

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<i>In re</i> WESCO AIRCRAFT HOLDINGS INC., <i>et al.</i> , ¹ Debtors,	Case No. 23-90611 (DRJ) Chapter 11 (Jointly Administered)
WESCO AIRCRAFT HOLDINGS INC., <i>et al.</i> , Plaintiffs, v. SSD INVESTMENTS LTD., <i>et al.</i> , Defendants	Adv. Pro. No. 23-03091 (DRJ)
SSD INVESTMENTS LTD., <i>et al.</i> , Counterclaim Plaintiffs, v. WESCO AIRCRAFT HOLDINGS, INC., <i>et al.</i> , Counterclaim Defendants.	
LANGUR MAIZE, L.L.C., Crossclaim Plaintiff, v. PLATINUM EQUITY ADVISORS, LLC, <i>et al.</i> , Crossclaim Defendants.	
LANGUR MAIZE, L.L.C., Third-Party Plaintiff, v. UNNAMED PLATINUM FUNDS C/O PLATINUM EQUITY ADVISORS, LLC, <i>et al.</i> , Third-Party Defendants.	
LANGUR MAIZE, L.L.C., Counterclaim Plaintiffs, v. WESCO AIRCRAFT HOLDINGS, INC., <i>et al.</i> , Counterclaim Defendants.	

¹ The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in the chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at <http://www.kccllc.net/Incora/>. The service address for each of the Debtors is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.



**SENATOR INVESTMENT GROUP, LP'S NOTICE OF FILING
COLLECTIVE DESIGNATIONS OF THE DEPOSITION OF JAY BHARADWA**

Please take notice that Senator Investment Group, LP (“Senator”) submits the attached (i) collective designations of all parties from the deposition of Jay Bharadwa, Co-Chief Investment Officer of Senator, (ii) the Bharadwa deposition admitted exhibits list, and (iii) the objections to the designations of deposition testimony of Jay Bharadwa and responses thereto.

Dated: New York, New York
June 17, 2024

KASOWITZ BENSON TORRES LLP

By: /s/ Constantine Z. Pamphilis

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Attorneys for the Senator Defendants



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Transcript of Jay Bharadwa, Corporate Designee

Date: October 25, 2023

Case: Wesco Aircraft Holdings, Inc., et al. -v- SSD Investments Ltd., et al.

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2 IN THE UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF TEXAS
4 HOUSTON DIVISION

5 -----X
6 IN RE:
7 WESCO AIRCRAFT HOLDINGS, INC., et al.,
8 Debtors.

9 -----X
10 WESCO AIRCRAFT HOLDINGS, INC. ET AL.,
11 Plaintiffs,
12 v. Case No.:
13 23-90611 (DRJ)

14 SSD INVESTMENTS LTD, ET AL.,
15 Defendants.

16 -----X

17 1633 Broadway
18 New York, New York 10019
19 October 25, 2023
20 12:15 p.m.

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REALTIME VIDEOTAPED EXAMINATION BEFORE
TRIAL of JAY BHARADWA, the Corporate designee
in the above-entitled action, taken on behalf
of the Respective Parties, held at the above
time and place, and taken before Dorene Glover,
an RSR Reporter and Notary Public within and
for the State of New York.

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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Transcript of Jay Bharadwa, Corporate Designee

Conducted on October 25, 2023

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Also Present:

ALEJANDRO GOMEZ
EVAN GARTENLAUB

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before whom said deposition was taken.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial.

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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THE VIDEOGRAPHER: Here begins disc
number one in the videotaped deposition
of Jay Bharadwa in the -- in the matter
of Wesco Aircraft Holdings, Inc. et al.
versus SSD Investment Limited et al.,
case number 2390611.

Today's date is October 25th, 2023,
and the time on the monitor is
12:15 p.m. The videographer today is
Alejandro Gomez representing Planet
Depos.

This video deposition is taking
place at Kasowitz, Benson & Torres, LLP,
New York.

Would counsel please voice identify
themselves and state whom they
represent?

MR. KURLAND: I'm Andrew Kurland.
I'm from Kasowitz, and I represent the
witness.

MS. SHARMA: I'm Tanmayi Sharma,
I'm from Quinn, Emanuel, and I represent
the debtors.

MR. WALTER: This is Nicholas

12:14:13
12:14:14
12:14:16
12:14:23
12:14:28
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12:15:10

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1	BHARADWA	
2	Walter of Jones Day, representing Langur	12:15:13
3	Maize.	12:15:14
4	MR. MARGULYAN: Igor Margulyan from	12:15:17
5	Kobre & Kim on behalf of the 2024/2026	12:15:17
6	holders, and with me, I have my	12:15:17
7	colleague Michael Brasky.	12:15:23
8	MR. BASKERVILLE: Dan Baskerville	12:15:24
9	representing the official (inaudible)	12:15:25
10	creditors with me is my colleague,	12:15:27
11	Michael Birnbaum.	12:15:30
12	MR. SANDBERG: Benjamin Sandberg	12:15:32
13	from Jones Day representing Langur	12:15:32
14	Maize.	12:15:32
15	THE COURT REPORTER: I'm sorry,	12:15:32
16	representing?	12:15:32
17	MR. SANDBERG: Langur Maize.	12:15:39
18	THE VIDEOGRAPHER: The court	12:15:39
19	reporter is Dorene Glover representing	12:15:40
20	Planet Depos.	12:15:42
21	Will the court reporter please	12:15:44
22	swear in the witness?	12:15:45
23	J A Y B H A R A D W A,	
24	the witness herein, having first been duly	
25	sworn by a Notary Public of the State of New	

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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BHARADWA

York, was examined and testified as follows:

EXAMINATION BY

MR. WALTER:

12:15:58

Q. Good morning, Mr. Bharadwa.

12:15:58

A. Good morning.

12:16:07

Q. Thanks for your time today. My

12:16:08

name is -- yes, my name's Nicholas Walter. I'm

12:16:18

an attorney representing Langur Maize, and?

12:16:20

THE COURT REPORTER: I'm sorry,

12:16:20

Lang?

12:16:20

Q. Langur Maize, and we are -- Langur

12:16:27

Maize is the majority holders of the 13 and one

12:16:30

eighth senior notes to 2027 of Wesco Aircraft

12:16:33

Holdings, and I'll generally -- generally refer

12:16:40

to those notes as the 2027 notes. There were a

12:16:40

bunch of notes in this case, and I will be as

12:16:45

clear as I can about which ones I'm talking

12:16:47

about. If ever it gets unclear, then please --

12:16:50

please let me know. We've served a deposition

12:16:54

notice on you today in your personal capacity

12:16:58

and as a representative of Senator Investment

12:17:01

Group, LP; is that your understanding?

12:17:06

A. Yes.

12:17:08

Q. What did you do to prepare for this

12:17:08

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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BHARADWA

deposition in your representative capacity?

12:17:13

A. Had a Zoom yesterday for 45 minutes

12:17:17

or an hour with our counsel here.

12:17:21

Q. And without going into that Zoom,

12:17:23

was that just you and Mr. Kurland?

12:17:28

A. No, it was one of his colleagues,

12:17:31

and my general counsel and Evan Gartenlaub were

12:17:34

there.

12:17:37

Q. Nobody else on the call?

12:17:37

A. No.

12:17:38

Q. Did you speak to any of your --

12:17:38

apart from Mr. Gartenlaub, did you speak to any

12:17:41

of your colleagues in preparing for this

12:17:46

deposition?

12:17:47

A. No.

12:17:47

Q. Review any documents apart from

12:17:47

whatever you may have covered in that call?

12:17:50

A. No.

12:17:52

Q. Any e-mails?

12:17:52

A. No.

12:17:53

Q. And you haven't talked to any other

12:17:53

attorneys in the course of preparing this

12:18:00

deposition, and by other attorneys, I mean

12:18:05

attorneys from firms other than Mr. Kurland's

12:18:06

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1		BHARADWA	
2	firm?		12:18:09
3	A.	I have not.	12:18:10
4	Q.	Okay. What is Senator Investment	12:18:10
5	Group LP?		12:18:18
6	A.	We're a hedge fund.	12:18:18
7	Q.	Okay. Fine if I refer to it just	12:18:21
8	as Senator?		12:18:27
9	A.	I -- I'm sorry?	12:18:27
10	Q.	Fine if I refer to it --	12:18:24
11	A.	Yeah, sure.	12:18:26
12	Q.	-- just as Senator? And Senator	12:18:26
13	advises the fund Senator Global Opportunity		12:18:30
14	Master Fund LP; is that right?		12:18:35
15	A.	Yeah, that's -- that's our main	12:18:37
16	fund.		12:18:40
17	Q.	I see. And you would call your --	12:18:40
18	you would call Senator the advisor of it?		12:18:43
19	A.	Sure.	12:18:46
20	Q.	Is that -- okay. I just want to	12:18:46
21	make sure I understand the relationship.		12:18:49
22		How long have you worked at	12:18:51
23	Senator?		12:18:53
24	A.	Since inception in 2008.	12:18:53
25	Q.	And before then, what did you do?	12:18:56

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1		BHARADWA	
2	A.	I was at Morgan Stanley.	12:19:03
3		THE COURT REPORTER: I'm sorry, say	12:19:03
4		that again.	12:19:03
5	A.	I was at Morgan Stanley.	12:19:05
6	Q.	And what's your role now?	12:19:06
7	A.	I am co-CIO.	12:19:10
8	Q.	Who is the co?	12:19:13
9	A.	Doug Silverman.	12:19:15
10	Q.	What are your responsibilities as	12:19:18
11		co-CIO?	12:19:21
12	A.	Manage the investment activities,	12:19:22
13		co-manage the investment activities of the	12:19:26
14		firm.	12:19:28
15	Q.	I see. But do you have any	12:19:28
16		particular area that you focus on as -- as	12:19:30
17		opposed to Mr. Silverman?	12:19:33
18	A.	I spend more time on credit, but	12:19:36
19		it's broad -- it's a broad mandate for me.	12:19:38
20	Q.	Okay. Do you over -- do you	12:19:41
21		oversee Senator's investment in -- in credit	12:19:43
22		generally?	12:19:47
23	A.	Generally.	12:19:47
24	Q.	Okay. And does Senator attend to	12:19:49
25		invest in distressed credit or all credit?	12:19:53

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

11

1	BHARADWA	
2	A. All credit.	12:19:55
3	Q. And out of the people at Senator,	12:19:56
4	would you say that you have the deepest	12:20:01
5	knowledge of Senator's credit investments?	12:20:04
6	A. Yes.	12:20:07
7	MR. WALTER: Tab one, please. I'm	12:20:15
8	passing to you and your counsel, two	12:20:32
9	copies of the exhibit.	12:20:35
10	THE COURT REPORTER: Do you want me	12:20:35
11	to mark it?	12:20:35
12	MR. WALTER: Yes, please. So I'd	12:20:52
13	like --	12:20:52
14	THE COURT REPORTER: Hold on, I	12:20:52
15	have to mark it first. I'm sorry.	12:20:52
16	MR. WALTER: I would like to	12:20:52
17	introduce as Exhibit 1, a document	12:20:52
18	that's Bates stamped	12:20:56
19	Senator_ADVP23-3091-0000346.	12:21:04
20	(Whereupon, the aforementioned	12:21:04
21	Bharadwa Exhibit one, e-mail was marked	12:21:14
22	as for identification as of this date by	12:21:14
23	the Reporter.)	12:21:35
24	Q. And Mr. Bharadwa, you're free to	12:21:35
25	look at any of it, but I'll just say I'm going	12:21:40

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

12

1	BHARADWA	
2	to direct you to just part of the third page.	12:21:43
3	Let me know when you're ready.	12:21:50
4	A. Okay.	12:21:52
5	Q. Okay. So do you see on the top of	12:22:07
6	the third page, which ends -- which is Bates	12:22:10
7	stamped ending 348, there's an e-mail from a	12:22:14
8	Mr. Pierson, Drew Pierson at Senator to a	12:22:21
9	Daniel Lakhdhir of Evercore --	12:22:26
10	A. Yep.	12:22:30
11	Q. -- copying you? Who is Mr.	12:22:31
12	Pierson?	12:22:33
13	A. He's our industrial analyst at the	12:22:34
14	time.	12:22:36
15	Q. By industrial analyst, do you mean	12:22:36
16	focusing on industrial companies?	12:22:41
17	A. Correct.	12:22:43
18	Q. Okay. And do you see subject line	12:22:43
19	of this e-mail is Incora/Wesco?	12:22:49
20	THE COURT REPORTER: I'm sorry, in?	12:22:49
21	Q. Incora/Wesco, do you see that?	12:22:53
22	A. Yep.	12:22:56
23	Q. And Mr. Pierson writes, Daniel,	12:22:56
24	happy to speak. I work on the credit here and	12:23:01
25	copying Jay (our co-CIO) who oversees the	12:23:05

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1	BHARADWA	
2	position and our credit strategy generally.	12:23:08
3	Do you agree with Mr. Pierson that	12:23:11
4	you oversaw Senator's position in Wesco?	12:23:15
5	A. Yes.	12:23:24
6	Q. When did Senator first consider	12:23:26
7	investing in Wesco?	12:23:41
8	A. Upon the new issuance that was	12:23:42
9	brought to market as part of a regular	12:23:48
10	syndication process Bank of America brought	12:23:53
11	when those, you know, all the notes were	12:23:57
12	issued.	12:23:59
13	Q. I see, so can you put a timeframe	12:23:59
14	on that?	12:24:02
15	A. I believe it was, like, 2019	12:24:02
16	when -- when it came to market.	12:24:05
17	Q. Late 2019?	12:24:06
18	A. Yeah, end of -- end of -- end of	12:24:07
19	the year.	12:24:09
20	Q. Do you remember what notes Senator	12:24:10
21	invested in at that time?	12:24:15
22	A. It's honestly dating me. I mean,	12:24:16
23	it's a very normal process for us, and exactly	12:24:22
24	which ones are the quantum, I'm not going to	12:24:25
25	maybe get right. But, like, we invested in a	12:24:29

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

14

1	BHARADWA	
2	couple of different securities at the time. I	12:24:31
3	think -- yeah, it was -- it was a few different	12:24:33
4	places in the capital structure.	12:24:39
5	THE COURT REPORTER: It was a, I'm	12:24:39
6	sorry?	12:24:39
7	A. A few different places in the	12:24:38
8	capital structure, but we've -- yeah, I -- I	12:24:40
9	believe the nine percent, but -- and the PIK	12:24:48
10	notes as well.	12:24:53
11	Q. And the nine percents being what,	12:24:53
12	do you recall?	12:24:56
13	A. The -- there was eight and a half	12:24:56
14	percent and nine percent bonds issued, so I	12:24:59
15	think we bought -- I don't remember if we	12:25:02
16	bought both eight and a half percents and nine	12:25:08
17	percent --	12:25:11
18	THE COURT REPORTER: Wait, you have	12:25:11
19	to slow -- I don't remember if we?	12:25:11
20	A. If we bought both eight and a half	12:25:03
21	and nine percent notes, but we bought, if I	12:25:10
22	recall correctly, one or both of those flavors	12:25:14
23	and also the PIK notes.	12:25:25
24	Q. Got it. Why did Senator invest in	12:25:26
25	the notes?	12:25:37

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

15

1	BHARADWA	
2	A. We thought it was good. We thought	12:25:37
3	it was a -- a good investment.	12:25:41
4	Q. And does that go for all of the	12:25:43
5	tranche that you invested in?	12:25:47
6	A. Yes.	12:25:48
7	Q. By good investment, what are you	12:25:49
8	looking for there?	12:25:56
9	A. Looking for a return in our money	12:25:57
10	back.	12:26:00
11	Q. Okay. Any particular time frame?	12:26:01
12	A. No. I mean -- no. It's -- we	12:26:02
13	invest across a range of different timeframes,	12:26:10
14	and there was nothing that particularly stood	12:26:12
15	out about this.	12:26:15
16	Q. Okay. Do you remember how much you	12:26:15
17	invested in each tranche then?	12:26:26
18	A. No.	12:26:27
19	Q. Roughly?	12:26:28
20	A. No. I just don't.	12:26:31
21	Q. Let's --	12:26:33
22	MR. WALTER: I think I will	12:26:43
23	introduce Exhibit 2, tab two, please.	12:26:45
24	(Whereupon, the aforementioned	12:26:45
25	Bharadwa Exhibit 2, chart was marked as	12:26:50

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1 BHARADWA
2 for identification as of this date by 12:26:50
3 the Reporter.) 12:26:50
4 MR. WALTER: Has that been marked? 12:26:50
5 THE COURT REPORTER: Yes. 12:27:16
6 Q. Okay. So I just introduced 12:27:16
7 Exhibit 2, which is a printout of a spreadsheet 12:27:26
8 that was produced to us in native XL format 12:27:30
9 with the Bates number 12:27:30
10 Senator_ADVP23-3091-0001746. Have you ever 12:27:42
11 seen this document before? 12:27:45
12 A. No. 12:27:46
13 Q. Do you know what it is? 12:27:47
14 A. Yeah, it's our summary of our 12:27:48
15 holdings. 12:27:51
16 Q. A summary of your holdings in Wesco 12:27:51
17 credit, right? 12:27:57
18 A. Correct. 12:27:59
19 Q. And WAIR, that's the symbol for Wesco? 12:27:59
20 A. Yeah. 12:28:05
21 THE COURT REPORTER: I'm sorry, 12:28:05
22 where that? 12:28:06
23 Q. Okay. So who is Edward Larrmann? 12:28:06
24 A. He's our CFO. 12:28:20
25 Q. Does he regularly produce documents 12:28:22

All parties agree on this edit to fix transcription error

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

17

1		BHARADWA	
2	like this?		12:28:28
3	A.	Yes.	12:28:28
4	Q.	For what purpose?	12:28:30
5	A.	Various purposes. I mean, it	12:28:34
6		depends on the particular situation I guess.	12:28:37
7	Q.	But is this a kind of thing that	12:28:39
8		you'll report to your LPs on a quarterly basis?	12:28:41
9	A.	No, we do not give individual	12:28:44
10		position histories.	12:28:47
11	Q.	So let's go to the -- go to the	12:28:47
12		fourth row of this spreadsheet, please. The	12:29:03
13		one that says, where eight and a half percent	12:29:05
14		11/15/24. So do you understand those as the	12:29:10
15		2024 eight and a half percent secured notes --	12:29:19
16	A.	Sure.	12:29:23
17	Q.	-- issued by Wesco? And do you see	12:29:24
18		as of January 2021, you held just under	12:29:27
19		47,000,000 of them?	12:29:34
20	A.	I see that.	12:29:35
21	Q.	And you say that -- well, is it	12:29:36
22		correct that you -- you may have invested in	12:29:39
23		the 2024 notes upon the issuance about a year	12:29:41
24		earlier, but you're not quite sure; is that	12:29:51
25		right?	12:29:53

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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BHARADWA

A. Yeah, we regularly trade our positions around, so I -- that's probably not what we started with.

Q. Okay. Any idea how much the bonds were trading at when you initially invested in them?

A. When we initially upon syndication?

Q. The 2024s, yeah?

A. I think they were par or very close to it. Maybe there was a small original issue discount. I don't remember.

Q. Okay. Any idea what they were trading at as of January 1st, 2021?

A. No. Lower.

Q. Okay. So -- and you see as of April 2021, it's -- the holdings of the 2024s are about 37 and a half million. And again, about the same on July 1st, 2021, and then, as of October 2021, nothing. Do you know why you sold out of the 2024s?

A. Because the company wasn't, you know, performing to our expectations. Most, you know --

Q. Do you recall at what price you

12:29:53
12:29:56
12:30:00
12:30:02
12:30:08
12:30:12
12:30:12
12:30:15
12:30:18
12:30:20
12:30:22
12:30:22
12:30:25
12:30:28
12:30:31
12:30:43
12:30:46
12:30:50
12:30:58
12:31:02
12:31:03
12:31:08
12:31:12
12:31:14

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1		BHARADWA	
2	sold?		12:31:20
3	A.	No.	12:31:20
4	Q.	Does Senator regularly mark to	12:31:20
5	market its credit investments?		12:31:32
6	A.	Yeah, just whatever Bloomberg spits	12:31:33
7	out.		12:31:37
8	Q.	And is that on a particular time	12:31:37
9	frame, like once a month, once a week?		12:31:40
10	A.	No, daily.	12:31:42
11	Q.	Daily, and for all -- for all of	12:31:43
12	the credit investments?		12:31:44
13	A.	Yeah. Whether -- yeah.	12:31:45
14	Q.	Just for what it's worth to your --	12:31:47
15	to save Mr. Kurland saying this, it's -- just		12:31:50
16	let me finish, and then -- for the -- for the		12:31:52
17	sake of the court reporter. Makes for a		12:31:54
18	cleaner transcript.		12:31:56
19		And if Bloomberg doesn't spit out a	12:31:57
20	price for that day because, for example,		12:32:07
21	there's no trading, do you just take the		12:32:08
22	previous day's price?		12:32:10
23	A.	Yeah, if there's no change to the	12:32:11
24	price, then I presume we would just take the		12:32:14
25	prior day's price, sure.		12:32:17

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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BHARADWA

Q. So going back to this spreadsheet, Exhibit 2, it goes up to July 2023, so is it your understanding that Senator never had a position in the 2024s after October 2021?

A. That sounds right.

Q. Okay.

MR. WALTER: Can I -- and let's get tab six.

(Whereupon, the aforementioned Bharadwa Exhibit 3, confidentiality agreement was marked as for identification as of this date by the Reporter.)

Q. So I just marked, for the record, Exhibit 3. And this is a document stating confidentiality agreement at the top, and it's Bates stamped Senator_ADVP23-3091-0002180. There's only one small thing that I'm going to point you to. You're free to look at any of it if you -- if you'd like. Have you seen this before?

A. This confidentiality agreement, I don't recall.

Q. Okay.

12:32:19
12:32:36
12:32:44
12:32:48
12:32:55
12:33:00
12:33:05
12:33:12
12:33:33
12:33:36
12:33:36
12:33:36
12:33:39
12:33:39
12:33:46
12:33:50
12:33:52
12:34:09
12:34:11
12:34:15
12:34:18
12:34:18
12:34:18
12:34:18

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1 BHARADWA

2 A. No. 12:34:22

3 Q. If you turn to the -- turn to 12:34:22

4 what's the tenth page, do you see -- just 12:34:43

5 before Exhibit A, do you see Mr. Gartenlaub's 12:34:46

6 signature? 12:34:52

7 THE COURT REPORTER: I'm sorry, 12:34:52

8 Mister? 12:34:52

9 Q. Gartenlaub on behalf of -- just 12:34:53

10 before that on behalf of Senator? 12:34:54

11 A. Yep. Yeah, I see that. 12:34:55

12 Q. So do you recognize this as the 12:34:57

13 confidentiality agreement that Senator entered 12:35:06

14 into with Wesco in February 2022? 12:35:09

15 A. Sure. 12:35:12

16 Q. Do you know why Senator entered 12:35:16

17 into this confidentiality agreement? 12:35:24

18 A. In February 2022? 12:35:26

19 Q. Yeah. 12:35:29

20 A. Yeah, that was to basically sign on 12:35:29

21 to the deal that was being proposed to us. 12:35:31

22 Q. And the deal being what became the 12:35:33

23 transactions in 2020 -- March 2022; is that 12:35:40

24 right? 12:35:42

25 A. I guess. 12:35:42

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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BHARADWA

THE COURT REPORTER: I'm sorry, I

12:35:42

guess or yes?

12:35:42

A. Yes.

12:35:45

Q. Just going back to the page with

12:35:45

Mr. Gartenlaub's signature, and you see there

12:35:50

are six lines. Are these all of Senator's

12:35:56

holdings in Wesco credit at the time?

12:36:00

A. I -- I assume so. I don't think we

12:36:04

would have gotten that wrong, so I would say

12:36:15

yes.

12:36:18

Q. So do you know why there's

12:36:18

5,000,000 of 2024 secured notes here, but that

12:36:21

5,000,000 doesn't appear on the spreadsheet --

12:36:27

A. No, I don't.

12:36:29

Q. -- we just looked at? Is it

12:36:30

possible that you would have invested in the

12:36:47

2024 notes sometime between January 1st, 2022,

12:36:54

and February 13th, 2022?

12:36:58

A. It's possible. I don't remember.

12:37:00

Q. Do you know how we could find out

12:37:06

for sure?

12:37:11

A. I -- I assume we could go back and

12:37:12

check our records.

12:37:18

MR. WALTER: Counsel, could I ask

12:37:34

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1 BHARADWA
2 you to look into that? 12:37:35
3 MR. KURLAND: Sure, we'll note it. 12:37:38
4 Q. Go back to the spreadsheet for a 12:37:40
5 moment if you will, so subject to this issue 12:38:14
6 about the 5,000,000, do you see that it looks 12:38:16
7 as if you sold out of the 2024 notes. And 12:38:19
8 then, on the line above that, you've got the 12:38:22
9 2028 PIK notes. Do you see that? 12:38:29
10 A. Yes. 12:38:31
11 Q. And your holdings -- well, it 12:38:32
12 doesn't look as if you're selling out of the 12:38:38
13 2028 PIK notes, right? 12:38:41
14 A. Correct. 12:38:43
15 Q. And on the bottom line, you've got 12:38:43
16 the 2026 secured notes, right? 12:38:49
17 A. Uh-huh. 12:38:51
18 THE COURT REPORTER: Yes? 12:38:51
19 A. Yes, yes. 12:38:53
20 Q. And looks as if you increased your 12:38:53
21 holding between January 2021 and July 2021 and 12:39:01
22 then decreased it? 12:39:04
23 A. Sorry, increased which position? 12:39:10
24 Q. The 2026s on the bottom line? 12:39:12
25 A. Okay. Sure. 12:39:15

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

24

1 BHARADWA

2 Q. Any -- any idea why you would have 12:39:17

3 done that? 12:39:21

4 A. Presumably because market prices 12:39:22

5 plus our investment case aligned and then did. 12:39:25

6 I -- you know, we regularly trade around our 12:39:31

7 positions, so it's fairly normal. 12:39:33

8 Q. Okay. Is it normal for you to -- 12:39:36

9 well, for example, looking at the 2024 and the 12:39:42

10 2026s, is it -- is it normal for you to 12:39:48

11 completely set out one tranche but still retain 12:39:52

12 a significant amount in another tranche? 12:39:57

13 A. All the time. 12:40:00

14 Q. Focussing on the 2026 notes for a 12:40:01

15 moment, do you have any idea at what prices you 12:40:13

16 bought and sold those notes? 12:40:16

17 A. No, I don't. I do know we -- we 12:40:18

18 added to our position in the days or the months 12:40:28

19 after COVID, presumably at lower prices. I 12:40:30

20 remember that as an interesting opportunity in 12:40:33

21 our minds in 2020. I'm sure we added some 12:40:35

22 there. 12:40:40

23 Q. And did Senator exchange its 2024 12:40:40

24 and 2026 notes in March 2022 as part of the 12:41:08

25 transactions in this case? 12:41:17

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1		BHARADWA	
2	A.	Yes.	12:41:18
3	Q.	And do you recall -- do you recall	12:41:18
4		what they were exchanged into?	12:41:27
5	A.	Yeah, the new first lien notes.	12:41:29
6	Q.	And are those reflected on the	12:41:33
7		first line of this spreadsheet?	12:41:39
8	A.	Yeah, these ten-and-a-halves.	12:41:40
9	Q.	Okay. Just do you have the	12:41:46
10		confidentiality -- you have Mr. Gartenlaub's --	12:41:58
11		that --	12:42:01
12	A.	Yeah.	12:42:01
13	Q.	That sheet. So looking at the	12:42:02
14		2026s for a moment?	12:42:07
15	A.	Sorry, what -- where are --	12:42:10
16	Q.	Sorry.	12:42:10
17	A.	-- you directing me?	12:42:11
18	Q.	On the -- on the spreadsheet,	12:42:12
19		looking at the 2026s bottom line --	12:42:14
20	A.	Okay.	12:42:14
21	Q.	-- you see that it's 20,000,000 as	12:42:17
22		of January 1st, 2022. Go to the sheet with Mr.	12:42:18
23		Gartenlaub's --	12:42:28
24		THE COURT REPORTER: I'm sorry, go	12:42:28
25		to?	12:42:28

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

26

1	BHARADWA	
2	Q. Go to the sheet with Mr.	12:42:21
3	Gartenlaub's signature. You see it says, 2026	12:42:29
4	secured notes and 24,795,000?	12:42:32
5	A. Yeah, I see that.	12:42:35
6	Q. Any idea why there's a difference?	12:42:36
7	A. I assume because we purchased.	12:42:38
8	I --	12:42:42
9	Q. Okay.	12:42:42
10	A. But I don't know.	12:42:44
11	Q. Would you be able to find out for	12:42:45
12	sure?	12:42:48
13	A. Sure.	12:42:48
14	Q. Okay.	12:42:49
15	MR. WALTER: Counsel, I'll follow	12:42:50
16	up with you about that.	12:42:53
17	A. If that's fine with Counsel, then	12:42:53
18	no problem.	12:42:56
19	MR. KURLAND: We're happy to look	12:42:56
20	into that as well.	12:42:59
21	A. I mean, it's also possible the	12:42:59
22	sheet is not right or I don't know.	12:43:01
23	Q. We'll get through what I was	12:43:02
24	concerned about.	12:43:04
25	Let's go into the second line of	12:43:04

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1	BHARADWA	
2	spreadsheet, the 2027 notes, and they were	12:43:15
3	unsecured, right?	12:43:24
4	A. Yes.	12:43:25
5	Q. And is it your understanding that	12:43:26
6	you exchanged your holdings of those notes in	12:43:35
7	March 2022?	12:43:39
8	A. Yes.	12:43:39
9	Q. For new one and a quarter lien	12:43:39
10	notes?	12:43:44
11	A. Yes.	12:43:44
12	Q. And are the new one and a quarter	12:43:44
13	liens reflected on the same line of the	12:43:50
14	spreadsheet from April 1st, 2022 onwards?	12:43:53
15	A. Looks like that is the case.	12:43:56
16	Q. And your holdings of the 2027s	12:43:58
17	looks as if you've had a -- 5,000,000 as of	12:44:08
18	April 2021, then increasing to 35,000,000 as of	12:44:14
19	July 2021. Any idea why you increased your	12:44:18
20	position?	12:44:22
21	A. Stupid buys.	12:44:22
22	Q. Do you remember the price of those	12:44:23
23	stupid buys?	12:44:26
24	A. I don't recall the price.	12:44:29
25	Q. Roughly?	12:44:31

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1 BHARADWA

2 A. There weren't, like, super 12:44:33

3 distressed levels. I think they were, you 12:44:39

4 know, just, like, kind of normal stress bond 12:44:40

5 purchases that we got completely upside down. 12:44:44

6 Q. But just to make sure that I'm 12:44:47

7 understanding the lingo, by super distressed 12:44:50

8 levels, what would you mean? 12:44:54

9 A. Well, they weren't like -- they 12:44:55

10 weren't, like, \$0.05, \$0.10, \$0.15. Like, 12:44:56

11 these were real prices we paid. I remember 12:44:58

12 because I was pissed off we bought those in the 12:45:01

13 end, but -- 12:45:03

14 Q. Okay. 12:45:03

15 A. -- they were, you know, I -- I 12:45:05

16 don't recall the exact price. 12:45:06

17 Q. Sure. But anyway, north of \$0.15? 12:45:07

18 A. Yes. 12:45:15

19 Q. So sticking on the 2027s, you see 12:45:16

20 it's -- there's nothing for January 2021? 12:45:37

21 A. I see that. 12:45:43

22 Q. Any idea if you'd previously 12:45:43

23 invested in the 2027s and then sold out? 12:45:49

24 A. I don't recall. 12:45:51

25 Q. What's the process at Senator for 12:45:52

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

29

1	BHARADWA	
2	investing in these notes? And by that I mean,	12:46:09
3	for example, would any investment in -- in	12:46:13
4	Wesco's credit have to go to an investment	12:46:16
5	committee?	12:46:19
6	A. Not a formal one. It would have to	12:46:19
7	be approved by myself and/or Doug as co-CIOs.	12:46:26
8	Q. I see. And did you approve of all	12:46:31
9	of these purchases?	12:46:33
10	A. Yes.	12:46:34
11	Q. And nobody else has signed off as	12:46:35
12	needed?	12:46:40
13	A. That's correct.	12:46:40
14	Q. And the middle of the spreadsheet,	12:46:41
15	the 13 and three quarters of 2028, do you see	12:47:12
16	that?	12:47:18
17	A. Yep.	12:47:18
18	Q. So those are PIK notes that you	12:47:18
19	invested in around the time of the initial	12:47:21
20	syndication in --	12:47:26
21	A. Yes.	12:47:28
22	Q. -- 2019? And for those PIK notes,	12:47:29
23	did -- did you increase your holdings over	12:47:40
24	time, or is that when -- or was the increase	12:47:42
25	just the PIK?	12:47:44

