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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA (ALEXANDRIA)

IN RE:) Case No. 24-10453-BFK
) Alexandria, Virginia
ENVIVA INC., ET AL.,)
)
Debtors.) June 14, 2024
) 2:03 p.m.
-----)

TRANSCRIPT OF HEARING ON
"MOTION TO RECONSIDER" DEBTORS' MOTION UNDER BANKRUPTCY RULES
9023 AND 9024 REQUESTING RECONSIDERATION OF MEMORANDUM OPINION
AND ORDER DENYING DEBTORS' APPLICATION TO EMPLOY VINSON &
ELKINS LLP [DOCKET NO. 663]
"2004 MOTION" MOTION FOR AUTHORITY TO EXAMINE THE DEBTORS
PURSUANT TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE [DOCKET NO. 604]
BEFORE THE HONORABLE BRIAN F. KENNEY
UNITED STATES BANKRUPTCY JUDGE

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1 THE CLERK: All rise. The United States Bankruptcy
2 Court for the Eastern District of Virginia is now in session.
3 The Honorable Brian F. Kenney is now presiding.

4 THE COURT: Good afternoon, and please be seated.
5 Good afternoon. Let's call our 2 o'clock matters, please.

6 THE CLERK: Item number two, Enviva Inc., Case Number
7 24-10453.

8 MR. WILLIAMS: Good afternoon, Your Honor. Jeremy
9 Williams with the law firm of Kutak Rock, appearing on the
10 record for the debtors and debtors-in-possession, Your Honor.

11 I'm joined today by Vanessa Griffith, general counsel
12 for Vinson & Elkins, who will also be presenting to the Court
13 to describe certain new proposed engagement terms for Vinson &
14 Elkins. Your Honor, in the courtroom, we also have Keith
15 Fullenweider, who is the chairman and member of the executive
16 committee of Vinson & Elkins.

17 From the company, Your Honor, I'm joined by Glenn
18 Nunziata, who is the CEO and CFO of Enviva. Your Honor, we
19 have Jason Paral, vice president, general counsel, and
20 secretary for Enviva. And we have James Garrity, executive
21 vice president for finance of Enviva.

22 Your Honor is also familiar with David Meyer and
23 Jessica Peet, also from the law firm Vinson & Elkins, and
24 they're here with us today.

25 THE COURT: Well, good afternoon, and thank you for

1 joining us.

2 MR. WILLIAMS: Your Honor, first, I want to thank you
3 for hearing us on an expedited basis on this matter of great
4 urgency and critical importance to the debtors and their
5 estates. We are here today on our expedited hearing on the
6 debtors' motion under Bankruptcy Rules 9023 and 9024,
7 requesting reconsideration of this Court's memorandum, opinion,
8 and order denying the debtors' application to employ Vinson &
9 Elkins.

10 THE COURT: Before we jump into that, there was
11 another matter on the docket today that I understand you've
12 resolved the Rule 2004 examination.

13 MR. WILLIAMS: That's correct, Your Honor.

14 THE COURT: All right.

15 MR. WILLIAMS: That has been resolved per the amended
16 agenda that was filed.

17 THE COURT: Okay. And you're going to submit the
18 order on that?

19 MR. WILLIAMS: Yes, Your Honor, we will submit an
20 amended order -- or sorry, a consent order on that matter.

21 THE COURT: All right. And I thank the parties for
22 resolving that.

23 MR. WILLIAMS: Thank you, Your Honor.

24 Your Honor, on June 3rd, the debtors filed the
25 debtors' motion to reconsider at Docket Number 663. That

1 motion is joined by a declaration of Jason Paral in support of
2 the reconsideration motion at Docket 664, and the declaration
3 of David Meyer in support at Docket Number 665. Your Honor,
4 only one party filed an objection. That was the Office of the
5 U.S. Trustee at Docket Number 705. We do have replies, Your
6 Honor, in support of the motion to employ Vinson & Elkins filed
7 by the ad hoc group and WSFS at Docket Numbers 703 and 704.

8 And last, Your Honor, we're pleased to have -- had
9 filed earlier today a statement from the official committee of
10 unsecured creditors in support of the retention of Vinson &
11 Elkins, and that's a Docket Number 712, Your Honor.

12 Your Honor, both Mr. Paral and Mr. Meyer, who
13 submitted declarations in support, are present in the courtroom
14 today and are available for cross-examination or to answer any
15 of the Court's questions. It's our understanding that the
16 Office of the U.S. Trustee does not intend to cross-examine
17 them. I do think the U.S. Trustee has concern with an exhibit
18 that was filed this morning as part of our amended witness and
19 exhibit list. Your Honor, I think we can deal with that
20 separately, but we would ask that the Court admit the
21 declarations into evidence.

22 THE COURT: All right. Is there any objection to
23 either the Meyer declaration or the Paral declaration?

24 MR. HERRON: Good afternoon, Your Honor. Nicholas
25 Herron, on behalf of the U.S. Trustee.

1 There's no objection for the declarations to be
2 admitted for the limited purposes of being a proffered
3 testimony of the declarants for purposes of today's hearing.
4 And that was the understanding that we reached with debtors'
5 counsel.

6 THE COURT: All right. That's fine. And if
7 anybody -- any party would like to cross-examine either of the
8 declarants, they'll be entitled to do so, just to advise the
9 Court. They are admitted. Thank you.

10 (Meyer Declaration was hereby received into evidence as
11 debtor's Exhibit 1, as of this date)

12 (Paral Declaration was hereby received into evidence as
13 debtor's Exhibit 2, as of this date)

14 MR. WILLIAMS: Thank you, Your Honor.

15 Your Honor, we did file at Docket Number 713 earlier
16 today a resolution of the board of directors of Enviva, Inc.,
17 dated June 13th, 2024, appointing a special committee, the plan
18 evaluation committee. Your Honor, we were hoping to have that
19 admitted into evidence. I think Mr. Herron objects to that.
20 And we're happy to put Mr. Paral on the stand for the purposes
21 of submitting that as evidence, Your Honor.

22 THE COURT: Is there an objection to the resolution of
23 the board dated June 13th, 2024?

24 MR. HERRON: Your Honor, the objection is the
25 exhibit -- we're not arguing about the authenticity of the

1 exhibit or that the resolution was adopted, merely that the
2 arguments raised by Vinson & Elkins and debtors set the
3 parameters. And this corporate resolution was not alleged in
4 the motion itself. It's not relevant to the pending motion,
5 and therefore it should not be included, especially considering
6 the fact that this resolution was filed just today, when the
7 case management order requires that exhibits be exchanged two
8 business days prior to the hearing.

9 For those reasons, the motion should be excluded from
10 today's hearing.

11 THE COURT: You probably found out about it on your
12 way to court this morning.

13 MR. HERRON: Yes, Your Honor.

14 THE COURT: All right. Thank you. I will admit it.
15 The board resolution is admitted. The objection is overruled.

16 (Board resolution was hereby received into evidence as
17 debtor's Exhibit 3, as of this date)

18 MR. WILLIAMS: Thank you, Your Honor.

19 MR. HERRON: If I may interrupt briefly, Your Honor.
20 There is one housekeeping matter that I would like to address,
21 if I may.

22 The committee of unsecured creditors did file a late
23 statement in support of today's hearing. The Court's order
24 setting this matter for an expedited hearing set the deadlines
25 for responses from the U.S. Trustee, as well as the committee

1 to be Wednesday, June 12th at 5 o'clock. Given the fact that
2 that statement violates this Court's order, we would ask that
3 that statement be stricken and not be considered today.

4 THE COURT: Would the committee like to respond to
5 that?

6 MR. ALBERINO: Yes, Your Honor. For the record, Scott
7 Alberino from Akin Gump on behalf of the official committee.

8 Your Honor, as we noted in the statement itself, we
9 fully recognize the Court set an earlier response deadline. We
10 delayed filing a statement because we've been involved in
11 active negotiations with the company, as well as with V&E, with
12 respect to whether we would be supporting the reconsideration
13 motion today and under what circumstances.

14 So the reason for the delay is because we were trying
15 to ultimately get to a resolution on what we thought were very
16 beneficial changes on corporate governance heading into the
17 hearing today. So I'd ask for leave to have the Court consider
18 the statement on a late basis, but --

19 THE COURT: All right. I'll grant leave to file the
20 late statement and overrule the U.S. trustee's objection.

21 MR. ALBERINO: Thank you, Your Honor. Thank you.

22 MR. WILLIAMS: Thank you, Your Honor.

23 Your Honor, per the motion, the debtors are
24 respectfully requesting that this Court reconsider the opinion
25 and order, either as a motion to alter or amend judgment under

1 Bankruptcy Rule 9023, which would apply to the opinion and
2 order interlocutory, or for relief from judgment under
3 Bankruptcy Rule 9024, which incorporates Federal Rule 60(b), if
4 they're deemed to be -- if it's deemed to be a final order.

5 Your Honor, we think both of these rules justify
6 reconsideration. Additionally, Your Honor, the Court always
7 has the discretion to revisit its own orders. And finally,
8 Your Honor, you could simply treat this as a new application to
9 employ. There's substantial precedent for that.

10 Your Honor, in your opinion, you raised several
11 important issues. However, the debtors believe that there is
12 now a clear path forward which allows the Court to approve the
13 Vinson & Elkins retention. Your Honor, the opinion raises
14 issues first that are related to fact, whether or not it's
15 still impossible for V&E to be disinterested in these
16 proceedings. The debtors assert, and Vinson & Elkins believe,
17 that they are unequivocally disinterested. Your Honor, we
18 think that is even more so now in light of the new evidence
19 that's been presented.

20 The second issue, Your Honor, is under what legal
21 standard can the retention be approved. We think Your Honor
22 has several tools at his discretion, which he can use to permit
23 the approval of the retention application at this stage and
24 will address those shortly.

25 Your Honor, with respect to the factual issues, the

1 opinion raises some concerns about why V&E is not disinterested
2 in these proceedings. Your Honor found an ethical wall was
3 impossible because certain Vinson & Elkins attorneys continued
4 to work on Enviva and Riverstone matters. Your Honor
5 specifically notes that while they're representing both
6 clients, disinterestedness is impossible.

7 You're also -- Your Honor also raises concerns about
8 the ability of V&E to negotiate a plan which may adversely
9 impact a firm client, Riverstone, and question how that could
10 be delegated, and especially in relation to the size of the
11 client.

12 Your Honor, we're not here to renegotiate with you
13 about Vinson & Elkins' retention application. That would
14 involve us asking you simply to change your ruling based on the
15 same set of facts. But here, Your Honor, we have material
16 changes in the landscape, changes which the debtor believe
17 warrant approving the retention of Vinson & Elkins.

18 At our prior hearing, Your Honor, the debtors
19 admittedly failed to clearly express how a wall could be
20 implemented and left Your Honor with the impression that it was
21 impossible. That was our failure, Your Honor. But we are here
22 today because we strongly believe that this issue, along with
23 the other issues raised in the opinion, have been addressed by
24 new facts. Ms. Griffith will --

25 THE COURT: You know, Mr. Williams, if you have

1 reviewed the transcript of the May 9th hearing, it wasn't just
2 that the Court was left with the impression that it was
3 impossible because V&E lawyers were working both for Riverstone
4 and Enviva at the same time. It was that V&E's counsel Mr.
5 Meyer said on page 13, and I'm quoting here, "But a wall of
6 separation where none is required would be incredibly harmful
7 to Enviva at this critical phase of its restructuring efforts."
8 He then said, "There's certainly a detriment to Enviva." And
9 said it would be, "again detrimental to the debtors."

10 So now you're proposing an ethical wall, which your
11 co-counsel described previously as being incredibly harmful to
12 the debtors.

13 MR. WILLIAMS: Your Honor, there is a vast amount of
14 institutional knowledge that is held by certain attorneys at
15 Vinson & Elkins that work on Riverstone and Enviva matters,
16 and --

17 THE COURT: Right, but that's not my question. Why
18 was it incredibly harmful then and not incredibly harmful now?

19 MR. WILLIAMS: Your Honor, it is -- there will be a
20 loss by the debtors not having access to the individuals that
21 are going to be walled off, for sure.

22 THE COURT: So it will be harmful to the debtors.

23 MR. WILLIAMS: It will be harmful to the debtors. But
24 Your Honor, candidly, what is substantially more harmful to the
25 debtors is losing Vinson & Elkins in their entirety. Your

1 Honor, they --

2 THE COURT: So the Court is being asked to choose
3 between a bad situation and a worse situation.

4 MR. WILLIAMS: Your Honor, I --

5 THE COURT: Incredibly harmful or disastrous?

6 MR. WILLIAMS: Your Honor, there is --

7 THE COURT: Ma'am, Mr. Williams is arguing. I'll hear
8 from you shortly, please.

9 MR. WILLIAMS: Your Honor, there's no way to deny
10 there will be some loss for the debtors by not having access to
11 these to these other individuals. And that may be the case
12 anytime an ethical wall is imposed. We certainly did not mean
13 to convey that it was an impossibility. But is it difficult?
14 Does it come with consequences? Absolutely, Your Honor. I
15 don't think there's any way around that.

16 But again, Your Honor, I think losing the entirety of
17 the Vinson & Elkins team is substantially worse. And so yes,
18 from that perspective, I think we've got a -- we've got to
19 decide. But I think at the end of the day, really, Your Honor,
20 the question is, what we're here today to talk about is the
21 disinterestedness component. And sometimes disinterestedness
22 may come with consequences, either for the firm or the debtor.
23 But what's more important is that we retain Vinson & Elkins in
24 these proceedings, Your Honor.

25 Ms. Griffith is going to address in detail some of the

1 internal things that have been implemented at the firm to
2 preserve disinterestedness. But in summary, Your Honor, what
3 we now have is a complete ethical wall that has been put in
4 place such that no -- such that no attorney will work for both
5 the debtors and Riverstone going forward. Vinson & Elkins has
6 implemented --

7 THE COURT: But it's not -- it's not no attorney.
8 It's attorneys who have billed less than 12.5 hours. Right?

9 MR. WILLIAMS: On a go forward basis, Your Honor,
10 there will be no attorneys that will -- can cross over. There
11 will be no cross-pollenization (sic). And I think that was a
12 misunderstanding in the reply that was filed by the U.S.
13 Trustee, and apologies if it wasn't clear in the filing, but
14 there are --

15 THE COURT: No, but the point of your filing was to
16 have this 12.5 hour threshold.

17 MR. WILLIAMS: Because there were -- there were two
18 attorneys, Your Honor, who are now going to be, I think, on the
19 Riverstone team. And had we just set it at zero, there would
20 have been some loss of some institutional knowledge there.

21 But going forward, Your Honor, on a prospective basis,
22 there will be no crossover between the attorneys. And so we
23 think that is important, Your Honor. V&E has also implemented
24 changes to their compensation structure so that no Enviva
25 attorneys -- no attorneys working on the Enviva matters will

1 share in the profits generated by Riverstone. You're also --
2 we have -- we also have changes that have been implemented to
3 ensure that there's no question that the plan will be fairly
4 negotiated.

5 It remains, at this point, somewhat hypothetical as to
6 whether the current form of the RSA will remain or whether
7 equity will have an interest in this case. But nevertheless,
8 the debtors have taken affirmative steps to avoid any
9 appearance of disinterestedness.

10 As Your Honor has noted, last night, the board
11 approved the appointment of a special committee to evaluate the
12 proposed plan among other things. While V&E, as it always has,
13 advised the board that it could and should not create this
14 committee unless it was in the best interest of the company,
15 Kutak Rock was also given the opportunity to provide
16 independent counsel to the board on this matter.

17 At the end of the meeting, the special committee was
18 approved. This newly formed committee does not include any
19 members of management or any Riverstone Investment
20 professionals or senior advisors.

21 The plan evaluation committee will be responsible for
22 independently assessing, reviewing, analyzing, approving, and
23 authorizing the filing of the plan, as well as other
24 restructuring transactions, and will oversee the settlement of
25 claims or causes of action against the company's officers,

1 directors, and shareholders.

2 THE COURT: So two questions about this, the plan
3 evaluation committee. One, the resolution says that they shall
4 have the authority to retain independent counsel. What about
5 financial advisors?

