

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
MEDLEY, LLC, Case No. 21-10526(KBO)
Debtor. 824 Market Street
Wilmington, Delaware 19801
Thursday, March 23, 2023

TRANSCRIPT OF HEARING RE:
MEDLEY LLC LIQUIDATING TRUST'S MOTION TO APPROVE SETTLEMENT
WITH CERTAIN FORMER INSIDERS OF THE DEBTOR
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 1:04 p.m.)

2 THE COURT: Good afternoon. Please be seated.

3 Nice to see you all.

4 Okay. We're gathered today -- together today for a
5 9019 hearing in Medley.

6 Mr. Carr.

7 MR. CARR: Good afternoon, Your Honor. For the
8 record, James Carr of Kelley, Drye & Warren on behalf of the
9 Medley LLC Liquidating Trust. It was established pursuant to
10 the Medley LLC Joint Plan of Liquidation, which was confirmed
11 on October 18th, 2021.

12 First of all, let me say, Your Honor, it's a
13 pleasure to be here live in and in person for the first time
14 in a long time. I think the last case, the committee case I
15 had before Your Honor, was probably Bayou Steel. And
16 ironically, that case ended, I think January or February of
17 2020.

18 THE COURT: I think it did.

19 MR. CARR: So it's --

20 THE COURT: I haven't --

21 MR. CARR: -- good to be --

22 THE COURT: -- seen you in person in many years.

23 MR. CARR: It's good to be here live and in person
24 and wearing my business shoes.

25 (Laughter)

1 MR. CARR: So, with me today in Court, Your Honor,
2 is Mr. Anthony Saccullo of Saccullo Business Consulting,
3 which was retained as the liquidating trustee of the Medley
4 LLC Liquidating Trust.

5 And attending virtually is Brandon Lewis of the law
6 firm of Reid, Collins & Tsai, which was retained as
7 litigation counsel for the Medley LLC Liquidating Trust.

8 And last, but not least, is Mr. Samis of Potter
9 Anderson, who is Delaware counsel for the liquidating trust.

10 Anyway, Your Honor, we are here today on the
11 liquidating trustee's motion for entry of an order pursuant
12 to Bankruptcy Rule 9019 and Section 105(a) of the Bankruptcy
13 Code, seeking approval of two proposed settlement agreements
14 of the trust's claims against certain former insiders that
15 are attached to the motion as Exhibits B and C.

16 Your Honor, before proceeding, it's been about 18
17 months since I last appeared before Your Honor. As such,
18 would Your Honor like to get a brief background of what's
19 happened in the case in the last 18 months before we proceed
20 with the motion?

21 THE COURT: I would. I think it's helpful.

22 MR. CARR: Okay.

23 THE COURT: Thank you.

24 MR. CARR: As Your Honor may recall, the plan
25 established a trust and Saccullo Business Consulting was

1 retained as the liquidating trustee to administer the trust's
2 assets for the benefit of unsecured creditors.

3 After the plan went effective on October 18th of
4 2021, the liquidating trust got access to the debtor's books
5 and records, which, as you may recall, the committee tried to
6 do numerous times during the case, but we were unsuccessful.

7 Anyway, the liquidating trust began investigating
8 potential claims and causes of action against former
9 directors, officers, insiders, recipients of preference
10 actions, et cetera. As part of its investigation, the
11 liquidating trust analyzed the -- started out by analyzing
12 the allegations of the SEC had made against the debtor,
13 against Medley Management, the debtor's former managing
14 member, and certain of the directors and officers.

15 In March of 2022, after several months of
16 negotiations with numerous parties, the liquidating trust,
17 Medley Management, and certain of the directors and officers
18 reached an agreement that was dependent on reaching agreement
19 with the SEC that would ultimately result in about \$10
20 million distributed to the bondholders in this case, in
21 exchange for release of what we call the "non-covered
22 insurance claims," like, for example, avoidance actions.

23 In May of 2022, the SEC issued an administrative
24 order that imposed a ten-million-dollar civil penalty against
25 the respondents and granted them a dollar-for-dollar credit

1 if they paid those amounts into the liquidating trust for the
2 benefit of the debtor's bondholders, which, as Your Honor may
3 recall, had like a hundred-and-twenty-five-million-dollar
4 claim. And again -- well, not "again." But I believe the
5 bondholders comprised about 98 percent of the unsecured
6 creditor pool in this case.