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	A. Just the PIK.	12:47:45
3	Q. Is it right that by the -- by	12:47:46
4	March 2022, you held the majority of the 2028	12:47:55
5	notes that weren't held by Platinum or its	12:48:04
6	affiliates?	12:48:07
7	A. I don't know.	12:48:08
8	Q. Does that sound right to you?	12:48:12
9	MR. KURLAND: Objection. You can	12:48:15
10	answer. If it's a different answer, you	12:48:17
11	can answer.	12:48:23
12	A. Yeah, I mean, no, no. That's -- it	12:48:24
13	sounds -- it sounds like -- I don't know.	12:48:26
14	Like, I just don't know. I think that's	12:48:29
15	probably right, but I'm not, you know, prepared	12:48:30
16	to say definitively yes or no because I don't	12:48:33
17	know. There was -- I know there were other	12:48:36
18	holders of the notes, and I don't know what	12:48:37
19	they held exactly.	12:48:39
20	Q. So let me ask it this way. When	12:48:39
21	you are investing in notes, and we can take the	12:49:14
22	example of the 2028s, do you know -- do you	12:49:20
23	know who the other market participants are?	12:49:25
24	A. Sometimes, not always.	12:49:27
25	Q. So for the 2028s, did you know that	12:49:31

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	Platinum held a position in them?	12:49:40
3	A. We had heard that.	12:49:43
4	Q. Do you recall why you -- do you	12:49:44
5	recall why Senator initially invested in the	12:49:49
6	2028s?	12:49:53
7	A. Because we thought it was a good	12:49:54
8	investment.	12:49:56
9	Q. Do you know how that opportunity	12:49:56
10	came to you?	12:49:58
11	A. Yes. Bank of America was hung with	12:49:59
12	the -- the PIK notes. They had underwritten	12:50:02
13	it, and they were willing to sell it to us at a	12:50:06
14	price that they thought was attractive.	12:50:09
15	Q. And did they say who else was	12:50:10
16	investing in the PIK notes?	12:50:12
17	A. No.	12:50:13
18	Q. And did you find out at any time?	12:50:13
19	A. Not definitively.	12:50:22
20	Q. What exactly do you mean by not	12:50:27
21	definitively? Did you mean -- do you mean --	12:50:35
22	A. How could I know?	12:50:35
23	Q. Oh, I see, but are you saying that	12:50:37
24	--	12:50:39
25	A. I heard that there was one other --	12:50:39

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1	BHARADWA	
2	I had heard of at least one other party	12:50:41
3	involved.	12:50:44
4	Q. And who was that party?	12:50:45
5	A. Am I allowed to comment on	12:50:45
6	speculation -- I mean, it's speculation, but I	12:50:50
7	had heard it was AlbaCore.	12:50:51
8	Q. I'm sorry?	12:50:54
9	A. I -- I heard it was AlbaCore.	12:50:55
10	Q. Do you know how much they --	12:50:57
11	A. No.	12:51:01
12	Q. -- held? Okay. And just based on	12:51:01
13	what you've heard, did -- have you heard that	12:51:06
14	they'd invested at the time of the initial	12:51:10
15	syndication?	12:51:13
16	A. I don't know. I assume so.	12:51:13
17	Q. You're familiar with the Platinum	12:51:16
18	private equity firm; is that right?	12:51:38
19	A. Yes.	12:51:40
20	Q. Does Senator have a close	12:51:40
21	relationship with Platinum?	12:51:43
22	MR. KURLAND: Objection to the	12:51:48
23	form, but you can answer.	12:51:49
24	A. We've done multiple deals with them	12:51:50
25	as we have with other sponsors.	12:51:52

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1	BHARADWA	
2	Q. Over what period of time are you	12:51:54
3	talking?	12:51:58
4	A. Probably since 2017, yeah.	12:51:58
5	Probably the first one we did.	12:52:05
6	Q. Do you remember what that deal was?	12:52:07
7	A. Yeah, Vertiv.	12:52:09
8	THE COURT REPORTER: Vertiv?	12:52:09
9	A. Vertiv.	12:52:13
10	Q. And on that deal were you in the	12:52:13
11	credit?	12:52:21
12	A. Yes.	12:52:22
13	Q. And of all -- have -- for all of	12:52:22
14	your deals with Platinum, have you been in the	12:52:26
15	credit?	12:52:28
16	A. Yes.	12:52:28
17	Q. Can you say roughly how many deals	12:52:28
18	you've done with them since 2017?	12:52:35
19	A. Between five and ten.	12:52:37
20	Q. How did the relationship between	12:52:39
21	Senator and Platinum start?	12:52:52
22	A. Like any other sponsor	12:52:57
23	relationship, we, in the course of the	12:52:59
24	syndication process, had a management call, had	12:53:01
25	a sponsor call, understood their strategy	12:53:05

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1	BHARADWA	
2	around the business.	12:53:08
3	Q. But are there folks at Senator who	12:53:15
4	are good friends with folks at Platinum for	12:53:19
5	example?	12:53:21
6	A. No.	12:53:21
7	Q. And of the five and ten deals	12:53:22
8	you've done with Platinum, would you say that	12:53:33
9	this one's been the worst for you?	12:53:37
10	A. Yes.	12:53:41
11	Q. Okay. You're smiling, why?	12:53:44
12	A. It hasn't been a pristine track	12:53:50
13	record.	12:53:57
14	Q. I see.	12:53:58
15	A. Oops, sorry. I was just going to	12:53:58
16	grab a water. I didn't want to, like, say it	12:53:58
17	and then have it be on the thing. Thank you.	12:53:58
18	MR. WALTER: And could we get tab	12:54:27
19	11, please?	12:54:28
20	(Whereupon, the aforementioned	12:54:46
21	Bharadwa Exhibit 4, e-mail was marked as	12:54:47
22	for identification as of this date by	12:54:47
23	the Reporter.)	12:54:56
24	Q. So I just handed the -- the	12:54:56
25	reporter has now handed to you what will be	12:54:57

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1	BHARADWA	
2	Exhibit 4, and this is Bates stamped	12:54:57
3	Senator_ADVDP23-3091-0000452 in the bottom right	12:55:04
4	corner. First question, Mr. Bharadwa, and take	12:55:14
5	your time to look at it, but the first question	12:55:27
6	will be do you recognize this e-mail?	12:55:28
7	A. Yes.	12:55:30
8	Q. And it's -- it looks to be an	12:55:31
9	e-mail chain between you and Mr. Pierson and	12:55:41
10	Evan Boggs?	12:55:44
11	A. Yes.	12:55:47
12	Q. Who is Evan Boggs?	12:55:48
13	THE COURT REPORTER: Evan Bolts?	12:55:48
14	Q. Boggs.	12:55:55
15	A. He's a -- a colleague on the -- on	12:55:55
16	the credit team.	12:55:58
17	Q. Was he the lead analyst on the	12:55:58
18	Wesco credit?	12:56:03
19	A. No Drew Pierson was.	12:56:04
20	Q. So you're senior to Mr. Pierson?	12:56:06
21	A. Yes.	12:56:09
22	Q. So I'm going to be -- go to the top	12:56:09
23	of the second page, please. There's an e-mail	12:56:29
24	from you to Drew Pierson, dated November 17th,	12:56:32
25	2021 at 2:08 p.m., and then, you see	12:56:40

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	immediately below that there's one from Mr.	12:56:43
3	Pierson the previous day at 1:11 p.m. And the	12:56:46
4	final paragraph of Mr. Pierson's e-mail is, the	12:56:53
5	Rubik's Cube I'm trying to --	12:57:00
6	THE COURT REPORTER: I'm sorry,	12:57:00
7	the?	12:57:00
8	Q. Rubik's Cube I'm trying to solve,	12:57:02
9	parenthetical et cetera. Do you see that?	12:57:05
10	A. Yes.	12:57:07
11	Q. Can you explain in your own words	12:57:07
12	what this Rubik's Cube was?	12:57:14
13	A. I'm reading his text, so I can	12:57:19
14	explain in his words, but he's clearly trying	12:57:22
15	to understand some of the cash flow dynamics of	12:57:28
16	what happened in the quarter that was just	12:57:32
17	reported.	12:57:36
18	Q. Do you remember that there had	12:57:36
19	been, in Mr. Pierson's words, some source of	12:57:45
20	incremental liquidity into the company?	12:57:50
21	A. What -- what's the question?	12:57:54
22	Q. Do you recall that there had been	12:57:56
23	some source of incremental liquidity at this	12:57:58
24	time?	12:58:03
25	A. Not particularly. There were	12:58:03

Transcript of Jay Bharadwa, Corporate Designee
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1 BHARADWA

2 challenges quarter to quarter, and as he said, 12:58:16

3 nothing is straightforward from the financial. 12:58:21

4 So there's nothing that particularly stands out 12:58:23

5 about that comment. 12:58:26

6 Q. Sure. As for that comment, nothing 12:58:26

7 ever straightforward with this company, what's 12:58:37

8 your understanding of why he wrote that? 12:58:39

9 MS. SHARMA: Objection. 12:58:42

10 MR. KURLAND: You can -- 12:58:43

11 A. Oh, okay. Because they -- it was 12:58:43

12 always messy. It was all too never clean. You 12:58:51

13 know, sales were all over the place, EBITDA 12:58:55

14 was, you know -- it just wasn't like a -- an 12:59:00

15 easy story. It was complicated. 12:59:03

16 Q. When you say it was messy and 12:59:05

17 complicated, do you mean that the financial 12:59:07

18 results were bad, or do you mean that the 12:59:09

19 financial results were difficult to understand? 12:59:12

20 MS. SHARMA: Objection. 12:59:14

21 A. Yeah, I don't mean either of those. 12:59:15

22 Q. Oh, okay. Can you explain what you 12:59:18

23 mean then? 12:59:20

24 A. Sure. When a -- like, it's not as 12:59:20

25 predictable and linear in terms of, you know, 12:59:26

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1 BHARADWA

2 just the financial output versus, like, what 12:59:30

3 you would expect happens with the underlying 12:59:34

4 cadence of production and, you know, 12:59:38

5 aftermarket data that you see out there. It 12:59:39

6 just, like -- just a lot of tracking error is 12:59:41

7 the best way to describe it. 12:59:46

8 Q. So unpredictable? 12:59:47

9 A. Yeah. 12:59:49

10 Q. Is that fair? 12:59:49

11 A. Yeah, there's not that much 12:59:50

12 predictability quarter to quarter. 12:59:52

13 Q. Okay. But could you actually 12:59:54

14 understand the financials once you got them? 12:59:55

15 A. Yeah, when we saw the output. 12:59:57

16 Q. Go to the top of this e-mail, 01:00:00

17 please. I'm on the first page. That's where 01:00:15

18 Mr. Pierson says, looking more closely at the 01:00:17

19 numbers, we don't have a good answer for what 01:00:24

20 happened. 01:00:24

21 THE COURT REPORTER: I'm sorry, 01:00:24

22 looking closely at the numbers? 01:00:24

23 Q. Looking more closely at the 01:00:20

24 numbers, we don't have a good answer for what 01:00:24

25 happened. The short answer is worth it's 01:00:29

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1	BHARADWA	
2	poking Kevin to make sure we understand what's	01:00:33
3	going on. Do you see that?	01:00:35
4	A. Yes.	01:00:37
5	Q. Do you know who Kevin was?	01:00:37
6	A. Yes.	01:00:39
7	Q. And who was he?	01:00:40
8	A. Kevin Smith at Platinum.	01:00:42
9	Q. And do you know why Mr. Pierson	01:00:45
10	said that you should poke Kevin as opposed to	01:00:53
11	anyone else?	01:00:53
12	THE COURT REPORTER: That you	01:00:53
13	should put?	01:00:53
14	Q. Poke Kevin.	01:01:00
15	A. Yeah, he is the capital markets	01:01:00
16	head. If there is questions around a	01:01:01
17	particular company, it's normal course to go to	01:01:04
18	the capital markets head at any sponsor to	01:01:06
19	clarify.	01:01:09
20	Q. So he was your main point of	01:01:10
21	contact --	01:01:15
22	A. Correct.	01:01:16
23	Q. -- for Platinum? Did you ever go	01:01:17
24	to anybody at Wesco with this kind of question?	01:01:20
25	A. Yes. We asked for management calls	01:01:23

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1	BHARADWA	
2	from time to time. Usually, we would go to	01:01:29
3	Kevin in order to effectuate that, but yes.	01:01:34
4	Q. I see. And so is the situation	01:01:37
5	that Kevin would either be able to answer	01:01:45
6	himself, or he would connect you with	01:01:48
7	management; is that right?	01:01:50
8	A. Correct.	01:01:51
9	Q. How often did you talk with Mr.	01:01:52
10	Smith about Wesco?	01:01:57
11	A. Probably -- I mean, I don't recall,	01:02:00
12	but yeah. I -- presumably, like, a few times a	01:02:07
13	year.	01:02:15
14	Q. And going on, I'm in the second	01:02:15
15	half of this page. Do you see there's what	01:02:44
16	looks to be some kind of chat between Mr.	01:02:47
17	Pierson and -- and Andrew Verri?	01:02:50
18	THE COURT REPORTER: I'm sorry,	01:02:50
19	Andrew?	01:02:50
20	Q. Verri, V-E-R-R-I?	01:02:54
21	A. I see that.	01:02:58
22	Q. Do you know who Andrew Verri is?	01:02:59
23	A. Not more than the name.	01:03:03
24	Q. Do you know what 140 summer is?	01:03:09
25	A. Yes.	01:03:12

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1	BHARADWA	
2	Q. What is that?	01:03:12
3	A. It's another hedge fund.	01:03:13
4	Q. Do you know if they were in the	01:03:14
5	credit of Wesco at this time?	01:03:17
6	A. I don't know.	01:03:18
7	Q. So going back to poking Kevin, do	01:03:19
8	you know whether you actually did reach out to	01:03:38
9	Mr. Smith in response to this?	01:03:40
10	A. I don't recall.	01:03:42
11	Q. This kind of analysis of the --	01:03:42
12	excuse me, strike that.	01:03:50
13	This kind of effort to understand	01:03:51
14	the financials, is it something that Mr.	01:03:58
15	Pierson would do every quarter --	01:04:01
16	A. Yes.	01:04:04
17	Q. -- when announced?	01:04:04
18	MR. WALTER: Can you give me tab	01:04:10
19	12, please? I'm just marking Exhibit 5.	01:04:13
20	(Whereupon, the aforementioned	01:04:28
21	Bharadwa Exhibit 5, e-mail was marked as	01:04:29
22	for identification as of this date by	01:04:29
23	the Reporter.)	01:04:29
24	THE COURT REPORTER: Hold on, hold	01:04:29
25	on.	01:04:36

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1	BHARADWA	
2	Q. And this is Bates --	01:04:36
3	THE COURT REPORTER: Hold on.	01:04:36
4	Okay.	01:04:36
5	Q. -- stamped Senator_ADVP23-1391-469.	01:04:38
6	You see this is an e-mail from you to Mr.	01:04:54
7	Smith, so -- well, I think you just nodded; is	01:04:56
8	that right?	01:05:11
9	A. Oh --	01:05:11
10	Q. She has to catch --	01:05:11
11	A. -- yes.	01:05:12
12	Q. Do you -- so is this your reach out	01:05:12
13	to Mr. Smith to follow up on the conversation	01:05:18
14	you were having with Mr. Pierson?	01:05:22
15	A. I presume so, yes.	01:05:24
16	Q. Do you know if you ever got an	01:05:25
17	answer to this question?	01:05:36
18	A. I don't recall.	01:05:37
19	Q. And this -- the time of this e-mail	01:05:37
20	is November 30, 2021. At this time, had you	01:06:00
21	had any discussions with anybody about a	01:06:07
22	potential transaction in Wesco's credit?	01:06:10
23	A. No.	01:06:15
24	Q. Had you heard any rumors in the	01:06:15
25	market?	01:06:17

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1		BHARADWA	
2	A.	No.	01:06:17
3	Q.	Can you go back to Exhibit 1, which	01:06:18
4		will be somewhere in your pile?	01:07:14
5	A.	In this packet?	01:07:16
6	Q.	It would be somewhere in the pile.	01:07:18
7		You should have it.	01:07:21
8		MR. KURLAND: You can look at my	01:07:31
9		copy.	01:07:32
10	A.	Oh, okay.	01:07:32
11	Q.	You see it's an e-mail from Daniel	01:07:33
12		Lakhdhir of Evercore --	01:07:56
13		THE COURT REPORTER: I'm sorry,	01:07:56
14		Daniel?	01:07:56
15	Q.	Lakhdhir of Evercore to you and a	01:07:57
16		bunch of other folks on September 16th, 2021?	01:08:00
17	A.	Yes.	01:08:07
18	Q.	Do you know why Mr. Lakhdhir was	01:08:07
19		getting in touch with you at this time?	01:08:20
20		MS. SHARMA: Objection.	01:08:22
21	A.	I -- these objections are funny,	01:08:23
22		it's, like, I answer them anyway. I -- anyway,	01:08:31
23		I -- yes. He's an advisor that was trying to	01:08:35
24		build advisory business.	01:08:39
25	Q.	Do you know who -- who he was	01:08:40

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1	BHARADWA	
2	representing at this time?	01:08:45
3	A. No, I don't think he's representing	01:08:46
4	anybody. I think he's trying to pitch, I	01:08:48
5	assume.	01:08:50
6	Q. And had -- had you worked with him	01:08:50
7	previously?	01:08:58
8	A. No, not that I recall.	01:08:59
9	Q. Had -- had you worked with any of	01:09:02
10	these Evercore folks previously?	01:09:04
11	A. I don't believe so, but I -- you	01:09:06
12	know. I mean, you run into these people, but	01:09:21
13	I -- I can't -- I can't recall of any specific	01:09:29
14	engagement with anybody here.	01:09:30
15	Q. So you see Mr. Lakhdhir writes, let	01:09:32
16	me know if there is a time that works for a	01:09:48
17	call over the coming days. Do you remember if	01:09:54
18	you had a call with him?	01:09:57
19	A. I don't recall.	01:09:58
20	Q. And you see just before that, he	01:09:59
21	writes, we've been speaking with a number of	01:10:16
22	other large holders and would be great to	01:10:19
23	compare notes on how this may play out over the	01:10:22
24	next few months. Did you have any views on how	01:10:23
25	this, quote, might play out over the next few	01:10:30

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1	BHARADWA	
2	months?	01:10:33
3	A. We did not.	01:10:33
4	Q. Did you think there would be some	01:10:34
5	kind of transaction?	01:10:39
6	A. We -- I think we assumed that	01:10:40
7	Platinum would -- would support the deal with	01:10:49
8	some capital.	01:10:53
9	Q. What -- sorry, what do you mean by	01:10:55
10	that?	01:10:58
11	A. You know, a sponsor wants to, you	01:10:59
12	know, maintain its equity position. I think	01:11:04
13	they probably -- I think we assumed they would	01:11:06
14	be supportive of the -- of the company, and --	01:11:10
15	but I don't -- but we had no view as to any	01:11:16
16	particular transaction.	01:11:20
17	Q. When you say you assumed that	01:11:21
18	Platinum would support the deal with some	01:11:24
19	capital, did you think they would be putting in	01:11:26
20	more equity?	01:11:28
21	A. We thought that was one of the	01:11:29
22	things that could happen. I mean, generally,	01:11:33
23	you know, sponsors want to support their deals.	01:11:38
24	This one, we believed, could improve over time	01:11:41
25	and thought that they probably wanted to	01:11:46

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	stay in -- probably wanted to stay -- stay in	01:11:49
3	their equity position, so we assumed they would	01:11:49
4	support it.	01:11:52
5	Q. When you spoke with -- excuse me.	01:11:52
6	When you were in contact with Mr. Smith to talk	01:11:58
7	about Wesco's financials, did you discuss a	01:12:04
8	potential transaction?	01:12:08
9	A. No.	01:12:11
10	MS. SHARMA: Objection.	01:12:10
11	Q. And did you get in touch with --	01:12:11
12	yourself, to speak with any other people that	01:12:16
13	had positions in the credit to talk about a	01:12:21
14	transaction?	01:12:23
15	A. No.	01:12:24
16	Q. I want to --	01:12:24
17	MR. WALTER: Tab 15, please. This	01:13:10
18	is going to be Exhibit 6. I don't have	01:13:10
19	a copy at the moment.	01:13:12
20	(Whereupon, the aforementioned	01:13:12
21	Bharadwa Exhibit 6, e-mail was marked as	01:13:13
22	for identification as of this date by	01:13:13
23	the Reporter.)	01:13:24
24	Q. You can take a look at it if you'd	01:13:24
25	like. This is Bates stamped	01:13:39

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1	BHARADWA	
2	Senator_ADV23-1391-5330. Do you -- do you see	01:13:43
3	it seems to be a Bloomberg chat between you and	01:14:13
4	somebody with a Bloomberg login, SAGGARWAL51?	01:14:18
5	A. Yes.	01:14:22
6	Q. Who -- who is that person?	01:14:22
7	A. That is Sunil Aggarwal.	01:14:23
8	THE COURT REPORTER: I'm sorry,	01:14:23
9	that is?	01:14:23
10	A. Sunil Aggarwal.	01:14:32
11	Q. And is he a -- an analyst at	01:14:32
12	BlackRock?	01:14:35
13	A. Yes, at the time.	01:14:35
14	Q. How did you know him?	01:14:36
15	A. I've known him for 20 years in the	01:14:39
16	investing business.	01:14:43
17	Q. And do you know why he got in touch	01:14:44
18	with you, or why he started chatting about	01:14:53
19	this?	01:14:57
20	MS. SHARMA: Objection.	01:15:01
21	A. To -- yeah, I -- I -- how could I?	01:15:02
22	I mean, I don't know other than he's clearly	01:15:04
23	evaluating this as an investment opportunity.	01:15:07
24	Q. But did he know that Senator had	01:15:10
25	invested in Wesco?	01:15:14

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1	BHARADWA	
2	A. Sure.	01:15:15
3	Q. And you say sure. Is that -- is	01:15:16
4	that public?	01:15:19
5	A. It's not public, but you have	01:15:19
6	friends that you, you know, in some cases, know	01:15:25
7	they've overlapped with you on certain	01:15:30
8	investments, or they know things that you've	01:15:32
9	been involved in and --	01:15:35
10	Q. Okay.	01:15:36
11	A. He knew that we were invested in	01:15:38
12	Wesco, yes.	01:15:41
13	Q. Go to the -- well, bottom of the --	01:15:41
14	very bottom of the first page, there's his	01:15:54
15	screen name and then --	01:16:00
16	THE COURT REPORTER: There's a?	01:16:00
17	Q. There's his screen name, and then,	01:16:01
18	turn over to the second page. It says, not	01:16:01
19	yet. Seems absurd that people think they'll	01:16:04
20	let it go. And then, it follows up, like just	01:16:08
21	preposterous. Do you understand what he was	01:16:14
22	getting at there?	01:16:17
23	A. Yeah, he's saying the same framing	01:16:18
24	as I gave you just a couple minutes ago, which	01:16:20
25	is Platinum has a big equity position in this,	01:16:25

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1 BHARADWA

2 and it's an asset that should do well over 01:16:28

3 time. So why would they let it go is clearly 01:16:30

4 what he's asking. Like, he doesn't think that 01:16:34

5 they would let it go is what I would gather 01:16:37

6 from his comments here. 01:16:40

7 Q. All right. And then, a little 01:16:41

8 further down, you say, has performed terribly 01:16:44

9 though. Ultimate margin structure is no -- 01:16:48

10 THE COURT REPORTER: I'm sorry, 01:16:48

11 ultimate? 01:16:48

12 Q. Ultimate margin structure is no 01:16:49

13 diff we think. Just need to plug hole. What 01:16:55

14 did you mean by that? 01:17:01

15 A. It's what I just discussed with you 01:17:02

16 a couple minutes ago, which is it hasn't 01:17:07

17 performed well. The ultimate margin structure 01:17:09

18 is no diff, i.e., no different, we believe, so 01:17:13

19 you just need to plug the liquidity hole. 01:17:18

20 Q. But the ultimate margin structure, 01:17:21

21 what's that? The company's -- 01:17:23

22 A. Like, the profitability. 01:17:24

23 Q. Okay. 01:17:24

24 A. Yeah, the profitability of 01:17:24

25 business. 01:17:27

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BHARADWA

Q. And then -- then, you say, how they get there, we'll see. Then, I mean, if they try to use a stick, I don't know what the credible threat is. BK would wipe them out and force new capital --

THE COURT REPORTER: I'm sorry, BK will?

Q. Would wipe them -- would wipe them and force new capital regardless if they wanted to keep. What do you mean by if they tried to use a stick, I don't know what the credible threat is?

A. Meaning, we clearly thought they needed to support it with some equity capital because trying something else would have been risky for their position or wouldn't work or -- you know, if they tried to take through process, bankruptcy would wipe them out, so clearly we -- we didn't anticipate some, you know, crazy transaction that would allow them to, you know, to -- to stay in without, you know -- I -- that -- that's -- that's what I mean -- meant by this is, like, they need to -- they need to basically put up capital in order

01:17:27
01:17:40
01:17:45
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01:18:03
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01:18:48
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01:18:53

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BHARADWA

to, you know, stay in the trade.

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01:18:57
01:19:03
01:19:06
01:19:11
01:19:12
01:19:18
01:19:19
01:19:21
01:19:28
01:19:32
01:19:35
01:19:38
01:19:39
01:19:39
01:19:45
01:19:47
01:19:49
01:19:51
01:19:56
01:19:59
01:20:09
01:20:13
01:20:18

Q. When you say, what the credible threat is, credible threat to whom?

A. To bondholders, bondholders are large.

Q. Doing what kind of thing?

MS. SHARMA: Objection.

A. What's the question, sorry?

Q. So what exactly -- what might a credible threat be? Can you describe that?

A. I'd be speculating. What I say is I don't know what it would have been. Therefore, we assumed that they needed to support the deal.

Q. Right.

A. Because if you threaten to walk away, then you got to give up the keys, and the bondholders are going to own the company. That's what we believed their, kind of, big two alternatives were, support it or let it go.

Q. And by -- well, a credible threat to the bondholders, would that be some threat that would force them to put up money or else find themselves in a worse off position?

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1	BHARADWA	
2	A. That could be. That would be one	01:20:21
3	example, I guess.	01:20:27
4	Q. And by finding themselves in a	01:20:28
5	worse off position, that would be things like	01:20:39
6	the liens on the notes, the payment terms, et	01:20:43
7	cetera; is that --	01:20:49
8	MR. KURLAND: Objection. Objection	01:20:49
9	to form.	01:20:49
10	A. I don't know. I clearly didn't	01:20:49
11	know what that threat could entail.	01:20:57
12	Q. Had you seen in your other	01:20:59
13	transactions with Platinum, Platinum threaten	01:21:16
14	the bondholders?	01:21:20
15	A. No.	01:21:22
16	MS. SHARMA: Objection.	01:21:22
17	A. Oh.	01:21:24
18	MR. KURLAND: It's fine. She got	01:21:24
19	it for the record. Objection from both	01:21:25
20	of us.	01:21:26
21	A. I mean, I don't believe so.	01:21:27
22	Q. Are you familiar with the phrase	01:21:28
23	LME?	01:21:42
24	A. Yes.	01:21:42
25	Q. Liability management exercise?	01:21:42

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1		BHARADWA	
2	A.	Sure.	01:21:45
3	Q.	Would you have called the 2022	01:21:45
4		transactions an LME?	01:21:48
5	A.	I would.	01:21:52
6	Q.	In your previous deals with	01:21:57
7		Platinum, has platinum done any LMEs?	01:22:01
8	A.	Prior to Wesco, I can't recall of	01:22:08
9		any that we've been involved in.	01:22:19
10	Q.	Go down. You see immediately below	01:22:20
11		your -- that line we've just talked about,	01:22:35
12		Sunil Aggarwal writes, any --	01:22:43
13		THE COURT REPORTER: I'm sorry,	01:22:43
14		sun?	01:22:43
15	Q.	Sunil Aggarwal writes, any priming	01:22:44
16		capacity.	01:22:46
17	A.	Uh-huh.	01:22:46
18	Q.	And then, you say, no. So would --	01:22:47
19		if there had been any priming capacity, would	01:22:52
20		using that have been a potential threat to the	01:22:55
21		bondholders?	01:22:58
22	A.	Yes.	01:23:00
23		MS. SHARMA: Objection.	01:23:00
24	A.	Sorry.	01:23:00
25	Q.	And why is that?	01:23:00

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	A. Because bondholders don't like to	01:23:03
3	get primed.	01:23:06
4	Q. A little further down, he says,	01:23:07
5	shucks. And then, you say, I'd own through	01:23:33
6	secureds in that --	01:23:33
7	THE COURT REPORTER: I'm sorry, I'd	01:23:33
8	own?	01:23:33
9	Q. Own through secureds in that	01:23:39
10	process. What did you mean by that?	01:23:40
11	A. Meaning, I would own -- I would own	01:23:42
12	bonds, secured bonds, through that process	01:23:49
13	because it felt like we were covered.	01:23:52
14	Q. So you were meaning that Senator	01:23:55
15	would not sell out if Platinum was sponsoring	01:23:59
16	any transaction?	01:24:04
17	MS. SHARMA: Objection.	01:24:08
18	A. No. I just -- it's a pipe -- it's	01:24:09
19	like a categorical, like, look it -- creation	01:24:13
20	through the secured tranche feels pretty good.	01:24:16
21	That's what that comment means.	01:24:20
22	Q. I see, but the -- that process,	01:24:21
23	what do you mean by that, the bankruptcy, a --	01:24:26
24	A. What -- whatever that process is.	01:24:28
25	Clearly, I did not have any particular view as	01:24:30

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1 BHARADWA

2 to what process could play out, but I thought 01:24:35

3 they needed to put in equity and thought there 01:24:39

4 needed to be some way to plug the hole. And 01:24:41

5 through that process, I thought that owning 01:24:44

6 secured risk would create the company at a 01:24:47

7 cheap enough enterprise value multiple to be a 01:24:51

8 good investment. 01:24:55

9 Q. But at this -- at this time, you 01:24:56

10 didn't sell out of your unsecured positions, 01:25:26

11 did you? 01:25:29

12 A. I don't think I -- I don't think 01:25:30

13 the market was very liquid for the unsecured 01:25:37

14 bonds. 01:25:45

15 Q. Looking at the spreadsheet, we 01:25:46

16 looked at earlier, it doesn't seem as if you 01:26:02

17 increased your holdings in secured credit at 01:26:04

18 this time. Did you think about that? 01:26:09

19 A. I don't recall. It was two years 01:26:10

20 ago. I -- we're constantly evaluating 01:26:14

21 investment opportunities, so I assume I did 01:26:21

22 think about that, yes. 01:26:24

23 Q. Go to the bottom. There's a -- Mr. 01:26:25

24 Aggarwal says, pari accordion. You say, don't 01:26:30

25 think there's any capacity. They can prob PIK 01:26:35

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	the unsecureds --	01:26:40
3	THE COURT REPORTER: I'm sorry,	01:26:40
4	they can?	01:26:40
5	Q. Prob PIK the unsecureds between	01:26:40
6	them and Carlyle. Do you see that?	01:26:42
7	A. Yeah.	01:26:44
8	Q. Did you understand that Carlyle had	01:26:46
9	a significant position in --	01:26:57
10	A. Yes.	01:27:01
11	Q. -- the 2027s? Did you understand	01:27:01
12	that they owned the majority of the 2027 notes?	01:27:09
13	A. I don't recall the exact position.	01:27:14
14	I knew that they owned a big chunk, like, over	01:27:16
15	100,000,000, but I'd never knew exactly what	01:27:25
16	that was.	01:27:29
17	Q. Making decent time, should we take	01:27:29
18	five minutes?	01:27:41
19	MR. KURLAND: Sure.	01:27:42
20	THE VIDEOGRAPHER: We are going off	01:27:43
21	the record. The time is 1:28 p.m.	01:27:44
22	(Whereupon, an off-the-record	01:27:47
23	discussion was held.)	01:37:45
24	THE VIDEOGRAPHER: We are going	01:37:45
25	back on the record. The time is	01:38:01

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1	BHARADWA	
2	1:38 p.m.	01:38:02
3	MR. WALTER: Mark this.	01:39:05
4	(Whereupon, the aforementioned	01:39:10
5	Bharadwa Exhibit 7, e-mail was marked as	01:39:11
6	for identification as of this date by	01:39:11
7	the Reporter.)	01:39:17
8	MR. KURLAND: Maybe you can read	01:39:17
9	the last of the Bates number instead of	01:39:18
10	the whole thing, so we can speed it	01:39:18
11	along.	01:39:18
12	MR. WALTER: Save all of two	01:39:18
13	seconds.	01:39:18
14	MR. KURLAND: Hands up.	01:39:24
15	Q. So just marked Exhibit 7. This is	01:39:24
16	an e-mail from Drew Pierson to Evan Boggs.	01:39:30
17	THE COURT REPORTER: I'm sorry,	01:39:32
18	Drew Pierson to?	01:39:32
19	Q. Evan Boggs, and it's Bates stamped	01:39:36
20	Senator_ADVP23-3921-341. And you're not on	01:39:38
21	this e-mail, Mr. Bharadwa. It's an e-mail from	01:39:50
22	Mr. Pierson to Mr. Boggs, September 16th, 2021.	01:40:00
23	Any idea why Mr. Pierson would have had Mr.	01:40:02
24	Boggs do some analysis on Wesco about this	01:40:09
25	time?	01:40:11