6 MR. WILLIAMS: Your Honor, the -- I think what was
7 contemplated is attorneys, but I -- I'm sure that if it is
8 determined that financial advisors are necessary, then
9 requisite changes can be made or they can be authorized under
10 the provisions of the --

11 THE COURT: I'm really asking you what your proposal
12 is.

13 MR. WILLIAMS: Your Honor, candidly, from my
14 perspective, we have no say. It's up to the special committee.
15 Again, this was just approved last night, and so I think there
16 are some things that need to be thought through. The language
17 is set forth there and whether that includes, you know,
18 financial advisor or whether a financial advisor is necessary.

19 And -- but separately, Your Honor, their counsel could
20 also potentially retain a financial advisor if it was deemed
21 necessary. It doesn't necessarily, I think, have to be
22 retained depending on the scope, but there is certainly an
23 opportunity for that if that's necessary.

24 Your Honor --

25 THE COURT: So the second question is what would

1 happen if the special committee and the board disagreed on the
2 on the plan?

3 MR. WILLIAMS: Your Honor, I think if -- well, I think
4 given the makeup of the special committee, I'm not sure that
5 that would be possible, given the members, as I said, but --

6 THE COURT: Well, there are six members, right? Did
7 I -- did I count that correctly?

8 MR. WILLIAMS: Yes, Your Honor.

9 THE COURT: So six of thirteen. What -- just tell me
10 what would happen if there was a disagreement.

11 MR. WILLIAMS: Your Honor, I think if there were a
12 disagreement, I think the decision still ultimately rests with
13 the board, but obviously there's going to be -- I think it's
14 going to have to be -- it's got to be authorized by the plan
15 evaluation committee, Your Honor.

16 Your Honor, we do think that the plan evaluation
17 committee is going to have to approve the restructuring
18 transaction at the end of the day, and they're going to have
19 total approval rights over the treatment of shareholders,
20 period.

21 Your Honor, the board has exercised their duties with
22 great care in excluding Riverstone-related board members from
23 voting on the RSA or the DIP to date. But the debtors do
24 believe this is a further material step in resolving any
25 concerns over disinterestedness.

Colloquy

1 As for the financial interest creating
2 disinterestedness, additional facts have also presented
3 themselves, Your Honor, even aside from the plan evaluation
4 committee. V&E has taken a number of additional steps. V&E's
5 compensation structure does not currently assign any
6 materiality for Riverstone work to the compensation for the
7 parties that are involved in the debtors' cases. In fact, from
8 that perspective, Enviva is the much larger client.

9 But even if Riverstone were more impactful for their
10 compensation, any financial influence has been resolved by this
11 agreement that's been put in place not to share any profits.

12 Your Honor, we do think we have a number of new facts
13 here which go directly to the issue of disinterestedness, in
14 which the debtors strongly believe address the concerns
15 astutely raised in your opinion. Your Honor does need a path
16 forward for approving the retention at this stage. In that
17 respect, Your Honor, we do think you have several options.

18 As noted at the outset in our pleading, Your Honor has
19 9023 and 9024. Your Honor, we believe those provisions permit
20 the Court to reconsider the opinion in light of these new facts
21 and change circumstances in the interest of justice. Indeed,
22 Your Honor, courts have frequently approved retention of
23 debtors' counsel and other estate professionals following
24 initial denials. In fact, Your Honor has the discretion here
25 to simply ignore 9023 and 9024 and treat the motion to

Colloquy

1 reconsider as a new application to employ.

2 Even aside from that, Your Honor, there is extensive
3 precedent, including in this jurisdiction, providing clear
4 authority for the Court to revisit the opinion and order in
5 light of the new facts and circumstances present here. A
6 controlling or significant change in the facts is always a
7 potential basis for a motion to reconsider, and that's the case
8 In re Green (ph.) from the Eastern District 2013.

9 Your Honor, the ethical wall, the profit sharing
10 changes, and the plan evaluation committee all constitute new
11 evidence. New evidence satisfies Rule 59. And aside from the
12 new evidence, even if the Court thinks we did not sufficiently
13 convey our position at the outset, that is alone sufficient to
14 satisfy the standard.

15 Specifically, Your Honor, the District Court in
16 Alexandria, in the case of David v. King, found that new
17 argument addressing different issues is an appropriate basis
18 for reconsideration. Simply put, Your Honor, I think the
19 standard is different than what the U.S. Trustee has argued
20 for.

21 But here, regardless, the debtors have presented new
22 facts, new circumstances, and new arguments, addressing why V&E
23 is disinterested. And this clearly falls within the scope of
24 Rule 59.

25 Even if all of these things failed, Your Honor, the

Colloquy

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1 Court has inherent authority to revise prior orders it finds
2 interlocutory at any point in time. That's supported by the
3 case of In re Future Holdings (sic) out of the Third Circuit,
4 2018. As described in the reconsideration motion, Your Honor,
5 V&E's made significant changes to their proposed retention,
6 which are intended to fully address and provide complete
7 comfort to the Court as to V&E's disinterestedness.

8 THE COURT: Can you cite to the Court any cases that I
9 can look at, where a board of directors delegated the authority
10 to negotiate a plan -- to formulate a plan to a subcommittee?

11 MR. WILLIAMS: Your Honor, if I may, I'm happy to take
12 a look at that and look at our notes. We have a -- I've got a
13 binder of materials here, and maybe I can address that on reply
14 if that's agreeable to Your Honor.

15 THE COURT: That'll be fine. Thank you.

16 MR. WILLIAMS: Thank you, Your Honor. So but, Your
17 Honor, we do believe these changes address the concerns that
18 the Court raised regarding the ethical law and any perception
19 of bias and any safeguards that might be in place.

20 Your Honor, again, V&E is imposing an ethical wall as
21 a safeguard. No lawyer will work for both clients for the
22 balance of the Chapter 11 cases. And V&E has a new safeguard
23 where partners working on these cases, as well as the firm's
24 executive committee, will not share in profits from Riverstone.
25 We think, Your Honor, from the debtors' perspective, this

Colloquy

1 change removes any doubt that the V&E lawyers working for the
2 debtors have no economic incentive to act, other than in their
3 best interest, and that being the interest of the debtors and
4 their estates.

5 Your Honor, I'd like to now cede the podium to Ms.
6 Griffith, general counsel for Vinson & Elkins, to walk through
7 some of the proposed terms with the Court.

8 THE COURT: Okay. Thank you.

9 Ms. Griffith, good afternoon.

10 MS. GRIFFITH: Thank you, Your Honor. Before I go
11 into my presentation, I'd like to address the question you
12 asked Mr. Williams about whether or not an ethical wall would
13 be extremely harmful to the debtors. And it certainly could
14 have been. It depends on how you go about doing it. And I
15 want to talk to you about exactly how we went about
16 establishing this ethical wall, which is now currently in
17 place.

18 We looked at all of the timekeepers who had worked for
19 Enviva, or the debtors, since the filing of the petition, and
20 we identified which ones had also worked for Riverstone. And
21 as it turns out, only thirteen had worked for Riverstone and
22 the debtors during this period of time. So that means that the
23 vast majority of our timekeepers who were working for Enviva,
24 had not worked for Riverstone at all. All of those individuals
25 were put on team A -- we'll call that -- which is the Enviva

Colloquy

1 team. There are the thirteen people who are left.

2 A couple of initial points, none of those thirteen are
3 part of V&E's core restructuring practice: not Mr. Meyer, not
4 Mr. Peet, not any of those individuals. They are all
5 individuals who work in specialty practice areas, who provide
6 specialty support to the debtors.

7 For example, some of them are litigators. A couple of
8 them are finance lawyers. We have a tax lawyer. And of those
9 thirteen, only five of them are partners. So we had to decide
10 what do we do with those thirteen individuals since they have
11 some time, though not a lot, working for Riverstone, and
12 importantly, the work that they were doing for Riverstone
13 during this time was all on unrelated matters. In fact,
14 there's no work for Riverstone in the firm at all on matters
15 related to this bankruptcy. So --

16 THE COURT: In the Meyer declaration -- I mean,
17 clearly, he's talking about people who have billed more than or
18 less than 12.5 hours?

19 MS. GRIFFITH: Yes.

20 THE COURT: All right. So you're just abandoning that
21 scheme all together?

22 MS. GRIFFITH: No, no, no. So what we did was we took
23 those thirteen people, and we said, how many hours have they
24 billed to Riverstone and how are we --

25 THE COURT: Since the bankruptcy was filed?

Colloquy

1 MS. GRIFFITH: Yes, sir.

2 THE COURT: Okay.

3 MS. GRIFFITH: So how many hours have they billed to
4 Riverstone since this petition was filed, and which team do
5 they get put on? Do they get put on the debtors' team or the
6 Riverstone team? And what we did was we put everyone who
7 billed 12.5 hours or fewer to Riverstone on the debtors' team.
8 And we did that, primarily, Your Honor, to address just the
9 concern that Mr. Meyer had that the debtors would be harmed by
10 a wall. And we did not want that to happen.

11 So we wanted the debtors to have the expertise of our
12 specialty lawyers. For example, the two finance lawyers have
13 been instrumental in negotiating the DIP facility. We put them
14 on the Enviva wall. Yes, they had done some work for
15 Riverstone, as I said, unrelated work and not very much, 12-
16 and-a-half hours in about three months.

17 They are behind a wall. They are not able to work for
18 Riverstone going forward on anything. It is not a partial
19 wall; it is a complete wall. There were two other lawyers who
20 had worked more than 12-and-a-half hours, and they are now on
21 the Riverstone team. And they may not do any work for the
22 debtors.

23 But the Enviva team -- the debtors' team, is about
24 eighty lawyers. Only two lawyers who had worked for Enviva are
25 not on that team. And we did that with careful analysis as to

Colloquy

1 what the necessary contribution was to the debtors, and whether
2 their expertise was duplicated by other lawyers in the firm,
3 and whether that could be done without any harm to the debtors.
4 And we became very comfortable that we could establish this
5 wall on a prospective basis and ensure that there is complete
6 separation between the Enviva team and the Riverstone team for
7 as long as this proceeding is going on, and thereafter, to the
8 extent Your Honor deems it appropriate.

9 So just to reiterate that last point, the U.S.
10 Trustee's objection states that this was a partial wall, which
11 it's not, and states that the wall excludes certain
12 individuals, which it does not. Every single timekeeper is on
13 one team or the other. No one is outside the wall. No one can
14 straddle the wall or anything like that.

15 And just to go to the mechanics of the screen, Your
16 Honor, what it --

17 THE COURT: Well, let's take an example of that.

18 MS. GRIFFITH: Yes, sure.

19 THE COURT: Lindsay Moore had 11.25 hours. Where does
20 she fall, team A or team B?

21 MS. GRIFFITH: Team A for Enviva for the debtors, Your
22 Honor.

23 THE COURT: All right. So that's the implementation
24 of the 12.5 hour threshold.

25 MS. GRIFFITH: Correct.

Colloquy

25

1 THE COURT: Okay. So it's not complete; it's partial.

2 MS. GRIFFITH: No. Well, I suppose it's a matter of
3 terminology. But she's on a team, and that is on the Enviva
4 team. And she may do no more work for Riverstone since the
5 implementation of this wall.

6 MS. GRIFFITH: Oh I see. All right.

7 MS. GRIFFITH: So just to be clear, what does it mean
8 to be on a team? What it means is several things. It means
9 that you cannot do work for the other team. There is a
10 complete separation of information between the two teams.
11 That's implemented several different ways. One is through
12 logical controls. And what I mean by that is, in our document
13 management system, we create what's called inclusionary walls.
14 Neither team can access the other. We don't allow you to bill
15 time to the other team, even if you don't look at the
16 documents.

17 THE COURT: That seems like an exclusionary wall,
18 but --

19 MS. GRIFFITH: Well --

20 THE COURT: -- whatever you'd like to call it.

21 MS. GRIFFITH: -- I actually just had this
22 conversation. I think the terminology can be nonintuitive, but
23 suffice it to say, that the documents are not available to the
24 other team that are saved --

25 THE COURT: Right.

Colloquy

1 MS. GRIFFITH: -- on the document management system.
2 And you can't bill time. We have written instructions. We
3 require everyone to acknowledge those written instructions. We
4 send periodic reminders of those instructions.

5 So this is a fairly standard screen. It's how we do
6 it in other circumstances, where it's required under the
7 ethical rules. Again, our position is this is not a required
8 screen for, I think, the reasons that were discussed earlier,
9 but I'm happy to go into those. But we're following the same
10 procedures that we would do, Your Honor, if a screen were
11 required under the applicable ethical rules.

12 The other aspect of the efforts that Vinson & Elkins
13 made to alleviate the concerns the Court expressed is with
14 respect to the reduction in compensation to the key partners.
15 In other words, these are partners who've worked more than ten
16 hours. In the event that Vinson & Elkins' application is
17 approved, those partners who work more than 10-and-a-half hours
18 for the debtors and the firm's executive committee will not
19 receive distributions from any profits from Riverstone for
20 2024, and if necessary, 2025 if the matter is still open.

21 I want to talk about what that means, but Your Honor,
22 before I even get into that, I think it's important to
23 understand the way Vinson & Elkins' compensation system works.
24 We are not a firm that compensates based on formula or points.
25 Many firms do. They have origination credits, they have

Colloquy

1 billing credits, and the compensation is fairly formulaic.

2 That is not how V&E works.

3 For better or for worse -- I'm sure some of our
4 partners might disagree -- we have a partnership share. It's
5 called a sharing ratio, which is a holistic analysis. Now of
6 course, it does take into account past contribution. It also
7 very much is prospective in nature. What will you be
8 contributing? It takes into account a lot of intangibles, both
9 financial intangibles, such as business development efforts,
10 and nonfinancial intangibles. And that is compensation for a
11 two-year period of time.

12 That kind of compensation structure ensures that
13 partners do not receive direct compensation from any clients
14 that they bill to, any clients that they are timekeepers on,
15 any clients that they bring directly into the firm. None of
16 that compensation is directly put in any partner's pocket.
17 That's the kind of compensation system, for example -- and I
18 say this, really, by way of analogy -- that there are ethical
19 rules that prohibit the sharing of revenue as part of a screen.
20 For example, when you come out of government service, or if
21 you're a former judge and you go to a private practice, the
22 ethical rules, including in Virginia, say that you cannot
23 apportion any of the fee for conflicted matters to that
24 individual.

25 But in a system like Vinson & Elkins, where you just

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1 have a share, that's already in compliance with those ethical
2 rules. So and that's actually stated right in Virginia's
3 commentary, as well as the model rules, that this kind of
4 compensation system, a partnership share, a salary is
5 permitted. It's only -- those rules are really targeted,
6 again, at compensation systems that pay by points or by formula
7 in which David Meyer would get, you know, .1 percent of his
8 Riverstone work and .1 percent of his Enviva work. That's just
9 not how it works.

10 But what we've done here, Your Honor, is we've gone a
11 step further. We've taken an aggressive or conservative
12 approach, depending on which word is best to use to describe
13 this. We will calculate the profits attributable to the
14 Riverstone work, which we can do, and that money will not be
15 distributed to the partners who work on this. And our chair is
16 here today, Mr. Fullenweider. He could answer any of the
17 questions Your Court may have.

18 But part of why we are here to talk about this is to
19 ensure that the Court appreciates that we're serious about
20 this. This is not a casual representation we're making. We're
21 making it in a motion and in open court. And we will
22 absolutely implement the commitment we have made to reduce the
23 compensation of these individuals to ensure that they don't
24 share in the profits from Riverstone work.

25 Again, as I said, this is not required, as far as I

Colloquy

1 know, under any ethical rule, but it is designed to ensure that
2 there is no question as to who this team, and who, frankly, the
3 firm is working for in this particular matter.

4 The last point I want to make, Your Honor, which is
5 also -- and incidentally, all of the points I'm making are
6 supported by the declaration of Mr. Meyer. In addition to
7 these two new safeguards, I do want to make the additional
8 point that the firm is regularly adverse to Riverstone in
9 matters. And we are adverse to them effectively in matters,
10 meaning that this has happened on multiple occasions, in which
11 our clients are confident that we can adequately, indeed
12 zealously, represent their interests in those matters.

13 Sometimes we are adverse directly. Riverstone is
14 selling an asset. They have counsel other than Vinson &
15 Elkins. We are on the other side. That is direct adversity.
16 Riverstone has granted us waivers in those situations, and the
17 client we are representing has also granted waivers.
18 Sometimes, it's more of a side by side. We're representing a
19 client bidding for assets, and Riverstone's the competitor.

