point, whether we're here asking Your Honor to convert the case, or dismiss the case, or we go back to the drawing board and try to consider -- figure something else out. And I know as I stand here today that that's a material consideration to my client to support this plan, and provide support to the case, to try to get to the point where we are here today. Thank you.

THE COURT: All right.

MS. CHO: Your Honor --

THE COURT: Please.

MS. CHO: May I be heard, Your Honor?

THE COURT: Sure.

MS. CHO: Good afternoon -- good afternoon, Your Honor. It's Shirley Cho of Pachulski Stang Ziehl & Jones, for the Official Committee of Unsecured Creditors. May I be heard?

THE COURT: Yeah, you may.

MS. CHO: And apologies if someone else was in the courtroom, trying to get up to the podium. I didn't mean to cut anyone off.

Your Honor, from the Committee's perspective, the totality of the case is bleak. As Mr. Kurzweil has outlined

for the Court, it is an underwater case where the Secured Lenders aren't getting paid out in full. And so from the Committee's perspective, where you have a case where the Unsecured Creditors should, under the absolute priority rule, really be receiving a zero recovery, and then have the potential of being sued for preference claims, to add insult to injury, that would be a fate worse than liquidation under Chapter 7.

And so with that in mind, Your Honor, the Committee did negotiate over a period of weeks the consensual settlement that is outlined in the plan. What was important to the Committee, Your Honors, is that the releases were very narrow, as outlined by Mr. Kurzweil. You don't have any of the former directors and officers being released, you have significant causes of action being preserved, and most importantly, from the Committee's perspective, you have a dedicated trust for Unsecured Creditors with the fiduciary that the Committee has selected in order to pursue those causes of action, and to look out for the interests of Unsecured Creditors. That was very important for the Committee, to not have Creditors kind of, you know, looking over their shoulders.

We do view this as kind of a hope note case. As Your Honor has outlined, it is better than what would have been the alternative here. The reality is, Your Honor, the

$850,000 that's in the Committee, that's in the DIP budget for the Committee professionals is insufficient to fund the Committee professionals. And so the $1 million pot of cash that's set aside there for the Trust is actually anticipated to -- a portion of that is anticipated to be used to pay the Committee professional's shortfall. So that $1 million pot of money becomes even less, and at the end of the day, that money needs to be used to reconcile unsecured claims to get a distribution out the door.

So you know, obviously this will be the future Trustee's call, but it is likely that contingency counsel will even need to be brought in, Your Honor, to pursue those causes of action. I just wanted to point that out, and give Your Honor that preview.

THE COURT: Yeah. You mentioned preference actions and such, and the indignity of getting nothing out of the case, and then getting sued for money you already received. What's your understanding of the intention to prosecute those (indiscernible)

MS. CHO: Well, Your Honor, the plan does not contain an express waiver of preference claims in favor of trade vendors, or ordinary creditors that received preference payments within the 90 days. But you know, because the Trustee is a fiduciary, or is -- my understanding is he's an advisor to a couple of the

Committee members, our understanding would be that the Trustee would look to kind of insider preference claims, and bring those, and leave the kind of ordinary course preference claims alone. But of course, you know, that would be the Trustee's call. That's certainly, you know, all causes of action very broadly are being preserved for the Trustee to evaluate and pursue.

Obviously, if there are legitimate preference claims, you know, the Trustee would need to make that call. But that would be up to that independent Trustee to make that decision.

THE COURT: Okay. So they may yet be subject to the indignity you describe?

MS. CHO: They may be, but the chances (indiscernible) is being lessened, Your Honor.

THE COURT: Okay. Well, thank you.

MS. CHO: Thank you.

THE COURT: Mr. Williamson returns.

MR. WILLIAMSON: Yes. Just one last point, Your Honor, I forgot to mention, which is an important point, I think.