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1	BHARADWA	
2	A. Sure, to try to figure out how the	01:40:11
3	company is going to be able to raise money and	01:40:22
4	plug the gap.	01:40:27
5	Q. Going back to Exhibit 1, this is an	01:40:28
6	e-mail that we looked at earlier. And you see	01:40:43
7	this date of this is September 16th, 2021 as	01:40:53
8	well. Was Mr. Pierson's and Mr. Boggs's	01:40:58
9	exchange in any way instigated by the outreach	01:41:09
10	you had from Evercore?	01:41:17
11	A. I have no idea.	01:41:19
12	Q. Any idea why Evercore would have	01:41:20
13	been in touch at the same time as Mr. Pierson	01:41:26
14	had Mr. Boggs do this work?	01:41:29
15	MS. SHARMA: Objection.	01:41:32
16	A. Do I know, no.	01:41:34
17	Q. Any idea is the question?	01:41:35
18	A. I don't. I mean, like, usually	01:41:38
19	when advisors reach out, there's -- because	01:41:46
20	they've -- you know, they've just heard that	01:41:50
21	there is, like, you know, people doing work	01:41:53
22	around a tough situation. They're trying to	01:41:57
23	figure out how they can advise, and I don't	01:41:59
24	know.	01:42:07
25	Q. Okay.	01:42:07

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	A. It's clearly a tough situation.	01:42:07
3	MR. WALTER: Mark this.	01:42:20
4	(Whereupon, the aforementioned	01:42:22
5	Bharadwa Exhibit 8, e-mail was marked as	01:42:24
6	for identification as of this date by	01:42:24
7	the Reporter.)	01:42:33
8	Q. Exhibit 8, e-mail Bates stamped	01:42:33
9	Senator_ADV23-309146. You can look at as much	01:42:44
10	as you'd like. I'll tell you that it's a	01:43:01
11	follow on to the chain that we've previously	01:43:03
12	been discussing. Do you see your e-mail, as of	01:43:08
13	Thursday, September 23rd, 2021, is to Mr.	01:43:15
14	Lakhdhir at Evercore --	01:43:23
15	THE COURT REPORTER: I'm sorry,	01:43:23
16	Mister? To Mister?	01:43:23
17	Q. Lakhdhir at Evercore, saying, not	01:43:24
18	much has happened or progressed over the past	01:43:26
19	week, so probably best to stay close and play	01:43:28
20	by ear on when to connect next. Do you see	01:43:31
21	that?	01:43:34
22	A. Yes.	01:43:35
23	Q. Did they ever get in touch with you	01:43:35
24	after that?	01:43:38
25	A. I don't know.	01:43:38

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1	BHARADWA	
2	Q. And did you get in touch with them?	01:43:39
3	A. I don't know.	01:43:41
4	Q. Do you recall what you discussed in	01:43:42
5	the call with him --	01:43:48
6	A. No.	01:43:49
7	Q. -- as we have referenced?	01:43:49
8	A. I don't even know that I was on	01:43:56
9	this call. It may have just been Drew and	01:43:57
10	Evan. I don't know.	01:44:00
11	Q. Okay.	01:44:00
12	MR. SIMPSON: My apologies,	01:44:19
13	Counsel. Could I get that Bates number	01:44:19
14	again?	01:44:20
15	MR. WALTER: Sure. It's	01:44:20
16	Senator_ADVP23-3091-0000426.	01:44:24
17	MR. SIMPSON: Thank you.	01:44:32
18	MR. WALTER: Mark this.	01:44:38
19	(Whereupon, the aforementioned	01:44:40
20	Bharadwa Exhibit 9, e-mail was marked as	01:44:43
21	for identification as of this date by	01:44:43
22	the Reporter.)	01:44:49
23	Q. Which is going to be marked as	01:44:49
24	Exhibit 9. It's Bates stamped	01:44:55
25	Senator_ADVP233091-384. E-mail from you to --	01:45:04

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1	BHARADWA	
2	e-mail from Mr. Boggs to you and Mr. Yingst.	01:45:13
3	Who's Mr. Yingst?	01:45:16
4	A. He's a credit colleague at Senator	01:45:18
5	at the time.	01:45:22
6	Q. And was this a regular report that	01:45:22
7	Mr. Boggs did on all of his investments?	01:45:35
8	A. Yes.	01:45:38
9	Q. And did all the analysts like Mr.	01:45:40
10	Boggs do reports like this?	01:45:43
11	A. Evan centralized the credit	01:45:43
12	investment updates that were sent out weekly.	01:45:46
13	Q. And the --	01:45:50
14	A. But yes, it's a firm process. It	01:45:56
15	happens across equities as well.	01:45:59
16	Q. And look back to the confidential,	01:46:01
17	does that refer to other positions other than	01:46:04
18	Wesco?	01:46:05
19	A. I assume so. We -- it's	01:46:06
20	performance and positioning. It says -- so it	01:46:09
21	has, you know, portfolio summary, how we did,	01:46:11
22	updates on, kind of, any news events, across	01:46:15
23	the portfolio within credit, so I assume that	01:46:18
24	just doesn't have any bearing on this	01:46:21
25	conversation. That's why it's redacted.	01:46:23

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1	BHARADWA	
2	Q. Look at the second page. Do you	01:46:24
3	see Mr. Boggs's report? Then, the second	01:46:36
4	sentence, he says, ultimately, the company's	01:46:41
5	existing indentures are extremely tight --	01:46:44
6	THE COURT REPORTER: Wait.	01:46:44
7	Ultimately, the company's?	01:46:43
8	Q. Existing indentures are extremely	01:46:44
9	tight and don't provide for much flexibility.	01:46:52
10	Do you see that, then, it continues?	01:46:55
11	A. Yes.	01:46:57
12	Q. Did you agree that indentures were	01:46:57
13	extremely tight?	01:47:02
14	MR. KURLAND: Objection.	01:47:03
15	A. I take my team's analysis at face	01:47:04
16	value, generally.	01:47:16
17	Q. No reason to disagree then?	01:47:18
18	A. No.	01:47:20
19	Q. Do you recall in what way they were	01:47:21
20	extremely tight?	01:47:27
21	MR. KURLAND: Objection.	01:47:28
22	A. No.	01:47:28
23	Q. And you see the final --	01:47:29
24	penultimate sentence is we are also talking	01:47:43
25	with Platinum on Wednesday and are hopeful to	01:47:46

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1	BHARADWA	
2	get a better sense where their heads are at	01:47:48
3	regarding the investment. Do you see that?	01:47:50
4	A. Yes.	01:47:51
5	Q. Do you recall if Mr. Boggs actually	01:47:51
6	did speak with Platinum?	01:47:56
7	A. I don't recall.	01:47:57
8	Q. Did you have any conversations with	01:47:58
9	them at this time?	01:48:06
10	A. I don't recall.	01:48:07
11	Q. At this time, did you understand	01:48:07
12	that if there was going to be an LME, Platinum	01:48:34
13	would have to approve it?	01:48:38
14	MS. SHARMA: Objection.	01:48:42
15	A. Would have to approve it, what do	01:48:43
16	you mean?	01:48:45
17	Q. I mean Platinum would have to	01:48:45
18	consent to it. There couldn't be an LME	01:48:48
19	without Platinum's consent?	01:48:52
20	A. I didn't know that or consider that	01:48:53
21	one way or the other. It just never came up.	01:49:10
22	Q. Can a portfolio company do a LME	01:49:13
23	without its sponsor's consent?	01:49:19
24	MS. SHARMA: Objection.	01:49:24
25	A. I don't know of any.	01:49:25

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1 BHARADWA

2 Q. You don't know any -- any that have 01:49:33

3 happened without a sponsor's consent? 01:49:38

4 A. No. 01:49:40

5 Q. Do you understand that Platinum was 01:49:40

6 integral to this process? 01:49:46

7 MS. SHARMA: Objection. 01:49:49

8 A. To what process? 01:49:50

9 Q. To any LME? 01:49:51

10 A. I think that would have been our 01:49:53

11 assumption. 01:49:55

12 MR. WALTER: This is going to be 01:50:30

13 Exhibit 10. 01:50:32

14 (Whereupon, the aforementioned 01:50:32

15 Bharadwa Exhibit 10, e-mail was marked 01:50:33

16 as for identification as of this date by 01:50:33

17 the Reporter.) 01:50:45

18 Q. And what you're about to get is -- 01:50:45

19 THE COURT REPORTER: Hold on. 01:50:45

20 Q. Marked as Exhibit 10 is document, 01:50:46

21 Senator_ADVP23-3091-430, sent by you to Mr. 01:50:49

22 Pierson, September 29th, 2021. That is two 01:51:00

23 e-mails from you. Do you recall that you were 01:51:22

24 trying to schedule a call with Platinum about 01:51:28

25 this time? 01:51:31

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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BHARADWA

A. I don't recall, but I see that I was.

01:51:32
01:51:35

Q. And do you know if you proposed the options in your e-mail at the top to Platinum on the call?

01:51:35
01:51:52
01:51:54

A. I don't know. I don't recall the substance of any conversation at that time.

01:51:55
01:52:00

Q. So you don't recall how Platinum reacted to any of these suggestions?

01:52:07
01:52:10

A. No.

01:52:13

Q. You see the first option in the bullet says, PIKing unsecureds. Do you see that?

01:52:14
01:52:23
01:52:26

A. Yes.

01:52:26

Q. Were you thinking about PIKing your unsecured holdings at this time?

01:52:27
01:52:30

A. Would we have? I think that was -- yeah, I think we probably would have, but there's -- I can't -- I'm not unilaterally going to do that.

01:52:32
01:52:39
01:52:43
01:52:45

Q. Ultimately, in the exchange in March 2022, you did PIK your unsecureds, right?

01:52:52
01:52:55

A. Yes.

01:52:58

Q. Why did you take part in that

01:52:58

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1	BHARADWA	
2	exchange?	01:53:00
3	A. Because I was offered the ability	01:53:01
4	to participate, and it was, from an investment	01:53:04
5	case standpoint, a no-brainer.	01:53:08
6	Q. Why was it a no-brainer?	01:53:11
7	A. Because you were securing a better	01:53:13
8	place in a capital structure.	01:53:18
9	Q. Do you know why you were invited to	01:53:21
10	participate?	01:53:29
11	MS. SHARMA: Objection.	01:53:30
12	A. As part of that transaction, we	01:53:31
13	understand that our consent to -- our -- we had	01:53:40
14	a consent right on the PIK notes that was	01:53:48
15	helpful for that process.	01:53:51
16	Q. What was that consent note?	01:53:53
17	A. It -- I don't remember what the	01:53:54
18	exact provision was, but it -- I don't	01:54:06
19	remember -- remember what the exact provision	01:54:11
20	was, but it was basically, you know, Platinum	01:54:12
21	needed to -- our consent in order to effect the	01:54:16
22	transaction in some way, shape, or form. I	01:54:20
23	don't remember exactly what it was.	01:54:25
24	Q. And would you have given that	01:54:25
25	consent if they hadn't given you the	01:54:27

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1	BHARADWA	
2	opportunity to participate?	01:54:33
3	MR. KURLAND: Objection.	01:54:35
4	A. That's a hypothetical.	01:54:35
5	Q. Yes. Would you have?	01:54:37
6	A. No. Well, I -- I don't imagine I	01:54:39
7	would have.	01:54:43
8	Q. What do you think would have	01:54:44
9	happened if you hadn't taken the opportunity to	01:55:01
10	participate with your unsecureds?	01:55:04
11	MR. KURLAND: Objection.	01:55:07
12	MS. SHARMA: Objection.	01:55:09
13	A. Okay.	01:55:12
14	MR. KURLAND: If you can.	01:55:12
15	A. Yeah, what would have happened? I	01:55:13
16	would have stayed in the existing securities,	01:55:14
17	and that would have been a worse economic	01:55:16
18	outcome for us. So I elected to participate.	01:55:19
19	Q. And a worse outcome, why?	01:55:21
20	A. Because we would -- we wouldn't	01:55:25
21	have been up tiered.	01:55:26
22	THE COURT REPORTER: We wouldn't	01:55:26
23	have been?	01:55:26
24	A. Up tiered.	01:55:28
25	Q. Do you know what happened to the	01:55:30

Transcript of Jay Bharadwa, Corporate Designee
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BHARADWA

value of the unsecured notes that were not up
tiered as part of the 2022 transactions?

A. Yes, they went down.

Q. Do you know roughly how much?

A. I don't recall.

MS. SHARMA: Objection.

A. I don't recall.

Q. And do you know what happened to
the value of the new notes that you exchanged
from?

A. I don't recall where they were upon
exchange, so I -- I know where they were on
a -- where they are now. I don't know where
they were exactly before, but I think
directionally, the new ten and a halves went
up. And the 13 and an eighths didn't trade,
and there was no discoverable price. And now,
they're down a lot.

Q. You said the new ten and a halves
went up relative to where the -- relative to
where the 13 and eighths had been?

A. Relative to where the old nines and
eighth and a halves have been, yes. The ten
and a halves --

01:55:32
01:55:38
01:55:40
01:55:41
01:55:44
01:55:47
01:55:49
01:55:49
01:55:58
01:56:01
01:56:02
01:56:07
01:56:11
01:56:12
01:56:15
01:56:18
01:56:21
01:56:24
01:56:25
01:56:28
01:56:31
01:56:33
01:56:36
01:56:39

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BHARADWA

Q. Go ahead, I see.

01:56:40

A. -- were the pro forma note from the up tiered eight and a halves and nines, and that directionally went up, yes. I don't recall where the existings were trading at the time.

01:56:41
01:56:44
01:56:47
01:56:49
01:56:49

MR. WALTER: Tab 21.

01:57:19

(Whereupon, the aforementioned Bharadwa Exhibit 11, e-mail was marked as for identification as of this date by the Reporter.)

01:57:28
01:57:30
01:57:30
01:57:49

Q. What you just got as Exhibit 11 is an e-mail from Mr. Yingst to a bunch of folks as of February 7th, 2022, Bates stamp Senator_ADVP23-3091-565.

01:57:49
01:57:53
01:57:58
01:58:04

THE COURT REPORTER: I'm sorry, hyphen 46?

01:58:04
01:58:04

Q. 565. You see the -- about a third of the way down, it says, in the Debtwire e-mail, Wesco aircraft in talks with select holders for priming roll-up and new capital injection.

01:58:31
01:58:33
01:58:48
01:58:51
01:58:54

THE COURT REPORTER: Wait, I'm sorry, can you say that whole thing

01:58:54
01:58:54

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1	BHARADWA	
2	again?	01:58:54
3	Q. About a third of the way down, it	01:58:45
4	says, in the Debtwire e-mail, Wesco aircraft in	01:58:46
5	talks with select holders for priming roll-up	01:58:50
6	and new capital injection. Do you see that?	01:58:53
7	A. Oh, you're asking me.	01:58:55
8	Q. Yeah.	01:58:55
9	A. Yes, I see that. I see that,	01:59:05
10	sorry.	01:59:06
11	Q. And then, Mr. -- Mr. Boggs forwards	01:59:06
12	it, and Mr. Yingst replies. Was this the first	01:59:11
13	time that you've heard rumors of the March 2022	01:59:19
14	transactions?	01:59:23
15	A. Yeah, I assume so.	01:59:24
16	Q. You aware of any analysis on	01:59:27
17	transactions that Senator did between the	01:59:32
18	October 2021 timeframe and early February 2022?	01:59:38
19	A. What was the question?	01:59:43
20	MR. KURLAND: Objection.	01:59:44
21	Q. Are you aware of any analysis that	01:59:45
22	Senator did on a potential transaction between	01:59:47
23	October 2021 and early February 2022?	01:59:54
24	MS. SHARMA: Objection.	01:59:58
25	A. We clearly had no idea that this	01:59:59

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1	BHARADWA	
2	transaction was going to happen, so we	02:00:01
3	obviously did -- had no -- we did no analysis	02:00:03
4	around this particular thing. We're clearly on	02:00:07
5	the outside and trying to figure out what this	02:00:10
6	Debtwire story means.	02:00:13
7	MR. WALTER: Let's get tab 22.	02:00:37
8	(Whereupon, the aforementioned	02:00:42
9	Bharadwa Exhibit 12, e-mail was marked	02:00:57
10	as for identification as of this date by	02:00:57
11	the Reporter.)	02:00:58
12	Q. This is Exhibit 12.	02:00:58
13	A. Yeah.	02:00:58
14	Q. Bates stamped	02:01:07
15	Senator_ADVP23-3091-1767, e-mail from you to	02:01:17
16	Josh Abramson of PJT, February 10th, 2022, and	02:01:21
17	the chain starts with an e-mail from Jamie Bird	02:01:40
18	of PJT to you the previous day.	02:01:46
19	THE COURT REPORTER: Of -- Jamie	02:01:46
20	Bird of?	02:01:46
21	Q. PJT to you the previous day. Why	02:01:47
22	were PJT getting in touch with you?	02:01:53
23	A. To tell us about the transaction, I	02:01:55
24	recall.	02:02:02
25	Q. And he was getting in touch because	02:02:02

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	he wanted to offer you the opportunity to	02:02:25
3	participate?	02:02:29
4	A. Yes.	02:02:30
5	Q. And did he say why he was offering	02:02:30
6	you the opportunity?	02:02:33
7	MS. SHARMA: Objection.	02:02:35
8	A. They -- he said that they would	02:02:35
9	like our consent, which was embedded in the PIK	02:02:40
10	notes and offer the ability to come along on	02:02:45
11	the up tier transaction, and it seemed like a	02:02:49
12	good economic outcome.	02:02:53
13	Q. Did he suggest that Platinum could	02:02:55
14	do the transaction without your consent?	02:03:08
15	A. He said something to the effect of,	02:03:11
16	we don't know that it's really required, and we	02:03:17
17	think they're other creative ways -- or I	02:03:22
18	don't -- I can't recall what exactly was meant	02:03:27
19	by that, but he did insinuate that it wasn't an	02:03:29
20	absolute requirement that they had my consent,	02:03:35
21	but that it would be helpful.	02:03:37
22	Q. And without getting into the	02:03:38
23	substance of this, did Senator do analysis on	02:03:42
24	whether its consent was required or not?	02:03:46
25	A. I don't recall. It's a legal	02:03:48

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	question, so I -- we -- there's no analysis to	02:03:54
3	do it probably. I -- I assume I asked Evan	02:03:57
4	Gartenlaub, my counsel.	02:04:02
5	THE COURT REPORTER: I'm sorry, I	02:04:02
6	asked Devon?	02:04:02
7	A. Evan Gartenlaub, my counsel.	02:04:01
8	Q. I -- I would object to the	02:04:06
9	suggestion that lawyer's don't do analysis, but	02:04:07
10	that's fine.	02:04:10
11	Did Mr. -- did Mr. Abramson give	02:04:10
12	you a particular time in which you would have	02:04:19
13	to analyze this opportunity?	02:04:22
14	A. I don't recall.	02:04:24
15	Q. Did he say he wanted the	02:04:26
16	transaction done by a certain time?	02:04:29
17	MS. SHARMA: Objection.	02:04:32
18	A. I don't remember. I mean it's a	02:04:32
19	year and a half ago. I think he -- you know, I	02:04:34
20	remember it being a pretty quick, like,	02:04:37
21	everything was already baked. You know, I got	02:04:42
22	on the phone with Greenhill, like, you know,	02:04:45
23	just thereafter, and -- but I don't recall	02:04:46
24	specifics around timing.	02:04:52
25	Q. And Green Hill was representing	02:04:55

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1	BHARADWA	
2	who?	02:05:00
3	THE COURT REPORTER: I'm sorry, say	02:05:00
4	that again?	02:05:00
5	Q. Greenhill was representing who?	02:04:59
6	A. Carlyle.	02:05:00
7	Q. And did Mr. Abramson tell you to	02:05:04
8	get in touch with them?	02:05:07
9	A. Yes.	02:05:07
10	Q. Did Carlyle say whether your	02:05:08
11	consent was required or not?	02:05:14
12	A. I can't recall one way or the	02:05:15
13	other.	02:05:16
14	Q. At this point, so this is	02:05:17
15	February 10th, 2022. Were the terms of the	02:05:27
16	March transactions already negotiated?	02:05:32
17	A. Yes.	02:05:34
18	Q. So from your perspective, this is	02:05:35
19	a -- it was a take it or leave it?	02:05:39
20	A. Yes.	02:05:40
21	Q. Did you consider trying to	02:05:40
22	negotiate any of the terms?	02:05:53
23	A. That wasn't an option, so no. I --	02:05:54
24	I -- well, it was a year and a half ago. I	02:06:07
25	assume there were things that I would have	02:06:09

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1	BHARADWA	
2	liked more rather than what was on the paper.	02:06:11
3	I don't recall whether I, like, asked for them	02:06:15
4	at one point or time, but I remember, you know,	02:06:17
5	having zero sway in -- in that this was -- the	02:06:20
6	terms were already baked, and there was -- you	02:06:25
7	know, I was explicitly told, like, this is, you	02:06:29
8	know, take it or leave it.	02:06:33
9	Q. So do you understand that for the	02:06:34
10	exchange of the unsecured notes, it was -- the	02:06:41
11	participants were you, Platinum, and Carlyle?	02:06:44
12	A. Yes.	02:06:52
13	Q. And why was Carlyle involved?	02:06:52
14	A. I think they had previously owned	02:06:57
15	the business, right, and they had sold it to	02:07:01
16	Platinum if I recall correctly. And -- way	02:07:03
17	back and had taken that stake as part of --	02:07:06
18	part of that transaction if I recall correctly.	02:07:11
19	Q. And that stake, do you mean a	02:07:13
20	position in the unsecureds?	02:07:16
21	A. Yeah.	02:07:21
22	Q. And do you know why Platinum was	02:07:22
23	included in the transaction?	02:07:35
24	A. No.	02:07:36
25	Q. Did you ask?	02:07:37

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	A. I don't recall.	02:07:38
3	MR. WALTER: Mark this.	02:08:12
4	(Whereupon, the aforementioned	02:08:12
5	Bharadwa Exhibit 13, e-mail was marked	02:08:19
6	as for identification as of this date by	02:08:19
7	the Reporter.)	02:08:21
8	Q. And you've just been handed	02:08:21
9	Exhibit 13, which is an e-mail from you to a	02:08:46
10	Jamal Davis at PJT on February 17th, 2022.	02:08:50
11	It's Bates stamped Senator_ADV23 --	02:08:55
12	THE COURT REPORTER: I'm sorry,	02:08:55
13	ADV?	02:08:55
14	Q. P23-3091-935, and I've got a	02:09:04
15	question about the e-mail at the top of it.	02:09:14
16	You see you write, thanks Jamal. PJT team:	02:09:26
17	Obviously, Carlyle was driving the prior call	02:09:30
18	with management -- would we be able to get on	02:09:34
19	the call with management separately for	02:09:36
20	30 minutes, et cetera. Do you see that?	02:09:39
21	A. Yes.	02:09:41
22	Q. So do you recall who at management	02:09:41
23	you were talking with?	02:09:58
24	A. Do I recall what?	02:09:59
25	Q. Who at management you were talking	02:10:01

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1	BHARADWA	
2	with?	02:10:03
3	A. I think it was this -- I think it	02:10:03
4	was this guy that came over from Lombard Odier.	02:10:11
5	Co -- I think it was David Colial if I'm not	02:10:16
6	mistaken, but he and probably his -- couple of	02:10:20
7	other managers.	02:10:26
8	Q. Do you recall what you were talking	02:10:27
9	with management about?	02:10:31
10	A. I think a plan that they had	02:10:32
11	presented.	02:10:34
12	Q. For the March transactions?	02:10:34
13	A. No, for the -- the business plan	02:10:37
14	for the future of Wesco.	02:10:40
15	Q. So did you have any discussions	02:10:44
16	with Wesco management about the March 2022	02:10:48
17	transactions?	02:10:52
18	A. No.	02:10:52
19	Q. Was that all between you and	02:10:53
20	Platinum and Carlyle?	02:10:57
21	A. As I said, my --	02:10:58
22	MS. SHARMA: Objection.	02:11:01
23	A. My conversation about that	02:11:02
24	transaction was about, you know, as simple as	02:11:05
25	saying yes and signing our names, and I may	02:11:11

Transcript of Jay Bharadwa, Corporate Designee
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BHARADWA

have -- I don't know. As I said, I maybe --
maybe at one point, I may have dreamt about
getting some provision or another, but the deal
was not ours to negotiate.

02:11:14
02:11:16
02:11:20
02:11:24

Q. Okay. But to the extent you had
conversations, they were between you and
Platinum and Carlyle --

02:11:25
02:11:29
02:11:31

MS. SHARMA: Objection.

02:11:33

Q. -- as opposed to management?

02:11:34

A. I don't -- I don't even think I
talked to Carlyle. I may have talked to
Carlyle, like, once just to figure out who they
were on the other side, but no, there was no
discussion around the transaction with Carlyle
specifically that I can recall or with
Platinum.

02:11:35
02:11:37
02:11:39
02:11:42
02:11:44
02:11:45
02:11:47

Q. Then, who -- who was it with?

02:11:48

A. Greenhill.

02:11:51

Q. So did PJT drop out of the picture
after this time?

02:11:52
02:12:10

A. Yes. I -- yeah.

02:12:10

Q. Go to --

02:12:43

MR. WALTER: Mark this.

02:12:52

(Whereupon, the aforementioned

02:12:54

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	Bharadwa Exhibit 14, e-mail was marked	02:12:55
3	as for identification as of this date by	02:12:55
4	the Reporter.)	02:12:57
5	Q. This is Exhibit 14. A document	02:12:58
6	Bates stamped Senator_ADVP23-3091-0001324.	02:13:19
7	It's an e-mail from Mr. Boggs to you and Mr.	02:13:30
8	Yingst. Again, most of it's redacted. Do you	02:13:34
9	see at the -- at the end of it, it talks about	02:13:40
10	a follow-up call with WAIR management and then	02:13:45
11	ongoing discussion with PJT/the company around	02:13:48
12	an up tier exchange. So was -- was Mr. Boggs	02:13:51
13	having any discussions with PJT or the company	02:14:03
14	that you weren't part of?	02:14:07
15	A. Not that I know of.	02:14:08
16	Q. So part of the March 2022	02:14:12
17	transactions, you exchanged your unsecured	02:14:34
18	notes and also your secured notes?	02:14:36
19	A. Yeah.	02:14:38
20	Q. Were you always offered the	02:14:40
21	opportunity to exchange both sets of notes, the	02:14:45
22	secured and the unsecured?	02:14:52
23	A. I believe so. I don't remember any	02:14:54
24	differential sequencing.	02:14:59
25	Q. So it's, for example, not a case	02:15:01

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	that you were offered the chance to exchange	02:15:11
3	your unsecured notes, and then, you asked to be	02:15:15
4	able to exchange your secured notes as well?	02:15:18
5	MR. KURLAND: Objection.	02:15:21
6	A. Not that I recall.	02:15:22
7	Q. Did you provide any new money to	02:15:22
8	the company as part of the transactions?	02:15:40
9	A. We were so small. I don't actually	02:15:42
10	remember if we, sort of, plugged in a pro rata.	02:15:58
11	Now, I don't believe we did. It would have	02:16:10
12	been so small, but I don't believe we did. But	02:16:11
13	I honestly can't recall, so it would have	02:16:12
14	been -- our pro rata share would have been so	02:16:14
15	small.	02:16:17
16	Q. And the consent right you had, you	02:16:17
17	understand that you had it because of the size	02:16:24
18	of your positions -- position in the 2028s?	02:16:27
19	A. I don't recall if it was because of	02:16:29
20	the size or because it was just an indenture.	02:16:32
21	I don't recall.	02:16:35
22	Q. Okay. But did you -- before you	02:16:36
23	were told that you had a consent right, had you	02:16:38
24	consciously made sure that you would have a	02:16:44
25	blocking right?	02:16:47

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1	BHARADWA	
2	MS. SHARMA: Objection.	02:16:48
3	A. I don't recall.	02:16:49
4	Q. And by that I mean, you hadn't	02:16:56
5	deliberately purchased a certain amount of	02:17:03
6	notes so you would be able to --	02:17:08
7	THE COURT REPORTER: I'm sorry, you	02:17:00
8	hadn't deliberately?	02:17:01
9	Q. Purchased a certain amount of notes	02:17:05
10	so you would be able to consent or not?	02:17:09
11	A. No, not that I recall.	02:17:11
12	Q. Are you familiar with the indenture	02:17:13
13	governing any of the series of notes?	02:17:33
14	A. It's not something I ever dug into	02:17:36
15	myself, but we keep those on file, and usually	02:17:40
16	legal, at points like this, take a crack at it.	02:17:46
17	But I am -- I am familiar, but that's about it.	02:17:51
18	Q. When it comes to indentures for the	02:17:57
19	credit that you hold, were you normally	02:18:15
20	reviewing them yourself, or were you leaving	02:18:19
21	that to legal?	02:18:22
22	A. Generally not.	02:18:22
23	Q. You generally wouldn't review them	02:18:25
24	yourself?	02:18:27
25	A. Correct.	02:18:27

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1	BHARADWA	
2	Q. Do you know if you reviewed any of	02:18:28
3	these ones yourself?	02:18:31
4	A. I don't believe I did.	02:18:32
5	Q. Do you know what benefits Platinum	02:18:35
6	could have had with the 2022 transactions?	02:18:57
7	A. I know they got incremental runway	02:18:59
8	for the business, which is what we thought was	02:19:07
9	the biggest benefit overall is the ability to	02:19:11
10	see through to a better business plan, and I	02:19:14
11	don't know exactly what benefits they recouped	02:19:19
12	from their existing holdings. I don't know	02:19:22
13	exactly what they owned. I know they had a big	02:19:27
14	slug of the unsecureds, so up tiering those	02:19:31
15	presumably had some benefit. Although	02:19:40
16	that's -- could be pretty limited, I think,	02:19:41
17	in -- in the end, but that's -- that's all I --	02:19:41
18	that's all I can comment on.	02:19:44
19	Q. Did you ever ask at the time	02:19:45
20	whether -- did you ever ask at the time what	02:19:47
21	benefits they would get out of the deal	02:19:51
22	themselves?	02:19:53
23	A. No.	02:19:53
24	Q. Was that important to you?	02:19:54
25	A. No. We were presented with an	02:19:59

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1	BHARADWA	
2	economic transaction, and that's about the	02:20:04
3	extent of, kind of, how we evaluated the	02:20:08
4	situation.	02:20:11
5	MR. WALTER: Mark this.	02:20:48
6	(Whereupon, the aforementioned	02:20:48
7	Bharadwa Exhibit 15, original unsecured	02:20:51
8	indenture was marked as for	02:20:51
9	identification as of this date by the	02:20:51
10	Reporter.)	02:21:03
11	Q. I've just handed you Exhibit 15.	02:21:03
12	You can just flip the first page. You'll see	02:21:20
13	it's a -- the indenture governing the 2027	02:21:23
14	notes.	02:21:27
15	A. Okay.	02:21:27
16	Q. You see that? You'll be glad that	02:21:27
17	I'm not going to ask you to peruse it. Turn to	02:21:32
18	page 57. You see section 3.02?	02:21:45
19	A. Uh-huh.	02:21:57
20	THE COURT REPORTER: Yes?	02:21:57
21	A. Yes.	02:21:57
22	Q. You understand this is the	02:21:58
23	indenture governing the unsecured notes that	02:22:01
24	you exchanged?	02:22:04
25	A. Yes.	02:22:04

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1	BHARADWA	
2	Q. Do you have an understanding of the	02:22:05
3	first sentence of section 3.02 that begins, if	02:22:17
4	less than all of the Unsecured Notes are to be	02:22:22
5	redeemed?	02:22:28
6	THE COURT REPORTER: I'm sorry,	02:22:28
7	less than all?	02:22:28
8	Q. Of the Unsecured Notes are to be	02:22:23
9	redeemed?	02:22:28
10	MR. KURLAND: Objection.	02:22:29
11	A. I can read it and try to come up	02:22:30
12	with an understanding, but I haven't read it	02:22:36
13	yet, so --	02:22:38
14	Q. Can you read it?	02:22:38
15	A. Sure. Yes, okay.	02:22:39
16	Q. So what -- so do you understand	02:22:59
17	that this means that in an exchange, such as in	02:23:04
18	the 2022 transaction, if less than all of the	02:23:09
19	unsecured notes are exchanged, then they will	02:23:14
20	be selected for exchange pro rata?	02:23:17
21	MR. KURLAND: Objection.	02:23:20
22	A. Yeah, I can't comment on particular	02:23:21
23	circumstances associated with this transaction,	02:23:23
24	but I see what this says, which is a pro	02:23:26
25	rata -- a pro rata clause.	02:23:30

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1	BHARADWA	
2	Q. And do you understand that was	02:23:31
3	there to protect the unsecured note holders?	02:23:36
4	MR. KURLAND: Objection.	02:23:39
5	A. Yes. It's a standard protection,	02:23:39
6	yes.	02:23:46
7	Q. And do you understand that the	02:23:46
8	2020 -- excuse me -- the 2022 transactions, as	02:24:03
9	far as they concerned the unsecured notes, were	02:24:04
10	not pro rata?	02:24:07
11	A. I do understand that, yes.	02:24:08
12	Q. Following the 2022 transactions,	02:24:10
13	did Senator sell out of its position in Wesco's	02:24:17
14	credit --	02:24:27
15	THE COURT REPORTER: I'm sorry, did	02:24:27
16	Senator?	02:24:27
17	Q. Sell -- sell out of its position in	02:24:24
18	Wesco's credit, or did you sell down?	02:24:26
19	A. In the -- in which tranche?	02:24:28
20	Q. In any of them?	02:24:32
21	A. Yes. We sold our up tiered ten and	02:24:33
22	a halves, all but -- I think we have a very	02:24:37
23	small position today, but we primarily sold	02:24:43
24	down that tranche, yeah.	02:24:46
25	Q. And why did you sell down?	02:24:49