20 But we have multiple of these situations. In fact,
21 the Vital matter on our website, that is cited in the opinion,
22 is actually a situation which we were adverse to Riverstone; we
23 were representing Vital. And sometimes, we use a screen in
24 those matters, Your Honor, when required by the ethical rules.
25 And sometimes, we don't. It just depends on the nature of the

Colloquy

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1 particular matter because screens are not always required under
2 the ethical rules.

3 We certainly do them where they are required, and
4 sometimes, we do them when clients request it. So a client
5 might say, sure, I'll waive that conflict, but I want you to
6 put a screen in place, and we do that. Sometimes, the client
7 waives the conflict, and we decide to put a screen in place as
8 a matter of caution. And then, we always do it when it's
9 required under the ethical rules. But the point being, that we
10 have been regularly and effectively adverse to Riverstone in
11 multiple matters.

12 Thank you. I'll return it to Mr. Williams at this
13 time.

14 THE COURT: All right. Thank you for your comments.
15 Mr. Williams?

16 MR. WILLIAMS: Thank you, Your Honor. And I
17 appreciate Your Honor's indulgence. I, too, was unfortunately
18 traveling when the resolution got filed, although I had seen
19 prior drafts. And I just wanted to go back and take a look at
20 the language, Your Honor. And there are two points I just want
21 to very clearly address for Your Honor.

22 If the plan evaluation committee says, no, that the
23 plan is not acceptable, the company has to negotiate a new
24 plan, or they're going to have to make changes to address
25 whatever issues the plan evaluation committee raises. So they

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1 will have authority on that issue.

2 And then, Your Honor, the language of the resolution
3 does say counsel. If the plan evaluation committee determines
4 that they need an investment banker, they'll need to request
5 it. But if it's important for Your Honor, it can certainly
6 also be ordered. And they --

7 THE COURT: Well, it's not a question of what's
8 important to me. It's a question of what you're suggesting as
9 the fixer.

10 MR. WILLIAMS: Your Honor, I think the --

11 THE COURT: What I want to know is what -- all right.
12 I mean, are they going to be able to -- it says they're going
13 to be able to hire counsel, right? But the question is, are
14 they going to hire financial advisors as well?

15 MR. WILLIAMS: And Your Honor, I think if the
16 special -- if the plan evaluation committee determines that's
17 necessary, they can request it. And I would imagine that would
18 be approved. But they would need to request it under the
19 current form of the resolution, Your Honor. Your Honor --

20 THE COURT: Requested from the Court, you mean?

21 MR. WILLIAMS: Well, Your Honor, I guess, from the
22 board and then from the Court, Your Honor, in order to
23 compensate that financial advisor.

24 THE COURT: Okay. Thank you.

25 MR. WILLIAMS: Your Honor, so we have addressed, sort

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1 of, the factual issues and some of the legal issues, but there
2 is one other issue, aside from disinterestedness, that I do
3 think is important; although, disinterestedness is obviously
4 paramount in these proceedings. But I don't want to understate
5 what this may mean for the debtors.

6 In connection with our motion to reconsider, we did
7 submit the declaration of Jason Paral. His declaration is
8 important because as vice president, general counsel, and
9 secretary for Enviva, Mr. Paral has worked with Vinson & Elkins
10 for nine years in all aspects of the debtors' business. As a
11 secretary, he's also been present for the board meetings.

12 Your Honor, we think the bottom line is Mr. Paral's
13 word carries a lot of weight because he has a lot of years of
14 experience observing Vinson & Elkins. And it was through his
15 experience --

16 THE COURT: In fact, he was a -- was he a partner at
17 Vinson & Elkins?

18 MR. WILLIAMS: Not a partner, Your Honor. He did
19 previously work at Vinson & Elkins. It was a number of years
20 ago. But obviously, he has obligations to the company still.
21 And that's -- a lot of times, Your Honor, we see where you
22 build your familiarity with folks.

23 But since that time, Mr. Paral's been actively
24 involved in the company's restructuring process. And I think
25 he would testify that as lead counsel, they've served the

Colloquy

1 company diligently. And prior to and throughout the course of
2 these Chapter 11 proceedings, Vinson & Elkins has advised
3 Enviva on various financing efforts, ongoing long-term contract
4 renegotiations that are pivotal for the efforts of this case --
5 the raise-the-bridge efforts, Your Honor, tax analysis,
6 securities and public disclosure, various litigation matters,
7 and a myriad of other outside counsel roles.

8 Vinson & Elkins, Your Honor, has years of unique and
9 specific experience in advising the debtors as a result of its
10 years serving as Enviva's primary outside counsel, or principal
11 outside counsel.

12 Your Honor, this knowledge that has been accrued over
13 these years has provided significant benefit to Enviva through
14 these restructuring efforts, and that cannot be replaced. Mr.
15 Paral states that in all matters he's observed during his time
16 at Enviva, Vinson & Elkins has acted professionally and
17 ethically, and they've never pulled their punches for
18 Riverstone or anyone else.

19 Your Honor, my firm, Kutak Rock, has had the
20 opportunity to work closely with Vinson & Elkins since
21 February. We have no concerns about the disinterestedness or
22 any divided interest to the debtors. We also now have the plan
23 evaluation committee, Your Honor, which will operate without
24 Riverstone or management and can retain its own counsel. Your
25 Honor, we think this extraordinary step further demonstrates

Colloquy

1 that the debtors took Your Honor's comments to heart, and that
2 they are committed to making this case succeed with Vinson &
3 Elkins as lead counsel.

4 Your Honor, in your opinion, towards the end, you
5 expressed concern or acknowledged that there was a desire that
6 the parties work together with the debtor, in light of the
7 retention not being approved, to try and minimize the impact.
8 Your Honor, having been on the front lines of this case for a
9 while, and even more so in the past two weeks, I think,
10 candidly, Your Honor, I would say my outlook is much more
11 somber. The debtors believe there will be significant harm to
12 them in these cases if the Court does not reconsider the
13 opinion and order employing Vinson & Elkins. The case is at a
14 milestone moment, and this is not just merely a setback for the
15 debtors.

16 As stated in Mr. Paral's declaration, V&E, having
17 served as lead outside counsel, provides legal advice on a
18 number of issues, not just bankruptcy, and they've served in
19 that role for over a decade. The debtors have expended
20 substantial resources to help Vinson & Elkins obtain a level of
21 institutional knowledge about the debtors and their operations
22 that cannot be replicated, and certainly cannot be replicated
23 quickly, especially when the company is focusing its resources
24 on trying to navigate the bankruptcy.

25 If V&E is unable to serve as counsel to Enviva, this

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1 knowledge and experience will be impossible to fully replace,
2 and the onboarding of substitute legal advice across the vast
3 scope of services performed by V&E will result in significant
4 expense, not only monetarily, Your Honor, but also in personnel
5 resources and delay that would further harm Enviva and its
6 estate.

7 While I think Mr. Paral would say that he's been
8 pleased with the services of our firm, Kutak, Your Honor,
9 simply put, we don't have the same institutional experience
10 with the debtors or the depth of resources and personnel that a
11 firm like Vinson & Elkins has. Mr. Paral believes that the
12 risk of delay and associated costs will be significant. The
13 cost in delay would result, at least, from the interview,
14 selection, and conflict process associated with new counsel and
15 the required time to bring new counsel up to speed.

16 But Your Honor, the cost of the debtors' estate does
17 not only include the cost of those additional professional fees
18 for new counsel, but there are sizable expenses that would
19 result from the delay in these cases, including professional
20 fees of other firms, financial advisors, for instance, Your
21 Honor, and other parties, the U.S. Trustee fees, and the
22 interest under the DIP. Additionally, this delay in these
23 cases put the debtor -- puts the debtors at risk of defaulting
24 under the DIP, which has a scheduled maturity nine months after
25 the petition date, and which is quickly approaching.

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1 Mr. Paral is also concerned, Your Honor, that the loss
2 of access to the debtors' longtime counsel will result in an
3 irreplaceable loss of institutional knowledge and expertise and
4 will require the debtors to effectively rebuild their outside
5 legal function from scratch, while trying to navigate a Chapter
6 11 proceeding.

7 The debtors are especially vulnerable right now, and
8 they need their historical counsel to help guide them. While
9 Mr. Paral's competent management would use all efforts to
10 maximize and preserve value in these circumstances, there is
11 meaningful and undeniable risk that a broad substitution of
12 counsel across many legal functions would drain internal
13 resources and will result in suboptimal execution in a manner
14 that has long-term effects on the debtor and destroys value for
15 the debtors' estates.

16 Your Honor, the debtors believe that Vinson & Elkins
17 has proposed a concrete and tailored solution to fully address
18 the Court's concerns and that justify reconsideration of the
19 opinion and the order in approval of Vinson & Elkins'
20 retention, inclusive of the new facts and circumstances we've
21 described in the reconsideration motion today.

22 So Your Honor, then, I think one of the last questions
23 is, what is the -- what is the path forward if, Your Honor --
24 we think that disinterestedness should no longer be an issue in
25 light of the new facts here. But how do we get to a place

Colloquy

1 where we can retain Vinson & Elkins? And Your Honor has a
2 number of options available to him, any of which will suffice.

3 To implement this retention, Your Honor, first and
4 foremost, it could treat the motion as a second application to
5 employ. Courts have done that previously. The applicable
6 standard there would just be under 327. And if
7 disinterestedness is now satisfied, then Vinson could be
8 retained.

9 Your Honor, you could determine that the wall's
10 erected, the restriction on profit sharing, and the new
11 committee of the board all constitute new evidence under Rule
12 9023, which warrant approval of their retention application.
13 Your Honor could determine that the prior arguments and
14 pleadings failed to clearly convey the debtors' position, or
15 Vinson & Elkins' position with the wall, and that in light of
16 such failure to convey, this Court has authority to reconsider
17 under 9023.

18 Your Honor could determine that this matter is not
19 final, and this Court just has inherent authority to reconsider
20 under 9023 simply because it so chooses. We find that these
21 procedures, which are being implemented and which are
22 unprecedented, in my opinion, have been a -- have a prospective
23 effect, constitute an exceptional change in circumstances, and
24 the relief could therefore be granted under 9024.

25 Your Honor, I think employing Vinson & Elkins at this

Colloquy

1 stage of the proceedings also sends a powerful message. One,
2 the debtors will have the benefit of their legacy counsel and
3 can avoid the extraordinary expense, not just of time, but of
4 resources in bringing in new counsel up to speed. And it
5 substantially increases the likelihood this case is successful.

6 Your Honor, the creditors win because this case can
7 move forward quickly without the attendant expense and delay
8 that comes with trying to replace lead counsel midstream and
9 having the case languish. Your Honor and the Office of the
10 U.S. Trustee and this Court have undoubtedly sent a message to
11 Chapter 11 professionals throughout this country about what the
12 standard is in the Eastern District of Virginia and what is
13 expected of counsel to meet the requirements of 327. That
14 final point should not be understated, Your Honor.

15 Last, on a personal note, I cannot emphasize how
16 important this is for the debtors for this case, or for the
17 creditors. Your Honor, based on my personal experience with
18 this case, and everything we have seen, I truly believe that
19 the denial of the motion here will have far and lasting
20 consequences. The committee, the ad hoc group, and Wilmington
21 have all expressed their support for the reconsideration
22 motion, among others, and I believe, share my concerns, Your
23 Honor, which you will hear shortly.

24 Notably, Your Honor, the committee is no longer
25 agnostic about the retention of V&E. The committee, which is

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1 an additional estate fiduciary representing all unsecured
2 creditors, has engaged with the debtors and the board and as
3 noted by their filing this morning, affirmatively supports the
4 retention of Vinson & Elkins.

5 With the committee's support, every economic
6 stakeholder in this case, a case with a robust consensus and an
7 active and constructive dialog, support the retention of V&E.
8 For all of these reasons, Your Honor, we are asking that the
9 Court grant the motion to reconsider and approve the retention
10 of Vinson & Elkins.

11 Your Honor, I'm happy to answer any questions you
12 might have. I know Mr. Alberino wanted to be heard, but I'm
13 happy to cede the podium however Your Honor deems appropriate.

14 THE COURT: All right. That's fine. Thank you for
15 your argument.

16 MR. WILLIAMS: Thank you, Your Honor.

17 THE COURT: Mr. Alberino? Good afternoon.

18 MR. ALBERINO: Good afternoon, Your Honor. Scott
19 Alberino, once again, from Akin Gump, on behalf of the official
20 committee.

21 Your Honor, last time I was in this courtroom, I was
22 on the losing end of a DIP objection. Probably wondering why
23 I'm here today saying nice things about Vinson & Elkins. But
24 I'm just kidding. But let me -- I do want to get into my
25 argument a little bit here.

Colloquy

1 It's been a strange couple of weeks processing the
2 ruling, but also recognizing the legitimate issues that were
3 raised as part of the ruling and working with V&E, as well as
4 with the company, to try to get to a position where the
5 committee could stand up today and support V&E's retention in
6 light of Your Honor's ruling from several weeks ago.

7 I thought it'd be helpful, Your Honor, just to kind of
8 go back in time a little bit because the committee did not file
9 an objection to V&E's original retention application. As a
10 matter of fact, I think we stood up in court on the day of the
11 retention hearing and said something supportive of the
12 retention. So I want to kind of go back in time a little bit
13 and just kind of talk to you about the committee's thinking.

14 Your Honor, when they filed the retention application,
15 the Riverstone issues were not a surprise to Akin Gump, not a
16 surprise to the committee. And we took a very hard look at the
17 retention application and the circumstances surrounding V&E's
18 involvement here. And we looked at all of the issues. This
19 was not a cavalier, kind of, glance at the retention
20 application or the declaration.

21 We looked at the fact that V&E both had long-standing
22 client relationships on both sides of the aisle. Riverstone
23 was a longtime client of V&E, very well known in the market.
24 At the same time, V&E has been representing Enviva for the
25 better part of a decade, and Enviva is not a simple company.

Colloquy

1 It's a very complex company with production facilities around
2 the United States and customers and ports and shipping around
3 the world. The importance of outside counsel, especially one
4 that has been around the hoop for that long, was not lost on,
5 at least, another set of lawyers at another major law firm.

6 We also looked at Riverstone's equity ownership. It
7 jumps off the page at forty-three percent. Now, Riverstone is
8 managing lots of other people's money through their fund. And
9 as Your Honor can recall from the DIP hearing, when the DIP was
10 syndicated, of the DIP syndication, I think Riverstone had
11 around one percent of that DIP syndication. Your Honor, if you
12 recall, I think seventy percent-plus was held by another party.
13 We looked at Riverstone's representation on the debtors' board
14 of directors. They have two seats. Two of the founders of
15 Riverstone are longtime board members on Enviva.

16 But we also looked at how Riverstone's influence
17 extended throughout the board of directors. This was a
18 thirteen-person board, a public company. There were lots of
19 strong opinions on that board, and we got to witness that and
20 see some of that as we went through discovery and the DIP
21 financing process on our own.

22 We were focused on Riverstone's engagement of separate
23 counsel. They brought in a separate law firm to represent
24 them, to the extent they had interests that were at stake in
25 the Enviva bankruptcy case. We looked at the RSA, Your Honor.

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1 It kind of cuts both ways. On one hand, as you heard from us,
2 we had a big problem with an RSA that provides five percent of
3 the equity of the reorganized company to shareholders, when
4 unsecured creditors are impaired under that RSA. We think
5 that's a violation of the Bankruptcy Code. We raised that in
6 the DIP hearing, and as you know, Your Honor, we still believe
7 that as we are pursuing an appeal, but we intend to continue to
8 prosecute those objections throughout this case.

9 On the other hand, you know, the RSA also wiped out
10 almost much -- most of the equity for the existing
11 shareholders, including Riverstone. So this is not a case
12 where you had the company filing an RSA, where the shareholders
13 were intent on clinging on to their existing ownership
14 interest, you know, putting all creditors in peril.