7 As we were negotiating with the SEC, the primary
8 goal of the liquidating trustee was to get the moeny into the
9 hands of the bondholders because the bondholders were
10 comprised of mostly what we call "mom and pop bondholders,"
11 instead of sophisticated bondholders. So the liquidating
12 trustee wanted the funds to flow through the trust for
13 distribution, instead of having the SEC distribute the money
14 to the bondholders, pursuant to the Federal Fund Act, which
15 can be very lengthy, complicated. And there may be
16 bondholders who would not know that they had to then file
17 another proof of claim to get their recovery.

18 Since the Chapter 11 professionals at that time had
19 not yet been paid in full the amounts that were awarded by
20 Your Honor pursuant to the amended final fee order, the
21 liquidating trustee had to get these professionals to waive
22 their right to be paid on their administrative claim, in
23 order to allow the unsecured claim -- the unsecured
24 distributions to be made firsts.

25 These administrative claims amounted to about \$2.7

1 million with the primary firms reaching an agreement with the
2 liquidating trustee, being Morris James, B. Riley, Kelly
3 Drye, Potter Anderson, FTI, KCC. These administrative
4 claimants, Your Honor, will be paid after the -- if the
5 settlement agreement is, in fact, approved by Your Honor
6 today, will be paid shortly after court approval.

7 In any event, as part of the agreement with the
8 SEC, the trust had to distribute the \$10 million with the
9 week of receipt of the funds. And in August of 2022, the
10 trust received \$10 million and transferred that amount to
11 U.S. Bank in its capacity as indenture trustee. U.S. Bank,
12 in that capacity, then distributed the funds to DTC. DTC
13 then distributed the funds to brokerage houses, and the
14 brokerage houses to the bondholders. This way, we were
15 guaranteed of getting the money into the hands of the
16 bondholders.

17 And the \$10 million, it's important to note, Your
18 Honor, is basically an 8 percent recovery. And I don't know
19 if Your Honor recalls -- probably not -- by the disclosure
20 statement provided an estimated recovery of about 2 percent.
21 So the 8 percent recovery was a tremendous result thus far in
22 the case.

23 There are two settlement agreements that are the
24 subject of today's hearing. Both agreements are the
25 culmination of arm's length, intense negotiations that lasted

1 more than a year between the liquidating trustee and the
2 insiders.

3 I will briefly introduce the circumstances
4 surrounding the entering of both agreements, and Mr. Lewis
5 will explain in greater detail the relevant terms of the
6 agreements, the importance to the trust of both agreements,
7 the nontraditional consideration being provided by one of the
8 agreements, and why this Court should, in fact, approve both
9 agreements.

10 So, shortly after the SEC settlement that I
11 described earlier, the liquidating trust began negotiating
12 the resolution of the trust's, what we call "covered claims,"
13 claims that are covered by insurance. There were two
14 categories of covered claims. The liquidating trust had one
15 -- bifurcated them based on conduct that occurred prior to
16 April 30th, 2019. And the second category is based on
17 conduct that occurred on and after April 30th, 2019. And
18 I'll explain why we had two categories, Your Honor.

19 On May 25th, 2022, the parties agreed to mediate
20 all the covered claims before Judge Jed Melnick of JAMS. At
21 that mediation session, the insurance tower that we referred
22 to in the motion as the "Allianz tower" denied that it had
23 coverage for these claims. The denial of coverage prevented
24 the parties from settling all covered claims.

25 The liquidating trust and the insiders agreed to a

1 second mediation to focus now on what we call the "pre April
2 30th claims," and that second mediation session took place on
3 June 8th of 2022; and again, it was an all-day session hosted
4 by Jed Melnick. At the end of the day, the liquidating trust
5 and the insiders agreed in principle to settle the pre April
6 30 claims in exchange for a payment of \$6.7 million.

7 The liquidating trust and the insiders then began
8 working to document the agreement in principle, and that
9 process took about eight months to accomplish what is
10 ultimately before Your Honor as Exhibit B to the motion.

11 While the parties were drafting that settlement
12 agreement, they continued to pursue a parallel track of
13 trying to resolve the post April 30 claims. So the parties
14 went to a third mediation on August 30th of 2022, the
15 mediation this time was before retired District Court Judge
16 Gerald Rosen of JAMS. And this third mediation, like the
17 others, basically took the entire day.

18 At the end of the mediation, Your Honor, the
19 parties failed to reach an agreement. Judge Rosen proposed
20 to break the stalemate through a mediator's proposal and the
21 parties agreed. Judge Rosen indicated that \$6.4 million
22 would be a fair resolution of the case when considering all
23 of the factors, the defenses and the risks.