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	A. Because the price was close to par.	02:24:56
3	Q. Did you speak to Carlyle directly	02:24:59
4	about this transaction?	02:25:10
5	A. After the transaction, I did a	02:25:11
6	couple of times speak to Jessie Howell over	02:25:23
7	there, who manages that investment for them.	02:25:26
8	Q. I see. Did you speak to Mr. Howell	02:25:29
9	before the transactions?	02:25:32
10	A. I don't recall. As I mentioned, I	02:25:34
11	had never had any interaction with him before	02:25:39
12	this transaction was brought to us. I -- I	02:25:42
13	don't know if I spoke with them, you know, just	02:25:45
14	to figure out who they were and for them to	02:25:47
15	know who we were. That would be a very normal	02:25:50
16	thing, but, like, if -- if we did, it was,	02:25:52
17	like, you know, circumstantial, like, nothing	02:25:56
18	of --	02:26:02
19	Q. And you said that -- I think that	02:26:04
20	you approved transactions in the credit on	02:26:18
21	behalf of Senator or for Wesco?	02:26:21
22	A. Yes.	02:26:23
23	Q. And is that the -- the kind of	02:26:23
24	thing that -- when you're giving this consent,	02:26:28
25	is that by e-mail? Is it formal memo?	02:26:33

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	A. What kind of consent?	02:26:35
3	Q. If you're consenting to a trade in	02:26:36
4	the credit that --	02:26:39
5	A. A trade in the credit, it would be	02:26:39
6	reflected in our trading blotter, which is	02:26:44
7	sent, you know, at the time of a -- a trade	02:26:47
8	getting put through.	02:26:51
9	Q. Oh, sure, but for the actual	02:26:52
10	consent of -- that you're giving?	02:26:55
11	A. It would be -- it could be. It's	02:26:56
12	usually -- is on Bloomberg or e-mail, but	02:27:01
13	there's -- it could have been done verbally.	02:27:04
14	Q. And do you understand that not all	02:27:06
15	of the unsecured notes were exchanged in	02:27:12
16	March 2022 transactions?	02:27:17
17	A. Yes.	02:27:18
18	Q. Would you have given your consent	02:27:18
19	to the transactions if all of the unsecured	02:27:25
20	notes were to have been exchanged?	02:27:27
21	MR. KURLAND: Objection.	02:27:29
22	A. That wasn't the transaction that	02:27:29
23	was afforded, so it's a hypothetical.	02:27:33
24	Q. Would you have?	02:27:35
25	MR. KURLAND: Objection. You can	02:27:38

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1	BHARADWA	
2	answer if you can.	02:27:41
3	A. Probably.	02:27:41
4	MR. WALTER: Counsel, I think --	02:27:50
5	can we take five minutes off the record,	02:27:52
6	so I can check and then --	02:27:55
7	MR. KURLAND: Yeah, absolutely.	02:27:56
8	THE VIDEOGRAPHER: We are going off	02:27:57
9	the record. The time is 2:28 p.m.	02:27:59
10	(Whereupon, an off-the-record	02:28:02
11	discussion was held.)	02:28:02
12	THE VIDEOGRAPHER: We are going	02:40:46
13	back on the record. The time is	02:40:47
14	2:41 p.m.	02:40:49
15	MR. KURLAND: My -- oh, sorry, are	02:40:49
16	you continuing? I'll just --	02:40:49
17	Q. So as a result of the transactions,	02:40:49
18	the -- well, can you describe the benefits to	02:41:01
19	the company of the transactions?	02:41:10
20	MS. SHARMA: Objection.	02:41:14
21	A. Yeah, I mean, the company at	02:41:14
22	that -- that company at the time avoided a, you	02:41:22
23	know, a costly, lengthy filing and had	02:41:26
24	liquidity to help, sort of, see through to the	02:41:31
25	business improvement case that they had laid	02:41:36

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	out.	02:41:39
3	Q. Did -- did the benefits include	02:41:39
4	PIKing the interest on the unsecureds?	02:41:42
5	MS. SHARMA: Objection.	02:41:46
6	A. Did that benefit the company, yeah.	02:41:46
7	Q. Would the company have benefited	02:41:49
8	more if the interest on all of the unsecureds	02:41:54
9	had been PIKed?	02:41:57
10	MS. SHARMA: Objection.	02:41:58
11	A. They would have saved that interest	02:41:58
12	expense.	02:42:06
13	Q. So yes?	02:42:10
14	A. Yeah, the company would have saved	02:42:11
15	additional interest expense. I don't know if	02:42:20
16	there's an offset that I'm not considering	02:42:23
17	right now, but yes.	02:42:25
18	MR. WALTER: I've got nothing	02:42:28
19	further right now. Thank you.	02:42:29
20	MR. MARGULYAN: All right. Can we	02:42:39
21	go off the record?	02:42:39
22	THE VIDEOGRAPHER: We are going off	02:42:40
23	the record. The time is 2:43 p.m.	02:42:42
24	(Whereupon, an off-the-record	02:42:48
25	discussion was held.)	02:44:35

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1	BHARADWA	
2	MR. MARGULYAN: Mark one of each.	02:44:35
3	(Whereupon, the aforementioned	02:44:35
4	Bharadwa Exhibit 16 and 17, documents	02:45:53
5	was marked as for identification as of	02:45:53
6	this date by the Reporter.)	02:47:13
7	THE VIDEOGRAPHER: We are going	02:47:13
8	back on the record. The time is	02:47:21
9	2:47 p.m.	02:47:23
10	EXAMINATION BY	02:47:23
11	MR. MARGULYAN:	02:47:27
12	Q. All right. Mr. Bharadwa, good	02:47:27
13	afternoon.	02:47:29
14	A. Good afternoon.	02:47:29
15	Q. Once again, my name is Igor	02:47:30
16	Margulyan, and I'm with my colleague, Michael	02:47:31
17	Brasky. We're from the law firm of Kobre &	02:47:32
18	Kim, and we represent the 2024, 2026 note	02:47:35
19	holders in this case.	02:47:37
20	A. Okay.	02:47:38
21	Q. So we marked -- so the court	02:47:43
22	reporter is handing you what we marked as	02:47:44
23	Exhibit 16 and 17.	02:47:45
24	THE COURT REPORTER: Both of them.	02:47:51
25	Q. Exhibit 16 is a copy of a rule	02:47:52

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	30(b)(6) deposition notice to Senator	02:47:55
3	Investment Group LP. You can take a moment to	02:47:56
4	flip through it, and let me know if you've seen	02:47:59
5	this document before?	02:48:02
6	A. I have not.	02:48:03
7	Q. Okay. But do you understand that	02:48:04
8	you're appearing today pursuant to this	02:48:05
9	30(b)(6) notice as Senator's corporate	02:48:08
10	representative?	02:48:11
11	A. Yes.	02:48:11
12	Q. And do you also understand that	02:48:12
13	pursuant to this notice in Exhibit 16, you're	02:48:13
14	testifying on behalf of Senator with respect to	02:48:15
15	the topics that are listed in this Exhibit 16?	02:48:17
16	A. Yes.	02:48:19
17	Q. Okay. And then, if you could --	02:48:20
18	yeah, no, please continue. Let me know when	02:48:24
19	you're finished --	02:48:26
20	A. I'm fine.	02:48:26
21	Q. -- looking through it. And then,	02:48:27
22	Exhibit 17 is a copy of an individual subpoena	02:48:33
23	that was -- that's directed to you, Mr.	02:48:38
24	Bharadwa.	02:48:40
25	A. Okay.	02:48:40

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BHARADWA

Q. Are you also appearing today

02:48:40

pursuant to this deposition subpoena that we

02:48:42

marked as Exhibit 17?

02:48:45

A. Yes.

02:48:46

Q. And you understand that pursuant to

02:48:46

the subpoena, you're also appearing --

02:48:52

THE COURT REPORTER: I'm sorry,

02:48:52

slow down. You said, you understand?

02:48:52

Q. And do you understand that pursuant

02:48:49

to the subpoena that we marked as Exhibit 17,

02:48:52

you're also testifying today in your individual

02:48:54

capacity?

02:48:56

A. Yes.

02:48:56

Q. I'd like to ask you a few

02:48:59

questions, Mr. Bharadwa. At the bottom of the

02:49:07

exhibit that's already been marked, it's

02:49:09

Exhibit 6.

02:49:12

A. Okay.

02:49:12

Q. Would you mind grabbing that one?

02:49:12

A. Yes.

02:49:16

Q. So we had looked at this exhibit

02:49:17

earlier, and I believe you testified that this

02:49:23

is a copy of a Bloomberg chat between you and

02:49:25

Mr. Aggarwal from BlackRock, correct?

02:49:29

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	A. Yes.	02:49:33
3	Q. So if I could direct your attention	02:49:33
4	to the second page of this exhibit that ends	02:49:36
5	with the Bates stamp 5331, and direct your	02:49:40
6	attention specifically to -- I guess it would	02:49:46
7	be, one, two, three, four -- eighth line from	02:49:52
8	the top, where Mr. Aggarwal asked you, any	02:49:53
9	priming capacity. Do you see that?	02:49:57
10	A. Yeah.	02:49:58
11	Q. And you responded, no, correct?	02:49:59
12	A. I see that.	02:50:03
13	Q. What was your understanding of what	02:50:04
14	Mr. Aggarwal meant when he asked, any priming	02:50:07
15	capacity?	02:50:11
16	A. Meaning, could they put in super	02:50:11
17	senior debt, or could someone put in super	02:50:11
18	senior debt and inject liquidity that way.	02:50:15
19	THE COURT REPORTER: And I'm sorry?	02:50:15
20	A. And inject liquidity that way.	02:50:16
21	Q. Put in super senior debt where?	02:50:23
22	A. Well, priming is definitionally at	02:50:26
23	the top.	02:50:29
24	Q. You're talking about in core,	02:50:32
25	correct?	02:50:34

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1 BHARADWA

2 A. Yes, the top of the capital 02:50:34

3 structure. 02:50:37

4 Q. Why did you say, no? 02:50:37

5 A. Because the -- the document -- 02:50:38

6 the -- our understanding of the documents is 02:50:44

7 that there wasn't priming capacity. 02:50:45

8 Q. When you say documents, to which 02:50:48

9 documents are you referring? 02:50:49

10 A. The indenture and, I guess, there's 02:50:50

11 no credit agreements. There's no loan, so it 02:51:03

12 would be the indenture. 02:51:04

13 Q. So this conversation that we were 02:51:08

14 just discussing in Exhibit 6 took place on 02:51:11

15 September 9, 2021, it looks like, correct? 02:51:14

16 A. Yeah. 02:51:16

17 Q. So prior to September 9, 2029 02:51:17

18 (sic), did you review the indentures for the 02:51:21

19 2026 notes? 02:51:25

20 A. Not personally. 02:51:26

21 Q. Then what was the basis for your 02:51:27

22 being able to respond to Mr. Aggarwal's 02:51:31

23 question about there being priming capacity? 02:51:35

24 A. Because we have our counsel look 02:51:37

25 into these questions and -- and/or the team, so 02:51:40

Transcript of Jay Bharadwa, Corporate Designee
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BHARADWA

my analysts would have given me their read in connection with the -- our legal counsel, and that's their belief.

02:51:43
02:51:47
02:51:50

Q. Can I have you look at what's been marked as Exhibit 9?

02:51:51
02:53:00

A. Yeah. I've got it.

02:53:01

Q. Mr. Bharadwa, I believe you -- you testified that what we see here in this Exhibit 9 is a redacted copy of a weekly update --

02:53:16
02:53:20
02:53:23
02:53:29

A. Yes.

02:53:29

Q. -- that Mr. Boggs prepared with respect to Senator's credit portfolios?

02:53:30
02:53:33

A. Yes.

02:53:36

Q. Is what we see here a draft of that update?

02:53:36
02:53:44

A. I believe so because Evan usually sends out a draft so that myself or other members of the team can add or -- you know, add any, you know, color or names that we might be specifically working on to the update before it's sent out in file form.

02:53:44
02:53:52
02:53:57
02:54:01
02:54:04
02:54:07

Q. Do you usually review every update -- every draft update of this credit

02:54:09
02:54:21

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1	BHARADWA	
2	weekly report that Mr. Boggs would send to you?	02:54:23
3	A. Yes.	02:54:27
4	Q. And if you had any comments and	02:54:28
5	edits to the draft, you would respond to him in	02:54:36
6	writing and provide those?	02:54:40
7	A. Yes.	02:54:40
8	Q. If you didn't have any comments or	02:54:41
9	edits, would you also respond to him in writing	02:54:46
10	and confirm that?	02:54:49
11	A. Usually.	02:54:50
12	Q. And then, once you signed off on	02:54:51
13	the draft, where does it go -- of this credit	02:54:57
14	weekly update?	02:55:00
15	A. It goes out to everybody at the	02:55:00
16	firm.	02:55:00
17	THE COURT REPORTER: I'm sorry, it?	02:55:00
18	A. It goes out to all -- all	02:55:00
19	investment employees at Senator.	02:55:03
20	Q. So still staying -- staying on this	02:55:05
21	Exhibit 9, Mr. Bharadwa, do you recall if you	02:55:15
22	had any comments or edits to this --	02:55:23
23	A. I don't recall.	02:55:25
24	Q. -- draft, regarding a core that Mr.	02:55:26
25	Boggs prepared as we see in this Exhibit 9?	02:55:37

Transcript of Jay Bharadwa, Corporate Designee
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BHARADWA

THE COURT REPORTER: I'm sorry,
regarding the?

MR. MARGULYAN: Huh?

THE COURT REPORTER: I'm sorry,
regarding the?

Q. Regarding a core that Mr. Boggs
prepared in this Exhibit 9?

A. I do not recall.

Q. If I could direct your attention to
the second sentence of his draft summary -- of
Mr. Boggs's draft summary, where it says,
ultimately the company's existing indentures
are extremely tight.

THE COURT REPORTER: Wait, existed
in?

Q. Indentures are extremely tight, and
don't provide for much flexibility (recall that
this financing had a cool market reception at
time of syndication). Do you see that?

A. Yes.

Q. Do you know what Mr. Boggs meant
when he said, recall that this financing had a
cold market reception at the time of
syndication?

02:55:27
02:55:38
02:55:39
02:55:40
02:56:05
02:56:09
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02:56:19
02:56:19
02:56:14
02:56:21
02:56:26
02:56:30
02:56:32
02:56:33
02:56:38
02:56:40
02:56:42

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1 BHARADWA

2 A. Yes, the deal struggled upon -- 02:56:43

3 upon initial syndication. 02:56:47

4 Q. Which deal is that? 02:56:50

5 A. The entire Incora financing upon 02:56:51

6 new issue. It wasn't like everybody was 02:56:54

7 running out to buy it. 02:56:57

8 Q. Do you know why the deal struggled? 02:57:00

9 A. Yeah, it was more highly levered 02:57:04

10 than other deals. It was rated -- 02:57:06

11 THE COURT REPORTER: I'm sorry? 02:57:06

12 A. It was more highly levered than 02:57:04

13 other deals, and it was rated badly. 02:57:06

14 Q. Other than being highly levered, do 02:57:08

15 you recall if there were any other reasons why 02:57:26

16 the deal was rated badly? 02:57:28

17 A. I don't recall. 02:57:30

18 Q. All right. Can I have you take a 02:57:31

19 look at Exhibit 8? 02:57:58

20 A. Okay. 02:58:12

21 Q. Mr. Bharadwa, so as you may recall, 02:58:13

22 Exhibit 8 that we looked at previously is a 02:58:15

23 copy of a -- contains a copy of an e-mail 02:58:19

24 exchange on the first page that ends in 426 02:58:23

25 stamp, between yourself and a couple of folks 02:58:28

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	at Senator and also several people at Evercore.	02:58:32
3	Do you see that?	02:58:36
4	A. I see that.	02:58:37
5	Q. And -- and so just to -- just to	02:58:37
6	recap, according to what we see here in	02:58:40
7	Exhibit 8, it looks like sometime after	02:58:43
8	September 16th, 2021, Senator had a call with	02:58:54
9	Evercore about Incora, correct?	02:58:58
10	THE COURT REPORTER: About, I'm	02:58:58
11	sorry?	02:58:58
12	Q. About Incora, correct?	02:58:59
13	A. I don't know. After the 23rd, is	02:59:03
14	that what you're asking?	02:59:11
15	Q. No. So let -- let's -- let's do	02:59:12
16	this. So if you look at the top -- not the	02:59:16
17	topmost e-mail, but the second e-mail from the	02:59:19
18	top from Mr. Daniel Lakhdhir --	02:59:22
19	A. Yeah, yeah.	02:59:22
20	Q. -- presumably, to you and some	02:59:24
21	other people --	02:59:26
22	A. Yeah.	02:59:26
23	Q. -- on September 23rd, 2021, where	02:59:26
24	he says, good morning, Senator team. Just	02:59:29
25	wanted to circle back as discussed on Monday.	02:59:31

Transcript of Jay Bharadwa, Corporate Designee
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1		BHARADWA	
2	A.	Yeah.	02:59:31
3	Q.	And see if it makes sense to	02:59:34
4		reconnect, either tomorrow or early next week;	02:59:36
5		do you see that?	02:59:38
6	A.	Yep, I do.	02:59:39
7	Q.	Does this refresh your memory	02:59:40
8		whether a call took place?	02:59:41
9	A.	Yeah, so a call must have taken	02:59:42
10		Monday, yes.	02:59:44
11	Q.	Did you participate in that call?	02:59:44
12	A.	I don't recall.	02:59:46
13	Q.	And so you responded that same day,	02:59:46
14		on September 23, 2021, to Mr. Lakhdhir of	02:59:51
15		Evercore and said, hi Daniel. Not much has	02:59:56
16		happened or progressed over the past week, so	03:00:00
17		probably best to stay close and play by ear on	03:00:02
18		when to connect next.	03:00:07
19	A.	Yeah.	03:00:07
20	Q.	Do you see that? So Mr. Bharadwa,	03:00:08
21		to what were you referring when you said not	03:00:13
22		much has happened or progressed over the past	03:00:16
23		week?	03:00:19
24	A.	I have no idea.	03:00:19
25	Q.	Do you recall why did you say that	03:00:20

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1	BHARADWA	
2	this -- that it was best to stay close and play	03:00:29
3	by ear on what -- on when to connect next?	03:00:31
4	A. Letting the advisors off easily.	03:00:33
5	Like, we didn't want to, like, waste time	03:00:35
6	engaging with them is what I -- just thinking	03:00:38
7	about, like, what -- what I'm probably, you	03:00:41
8	know, telling him. Just like, we -- you know,	03:00:44
9	we don't really have anything more to discuss,	03:00:49
10	but let's, like -- you know, let's just, like,	03:00:52
11	keep in touch. That's what this reads like to	03:00:56
12	me, but I don't recall exactly, you know. It	03:00:59
13	was two years ago.	03:01:02
14	Q. Okay.	03:01:29
15	MR. MARGULYAN: Would you mark	03:01:29
16	these, please?	03:01:32
17	THE COURT REPORTER: Sure.	03:01:32
18	MR. MARGULYAN: That's going to be	03:01:33
19	18 and 19.	03:01:37
20	(Whereupon, the aforementioned	03:01:37
21	Bharadwa Exhibit 18 and 19, documents	03:01:38
22	was marked as for identification as of	03:01:38
23	this date by the Reporter.)	03:02:00
24	Q. Mr. Bharadwa, so the court reporter	03:02:00
25	has handed you what we marked as Exhibits 18	03:02:01

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	and 19. For the record, Exhibit 18 bears	03:02:05
3	Senator's Bates stamp ending in 0434, and I'll	03:02:10
4	represent for the record that Exhibit 19 is an	03:02:16
5	attachment to the e-mail that we see in	03:02:18
6	Exhibit 18. And that attachment, Exhibit 19,	03:02:22
7	also bears the Senator production Bates number	03:02:25
8	that ends in 0432. If you could take a moment	03:02:29
9	to review these and then let me know when	03:02:33
10	you're finished.	03:02:36
11	A. Okay, finished.	03:02:59
12	Q. Do you recognize these documents?	03:03:00
13	A. I -- I recall the e-mail chain	03:03:02
14	very -- very topically. I don't remember this	03:03:04
15	letter of authorization or anything.	03:03:11
16	Q. But can you briefly describe what	03:03:12
17	this conversation is about in this Exhibit 18?	03:03:15
18	A. Yeah, it's clearly there's a	03:03:18
19	request for our holdings in these various	03:03:19
20	tranches of Wesco to be delivered to an agent	03:03:24
21	of the company, and we were internally just	03:03:28
22	discussing -- not even discussing, just saying	03:03:35
23	are we supposed to deliver our holdings	03:03:39
24	information, and Evan, our general counsel,	03:03:43
25	suggested that we can disclose or ignore, and	03:03:49

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1	BHARADWA	
2	we generally ignore them unless we have a	03:03:51
3	business reason to disclose. So I'm looking at	03:03:54
4	the same thing you are.	03:03:56
5	Q. So just -- just to be clear for the	03:03:57
6	record, the request that we're seeing in -- in	03:04:00
7	Exhibit 18 was concerning Senator's holdings in	03:04:04
8	Incora's 2024 notes, 2026 notes, and 2027	03:04:12
9	notes, correct?	03:04:15
10	A. I believe so.	03:04:16
11	Q. Do you recall if Senator ultimately	03:04:16
12	ended up responding to this disclosure request?	03:04:21
13	A. I do not recall, no.	03:04:24
14	Q. And do you know why -- let me back	03:04:26
15	up. So for the record, Exhibit 18 contains	03:04:31
16	this e-mail exchange that's dated	03:04:37
17	November 12th, 2021, correct?	03:04:39
18	A. Yes.	03:04:40
19	Q. Do you know why in November 2021,	03:04:41
20	Incora engaged an agent to identify holders of	03:04:47
21	their securities that are listed in this	03:04:52
22	Exhibit 18?	03:04:54
23	A. I do not know.	03:04:55
24	Q. Mr. Bharadwa, so Senator is aware	03:04:56
25	that on March 28, 2022, Incora announced the	03:05:41

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	closing of a transaction that restructured its	03:05:46
3	debt, correct?	03:05:49
4	A. Yes.	03:05:49
5	Q. Going forward, I'll refer to that	03:05:50
6	transaction as the 2022 transaction; is that	03:05:52
7	okay?	03:05:54
8	A. That's fine.	03:05:54
9	Q. You'll understand what I mean when	03:05:55
10	I say --	03:05:55
11	A. Yes.	03:05:55
12	Q. -- the 2022 transaction?	03:05:57
13	A. Yes.	03:05:58
14	MR. MARGULYAN: Mark this.	03:07:18
15	(Whereupon, the aforementioned	03:07:21
16	Bharadwa Exhibit 20, e-mail was marked	03:07:21
17	as for identification as of this date by	03:07:21
18	the Reporter.)	03:07:29
19	Q. Mr. Bharadwa, so the court reporter	03:07:29
20	handed you what we marked as Exhibit 20. If	03:07:33
21	you could -- which is, for the record, bears	03:07:42
22	the Senator production Bates stamp that ends	03:07:47
23	with 0569 on the first page. I suspect that	03:07:50
24	this -- the e-mail chain in this Exhibit 20	03:07:59
25	looks similar to another one that we already	03:08:03

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1	BHARADWA	
2	looked at, but obviously feel free to look at	03:08:07
3	this one again. And let me know when you're	03:08:08
4	finished.	03:08:11
5	A. Okay.	03:08:34
6	Q. So as I believe we -- we had	03:08:34
7	discussed earlier this Exhibit 20 contains an	03:08:38
8	e-mail exchange that starts with Mr. Jamie	03:08:43
9	Baird from PJT reaching out to you on	03:08:49
10	February 9, 2022, and introducing you to	03:08:53
11	another PJT member Josh Abramson, correct?	03:08:55
12	A. Uh-huh.	03:08:59
13	Q. And so then, if I could have you	03:09:00
14	look at the page in this Exhibit 20 that's	03:09:02
15	stamped ending with 575, so it would be --	03:09:09
16	A. Yeah, I got it.	03:09:14
17	Q. -- third page from the end. And if	03:09:15
18	I -- if I could have you look at the second	03:09:19
19	e-mail from the bottom from Mr. Abramson of PJT	03:09:22
20	to you, where it says let's do 910 tmw. In the	03:09:28
21	interim, can you please confirm your own 25mm	03:09:34
22	of the 26s? Do you see that?	03:09:37
23	A. Yes.	03:09:39
24	Q. The 26s refers to the 20 --	03:09:39
25	Incora's 2026 notes?	03:09:49

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BHARADWA

A. Yes.

03:09:51

Q. And in that sentence, when Mr.

03:09:52

Abramson said you, you understood him to mean

03:10:01

that he was referring to Senator, correct?

03:10:04

A. Correct.

03:10:06

Q. Do you know why at this time on

03:10:06

February 9, 2022, PJT was asking Senator to

03:10:14

confirm the amount of the 2026 notes that

03:10:17

Senator held?

03:10:20

A. No.

03:10:20

Q. And so on that same day, you

03:10:21

responded and provided him with the amount of

03:10:38

your holdings, correct?

03:10:40

A. Yeah.

03:10:40

Q. In the 2026 notes?

03:10:41

A. That's right.

03:10:42

Q. At any time after this e-mail of

03:10:43

February 9, 2022, did you ever discuss with PJT

03:10:50

why they asked you to confirm the amount of the

03:10:53

2026 notes that Senator owned?

03:10:56

A. I don't recall having that

03:10:58

conversation. I don't believe so.

03:11:03

Q. Did you ever go back and ask PJT

03:11:07

why they sought from Senator information about

03:11:24

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1	BHARADWA	
2	how many 2026 notes Senator owned?	03:11:26
3	A. No, not that I recall.	03:11:28
4	Q. If not, why didn't you seek	03:11:31
5	clarification?	03:11:35
6	A. It wasn't relevant to our	03:11:36
7	investment decision.	03:11:40
8	Q. And why is that? Why wasn't it	03:11:41
9	relevant?	03:11:43
10	A. Because it doesn't impact -- it	03:11:44
11	doesn't impact our decision, which is do we up	03:11:52
12	tier or do we not. Like, whatever their	03:11:55
13	intention or plan or machinations are going	03:11:59
14	through their heads, like, it's -- it was	03:12:04
15	irrelevant for that decision.	03:12:06
16	Q. And so following this February 9,	03:12:08
17	2022 e-mail from Mr. Abramson, did PJT ever	03:12:17
18	explain to Senator why PJT asked for that	03:12:24
19	information about Senator's ownership of the	03:12:27
20	2026 notes?	03:12:30
21	A. Sorry, repeat the question one more	03:12:31
22	time.	03:12:36
23	THE COURT REPORTER: Would you mind	03:12:37
24	reading the question?	03:12:38
25	(Whereupon, the referred question	03:12:38

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1	BHARADWA	
2	was read back by the Reporter.)	03:13:01
3	Q. So following this February 9, 2022	03:13:01
4	e-mail from PJT, did PJT ever explain to	03:13:05
5	Senator why PJT asked Senator to confirm the	03:13:10
6	amount of their 2026 notes holdings?	03:13:13
7	A. Not that I recall.	03:13:17
8	Q. And did Senator have an	03:13:19
9	understanding of why on February 9, 2022, PJT	03:13:25
10	was asking Senator to confirm the amount of the	03:13:29
11	2026 notes that Senator owned?	03:13:32
12	A. Not at that time.	03:13:34
13	Q. Did Senator develop that	03:13:35
14	understanding subsequently?	03:13:39
15	A. We have -- we could -- we could --	03:13:40
16	I didn't have this, like, conversation very	03:13:49
17	overtly, but I think that it probably had to do	03:13:52
18	with the vote with the, you know, vote	03:13:55
19	numerosity and the percentages that were needed	03:13:58
20	to up tier.	03:13:59
21	Q. And could you elaborate on that?	03:14:00
22	A. That's -- that's it.	03:14:02
23	MS. SHARMA: Objection.	03:14:04
24	A. I think there were, like, certain	03:14:05
25	thresholds that needed to be met, and that's	03:14:07

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1	BHARADWA	
2	presumably why he was asking me. But at that	03:14:09
3	time, I had no knowledge of any transaction.	03:14:12
4	It's also fairly normal course for companies	03:14:16
5	to, sort of, want to know, you know, who in --	03:14:18
6	who's -- who's in their debt and --	03:14:22
7	Q. So before Senator could become	03:14:41
8	substantively involved in discussing the terms	03:14:45
9	of the 2022 transaction --	03:14:50
10	THE COURT REPORTER: I'm sorry, in	03:14:50
11	discussing the terms?	03:14:50
12	Q. Of the 2022 transaction, it had to	03:14:50
13	sign a nondisclosure agreement, correct?	03:14:54
14	A. Yes.	03:14:56
15	Q. And I believe we earlier looked at	03:14:56
16	a copy of that disclosure agreement --	03:15:10
17	nondisclosure agreement that was marked as	03:15:12
18	Exhibit 3, correct?	03:15:14
19	A. I believe so, yeah.	03:15:16
20	Q. Would you mind --	03:15:17
21	A. Yeah, yeah.	03:15:17
22	Q. -- grabbing it just so you have it?	03:15:21
23	Actually, can you take a look at Exhibit 20	03:15:49
24	again?	03:15:52
25	A. Yeah.	03:15:54

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1	BHARADWA	
2	Q. So Senator signed a nondisclosure	03:15:55
3	agreement in connection with the Incora	03:16:12
4	transaction on February 13 --	
5	THE COURT REPORTER: In connection	
6	with the?	
7	Q. -- 2022, correct?	
8	THE COURT REPORTER: I'm sorry, in	
9	connection with the?	
10	Q. So Senator signed a nondisclosure	03:16:20
11	agreement in connection with the Incora	03:16:22
12	transaction -- in connection with the 2022	03:16:24
13	transaction on February 13th, 2022, correct?	03:16:25
14	A. Is that the date? I don't know	03:16:29
15	what that date is, but clearly we signed it	03:16:36
16	just after this e-mail exchange, yes.	03:16:39
17	Q. And then, so if I could have you	03:16:41
18	take a look at Exhibit 20, and I'd like to	03:16:47
19	focus on the top most e-mail in that exhibit.	03:16:50
20	It's an e-mail from you, Mr. Bharadwa, to Josh	03:16:53
21	Abramson of PJT dated February 15th, 2022,	03:16:57
22	where you say, Josh - happy to interface when	03:17:01
23	you're ready around next steps. Do you see	03:17:07
24	that?	03:17:10
25	A. Yes.	03:17:10

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BHARADWA

Q. So were you involved in discussing the terms of the 2022 transaction with PJT?

A. No.

Q. So on -- on February 15th, 2022, when you offered to interface with PJT as we see in Exhibit 20, did you have any discussions with PJT following this e-mail?

A. I have no idea.

Q. So what was the extent of your involvement, Mr. Bharadwa, in the discussion of the terms of the 2022 transaction?

A. Signing off on the PIK consent and signing onto the agreement that -- that was offered to us.

Q. And which agreement is that?

A. That's the up tier that got put in place.

THE COURT REPORTER: That got?