Of course as Your Honor knows, there is provision in the plan which allows not only do we think that the release system is paid for consensual, very conspicuous, but certainly the provision allows the parties to come back to

Your Honor if they think they didn't get proper notice, or for whatever reason that they shouldn't be bound by the release. And so we think that's a provision you don't often see in some of the other cases, or approved in the opt-out of releases, and we think that's an important provision, and is an additional reason why having that escape route I think also merits the approval of releases under these circumstances.

If somebody thinks they didn't get proper notice, it's unlikely. We think it's unlikely anybody would have a claim, for example, against my client. I can't think of maybe tortious lending, they owe too much money or something. But I don't think that theory is recognized here in Georgia but (indiscernible) come back and try to (indiscernible) support, if for whatever reason the release wasn't consensual as to them, they have an opportunity to do so.

Thank you, Your Honor.

THE COURT: All right. Before we get to Mr. Adams, anybody else in the virtual room wish to be heard?

Okay. Hearing none, Mr. Adams (indiscernible)

MR. ADAMS: Good afternoon, Your Honor. Jonathan Adams, on behalf of the United States Trustee. Before we get started, I just want to say that to Debtors Counsel, I do appreciate the professionalism that you've shown in the

case. They're very good and kind to us (indiscernible) and we do appreciate your work, and appreciate the CRO (indiscernible) you've done great, and all the other parties in interest that have worked in this case, Your Honor. It's been a great case to be a part of. I've enjoyed it. And with that said, I guess the next thing to say to Your Honor, here we are again.

As Your Honor well knows, I had the misfortune of arguing the release provision in LaVie, and I was there when the Court ruled against us in that case. I don't intend to re-litigate LaVie. I don't think that's what the Court would want to do with its time, and it's certainly not what I want to do with mine. Our papers say what they say, and I think the Court has carefully read them, just as they did in LaVie, and we do appreciate the Court's attention to the matter.

Your Honor, my time with you today I'd like to spend thinking about three questions. And I think the first question Your Honor has already hit pretty hard, but I'll reiterate just to be safe. If the Court is inclined to allow a third-party release here, under these factual circumstances, under what circumstances would a third-party release be appropriate? Your Honor, we've heard a lot about the LaVie release, and I think Counsel for the Lender just pointed out one of the big provisions that the Court added

to the LaVie release, that release valve. And so I think it's fair to say, and I don't know if Mr. Kurzweil will disagree with me if he's wrong, I think it's fair to say that the AirPros release has been heavily influenced by the release that this Court eventually granted in LaVie, and I don't think that's of much dispute.

But Your Honor, LaVie was a very different case. LaVie was a series of cases where I think there were 43 operating entities, operating nursing homes, and the threat there was that if the plan didn't get confirmed, and if we didn't have a new series of operators put in place, these folks might not have anywhere to go, that these nursing homes just might cease operations. And so there was a sense in LaVie, as I recall from the confirmation hearing, that if that release had not been granted, yes, the unsecured creditors would have lost, but everybody would have lost. There was a sense of collectivism there, in other words, in the outcome. And Your Honor, I don't think that's the case here.

Here, the reality is the customers, thankfully, are already protected. Here, the sale of the businesses have already occurred, and the warranties that were given to those customers are enforced and are in place, and will be protected by those new buyers. And so we're thankful that the process worked out that way for the customer, but we

don't have that concern like we had in LaVie.

And again in LaVie, you had a different mechanism through which the plan would function. That was the plan of reorganization. Now, the reality was there were going to be separate entities that would be set up through the plan, and those entities were going to operate the Debtors, true enough. But at the end of the day, there was going to be something operating, and such that those releases would protect them and allow them to go forward and do what they need to do. Your Honor, that's not the case here. The Debtors are dead. They're defunct. They're not going to do business. This is a plan of liquidation.