24 Judge Rosen also indicated that part of the
25 settlement should include an assignment of the insiders'

1 rights against the Allianz tower to the liquidating trust.
2 Again, the parties then worked on preparing an acceptable
3 agreement memorializing this agreement in principle, and that
4 took about five months. But the end result, Your Honor, is
5 what you see before you that's attached to the motion as
6 Exhibit C.

7 This settlement, Your Honor, the liquidating trust
8 is being provided with the opportunity to recover 6.4 million
9 through an assignment of the insiders' claims against the
10 insurance companies that comprise what we call the "Allianz
11 tower" because those insurance companies have declined to
12 provide coverage for the post April 30 claims. So what does
13 that mean? Absent a settlement with these insurance
14 companies, the trust will then have to proceed to arbitration
15 to demonstrate that, in fact, coverage exists of the post
16 April 30 claims.

17 So, Your Honor, just there are a couple of other
18 matters I'd like to mention that are ongoing right now in
19 connection with this case.

20 As Your Honor may know, there were two lawsuits
21 that were filed, two preference -- to avoidance action
22 complaints that were filed recently:

23 One was against RSM. In that complaint, the trust
24 is seeking to avoid and recovery about \$2 million.

25 And the second avoidance action complaint was filed

1 against Eversheds Sutherland. And in that complaint, the
2 trust is seeking to recover about \$3.5 million.

3 Both complaints have not yet been served, as we are
4 in discussions with both RSM and Eversheds to see if some
5 type of consensual resolution can be resolved.

6 But as Your Honor may also know, on January 23rd,
7 the trustee, the liquidating trustee, filed a motion seeking
8 to vacate two orders that were entered by this Court in
9 connection with the retention of Eversheds: One was the
10 retention order retaining Eversheds Sutherland as special
11 litigation counsel, and the second order was the amend -- at
12 least that portion fo the amended final fee order that
13 awarded fees to Eversheds. That motion has been, again,
14 adjourned, I think for 30 days, while the parties are
15 discussing settlement. So that's why that has -- motion has
16 not yet been be -- brought before Your Honor.

17 So, unless Your Honor has any questions, I will
18 turn the virtual podium over to Mr. Lewis.

19 THE COURT: I guess my only question is: Once I
20 approve these settlements, what's left in terms of assets
21 that the liquidating trust has, other than, I guess the two
22 avoidance actions and any recovery as a result of potential
23 reconsideration or vacation of the prior orders?

24 MR. CARR: Your Honor, there -- we believe that all
25 actions have been filed.

1 THE COURT: Okay.

2 MR. CARR: There have been a couple of settlements
3 without actions being filed. So, once the -- what I'll call
4 the "Tower B," the Allianz tower insurance issue is resolved,
5 then there will be no other assets that will need to be
6 brought before Your Honor. And at that point, hopefully
7 final distributions can be made and then we can close the
8 case. Not being an expert in arbitration, Your Honor, my
9 understanding is that that process could take a bit of time
10 to conclude.

11 THE COURT: And is it -- and I apologize if you
12 said this. Is it binding arbitration?

13 MR. CARR: It is.

14 THE COURT: Okay. Okay.

15 MR. CARR: Okay?

16 THE COURT: Thank you.

17 MR. CARR: Thank you.

18 Mr. Lewis, are you out there?

19 MR. LEWIS: Yes.

20 THE COURT: Okay.

21 MR. LEWIS: I'm here.

22 THE COURT: I can see you.

23 MR. CARR: Okay.

24 THE COURT: I don't think you can see him.

25 MR. LEWIS: Okay.

1 THE COURT: Here he is. Good afternoon, Mr. Lewis.

2 MR. LEWIS: Good afternoon, Judge Owens. And
3 first, for the record, my name is Brandon Lewis, I'm with the
4 law office of Reid, Collins & Tsai, and we serve as special
5 litigation counsel to the liquidating trustee.

6 I want to begin by thanking Your Honor for allowing
7 me to appear remotely, it saves my client some money, it
8 saves me some time, it allows me to be with my family a
9 little bit more. So just, first of all, on a personal note,
10 I just want to thank you.

11 So the procedural posture, I'm here to talk about
12 Docket Number 622, the trustee's 9019 motion. Docket Number
13 622 was filed on February 22nd, 2023. It recited that
14 objections to the motion were due on or before March 8th,
15 2023, and that the hearing would be today at this time, March
16 23rd.