A. Put in place.

Q. Were --

A. So we're a silent party to, you know, a call or two with Greenhill and Carlyle where, you know -- where Carlyle was talking to the management team, for instance, and, you

03:17:11
03:17:20
03:17:23
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03:17:53
03:18:06
03:18:08
03:18:10
03:18:15
03:18:21
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03:18:41
03:18:45
03:18:49

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1	BHARADWA	
2	know. But in terms of anything to do with deal	03:18:53
3	terms, we were not -- we were not participants.	03:18:56
4	Q. Did Senator put a deal team	03:19:01
5	together for the 2022 transaction?	03:19:18
6	A. No.	03:19:21
7	THE COURT REPORTER: I'm sorry for	03:19:21
8	the?	03:19:21
9	Q. For the 2022 transaction?	03:19:21
10	A. What is a deal team? Like, what --	03:19:21
11	define that.	03:19:24
12	Q. Actually, let me just do this.	03:19:24
13	MR. MARGULYAN: Can I -- can I get	03:19:32
14	tab 14? Do you mind marking this?	03:19:32
15	THE COURT REPORTER: Sure.	03:19:32
16	MR. MARGULYAN: This is going to be	03:19:32
17	21?	03:19:32
18	THE COURT REPORTER: Yes.	03:19:53
19	(Whereupon, the aforementioned	03:19:53
20	Bharadwa Exhibit 21, e-mail was marked	03:19:56
21	as for identification as of this date by	03:19:56
22	the Reporter.)	03:20:03
23	Q. Mr. Bharadwa, so the court reporter	03:20:03
24	handed you what we marked as Exhibit 21, which	03:20:06
25	has a Senator production Bates stamp ending in	03:20:09

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1	BHARADWA	
2	the first page with 956. You're welcome to	03:20:12
3	reviewed entire e-mail chain in this	03:20:17
4	Exhibit 21, but I'm only going to ask you a	03:20:19
5	question on the first --	03:20:22
6	A. Go ahead.	03:20:23
7	Q. On the first page, yeah. So if I	03:20:24
8	could direct your attention to the middle of	03:20:24
9	the first page in Exhibit 21, where there's an	03:20:26
10	e-mail from you to several folks at PJT and --	03:20:29
11	and copying several folks at Senator. It's	03:20:35
12	dated Thursday, February 17th, 2022 at	03:20:36
13	5:28 p.m., and it starts with --	03:20:44
14	THE COURT REPORTER: I'm sorry, at	03:20:44
15	five?	03:20:44
16	Q. 28 p.m., and it starts with thanks	03:20:45
17	Jamal. Do you see it?	03:20:47
18	A. Yes.	03:20:48
19	Q. Okay. So all the way at the end of	03:20:49
20	that e-mail, you said our deal team (should be	03:20:52
21	cc'd on all comms going fwd) is myself, Evan B,	03:20:55
22	Evan G, and Drew --	03:21:03
23	A. Yeah.	03:21:06
24	Q. -- (cc'd). So the deal team that	03:21:06
25	you're referencing in this e-mail in	03:21:16

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1	BHARADWA	
2	Exhibit 21, was that the deal team that was put	03:21:18
3	together for the 2022 transaction?	03:21:20
4	A. No. This is the analyst Drew, who	03:21:21
5	was on it since inception, his credit	03:21:25
6	counterpart, who helps out with the, sort of	03:21:29
7	like, more credit oriented parts of that	03:21:31
8	underwrite, Evan, and then Evan G is our --	03:21:33
9	Evan Gartenlaub is our general counsel, who	03:21:37
10	obviously, you know, needed to look through	03:21:40
11	some of the legal, you know, aspects of this	03:21:41
12	deal, but there's nothing like, you know, we --	03:21:48
13	that -- that's about it.	03:21:52
14	Q. So would it be fair to say that the	03:21:52
15	individuals you identified in the e-mail that	03:21:59
16	we just looked at in this Exhibit 21 and that	03:22:01
17	you characterized as the deal team?	03:22:04
18	A. Deal meaning Incora, like, meaning,	03:22:06
19	like, this is the underwrite. Like, it's a	03:22:09
20	three-year-old investment at the time or	03:22:12
21	whatever it was, you know, two-year-old, you	03:22:16
22	know, two, three-year-old investment. That's	03:22:17
23	the team that's been on the deal, not for the	03:22:18
24	2022 transaction.	03:22:21
25	Q. So fair to say that the -- the	03:22:21

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1	BHARADWA	
2	roster of these individuals in this Exhibit 21	03:22:26
3	that you list and described as a deal team	03:22:28
4	would have been involved in any transaction	03:22:30
5	involving Incora?	03:22:36
6	THE COURT REPORTER: I'm sorry,	03:22:36
7	would have been?	03:22:36
8	Q. Would have been involved in any	03:22:30
9	transaction involving Incora?	03:22:35
10	A. Yes.	03:22:37
11	Q. Did -- did Senator retain any	03:22:38
12	financial advisors to negotiate the terms of	03:22:46
13	the 2022 transaction?	03:22:48
14	A. No.	03:22:49
15	Q. Can I have you take a look at	03:22:49
16	Exhibit 20 again?	03:23:11
17	A. Sure.	03:23:12
18	Q. And once you have it, if you could	03:23:13
19	take a look at -- I guess it -- yeah, it would	03:23:22
20	be a -- once again, the third page from the end	03:23:27
21	that has the Senator Bates stamp at the bottom	03:23:29
22	ending in 575.	03:23:33
23	A. Yep.	03:23:33
24	Q. If I could direct your attention to	03:23:35
25	the second e-mail from the top, it's an e-mail	03:23:37

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1 BHARADWA
2 from you on February 10th, 2022, where you 03:23:42
3 said, Josh -- good connecting earlier. We're 03:23:47
4 fine getting restricted alongside Carlyle with 03:23:54
5 Greenhill/PW as our reps. Do you see that? 03:23:57
6 A. Yes. 03:24:02
7 Q. So first of all PW. What does PW 03:24:02
8 refer to in -- in this sentence? 03:24:08
9 A. I assume that's Paul Weiss. 03:24:09
10 Q. What did you mean when you said 03:24:13
11 with Greenhill/PW as our reps? 03:24:15
12 A. Meaning they're representing our 03:24:17
13 interests. 03:24:29
14 Q. So -- 03:24:29
15 A. I don't even recall if we had any 03:24:31
16 financial obligation or anything. We basically 03:24:33
17 said, you know, we're stapling ourselves to 03:24:36
18 Carlyle, basically or -- 03:24:40
19 Q. So in -- in Senator's view, was 03:24:41
20 Greenhill representing Senator in any 03:24:44
21 discussions concerning the 2022 transaction? 03:24:47
22 MR. MOORE: Objection.
23 THE COURT REPORTER: I'm sorry, who
24 objected?
25 MR. MOORE: O'Ryan Moore from Paul

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1	BHARADWA	
2	Weiss.	
3	MR. MARGULYAN: O'Ryan Moore from	
4	Paul Weiss. Did you get that?	
5	THE COURT REPORTER: Yes.	03:25:03
6	Q. You can answer.	03:25:03
7	A. I mean, in order to be party to the	03:25:04
8	transaction, we got restricted, and Greenhill	03:25:13
9	gave us the download of the transaction and	03:25:21
10	connected us with management. And then,	03:25:24
11	management called. So yeah, we wanted to hear	03:25:27
12	what management had to say and hear about the	03:25:31
13	transaction.	03:25:34
14	Q. So Senator never formally retained	03:25:34
15	Greenhill to represent it in connection with	03:25:45
16	the 2022 transaction --	03:25:46
17	A. I -- I don't --	03:25:46
18	Q. -- correct?	03:25:47
19	A. I -- honestly, I don't know. I	03:25:47
20	don't know if something was signed by Evan with	03:25:50
21	them, but I don't think so. It was, like, a	03:25:52
22	series of -- it was, like, two calls, and we	03:25:54
23	didn't -- I don't -- I don't believe so.	03:25:56
24	Q. If Greenhill was formally retained	03:25:58
25	by Senator to represent Senator in connection	03:26:04

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1	BHARADWA	
2	with the 2022 transaction, would you have known	03:26:06
3	about it?	03:26:09
4	MR. MOORE: Objection.	03:26:12
5	A. I -- probably, but I can't say that	03:26:14
6	definitively because again, there's -- every	03:26:18
7	circumstance is individual.	03:26:21
8	Q. Did Paul Weiss represent Senator in	03:26:24
9	connection with the 2022 transaction?	03:26:35
10	A. I don't think so. I don't think I	03:26:37
11	had a direct conversation with them during that	03:26:40
12	entire time.	03:26:43
13	Q. Did Senator retain any legal	03:26:43
14	advisors in connection with the 2022	03:26:48
15	transaction?	03:26:53
16	A. Yeah, we had Morgan Lewis look at	03:26:53
17	some -- look at some of the indenture	03:26:55
18	provisions for us if I recall correctly.	03:26:57
19	Q. Do you recall when Senator retained	03:26:59
20	Morgan Lewis in connection --	03:27:07
21	A. No.	03:27:09
22	Q. -- with the 2022 transaction?	03:27:08
23	A. I mean obviously it was sometime	03:27:10
24	around here.	03:27:12
25	MR. MARGULYAN: Actually, I'm told	03:28:38

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1	BHARADWA	
2	that this already has been marked. Can	03:28:40
3	we -- can you have him take a look at	03:28:41
4	Exhibit 14?	03:28:45
5	A. Yes.	03:28:57
6	Q. So Exhibit 14 is a copy of another	03:28:58
7	draft of this credit weekly update.	03:29:09
8	THE COURT REPORTER: I'm sorry, of	03:29:09
9	this credit?	03:29:09
10	Q. Weekly update that Mr. Boggs	03:29:13
11	prepared for your review, correct?	03:29:17
12	A. Yes.	03:29:21
13	Q. So yeah, if I could direct your	03:29:21
14	attention to the unredacted section on the	03:29:23
15	third page that ends with the Bates stamp 1326?	03:29:28
16	A. Yeah.	03:29:33
17	Q. The second sentence of that update	03:29:33
18	says, moreover, we reached out to Morgan Lewis	03:29:38
19	this week in order to get our own legal --	03:29:43
20	THE COURT REPORTER: Wait, slow	03:29:43
21	down. We reached out to Morgan Lewis?	03:29:43
22	Q. This week in order to get our own	03:29:43
23	legal representation as part of that ongoing	03:29:47
24	discussion with PJT/the company around an up	03:29:51
25	tier exchange, correct?	03:29:56

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1	BHARADWA	
2	A. Yes, I see that.	03:29:57
3	Q. And so what is -- the date of this	03:30:01
4	update is February 27th, 2022, correct?	03:30:03
5	A. Correct.	03:30:07
6	Q. So according to this update, as of	03:30:08
7	February 27th, 2022, Senator had not yet	03:30:15
8	retained Morgan Lewis, correct?	03:30:18
9	A. That appears to be the case,	03:30:20
10	correct.	03:30:22
11	Q. And then, we earlier saw in	03:30:22
12	Exhibit 3 that Senator signed the NDA in order	03:30:25
13	to participate in the 2022 transaction on	03:30:31
14	February 13th, 2022, correct?	03:30:35
15	A. Yes.	03:30:36
16	Q. What was the reason that Senator	03:30:39
17	waited to retain Morgan Lewis for what appears	03:30:41
18	to be several weeks after it finally signed the	03:30:45
19	NDA?	03:30:49
20	MR. KURLAND: Objection.	03:30:50
21	A. No idea.	03:30:50
22	Q. And to your knowledge, did anyone	03:30:54
23	other than Morgan Lewis represent Senator in	03:31:13
24	connection with the 2022 transaction?	03:31:16
25	A. Not to my knowledge.	03:31:17

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1	BHARADWA	
2	Q. So Mr. Bharadwa, I -- I do want to	03:31:19
3	talk a bit more about the process by which	03:31:43
4	Senator was apprised of the terms of its	03:31:46
5	participation in the 2022 transaction. Is my	03:31:53
6	understanding correct that nobody from Senator	03:31:56
7	directly negotiated with the company any of the	03:31:59
8	2022 transaction terms?	03:32:05
9	A. That is correct.	03:32:05
10	Q. How did Senator communicate to the	03:32:06
11	company or its advisors its proposals or	03:32:09
12	counterproposals with respect to the 2022	03:32:13
13	transaction?	03:32:17
14	A. We had no -- how did Senator	03:32:17
15	communicate its -- we had no proposal or	03:32:20
16	counterproposal. We had no -- we had no, like,	03:32:22
17	stand. I mean, we didn't have any dialogue	03:32:27
18	around it. It was a one-way communication.	03:32:30
19	Q. And again, just so I understand,	03:32:32
20	why was it a one-way communication?	03:32:34
21	A. Because the transaction was baked	03:32:36
22	by other parties and then brought to us.	03:32:39
23	Q. Okay. And I -- I believe you	03:32:41
24	testified earlier that the transaction was --	03:32:45
25	was baked at the time that PJT reached out to	03:32:47

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1	BHARADWA	
2	you on February 9th, correct?	03:32:50
3	A. I believe so. Well, I -- at the	03:32:52
4	time they reached out to us on February 9th,	03:32:58
5	I -- I don't -- I don't know. I think we --	03:33:00
6	the first we heard about it was in that call	03:33:02
7	with Greenhill and Carlyle, which was after, so	03:33:06
8	I don't think that on February 9th we had any	03:33:10
9	understanding of what the transaction was or	03:33:13
10	wasn't or whether there was a transaction.	03:33:15
11	MR. MARGULYAN: Can we do tabs, 21	03:34:02
12	and 21A? Would you mind marking these?	03:34:02
13	THE COURT REPORTER: Sure.	
14	MR. MARGULYAN: So now, we're at	
15	22, 23.	
16	THE COURT REPORTER: So you want me	
17	to mark this 22?	
18	MR. MARGULYAN: Yes.	03:34:04
19	(Whereupon, the aforementioned	03:34:19
20	Bharadwa Exhibit 22 and 23, documents	03:34:21
21	was marked as for identification as of	03:34:21
22	this date by the Reporter.)	03:34:29
23	Q. Mr. Bharadwa, so --	03:34:29
24	THE COURT REPORTER: Hold on.	03:34:29
25	MR. MARGULYAN: Oh, okay.	03:34:29

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1	BHARADWA	
2	Q. Mr. Bharadwa, so the court reporter	03:34:30
3	handed you what we marked as Exhibits 22 and	03:34:31
4	23. Exhibit 22 is -- bears the Senator's	03:34:36
5	production Bates stamp and ending with 5348.	03:34:42
6	THE COURT REPORTER: I'm sorry,	03:34:48
7	5348?	03:34:48
8	Q. 5348, and then, Exhibit 23 bears a	03:34:49
9	Senator's production Bates number ending with	03:34:52
10	5349. If you could, take a moment to review	03:34:56
11	those and let me know when you're finished.	03:35:01
12	A. Yep.	03:35:20
13	Q. Do you recognize the documents in	03:35:21
14	these Exhibits 22 and 23?	03:35:23
15	A. Yes.	03:35:24
16	Q. Can you describe what they are?	03:35:25
17	A. One is an e-mail exchange -- or not	03:35:27
18	an e-mail exchange. It's an e-mail from Neal	03:35:32
19	at Greenhill to me with, I believe, this PDF as	03:35:35
20	an attachment, which describes the transaction.	03:35:45
21	Q. And the attachment that describes	03:35:49
22	the 2022 transaction that we see in Exhibit 23	03:35:56
23	is entitled, "Comprehensive Transaction	03:36:01
24	Proposal Comparison," correct?	03:36:04
25	A. Uh-huh.	03:36:05

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1	BHARADWA	
2	THE COURT REPORTER: Yes?	03:36:05
3	A. Yes.	03:36:06
4	Q. Do you recall if you reviewed that,	03:36:06
5	the proposal comparisons, in Exhibit 23 after	03:36:12
6	you received them from Greenhill?	03:36:16
7	A. If I reviewed them after I received	03:36:18
8	them from Greenhill?	03:36:23
9	Q. Yeah, when you received them.	03:36:24
10	A. I reviewed them of course, yes.	03:36:25
11	Q. Why did Greenhill provide you with	03:36:28
12	this transaction proposal comparison that we	03:36:34
13	see in Exhibit 23?	03:36:39
14	MS. SHARMA: Objection.	03:36:41
15	MR. MOORE: Objection.	03:36:44
16	A. Why do I think they did? Because	03:36:45
17	it's just an information, like, hand over.	03:36:51
18	I -- I obviously needed to agree or not with my	03:37:00
19	consent with the PIK, so they're giving me what	03:37:06
20	the deal is outlined to be.	03:37:09
21	Q. So this was -- so this Exhibit 23	03:37:11
22	that Greenhill provided to you was more for	03:37:26
23	informational purposes?	03:37:29
24	A. Yes.	03:37:30
25	Q. So at the time that Senator	03:37:30

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1	BHARADWA	
2	received this Exhibit 23 from Greenhill, it did	03:37:36
3	not have an understanding that it could provide	03:37:40
4	its own counterproposal to the terms of the	03:37:48
5	2022 transaction?	03:37:51
6	A. That's right.	03:37:51
7	Q. So if I could have you take a look	03:37:53
8	at Exhibit 23, and if you could take a look at	03:38:32
9	page 3 of Exhibit 23, that has a Bates stamp	03:38:41
10	ending in 5351?	03:38:46
11	A. Yeah, okay.	03:38:49
12	Q. So as you can see, there's a chart	03:38:54
13	there, and the leftmost column is entitled,	03:38:58
14	"Super Senior Second-Out Debt."	03:39:05
15	THE COURT REPORTER: Super Senior?	03:39:05
16	Q. Second-Out Debt. Do you see that?	03:39:09
17	A. I see that.	03:39:11
18	Q. So on that page, if I could have	03:39:12
19	you navigate to the row entitled, "Eligible	03:39:17
20	Participants," it would be the second row	03:39:21
21	under --	03:39:28
22	A. Oh, yeah. Okay.	03:39:28
23	Q. And as you can see, the way this is	03:39:30
24	structured is that the next set of columns have	03:39:41
25	titles, "Company Proposal" and "Carlyle	03:39:45

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1	BHARADWA	
2	Counterproposal." Do you see that?	03:39:48
3	A. I see that.	03:39:50
4	Q. So do you understand that these	03:39:51
5	columns represent a summary of the proposals	03:39:53
6	that the -- the Incora and Carlyle were	03:39:57
7	exchanging --	03:40:01
8	A. Yes.	03:40:01
9	Q. -- with respect to the 2022	03:40:01
10	transaction? Okay.	03:40:03
11	So in the first column -- well, I	03:40:04
12	guess technically the third column that's under	03:40:13
13	the -- it has the heading "Company Proposal	03:40:16
14	February 26, 20" --	03:40:21
15	THE COURT REPORTER: I'm sorry, it	03:40:21
16	has the heading?	03:40:21
17	Q. "Company Proposal February 26,	03:40:19
18	2022." Do you see that?	03:40:22
19	A. Yes.	03:40:23
20	Q. Under that column, in the row	03:40:24
21	eligible participants, it says, Carlyle,	03:40:28
22	Senator and Platinum may exchange unsecured	03:40:31
23	holdings into Super Senior Second-Out Debt at	03:40:34
24	par.	03:40:42
25	THE COURT REPORTER: I'm sorry,	03:40:37

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1	BHARADWA	
2	into Super Senior?	03:40:37
3	Q. Second-Out Debt at par, correct?	03:40:40
4	A. Yes.	03:40:44
5	Q. And then, if you move on, staying	03:40:45
6	still on the eligible participants row, if you	03:40:52
7	move onto the next column, which contains	03:40:54
8	Carlyle's March 1st counterproposal, in the	03:40:57
9	eligible participants cell, it says, agree	03:41:06
10	except Platinum shall not participate in	03:41:09
11	exchange, and all Platinum debt shall be PIK'd	03:41:11
12	for life. Do you see that?	03:41:15
13	A. I see that.	03:41:16
14	Q. So according to this, would you	03:41:16
15	agree with me that Carlyle initially opposed	03:41:19
16	Platinum's participation in the notes exchange	03:41:22
17	as part of the 2022 transaction?	03:41:25
18	MR. KURLAND: Objection.	03:41:28
19	MS. SHARMA: Objection.	03:41:29
20	MR. MOORE: Objection.	03:41:31
21	Q. You can answer.	03:41:31
22	A. It appears that way.	03:41:31
23	Q. Do you know why?	03:41:34
24	A. I don't know why, but I've -- I --	03:41:36
25	it seem -- it seems clear that if Platinum were	03:41:38

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1	BHARADWA	
2	to up tier, then Carlyle's position would be	03:41:43
3	advantaged, and they would be PIKed for life	03:41:46
4	which is better than the terms of what was, you	03:41:50
5	know, what the -- the unsecureds were	03:41:54
6	exchanging into. So there was, kind of, a	03:41:58
7	benefit to Carlyle and a slight benefit to the	03:42:01
8	company probably.	03:42:03
9	Q. Did Senator have a position on this	03:42:04
10	issue of Platinum's participation in the	03:42:12
11	exchange?	03:42:17
12	THE COURT REPORTER: On this issue	03:42:17
13	of?	03:42:17
14	Q. Platinum's participation in the	03:42:16
15	notes exchange?	03:42:17
16	A. Again, we had no bearing on the --	03:42:18
17	or -- on the shape of this transaction, but I	03:42:25
18	see Carlyle's logic in asking for that -- for	03:42:31
19	that concession from Platinum.	03:42:37
20	Q. Okay. So then, coming back to this	03:42:38
21	Exhibit 23 and still staying on this page, if	03:42:44
22	you -- we're still on the eligible participants	03:42:47
23	row, and if you move onto the next column	03:42:52
24	that -- that contains terms --	03:42:54
25	A. Yes.	03:42:54

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1	BHARADWA	
2	Q. -- of the company's March 2nd	03:42:55
3	proposal, on this eligible participant's issue,	03:42:57
4	it says, same as company proposal 2/26/2022.	03:43:01
5	Do you see that?	03:43:07
6	A. Yes.	03:43:07
7	Q. So according to this, would you	03:43:08
8	agree with me that Incora responded to	03:43:09
9	Carlyle's counterproposal on March 2, 2022 and,	03:43:15
10	once again, included as its proposed deal term	03:43:17
11	that Platinum would participate in the	03:43:23
12	exchange?	03:43:24
13	MS. SHARMA: Objection.	03:43:26
14	A. I agree with you.	03:43:26
15	Q. So according to what we see here in	03:43:28
16	this Exhibit 23, Incora did not change its	03:43:33
17	position with respect to Platinum's	03:43:37
18	participation in the exchange, correct?	03:43:40
19	A. That -- correct.	03:43:41
20	Q. And then finally, moving onto the	03:43:41
21	last column, which is entitled, "Recommended	03:43:47
22	Carlyle Counterproposal March 2, 2022."	03:43:52
23	According to this, on March 20th -- March 2,	03:43:59
24	2022, Carlyle appears to now agree that	03:44:02
25	Platinum can participate in the exchange,	03:44:10

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1	BHARADWA	
2	correct?	03:44:12
3	A. I see that.	03:44:13
4	Q. Does Senator know why Carlyle	03:44:14
5	changed its mind with respect to Platinum's	03:44:31
6	participation?	03:44:33
7	A. No. We weren't involved in any of	03:44:33
8	these back and forth.	03:44:35
9	Q. And Senator didn't have any	03:44:36
10	discussions with Carlyle or Greenhill about	03:44:37
11	this issue of Platinum's participation?	03:44:43
12	A. No.	03:44:43
13	THE COURT REPORTER: I'm sorry,	03:44:43
14	about?	03:44:43
15	Q. About this issue of Platinum's	03:44:40
16	participation?	03:44:44
17	A. Not that I recall.	03:44:44
18	MR. MARGULYAN: Mark this.	03:45:13
19	(Whereupon, the aforementioned	03:45:16
20	Bharadwa Exhibit 24, e-mail was marked	03:45:16
21	as for identification as of this date by	03:45:16
22	the Reporter.)	03:45:23
23	Q. Mr. Bharadwa, the court reporter	03:45:23
24	handed you what's been marked as Exhibit 24,	03:45:24
25	which is an e-mail that was produced with	03:45:30

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	the -- by Senator with a Bates stamp ending in	03:45:32
3	5355. If you could, take a moment to review it	03:45:36
4	and then let me know when you're finished.	03:45:41
5	A. Okay.	03:45:47
6	Q. Would you agree with me that this	03:46:07
7	e-mail chain that we just marked as Exhibit 24	03:46:12
8	contains your response to Greenhill's	03:46:18
9	March 2nd, 2022 e-mail and the attached	03:46:22
10	proposal that we saw in Exhibits 22 and 23?	03:46:26
11	A. Yes.	03:46:29
12	Q. So in your response in this	03:46:31
13	Exhibit 24, you said, I still don't really know	03:46:35
14	what this third lien basket is for if in a	03:46:41
15	downside legal case, the subs become pari with	03:46:46
16	us.	03:46:46
17	THE COURT REPORTER: I'm sorry,	03:46:46
18	become?	03:46:46
19	Q. Become pari, P-A-R-I, with us. Do	03:46:54
20	you see that?	03:46:56
21	A. I see that.	03:46:56
22	Q. What did you mean by downside legal	03:46:59
23	case?	03:47:03
24	A. Meaning if there was successful	03:47:03
25	litigation brought by the stub 24s and -- oh,	03:47:06

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	maybe it was -- I don't know if it's a stub. I	03:47:12
3	don't recall if it's this -- the, you know,	03:47:16
4	unsecureds or the secureds, but downside legal	03:47:19
5	case, meaning, you know, the transaction or	03:47:30
6	parts of it are challenged. You know, like, we	03:47:33
7	always think about the spectrum of things that	03:47:38
8	could happen and, you know, had -- had to	03:47:41
9	consider that there could be a litigation. And	03:47:44
10	if there's litigation, like, I guess I was	03:47:50
11	assuming that the subs in that case, it would	03:47:52
12	be possible that they could, you know, try --	03:47:58
13	they could argue for becoming pari with us in	03:48:00
14	the one and a half lien. That's what it looks	03:48:06
15	like.	03:48:10
16	Q. Can you explain what you mean by	03:48:10
17	the subs?	03:48:13
18	A. I don't know. I -- I assume -- I	03:48:13
19	mean again, this is, like, a year and a half	03:48:16
20	ago, and I don't recall the exact, kind of,	03:48:19
21	thought process at that moment in time. I -- I	03:48:21
22	can't -- I can't recall what layer I was	03:48:31
23	referring to there. The subs -- I -- I think	03:48:33
24	it was probably the unsecureds that were left	03:48:43
25	behind, but --	03:48:49

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	Q. When you say the unsecureds that	03:48:54
3	were left behind, what do you mean by that?	03:48:56
4	A. The 13 -- the 13 and eighths that	03:48:57
5	weren't up tiered.	03:49:01
6	Q. That weren't up tiered as part of	03:49:02
7	the 2022 transaction?	03:49:06
8	A. Correct.	03:49:06
9	Q. And then, what do you mean, Mr.	03:49:06
10	Bharadwa, when you said become pari with us?	03:49:08
11	A. Become pari, meaning same level.	03:49:10
12	Q. In terms of lender seniority?	03:49:14
13	A. Correct. I was just questioning	03:49:21
14	what is this third lien basket. I have no idea	03:49:23
15	what it's for.	03:49:23
16	Q. And it looks like in this	03:49:24
17	Exhibit 24, Mr. Augustine from Greenhill	03:49:29
18	responded to your --	03:49:35
19	THE COURT REPORTER: I'm sorry,	03:49:35
20	Mister?	03:49:35
21	Q. Augustine from Greenhill	03:49:31
22	responded to your question, correct?	03:49:35
23	A. Yes.	03:49:36
24	Q. And he said, I think the company's	03:49:36
25	view is maybe you use it in the future to	03:49:41

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1	BHARADWA	
2	capture a discount from other unsecureds that	03:49:46
3	didn't participate in this deal. Do you see	03:49:50
4	that?	03:49:52
5	A. Yes.	03:49:52
6	Q. Did you have an understanding of	03:49:53
7	what Mr. Augustine meant in that sentence --	03:49:58
8	A. Yes.	03:49:58
9	Q. -- I just read?	03:50:02
10	A. Yes, he's referring to, you know,	03:50:02
11	maybe the -- he's speculating that maybe the	03:50:05
12	company would allow for some settlement with	03:50:08
13	litigating 24s and 26s, such that they were	03:50:18
14	given an up tier or something, like -- or	03:50:24
15	maybe -- I -- you know, I don't know.	03:50:31
16	Actually, it might not be litigating. It might	03:50:32
17	just be, hey, let's use this as an LME bucket,	03:50:34
18	so I guess the short answer is no, I don't know	03:50:40
19	exactly what he meant by that, but he wanted	03:50:42
20	to -- you know, he was suggesting the company	03:50:44
21	wanted to use that as currency to offer some	03:50:46
22	sort of carrot to unsecureds, maybe by exchange	03:50:49
23	or otherwise, to put themselves in a better	03:50:54
24	position of capital structure.	03:50:57
25	Q. Mr. Bharadwa, do you recall whether	03:50:59

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BHARADWA

at this time on March 2nd, 2022, which is the date of this exchange in Exhibit 24 that we're looking at, whether at that time in March 2, 2022, Senator anticipated that the 2022 transaction would be challenged in court?

03:51:14
03:51:16
03:51:19
03:51:25
03:51:28

A. I don't know that we had a view one way or the other, but we definitely had -- yeah, we -- we assumed that it -- yeah, so that was a possibility. As I said, we consider all outcomes, and this was clearly something that there was a possibility of it being challenged.

03:51:30
03:51:37
03:51:42
03:51:44
03:51:47
03:51:53

Q. And what was the basis for Senator's thinking that there was a possibility --

03:51:56
03:52:07
03:52:08

THE COURT REPORTER: I'm sorry, what was the basis for that?

03:52:08
03:52:00

Q. What was the basis for Senator's thinking that there was a possibility that the 2022 transaction could be challenged in court?

03:52:05
03:52:07
03:52:12

A. Because it's an aggressive liability management exercise transaction where clearly some constituents would be advantaged and some disadvantaged, and that's a perfect recipe for litigation.

03:52:14
03:52:17
03:52:20
03:52:25
03:52:27

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BHARADWA

Q. So do I understand you correctly

03:52:29

that you would characterize the 2022

03:52:44

transaction as an aggressive liability

03:52:46

management exercise?

03:52:48

A. Yeah. Is it aggressive, yes. I

03:52:49

think that's a fair characterization.

03:52:53

Q. And what do you mean by aggressive?

03:52:56

A. It just hadn't been, like -- these

03:52:57

things hadn't become standard yet. They're

03:53:00

effectively becoming standard by the day, but

03:53:03

at that time, this is unique relative to what

03:53:05

you would typically see.

03:53:11

Q. Why was it unique?

03:53:12

A. Because of the up tiering and, you

03:53:15

know, the -- it was an up tier transaction

03:53:20

where the sponsor was, you know, investing in

03:53:26

the capital structure and -- lots of --

03:53:28

that's -- that's it. I mean, it was an -- I

03:53:36

don't know how you define aggressive versus me,

03:53:39

but --

03:53:39

THE COURT REPORTER: I don't know

03:53:39

how you define aggressive versus?

03:53:39

A. Versus me. Anyway, it's aggressive

03:53:40

because these transactions with up tier

03:53:50

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BHARADWA

exchanges had not been regularly seen in the capital markets until more recently, so this is, at the time, certainly one of the, you know, earlier ones.

03:53:55
03:53:59
03:54:03
03:54:06
03:54:30
03:54:32
03:54:34
03:54:37
03:54:40
03:54:46

Q. So Mr. Bharadwa, in -- in response to my question why the 2022 transaction was unique, you had said, among other things, that it was an up tier transaction where the sponsor was invested in the capital structure. Do you recall that?

A. Yes.

Q. So in your experience, having a -- doing an up tier transaction where the sponsor is invested -- where the -- where the sponsor of the company that is the subject of the up tier is invested in its capital structure, is that unusual?

03:54:46
03:54:46
03:54:54
03:54:57
03:54:59
03:55:03
03:55:05

A. We don't see a whole host of these, let alone, you know, ones where a sponsor is invested in up tiering themselves, so I think it's more unique. I think it's somewhat unusual.