15 Your Honor, we also looked at harm to unsecured
16 creditors if the company were to hire separate 327(a) counsel.
17 Now, I know there's lots of unquantified representations by the
18 company about costs and delay. I did not want to get dragged
19 into the merits of that, but I can tell you from first-hand
20 experience, you know, for a company like Enviva with a complex
21 tax operation that they have, you know, just replacing V&E as
22 tax counsel and bringing another law firm into the case to get
23 up to speed to understand historical tax issues, how they
24 impact future tax issues, including the impact of the
25 restructuring, you know, it's one example --

Colloquy

1 THE COURT: Well, standards under Section 327(e) are
2 different from 327(a) right?

3 MR. ALBERINO: Correct. Correct, Your Honor. That is
4 absolutely correct.

5 THE COURT: I think we all understand that.

6 What's the committee's position on the -- well, I
7 understand you're supporting the idea of the plan evaluation
8 committee.

9 MR. ALBERINO: Let me talk about that.

10 THE COURT: Yes. And A) have -- is there case law, to
11 your knowledge, that supports the idea that the board of
12 directors can delegate its plan formulation responsibilities to
13 a subcommittee and be from the committee's perspective, now
14 we're going to have a whole new set of legal advisors and
15 financial advisors? And aren't you concerned about the cost
16 there as well? Two separate questions. Sorry for throwing
17 them at you at the same time.

18 MR. ALBERINO: So I'll address both of them in order,
19 Your Honor.

20 So when the ruling came out, we know V&E quickly kind
21 of moved to talk to all the stakeholders about some of the
22 modifications that they proposed here today, and in particular
23 the ethical screening and the profit sharing carve outs. And
24 those are things that V&E controls and V&E can do that on their
25 own. And we were happy and continued as -- and we're happy to

Colloquy

1 continue to push them, you know, to include that as part of a
2 modified retention application.

3 But we also told them that, you know, the concerns
4 that we thought Your Honor had that were expressed in the
5 order, you know, required some help from the company as well in
6 terms of managing the plan process to eliminate any perception
7 or actual kind of bias in that process, given the V&E and
8 Riverstone connections, you know, that were, you know,
9 problematic to Your Honor.

10 So we engage with the company on a series of
11 governance reforms that are reflected in the resolution that
12 was filed today. It's called the plan evaluation committee.
13 Now, what I will tell you is, you know, it is not uncommon in
14 large, complex cases where there are conflict issues for
15 corporate debtors to establish special committees with a full
16 delegation of authority to control restructuring related
17 matters in the bankruptcy case. It's not required. But in
18 cases where there is a potential for bias, the potential for
19 conflicts of interest, you know, it's a tool that restructuring
20 lawyers will use. And it's a tool that is permitted under
21 Delaware law to essentially delegate authority of the board to
22 a subset of directors.

23 I don't have a statute to refer to you today. If we
24 had to work with the company to supplement, you know, the
25 record on that, we could do that. But I will represent to you

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1 from my own personal experience, you know, representing
2 companies and boards, as well as being involved in many cases
3 where these special committees exist, it's permissible under
4 Delaware law to create a special committee consisting of a
5 subset of board members that has been delegated binding
6 authority on behalf of the board to make certain decisions on
7 behalf of the company.

8 And here, you know, the issue is, you know -- the
9 issue was the plan and ensuring that in the future negotiation
10 that we want to have on the plan and that other stakeholders
11 are going to want to have under the plan, what board is
12 ultimately going to consider what that plan looks like, what
13 amendments to the plan may be necessary relative to the RSA
14 term sheet, and what advice and who -- and who is providing
15 advice to that board throughout that process.

16 Now, we had no objection to V&E continuing to advise
17 the special committee, but we also wanted it to be clear that
18 that committee was required to hire their own independent
19 counsel to advise them on restructuring matters, you know, to
20 make sure at the end of the day, they had an independent
21 perspective with no Riverstone connections, you know, that
22 would allow them to make the decisions and take advice of
23 counsel with respect to the plan.

24 Now, is there an incremental cost associated with
25 that? There is. I think it's a lot less, significantly less

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1 than the cost the estate will bear by bringing new 327(a)
2 counsel in to replace to replace V&E. And the way we would
3 envision the plan evaluation committee operating, you know, the
4 plan is negotiated through the advisors. You know, the
5 company's professionals are going to work with the other
6 stakeholders to negotiate terms, you know, in consultation with
7 principals, like reporting to the board.

8 Ultimately, here, the plan evaluation committee is
9 going to have to make a decision as to whether -- you know,
10 whether a plan will be authorized by the company to be filed.
11 Through that process, I think V&E will be involved, but the
12 independent directors will have the ability to tell V&E to
13 leave the room. We want to make sure that, you know, we're
14 doing something that is -- that -- and receiving advice that is
15 clear of any potential bias.

16 And we think, Your Honor, kind of with that
17 arrangement, which is not, again, uncommon in a lot of complex
18 Chapter 11 cases where there are conflict concerns, you know,
19 that mechanism has been kind of used to at least create and
20 improve governance process, which, you know, I think got us
21 comfortable to support the V&E retention application.

22 From our perspective, V&E did what they had to do, or
23 they could do what was within their control. We thought it was
24 imperative that the company do something within their control,
25 you know, to modify governance and improve governance.

Colloquy

1 THE COURT: So what does happen at the end of the day
2 if the plan evaluation committee and the board disagree
3 fundamentally on the plan?

4 MR. ALBERINO: Well, there can't be a disagreement.
5 The board is delegated to the plan evaluation committee whether
6 to file the plan.

7 THE COURT: So the board is stuck, so to speak.

8 MR. ALBERINO: The board is stuck. The six directors
9 that are on the plan evaluation committee --

10 THE COURT: But the board created the resolution,
11 creating the plan evaluation committee. I mean, it seems to me
12 that the board can revoke the resolution, couldn't it?

13 MR. ALBERINO: It's a fair point, Your Honor, and we
14 would prefer and again, I didn't get to the end of my
15 statement. We would have preferred that the resolution be
16 irrevocable, so that once the resolution is put in place, it's
17 an irrevocable resolution by the board so that there is no risk
18 that, you know, the -- you know, the football gets pulled like
19 Charlie Brown.

20 But as I was going to say, the arrangement that we
21 worked out it is -- was not -- it is not an arrangement that is
22 perfect in every matter. But to quote Voltaire, we didn't want
23 to let the perfect be the enemy of the good here. And as you
24 said, you know, you called it. You're asking me to choose
25 between a bad situation and a worse situation. We're trying to

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1 get to a better situation, and a situation that we think works
2 and is manageable, and is something that, you know, we think
3 works kind of in a restructuring context, especially for a case
4 as complex as this one, and with professionals that we know,
5 understand what their fiduciary obligations are.

6 And frankly, Your Honor, like going back to earlier,
7 one of the reasons we didn't object is at the end of the day,
8 we knew as committee counsel that if there were any issues
9 concerning bias, influence that was crossing the line, you're
10 going to hear about it from us. You know, we're not shy about
11 coming into court if we have issues with how either the
12 professionals are behaving or how the company is behaving.

13 And I think here with the concerns that you raised, I
14 think it's fairly addressed by V&E and by the company. It's
15 hard to sit here and say that the transaction results -- that
16 in the RSA or the DIP that we objected to, was it because of
17 advice received by V&E? Was it because of the deals that were
18 negotiated by professionals that were advised by the board? At
19 the end of the day, you know, as committee counsel, we have the
20 right to kind of challenge the company's business deal or at
21 least elements of the business deal. But both the company and
22 the professionals, everybody has to compromise to make sure
23 that at the end of the day, the process has integrity and the
24 process is respected and that, you know, good governance -- you
25 know, good governance rules the day and that, you know,

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1 professionals, you know, are mindful that they'll be held to
2 account by the committee if people cross the line improperly.

3 And listen, we've had our fights. We almost had a
4 2004 fight today as well, Your Honor, and I'm highly confident
5 I will be back in front of you with another contest between us
6 and the company on V&E. I'm hoping that we're going to start
7 resolving more issues going forward and working in a more
8 cooperative fashion, but every client has the right to their
9 own representation. And if we're going to conduct that case in
10 that way, well, maybe we'll be back in front of you with
11 another contested matter down the road.

12 But like being -- leaving that to the side, the
13 committee -- as we did initially in connection with the first
14 application, and we -- reasonable people can disagree on
15 whether a professional is disinterested or represents an
16 adverse interest, you know, based on the facts presented. And
17 we took into account those facts. We, as a committee,
18 exercised our discretion to not pursue an objection based upon
19 the facts as we saw them back in the day. I think sitting here
20 today, the facts have gotten better with concessions from V&E,
21 which I think -- which I think are long overdue, ethical
22 screening, profit sharing, carve outs.

23 And on top of that, I think the company, you know, did
24 what they needed to do as well, which is kind of look at how
25 the board was functioning and make changes to ensure that the

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1 plan process going forward, you know, will be hopefully kind of
2 free of kind of bias, you know, and influence. So Your
3 Honor --

4 THE COURT: You know, in in my opinion, I talked about
5 how you can't delegate the core function for negotiating a
6 plan --

7 MR. ALBERINO: Right.

8 THE COURT: -- as 327(a) counsel, relying on that
9 Project Orange case, I think it's called. So what's different
10 here where, I mean -- isn't creating this plan evaluation
11 committee and getting a plan evaluation committee its own
12 counsel and maybe its own financial advisors, or aren't we
13 doing the same thing? Aren't we contracting out, so to speak,
14 the plan formulation process?

15 MR. ALBERINO: I don't think we are, Your Honor.

16 THE COURT: Well, what's different about that?

17 MR. ALBERINO: Sure. So I think I think what's
18 different here is that -- what's different here is that ninety-
19 five percent, let's call it ninety-eight, ninety-nine percent
20 of the plan, and the elements of the plan need to be
21 negotiated. V&E is going to be a part of that process, a lot
22 of that -- but a lot of that --

23 THE COURT: Did you say need to be or have been
24 negotiated? I didn't hear it.

25 MR. ALBERINO: That will need --

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1 THE COURT: I'm not trying to be --

2 MR. ALBERINO: Oh, sure. Well, if you think about it,
3 a big chunk of the plan was negotiated with the RSA parties
4 already.

5 THE COURT: Right.

6 MR. ALBERINO: There will be amendments that will
7 likely be negotiated to that plan now that the committee is
8 involved in the case, you know, and getting kind of -- getting
9 up to speed and being familiar with what they will be asking
10 for.

11 So at some point there will be a negotiation. I think
12 as part of this process, V&E will be negotiating the plan, and
13 the plan is like -- it's like an iceberg, Your Honor. Like
14 there's the terms up top, but there's so much else going on
15 kind of below the surface in terms of financing, governance,
16 tax work. V&E's going to be --

17 THE COURT: Right. But I said in my opinion, and I
18 think you'd probably agree with this, I mean, the metaphor I
19 use is it's a machine and all the parts depend on all the other
20 parts. You can't get the machine to work if one part isn't
21 working. Right?

22 MR. ALBERINO: Well, I think -- I guess what I would
23 say, Your Honor, is this. Under the arrangement with the plan
24 evaluation committee, V&E is still going to be kind of working
25 on the front lines, negotiating the plan. The issues that

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1 you're focused on, that would be Riverstone related, I think of
2 them kind of in two ways. The equity issues, you know, they're
3 an existing shareholder. You know, there's equity set aside
4 under the RSA for old shareholders. Number two, there are
5 going to be release issues in the plan -- you know, debtor
6 releases --

7 THE COURT: Depending on what the Supreme Court says
8 next week.

9 MR. ALBERINO: Depending what the Supreme -- exactly.
10 We'll see if they can get the plan done before the ruling. But
11 you're right. There will be release issues. There will be
12 equity issues. And V&E will be -- you know, will be part of
13 that.

14 But on the release front, as you know, the company has
15 a special committee that's working with Baker Botts and the
16 releases. The plan evaluation committee, ultimately, is going
17 to consist of many members who are actually on that special
18 committee that's leading the company's investigation.

19 The committee, Your Honor, we're investigating that as
20 well. If there are issues with the releases, the committee
21 will be on top of that. And having the ability to have
22 independent counsel, not just Baker Botts, but having
23 independent counsel speaking to the plan evaluation committee
24 on an issue such as releases is very important. So it gives
25 the special committee or the plan evaluation committee in this

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1 context, the ability to get, you know, advice from lawyers that
2 have no connection to any of the beneficiaries of the releases.

3 And we think that's critical here and for the
4 committee, you know, it gives us the ability also to have, you
5 know, an outlet to, you know, talk to, you know, one of the
6 parties -- a set of advisers that has no connection to any of
7 the beneficiaries of the releases, where if we have issues, you
8 know, we have another party that we can speak to on this.

9 But again, that's one -- and I don't want to diminish
10 the importance. I think it's very important. But it's also
11 just one component of a much bigger plan. And in other cases
12 where we've seen kind of these arrangements work, the kind of
13 lead 327(a) counsel and special committee counsel, people
14 figure out how to work with one another, you know, and get --
15 and do it -- and do it in an efficient way.

16 But in a case as complex as this one, it would be --
17 you know, I think V&E is going to play a role in a lot of the
18 issues and the plan that perhaps the committee may be less
19 focused on. So I think we're comfortable with them kind of
20 playing a role here. But you know, we certainly want the
21 ability to have independent directors with independent counsel
22 when we come to them with issues that they know that we're
23 going to be hot about potentially, you know, releases and
24 equity distributions to shareholders. I'd like to make sure
25 that, you know, I have an independent set of ears and

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1 independent counsel to talk to, to make sure our message is
2 getting through. And not that it wouldn't with Mr. Meyer and
3 the team at V&E, but it's a better process, a process with
4 greater integrity, I think, if that outlet, you know, that
5 mechanism exists here.

6 So Your Honor, this was -- I'd say it was tough, but
7 it wasn't tough. I think that we are really -- we share the
8 concern of some of the ad hoc groups and other economic
9 stakeholders, cost and delay, again, somewhat amorphous, but
10 there's going to be a cost. There's going to be a potential
11 delay if V&E is sidelined as 327(a) counsel.

12 Is there a kick save? Bring them in as 327(e)
13 counsel? Maybe, but it's going to be disruptive to the
14 company.

15 And I take the point that dealing with this three
16 months into a live bankruptcy case with all the customers --
17 all the company's customers and employees watching and waiting
18 to see how the case moves, how it progresses, it could -- it
19 could potentially cause even, you know, greater harm if it
20 becomes destabilizing to our workforce -- to the company's
21 workforce, or to the company's customers.

22 We do think given the package of reforms that they've
23 proposed and, importantly, what the company has proposed, you
24 know, to improve governance and which we think goes to the
25 heart of Your Honor's concerns and the ruling, you know,

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1 denying V&E's retention, you know, we think V&E should be
2 approved under these modified terms, Your Honor. And we would
3 respectfully request that you do that.

4 THE COURT: Okay. Thank you for your argument.

5 MR. ALBERINO: Thank you, Your Honor.

6 THE COURT: All right. Good afternoon.

7 MS. DEXTER: Good afternoon, Your Honor. Erin Dexter
8 of Milbank, appearing on behalf of an ad hoc committee of
9 holders of interests and claims acquired from RWE.

10 We filed our notice of appearance this morning, Your
11 Honor, and I'll note that my motion for admission to this Court
12 pro hac vice is currently pending. May I be allowed to
13 continue?

14 THE COURT: I'm sure that we'll grant that. That
15 won't be a problem.

16 MS. DEXTER: Thank you, Your Honor. I'll also note
17 just briefly that I am joined on the Zoom here today by my co-
18 counsel, Michael Mueller of Williams Mullen.

19 THE COURT: Okay. Good afternoon.

20 MS. DEXTER: Your Honor, I just wanted to rise briefly
21 to note that our client is supportive of the motion to
22 reconsider, particularly given the agreement reached with the
23 UCC and the amendments in the plan evaluation committee
24 discussed on the record here today.

25 Before I step back, I also just wanted to note briefly

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1 that I also wish to be heard on the second agenda item for
2 today, the 2004 motion, which was consensually resolved. But I
3 will, of course, reserve my remarks on that until the close of
4 this matter.

5 THE COURT: Why don't you go ahead and address it now,
6 because I understood that it was resolved.

7 MS. DEXTER: Yeah, we don't oppose it, Your Honor.
8 And we're pleased to hear that the UCC and the debtors have
9 reached agreement on the 2004 motion.

10 THE COURT: Okay.

11 MS. DEXTER: I wanted to rise just briefly, first to
12 introduce our client to Your Honor and to note that we are
13 requesting access to the materials that will be shared with the
14 UCC. We've already been in contact with the debtors about
15 this, and expect to work consensually with them to obtain that
16 access for our clients. But I wanted to rise briefly to just
17 introduce our client to Your Honor.