So the customers aren't benefiting from this release. The Debtors aren't benefiting from the release. So who's left? Well, we have the released parties, which I think Mr. Kurzweil (indiscernible) when he said that they're very narrow. Your Honor, I think the reality is we're talking about the Lenders. That's who's really getting the relief. Everyone else, as subject to being a released party, would be someone that would be allowed to get relief under an exculpation provision that we see all the time, Your Honor, and we work on those all the time, and those folks could have gotten this relief under a similar sort of arrangement here. Really, we're talking about the bank. That's who benefits from this release here, the Lenders.

And I acknowledge the fact that the Lenders have funded the Trust. If this plan is confirmed, they'll put $1 billion in there. But as Your Honor pointed out, they're going to get 70% of the proceeds roughly of what that Trust generates. With regard to the DIP facility, I always -- I try to jot down when I hear phrases I like, "Dollars are fungible," I like that, and I don't hear that a lot. But I think that says volumes here, that they decided which dollars would be applied to which. And we're talking about what was paid when they got the proceeds of the sale, and then the optics of the paperwork are not very good here. Your Honor, I don't think that's the optics of the paperwork that aren't good here. The reality is it's just not a very good deal here. The reality is we're paying $1 million to fund a trust, of which the Lender who's getting the release is getting 70%.

I'm not asking the Court to question the business judgment of the Committee. I know I'm in a fine space here. That's not what I'm asking the Court to do. I am asking the Court to apply what it said in LaVie. In LaVie, in the opinion of the Court, I'm going to read it to make sure I get it right, I don't want to say it wrong (indiscernible) I'm nervous. I think this is 539 -- or excuse me, 24 (indiscernible) 29, pages 39 and 40. "As is the case with numerous other aspects of this analysis, this Court agrees

with Judge Cavender and Mister (indiscernible) that third-party releases should not be commonplace, or be reduced to a matter of procedural routine, but instead they should be uncommon, should meet certain procedural requirements, and should be justified under the particular circumstances of the case."

Your Honor, from our point of view, if we allow a release here, I can't imagine a series of circumstances where the Court would not grant a release. And I'd ask the Court, if the Court disagrees with this, to explain that for us so that we'll understand when we're trying to apply the law going forward (indiscernible) can be applied properly. Because from our point of view, there's not a lot of there there. I understand the economics of the case. I understand and readily acknowledge the Lender lost a lot of money here. There's no question about that. So did all the other Unsecured Creditors. There are a lot of people losing a lot of money in this case. Unfortunately, that's just the nature of some bankruptcy cases, including this one. So Your Honor, we do question that.

Your Honor, the second question we would like the Court to consider, and might go a little more towards the traditional LaVie arguments there, but given the specific facts in the case, how can we surmise that Creditors understood much less consented to the options provided by

the Debtor here? Your Honor, you've heard some of the numbers regarding voting, but I want to make sure we highlight them, and make sure we fully articulate that. It's my understanding that the Class 4 of the general Unsecured Creditor, there were 198 ballots sent out to Creditors. It's my understanding that there were 24 responses, and out of that, 21 of those Creditors voted. And we've heard the breakdown of vote, that 17 of those Creditors voted for the plan, but note that 5 of the Creditors who voted for the plan also voted to opt out, which under the plan they cannot do. I cannot imagine any other circumstance why a Creditor would do that other than they simply did not understand what they were doing. What's the point of checking the opt-out box if you accepted the plan, other than I didn't understand the opt-out box didn't apply to me.

Your Honor, I would also point out that one of the Creditors who did that, who voted for the plan and then opted out, was on the Committee. They were in the room when these things were negotiated, and yet they still did not understand when it came time to vote that if they voted for the plan, the opt-out box didn't apply to them. If a member of the Committee didn't understand that, if one of the seven folks who were put on this Committee, who were in the meetings that the Committee had, were part of the active

negotiations with regard to this plan didn't understand that, it seems difficult for me to understand how we can surmise that the other 197 Creditors understood what they got when they got the plan and they got the ballot.

