Docket #0722 Date Filed: 06/17/2024

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.
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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

APPEARANCES:

For the Debtor:

JEREMY S. WILLIAMS, ESQ.
KUTAK ROCK LLP
901 East Byrd Street
Suite 1000
Richmond, VA 23219

VANESSA GRIFFITH, ESQ.
VINSON & ELKINS LLP
Trammell Crow Center
2001 Ross Avenue
Suite 3900
Dallas, TX 75201

KEITH FULLENWEIDER, ESQ.
VINSON & ELKINS LLP
Texas Tower
845 Texas Avenue
Suite 4700
Houston, TX 77002

APPEARANCES (CONT'D):

For the Debtors:	DAVID S. MEYER, ESQ. JESSICA C. PEET, ESQ. VINSON & ELKINS LLP The Grace Building 1114 Avenue of the Americas 32nd Floor New York, NY 10036
For the Office of the U.S. Trustee:	NICHOLAS S. HERRON, ESQ. UNITED STATES DEPARTMENT OF JUSTICE 200 Granby Street Room 625 Norfolk, VA 23510
For the Official Committee:	SCOTT L. ALBERINO, ESQ. AKIN GUMP STRAUSS HAUER & FELD LLP Robert S. Strauss Tower 2001 K Street, NW Washington, DC 20006
	ABID QURESHI, ESQ. AKIN GUMP STRAUSS HAUER & FELD LLP One Bryant Park Bank of America Tower New York, NY 10036
For the Ad Hoc Committee RWE:	ERIN DEXTER, ESQ. MILBANK LLP 1850 K Street, NW Suite 1100 Washington, DC 20006
	MICHAEL MUELLER, ESQ. (ZOOM) WILLIAMS MULLEN 200 S 10th Street Suite 1600 Richmond, VA 23219
For the Ad Hoc Group:	DION W. HAYES, ESQ. MCGUIREWOODS 800 East Canal Street Richmond, VA 34219

APPEARANCES (CONT'D):

For Wilmington Trust:
DOUGLAS BUCKLEY, ESQ. (ZOOM)
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, NY 10036

Wilmington Savings Fund Society:
GIANFRANCO FINIZIO, ESQ.
KILPATRICK TOWNSEND & STOCKTON LLP
The Grace Building
1114 Avenue of the Americas
New York, NY 10036

Also Appearing:
GLENN NUNZIATA
JASON PARAL, ESQ.
JAMES GARRITY

Transcription Services:
eScribers, LLC
7227 North 16th Street
Suite #207
Phoenix, AZ 85020
(800) 257-0885

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

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

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

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

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

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

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

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

joining us.

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

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

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

THE COURT: All right.

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

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

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

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

MR. WILLIAMS: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

MR. WILLIAMS: Thank you, Your Honor.

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

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

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

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

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

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

MR. HERRON: Yes, Your Honor.

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

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

MR. WILLIAMS: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

MR. WILLIAMS: Thank you, Your Honor.

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

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

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

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

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

Your Honor, with respect to the factual issues, the

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

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

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

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

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

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

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

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

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

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

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

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

Honor, they --

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

MR. WILLIAMS: Your Honor, I --

THE COURT: Incredibly harmful or disastrous?

MR. WILLIAMS: Your Honor, there is --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

directors, and shareholders.

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

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

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

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

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

Your Honor --

THE COURT: So the second question is what would

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

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

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

MR. WILLIAMS: Yes, Your Honor.

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

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

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

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

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

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

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

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

reconsider as a new application to employ.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay. Thank you.

Ms. Griffith, good afternoon.

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

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

team. There are the thirteen people who are left.

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

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

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

MS. GRIFFITH: Yes.

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

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

THE COURT: Since the bankruptcy was filed?

MS. GRIFFITH: Yes, sir.

THE COURT: Okay.

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

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

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

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

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

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

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

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

MS. GRIFFITH: Yes, sure.