18 We are holders and claims acquired from RWE of
19 approximately 310 million in claims in total across the debtors
20 Enviva LP, Enviva Pellets Waycross, and Enviva Inc. And given
21 the size --

22 THE COURT: All right. So let me -- I'm sorry. Let
23 me back up a second, and this is my confusion.

24 MS. DEXTER: Sure.

25 THE COURT: You don't represent the ad hoc group that

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1 was the ad hoc group under the DIP facility.

2 MS. DEXTER: No, Your Honor, that's our colleagues at
3 Davis Polk, who are here in the courtroom.

4 THE COURT: Yes. So you represent a different ad
5 hoc --

6 MS. DEXTER: Yes, Your Honor.

7 THE COURT: -- group that acquired the RWE interest.

8 MS. DEXTER: That's right, Your Honor.

9 THE COURT: Thank you.

10 MS. DEXTER: We represent an ad hoc committee of
11 holders of interests and unsecured claims acquired from RWE.

12 THE COURT: Thank you very much.

13 MS. DEXTER: Absolutely.

14 And given the size of the holdings of this client
15 group, we expect to play a significant and hopefully
16 constructive role in these cases. We've already been playing
17 an active role and we hope a constructive one, and appreciate
18 the efforts of the debtors and the UCC and the ad hoc group and
19 working constructively with us already.

20 We actually expect to be under NDA at an advisor level
21 with the debtors shortly, and hope that that will enable
22 information sharing that will facilitate constructive plan
23 discussions.

24 My only note on the 2004 motion, Your Honor, is that
25 of course, we're pleased that it was resolved consensually, but

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1 we will be seeking access to the information shared with the
2 UCC. Again, we expect to work cooperatively with the debtors
3 there and don't anticipate a need to come back to Your Honor.
4 We will do so if that becomes necessary, but we don't believe
5 it will be.

6 We also don't intend to duplicate the efforts of the
7 UCC, but we do believe that it is critical that we receive the
8 information shared with the UCC. It will enable us to
9 participate meaningfully in these cases and specifically in the
10 plan process. Our client, as a significant claim holder here,
11 is prepared to roll-up its sleeves and work constructively with
12 the other parties, and obtaining access to that information
13 will enable us to do so.

14 That's all I have, Your Honor, and we wanted to note
15 our support as well for the debtors' motion for
16 reconsideration.

17 THE COURT: Okay. Very good. Thank you.

18 MS. DEXTER: Thank you.

19 MR. HAYES: Good afternoon, Your Honor. Dion Hayes
20 with McGuireWoods. I'm here as co-counsel with Davis Polk for
21 the original ad hoc group.

22 THE COURT: Thank you.

23 MR. HAYES: And I'll be very brief, Your Honor.

24 The ad hoc group filed a statement in support of
25 Vinson & Elkins' motion to reconsider at Docket 703. I'm not

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1 going to reiterate what colleagues at the bar have already said
2 about the damage that will be occasioned to the case, and the
3 cost and delay that would come about if Vinson & Elkins is not
4 retained.

5 We think that cost would far exceed any additional
6 incremental costs that might be occasioned by the special
7 committee, retaining professionals, Your Honor. And we note
8 that all of the economic stakeholders in the case, and I don't
9 include the U.S. Trustee in that, are here supporting the
10 debtor's retention of Vinson & Elkins because of the concern
11 about delay and cost.

12 We think that Vinson & Elkins, in particular, has gone
13 to extraordinary lengths to establish what's been referred to
14 as a complete ethical wall. I think the U.S. Trustee has shown
15 his hand by citing on page 13 of his brief, a discredited
16 thirty year old Florida bankruptcy court case called Trust
17 American Services at 175 B.R. 413 for the proposition that an
18 ethical wall doesn't work. And Your Honor, we would note that
19 the Third Circuit In re Imerys Talc at 38 F.4th 361 in 2022
20 determined an ethical wall was adequate to resolve a perceived
21 conflict.

22 THE COURT: Right. I didn't say in my opinion that
23 ethical walls are impermissible. What I said was that I was
24 told that V&E didn't have an ethical wall, and had no intention
25 of planning to have an ethical wall. Now, V&E says it's

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1 willing to implement an ethical wall, but the U.S. Trustee says
2 it's insufficient because it's not complete, and I suppose that
3 depends on our nomenclature.

4 MR. HAYES: Your Honor, I think in your opinion, the
5 Court was clear that the Court recognizes the value and
6 importance of an ethical wall. I was merely pointing out that
7 the U.S. Trustee appears to have cited a case that no other
8 court has followed, that suggests that any ethical wall would
9 be inadequate. And I think that that is an extreme minority
10 position at variance with Your Honor's opinion that the Court
11 wrote a few weeks ago.

12 The other opinion I would cite is In re SAS AB at 645
13 B.R. 37, in which a bankruptcy court in the Southern District
14 of New York two years ago found an ethical wall to be adequate
15 to support -- to resolve a conflict.

16 Your Honor, having had the pleasure of running for
17 five years half of a 1,000-lawyer law firm, I have some
18 familiarity with ethical walls. And a complete ethical wall,
19 such as the one that Vinson & Elkins has established here,
20 prospectively, is a rare thing indeed.

21 And it's not that law firms operate in a vacuum with
22 respect to ethical laws. I wanted to read to the Court wording
23 from the ABA Model Rule 1.0(k), which is the definition of
24 screened. The Virginia model rule -- the Virginia rules do not
25 have a definition of screened, but the ABA model rules do. And

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1 it means, "The isolation of a lawyer from participation in a
2 matter through the timely imposition of procedures within a
3 firm that are reasonably adequate under the circumstances to
4 protect information that the isolated lawyer is obligated to
5 protect under these rules." The key wording is reasonably
6 adequate under the circumstances.

7 I think what Vinson & Elkins has instituted here goes
8 well beyond what the ABA model rules would require. It's more
9 than reasonably adequate under the circumstances, and should be
10 sufficient to enable the Court to approve the retention.

11 The other point I would make, Your Honor, and the
12 Court referred to some of these items in your opinion. There
13 are many safeguards in this case and in most Chapter 11 cases,
14 really any Chapter 11 case for the treatment of equity under a
15 plan. Number one, the board has established a special
16 committee, and the Delaware statute that permits boards to
17 establish special committees is Delaware Title 8, Section 141,
18 subsection C(2). Board establishment of subcommittees or
19 special committees is not unique. It's a normal facet of
20 Delaware corporate law, as the Court knows.

21 The debtor would have to approve a plan approved by
22 that committee. The UCC here is very well represented and
23 vigilant and will scrutinize any plan put forward. It would be
24 the natural opposition of the equity here, yet is here
25 supporting the retention of Vinson & Elkins. There is --

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1 THE COURT: But I'll ask you the same question I asked
2 of committee counsel. What's the difference between that
3 functionally and farming out plan formulation in the form of
4 conflicts counsel, which I said in my opinion was shifting a
5 very -- the core responsibility in a Chapter 11 case? What's
6 the difference?

7 MR. HAYES: I think it's distinctly different because
8 corporate law and the bylaws of this company, which are
9 referenced in the board resolution, expressly contemplate that
10 this board can refer to a subcommittee of the board particular
11 issues. And that's not an uncommon situation, in my
12 experience, where you have participants on the board that
13 arguably may have a unique interest at variance from the
14 position of the company in its entirety.

15 THE COURT: I'm sorry, I wasn't referring to the
16 board. I was talking about Vinson & Elkins, that's 327(a)
17 counsel.

18 What I said in my opinion was that this is a -- is the
19 core function of counsel in a Chapter 11 case as to formulate a
20 plan of reorganization. And I didn't think it was okay to say,
21 well, we'll just delegate that to Kutak Rock. So what's the
22 difference in saying now, we're going to have a whole new
23 committee and they'll have their own counsel and financial
24 advisors? Isn't that the same thing functionally?

25 MR. HAYES: Well, I -- personally, I think that Kutak

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1 Rock is well-equipped to serve as conflict counsel in the case,
2 and that's not unusual either.

3 Your Honor, I think the difference here is that the
4 governance has been the committee uses the term reformed. I
5 think it's been modified to accommodate the concern the Court
6 had about Riverstone. That's one issue. The Vinson & Elkins
7 issue, I think the wall, which is complete on a prospective
8 basis and goes beyond what the ABA model rules would require,
9 in my opinion, resolves the issue there.

10 But the other point I was making, Judge, there's
11 voting on the plan. You've got an active committee. The Court
12 has to confirm a plan. You have the absolute priority rule, or
13 the senior classes have to consent. So there are many, many
14 safeguards here, Your Honor, to prevent Riverstone from getting
15 a special deal, notwithstanding the fact that they're not going
16 to be on this special committee that's going to be reviewing
17 the plan. So I think that there are multiple safeguards here.

18 And Your Honor cited in your decision 327(c), which
19 refers to the fact that if a party represents -- if a firm
20 represents a creditor, they're not disqualified from being
21 counsel for the debtor. I think there's a reason that equity
22 is not referenced there because it would be counter -- it would
23 be odd for a law firm that has represented equity on unrelated
24 matters to not be able to represent the company. You heard
25 the --

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1 THE COURT: Yeah, well, 327(c) is permissive. In
2 other words, you can do it and you're not prohibited from
3 representing the debtor by virtue of a representation of a
4 prepetition creditor. Right?

5 MR. HAYES: And I think that's because --

6 THE COURT It's not -- it doesn't exclude you from
7 doing it.

8 MR. HAYES: Correct.

9 THE COURT: Right.

10 MR. HAYES: But you noted in your opinion that that
11 doesn't include equity, and I think the reason would be, it
12 would be natural for a law firm to potentially represent equity
13 on unrelated matters, to represent the debtor. You heard the
14 law firm has represented the company for ten years, well before
15 the company arguably became insolvent. The company and its
16 fiduciaries --

17 THE COURT: Then why do we require disclosure of
18 connections with equity at all? Why is it in the rule?

19 MR. HAYES: Well, it's in -- the rule is defined
20 broadly. And as Your Honor pointed out in your decision, the
21 connections obligation is significant. But I think the absence
22 of that in 327(c) can be read to suggest that it's not uncommon
23 and would be natural for a law firm that's representing a
24 debtor to have in the past or currently on unrelated matters do
25 work for the equity. That's the point, Your Honor.

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1 So we support the motion. We think the steps that
2 have been taken are extraordinary, well beyond what's required.
3 We're very concerned about the damage to the case and the cost
4 and the delay if this fine law firm is not permitted to be
5 primary bankruptcy counsel for the debtors. And so we would
6 urge the Court to reconsider its decision in light of all of
7 these new facts and approve their retention.

8 THE COURT: Thank you.

9 MR. HAYES: Thank you.

10 THE COURT: Mr. Herron, good afternoon.

11 MR. BUCKLEY: Your Honor, if you can hear me, this is
12 Douglas Buckley on behalf of Wilmington Trust. If you'll
13 permit me to speak via Zoom briefly.

14 THE COURT: All right. Yes, certainly.

15 MR. BUCKLEY: Thank you very much. For the record
16 Douglas Buckley, Kramer Levin, on behalf of Wilmington Trust as
17 indentured trustee for the Epes Green Bonds and Bond Green
18 Bonds. Thank you for accommodating my appearance via Zoom this
19 afternoon.

20 Following distributions made to bondholders pursuant
21 to the Court-approved settlement order relating to the Green
22 Bonds' construction funds, the Green bondholders have remaining
23 allowed general unsecured claims of at least 237 million in the
24 aggregate, placing the Green bondholders among the largest
25 unsecured creditor constituencies in the case. And Wilmington

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1 Trust is therefore laser focused on how this case progresses as
2 the unsecured creditor recoveries.

3 We believe that the revised retention terms and the
4 new plan evaluation committee present real safeguards,
5 safeguards to which many parties will hold the debtors
6 accountable in the future. And I say that because as folks
7 have discussed in this hearing today, there is much left to do
8 in these cases, and therefore multiple parties will be keeping
9 a close eye in the process going forward, whether it's my
10 client, the creditors committee, the ad hoc group, or the 2026
11 notes indenture trustee, among others.

12 That said, I do want to state for the record that in
13 my firm's many dealings with Vinson & Elkins in this case, we
14 have not come across any issues that suggest that Vinson &
15 Elkins is not disinterested. We nevertheless welcome the
16 addition of this safeguard to prevent any future issues, or
17 even the appearance that Vinson & Elkins is acting in anything
18 but the interests of the debtors and the estate.

19 I also agree with the comments by counsel for the
20 Davis Polk, McGuireWoods ad hoc group as to the cost, if V&E
21 were not allowed to proceed in this case. If Vinson & Elkins
22 were removed, then we believe it would significantly delay the
23 trajectory of these cases with the consequential harm to
24 creditor recoveries. So in sum, we respectfully support V&E's
25 motion for reconsideration based upon the specific facts and

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1 circumstances of this case, and would ask that the Court
2 approve the retention and prevent any further delay that would
3 fall to the detriment of general unsecured creditors. Thank
4 you.

5 THE COURT: Okay. Thank you. Mr. --

6 MR. FINIZIO: Your Honor, may I be heard?

7 THE COURT: Who's speaking?

8 MR. FINIZIO: Gianfranco Finizio, Kilpatrick Townsend
9 & Stockton, counsel for Wilmington Savings Fund Society.
10 That's the successor indenture trustee for the 6-and-a-half
11 percent senior notes.

12 Your Honor, as you're aware, the indenture trustee for
13 the senior notes is one of the largest unsecured creditors in
14 the case, holding claims in the principal amount of 750 million
15 dollars. We filed a joinder in support of the debtors' motion
16 to reconsider. That's at Docket Number 704.

17 And for the reasons therein, we support the debtors'
18 motion and the arguments that they have set forth in their
19 papers, including the arguments regarding disinterestedness,
20 the fixes that you've heard today, and in particular, the
21 case -- the negative impact that would be a that would occur to
22 the estate if V&E is not allowed to stay in place. We're
23 particularly laser focused on that, and we believe that value
24 will be maximized if V&E could stay in as lead restructuring
25 counsel to the debtors.

Colloquy

1 So with that, Your Honor, we support the motion.

2 Happy to answer any questions you may have.

3 THE COURT: Okay. No. Thank you for your comments.

4 Mr. Herron?

5 MR. HERRON: Thank you, Your Honor. Nicholas Herron,
6 on behalf of the U.S. Trustee.

7 Your Honor, the purported new evidence now consists
8 of, at least at the time that the motion was filed and the
9 declarations were submitted, a proposal for a wall, a proposal
10 for distributions with regard to net proceeds received from
11 Riverstone, and now this corporate resolution creating the
12 special counsel -- our committee, rather.

13 Your Honor, I'm going to address the debtors' new
14 evidence argument first, then the manifest injustice argument.
15 And then lastly, I'll conclude by addressing the debtors' Rule
16 60(b) argument.

17 With regards to the new evidence argument raised by
18 the debtors, Fourth Circuit precedent requires the debtors, as
19 a movement, to show first, initially, that the newly discovered
20 evidence wasn't available to them after they conducted due
21 diligence, or provide some other satisfactory explanation as to
22 why that new evidence wasn't submitted to the Court at the time
23 of the hearing. And in fact, the Fourth Circuit has held that
24 it's an abuse of the trial court's discretion to grant a motion
25 for reconsideration on new evidence grounds if the movement

Colloquy

1 doesn't establish that initial threshold. And that was the
2 case that we cited, JTH from 2021, which was a published
3 decision from the Fourth Circuit.

4 The proposal of the wall, the proposal of the
5 distributions, Vinson could have offered that to the Court at
6 the time of the hearing. It just didn't. It's not new
7 evidence. They haven't shown an initial threshold that that
8 evidence wasn't available to them for lack of an effort of
9 trying, nor have they explained satisfactorily as to why that
10 evidence wasn't admitted or attempted to be admitted at the May
11 9th hearing.

12 But importantly, the new evidence argument also fails
13 for reasons Your Honor articulated in a prior decision of In re
14 Koontz (ph.) back in 2018, in which Your Honor denied a pro se
15 debtor's motion for reconsideration because the purported new
16 evidence was not evidence that existed prior to trial or prior
17 to the hearing. It was new evidence that came about after the
18 fact.