And Your Honor, that knowledge or that understanding in our opinion is an essential part of consent. Whether you take the contract theory or you take the fault theory, either way, there has to be an understanding of what you're agreeing to. And we think those five Creditors, again which would be 29.4% of everyone who voted in favor of the plan in Class 4, and 23, or almost 23.8%, or almost a quarter of the entire voting party voted in a non-sensible fashion, a quarter of your votes that we're relying on here today voted in a way that just makes no sense, you can't vote for the plan and opt out, yet these folks did anyway, why? The only logical explanation for that is they did not understand what they were doing. Otherwise, they would have either not voted for the plan, or they would have voted for the plan and not bothered checking the box, because checking the box is irrelevant.

Just going down the line, Your Honor, as I'm sure Your Honor knows and will probably recognize from LaVie, we broke down each subsection of potential Creditors and analyzed that. But Your Honor, we don't have to worry about the folks who rejected the plan in this case. There were

four of those, and all of them opted out, so there's no issues about consent variance in that subclass. They all opted out. They consented, it is what it is.

With regard to the largest class, which is always the largest class in these opt-out cases, there were 174 folks who received a ballot, but then did not vote or did not opt out. So that's about -- we had about 12.1% response rate, so that's about 87.9% of all Creditors just simply didn't do anything.

And I appreciate the bank's point about the release ballot later on, and I do agree that probably helps mitigate some risk to these folks. But at the end of the day, Your Honor, we are making some assumptions about what these folks know and about what these folks got. And given the confusion that we saw from the limited amount of people that did vote, I just don't see how we can make the assumption that they fully understood what they were doing, and just simply decided not to vote as some sort of consent. I just don't see how that is possible, given the voting nature here in this case.

Your Honor, in addition, there was a subclass of folks that were presumed to accept or reject the plan. They were subject to the release unless they sent in the opt-out form. I think there were 56 of those notices out, that were sent out. There was just one response, one opt-out from

that. So what we're looking at, we had -- make sure my count is correct, we had -- we had 13, if I'm doing my math correctly -- excuse me, 12, 12 attempted opt-outs in this case, 12 of the 24 responses, all right? That's half of the respondents, or about 6.1 of the class tried to opt-out. But only 7 of them were successful, right? The other 5 were unsuccessful. So of our 12, we had 5 unsuccessful attempts because they voted for the plan.

Your Honor, again, I know I'm slicing the math a slightly different way to make a point, but I hope the point is clear. I just don't see how we can make the assumption that these folks understood what they were doing when they did it. It just makes -- That just doesn't -- it doesn't make sense to me, Your Honor.

And the third and finally going through the theory, and I guess the heart of what I would consider the United States Trustee's disagreement with the (indiscernible) Court's decision in LaVie is how can forfeiture equate to consent? Because at the end of the day, that's what we're talking about here. We're talking about how can the Court assume consent out of a default? In order to apply forfeiture law, this Court must imply that it would have the authority to substantially rule on the merits of a release, just as the Court would rule on any matter. The Court has the authority to alter the rights of Debtors

and their Creditors under the Bankruptcy Code, but there's no authority in the Code to alter the rights of the third party and those same Creditors.

We agree, the Bankruptcy Court can acknowledge an agreement that already exists. Of course it can do that. If that agreement occurs by an opt-in perhaps, or some other arrangement, that would be different. But it cannot impose a release that it has no authority to impose. It just can't do that. There's -- Without that consent, without that agreement, we just don't think it can be done. And --

THE COURT: There's two words there, consent and agreement, and those are not the same thing (indiscernible)

MR. ADAMS: And I suspect that goes to the heart --

THE COURT: (indiscernible)

MR. ADAMS: I'm sorry, Your Honor, I spoke over you.

THE COURT: No, just go ahead.