03:55:06
03:55:15
03:55:19
03:55:22
03:55:29

Q. And why is that?

A. Just because it -- it just creates

03:55:29
03:55:30

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1	BHARADWA	
2	a -- the look of enriching yourselves at the	03:55:36
3	behest of other creditors. It's just the	03:55:39
4	optics. I'm not making any legal opinion.	03:55:42
5	Q. Mr. Bharadwa, and do you know	03:55:46
6	whether, at this time again, of -- of this	03:56:09
7	e-mail exchange we were discussing in	03:56:11
8	Exhibit 24, which is early March 2022, do you	03:56:14
9	know whether at that time any other	03:56:19
10	participants in the 2022 transaction	03:56:21
11	anticipated that the transaction would be	03:56:24
12	challenged in court?	03:56:26
13	MR. MOORE: Objection.	03:56:28
14	MS. SHARMA: Objection.	03:56:30
15	A. No. I had no discussions with	03:56:30
16	other parties, so I don't know.	03:56:33
17	Q. Do you know if Senator entered into	03:56:35
18	a joint defense agreement with any of the	03:56:39
19	participants in the 2022 transaction?	03:56:42
20	MS. SHARMA: Objection.	03:56:47
21	A. I don't believe so, but I don't	03:56:48
22	know definitively. I would have to ask Evan.	03:56:50
23	Q. And to your knowledge, did -- did	03:56:54
24	Senator ever communicate with PJT about how to	03:56:56
25	defend against any potential legal challenge to	03:57:02

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	the 2022 transaction?	03:57:05
3	MS. SHARMA: Objection.	03:57:07
4	A. To my knowledge, there was zero	03:57:08
5	discussion around any of that.	03:57:12
6	Q. With PJT?	03:57:13
7	A. Correct, with generally.	03:57:15
8	Q. What about with Platinum?	03:57:16
9	A. With -- with anybody, but this is,	03:57:17
10	like, you know -- I mean, every -- you could	03:57:28
11	see Debtwire articles. You know, people were	03:57:30
12	talking about --	03:57:30
13	THE COURT REPORTER: I'm sorry, you	03:57:30
14	could see?	03:57:30
15	A. You could see Debtwire articles.	03:57:29
16	You know, it's no secret that people were	03:57:35
17	speculating that this could be challenged, so	03:57:38
18	that was out there.	03:57:41
19	MR. MARGULYAN: Can we take a	03:57:51
20	break?	03:57:52
21	MR. KURLAND: Sure.	03:57:52
22	THE VIDEOGRAPHER: We are going off	03:57:53
23	the record. The time is 3:58 p.m.	03:57:54
24	(Whereupon, an off-the-record	03:57:58
25	discussion was held.)	04:14:36

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1	BHARADWA	
2	MR. MARGULYAN: This will be 25.	04:14:36
3	(Whereupon, the aforementioned	04:14:38
4	Bharadwa Exhibit 25, e-mail was marked	04:14:38
5	as for identification as of this date by	04:14:38
6	the Reporter.)	04:14:46
7	THE VIDEOGRAPHER: We are going	04:14:46
8	back on the record. The time is	04:14:54
9	4:15 p.m.	04:14:56
10	Q. Mr. Bharadwa, so, the court	04:15:13
11	reporter handed you what we marked as	04:15:15
12	Exhibit 25, which is a copy of a document	04:15:17
13	produced by Senator, beginning with a Bates	04:15:24
14	stamp that ends 1339. You can take a moment to	04:15:27
15	review this one. Let me know when you're	04:15:32
16	finished.	04:15:36
17	A. I am finished.	04:15:58
18	Q. So this Exhibit 25 appears to be	04:15:59
19	another draft of a weekly update --	04:16:07
20	A. Yes.	04:16:07
21	Q. -- Mr. Bogs prepared with respect	04:16:13
22	to Incora. Do you recall reviewing this draft?	04:16:16
23	A. I mean, not specifically, but I	04:16:25
24	assume I did.	04:16:29
25	Q. So I think I just have one question	04:16:36

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1	BHARADWA	
2	about its contents. If I could direct your	04:16:39
3	attention to the fourth line from the bottom	04:16:42
4	where you see we have a full -- first full	04:16:46
5	sentence where it says, in addition to these up	04:16:49
6	tier transactions, the company is creating new	04:16:52
7	1.5L capacity (undrawn at close) --	04:16:57
8	THE COURT REPORTER: Wait, I'm	04:16:57
9	sorry, after paren?	04:16:57
10	Q. (Undrawn, U-N-D-R-A-W-N, at close.)	04:17:10
11	Do you see that?	04:17:10
12	A. Yes.	04:17:10
13	Q. Fair to say the company in that	04:17:11
14	sentence refers to Incora?	04:17:16
15	A. Yes.	04:17:17
16	Q. And do you have an understanding of	04:17:18
17	what 1.5L capacity refers to?	04:17:21
18	A. I believe that's consistent with	04:17:25
19	that prior question I had written to Neal	04:17:27
20	Augustine which is what is, you know, this --	04:17:33
21	this basket capacity for. I think that -- I	04:17:36
22	believe that that is, like, the sort of, like,	04:17:39
23	third tier, which is, then, between the up	04:17:44
24	tiered unsecureds, the one and a quarters, and	04:17:49
25	the stub unsecureds.	04:17:53

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1	BHARADWA	
2	Q. So was it Senator's understanding	04:17:55
3	that this 1.5L capacity was being created to	04:18:00
4	issue additional Incora notes that could be	04:18:13
5	provided by -- that could be provided by Incora	04:18:18
6	to those note holders that did not participate	04:18:21
7	in the 2022 transaction?	04:18:26
8	A. I -- that was our speculation.	04:18:27
9	Q. And actually, can I have you take a	04:18:31
10	look at the next sentence following the one we	04:18:41
11	just looked at --	04:18:43
12	A. Yeah.	04:18:43
13	Q. -- where it says, pro forma, the	04:18:44
14	stub existing secured bonds will be striped of	04:18:49
15	all security (becoming pari, with the stub	04:18:52
16	unsecured notes), and the HoldCo bonds --	04:18:58
17	THE COURT REPORTER: I'm sorry, and	04:18:58
18	the?	04:18:58
19	Q. And the HoldCo, one word, bonds	04:19:01
20	will remain in place. Do you see that?	04:19:08
21	A. Yes.	04:19:11
22	Q. What -- so what is stub existing	04:19:11
23	secured bonds?	04:19:16
24	A. The -- the secured eight and halves	04:19:17
25	and nines that were not participants in the up	04:19:21

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1	BHARADWA	
2	tier exchange.	04:19:24
3	Q. So did Senator understand that once	04:19:27
4	the 2022 transaction was consummated, any	04:19:31
5	holders of Incora secured notes that did not	04:19:34
6	participate in the 2022 transaction would be	04:19:38
7	stripped of their secured status?	04:19:41
8	A. Yeah, that was our understanding.	04:19:44
9	MR. MARGULYAN: Mark this, please?	04:20:13
10	THE COURT REPORTER: Sure.	04:20:13
11	(Whereupon, the aforementioned	04:20:13
12	Bharadwa Exhibit 26, e-mail was marked	04:20:16
13	as for identification as of this date by	04:20:16
14	the Reporter.)	04:20:27
15	Q. Mr. Bharadwa, so the court reporter	04:20:27
16	handed you a document that we've marked as	04:20:28
17	Exhibit 26. And I'll -- you -- you're welcome	04:20:33
18	to review this document, but while you do that,	04:20:42
19	I'll represent for the record that this	04:20:44
20	document were -- we just marked as Exhibit 26	04:20:46
21	is it a copy of a presentation that was -- that	04:20:49
22	was used by the 2024, 2026 holders at the	04:20:52
23	October 11, 2023 summary judgment hearing in	04:20:57
24	this case and then subsequently filed in the	04:21:01
25	court's public docket. And Mr. Bharadwa, I	04:21:03

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1	BHARADWA	
2	will like to ask you just a couple of questions	04:21:08
3	about one slide in this presentation. It	04:21:10
4	appears on page 32. Can you please turn to it?	04:21:14
5	So just -- just to begin with, as	04:21:29
6	you can see, this slide has a title that says,	04:21:35
7	minutes of a meeting of the board of directors	04:21:40
8	of Wolverine Intermediate Holding	04:21:42
9	Corporation --	04:21:49
10	THE COURT REPORTER: I'm sorry, of?	04:21:49
11	Q. Wolverine Intermediate Holding	04:21:45
12	Corporation, do you see that?	04:21:49
13	A. Yes, I see that.	04:21:49
14	Q. Are you familiar with the company	04:21:52
15	Wolverine Intermediate Holding Corporation?	04:21:56
16	A. I'm not sure which box that is, but	04:21:59
17	yeah, it's part of Wesco. I assume that's --	04:22:02
18	board of directors, I assume that's the equity	04:22:06
19	box.	04:22:08
20	Q. And Mr. Bharadwa, have you seen any	04:22:08
21	of the information that appears in this slide	04:22:27
22	before?	04:22:29
23	A. I don't recall any of this.	04:22:29
24	Q. Okay.	04:22:29
25	A. It's possible that this -- maybe --	04:22:39

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1	BHARADWA	
2	it's possible that it was in, like, one of the	04:22:42
3	management presentations or something, but I --	04:22:45
4	I can't recall.	04:22:48
5	Q. Okay. Well, let me -- let me just	04:22:48
6	represent for the record, then, that this slide	04:22:51
7	contains an executive summary excerpt from a	04:22:53
8	presentation that was provided to the board of	04:22:57
9	directors of the Wolverine Intermediate Holding	04:22:59
10	Corporation and was attached to the Wolverine	04:23:04
11	Intermediate Holding Corporation's	04:23:09
12	board meeting minutes for March 24, 2022. So	04:23:14
13	Mr. Bharadwa, the excerpt that I mentioned	04:23:19
14	starts from the phrase executive summary on	04:23:22
15	this slide.	04:23:24
16	A. Yes.	04:23:24
17	Q. And it ends with the bullet that	04:23:25
18	says, majority secured group has the ability to	04:23:27
19	prevent incurrence of debt and liens beyond	04:23:31
20	existing baskets. Do you see that?	04:23:37
21	A. Yes.	04:23:39
22	Q. Okay. But the question I'd like to	04:23:39
23	ask you actually is about the second bullet	04:23:40
24	that's right above it that says, majority	04:23:43
25	secured group was not willing to open up	04:23:46

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1	BHARADWA	
2	transaction to all secured note holders.	04:23:48
3	THE COURT REPORTER: I'm sorry, was	04:23:48
4	not willing to open up transaction?	04:23:48
5	Q. Was not willing to open up	04:23:47
6	transaction to all secured note holders. Do	04:23:48
7	you see that?	04:23:58
8	A. I see that.	04:23:58
9	Q. As part of the 2022 transaction,	04:23:59
10	Senator exchanged its 2024 secured notes and	04:24:08
11	2026 secured notes, correct?	04:24:16
12	A. Yes.	04:24:18
13	Q. Okay. So do -- do you have an	04:24:18
14	understanding of what the term majority secured	04:24:28
15	group means here in this slide?	04:24:31
16	A. I don't.	04:24:32
17	MS. SHARMA: Objection.	04:24:34
18	Q. Okay. So I'll represent for the	04:24:34
19	record that the phrase majority secured group	04:24:35
20	refers to those holders of the 2024 notes and	04:24:38
21	the 2026 notes that participated in the 2022	04:24:41
22	transaction.	04:24:45
23	A. Okay.	04:24:45
24	Q. Okay. So based on that	04:24:46
25	representation would you agree with me that	04:24:47

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	Senator would have been a member --	04:24:52
3	THE COURT REPORTER: Wait, wait,	04:24:52
4	would you agree with me?	04:24:52
5	Q. Would you agree were with me that	04:24:48
6	Senator would have been a member of the	04:24:52
7	majority secured group?	04:24:53
8	A. Based on how you're defining it,	04:24:58
9	I'll take your word for it.	04:25:01
10	Q. That's fair. So based on my	04:25:02
11	definition and you're agreeing with it, would	04:25:05
12	it be accurate to say that Senator was not	04:25:08
13	willing to open up the 2022 transaction to all	04:25:10
14	holders?	04:25:12
15	MS. SHARMA: Objection.	04:25:13
16	A. It's not accurate.	04:25:14
17	Q. Why not?	04:25:15
18	A. Because we had no -- we were never	04:25:15
19	asked. We never opined. It was never our	04:25:19
20	place to decide whether to open it up or not.	04:25:23
21	Q. Does Senator know which note	04:25:25
22	holders that participated in the 2022	04:25:30
23	transaction were unwilling to open up the	04:25:35
24	transaction to all holders of the '24 notes or	04:25:38
25	the '26 notes?	04:25:41

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1	BHARADWA	
2	A. I do not know, but the -- I mean,	04:25:42
3	they're -- they're two major holders, so I	04:25:45
4	assume that they -- well, anyway, I don't want	04:25:47
5	to make assumptions.	04:25:49
6	Q. When you say they're two major	04:25:50
7	holders, who do you have in mind?	04:25:52
8	A. Silver Point and PIMCO.	04:25:54
9	THE COURT REPORTER: I'm sorry?	04:25:54
10	A. Silver Point and PIMCO.	04:25:59
11	THE COURT REPORTER: Silver point	04:25:59
12	and?	04:25:59
13	A. PIMCO, were the two major holders.	04:26:02
14	MR. MARGULYAN: Mark this please,	04:26:26
15	27?	04:26:26
16	THE COURT REPORTER: Yes.	04:26:28
17	(Whereupon, the aforementioned	04:26:28
18	Bharadwa Exhibit 27, e-mail was marked	04:26:29
19	as for identification as of this date by	04:26:29
20	the Reporter.)	04:26:35
21	Q. Mr. Bharadwa, the court reporter	04:26:35
22	handed you what we marked as Exhibit 27. Which	04:26:38
23	is a March 9, 2022 e-mail exchange between you	04:26:44
24	and several people from Evercore and PJT	04:26:48
25	partners. If you could, take a moment to	04:26:54

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1	BHARADWA	
2	review this exhibit, and while you review, I'll	04:26:56
3	just say for the record that it bears the	04:26:59
4	Senator production Bates stamp that ends with	04:27:02
5	6180.	04:27:05
6	A. Okay. Yes. I got it.	04:27:12
7	Q. Do you recognize this e-mail	04:27:12
8	exchange?	04:27:14
9	A. No, but just going through it now,	04:27:14
10	jogging my memory a little bit, okay.	04:27:31
11	Q. So would you mind briefly having --	04:27:40
12	now that you reviewed this exhibit, would you	04:27:42
13	mind briefly explaining what's being discussed	04:27:45
14	here?	04:27:47
15	A. It's new funding for the one and a	04:27:47
16	half -- sorry, the first lien, ten and a half	04:27:52
17	percent piece of paper that's PIMCO and Silver	04:27:56
18	Point provided.	04:28:00
19	Q. So -- okay. So let's just unpack	04:28:03
20	this a little bit. So in this Exhibit 27, we	04:28:07
21	see that on March 9th, 2022, Mr. Abramson from	04:28:10
22	PJT e-mailed you and said, Jay -- well, sorry.	04:28:17
23	Let me start over.	04:28:30
24	So at the bottom of this	04:28:31
25	Exhibit 27, there's an e-mail from Mr. Josh	04:28:35

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Conducted on October 25, 2023

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1	BHARADWA	
2	Abramson, dated March 9, 2022, to you and his	04:28:38
3	colleague at Evercore, Roopesh Shah, correct?	04:28:42
4	A. Yes.	04:28:44
5	Q. Okay. And the subject line is	04:28:45
6	funding mechanics?	04:28:47
7	A. Yes.	04:28:48
8	Q. And he says, Jay, Roopesh, Daniel,	04:28:48
9	as discussed, wanted you to connect you on	04:28:57
10	funding logistics. Jay is finalizing whether	04:29:01
11	he will participate in the funding. So let me	04:29:05
12	just stop there. Jay, in this e-mail, refers	04:29:07
13	to you?	04:29:10
14	A. Yes.	04:29:10
15	Q. And so do you have an understanding	04:29:11
16	of what they meant when they said -- or when, I	04:29:14
17	guess, Mr. Abramson says, Jay is finalizing	04:29:17
18	whether he will participate in the funding?	04:29:22
19	A. Yes.	04:29:24
20	Q. What is he talking about there?	04:29:25
21	A. They're asking if I want to	04:29:26
22	participate in my pro rata piece of the funding	04:29:29
23	for the ten and a half percent new liquidity	04:29:30
24	injection that was given to the company.	04:29:32
25	Q. So just so I understand, it -- the	04:29:35

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	funding that we're talking about here is	04:29:40
3	providing new money to the company --	04:29:42
4	A. Correct.	04:29:42
5	Q. -- as part of the 2022 transaction?	04:29:43
6	A. Correct.	04:29:45
7	Q. And so on that same day, Mr.	04:29:46
8	Bharadwa, you replied, and we see this right --	04:29:49
9	right above the e-mail that we just read,	04:29:54
10	thanks Josh. Roopesh/Daniel nice to meet. We	04:29:57
11	were on the fence, but elected to stand down	04:30:03
12	due to situational/liquidity/hassle factor in	04:30:06
13	combination.	04:30:12
14	A. Yeah.	04:30:12
15	Q. Period. I'll stop right there. So	04:30:13
16	Senator elected to stand down with respect to	04:30:20
17	providing new money.	04:30:22
18	A. Yes.	04:30:24
19	Q. Why?	04:30:24
20	A. This -- I was asked this question	04:30:26
21	earlier around, like, whether we participated,	04:30:30
22	and I honestly couldn't remember because I	04:30:32
23	think it was just so small that it didn't make	04:30:34
24	any difference. We had, what, 25,000,000 of	04:30:36
25	secured notes in total or 30, something like	04:30:39

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1 BHARADWA
2 that, and pro rata share was, like, two or 04:30:42
3 3,000,000 bucks probably. So it just didn't 04:30:45
4 make a difference one way or the other, and I 04:30:46
5 think we just said, forget it. Like, it's not 04:30:48
6 worth signing the paperwork and doing back and 04:30:51
7 forth and whatever. We just let it go. 04:30:54
8 Q. And so if Senator didn't provide 04:31:17
9 any new money as part of the 2022 transaction, 04:31:19
10 then what was Senator's understanding of the 04:31:26
11 benefit that it was providing to the company by 04:31:29
12 being allowed to exchange its 2024 notes and 04:31:32
13 2026 notes for the new 1L notes? 04:31:40
14 MR. KURLAND: Objection to the 04:31:44
15 form. You can answer if you understand 04:31:46
16 the question. 04:31:49
17 A. So I think -- let me just 04:31:50
18 paraphrase. What you're asking is what benefit 04:31:53
19 did we provide the company in order to have our 04:31:55
20 position up tiered. 04:32:01
21 Q. Correct. 04:32:02
22 A. Correct? 04:32:02
23 Q. Yes. 04:32:04
24 A. Okay. That's the consent right 04:32:05
25 from the PIK note is my -- 04:32:07

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1	BHARADWA	
2	THE COURT REPORTER: I'm sorry,	04:32:07
3	that's the --	04:32:07
4	A. My understanding, it's the consent	04:32:07
5	right from the PIK note that we owned.	04:32:09
6	THE COURT REPORTER: That we owned?	04:32:09
7	A. Yes.	04:32:12
8	Q. Okay. So -- and just so I'm clear,	04:32:12
9	so it -- it's Senator's understanding that the	04:32:16
10	consent right that Senator had, by virtue of	04:32:23
11	its ownership of the 2024 notes and the 2026	04:32:28
12	notes, was not necessary to execute the 2022	04:32:31
13	transaction, correct?	04:32:36
14	A. It was --	04:32:37
15	MR. KURLAND: Objection.	04:32:37
16	MS. SHARMA: Objection.	04:32:38
17	A. Yeah, restate the question.	04:32:39
18	Q. So --	04:32:41
19	A. The consent right is embedded in	04:32:44
20	the 2028 or the -- whatever those -- whatever	04:32:46
21	the maturity is, PIK notes. It has nothing to	04:32:47
22	do with the --	04:32:55
23	Q. So what -- Mr. Bharadwa, when I	04:32:56
24	asked you what benefit the company received	04:33:21
25	from Senator's participation --	04:33:24

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

1 BHARADWA

2 A. Yeah. 04:33:24

3 Q. -- in the 2022 transaction, your 04:33:25

4 answer was that's the consent. 04:33:27

5 A. Yeah. 04:33:27

6 Q. My understanding, it's the consent 04:33:32

7 right from the PIK note -- 04:33:32

8 A. Yes. 04:33:32

9 Q. PIK notes that we owned? 04:33:33

10 A. Correct. 04:33:34

11 MS. SHARMA: Objection. 04:33:35

12 Q. And my question is whether -- 04:33:35

13 again, just to confirm, whether Senator's 04:33:44

14 understanding was that the consent rights that 04:33:47

15 it held as owners of the 2024 notes and the 04:33:54

16 2026 notes were not necessary for the 2022 04:33:59

17 transaction to be consummated? 04:34:03

18 A. I do not understand your question. 04:34:05

19 As -- I do not understand your question. 04:34:11

20 Q. Well, let me ask this, can you 04:34:12

21 explain what was it about -- how -- how did -- 04:34:15

22 so I think you said -- and correct me if I'm 04:34:50

23 wrong -- that the consent right that Senator 04:34:53

24 held as owner of PIK notes -- 04:34:55

25 A. Yeah. 04:34:55

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1	BHARADWA	
2	Q. -- was the benefit that the company	04:34:58
3	received from Senator's participation in the	04:34:59
4	2022 transaction?	04:35:05
5	MS. SHARMA: Objection.	04:35:06
6	A. Yes.	04:35:06
7	Q. So in your understanding, were	04:35:08
8	Senator's holdings in the 2026 notes needed to	04:35:35
9	meet any necessary consent thresholds for the	04:35:42
10	2022 transaction to be executed?	04:35:48
11	A. Ah, okay. I understand that	04:35:50
12	question. I don't know the answer though.	04:35:51
13	I -- I -- I don't know whether that was	04:36:04
14	specifically needed. I think there were	04:36:06
15	probably ways they could have gotten a majority	04:36:09
16	or, you know, maybe on the note issuance, they	04:36:13
17	-- I -- I don't know. I don't know for sure.	04:36:16
18	I think my understanding is that that was	04:36:18
19	helpful, but I don't know that it was ever	04:36:22
20	necessary or not.	04:36:27
21	Q. Okay. So I guess -- yeah, just to	04:36:46
22	close the loop on this, Mr. Bharadwa, were	04:36:47
23	Senator's holding in the 2027 notes needed to	04:36:54
24	meet any necessary consent thresholds for the	04:36:57
25	2022 transaction to be completed?	04:37:01

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1	BHARADWA	
2	MS. SHARMA: Objection.	04:37:03
3	A. Those -- those are 13 and eighths,	04:37:04
4	right, the unsecureds? I don't -- I don't	04:37:06
5	think so.	04:37:08
6	Q. And the same answer for the 2024	04:37:08
7	notes?	04:37:11
8	MS. SHARMA: Objection.	04:37:12
9	A. I -- that was a little more unclear	04:37:12
10	to me. As I said, the 2024s and 2026s, I'm not	04:37:14
11	sure if my stake was valuable in them securing	04:37:18
12	the deal percentages or not. I don't know.	04:37:23
13	For the 13 and eighths, it wasn't necessary is	04:37:33
14	what I understand, but I could -- I don't know.	04:37:37
15	Q. Mr. Bharadwa, and do you understand	04:37:45
16	that as -- as part of the 2022 transaction,	04:37:49
17	Senator agreed to the amendment of certain	04:37:52
18	terms of the indentures for both the secured	04:37:57
19	notes and the unsecured notes that Senator held	04:38:00
20	in Incora?	04:38:03
21	A. Yes, there would have been changes	04:38:04
22	associated with that, yes. Like, you mean in	04:38:08
23	the pro forma ten and a half percent notes?	04:38:11
24	Q. So do you understand that as part	04:38:14
25	of the 2022 transaction there were several	04:38:22

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1	BHARADWA	
2	amendments to the indentures that were	04:38:24
3	executed?	04:38:26
4	A. That sounds right.	04:38:26
5	Q. Did Senator -- and Senator	04:38:30
6	consented to those amendments, correct?	04:38:36
7	A. We must have.	04:38:38
8	Q. Did Senator review the terms of	04:38:40
9	those -- of the supplemental indentures that	04:38:45
10	amended the underlying indentures --	04:38:54
11	THE COURT REPORTER: I'm sorry,	04:38:54
12	that?	04:38:54
13	Q. That amended the underlying	04:38:51
14	indentures for Incora's notes?	04:38:57
15	A. We -- we probably had legal -- I --	04:39:00
16	yes, we had legal counsel take a look at what	04:39:04
17	was happening, and as I mentioned, Morgan Lewis	04:39:07
18	was assisting us with that. So the answer is	04:39:12
19	presumably yes, but it wasn't something that I	04:39:17
20	was directly involved in.	04:39:21
21	Q. So who on -- among folks at Senator	04:39:22
22	would have been involved in reviewing the terms	04:39:28
23	of the supplemental indentures that amended the	04:39:33
24	terms of the underlying indentures?	04:39:39
25	A. It would be --	04:39:39

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1	BHARADWA	
2	THE COURT REPORTER: I'm sorry,	04:39:39
3	that amended the?	04:39:39
4	Q. The terms of the underlying	04:39:37
5	indentures?	04:39:41
6	A. It would've been our general	04:39:41
7	counsel and our legal advisors.	04:39:43
8	MR. MARGULYAN: We're going to do	04:40:51
9	tab 39. Can you mark this?	04:40:52
10	THE COURT REPORTER: Sure.	04:40:52
11	MR. MARGULYAN: This will be 28.	04:40:52
12	(Whereupon, the aforementioned	04:40:52
13	Bharadwa Exhibit 28, e-mail was marked	04:40:54
14	as for identification as of this date by	04:40:54
15	the Reporter.)	04:40:55
16	Q. Mr. Bharadwa, so the court reporter	04:40:55
17	handed you what we marked as Exhibit 28, which	04:41:16
18	is an e-mail chain that was produced by Senator	04:41:21
19	with a Bates number -- with a starting Bates	04:41:28
20	number ending at 5658. If you could, take a	04:41:32
21	moment to flip through it, although, I will ask	04:41:36
22	you questions about the last two pages only.	04:41:40
23	A. Okay.	04:42:18
24	Q. Yeah, when -- and when I said the	04:42:19
25	last two pages, I probably meant not the actual	04:42:20

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BHARADWA

last two pages, but the last two pages that
actually have substantive e-mail text on it.

04:42:23
04:42:25

A. Okay.

04:42:25

Q. So it's the pages that end with

04:42:28

5663 Bates number and --

04:42:32

THE COURT REPORTER: I'm sorry, the

04:42:32

pages that end?

04:42:32

Q. With 5663 Bates number and 5664.

04:42:31

A. Okay.

04:42:37

Q. So if you're looking at the page

04:42:38

ending with Bates 5663, you'll see there in the

04:42:41

middle there's an e-mail, dated March 22, 2022,

04:42:47

from Mr. Jon English at Morgan Lewis to several

04:42:51

people at Senator, including yourself. Do you

04:42:56

see that?

04:42:59

A. Yes.

04:42:59

Q. Do you recall receiving and reading

04:43:00

this e-mail?

04:43:03

A. I don't recall this e-mail chain,

04:43:04

no.

04:43:07

Q. Okay. Looking at it now, do you

04:43:07

have an understanding of what it contains?

04:43:12

A. Yeah, this is just ops closing

04:43:14

mechanics for the exchange. It's not something

04:43:19

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1	BHARADWA	
2	that I would have been involved in.	04:43:23
3	Q. Understood. So on the page ending	04:43:24
4	with 5663, you see there's a -- there's the	04:43:33
5	beginning of a numbered list --	04:43:37
6	A. Yes.	04:43:40
7	Q. -- that's -- that's being	04:43:40
8	described -- that's -- you're right. That's	04:43:42
9	being described as closing mechanics, and if I	04:43:44
10	could direct your attention to the -- you know,	04:43:46
11	I guess the number two on that list, it says,	04:43:50
12	Incora executes the Third Supplemental	04:43:54
13	Indentures (2024, 2026, 2027) and the first up	04:43:57
14	supplemental indenture --	04:44:08
15	THE COURT REPORTER: I'm sorry, and	04:44:05
16	the first up supplemental indenture?	04:44:05
17	Q. Supplemental indenture (HoldCo PIK)	04:44:08
18	to permit the incurrence of the Additional 2026	04:44:13
19	Notes. Do you see that?	04:44:18
20	A. Yes.	04:44:18
21	Q. So did Senator have an	04:44:19
22	understanding that as part of the 2022	04:44:21
23	transaction, Incora executed the third	04:44:25
24	supplemental indenture, so that it could issue	04:44:30
25	additional 2026 notes?	04:44:36

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1	BHARADWA	
2	THE COURT REPORTER: I'm sorry	04:44:36
3	that -- so that it could issue?	04:44:36
4	Q. Additional 2026 notes?	04:44:36
5	A. That -- yeah that appears to be	04:44:38
6	correct.	04:44:45
7	Q. And did Senator have an	04:44:45
8	understanding why it was needed to execute the	04:44:51
9	third supplemental indenture for the	04:45:01
10	consummation of the 2022 transaction?	04:45:05
11	MR. KURLAND: Objection to form.	04:45:07
12	You can answer if you understand the	04:45:09
13	question.	04:45:11
14	A. Yeah. Yeah, so that they can issue	04:45:11
15	the additional 2026 notes and, kind of, hit the	04:45:16
16	required majority for the next steps in their	04:45:22
17	process or in the transaction.	04:45:25
18	Q. When Senator first became	04:45:27
19	substantively involved in discussing the 2022	04:45:33
20	transaction terms, was the third supplemental	04:45:37
21	indenture already part of the transaction	04:45:41
22	structure?	04:45:47
23	MR. KURLAND: Objection to form.	04:45:47
24	THE COURT REPORTER: Already part	04:45:41
25	of the, I'm sorry?	04:45:42

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1	BHARADWA	
2	Q. Transaction structure?	04:45:46
3	A. I have no idea.	04:45:49
4	Q. When Senator first became	04:45:50
5	substantively involved in discussions of the	04:46:12
6	2022 transaction, was the issuance of	04:46:15
7	additional 2026 notes already part of the	04:46:18
8	transaction structure?	04:46:22
9	MS. SHARMA: Objection.	04:46:25
10	A. I don't recall.	04:46:25
11	Q. Okay. Mr. Bharadwa, so yeah, still	04:46:30
12	staying on this Exhibit 28, if you could go --	04:47:45
13	if you could go on the next page that's Bates	04:47:47
14	stamped 5664, that's a continuation of the list	04:47:51
15	of the closing mechanics for the 2022	04:47:55
16	transaction. I wanted to direct your attention	04:48:00
17	to item four that says, Incora executes the	04:48:01
18	Fourth Supplemental Indenture (2024, 2026,	04:48:07
19	2027) and the Second Supplemental Indenture	04:48:13
20	(HoldCo PIK).	04:48:23
21	THE COURT REPORTER: Wait, and the	04:48:14
22	Second Supplemental?	04:48:14
23	Q. Indenture (HoldCo PIK). Do you see	04:48:19
24	that?	04:48:25
25	A. Yes.	04:48:25

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1	BHARADWA	
2	Q. Are you familiar with the terms of	04:48:26
3	the fourth supplemental indenture?	04:48:34
4	A. Not personally, no.	04:48:37
5	Q. Do you recall whether, at any	04:48:40
6	point, you would have reviewed the terms of the	04:48:43
7	four --	04:48:46
8	THE COURT REPORTER: I'm sorry, do	04:48:46
9	you recall?	04:48:46
10	Q. If at any point you would have	04:48:43
11	reviewed the terms of the fourth supplemental	04:48:44
12	indenture?	04:48:47
13	MR. KURLAND: Objection. Just so	04:48:48
14	the record's clear, it does say plural	04:48:49
15	indentures.	04:48:53
16	Q. Indentures, yes.	04:48:53
17	A. I did not specifically review. You	04:48:54
18	know, as mentioned, we had no bearing on what	04:48:58
19	the what the -- what they ultimately were going	04:49:04
20	to say, so did we review them, I -- yes, our	04:49:07
21	legal counsel and Morgan Lewis reviewed them.	04:49:11
22	I -- I am quite sure, but I never personally	04:49:14
23	did, nor did we have any back and forth around	04:49:17
24	any of that that I'm aware of.	04:49:20
25	Q. Okay.	04:49:46

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	MR. MARGULYAN: Mark this.	04:49:46
3	(Whereupon, the aforementioned	04:49:46
4	Bharadwa Exhibit 29, execution version	04:49:53
5	was marked as for identification as of	04:49:53
6	this date by the Reporter.)	04:50:09
7	Q. Mr. Bharadwa, so the court reporter	04:50:09
8	handed you what -- what's been marked as	04:50:27
9	Exhibit 29, which I'll represent for the record	04:50:30
10	is a copy of the executed fourth supplemental	04:50:34
11	indenture for the 2026 notes. So have you seen	04:50:37
12	this document before?	04:50:46
13	A. No.	04:50:46
14	Q. So I'd like to direct your	04:50:47
15	attention to section 2(c) of this fourth	04:50:55
16	supplemental indenture that appears on page 3.	04:50:58
17	A. Okay.	04:51:06
18	Q. Sorry, and I should have noted for	04:51:06
19	the record that what we marked as Exhibit 29	04:51:08
20	was produced in this case with the Bates stamp	04:51:11
21	Wesco_2004_0231726. Mr. Bharadwa, so like I	04:51:17
22	said, I wanted to direct your attention to	04:51:34
23	section 2(c) on page 3 of this Exhibit 29. Are	04:51:37
24	you there?	04:51:41
25	A. Yes.	04:51:41

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1	BHARADWA	
2	Q. So section 2(c) of Exhibit 29	04:51:41
3	that's the fourth supplemental indenture for	04:51:46
4	the 2026 notes says, clause (c) of section	04:51:48
5	708 --	04:51:56
6	THE COURT REPORTER: I'm sorry,	04:51:56
7	clause?	04:51:56
8	Q. Clause (c) of section 708	04:51:50
9	(Replacement of Trustee) of the Indenture is	04:51:57
10	hereby amended by deleting the second sentence	04:52:00
11	thereof in -- in its entirety. Do you see	04:52:03
12	that?	04:52:06
13	A. Yes.	04:52:06
14	Q. Does Senator have an understanding	04:52:06
15	of why -- why that amendment that I just read	04:52:18
16	in this section 2(c) was made to the indenture?	04:52:20
17	A. No.	04:52:23
18	Q. Does Senator know who proposed that	04:52:24
19	amendment?	04:52:29
20	A. No.	04:52:30
21	MR. MARGULYAN: Would you mark	04:53:20
22	this?	04:53:26
23	THE COURT REPORTER: Sure.	04:53:26
24	(Whereupon, the aforementioned	04:53:26
25	Bharadwa Exhibit 30, document was marked	04:53:27

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1 BHARADWA
2 as for identification as of this date by 04:53:27
3 the Reporter.) 04:53:53
4 Q. Mr. Bharadwa, if I could 04:53:53
5 actually -- so the court reporter handed you 04:54:22
6 what we marked as Exhibit 30, but before I have 04:54:24
7 you look at that exhibit, can I have you turn 04:54:28
8 back at Exhibit 28 -- to Exhibit 28 rather? 04:54:30
9 A. Okay. 04:54:38
10 Q. And if you could turn to the page 04:54:39
11 we looked at previously that has a Bates number 04:54:43
12 ending in 5664 with the list of the -- 04:54:48
13 A. Okay. 04:54:48
14 Q. -- closing mechanics for the 2022 04:54:50
15 transaction, if I could -- 04:54:56
16 THE COURT REPORTER: For -- for 04:54:56
17 the? 04:54:56
18 Q. 2022 transaction, and if I could 04:54:54
19 direct your attention to item six -- 04:54:59
20 A. Yes. 04:55:02
21 Q. -- which refers to the exchange 04:55:02
22 agreement, it says, the Exchange Agreement will 04:55:04
23 provide for the exchanging noteholders -- 04:55:10
24 THE COURT REPORTER: I'm sorry, the 04:55:06
25 Exchange Agreement? 04:55:07

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1	BHARADWA	
2	Q. Will provide for the exchanging	04:55:10
3	noteholders have custodians transfer their	04:55:12
4	existing notes. Do you see that?	04:55:16
5	A. Yes.	04:55:19
6	Q. So what was your understanding	04:55:19
7	of -- of the role that the exchange agreement	04:55:33
8	played in the 2022 transaction?	04:55:36
9	A. I -- what was, I mean, we -- I	04:55:36
10	didn't -- I didn't -- we didn't go through this	04:55:41
11	or look at this or discuss it as an investment	04:55:45
12	team. I don't -- I mean, it's an exchange	04:55:48
13	agreement, so I assume it executes the exchange	04:55:53
14	of the bonds.	04:55:56
15	Q. Okay. So -- yeah, so if you -- if	04:55:56
16	you could now take a look at Exhibit 30, which	04:56:00
17	I'll represent for the record is a copy of the	04:56:03
18	exchange agreement that was produced in this	04:56:07
19	litigation with a Bates number starting with	04:56:10
20	WSFS_00028511.	04:56:16
21	A. Okay.	04:56:22
22	Q. Have you seen this document before?	04:56:22
23	A. No.	04:56:25
24	Q. If I could have you turn to -- it	04:56:26
25	should be the ninth page from the end. It's	04:56:46