19 Well, the proposal that was submitted to the Court for
20 a wall and for the distributions, and now the creation of this
21 special committee, they're not new evidence that existed prior
22 to the trial. They're newly created facts. Newly created
23 facts isn't sufficient to warrant relief as new evidence under
24 59(e) and in Your Honor's opinion, you cite Judge St. John's
25 prior case in In re Greene, where Judge St. John again echoed

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1 that sentiment that creating facts after the fact doesn't
2 amount to new evidence, and submitting proposed new evidence
3 that is really creating new facts isn't acceptable and
4 shouldn't be admitted by the Court in a motion for
5 reconsideration and should be denied.

6 The proposal as filed is actually not evidence at all,
7 at least at the time that it was filed. It was a proposal. It
8 was a negotiation with the Court to try to negotiate the
9 Court's order. We will --

10 THE COURT: The proposal that you're referring to is
11 the team A, team B --

12 MR. HERRON: That's correct, Your Honor.

13 THE COURT: -- proposal?

14 MR. HERRON: That and the distributions.

15 THE COURT: Right, right. Thank you.

16 MR. HERRON: The declaration crouched those two
17 proposals as if you grant our motion and employ us, we'll do
18 this. Again, offering it to the Court as some type of
19 negotiation. It's not appropriate for a litigant or movant
20 seeking reconsideration to try to negotiate with the Court from
21 the bench. You have to show that the new evidence existed
22 prior to the hearing, you didn't do -- you did due diligence,
23 you weren't able to get it, and you have to show that the
24 evidence would have changed the outcome. The new purported new
25 evidence doesn't change the outcome.

Colloquy

1 Your Honor hammered time and time again and asked
2 counsel for the debtors, you've asked counsel for a committee,
3 you asked ad hoc committee's counsel. Let's assume the special
4 committee will -- whatever -- well, consider the special
5 committee and the special committee hires counsel, isn't that
6 really just delegating the core function that I've already
7 articulated cannot be done, in my opinion? Aren't we basically
8 arguing the same issue that I've already considered and ruled
9 on?

10 And the answer to that is yes, you have, and yes we
11 are, and a motion for reconsideration is not appropriate to
12 reconsider arguments that the Court has properly considered the
13 facts, gave it an analysis, and ruled on it.

14 I agree with my colleagues. Reasonable minds
15 disagree. They disagree all the time. Some of the smartest
16 legal minds in our country disagree about the interpretations
17 of law and the interpretations of law as to fact, but the
18 appropriate remedy is appeal.

19 So if Vinson or the debtors are unhappy with this
20 court's opinion and the analysis set therefor, file an
21 appeal. There's nothing to stop them. And a court may or may
22 not agree, but we can deal with it on appeal. A motion for
23 reconsideration is not an appropriate vehicle to do what Vinson
24 & Elkins is attempting to do.

25 Moving to the manifest injustice argument, Your Honor.

Colloquy

1 Again, the new evidence should not be considered as manifest
2 injustice because to the extent that Vinson wanted to offer
3 some limitations on distributions or implement a wall, it could
4 have done so at the time that the Court held a hearing, and we
5 cited the case of In re Pella Corp (ph.) from the District of
6 South Carolina, that it's not a manifest injustice if counsel
7 calls essentially the own harm. You --

8 THE COURT: Right. It's a little hard, and I'll ask
9 Mr. Williams this when he rejoins us at the podium. It's a
10 little hard for the Court to compare the cost, for example, of
11 denying V&E's employment application and bringing in new 327(a)
12 counsel with perhaps V&E coming on board for discrete matters
13 under 327(e) versus this plan performance -- what's it
14 called -- plan evaluation committee with its own set of counsel
15 and its own financial advisors and so forth.

16 I mean, you know, how -- the working assumption, I
17 think, is that the former is just more expensive and damaging
18 than the latter, but that's hard to quantify. Would you agree?

19 MR. HERRON: I agree, and really, Your Honor, the cost
20 argument is a red herring. It's irrelevant. What is relevant
21 is the applicable standard that Vinson & Elkins needed to meet,
22 which was 327 disinterestedness. This Court found that it
23 didn't meet that. It did consider the costs associated with
24 denying Vinson & Elkins' application.

25 So to the extent all of the parties want to hammer

Colloquy

1 home the cost, we all recognize there is a cost. But cost
2 alone cannot override the requirements of 327(a). To the
3 extent that my colleagues disagree and wish to petition
4 Congress to change 327(a) to factor in public policy issues of
5 cost, it may do so. But as of now, Congress has deemed 327(a)
6 and has written it as such that certain requirements need to be
7 met, including the disinterestedness standard.

8 So the cost argument should be disregarded in total by
9 the Court and not considered manifest injustice. It just is
10 not. And mere disagreement from this Court's opinion about how
11 the Court applied the law is not manifest injustice. If you
12 don't agree with the Court, you appeal. And that's again
13 binding precedent from the Fourth Circuit in the Hutchinson v.
14 Staton (ph.) case that we cited in our brief from 1993.

15 Your Honor, turning to the debtors' argument with
16 regards to 60(b)(5) and (b)(6), the relief under 60(b)(5) is
17 not available to the debtors, because the debtors have to show
18 that your prior opinion has prospective application. One, they
19 haven't articulated that. Two, they haven't made that argument
20 because they can't.

21 This order -- the order that the Court issued denying
22 Vinson & Elkins retention application may have future
23 consequences as it relates to Vinson, but under the applicable
24 standard of prospective application, the order has to be either
25 executory or it has to have some kind of --

Colloquy

1 THE COURT: Right. The prospective application cases
2 tend to be in the case of sort of long-term injunctions like,
3 you know, you appoint a receiver to oversee a police department
4 or a school desegregation case and that sort of thing. And
5 then ten years later, the school district comes in and says
6 it's no longer needed or, you know, it's inequitable to
7 continue to require it prospectively. I mean, that seems to be
8 the 60 -- the heartland of the 60(b)(5) cases. Anyway, that's
9 a comment. And that's not really a question, so.

10 MR. HERRON: That's correct. Well, no, Your Honor,
11 but you're absolutely correct.

12 And so therefore, that argument cannot provide any
13 relief to the debtors. So now we're left with the 60(b)(6)
14 argument that was raised by the debtors.

15 The debtors merely articulated what 60(b)(6) allows,
16 but there really is not an analysis as to how 60(b)(6) should
17 be used, or why it should be used and relief warranted in this
18 case. Merely providing this Court a conclusory statement as to
19 what the law is, without any analysis as to why a litigant or
20 movant is entitled to relief, is really a forfeiture of its
21 argument and should not be considered by this Court.

22 But moving beyond that, let's consider the new
23 evidence argument again. That doesn't provide for relief under
24 60(b)(6). There's no extraordinary circumstances that have
25 been presented to this Court. Vinson & Elkins put forth their

Colloquy

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1 evidence and put forth their case. If they made a litigation
2 error, okay. So bad. Sorry. And if again, they disagree with
3 this Court's ruling, appeal. That's not extraordinary
4 circumstances to warrant relief under 60(b)(6), nor are the
5 harms with regards to the cost associated with retaining new
6 counsel.

7 And this special committee retaining new counsel just
8 is farming out the core function of debtors' counsel. Really,
9 why do we need Vinson & Elkins at that point? What are they
10 going to do that Kutak Rock couldn't do? In fact, it just adds
11 another layer of costs that nobody could quantify because
12 everybody's speculating and assuming that the costs incurred by
13 the estate to hire another counsel for the special committee to
14 take on a core function is going to be less than if you had to
15 bring on new counsel.

16 THE COURT: Right. And it's likely, and I'll ask Mr.
17 Williams this as well, that the special committee couldn't do
18 its job without hiring its own financial advisors, right?

19 MR. HERRON: That's correct. And as Your Honor
20 pointed out and asked, well, doesn't the board that created the
21 special counsel through the resolution have the ability to
22 dissolve the special committee by another corporate resolution?
23 And candidly, counsel for creditors committee said, yes, that
24 is a possibility.

25 So we're left with a special counsel or special

Colloquy

1 committee that could be dissolved at any time by the board that
2 has two members that are held by Riverstone.

3 THE COURT: The board itself, not the not the
4 subcommittee.

5 MR. HERRON: The board itself. That's correct, Your
6 Honor. And to the extent the special committee wants an
7 investment banker or a financial adviser, it appears to me,
8 based on the responses that I heard from my friend on the other
9 side, Mr. Williams, that the special committee would need to
10 get authorization from the board itself, which presumably means
11 the board itself can refuse to provide that additional help if
12 it needs.

13 But Your Honor, all of this is nothing more than just
14 rehashing and rearguing all of the arguments that have been
15 presented to this Court. The ethical wall that now apparently
16 has been implemented was already considered by this Court.
17 This Court considered whether or not a wall could be
18 implemented at all and determined it couldn't.

19 So the fact that Vinson & Elkins has now just created
20 a wall doesn't change the fact that the Court previously
21 considered whether or not a wall could exist. Mr. Meyer
22 actually stood before the Court, and Your Honor asked opposing
23 counsel, well, is there a harm still by the creation of the
24 wall? Yes, there is a harm.

25 So now we went from a detrimental harm that we don't

Colloquy

1 have to create a wall to now we we've went ahead and created a
2 wall because we really want to get employed still under, still
3 acknowledging that there is a harm to our clients by the
4 creation of the wall.

5 THE COURT: Do you still -- hearing what you've heard
6 today, and I understand a lot of this is sort of being done on
7 the fly, do you still maintain the position that it's not a
8 complete ethical wall, that it's a partial ethical wall?

9 MR. HERRON: Absolutely, Your Honor. And also, the
10 wall aspect is just one element that the Court ultimately found
11 why Vinson & Elkins was not able to be retained. It outlined
12 the issue of the fact that Riverstone represented 1.4 percent
13 of its revenues. Riverstone held two and still holds two
14 members on the board of directors. Vinson & Elkins has
15 overlapping employees working on both debtors' cases, as well
16 as matters for Riverstone, as well as the fact that a wall
17 cannot be implemented. None of those facts have really
18 changed. And so reconsideration is not appropriate in this
19 case. The debtors have not met their burden, and the motion
20 should be denied.

21 Thank you, Your Honor.

22 THE COURT: Okay. Thank you.

23 Mr. Williams, did you want to be heard in rebuttal?

24 MR. WILLIAMS: If I may, Your Honor, just briefly.

25 Your Honor, the United States Trustee Office focuses a

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1 lot on 9023 and 9024, but there -- and we think we've satisfied
2 their standards, Your Honor, clearly. But there is a separate
3 path for Your Honor as well here that completely avoids those
4 issues. And that is, treat the motion to reconsider as a new
5 or renewed application to employ that addresses the concerns
6 that have previously been raised.

7 THE COURT: You know, for the most part, I'll just
8 tell you, I'm not that concerned with the procedural niceties
9 here, and whether it's a Rule 9023 or 24 motion. And it seems
10 to me that, you know, we ought to get to the heart of the
11 matter.

12 So the heart of the matter is how is hiring -- well,
13 establishing the PEC, plan evaluation committee, and having its
14 own counsel and presumably financial advisor as different from
15 V&E's initial position, which is we'll just farm this out to
16 Kutak Rock, and they'll handle it as complex counsel, which I
17 said was an impermissible delegation of the core function of
18 327(a) counsel. How is this different?

19 MR. WILLIAMS: Right, Your Honor. And I think -- and
20 there's not being a delegation of authority necessarily the PEC
21 gets to analyze, review, and approve. But Your Honor's
22 question is --

23 THE COURT: I'm talking about the law firms.

24 MR. WILLIAMS: -- about Vinson & Elkins. Right, Your
25 Honor.

Colloquy

1 THE COURT: Yes.

2 MR. WILLIAMS: And the machine. And I think candidly,
3 I think from my perspective, if I view it, I view it a little
4 differently, Your Honor. And I think the debtors view it a
5 little bit differently.

6 The question is not whether or not Vinson & Elkins is
7 qualified to build the machine. They are undoubtedly,
8 unquestionably qualified to build the machine. And the debtors
9 think they are the best counsel to help build the machine.

10 THE COURT: But I said that. That was the first
11 sentence in my opinion that I don't doubt their qualifications.

12 MR. WILLIAMS: Correct, Your Honor. And the question
13 then becomes, well, can they build that particular cog, the cog
14 that is Riverstone or that relates to Riverstone without there
15 being some sort of bias. And the debtors know it and we know
16 it, and I think we've heard from lots of parties here today
17 that know it, that that Vinson can do that without any bias,
18 without any deceit, with disinterestedness, without any --
19 without any commitment to anybody other than the debtors.

20 But that's not sufficient, Your Honor. Right? My
21 paralegal is the best paralegal in the world, and I believe
22 that. And -- but you have to tell her that sometimes. And you
23 have to make it known to the world that she is the best
24 paralegal, because that's important, Your Honor. And so what I
25 think we're talking about here is how do we project to the

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1 world that Vinson & Elkins is disinterested when they're
2 building this machine, and when they're building this cog that
3 relates to Riverstone?

4 And Your Honor, I think there are a number of factors
5 here that preserve that disinterestedness and that makes sure
6 that no one can ever question it. Right? That's the issue.
7 Can we --

8 THE COURT: But how would they be involved in plan
9 formulation at all is really the question. And you know, the
10 Court's concern with them saying the first time around, well,
11 we can just farm this out to conflicts counsel and they'll
12 handle it for us, seem to me to be a game of telephone. You
13 know, the committee, Riverstone, et cetera would call your law
14 firm and then you would call V&E, and then V&E would call you,
15 and then you'd call them back. And that's how the plan would
16 get negotiated. Right?

17 So how is this different is the question for -- and I
18 have to apologize. I'm repeating my question a number of
19 times, but I'm just sort of trying to think through it.

20 MR. WILLIAMS: No, I understand, and I want to give
21 Your Honor a response. I think the question is not about --
22 the question is how do we ensure that they're doing it with
23 disinterestedness, right? Isn't that at the end of the day
24 really the question that we're trying to get to, because that's
25 a requirement for 327(a), which is how do they deal with the

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1 Riverstone issue while maintaining their disinterestedness?
2 Because if they can do that, then they've satisfied 327(a).
3 And again, I think the debtors believe, the debtors know that
4 they have done that. And the ad hoc group knows that that's
5 going to happen, and the committee believes that that's going
6 to happen.

7 But what we've done to address any concerns that
8 anybody else might have about whether they're going to do that
9 is we put in safeguards, and the safe -- one of those
10 safeguards is the plan evaluation committee, who is ultimately
11 going to have the decision about whether or not the plan gets
12 filed.

13 So Vinson -- and Your Honor, the question was, well,
14 how do we just allocate the conflict counsel that is done
15 sometimes. But Your Honor is obviously concerned about the
16 machine as a whole. And so if Your Honor believes that that --
17 the building of that cog related to Riverstone can't be
18 delegated to someone else, then the goal here is to make Your
19 Honor and every other creditor in this case comfortable that
20 that cog was built with the highest quality materials and to a
21 specific form -- to a specific requirement, and that it's going
22 to function, and that and that there was nothing done to
23 jeopardize the machine in the building of that cog.

24 And Your Honor, so we think there are so many
25 instances in this case that provide that sort of security.

Colloquy

1 We've got the creditors committee, you've got the ad hoc group,
2 you've got all the other creditors in the case, you've got the
3 Office of the U.S. Trustee, you've got Your Honor, and now
4 we've got the plan evaluation committee. All of these entities
5 are watching over testing and looking at the building of that
6 cog to make sure it was done properly.

7 And so Your Honor, we think that that satisfies the
8 requirements that they demonstrate that there's
9 disinterestedness and that we have reasonable safeguards in
10 place. And that's why we have ethical walls, right, Your
11 Honor? I mean, the ethical walls are there to make sure, to
12 help create an additional level of disinterestedness. And we
13 believe as lawyers and professionals that we are doing our
14 obligations, fulfilling our ethical obligations to our clients
15 every day.

16 And but sometimes we need to make sure that everyone
17 else knows that as well. And to do that, we implement ethical
18 walls. And here we've taken a number of steps to give
19 affirmation that that's what's been done in this case.