MR. ADAMS: I suspect that that is the Court's rejoinder and primary disagreement with our view. And I acknowledge the fact that this is a difficult issue. But you know, from our position, consent means two things, really, that you've got to understand what you're doing, and you've got to agree. We think that's part of the definition of consent. And I suppose that might be the heart of the

disagreement that we have here a little bit. We think you don't get consent without agreement. Unless the parties understand what they're doing, and agree to it, they cannot consent.

And a forfeiture is just something different than that. That is then a situation where a party has the ability to lose a right before a court, and it fails to exercise that right. Those are two different things. Purdue ruled on non-consensual releases, and we agree, and we're arguing about that definition. But to us, those two elements of consent can't be -- they're insoluble.

And I understand the desire for finality. I understand the desire to make a deal and move on. But Your Honor, another fundamental purpose of bankruptcy is fairness. It is just, from our perspective, boiling it down to one sentence, I think we believe it's unfair for a party who did file bankruptcy to get a release without consent after Purdue.

THE COURT: So I'm curious, so I'm sure you've read Stewart Airlines.

MR. ADAMS: Yes, Your Honor, we have.

THE COURT: Okay. And in there, the judge addresses some of the restatement law that you have cited, and there are several exceptions that of course (indiscernible) can't constitute acceptance. And you seem

to think, and I kind of thought when we were dealing with LaVie that several of those exceptions might apply, and I think he does a better job than I might have explaining why. I just noted that you had -- you had mentioned there were exceptions (indiscernible)

MR. ADAMS: Your Honor, I believe that --

THE COURT: Tell us about that.

MR. ADAMS: Yeah, sure. Two general exceptions, if we take with respect to the contracts (indiscernible) or Section 69, the offeree silently takes offered benefits, or the parties relies on another party's manifestation of intent. Your Honor, we just don't think either one of those primary exceptions apply here. With regard to the offerees silently taking offered benefits, I suppose they're bound by the plan to receive 30% of this Trust. That is true, they will receive that. But are they taking it, or are they being forced to take it by not voting? I guess that would be the position I would take as to the first exception.

And as to the second, I don't see how the Debtor can say that it has relied on another party's manifestation of intention here. At the end of the day, we don't believe the Bankruptcy Court has the authority to force another party to take a release. It just doesn't. So if they don't have the authority to do that, how can the Debtor be relying on it? This is the Debtor's plan, not the bank's plan. So

how can the Debtor possibly be reliant on anything?

We just don't think that those exceptions apply, Your Honor.

THE COURT: All right.

MR. ADAMS: Your Honor, unless you have any other questions for me, that's all I have.

THE COURT: (indiscernible)

MR. WILLIAMSON: (indiscernible)

MR. ADAMS: You're unresponsive. I am shocked, Your Honor. Shocked. But I appreciate the Court's time.

MR. WILLIAMSON: Your Honor, if I could -- This is Ron Williamson, and just before we get into arguments (indiscernible) the deficiency claim on the SIP loans (indiscernible) it is a little confusing.

The stipulation (indiscernible) the Debtor understands was, just for purposes of establishing what dollar amount on the secure claim would be used for voting purposes. But the intention was that after the funds are used for the wind down expenses, and the remaining funds are applied to the DIP loan, there's going to be a deficiency, a significant deficiency, and it will be converted to part of the pre-petition deficiency claim that goes into the Trust.

My understanding is that the parties have been circulating estimates on the wind down expenses, and they're supposed to be somewhere in the neighborhood of $1.1

million. There's -- The DIP loan, the outstanding balance is approximately $16.3 million, plus with accruing interest would be approximately, somewhere around $17 million we believe at the time of the wind down.

The cash on hand we understand is somewhere around $11 million. So if you back out the $1.1 million for the wind down expense, and let's say you have approximately $10 million left (indiscernible) to go against a $17 million remaining DIP plan. So there's a $7 million difference there that, absent the settlement, with super priority (indiscernible) in other words, they would be entitled to gobble up the first $7 million of net proceeds, we believe, from the causes of action (indiscernible) and the like.