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

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

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

MS. GRIFFITH: Correct.

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

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

MS. GRIFFITH: Oh I see. All right.

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

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

MS. GRIFFITH: Well --

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

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

THE COURT: Right.

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

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

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

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

billing credits, and the compensation is fairly formulaic. That is not how V&E works.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: All right. Thank you for your comments.

Mr. Williams?

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

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

will have authority on that issue.

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

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

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

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

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

THE COURT: Requested from the Court, you mean?

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

THE COURT: Okay. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Your Honor, I think employing Vinson & Elkins at this

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

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

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

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

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

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

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

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

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Mr. Alberino? Good afternoon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: I think we all understand that.

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

MR. ALBERINO: Let me talk about that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. ALBERINO: Right.

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

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

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

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

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

MR. ALBERINO: That will need --

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

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

THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay. Thank you for your argument.

MR. ALBERINO: Thank you, Your Honor.

THE COURT: All right. Good afternoon.

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

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

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

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

THE COURT: Okay. Good afternoon.

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

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

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

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

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

THE COURT: Okay.

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

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

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

MS. DEXTER: Sure.

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

was the ad hoc group under the DIP facility.

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

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

MS. DEXTER: Yes, Your Honor.

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

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

THE COURT: Thank you.

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

THE COURT: Thank you very much.

MS. DEXTER: Absolutely.

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

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

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

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

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

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

THE COURT: Okay. Very good. Thank you.

MS. DEXTER: Thank you.

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

THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. HAYES: Correct.

THE COURT: Right.

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

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

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

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

THE COURT: Thank you.

MR. HAYES: Thank you.

THE COURT: Mr. Herron, good afternoon.

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

THE COURT: All right. Yes, certainly.

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

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

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

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

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

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

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

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

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

THE COURT: Who's speaking?

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

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

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

So with that, Your Honor, we support the motion. Happy to answer any questions you may have.

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

Mr. Herron?

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: -- proposal?

MR. HERRON: That and the distributions.

THE COURT: Right, right. Thank you.

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

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

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

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

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

Moving to the manifest injustice argument, Your Honor.

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

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

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

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

So to the extent all of the parties want to hammer

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

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

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

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

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

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

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

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

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

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

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

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

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

So we're left with a special counsel or special

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

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

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

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

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

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

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

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

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

Thank you, Your Honor.

THE COURT: Okay. Thank you.

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

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

Your Honor, the United States Trustee Office focuses a

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

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

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

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

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

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

THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Or do they have decision making --

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

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

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

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

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

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

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

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

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

THE COURT: You're probably a critical vendor.

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

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

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

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

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

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

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

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

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

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

MR. ALBERINO: Thank you.

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

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

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

THE COURT: Mr. Meyer? Yes.

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

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

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

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

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

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

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

THE COURT: Okay.

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

THE COURT: Thank you, thank you.

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

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

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

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

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

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

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

to answer any other questions you may have.

THE COURT: No thank you for your argument.

MR. MEYER: Thank you, Your Honor.

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

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

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

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

MR. MEYER: I'm saying --

THE COURT: What is it delegating to the --

MR. MEYER: I was looking to --

THE COURT: -- PEC in your view?

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

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

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

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

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

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

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

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

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

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

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

Your Honor, I'm happy to answer any additional

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

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

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

MR. MEYER: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

Your Honor, from our perspective, we just want to

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

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

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

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

MR. QURESHI: Fair enough, Your Honor.

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

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

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

THE COURT: Oh, I see, all right.

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

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

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

MR. QURESHI: Right. I mean --

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

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

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

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

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

MR. QURESHI: Right.

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

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

THE COURT: Mr. Meyers.

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

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

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

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

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

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

THE COURT: All right.

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

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

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

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

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

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

THE COURT: Right. Okay.

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

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

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

MR. MEYER: Thank you, Your Honor.

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

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

I N D E X

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

AAERT Certified Electronic Transcriber CET-1243

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