20 Your Honor, so we do think that is important. Your
21 Honor, I also want to note there were just a couple of other
22 comments made by the Office of the U.S. Trustee. That -- about
23 whether or not this is new evidence, and I don't want to
24 belabor 9023 and 9024 too much, but there was no case to cite
25 that things that didn't exist prior to the prior hearing now

Colloquy

1 existing constitutes anything other than new evidence. He also
2 said these things are prospective --

3 THE COURT: Well, his point is that it's newly
4 created, but it's not newly discovered, right?

5 MR. WILLIAMS: Your Honor, and if there's a case that
6 supports that, I don't -- I don't think there is, though. And
7 then if you look at the EEOC case that they cite in their
8 pleading, what you see is that there, the subpoena was
9 initially denied because the Court didn't find that it was
10 relevant.

11 There was no new real evidence discovered. There was
12 new affidavits submitted. There was new information presented
13 to the Court which reframed everything and from that, it's not
14 as though -- and that was sufficient, Your Honor. And that's a
15 lower standard, I think, than what we're talking about here.
16 One, now we do -- and I want to be clear, the ethical wall is
17 in place. It's not prospective. The profit sharing
18 arrangement has been implemented, and we now have as of last
19 night, the plan evaluation committee.

20 These things, and even just the plan evaluation
21 committee, Your Honor, clearly did not exist before and do now.
22 And we think that's important.

23 Your Honor, we talked a little bit about manifest
24 injustice, and I think Your Honor is right, and maybe we see it
25 a little different than the Trustee is, is that it is hard to

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1 quantify what the costs are going to be to the debtor. The
2 only evidence before the Court is that it's going to be
3 extraordinary. And Your Honor, I don't want to think about
4 this only in terms of financial resources.

5 Bankruptcies are incredibly stressful on management,
6 employees, officers, directors, because not only are they
7 trying to do their day-to-day jobs, now they're dealing with
8 the demands of the bankruptcy case. And if you throw on top of
9 that having to deal with bringing new counsel up to speed and
10 as I know Your Honor knows well, representing companies
11 sometimes requires getting an in-depth understanding of how
12 their operations work on a fairly macro level so that we can
13 advise them as counsel. And that is not something that is
14 quickly learned and certainly not quickly learned when you've
15 got a company as big and as complex with foreign transactions
16 like Enviva.

17 And so Your Honor, I think it is important to
18 recognize and I think that weighs in favor of the retention of
19 Vinson & Elkins, because the costs are simply going to be high.
20 We know that, but difficult to quantify. And not only are they
21 going to be financial, they're going to be difficult for the
22 employees and the management as well. Your Honor --

23 THE COURT: But I -- and I think that's undoubtedly
24 true. But my question to other counsel was how do we compare
25 that to the cost of new counsel and financial advisers for the

Colloquy

1 plan evaluation committee? I mean, it's really, really not
2 quantifiable. I mean, it's anybody's guess. You might say,
3 well, it's just obvious that not granting your motion and the
4 application to employ V&E would create more disruption and cost
5 than the PEC.

6 MR. WILLIAMS: It's absolutely difficult to quantify,
7 Your Honor, but I think that the debtors would tell you
8 unequivocally, they think that not having Vinson & Elkins will
9 be the more expensive approach than having counsel and
10 potentially a financial advisor for the plan evaluation
11 committee. And I think that's important because ultimately the
12 debtors are bearing that burden.

13 Your Honor, Mr. Herron also said that some of these
14 issues are relevant, and I don't think that's necessarily true,
15 especially not in this court, a court of equity. This has
16 always been a court of equity. And I think it's important to
17 consider these things, especially in context with an
18 application to employ or reconsider the employment of counsel.

19 Your Honor, lastly, I'll notice that I think 9023 and
20 9024 are broad. All the cases cited support that concept.
21 This Court, I think, as Your Honor has noted, has a lot of
22 discretion on this matter. And Your Honor, we would ask that
23 the Court exercise that discretion and approve the retention of
24 Vinson & Elkins as counsel for the debtors, Your Honor. Thank
25 you.

Colloquy

1 THE COURT: All right. Did the committee want to be
2 heard? I'll hear you.

3 MR. ALBERINO: Briefly, Your Honor. For the record
4 again, Scott Alberino from Akin Gump on behalf of the
5 committee.

6 Your Honor, I just wanted to respond to a few things
7 as we've been kind of in the middle of some of the plan
8 evaluation committee discussions, and I want to try to respond
9 to some of the questions you raised earlier with me about, you
10 know, comparing that framework to, you know, the concern that
11 you raised in the Project Orange decision, in your opinion.

12 So first, a few things just on the plan evaluation
13 committee. Number one, we did make the point that it would be
14 better if it was irrevocable. We considered that as part of
15 the negotiations. I think Mr. Meyer understands that if this
16 resolution is revoked in the middle of the case, that he's
17 likely going to get a motion to appoint a Trustee filed by the
18 committee. So I think we were comfortable without it being
19 irrevocable. I think now the company is in bankruptcy, under
20 the supervision of the Court and under the watchful eye of the
21 committee, I think any attempt to modify that resolution and
22 withdraw it would be met harshly by the committee.

23 Number two, with respect to the financial advisers,
24 this was a discussion point as well with the debtors as we were
25 negotiating this. We got comfortable with no financial

Colloquy

1 advisers or at least part of this -- part of the resolution,
2 because between Lazard and Alvarez in this case, there were no
3 issues with respect to their retention, whether they were
4 advising the full board or advising the plan evaluation
5 committee on economic issues that will go to plan matters. We
6 are not of the opinion that separate advisers would be
7 necessary here. It could turn out that the plan evaluation
8 committee determines along the way that there's an issue, and
9 they go back for that. But our understanding, as we were
10 putting this together, is there are no issues with respect to
11 the financial advice that --

12 THE COURT: But how could you say that the plan
13 evaluation committee is independent of the board if they're
14 relying on the board's FAs?

15 MR. ALBERINO: Well, they're relying on the company's
16 financial advisers. They have acted -- just like the plan
17 evaluation committee --

18 THE COURT: Right. That's -- well, that's my
19 question.

20 MR. ALBERINO: Yeah. The plan evaluation committee
21 has access to the management team. They have access to the
22 company's existing kind of retained advisers, you know, and
23 they will work, you know, and operate -- you know, they'll work
24 and operate, you know, under the direction of the plan
25 evaluation committee with respect to plan issues in this case.

Colloquy

1 If there's a need for -- if the plan evaluation
2 committee determines that there's a need, they clearly would
3 have to go back to the full board for authorization to hire new
4 professionals. But we have operated off the assumption here,
5 Your Honor, that the existing financial advisory team would
6 remain in place, but would be working directly with the plan
7 evaluation committee, you know, as the plan evaluation
8 committee requests.

9 And then, Your Honor, just turning back to some of the
10 procedural issues, I can see that Your Honor has been
11 struggling with what the -- you know, what the difference is
12 between the plan evaluation committee with access to
13 independent counsel and just bringing in kind of new 327(a)
14 counsel, you know, to represent the company on all plan related
15 issues.

16 And I wanted to make sure that we were kind of clear
17 about at least the committee's expectations as to what V&E's
18 role is here with respect to the plan evaluation committee.
19 Our expectation is V&E will, I'll have to use kind of the
20 metaphor here of building the machine. You know, the plan
21 here. V&E is going to continue to build the plan here. Like
22 this is not a delegation to separate counsel to build the plan.
23 V&E is going to be working with the other company advisers,
24 Lazard and Alvarez, in helping negotiate the plan with the
25 various stakeholder groups in this case.

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1 The point of the independent -- of the plan evaluation
2 committee having access to their own counsel is to essentially
3 kind of give the independent committee the ability to get, you
4 know, advice from another set of lawyers where at the end of
5 the day, there's no issues with Riverstone connections or other
6 shareholder connections, so that the board ultimately kind of
7 has, I like to call it a sanity check, but they get a reality
8 check and we on the committee side and other participants in
9 the case know that whatever plan is being negotiated between
10 Vinson & Elkins, Lazard, Alvarez, and the management team that
11 ultimately gets to the plan evaluation committee for approval,
12 that plan evaluation committee is going to ask Vinson & Elkins
13 to leave the room, and they're going to get, you know, advice
14 and counsel.

15 THE COURT: So what happens at the end of the day, if
16 there is a difference of opinion between the PEC and the board,
17 the PEC and its counsel to be named and the board and V&E, on
18 the other hand, what -- how is that conflict resolved?

19 MR. ALBERINO: Well, first and foremost, assuming the
20 order doesn't get revoked, the resolution does not get revoked
21 by the full board, and we're operating in a world where --

22 THE COURT: So that's one way that it could get
23 resolved. But what's the other way?

24 MR. ALBERINO: We assume that's catastrophic. So in a
25 world where the authorization to the plan evaluation committee

Colloquy

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1 is a full delegation of board power, it's the board's decision.
2 The way -- and I'll let V&E can respond to this if they feel
3 differently, but the way this should operate, Your Honor, is if
4 independent counsel tell -- it provides advice to the plan
5 evaluation committee that says this part of the plan that V&E
6 and Lazard A&M is proposing to you, like, should not be
7 pursued. It's unlawful. We're going to run into objections.
8 It's not in the best interests of the estate. Then the board
9 will have -- then that board will take that advice, go back to
10 their advisors, and tell their advisors and follow -- and
11 hopefully follow the advice of their independent counsel and go
12 out and instruct their advisors to fix something.

13 THE COURT: But my question is, what happens if they
14 say no, we don't agree with that at all.

15 MR. ALBERINO: If the plan evaluation committee or --

16 THE COURT: The board disagrees with the plan
17 evaluation committee's recommendation, is the plan evaluation
18 committee in an advisory capacity here?

19 MR. ALBERINO: Oh, no. Not at all, Your Honor.

20 THE COURT: Or do they have decision making --

21 MR. ALBERINO: Not at all, Your Honor. The plan
22 advisory committee has been delegated the authority of the
23 board to bind the company and authorize the company to file the
24 plan, to prosecute the plan, to consummate the plan. The
25 thirteen member board essentially is delegating to the six

Colloquy

1 members of the plan evaluation committee control over the plan
2 process.

3 Now, again, there's always the theoretical risk that
4 they withdraw the resolution, which again, in my estimation, I
5 think that would be a catastrophic move for the company to do
6 that. However, Your Honor could tell --

7 THE COURT: It wouldn't be a good sign.

8 MR. ALBERINO: It would not be a good sign. However,
9 Your Honor could ultimately condition any order today on this
10 resolution becoming irrevocable. But in that world, the
11 thirteen board members, through the -- through the approval of
12 the resolution establishing the plan evaluation committee, are
13 delegating binding authority to these six board members on
14 plan-related issues in this case.

15 So in practice, V&E is going to continue to run point
16 on plan negotiations. We're okay with that, Your Honor. What
17 we wanted at the end of the day is when that plan is presented
18 to those six board members, they can -- those six board members
19 can tell Mr. Meyer, leave the room. We're going to hear from
20 independent counsel and get another -- and get -- receive
21 additional advice as to the propriety of kind of what the
22 advisers are recommending that we do. That's what the
23 committee wanted. The corollary to that is we also wanted the
24 ability to have access through another counsel if we were
25 running into issues, trying to negotiate issues with the plan,

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1 where we were trying to avoid litigation issues or conflict
2 issues, we couldn't see eye to eye. We wanted the ability to
3 access independent counsel to the plan evaluation committee to
4 make our case.

5 If we lose, we lose in the boardroom then we'll show
6 up and fight in the courtroom. But we want the ability to have
7 access to an independent -- another advisor who's independent,
8 not to cast any aspersions or doubt on V&E and what they're
9 going to do here. But we wanted the ability to talk to
10 somebody with no prior connections to the shareholders, where
11 we could kind of make our case that what you're proposing is a
12 bad idea and it needs to be changed.

13 So and when I looked at, Your Honor, this Project
14 Orange decision that you that you referenced in the order, and
15 I read it and I kind of agree with it, but I also think it's
16 different from this case. You had a merchant power company
17 where the lawyers representing the power plant, you know, the
18 merchant power operator also represented the turbine
19 manufacturer and the turbine maintenance company. And I've
20 done a number of power restructurings. And I get this as the
21 power company, that's your key constituency. You're fighting
22 with them --

23 THE COURT: You're probably a critical vendor.

24 MR. ALBERINO: The most critical of vendors, like your
25 turbine manufacturer, the party you're relying on for O&M

Colloquy

1 maintenance, there are always disputes between them. I mean,
2 that goes to the core business, right? That would be like the
3 company coming into -- like Enviva presenting, you know,
4 counsel that was like -- that was, you know, on the other side
5 of a number of their key customer contracts that were being
6 renegotiated, like there would be a potential there for the
7 lawyers there to actually be in conflict with the company, you
8 know, in the business. You know, that's real adversity.

9 Now, there's issues here that you've raised about, you
10 know, their involvement with one of the shareholders here. But
11 that doesn't go to, you know, say the adversity you have here
12 that may go to, like, the value of the operating business and
13 the ability of the company -- the ability of the company to
14 actually conduct itself, you know, and conduct its operations.

15 You know, Riverstone is in the capital structure, but
16 they're not, you know, a party that has anything to do with how
17 the company is conducting its business operations. I think in
18 Project Orange, and what you saw here is -- what you saw there
19 was, you know, counsel that was representing the merchant power
20 company as well as the key vendor that was going to be on the
21 side of every dispute between the power operator, you know, and
22 the turbine manufacturer. And I think that was kind of a
23 unique set of circumstances where, you know, the -- you know,
24 the ability to run that business, you know, dependent upon the
25 ability of the company, the debtor, to have counsel that could

Colloquy

1 be adverse, you know, to their key operating counterparty. But
2 I don't think that conflict exists here.

3 You know, this is not V&E representing their --
4 Enviva's largest customers where there's a potential for --
5 where you have to be adverse to all the customers and they
6 represent -- they have represented a party --

7 THE COURT: Right. It's just a different kind of
8 problem. It's not a day-to-day customer. How much wood do we
9 buy from this supplier and at what price? But it's a forty-
10 three percent equity holder. That's just a different and not
11 insignificant problem, in the Court's view.

12 MR. ALBERINO: Yeah. It's a different problem in the
13 sense that it kind of goes to okay, what is the -- you know,
14 how are we allocating value of the business down the road as
15 opposed to are you representing somebody that may ultimately
16 result in a shrinking of the value of the business, right, or
17 harm the company or harm the value of the business?

18 So I just kind of raised that. I just kind of point
19 that out to say, I think it's a distinction between the
20 conflict situation we have here and what they had in Project
21 Orange. So any more questions, Your Honor?

22 THE COURT: No. Thank you for your comments, for your
23 argument.

24 MR. ALBERINO: Thank you.

25 THE COURT: Mr. Williams, it's your motion. Do you

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1 want to -- I'll give you the last word if you'd like and --

2 MR. MEYER: Your Honor, my address the Court?

3 THE COURT: Mr. Meyer? Yes.

4 MR. MEYER: Yes. Thank you, Your Honor. David Meyer
5 of Vinson & Elkins.

6 First, Your Honor, take a step back. We greatly
7 appreciate you considering the company's reconsideration motion
8 today on an expedited basis due to the important issues to the
9 company, to its stakeholders, as well as to my firm.

10 V&E has represented Enviva for over a decade. We care
11 deeply about this company and by extension, its estates and its
12 stakeholders. But moreover, above all else, Your Honor, as a
13 law firm, we take our ethical obligations extremely seriously.
14 We pride ourselves on maintaining a standard that exceeds
15 expected best practices in all facets of our work. That's who
16 we are. And that guiding principle extends from restructuring
17 work to every other practice in our law firm.

18 Mr. Fullenweider is here for that exact reason, Your
19 Honor, given the importance of the issues we're discussing
20 today, as well as our commitment to these principles. We
21 respect and appreciate, the Court is, of course, likewise
22 charged with and seeking to protect the company and its
23 stakeholders. And we have carefully reviewed your opinion and
24 order. We take it very seriously. We respect your guidance,
25 and we understand we did not go far enough in your view, in

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1 connection with our initial retention application. But we've
2 worked tirelessly, Your Honor, to fully address the concern
3 raised in your opinion and order through the steps Ms. Griffith
4 described today. And with these --

5 THE COURT: But I'll ask you the first question that I
6 asked Mr. Williams. Didn't you tell me at the May 9th hearing
7 that it would be incredibly harmful to Enviva to erect an
8 ethical wall?