There's a provision in the proposed confirmation order, in paragraph 91, which (indiscernible) if entered by the Court would say in part that any unpaid DIP lender claims after there are no longer any remaining assets constituted, and shall be added to the pre-petition lender efficiency claim for distribution purchase under the plan. So that was the plan (indiscernible) plan that my client would convert whatever was remaining on the unpaid DIP plan (indiscernible) into the trust.

So we think that's a very significant part of the consideration that's being provided for this settlement, the community settlement, and for the releases, and we just

wanted to make sure that the record was clear on that. Thank you.

MR. KURZWEIL: Your Honor, if I may just respond to the U.S. Trustee's three points that they raised in the Court's inquiry, I'd like to start with the second one first. And the term used for understanding.

Your Honor, when we start with foundational concepts that have no place for (indiscernible) as addressed in the Code, it becomes very difficult to craft a resolution for that. And what I'm saying, or what I'm pointing out is first of all, there's no evidence of what somebody understood, or did or didn't understand with respect to looking at a particular document. But nowhere in the Code does the term whether somebody understood what happened or what's going on have any bearing on the outcome (indiscernible)

And that goes back to the old axiom, ignorance is no excuse of the law, but that's also found throughout the Bankruptcy Code. There's no level of understanding of what the U.S. Trustee is trying to do, or suggesting as opposed to a burden that doesn't otherwise exist. For example (indiscernible) there's no level of requirement that somebody understood what was in the document, if they received it. It's finality, and they're bound by it.

Another good example of this is actually contained

in the plan process itself. If you look at the requirements of what a disclosure statement would contain, the Code provides information of a kind and sufficient detail as far as reasonably practical, in light of (indiscernible) of the Debtor, and condition of best books and records, including a discussion of potential material federal tax consequences of the (indiscernible) to the Debtor, and a hypothetical investor typical of the holds of claims of interest that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

If you impose a level of understanding into the Code at any point, it should apply to everything, and no one would be able to get through any of the concepts, or any of these proceedings before the Court. And that is why, first of all, we're coming before the Court and asking for the Court's review, but also the Unsecured Creditors have an attorney in these cases, and a Committee who has the fiduciary duty to represent all Unsecured Creditors (indiscernible) have the right to obtain counsel, and they have the right to obtain any counsel they want, and sophisticated counsel. And usually the quality of that counsel is not limited by the cost of that counsel because it's paid for by the Debtor.

So therefore, there is a path for understanding what's going on. The concern that the Debtor has that if --

and I do as a bankruptcy attorney, if you start imposing a level of understanding, seeing what a person understands or doesn't understand, it applies to everything, and that would be -- we would propose that be inappropriate.

The second comment I'd like to raise is that of the forfeiture equal to consent. And again, Your Honor, that is, and I appreciate the U.S. Trustee pointing out the concept of finality, but that's also an axiom based on law, and based in the fundamental portions of Bankruptcy Law, that you have to have finality because you have to bring all the parties together, and they have to be able to negotiate for a resolution, and not have it overturned. Imagine if DIP orders didn't have the finality to them, or other orders of the Court, sale orders didn't have the finality to them. The issue about forfeiture also exists.

Now, we're not talking about State Law out of context forfeiture. We're talking about parties that are involved first in a legal proceeding. By the time parties in this case get a plan, they've got a number of legal documents. They know they're involved in a legal proceeding. And throughout that legal proceeding, there's a number of matters that they have to comply with. Otherwise, they lose their rights. The most one that we're all used to is the bar date. Bar date has been litigated throughout since the Code was started. You miss it by an hour, you

miss it by a day, you file it in one place, you're out, unless there is some act of God, or something that's completely unusual that some court will listen to, but it's a very, very high burden.