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1	BHARADWA	
2	also -- you'll see it has a Bates stamp -- the	04:56:50
3	top Bates stamp that ends in 8563.	04:56:52
4	A. Okay.	04:57:03
5	Q. Am I correct that the page I just	04:57:04
6	referred to -- you to contains a signature,	04:57:07
7	Senator's signature?	04:57:11
8	A. It contains Evan Gartenlaub's	04:57:12
9	signature, yes.	04:57:17
10	Q. On behalf of Senator?	04:57:17
11	A. Yes.	04:57:18
12	Q. So Senator signed this exchange	04:57:18
13	agreement, correct?	04:57:22
14	A. Yes.	04:57:22
15	Q. Okay. Can I have you, then, turn	04:57:22
16	to section 8.02 of the exchange agreement that	04:57:25
17	we have in this Exhibit 30?	04:57:34
18	A. Yeah.	04:57:43
19	Q. So section 8.02 is an -- is an	04:57:44
20	indemnification provision.	04:57:55
21	THE COURT REPORTER: I'm sorry, in?	04:57:55
22	Q. Indemnification provision.	04:57:56
23	A. Okay.	04:57:57
24	Q. Did Senator request that this	04:58:05
25	indemnification provision be included in the	04:58:12

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	exchange agreement?	04:58:14
3	THE COURT REPORTER: I'm sorry, did	04:58:05
4	Senator request?	04:58:05
5	Q. Did Senator request that this	04:58:05
6	indemnification provision be included in this	04:58:12
7	exchange agreement?	04:58:14
8	A. I do not know.	04:58:15
9	Q. Who would know?	04:58:17
10	A. Evan Gartenlaub, our general	04:58:23
11	counsel, would know.	04:58:26
12	Q. And does Senator know whether any	04:58:26
13	of the other participants in the 2022	04:58:34
14	transaction requested the inclusion of this	04:58:37
15	indemnity provision in the exchange agreement?	04:58:39
16	A. No.	04:58:42
17	Q. Mr. Bharadwa, at the time that	04:58:44
18	Senator was -- was discussing the 2022	04:58:59
19	transaction, was it aware that the -- Incora	04:59:02
20	was receiving alternative transaction proposals	04:59:09
21	from an ad hoc group represented by the law	04:59:12
22	firm of Akin Gump?	04:59:17
23	A. I had heard that there was some	04:59:20
24	other proposal that was reflected into the	04:59:21
25	company. Yes, I think we were aware of that.	04:59:22

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1	BHARADWA	
2	Q. And how did Senator become aware of	04:59:24
3	that?	04:59:26
4	A. Just generally, the market knew. I	04:59:26
5	mean, banks and --	04:59:30
6	THE COURT REPORTER: I'm sorry?	04:59:30
7	A. Banks probably mentioned it to us	04:59:39
8	or, you know, it's just -- it's out there. So	04:59:40
9	I think it was general market knowledge at that	04:59:47
10	time.	04:59:49
11	Q. And during the time that Senator	04:59:49
12	was involved in discussions of the 2022	04:59:57
13	transaction, did it -- did it receive any	05:00:01
14	information about the terms of the alternative	05:00:04
15	proposals from the group represented by --	05:00:07
16	A. I don't recall ever receiving	05:00:09
17	anything around that.	05:00:11
18	Q. So does Senator know what happened	05:00:12
19	to the value of the 2026 notes and the 2024	05:00:29
20	notes that were not up tiered as part of the	05:00:33
21	2022 transaction?	05:00:38
22	A. Yeah, they went down. I don't	05:00:38
23	recall from what level to exactly what level,	05:00:40
24	but they went down, yeah.	05:00:42
25	Q. And Mr. Bharadwa, in order to	05:00:43

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1	BHARADWA	
2	participate in the 2022 transaction, did	05:00:53
3	Senator have to obtain approval from its	05:00:59
4	investment committee?	05:01:01
5	A. As I mentioned, our process is Doug	05:01:02
6	and I as co-CIOs are authorized to approve or	05:01:12
7	disapprove investments, and so in this case,	05:01:17
8	that is our process. And we didn't have any	05:01:21
9	formal, like, all-hands investment committee	05:01:26
10	meeting around it.	05:01:29
11	MR. MARGULYAN: Can we take a	05:01:48
12	break?	05:01:49
13	THE COURT REPORTER: Sure.	05:01:49
14	MR. KURLAND: Break?	05:01:49
15	MR. MARGULYAN: Yeah.	05:01:49
16	THE VIDEOGRAPHER: We're going off	05:01:49
17	the record. The time is 5:02 p.m.	05:01:56
18	(Whereupon, an off-the-record	05:01:59
19	discussion was held.)	05:11:49
20	THE VIDEOGRAPHER: We are going	05:11:49
21	back on the record. The time is	05:11:54
22	5:12 p.m.	05:11:57
23	MR. MARGULYAN: Mark this, please.	05:12:10
24	THE COURT REPORTER: Sure.	05:12:10
25	MR. MARGULYAN: I think it's going	05:12:10

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1	BHARADWA	
2	to be 31.	05:12:12
3	(Whereupon, the aforementioned	05:12:12
4	Bharadwa Exhibit 31, e-mail was marked	05:12:13
5	as for identification as of this date by	05:12:13
6	the Reporter.)	05:12:15
7	Q. Mr. Bharadwa, the court reporter	05:12:15
8	handed you what's been marked as Exhibit 31.	05:12:25
9	A. Yes.	05:12:27
10	Q. But if you could take a moment to	05:12:28
11	review, and while you do that, I'll represent	05:12:30
12	for the record that Exhibit 31 is a document	05:12:34
13	produced by Senator in this case with a Bates	05:12:36
14	number ending at 5342.	05:12:39
15	A. Okay.	05:13:52
16	Q. So this Exhibit 31 is another draft	05:13:52
17	weekly update about Incora that Mr. Boggs	05:14:00
18	prepared, correct?	05:14:08
19	THE COURT REPORTER: I'm sorry,	05:14:08
20	about?	05:14:08
21	Q. Incora that Mr. Boggs prepared and	05:14:05
22	sent around on February 13th, 2022?	05:14:08
23	A. Yes.	05:14:11
24	Q. And do you recall reviewing this	05:14:11
25	draft?	05:14:17

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BHARADWA

A. I don't recall specifically, again,
but I'm sure I did.

Q. So I'd like to direct your
attention to the third sentence in that draft
that says, the other Ad Hoc creditor group is
attempting to form a blocking position in the
secured bonds in order to prevent the deal. Do
you see that?

A. Yes.

Q. The deal refers to the 2022
transaction?

A. That sounds right.

Q. So is it fair to say that as of
February 13, 2022, which is the date of this
draft update we just read, Senator was aware
that another group of creditors was formed and
planned to accumulate a blocking position in
their secured bond holdings in order to prevent
the --

A. Yeah, that -- that's fair.

Q. -- 2022 transaction? Okay.

THE COURT REPORTER: I'm sorry, in
order to prevent?

Q. In order to prevent the 2022

05:14:17
05:14:18
05:14:20
05:14:30
05:14:35
05:14:41
05:14:42
05:14:45
05:14:45
05:14:45
05:14:48
05:14:48
05:14:51
05:15:01
05:15:03
05:15:10
05:15:15
05:15:20

05:15:23

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1	BHARADWA	
2	transaction?	05:15:28
3	A. That's fair.	05:15:28
4	Q. Okay. And did Senator, at some	05:15:31
5	point, become aware that this ad hoc group was	05:15:34
6	successful in forming a blocking position?	05:15:40
7	A. I don't recall, but yeah. I mean,	05:15:43
8	that makes sense. It's, hence, why they issued	05:15:47
9	the additional nine percent note, so yeah.	05:15:50
10	Q. So when you said that makes sense,	05:15:54
11	and that's why they issued the additional nine	05:16:05
12	percent notes, can you explain what you mean by	05:16:08
13	that?	05:16:10
14	A. Well, I don't --	05:16:10
15	MS. SHARMA: Objection.	05:16:15
16	A. Yeah, I don't recall exactly	05:16:16
17	that -- knowing, at any point in time, they had	05:16:19
18	a blocking position, but clearly if they were	05:16:24
19	issuing these additional notes in order to make	05:16:26
20	their percentages, then therefore, a blocking	05:16:30
21	position had been established. I don't recall	05:16:32
22	exactly, you know, at what date, what -- you	05:16:34
23	know, but that -- that's, sort of, an obvious	05:16:39
24	inference.	05:16:41
25	Q. Does Senator know how any of the	05:16:41

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1	BHARADWA	
2	participants in the 2022 transaction reacted to	05:16:56
3	news about this blocking position being formed?	05:17:03
4	A. No.	05:17:06
5	Q. And does Senator know whether any	05:17:08
6	portion of the 2022 transaction changed in	05:17:21
7	response to the blocking position being formed?	05:17:27
8	A. Do we know whether any portions of	05:17:29
9	the transactions changed, no. We weren't	05:17:36
10	involved in -- in the transaction, so, like, we	05:17:40
11	don't know at what -- at any point, how much	05:17:45
12	had been, you know -- I don't know.	05:17:47
13	MR. MARGULYAN: Can you mark this,	05:18:19
14	please?	05:18:21
15	THE COURT REPORTER: Sure.	05:18:21
16	MR. MARGULYAN: This is 32.	05:18:24
17	(Whereupon, the aforementioned	05:18:24
18	Bharadwa Exhibit 32, e-mail was marked	05:18:25
19	as for identification as of this date by	05:18:25
20	the Reporter.)	05:18:36
21	Q. Mr. Bharadwa, so the court reporter	05:18:36
22	handed you what we marked, I believe, as	05:18:48
23	Exhibit 32.	05:18:52
24	A. Yeah. God, this is all --	05:18:53
25	Q. Which is --	05:18:53

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1	BHARADWA	
2	A. -- PTSD.	05:18:58
3	Q. Which is an e-mail exchange that	05:19:00
4	was produced in this case by Senator, starting	05:19:03
5	with the Bates number that ends in 0006. If	05:19:05
6	you could take a moment to review, let me know	05:19:13
7	when you're finished.	05:19:16
8	A. Yep.	05:19:17
9	Q. So if I can have you take a look at	05:19:17
10	the second to last page of this Exhibit 32, and	05:19:26
11	so it looks like, starting from the first	05:19:33
12	e-mail in this e-mail chain in Exhibit 32,	05:19:36
13	there was an e-mail on May 13, 2023 from Mr.	05:19:39
14	Ethan Ross at PJT to you, saying, we wanted	05:19:44
15	to -- to reach out to suggest Senator get	05:19:54
16	restricted on Incora. Milbank is cc'd and can	05:19:57
17	provide an NDA. Let us know if helpful to	05:20:06
18	discuss. Do you see that?	05:20:09
19	A. Yes.	05:20:10
20	Q. So were you in contact with PJT	05:20:10
21	about Incora prior to the date of this e-mail	05:20:18
22	of May 13th, 2023?	05:20:22
23	A. I -- not that I recall. It's	05:20:24
24	possible that sometime between February and	05:20:26
25	May -- February of '22 and May of '23, we	05:20:30

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1	BHARADWA	
2	talked to them at some point, but it wasn't --	05:20:36
3	there was no regular contact.	05:20:38
4	Q. And what did you talk to them	05:20:39
5	about?	05:20:41
6	MR. KURLAND: Objection.	05:20:42
7	MS. SHARMA: Objection.	05:20:43
8	A. I don't recall any specific	05:20:44
9	conversations with them.	05:20:47
10	Q. Okay. Do you understand what Mr.	05:20:48
11	Ross meant when he suggested in this e-mail	05:20:55
12	that Senator get restricted on Incora?	05:20:58
13	A. Yeah, I think he meant Senator get	05:21:01
14	restricted on Incora.	05:21:03
15	Q. Yeah, what does that mean?	05:21:05
16	A. Like, sign an NDA.	05:21:06
17	THE COURT REPORTER: I'm sorry, say	05:21:06
18	that again.	05:21:06
19	A. Sign an NDA.	05:21:08
20	Q. For what purpose?	05:21:09
21	A. We clearly didn't know until we	05:21:10
22	signed the NDA.	05:21:15
23	Q. Okay. Did you end up signing an	05:21:17
24	NDA?	05:21:21
25	A. I -- I believe so, yes. Yes, see	05:21:21

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1	BHARADWA	
2	executed attached, yes.	05:21:24
3	Q. Okay. And so once you signed the	05:21:25
4	NDA, what was the reason that you signed the	05:21:27
5	NDA at this time?	05:21:30
6	A. To hear the company's revised	05:21:31
7	business plan and fall into, you know, a	05:21:39
8	full-on restructuring.	05:21:43
9	Q. Did -- did you say fall into a	05:21:46
10	full-on restructuring?	05:21:54
11	A. Yeah.	05:21:55
12	Q. What do you mean by that?	05:21:55
13	A. Well, I mean, the -- it was going	05:21:57
14	to have to file for bankruptcy.	05:21:59
15	MS. SHARMA: Objection.	05:22:02
16	A. So that was the purpose of that	05:22:03
17	outreach is to inform us of that and present --	05:22:09
18	or to deliver the business plan around that.	05:22:13
19	Q. And after you sign an NDA, the	05:22:17
20	company's counsel provided Senator with some	05:22:27
21	financial materials about Incora, correct?	05:22:30
22	A. Yes.	05:22:34
23	Q. And did you review those materials?	05:22:34
24	A. Yes.	05:22:36
25	Q. And what was your reaction to those	05:22:36

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1	BHARADWA	
2	materials once you reviewed them?	05:22:39
3	A. My words are puke as previewed.	05:22:40
4	Q. Yeah, can you explain what you mean	05:22:46
5	by puke as previewed?	05:22:49
6	A. Like, really bad results that took	05:22:50
7	us by surprise, and, you know, we -- we knew	05:22:55
8	that the company wasn't tracking as well as we	05:23:01
9	had hoped, but this is a negative surprise.	05:23:04
10	Q. And do you recall, like, any	05:23:09
11	specifics that, sort of, triggered this	05:23:11
12	reaction from you?	05:23:14
13	MS. SHARMA: Objection.	05:23:17
14	A. No. I mean, it's bad financial	05:23:18
15	framework. Like, just looking at the -- the	05:23:20
16	numbers, it was, like, wow, this not solvent,	05:23:22
17	and the -- the amount of EBITDA that they're --	05:23:26
18	I just remember, like, the -- I remember the	05:23:29
19	recovered EBITDA that they were projecting over	05:23:33
20	the course of a couple of years was low	05:23:37
21	relative to what we thought the business should	05:23:40
22	be capable of. It was disappointing.	05:23:42
23	Q. And so yeah, if -- if you look at	05:23:44
24	the first page of Exhibit 32, I believe you're	05:23:51
25	already there. Second e-mail from the bottom,	05:23:57

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1	BHARADWA	
2	on May 15th, 2023 from Mr. Pierson to you,	05:23:59
3	says -- I'm looking at the portion of his	05:24:04
4	e-mail that says, we have to write off our	05:24:12
5	remaining 50bps of exposure --	05:24:14
6	THE COURT REPORTER: I'm sorry, 50?	05:24:14
7	Q. 50bps of exposure or take-back --	05:24:19
8	I'm sorry -- exposure, our take-back paper is	05:24:27
9	basically worthless. Do you see that?	05:24:35
10	THE COURT REPORTER: Basically?	05:24:35
11	Q. Worthless.	05:24:38
12	A. Yes.	05:24:38
13	Q. Do you know what Mr. Pierson meant	05:24:40
14	by those statements that I just read?	05:24:53
15	A. Yes. It's a negative surprise	05:24:55
16	versus our assumption that it was already	05:24:57
17	tracking worse than planned, and he's	05:25:00
18	suggesting that our remaining exposure is not	05:25:05
19	worth very much if this plan is, you know, what	05:25:12
20	we believe to be the base case for the company.	05:25:18
21	Q. And if you could look up at the	05:25:24
22	second e-mail from the top from Mr. Pierson,	05:25:38
23	that he sent to you on that same day on May 15,	05:25:43
24	2023, where he says, even by Platinum/Incora	05:25:46
25	standards, this is really bad though. Market	05:25:52

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1	BHARADWA	
2	challenges aside, they ruined this business and	05:25:56
3	f'd up all parts of the integration and	05:25:58
4	controllable margin stuff. And then, you	05:26:03
5	responded to that e-mail by saying, yes and	05:26:06
6	yes. Do you see that?	05:26:09
7	A. I do.	05:26:09
8	Q. So you agreed with Mr. Pierson's	05:26:10
9	statement that even by Platinum/Incora	05:26:14
10	standards, this is really bad though?	05:26:18
11	A. Yes.	05:26:20
12	Q. So what did you understand Mr.	05:26:22
13	Pierson to mean by even by Platinum/Incora	05:26:26
14	standards?	05:26:31
15	A. Meaning they haven't been the best	05:26:31
16	managers of every business we've interfaced	05:26:33
17	with them around, and, you know, we -- we've	05:26:37
18	had some wins and some losses. And, you know,	05:26:45
19	you hope for a lot more wins and only a couple	05:26:49
20	of losses over time, and, you know, the hit	05:26:52
21	rate -- the hit rate had -- hadn't been perfect	05:26:58
22	with them, which is what he was referring --	05:26:59
23	what he was referring to. By those standards,	05:27:02
24	meaning the hit rate not being perfect, this is	05:27:04
25	also, you know, even worse than that.	05:27:06

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BHARADWA

Q. And Mr. Bharadwa, when you just said they haven't been the best managers of every business, when you say they, are -- were you referring to Platinum?

A. Yes.

Q. And so when you responded to Mr. Pierson's e-mail that we -- we were just talking about by saying yes and yes, were you also agreeing with his comment that they ruined this business and f'd up all parts of the integration and controllable margin stuff?

MS. SHARMA: Objection.

A. That was my response to him, yes.

Q. And in that sentence was it your standing that they, again, refers to Platinum?

A. Yes.

Q. How do you think they ruined the -- Platinum ruined the business?

A. They just didn't operate it well.

Just, this is not an example of good operational execution. They had done better in many other cases. They've also not, you know -- this is -- but this is -- this is a -- an example of poor management.

05:27:08
05:27:13
05:27:15
05:27:17
05:27:19
05:27:19
05:27:29
05:27:32
05:27:35
05:27:37
05:27:40
05:27:44
05:27:44
05:27:47
05:27:55
05:27:57
05:27:58
05:28:00
05:28:03
05:28:05
05:28:09
05:28:12
05:28:17
05:28:20

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BHARADWA

Q. Since the 20 -- so we had already
discussed the 2022 transaction closed in
March 28, 2022, correct?

05:28:23
05:28:34
05:28:37

A. Yeah.

05:28:38

Q. Since the closing of the 2022
transaction, has Senator invested in any other
Platinum sponsored company -- companies?

05:28:39
05:28:43
05:28:47

A. Since the closing of 2022, I'm
trying to recall. I actually don't -- I mean,
we have other Platinum investments in our
portfolio, and we may have bought and sold
securities associated with those investments.
I don't recall any new company that Platinum
has bought out that we've invested behind since
that time in March, but I could be -- but I
don't know for sure. I'd have to go back and
check.

05:28:49
05:29:06
05:29:10
05:29:12
05:29:15
05:29:19
05:29:24
05:29:27
05:29:33
05:29:35

MR. MARGULYAN: Okay, I have no
more questions, so I can pass the
witness.

05:29:56
05:29:57
05:29:59

THE VIDEOGRAPHER: Okay. We are
going off the record. The time is
5:30 p.m.

05:30:00
05:30:01
05:30:06

(Whereupon, an off-the-record

05:30:12

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1	BHARADWA	
2	discussion was held.)	05:38:05
3	THE VIDEOGRAPHER: We are going	05:38:05
4	back on the record. The time is	05:38:12
5	5:38 p.m.	05:38:14
6	EXAMINATION BY	05:38:14
7	MR. BASKERVILLE:	05:38:15
8	Q. So good evening. My name is Dan	05:38:15
9	Baskerville. I'm with Morrison and Foerster,	05:38:19
10	representing the official committee unsecured	05:38:20
11	creditors. With me is my colleague, Michael	05:38:24
12	Birnbaum. I just have a few questions, and	05:38:26
13	let's see. Earlier throughout this deposition,	05:38:28
14	we've been discussing Senator's professional	05:38:31
15	associationship with Platinum, so is -- is	05:38:34
16	there a particular person at Senator who serves	05:38:37
17	as the point person for communications with	05:38:40
18	Platinum?	05:38:43
19	A. Not formally, but I have had the	05:38:43
20	most contact with Platinum, and by Platinum, I	05:38:48
21	mean Kevin Smith.	05:38:52
22	Q. So is there a specific team that	05:38:54
23	dedicated to Platinum deals, or is it just --	05:39:00
24	A. No.	05:39:03
25	Q. Okay. So are you aware that in	05:39:03

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BHARADWA

January 9th, 2020, Platinum consummated a leveraged buyout transaction of Wesco Aircraft Holdings via a merger of a Platinum -- excuse me -- portfolio company, Pattonair Limited and Wesco?

05:39:08
05:39:13
05:39:15
05:39:18
05:39:22
05:39:22
05:39:22
05:39:25
05:39:28
05:39:29
05:39:31
05:39:36
05:39:36
05:39:41
05:39:41
05:39:44
05:39:46
05:39:49
05:39:52
05:39:57
05:40:02
05:40:07
05:40:11
05:40:14

A. Yes.

Q. So -- and did you testify earlier today that Senator invested in Wesco in 2019?

A. Yes.

Q. Does Senator have an understanding of the financial condition of Wesco during 2019 in that case?

A. We did, and we were -- you know, yes.

Q. Can you explain what Senator's understanding of the financial condition was?

A. Yeah, that it was -- it was a merger of two reasonable -- you know, reasonable quality aerospace part supplier businesses that, you know, effectively, we thought, would ride the coattails of aerospace growth for many years, and it was starting from a relatively high leverage point. But because we believed in the end market and erroneously

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1	BHARADWA	
2	the margin structure and profitability of the	05:40:19
3	underlying business, we thought that our	05:40:22
4	investment was a good one.	05:40:24
5	Q. So at -- at any time then, did any	05:40:25
6	representative of Platinum reach out to Senator	05:40:29
7	to explore the possibility of participating in	05:40:32
8	the LBO?	05:40:37
9	THE COURT REPORTER: I'm sorry,	05:40:37
10	participating in the?	05:40:37
11	Q. In the LBO.	05:40:39
12	A. In the -- sorry, participating in	05:40:39
13	what --	05:40:40
14	Q. In the leveraged --	05:40:40
15	A. -- form?	05:40:40
16	Q. -- buyout transaction.	05:40:40
17	A. As?	05:40:40
18	Q. Investing in it.	05:40:43
19	A. Investing in what?	05:40:43
20	Q. The -- so earlier you said you were	05:40:45
21	aware --	05:40:48
22	A. The debt security?	05:40:48
23	Q. Sure.	05:40:50
24	A. Yeah, when you say the LBO, it's,	05:40:50
25	like, confusing because I'm not sure what	05:40:50

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1 BHARADWA

2 you -- okay. I don't recall any conversation 05:40:53

3 with Platinum directly. I mean, this is like a 05:40:58

4 regular way of syndication. Bank of America 05:41:01

5 brought it. We've done a lot of aerospace over 05:41:02

6 the years. This fit right into our sweet spot 05:41:05

7 of, kind of, the things that we like to look 05:41:08

8 at, which are -- you know, sort of, more, you 05:41:10

9 know, higher yield, lower rated securities 05:41:11

10 that, you know, price wider than you think 05:41:17

11 might be -- you know, might be justified. 05:41:22

12 That's the investment thesis. 05:41:26

13 Q. Okay. 05:41:26

14 THE COURT REPORTER: That's the? 05:41:26

15 A. Investment thesis. 05:41:28

16 Q. So you -- you said that you don't 05:41:29

17 recall Platinum ever reaching out to you? 05:41:31

18 A. I don't recall them reaching out 05:41:33

19 directly around this, but again, this is three 05:41:40

20 years ago plus. 05:41:43

21 Q. Sure. So why do you believe -- 05:41:44

22 A. Four years ago. 05:41:44

23 Q. That's fine, and why do you believe 05:41:48

24 that no one reached out to discuss an 05:41:48

25 opportunity for Senator to participate? 05:41:50

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1	BHARADWA	
2	A. Because it wasn't -- that's not the	05:41:53
3	nature of our relationship. I mean, like,	05:41:56
4	in -- they always go through syndication	05:42:00
5	channels, so they -- we hear about it from the	05:42:03
6	banks usually. If we happen to have some	05:42:05
7	conversation with Platinum, maybe about another	05:42:07
8	portfolio deal, sometimes they say, hey, you	05:42:11
9	should put something on your radar or that, you	05:42:13
10	know, you should talk to the banks about --	05:42:16
11	maybe you'll get an early look at some -- you	05:42:18
12	know, there's -- there -- there's just that	05:42:20
13	typical conversation, but I don't recall	05:42:20
14	anything specifically here. It's a regular way	05:42:24
15	of process.	05:42:28
16	Q. So at that time, then, did Senator	05:42:28
17	evaluate potential returns on investment --	05:42:30
18	A. Yes.	05:42:32
19	Q. -- for participating in the LBO?	05:42:32
20	A. Yes.	05:42:35
21	Q. Yes? Okay.	05:42:36
22	A. Yes.	05:42:36
23	Q. So what were the -- the findings?	05:42:37
24	A. We thought that they were -- we	05:42:41
25	thought it would be a good investment. You	05:42:43

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1 BHARADWA

2 know, I can't recall exactly what our math and 05:42:46

3 our investment thesis was numerically, but 05:42:51

4 simplistically, these were high-yielding 05:42:59

5 securities. And we thought the business would 05:43:01

6 grow EBITDA and deleverage over time, and these 05:43:03

7 securities would trade well. And we generate 05:43:06

8 the coupon in carry, and so that was our thesis 05:43:09

9 at a high level. 05:43:14

10 Q. I just want to make sure. Let's 05:43:15

11 see. So you -- you just said, we thought it 05:43:19

12 would be a good investment, but earlier, I 05:43:27

13 believe you had mentioned that you -- nobody 05:43:30

14 from Platinum had reached out for you to 05:43:31

15 participate. Did Senator -- did Senator -- 05:43:34

16 excuse me -- participate in the LBO? 05:43:37

17 A. Yes. 05:43:39

18 Q. Oh, okay. That's -- 05:43:39

19 A. Yeah. Bank of America brought the 05:43:46

20 deal. We interfaced with Bank of America and 05:43:47

21 the company during a regular syndication road 05:43:49

22 show and decided to participate. 05:43:54

23 Q. Sure ask -- do you recall the time 05:43:55

24 period -- do you recall the time period for 05:43:58

25 when Senator began participating in the LBO, 05:44:00

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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1	BHARADWA	
2	what -- what that time period was?	05:44:04
3	A. I don't. It's whenever Bank of	05:44:07
4	America brought it.	05:44:10
5	Q. Sure. Do you know if whether there	05:44:11
6	are documents reflecting those -- these	05:44:12
7	communications between Senator and Bank of	05:44:14
8	America?	05:44:17
9	A. There would have been a -- an	05:44:17
10	NDA -- or not an NDA, but just like a --	05:44:20
11	there -- there -- I'm sure there would have	05:44:27
12	been some, like, okay, you're getting the data	05:44:29
13	room and usually authorize that through our	05:44:32
14	legal department, so it's probably there.	05:44:35
15	Q. Let's see. So did Senator have an	05:44:37
16	understanding of the financial condition of the	05:44:47
17	debtors as a result of the LBO?	05:44:49
18	MR. KURLAND: Objection to form.	05:44:54
19	A. The financial condition of the	05:44:55
20	debtors, as I said, on a pro forma basis, all	05:44:58
21	we had was the projections provided to us by	05:45:02
22	the management team by the company, et cetera.	05:45:06
23	Q. And so can you describe what those	05:45:08
24	projections were?	05:45:11
25	A. No, I don't remember. It was four	05:45:12

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1	BHARADWA	
2	years ago, but, like, I remember there being,	05:45:14
3	you know, a bunch of synergies, and, you know,	05:45:17
4	on a pro forma basis, leverage is going to come	05:45:21
5	down. And we thought that directionally that	05:45:23
6	would be true, so that's what we were	05:45:27
7	underwriting.	05:45:29
8	Q. Can you describe those -- you said	05:45:30
9	a bunch of synergies. Can you describe your --	05:45:35
10	or Senator's understanding of those synergies?	05:45:38
11	A. Putting two similar businesses	05:45:41
12	together and theoretically, there is often	05:45:44
13	times overlap in how those businesses are run,	05:45:50
14	duplicative functions, standard, sort of,	05:45:58
15	synergy, you know, sometimes plant	05:46:00
16	consolidation. I think there was an element	05:46:00
17	that had to do with increasing inventory turns	05:46:03
18	and therefore, generating better free cash	05:46:07
19	conversion. Those are the things that I	05:46:11
20	remember.	05:46:14
21	Q. Sure.	05:46:15
22	MR. BASKERVILLE: Move to tab 10.	05:46:21
23	So this is tab ten and Exhibit 33, I	05:46:29
24	believe.	05:46:30
25	THE COURT REPORTER: Yes.	05:46:30

Transcript of Jay Bharadwa, Corporate Designee
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1	BHARADWA	
2	(Whereupon, the aforementioned	05:46:30
3	Bharadwa Exhibit 33, e-mail was marked	05:46:31
4	as for identification as of this date by	05:46:31
5	the Reporter.)	05:46:41
6	Q. So for the record, as I just	05:46:41
7	mentioned, Exhibit 33 --	05:46:41
8	THE COURT REPORTER: Hold on.	05:46:41
9	Q. These are May 19th, 2023 Bloomberg	05:46:41
10	chat messages, Bates stamped	05:46:45
11	Senator_ADVP23-3091-0000185 and that's through	05:46:51
12	187. So just take a moment. Let me know when	05:46:58
13	you're ready.	05:47:04
14	A. Okay.	05:48:02
15	Q. So if you take a look at the very	05:48:03
16	first message that's 7:41 a.m., it's -- it's a	05:48:06
17	bit buried in the text. It's from Or Shotan.	05:48:09
18	A. Yeah.	05:48:09
19	THE COURT REPORTER: I'm sorry, O?	05:48:09
20	Q. Or, Shotan, S-H-O-T-A-N. So he	05:48:16
21	writes, have you been close to this Incora? If	05:48:19
22	you go down a bit to Drew Pierson, he responds	05:48:22
23	7:42 a.m., we still hold a little bit of the	05:48:26
24	debt. Who is Or Shotan?	05:48:29
25	A. He's an industrials investor.	05:48:32

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1	BHARADWA	
2	Q. Okay. And -- and what is Point72	05:48:36
3	Asset Management?	05:48:40
4	A. It's a hedge fund.	05:48:40
5	Q. A hedge fund, so aside from this	05:48:41
6	conversation, has Senator ever communicated	05:48:43
7	with Or Shotan?	05:48:45
8	A. Yeah, I think he's been in the	05:48:47
9	industrial, sort of, investing -- investing	05:48:51
10	circles, so I've seen him at lunches and	05:48:54
11	dinner and conferences as has Drew.	05:48:59
12	Q. So are you aware of any -- is -- is	05:49:01
13	Senator aware of any other communications	05:49:04
14	involving Inco with Or Shotan?	05:49:06
15	A. I'm not.	05:49:08
16	Q. So if -- if you go ahead and take a	05:49:09
17	look, I believe it's 7:42 a.m., he writes, how	05:49:12
18	does an aero distributor go Ch.11 when things	05:49:17
19	are blooming? And Drew Pierson responds, also	05:49:22
20	7:42 a.m., nothing good. Or Shotan replies,	05:49:27
21	this is the fulcrum?	05:49:31
22	THE COURT REPORTER: This is the,	05:49:31
23	I'm sorry?	05:49:31
24	Q. Fulcrum, and then, turning the	05:49:35
25	page, Pierson responds, without being too	05:49:36

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1	BHARADWA	
2	specific, basically it was over-levered to	05:49:41
3	begin with then kept falling behind on	05:49:44
4	price/inflation plus all those delays meant	05:49:47
5	customers were continually destocking.	05:49:51
6	THE COURT REPORTER: I'm sorry,	05:49:51
7	were continually?	05:49:51
8	Q. Continually destocking. So by it,	05:49:52
9	do you understand Drew Pierson to be referring	05:50:00
10	to Incora?	05:50:03
11	A. Yes.	05:50:04
12	Q. And by Ch.11, do you understand	05:50:05
13	that to mean Chapter 11?	05:50:07
14	A. Yes.	05:50:09
15	Q. So what is Senator's understanding	05:50:11
16	of why Drew Pierson said nothing good?	05:50:13
17	A. Because the -- because they had	05:50:17
18	underperformed and, you know, clearly it was a	05:50:25
19	disappointing outcome. That's why it was	05:50:28
20	nothing good.	05:50:31
21	Q. In -- in what way was it	05:50:32
22	disappointing?	05:50:34
23	A. They missed all of our targets and	05:50:35
24	filed for bankruptcy.	05:50:37
25	Q. And you just mentioned, what were	05:50:38