9 MR. MEYER: So I wanted to cover that, Your Honor.

10 THE COURT: Okay.

11 MR. MEYER: It's one of the reasons I wanted to take
12 the podium.

13 THE COURT: Thank you, thank you.

14 MR. MEYER: You're correct, Your Honor. That is what
15 I said at that point in time. So let's go back now and think
16 about how things have changed.

17 We have eighty-two timekeepers that bill to each of --
18 that bill to Enviva to date. We have thirteen that bill to
19 each of Riverstone and Enviva. That is in the 700 lawyers in
20 our law firm. After your opinion, you're correct, Your Honor.
21 We went back and looked. And the most important thing that I
22 would tell you that is different today, Your Honor, that at the
23 point in time when we were discussing an ethical wall, every
24 timekeeper that Enviva wanted that works at V&E, Enviva is
25 getting the benefit of. There's not one timekeeper that Enviva

Colloquy

1 requested access to and that V&E said no to.

2 So Enviva is getting the benefit -- the entire benefit
3 of this wall in the first instance. All the resources that
4 Enviva has requested, they're receiving. And so you are
5 correct, Your Honor, with what I said at that hearing, and to
6 the extent that that has caused consternation today, I
7 apologize for that.

8 But the point that I really want to make clear on that
9 is there are no V&E timekeepers that have worked on V&E and
10 Riverstone matters, save for the folks that have worked more
11 than 12-and-a-half hours, and there's only two, and they have
12 not played a material function in this case in the first
13 instance.

14 There's a litigator who's spent significant amount of
15 time, Andrew Jackson, on this case. He's been doing Riverstone
16 work. He billed, I believe it's 313 hours to Riverstone
17 matters. Ten hours or you know, we'd have to go back. It's in
18 the exhibit list, Your Honor. I'm doing it from memory.

19 But I did say that to Your Honor at that particular
20 point in time. But as a firm, I'm on our management committee
21 with our executive committee, as the head of our practice
22 group, we went back and looked at all of that. And what's in
23 front of you, Your Honor, is different than what I relate to
24 you at that hearing, insofar as Enviva is getting the benefit
25 of all of that, and there is no harm to Enviva, and I'm happy

Colloquy

1 to answer any other questions you may have.

2 THE COURT: No thank you for your argument.

3 MR. MEYER: Thank you, Your Honor.

4 And so Your Honor, with the changes that the creditors
5 committee has negotiated with the company that I outlined as
6 well, and I would add, Mr. Alberino said it exactly right. The
7 company is not delegating plan negotiations. I don't want to
8 underscore that. It's the retain -- the company's proposed and
9 retained advisors, which are V&E, which are Lazard and A&M, and
10 you've approved the Lazard and A&M.

11 THE COURT: But the board is delegating it to the PEC,
12 right?

13 MR. MEYER: It is not delegating negotiating authority
14 to that. The company will continue, just as Mr. Alberino said,
15 to negotiate the plan with all of its stakeholders. We have
16 robust stakeholder support in this case. We are in constant
17 communication with the creditors.

18 THE COURT: So you're saying the board isn't
19 delegating the --

20 MR. MEYER: I'm saying --

21 THE COURT: What is it delegating to the --

22 MR. MEYER: I was looking to --

23 THE COURT: -- PEC in your view?

24 MR. MEYER: I was looking to validate because Mr.
25 Alberino said Mr. Meyer will confirm if he has any different

Colloquy

1 view. Mr. Alberino has it exactly right. The PEC, what it
2 will do is it will independently review, assess, analyze,
3 approve, and authorize the filing of any Chapter 11 plan.

4 So it has the say so on what the company actually
5 files. And that's important in my mind because to help -- from
6 the creditors committee's perspective, this was one of the big
7 pushes they leaned in on as it relates to pushing the company
8 further based on your order. They have effectively said, we
9 want to make sure that these six directors, all independent
10 directors, no former members or current members of management,
11 no Riverstone-related individuals, no participants in the DIP.
12 They have independent board approval on whatever plan is put in
13 front of the PEC.

14 And that PEC -- that plan will be extensively
15 negotiated by management with the help of the other advisors,
16 including V&E in this proposal. And it's one more safeguard to
17 help make sure that there's a good independent process. And I
18 would represent to Your Honor, that's not unlike many types of
19 committees. Less common, perhaps in a public company context,
20 but many committees that serve similar functions of independent
21 board members to ensure the fairness of an overall transaction.

22 THE COURT: So at the risk of being repetitive, I'll
23 ask you the same question that I've asked the last three or
24 four counsel at the podium, and that is how is this different?
25 The proposal with the PEC and PEC's counsel, new law firm, how

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1 is that different from what I said in the opinion couldn't be
2 farmed out to conflicts counsel, the core function under 327(a)
3 to formulate a plan? How is that different?

4 MR. MEYER: I would love to answer that because we're
5 not farming anything out in the first instance. The company,
6 together with the company's advisors, and we're proposed
7 counsel of the company is the one that's going to negotiate
8 that Chapter 11 plan. The sole farming out that we're
9 discussing here is after that plan has been extensively
10 negotiated, proposed, it's going to go to this six member
11 independent committee that would have its own independent
12 counsel to get -- to give one more look, to say, do we think
13 that this plan is a plan that the company should file and is
14 authorized to file?

15 And Mr. Alberino has it exactly right. How will that
16 work in practice? To be clear, the independent, the PEC will
17 hire its own counsel that -- the PEC may ask me to leave the
18 room. And that's okay. That's part of the design of this in
19 the first instance and was part of the safeguards the creditors
20 committee negotiated for because of the fact that it is one
21 more safeguard to ensure, given the Court's comments about the
22 thirteen member board, this was something that was important to
23 get the creditors committee's support in the first instance,
24 and they pushed the company very hard on given all the
25 different pieces.

Colloquy

1 So I would -- from my perspective, there's been no
2 delegation of the plan in the first instance. There's been no
3 delegation of the building of the machine in the first
4 instance. Instead, the company is creating the machine, and
5 there's an independent inspector coming in to review the
6 completion of that machine to ensure that it's up to par from a
7 safety perspective. That's a better comparison, from my
8 perspective, than we're farming out a core function of the
9 Chapter 11 process.

10 And again, if there's -- the plan cannot be filed
11 without the authority of the PEC, which I think gives more,
12 even additional safeguards to the process that the company, its
13 board and its management team are fully supportive of. And I
14 also would note the resolution forming the PEC in the first
15 instance contemplates that the committee dissolves on the
16 effective date.

17 I have no problem, Your Honor, indicating based on
18 discussions that I've had this resolution is not being
19 withdrawn. And Mr. Alberino is exactly right. And Mr.
20 Alberino has known me for years. If that resolution ever was
21 withdrawn, I'm pretty confident you would know about it very
22 quickly. But I can represent as an officer of the Court,
23 that's not what would occur here in the first instance and has
24 not been contemplated.

25 Your Honor, I'm happy to answer any additional

Colloquy

1 questions, but what I would hope to relate to you is we're
2 hopeful to be back in front of Your Honor, based on all of the
3 accommodations and changes that have been made to serve Enviva
4 on a go forward basis and to continue to navigate a
5 successfully -- a highly complex, integrated restructuring that
6 maximizes value for all stakeholders.

7 Of course, Your Honor, while I'm here, I'm happy to
8 answer any other questions you may have about my retention or
9 any of the other items that we've discussed today.

10 THE COURT: I don't have any further questions. Thank
11 you.

12 MR. MEYER: Thank you, Your Honor.

13 THE COURT: All right then. I thank everybody for
14 their arguments today, for their participation. I'm going to
15 take the matter under advisement. And I do understand the
16 importance of getting to it promptly and getting a decision.
17 So I will endeavor to do that.

18 The Court stands adjourned, and I hope everybody has a
19 good weekend.

20 MR. QURESHI: Your Honor, may I briefly be heard on
21 the 2004 order?

22 THE COURT: Oh, we're back to that. Okay.

23 MR. QURESHI: We're back to that unfortunately.

24 THE COURT: I hope that deal hasn't fallen apart in
25 the last two hours and fifteen minutes.

Colloquy

1 MR. QURESHI: It has not. Your Honor for the record,
2 Abid Qureshi, Akin Gump Strauss Hauer & Feld on behalf of the
3 official committee.

4 Your Honor, we do, in fact, have a negotiated consent
5 order. That order has a schedule, it has dates that the
6 company has agreed to in order to allow the committee access to
7 the documents in an appropriate time period.

8 Your Honor, we want to just ensure, now that the Court
9 is taking this matter under advisement, first of all, that the
10 company is going to, regardless of who represents it, continue
11 to proceed in accordance with that timeline.

12 THE COURT: Isn't that -- for the most part, isn't
13 that Baker & Botts that's going to be getting you all the
14 documents?

15 MR. QURESHI: So yes and no, Your Honor. It is Baker
16 Botts that is undertaking the investigation. Our
17 understanding, however, is the company has insisted upon doing
18 a privileged review of all of the documents before they are
19 submitted to the committee.

20 To be clear, Your Honor, we propose the way around
21 that, which was a 502(d) order, together with a clawback
22 agreement. The company, in its discretion, chose not to agree
23 to that. So my understanding is that there is a privilege
24 review. That is being done by Vinson & Elkins.

25 Your Honor, from our perspective, we just want to

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1 ensure that that work starts so that the timelines that are in
2 the consent order are still going to be met, or at least the
3 company will be on its way to meeting those, and that we don't
4 not proceed while we are waiting for Your Honor's ruling. So
5 that's one issue.

6 And the second, Your Honor, I wanted to bring the
7 Court's attention to one provision of the consent order. And
8 that provision contemplates that to the extent as that
9 discovery process unfolds, we arrive at any issues that we are
10 not able, after good faith discussions consensually to resolve.
11 we have agreed in that order to come back to Your Honor, but to
12 do so on an expedited basis without the need to shorten notice,
13 given the importance of the of the timeline of the committee
14 receiving this information relative to the RSA.

15 So of course, I wanted to bring to the Court's
16 attention that the parties are agreeing to get before Your
17 Honor on an expedited basis, just to --

18 THE COURT: I'm not sure how that would work. I mean,
19 the Court keeps its own calendar. And you know, there may be
20 matters not on the public calendar. You might say, oh, you
21 know, June 15th is available. And it isn't because of personal
22 matters. I might not even be in Alexandria on that date.

23 MR. QURESHI: Fair enough, Your Honor.

24 THE COURT: Right? So I mean, how does that work?

25 MR. QURESHI: Your Honor, we didn't purport to control

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1 the Court's calendar. Certainly. Instead, we simply agreed
2 that either the committee or the company may seek an expedited
3 hearing to the extent there is any dispute and shortened
4 response deadlines, without the need to file a motion with the
5 Court so that we collectively would --

6 THE COURT: Oh, I see, all right.

7 MR. QURESHI: We'll get it briefed very quickly, and
8 then it'll be up to Your Honor to give us a hearing date
9 whenever. That's it.

10 THE COURT: That's fine. I agree that number one, the
11 Court's taking the employment, the motion to reconsider the V&E
12 employment application under advisement.

13 As I said, I understand the importance of getting that
14 done. And now that's in in my responsibility to get it done.
15 And I'll get it done promptly. But there is not -- I mean,
16 you're going to submit a consent order, and the Court expects
17 all of the parties to comply with the terms of the consent
18 order. And if any party seeks an extension or stay under the
19 consent order, they'll need to file a motion to do that.

20 MR. QURESHI: Right. I mean --

21 THE COURT: That's point number one. Point number two
22 is I also agree as a general proposition that, you know, it
23 doesn't make any sense to me. We're -- this actually was an
24 omnibus hearing date. And it didn't make any sense to me to
25 say, if there's a dispute, you have to wait until July,

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1 whatever date, mid-July, to have that heard. And the Court,
2 consistent with our brothers and sisters on the rocket docket
3 up the street, we can hear it very promptly.

4 MR. QURESHI: I appreciate that, Your Honor. And Your
5 Honor, to be clear, right, the order that we were prepared to
6 hand up did contemplate Vinson & Elkins would continue to be
7 retained by the debtors, which, as Your Honor is well aware, is
8 the outcome the committee hopes for.

9 We do understand that in the event that V&E is no
10 longer debtors' counsel, that there will necessarily be some
11 delay because it is V&E that is undertaking the privilege
12 review. That would then need to be done by somebody else. So
13 we will have to revisit some of the deadlines that are in the
14 order. We just want to ensure that --

15 THE COURT: And all that's fine. I don't -- I don't
16 have a problem with that.

17 MR. QURESHI: Right.

18 THE COURT: Though it does seem to me that in the
19 event that the motion to reconsider is denied, it would seem to
20 me that that could fall to Baker & Botts. I mean, they're
21 perfectly capable of producing a privilege log. Right. All
22 right.

23 MR. MEYER: Sorry, I'm talking out of turn.

24 THE COURT: Mr. Meyers.

25 MR. MEYER: But they're not counsel to the company.

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1 They're counsel to a special committee of the board. They are
2 not counsel to the company in the first instance. So that's
3 why to your initial comments, it's not Baker -- Mr. Qureshi has
4 absolutely engaged with Baker Botts at various points in time
5 in this case. And that's great. But as it relates to the
6 privilege review that has to be conducted by the company and
7 Baker Botts is not counsel to the company.

8 THE COURT: Are privileged documents, privilege and
9 work product documents -- well, let's just stick with privilege
10 for the moment. Are they being produced to Baker Botts, or are
11 you doing a privilege review and not producing them to Baker
12 Botts?

13 MR. MEYER: These are Baker -- and Ms. Moore was here
14 previously, but Baker Botts, as part of its work, received
15 extensive documents from the company. It did not conduct any
16 privilege review.

17 THE COURT: No, I'm asking you, is the company
18 producing privileged documents to Baker Botts?

19 MR. MEYER: The company has produced -- the company
20 has produced privilege documents to Baker Botts. Yes.

21 THE COURT: All right.

22 MR. MEYER: Not with V&E's involvement.

23 THE COURT: All right. So I don't need to make any
24 rulings on this today, but it seems to me that Baker Botts can
25 conduct a privilege review. Why couldn't they, if -- in the

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1 event that you're not in the case, so to speak.

2 MR. MEYER: I think fundamentally, Your Honor, it's
3 that Baker Botts' client is not the company. It's the special
4 committee of the board that is leading this -- leading the
5 investigation in the first instance. So if Baker Botts is --
6 if Baker Botts had a different role by way of example, then it
7 would be able to conduct that privilege review. But its client
8 is the special committee, it's not -- its client is not the
9 company.

10 THE COURT: All right. Well, as I say, I don't -- I
11 don't think I need to make any rulings today. If it -- if it's
12 an issue, bring it before the Court, and what counsel for the
13 committee, Mr. Qureshi, is asking for is fine with the Court in
14 terms of hearing these matters on an expedited basis. I think
15 in most cases it will be appropriate to hear it on an expedited
16 basis as opposed to sort of forcing you to wait for the next
17 omnibus hearing.

18 MR. MEYER: I don't think that there's any debate with
19 Mr. Qureshi or myself or Your Honor on any of these points. I
20 think Mr. Qureshi was just pointing out a timing issue that
21 overlays all of this, and his representations as to getting in
22 front of the Court quickly. I don't think that there's any
23 issue with that.

24 THE COURT: Right. Okay.

25 MR. QURESHI: That's fine, Your Honor. And last

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1 thing, two ad hoc ad hoc groups, the Milbank Group and the
2 Davis Polk Group had both requested to get access to whatever
3 the committee does through this process. For the record, Your
4 Honor, that's perfectly fine with the committee.

5 THE COURT: Okay. Very good. I thank you for your
6 cooperation on both sides. I thank everybody for their
7 arguments today. And the Court stands adjourned. And have a
8 nice weekend.

9 MR. MEYER: Thank you, Your Honor.

10 THE CLERK: All rise. This Honorable Court is now
11 adjourned.

12 (Whereupon these proceedings were concluded at 4:20 PM)

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I N D E X

EXHIBITS:	DESCRIPTION	MARK	ADMIT
FOR THE DEBTOR:			
1	Meyer Declaration		7
2	Paral Declaration		7
3	Board resolution		8

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

I, Jamie Gallagher, the court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



June 17, 2024

JAMIE GALLAGHER

DATE

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