So that concept, again, is not foreign in proceedings, and is consistent with bankruptcy cases. And additionally, to make sure that the process is fair and that it's a level playing field, again creditors are provided with counsel throughout this, and everything is reviewed by the Court.

And finally, the first point was raised, which is the amount involved in the consideration. And we certainly are highly sensitive to that. And Your Honor, LaVie was an extremely very well-reasoned position, and really does a tremendous job of navigating the different issues in releases, and bringing that up is certainly very -- We agree it's extremely appropriate in the case. But consideration is one of relativity involved in the circumstances of the case, and when you have parties that have obviously disagreements, because they're coming from different sides, you have a lender with their constituency, you have creditors with their constituency, you have the debtor with their constituency, each one represented and coming to a resolution, it's their business judgment collectively that's being put before the Court for the resolution of the matter

(indiscernible)

And in particular, the facts and circumstances of this particular case, not (indiscernible) case, the parties in this case thought that was the best way to proceed. Certainly, the Committee believed that they were extracting enough consideration to make this addition in the plan look (indiscernible) Otherwise, they either wouldn't agree to it, or they would be objecting to it. Why? Because they have the fiduciary duty to do that on behalf of the Creditors, and they don't think it's (indiscernible) Obviously, the Lenders don't want to have to pay anything. Why should they want to have to pay anything? Any dollar paid, $1 that's out of their pocket, and they have their reasons for negotiating this. So certainly, the Debtor is trying to create the best forum to get all this resolved.

THE COURT: Well, let me ask you about that. So if the Lenders (indiscernible) viability of the claims that the Trust is assigned to pursue, but if they believe that those claims had merit and were worth pursuing, then, I mean, aren't they just paying for the pursuit of claims? I mean, if they got 100% of the money, then they would have to pay for the pursuit of those claims. So what they're dealing with is the 30% potential.

MR. KURZWEIL: Well, they're paying for the entire pursuit of those claims either way, because that's the only

funding source for this. As Committee Counsel pointed out, they may (indiscernible)

THE COURT: (indiscernible) then they can pursue those claims, presumably?

MR. KURZWEIL: They could pursue those claims. Yes, Your Honor, they could.

THE COURT: Yes.

MR. KURZWEIL: But the parties thought that (indiscernible)

THE COURT: (indiscernible) they're collateral. So they're going to need to pursue them themselves, and pay for 100% of it, and get 100%. So what they negotiated with the (indiscernible) is the 30%.

MR. KURZWEIL: Well, Your Honor, I believe that the Lenders would be happy, if their claim was so small, that they were only 10% instead of 70% of it. It just so happens --

THE COURT: Those were the circumstances when we got this case. Those are the things that were caused by this case. They were already $120 million or whatever it is underwater when they got here.

MR. KURZWEIL: You Honor, the assets were worth what the assets were worth, but they (indiscernible)

THE COURT: (indiscernible) were already agreed to by the time they got here.

MR. KURZWEIL: Well, right, before we filed. But -- well, there was an adjustment, Your Honor. There was an adjustment. The Court remember (indiscernible) $10 million to one of the sales to the negative on that. But the Lenders did agree to fund the case, and they did agree to fund --

THE COURT: They funded the case because they wanted their sale to go through. Right?

MR. KURZWEIL: But --

THE COURT: They weren't doing that for the charity of anyone else.

MR. KURZWEIL: Well, Your Honor, how would Debtor's Counsel (indiscernible) debtor's Counsel would never be able to get a Lender to fund a wind down if they didn't agree to certain or some (indiscernible) negotiations to some of the things that a Lender wanted in respect to what happens as part of that money (indiscernible) and the Committee (indiscernible)

THE COURT: But the Debtor can weight his claims against the Lender, what they may be.