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1	BHARADWA	
2	Senator's targets?	05:50:41
3	A. Well, we had our model, and we had	05:50:42
4	an expectation about, you know, what EBITDA	05:50:45
5	would do and what revenues would do and what	05:50:46
6	cash flow would do, and none of those were	05:50:49
7	correct.	05:50:51
8	Q. Do you recall what those -- let's	05:50:51
9	see -- what your expectation of the EBITDA	05:50:53
10	would do and what the cash flow would do?	05:50:56
11	A. No, I don't recall specifically. I	05:51:00
12	think at one point, we thought -- yeah, I don't	05:51:03
13	recall specifically. I don't want to say	05:51:08
14	incorrect numbers.	05:51:09
15	Q. That's fair. What is Senator's	05:51:10
16	understanding of why Drew Pierson said,	05:51:12
17	basically it was over-levered to begin with	05:51:15
18	then kept falling behind on price/inflation?	05:51:17
19	A. Yeah, so as I mentioned, when it	05:51:19
20	was first brought to market, it was a highly	05:51:22
21	leveraged transaction. You had to believe that	05:51:25
22	they were going to grow either by synergies or	05:51:29
23	by market growth in order to delever, and	05:51:33
24	that's what he meant by it was over-levered to	05:51:38
25	begin with and then kept falling behind on	05:51:41

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1	BHARADWA	
2	price/inflation, meaning they're a bunch of,	05:51:44
3	like, inflation cost pressures -- inflationary	05:51:46
4	cost pressures, post COVID in particular, that	05:51:49
5	they couldn't recoup. That's why	05:51:51
6	price/inflation didn't work, or they kept	05:51:53
7	falling behind on that. And then, you know,	05:51:57
8	there was also end market stress, where	05:51:59
9	customers were, you know, effectively not able	05:52:02
10	to take -- or not able to deliver planes as	05:52:06
11	fast as they had predicted the ramp would go,	05:52:10
12	so Boeing and Airbus and the engine	05:52:17
13	manufacturers in connection pushed out their	05:52:17
14	growth schedules. So those are the three	05:52:19
15	elements he's referring to.	05:52:21
16	Q. Right. And -- and do you -- excuse	05:52:23
17	me, strike that.	05:52:25
18	Does Senator have an understanding	05:52:26
19	of how much Wesco was over-levered to begin	05:52:28
20	with?	05:52:32
21	A. No.	05:52:32
22	Q. By that, I mean a specific --	05:52:32
23	A. That's subjective.	05:52:33
24	Q. Let's see. How did Senator obtain	05:52:34
25	information about the company being	05:52:39

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1	BHARADWA	
2	over-levered?	05:52:41
3	THE COURT REPORTER: Being, I'm	05:52:41
4	sorry, over?	05:52:41
5	Q. Levered or over-levered.	05:52:44
6	A. That's a -- it's purely a judgment	05:52:44
7	based on, you know, looking -- from 2023,	05:52:51
8	looking back four years and saying, well, it	05:52:56
9	was a high starting point. That's effectively	05:53:00
10	what he's saying. It's a subjective	05:53:02
11	assessment.	05:53:07
12	Q. Sure. And so does this -- does	05:53:07
13	this statement by Pierson represent Senator's	05:53:09
14	views as to the reasons why the company entered	05:53:11
15	into Chapter 11 proceedings?	05:53:14
16	A. Those are the business -- yeah,	05:53:16
17	those are the business reasons, yeah.	05:53:21
18	Q. Does Senator have a view as to the	05:53:24
19	nonbusiness reasons?	05:53:34
20	A. No. I mean, when I say those are	05:53:36
21	the business reasons, I just mean those are the	05:53:41
22	fundamental reasons, like, the -- like, what	05:53:43
23	was happening to the business.	05:53:46
24	Q. So if you scroll down -- well, if	05:53:47
25	you take a look at a bit down here at 7:45, Or	05:54:00

Transcript of Jay Bharadwa, Corporate Designee
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198

1	BHARADWA	
2	Shotan writes, typically how do these things	05:54:02
3	emerge? Process or debt holder float their new	05:54:03
4	equity?	05:54:09
5	THE COURT REPORTER: I'm sorry,	05:54:09
6	process?	05:54:09
7	Q. Or debt holder float their new	05:54:06
8	equity? Drew Pierson responds, I think high	05:54:09
9	level you can assume a lot of co-specific stuff	05:54:13
10	went wrong plus two aggressive cap structure,	05:54:17
11	so aggressive synergies, et cetera. By	05:54:20
12	co-specific, do you understand that to mean	05:54:24
13	company --	05:54:26
14	A. Yes.	05:54:26
15	Q. -- specific? What was Senator's	05:54:28
16	understanding of the aggressive synergies, as	05:54:33
17	Drew Pierson characterizes them?	05:54:45
18	A. Well, this so aggressive is clearly	05:54:47
19	meant to be too aggressive, just as too	05:54:48
20	aggressive cap structure, too aggressive	05:54:50
21	synergies. What did he mean by that, it just,	05:54:53
22	you know, it's a high percentage of EBITDA.	05:54:57
23	And, you know, synergies by definition are on	05:55:00
24	the com. You have to go execute them, and they	05:55:05
25	probably believed that they could do better	05:55:09

Transcript of Jay Bharadwa, Corporate Designee
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199

1	BHARADWA	
2	than they ultimately did in extracting those	05:55:12
3	synergies.	05:55:15
4	Q. So earlier, I believe you had --	05:55:16
5	you'd been discussing an informal process. I	05:55:22
6	believe it -- it involved you and Doug as an	05:55:25
7	informal committee, let's say?	05:55:30
8	A. Yeah.	05:55:31
9	Q. And I believe he was your co-CIO?	05:55:32
10	A. Yes.	05:55:37
11	Q. So were there any -- in investing	05:55:37
12	in Wesco, were there any -- I wouldn't say that	05:55:40
13	they're investment committee memos, but were	05:55:44
14	there any informal memos created when you were	05:55:45
15	considering?	05:55:49
16	A. Yeah, I mean, I -- I -- I would	05:55:50
17	think and we don't, like -- we don't have,	05:55:55
18	like, a specific IC, like, put together a	05:56:00
19	PowerPoint presentation and deliver it to a --	05:56:03
20	like, we don't run it like a private equity	05:56:06
21	organization that way, maybe but would we have	05:56:09
22	had, you know, maybe a summary that Drew would	05:56:13
23	put together at some point, probably, yes.	05:56:15
24	Q. Do you recall?	05:56:17
25	A. Certainly had a model. I don't	05:56:21

Transcript of Jay Bharadwa, Corporate Designee
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200

1	BHARADWA	
2	know whether he put it in, like, a formal, you	05:56:23
3	know, long e-mail with a business, like,	05:56:26
4	whatever. You know, that sort of one-pager	05:56:28
5	tear sheet -- if probably -- probably have it,	05:56:31
6	but I don't know for sure.	05:56:34
7	Q. Do you -- does Senator know	05:56:35
8	whether -- was this process consistent across	05:56:38
9	other investments that Senator makes?	05:56:41
10	A. Well --	05:56:41
11	Q. Creating a --	05:56:46
12	A. -- like I said, the process	05:56:49
13	isn't -- it's not a clearly -- like, it's not a	05:56:49
14	clearly bounded process. Like, every situation	05:56:52
15	can be different.	05:56:55
16	Q. So do you believe that Senator	05:56:58
17	would have some memo -- memorialization of	05:57:00
18	these conversations between yourself and Doug,	05:57:07
19	reflecting decisions for why Senator would	05:57:09
20	invest in Wesco?	05:57:13
21	MS. SHARMA: Objection to form.	05:57:15
22	A. I -- as I said, I think every	05:57:15
23	situation is different, but we probably have	05:57:20
24	some form of thesis laid out, probably from	05:57:23
25	Drew to myself or myself and Doug. And then,	05:57:27

Transcript of Jay Bharadwa, Corporate Designee
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201

1	BHARADWA	
2	Doug and I sit in the same room effectively, so	05:57:31
3	we usually talk about things verbally.	05:57:36
4	Q. So is it fair to say, then, that	05:57:37
5	you and Doug made the decision to invest in	05:57:52
6	Wesco together?	05:57:54
7	MS. SHARMA: Objection to form.	05:57:56
8	A. Yes. I -- yes. You know, I would	05:57:56
9	say I have primary jurisdiction and -- over	05:58:12
10	most things in the credit world, and -- but we	05:58:16
11	talk about all of our investments.	05:58:19
12	MR. BASKERVILLE: So for the	05:58:29
13	record, this is -- well, tab two for	05:58:30
14	those listening in -- Exhibit 34. This	05:58:32
15	is an April 21st, 2020 e-mail, Bates	05:58:37
16	stamped PLAT-AP-090111.	05:58:40
17	(Whereupon, the aforementioned	05:58:50
18	Bharadwa Exhibit 34, e-mail was marked	05:58:50
19	as for identification as of this date by	05:58:50
20	the Reporter.)	05:58:50
21	Q. Let me know --	05:58:50
22	THE COURT REPORTER: Hold on. I	05:58:50
23	didn't give it to him.	05:59:12
24	A. There you go. It's the COVID buys	05:59:12
25	I was referring to earlier.	05:59:15

Transcript of Jay Bharadwa, Corporate Designee
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202

1	BHARADWA	
2	Q. Sure. So just looking at it,	05:59:16
3	it's -- it's a rather short e-mail. You say,	05:59:20
4	bought some at 63 just now. Secured.	05:59:23
5	Wondering if I'm missing impending distress or	05:59:26
6	something. And you'll note that is to Kevin	05:59:30
7	Smith. Why -- why did you reach out to Kevin	05:59:34
8	Smith?	05:59:38
9	A. Because I -- well, presumably, I	05:59:38
10	wanted to understand whether the business was	05:59:42
11	going through, you know, a real fundamental	05:59:47
12	shock associated with COVID and how it would be	05:59:52
13	performing. We reach out to virtually all of	05:59:56
14	our companies in times of intense volatility to	05:59:59
15	understand how they're doing through those	06:00:03
16	times of intense volatility.	06:00:06
17	Q. So looking, then, at the subject	06:00:08
18	line, WAIR, and that's W-A-I-R, is getting	06:00:11
19	destroyed. What did you mean by?	06:00:14
20	A. I mean the security prices are	06:00:17
21	going down.	06:00:20
22	Q. Is it Senator's view that the	06:00:20
23	security prices coming down was a result of the	06:00:29
24	company's financial condition following the	06:00:35
25	LBO?	06:00:37

Transcript of Jay Bharadwa, Corporate Designee
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203

1	BHARADWA	
2	A. No. This is April 2020. It's	06:00:38
3	after the biggest event in Aerospace	06:00:45
4	fundamentally in history. I'm trying to assess	06:00:50
5	what that event might mean for the fundamentals	06:00:53
6	of the business.	06:00:58
7	Q. Did Kevin Smith or anybody from	06:00:59
8	Platinum ever respond to this e-mail?	06:01:05
9	A. I don't recall.	06:01:07
10	Q. So earlier when we were	06:01:08
11	discussing -- well, when you were discussing	06:01:48
12	Exhibit 2 -- feel free to take a look at that	06:01:50
13	if you'd like. You mentioned that Senator	06:01:54
14	keeps a -- I believe you referred to it as a	06:02:02
15	trading blotter. And that -- and correct me if	06:02:06
16	I'm wrong. These records were -- you did	06:02:11
17	not -- strike that.	06:02:13
18	Does Senator have a trading blotter	06:02:16
19	with respect to its -- or how -- let's strike	06:02:21
20	that.	06:02:21
21	How does Senator assemble its	06:02:23
22	trading data?	06:02:25
23	A. We use a daily -- we use a program	06:02:26
24	that -- what's it called. I can't remember	06:02:32
25	what it's called, but it basically keeps track	06:02:38

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

204

1	BHARADWA	
2	of all our trades, and at the end of the day,	06:02:43
3	we get a PDF with all of our positions, changes	06:02:45
4	to those positions. And then, during the day,	06:02:50
5	upon, you know, consummation of a trade, we	06:02:54
6	have a centralized trading e-mail list serve	06:02:58
7	that -- one on the equity side and one on the	06:03:04
8	credit side, and anything that we purchase goes	06:03:07
9	through those two -- one of those two list	06:03:09
10	serves. So you have a time record of when that	06:03:11
11	trade was put in, and then, it's, again,	06:03:13
12	reflected in that PDF at the end of the day.	06:03:17
13	Q. Okay. And is it your understanding	06:03:20
14	that these records are, as you were saying,	06:03:21
15	maintained daily and then --	06:03:27
16	A. Yes.	06:03:28
17	Q. Okay. I'd like to -- we were	06:03:28
18	discussing -- so if -- if you, today, wanted to	06:03:48
19	figure out Senator's trading history, how would	06:04:01
20	you go about doing that?	06:04:04
21	A. What's the specific question,	06:04:05
22	like --	06:04:10
23	Q. If you want to access as -- as you	06:04:11
24	had just described that you used a program.	06:04:15
25	You didn't recall what it was called, but that	06:04:18

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

205

1	BHARADWA	
2	it kept track of all of --	06:04:20
3	A. Yeah.	06:04:20
4	Q. -- Senator's trades. If you wanted	06:04:22
5	to access that, how would you go about doing	06:04:24
6	that?	06:04:26
7	A. We have an ops -- we have an ops	06:04:26
8	team and an ops director, and I would just go	06:04:29
9	ask him, and he'd pull it from our database.	06:04:30
10	Q. Perfect.	06:04:36
11	MR. BASKERVILLE: So I'd like to go	06:04:56
12	to tab nine. So tab nine, for the	06:04:57
13	record, that is Exhibit 35, I believe.	06:04:57
14	THE COURT REPORTER: Yes.	06:05:01
15	(Whereupon, the aforementioned	06:05:01
16	Bharadwa Exhibit 35 mark, e-mail was	06:05:03
17	marked as for identification as of this	06:05:03
18	date by the Reporter.)	06:05:07
19	Q. This is March 9th, 2022 e-mail,	06:05:07
20	Bates stamped Wesco_AP_PO00062569, and that's	06:05:16
21	through 572. And yeah, we'll give you a moment	06:05:29
22	to --	06:05:29
23	THE COURT REPORTER: Okay.	06:07:02
24	A. Okay.	06:07:02
25	Q. Let's see. So I want to ask about	06:07:02

Transcript of Jay Bharadwa, Corporate Designee
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206

1	BHARADWA	
2	the second page, so that's the 570. Now,	06:07:06
3	there's a March 8th e-mail from you. At	06:07:12
4	7:46 p.m., you write, Joss -- Josh, just	06:07:15
5	flagging to avoid the 11th hour sprint. Have	06:07:18
6	not seen PIK docs yet, but will definitely need	06:07:23
7	that in time to review (or even better a side	06:07:26
8	by side as we have w unsecureds et cetera).	06:07:30
9	Outstanding items/request. And then, I just	06:07:36
10	want to take a look at the eighth item in this	06:07:39
11	list. You say, want to understand how accrual	06:07:42
12	of management fee for Platinum will work. So	06:07:47
13	did you discuss these issues with Josh?	06:07:52
14	A. I don't recall.	06:07:59
15	Q. Do you recall why you said, want to	06:08:00
16	understand how accrual of management fee for	06:08:05
17	Platinum will work?	06:08:08
18	A. I -- again, like, I don't remember	06:08:09
19	specific thought processes around any one of	06:08:12
20	these points that were, like, you know, not	06:08:16
21	really up for debate with them, but, you know,	06:08:19
22	clearly when you have a transaction like this,	06:08:26
23	you want to make sure that you're not, you	06:08:30
24	know, handing out -- handing out undue money.	06:08:35
25	Like, Platinum was taking management fees for a	06:08:38

Transcript of Jay Bharadwa, Corporate Designee
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207

1	BHARADWA	
2	long time, and I think we were focused on the	06:08:40
3	idea that they probably shouldn't be, you know,	06:08:45
4	delivered cash management fees, and if they're	06:08:50
5	accrued, making sure that they're, like,	06:08:52
6	disbursed rationally or maybe according to	06:08:56
7	targets or whatever. That's, like, the frame	06:08:59
8	that, you know, we would have been thinking	06:09:01
9	about there.	06:09:04
10	Q. I see. So just to clarify, that	06:09:05
11	was your understanding of how the management	06:09:25
12	fees have been dealt with up until this time?	06:09:27
13	A. What was my understanding?	06:09:31
14	Q. Your understanding that Platinum	06:09:32
15	was taking the management fees up until that	06:09:45
16	time?	06:09:47
17	A. I -- I believe they were. I	06:09:47
18	believe they were taking cash management fees.	06:09:48
19	They -- it's a very typical construct for them,	06:09:51
20	but if the company's hurting for liquidity, and	06:09:53
21	you want to extend the runway, and the business	06:09:56
22	plan hasn't gone to plan, you, kind of, don't	06:09:59
23	want to allow them to take regular cash	06:10:03
24	management fees.	06:10:05
25	Q. I just want to take one last look	06:10:06

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208

1	BHARADWA	
2	at Exhibit 25. Sorry about that, it's in --	06:10:13
3	you -- I think you have it in your pile. It	06:10:19
4	should be number 25.	06:10:21
5	A. Yep.	06:10:30
6	Q. So let's see. So I just want to	06:10:31
7	direct your attention to -- towards the middle	06:10:46
8	of this paragraph. Well, this is on page 1 --	06:10:49
9	on the 1340 page. This is where it's Evan	06:10:54
10	writes, in addition to these up tier	06:10:59
11	transactions, the Company is creating new 1.5L	06:11:05
12	capacity --	06:11:10
13	THE COURT REPORTER: I'm sorry, the	06:11:10
14	company is creating new?	06:11:10
15	Q. 1.5L capacity (undrawn at close).	06:11:08
16	And then, if you go -- you skip this sentence.	06:11:17
17	You'll -- the -- the one after this one begins,	06:11:19
18	note that approximately two thirds of our	06:11:23
19	holdings will be up tiered into the new	06:11:26
20	1L/1.25L as part of this deal, which protects	06:11:33
21	our recovery in a variety of downside cases.	06:11:35
22	THE COURT REPORTER: In a, I'm	06:11:35
23	sorry, variety of?	06:11:37
24	Q. Downside cases. So I wanted to	06:11:40
25	talk about Evan's statement where he writes, in	06:11:45

Transcript of Jay Bharadwa, Corporate Designee
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209

1	BHARADWA	
2	addition to these up tier transactions. Was it	06:11:52
3	Senator's view that the 2022 transactions --	06:11:54
4	strike that.	06:11:59
5	Did Senator view the 2022	06:11:59
6	transactions as a combination of multiple	06:12:02
7	steps?	06:12:04
8	MR. KURLAND: Objection to the	06:12:07
9	form.	06:12:08
10	A. Yeah, I'm not quite sure I	06:12:08
11	understand the question.	06:12:15
12	Q. Do you see here where Evan writes,	06:12:15
13	as part of this deal, which -- which protects	06:12:19
14	our recovery, and then, prior to that, he had	06:12:21
15	-- he'd wrote -- here, he'd written, in	06:12:23
16	addition to these up tier transactions. So you	06:12:26
17	see how he writes up tier transactions and this	06:12:29
18	deal, so my question is --	06:12:32
19	A. Where is this deal?	06:12:38
20	Q. Sorry. All right. So the sentence	06:12:40
21	--	06:12:43
22	A. We refer to all -- we refer to	06:12:43
23	deals as, like, a very colloquial -- like, the	06:12:44
24	Wesco deal.	06:12:49
25	Q. Yes. So the question is: Are --	06:12:50

Transcript of Jay Bharadwa, Corporate Designee
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210

1	BHARADWA	
2	is Senator viewing these transactions as plural	06:12:55
3	or as a -- as one combined transaction or a	06:12:58
4	series of multiple transactions?	06:13:01
5	A. We --	06:13:03
6	MR. KURLAND: Objection. You can	06:13:03
7	answer.	06:13:04
8	A. Yeah, we understood it as a	06:13:04
9	sequencing of events.	06:13:07
10	Q. So -- and then, was Senator	06:13:09
11	agreeing to the entire sequence or each	06:13:20
12	separate event?	06:13:24
13	MR. KURLAND: Objection to form.	06:13:26
14	MS. SHARMA: Objection.	06:13:27
15	A. I don't know.	06:13:28
16	Q. I see.	06:13:35
17	MR. BASKERVILLE: No further	06:13:39
18	questions. We can go off the record.	06:13:40
19	MR. WALTER: Before we -- I have	06:13:46
20	nothing further for the witness. I just	06:13:47
21	want to say a thank you for your time.	06:13:48
22	I want to say on the record, we may	06:13:50
23	request further 30(b)(6) questioning at	06:13:52
24	some point. We can provide you a --	06:13:56
25	I'll be in touch with your counsel as	06:13:58

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211

1	BHARADWA	
2	necessary.	06:14:01
3	MR. KURLAND: Okay. I'm sure all	06:14:01
4	parties reserve all rights in that	06:14:02
5	regard.	06:14:03
6	MR. MARGULYAN: Yes, same -- same	06:14:05
7	for the 2024 note holders. We reserve	06:14:06
8	the right to request additional	06:14:08
9	questioning from --	06:14:12
10	THE COURT REPORTER: I'm sorry, we	06:14:12
11	reserve the right to request?	06:14:12
12	MR. MARGULYAN: Further questioning	06:14:12
13	from Senator of this 30(b)(6) witness.	06:14:12
14	MR. BIRNBAUM: We join.	06:14:18
15	MR. KURLAND: And we will reserve	06:14:19
16	our rights in that regard. Other than	06:14:19
17	that, I think we're done.	06:14:22
18	MS. SHARMA: Designate the	06:14:23
19	transcript as highly confidential.	06:14:25
20	MR. BIRNBAUM: Is that a question,	06:14:29
21	or I don't know --	06:14:29
22	MS. SHARMA: Would you like --	06:14:30
23	MR. KURLAND: As highly	06:14:31
24	confidential -- I -- I don't think so.	06:14:32
25	MR. WALTER: I see no basis.	06:14:36

Transcript of Jay Bharadwa, Corporate Designee
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BHARADWA

MR. KURLAND: I don't either.

06:14:39

MR. BIRNBAUM: Okay.

06:14:39

THE VIDEOGRAPHER: We can --

06:14:39

MR. KURLAND: Yes, we can go off
the record.

06:14:39

06:14:41

THE VIDEOGRAPHER: Okay. This
marks the end of the deposition of Jay
Bharadwa. We are going off the record
at 6:15 p.m.

06:14:41

06:14:45

06:14:51

06:14:52

06:14:54

(Whereupon, at 6:15 p.m., the
examination of this witness was
concluded.)

JAY BHARADWA

Subscribed and sworn to before me
this ____ day of _____, 2023.

NOTARY PUBLIC

Transcript of Jay Bharadwa, Corporate Designee
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BHARADWA			
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	EXHIBIT 30	DOCUMENT.....	165 25
	EXHIBIT 31	E-MAIL.....	172 4
	EXHIBIT 32	E-MAIL.....	175 18
	EXHIBIT 33	E-MAIL.....	192 3
	EXHIBIT 34	E-MAIL.....	201 18
	EXHIBIT 35		
	MARK	E-MAIL.....	205 16

Transcript of Jay Bharadwa, Corporate Designee
Conducted on October 25, 2023

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BHARADWA

C E R T I F I C A T E

STATE OF NEW YORK)
 SS.:
COUNTY OF BRONX)

I, DORENE GLOVER, a Notary Public for
and within the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that
such examination is a true record of the
testimony given by that witness.

I further certify that I am not related
to any of the parties to this action by blood
or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 27th day of October, 2023.



DORENE GLOVER

**Designations from the October 25, 2023
deposition of Jay Bharadwa, of Senator**

The parties' designations from the deposition of Jay Bharadwa are highlighted in the transcript that is being filed contemporaneously herewith. The designations with no objections appear highlighted in blue, and the designations that one or more parties object to appear highlighted in orange, and are described in the chart of objections, also being filed herewith.

Additionally, for the Court's convenience, below is a chart listing the exhibits used during Mr. Bharadwa's deposition that have been admitted into evidence at trial, as reflected on the record of the June 14, 2024 hearing.

Description	ECF Number
Bharadwa Ex. 2	1363-22
Bharadwa Ex. 4	1363-8
Bharadwa Ex. 7	1363-4
Bharadwa Ex. 8	1363-6
Bharadwa Ex. 10	1363-7
Bharadwa Ex. 11	1363-9
Bharadwa Ex. 14	1363-14
Bharadwa Ex. 21	1363-13
Bharadwa Ex. 22	1363-15
Bharadwa Ex. 23	1363-16
Bharadwa Ex. 24	1363-17
Bharadwa Ex. 25	1363-18
Bharadwa Ex. 27	1363-19
Bharadwa Ex. 28	1364-20 *conditionally admitted
Bharadwa Ex. 32	1363-20
Bharadwa Ex. 33	1363-21

Objections to Designations of Deposition Testimony of Jay Bharadwa and Responses Thereto

Designating Party	Deposition Testimony (Page: Line)	Basis for Objection	Designating Party's Response
Langur Maize	66:24-68:4	Counterclaim Defendants object on the basis of F.R.E. 403, 701, 802. The questions and related testimony call for speculation, the questions are vague and ambiguous to the extent the questions refer generally to the “unsecured” without defining the term; and the testimony relies on hearsay with respect to the change in the value of the unsecured notes.	Mr. Bharadwa’s statements are admissible as opposing party statements under FRE 801(d)(2)(A), (D). The term “unsecured” is not ambiguous as it was used throughout the deposition to refer to the 2027 Notes without any issue as to definition. Further, there was only one unsecured series of notes — there are no other notes that Mr. Bharadwa and the questioner could have been talking about. The question to Mr. Bharadwa regarding the change in value of the unsecured notes did not receive an objection during his deposition and there is no basis for the assertion that his answer relied on hearsay.
Langur Maize	87:14-88:03	Counterclaim Defendants object on the basis of F.R.E. 402 and 403. The question and related testimony call for speculation about a hypothetical situation.	Mr. Bharadwa’s statements are admissible as opposing party statements under FRE 801(d)(2)(A), (D). Whether Senator would have given its consent to the 2022 Transactions if all unsecured notes were exchanged is relevant to the issues of tortious interference and the economic interest defense. Several witnesses throughout the trial have testified regarding what they would have done in a hypothetical situation. There is no basis to suggest that the prejudice to Senator from the admission of this statement would outweigh its probative value.

Counterclaim Defendants	88:17-89:17	<p>Foundation (88:17-89:2)</p> <p>The 2024/2026 Holders object to this testimony because no foundation was laid to show that Mr. Bharadwa had any personal knowledge to be able to form a belief regarding the supposed benefits of the 2022 Transaction to Incora. Deposition Exhibits 10, 11 and 12, all predated the 2022 Transaction and, such as, could not have conceivably refreshed the deponent's recollection regarding any benefits of the 2022 Transaction.</p>	<p>Bharadwa deposition exhibits 10, 11, and 12, which Mr. Bharadwa was shown at his deposition by questioning parties, refreshed his recollection and established the foundation and his ability to know what he/Senator believed with respect to Incora and the benefit of the 2022 Transaction. Additionally, the Counterclaim Defendants are not seeking to admit the testimony for the truth of what is asserted, but instead for what Mr. Bharadwa /Senator believed with respect to Incora and the benefit of the 2022 Transaction.</p>
2024/2026 Holders	134:25-138:4	<p>Counterclaim Defendants object on the basis of F.R.E. 403 and 701. The question and related testimony are unrelated to the issues being presented at trial and call for opinion testimony of an unqualified lay witness.</p>	<p>The questions and related testimony are relevant to the Counterclaim Defendants' good-faith defenses and equitable issues in the case. Mr. Bharadwa's opinion testimony regarding the 2022 Transaction may be admitted because said testimony does not require any specialized knowledge within the scope of Rule 702. He was competent to provide the designated testimony, including his views on litigation risks posed by the 2022 Transaction, based on his knowledge and experience as a credit investment professional. <i>See, e.g., Epstein Constr., Inc. v. Mod. Piping, Inc.</i>, 2022 WL 407382, at *9 (N.D. Iowa Feb. 9, 2022) (overruling 701 objection to testimony by non-attorney regarding litigation risks, noting that "businesspeople often consider the possibility of litigation in making business decisions, even though they are not attorneys").</p>

Langur Maize	134:25- 135:25	Counterclaim Defendants object on the basis of F.R.E. 403 and 701. The question and related testimony are unrelated to the issues being presented at trial and call for opinion testimony of an unqualified lay witness.	Mr. Bharadwa's statements are admissible as opposing party statements under FRE 801(d)(2)(A), (D). Mr. Bharadwa did not provide lay opinion testimony in this portion of the transcript. Rather, he testified as to his state of mind during the 2022 Transactions and Senator's understanding that the 2022 Transactions could be challenged through litigation. There is no basis to suggest that the prejudice to Senator from the admission of this statement would outweigh its probative value.
Langur Maize	137:13- 138:3	Counterclaim Defendants object on the basis of F.R.E. 403 and 701. The question and related testimony are unrelated to the issues being presented at trial and call for opinion testimony of an unqualified lay witness.	Mr. Bharadwa's statements are admissible as opposing party statements under FRE 801(d)(2)(A), (D). Mr. Bharadwa did not provide lay opinion testimony in this portion of the transcript. Rather, he testified from his personal knowledge and experience as to uptier transactions and sponsor participation in such transactions. There is no basis to suggest that the prejudice to Senator from the admission of this statement would outweigh its probative value.

Counterclaim Defendants	158:11 – 161:17	<p>Foundation (160:21-161:17); Hearsay (160:21-161:17)</p> <p>The 2024/2026 Holders object to the designated testimony at 160:21-161:17 because no foundation was laid to show the basis for Mr. Bharadwa’s understanding regarding the Third Supplemental Indenture. Mr. Bharadwa earlier testified he was not involved in the “closing mechanics” of the 2022 Transaction and otherwise did not recall receiving an email exchange shown to him about the mechanics for consummating the 2022 Transaction. <i>See</i> Bharadwa Tr. at 158:11-159:21. Mr. Bharadwa, thus, has no personal knowledge of the subject matter of the designated testimony and, to the extent he was repeating the contents of the email shown to him to provide the testimony at 160:21-161:17, it is inadmissible hearsay.</p> <p>As stated on the record at the June 14, 2024 hearing before the Court, the 2024/2026 Holders further object to the Counterclaim Defendants’ proffer of ECF No. 1364-20 into evidence. That document is not necessary to provide context for this designated testimony given that the testimony shows Mr. Bharadwa was not involved in the “closing mechanics”, and the testimony is sufficiently clear without that exhibit. Apart from that, ECF No. 1364-20 is inadmissible hearsay.</p> <p>The 2024/2026 Holders further note for the record the untimeliness of this designation by the Counterclaim Defendants. At the time of the June 14 hearing before</p>	<p>As this portion of designated testimony will reflect, at his deposition, counsel for the 2024/2026 Noteholders introduced and questioned Mr. Bharadwa about deposition Exhibit 28 (filed at ECF No. 1364-20 and conditionally admitted into evidence at the June 14, 2024 hearing). This exhibit refreshed the witness’s recollection regarding what he/Senator/their attorney-agents at Morgan Lewis believed with respect to the mechanics and steps for consummating the 2022 Transaction, including with respect to the issuance of additional 2026 Notes.</p> <p>In January 2024, the UCC originally designated the portions of Mr. Bharadwa’s deposition at which he was questioned by counsel for the 2024/2026 Holders about this Exhibit No. 28. The 2024/2026 Holders did not object to this designation at that time, nor did any other party. Instead, less than 30 minutes before the June 14th hearing, counsel for the 2024/2026 Noteholders informed the Counterclaim Defendants that the UCC supposedly withdrew its designation of this testimony. After conferring with counsel for the UCC to determine whether or not this was in fact the case, Senator affirmatively designated the relevant portions of this testimony during which Exhibit 28 was introduced by the 2024/2026 Holders to refresh Mr. Bharadwa’s recollection about the steps of the 2022 Transaction. Based on these circumstances, the 2024/2026 Holders cannot claim prejudice as a result of this designation. Additionally, the designation is not untimely, considering parties have been conferring about these issues for months and since June 14th with respect to this particular portion of the</p>
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		<p>the Court, the testimony referencing ECF No. 1364-20 had not been designated by the Counterclaim Defendants; instead, it had been designated by the UCC, which indicated that it planned to withdraw that designation prior to the June 14 hearing. On June 15, 2024, in response to the UCC's confirmation of that withdrawal, counsel for Senator stated for the first time that Senator was affirmatively designating this testimony, and based on that belated designation, would be seeking admission of ECF 1364-20 in evidence on completeness grounds.</p>	<p>Bharadwa transcript, and, further, the parties agreed that deposition designations would be filed with the Court on June 17th.</p> <p>Finally, it should be noted that the Counterclaim Defendants are not seeking to admit Exhibit 28 for the truth of what is asserted (for example, no evidentiary value as to whether or not all of the steps set forth in the email took place or if the email accurately describes each of the steps of the 2022 Transaction), but instead for what Mr. Bharadwa/Senator believed and was told with respect to the sequence of events.</p>
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