MR. KURZWEIL: Well, those (indiscernible) So those were -- And that's the point here too, that the third-party release is so narrow, those were already -- That's nothing new. Those were already waived. And again, there was a (indiscernible) So Your Honor, that is why this

release is so narrow, because that is something that's been open and notorious, those issues open and conspicuous I should say rather notorious, open and conspicuous since the beginning of the case. And the stipulations are part of the DIP (indiscernible)

It's the Committee who said this is valuable enough to them, who represent the majority (indiscernible) and the majority in dollars of the unsecured debt other than the Lender, on that who thought in their business judgments, under the facts of this particular case, under these circumstances, that this was the way to proceed on this.

Your Honor, there probably would have been a lot more litigation in this case if the parties -- There would have been a lot more litigation in this case had the parties not agreed to the settlement, and this was an essential part of the settlement on this.

So there's no way to undo it, you know? And as Mr. Williamson pointed out, I don't know where to go with (indiscernible) because that is the essential part of this process moving forward, and where we sit today on these, again, very narrowly construed, very narrowly construed third-party releases.

THE COURT: Well, they're very broad as to the Lender. They're not -- They don't include other parties, but --

MR. KURZWEIL: Well, they include, they -- Right, Your Honor. They include --

THE COURT: And the Lender is the one who's insisting on it, right?

MR. KURZWEIL: Well, Your Honor, everybody, everybody who settled the case is insisting on it, because that's a term of the settlement. So I don't think it's fair to say, I do not think it's fair to say that it's the Lender insisting on it. It was a term that was negotiated as part of an overall structure, as part of the whole (indiscernible) statute. You pull one part out, the whole thing falls. There were multiple provisions to this, and that was just, you know, that was just one of those conditions.

And Your Honor, we believe that under the circumstances of this particular case, under this particular plan, at this particular time, based on the consideration provided, based on where we are, that we would impress to the Court to approve this solely for (indiscernible) Chapter 11 proceeding.

THE COURT: All right.

All right. I guess with regard to -- the release issue aside, with regard to confirmation of the requirement, it seems like the requirements for confirmation under 1129 have been met. The only issue the Court has to decide is

the release issue, and I think -- I hate to use this word again because it's been overused today, but as I did in LaVie, I'm going to take a little time to consider what I've heard here today, heard from you all, and I (indiscernible) and we can all meet together again soon. And we don't have to do it in person, but I can give you my (indiscernible)

THE COURT CLERK: (indiscernible)

THE COURT: I appreciate everybody indulging me today, and answering my questions. I don't know how much of that was expected or not, but I appreciate the time and attention you've given it.

Mr. Adams, I appreciate you not walking through entire brief issues (indiscernible) seen before.

So I'll take this matter under advisement, and I'll advise you when (indiscernible)

Let me just ask in terms of timeline, are there deadlines I'm working against? Is the world going to come to an end at some point in the near future with regard to the Debtors, that need to be (indiscernible) by some particular point in time?

MR. KURZWEIL: Your Honor, if I could just talk to the Lender's Counsel (indiscernible)

THE COURT: Sure.

MR. KURZWEIL: No, Your Honor. I think we're fine (indiscernible)

THE COURT: (indiscernible) take too long, and get a phone call from your tomorrow saying, we've got to know by the end of the day tomorrow, or whatever (indiscernible)

MR. KURZWEIL: (indiscernible)

THE COURT: All right, great.

All right. Well, thank you all. Appreciate you all coming out (indiscernible)

I guess we've got another omnibus (indiscernible) right on the 20th?

THE COURT CLERK: Yes, Your Honor (indiscernible) the 20th.

THE COURT: Okay. We'll (indiscernible)

MR. KURZWEIL: (indiscernible)

THE COURT: Right, yeah. I was talking about September 20th (indiscernible)

All right (indiscernible)

THE COURT CLERK: Court is now adjourned. All rise.

(Whereupon these proceedings were concluded.)

C E R T I F I C A T I O N

I, Lindsay Peacock, certified that the foregoing transcript is a true and accurate record of the proceedings.

Lindsay Peacock

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Date: August 19, 2025

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