17 Notice was served that same day to all parties
18 entitled to notice, as well as to representatives for the
19 difference insurance towers.

20 I will note that my read of the docket is that no
21 objections were filed by the March 8th deadline; and, indeed,
22 no objections have been filed prior to the start of this
23 hearing. So, as such, it appears that the trustee's hearing
24 is unopposed and the allegations in our motion are
25 uncontested.

1 So Your Honor may be wondering if unopposed and
2 uncontested, why are you looking at a screen with my face on
3 it. And Your Honor, it comes down to three reasons, and Mr.
4 Carr touched on them:

5 One is our view of the importance of this
6 settlement to the trust.

7 Another is the complexity of the settlement that's
8 being put before the Court.

9 And the third is the fact that this -- these
10 settlements include what I'll describe as "nontraditional
11 consideration."

12 Turning to the first point, the importance of these
13 settlements. They monetize one of the most valuable assets
14 that the trust has; namely, the debtor's claims against its
15 former insiders.

16 It also concerns the disposition of insurance
17 proceeds, which were the subject of motion practice in this
18 Court back in December 2021 and the comfort order at Docket
19 Entry 542.

20 But in broad strokes, this settlement resolves the
21 trust's claims against individuals who qualify as insured
22 persons under the different towers of insurance referenced in
23 the 9019 motion, including the debtor's former insiders. And
24 it provides settlement consideration to the trust in a total
25 amount of \$13.1 million, with \$6.7 million of that to be paid

1 in cash within the next 30 days or so, and another \$6.4
2 million in value to come, either at the same time, or soon
3 thereafter.

4 And that's the bifurcation that Mr. Carr alluded to
5 and also leads to the complexity that I wanted to address in
6 what would otherwise be perhaps a simple settlement agreement
7 and a short 9019 motion.

8 So, as Mr. Carr described, this -- I'll call it a
9 "global deal with insiders" -- is divided into two distinct
10 and independent parts, reflected by the two settlement
11 agreements attached to the motion as Exhibit B and Exhibit C.

12 Exhibit B, as Mr. Carr explained, is the settlement
13 of insured claims for acts that occurred before April 30th,
14 2019. Our motion refers to those as the "pre April 30
15 claims."

16 Exhibit C is the settlement of insured claims for
17 acts that occurred on or after April 30th, 2019. Our motion
18 refers to those claims as the "post April 30 claims."

19 So, in other words, the motion in front of the
20 Court concerns both the pre April 30 claims and the post
21 April 30 claims.

22 Now why the bifurcation? Mr. Carr went into this,
23 so I don't want to belabor the point, but there are three
24 different reasons for that bifurcation and the resulting
25 complexity:

1 First is you've got different insurance towers
2 covering different periods of time, and we addressed this in
3 the motion.

4 The second reason is that this settlement concerns
5 two separate sets of claims that are entirely distinct and
6 they differ, in terms of their alleged misconduct, that the
7 sets of claims do not overlap.

8 (Off the record. Back on the record)

9 MR. LEWIS: -- distribution that the debtor made to
10 its members in the period of a quarterly basis leading up to
11 April 2019.

12 The post April 30 claims, on the other hand,
13 concern alleged non-ratable benefits that were granted to the
14 debtor's managing member at the time, Medley Management,
15 Incorporated -- to the detriment of the debtor's other
16 members, we allege -- as well as what we describe as
17 "improper payments" to insiders, as well as an alleged
18 running of the debtor for the sole and exclusive benefit of
19 Medley Management, Incorporated. So these post April 30
20 claims, they started in June 2019, and the allegations
21 relating to the trust's bad faith claim -- I'll frame it that
22 way -- didn't start until May 2020.

23 And the third reason, as Mr. Carr alluded to, for
24 the bifurcation and complexity is the fact that the Allianz
25 tower denied coverage of the trustee's claims, specifically

1 the post April 30 claims, which resulted in bifurcated
2 negotiations and negotiations of the different settlement
3 agreements at different points in time.

4 So that denial also prompted what I described as
5 the "nontraditional consideration," in the form of the
6 assignment that Mr. Carr described. And the way that the
7 parties contemplate that assignment working, as described in
8 the motion and as set forth in Exhibit C to the motion, is
9 that, upon entry of the 9019 order granting these
10 settlements, payment of the \$6.4 million to resolve the
11 trust's post April 30 claims is to be paid within 15 business
12 days to the trust.

13 If that payment does not occur by that deadline,
14 then the settling insiders have the option to, in lieu of
15 payment, provide the trust with an assignment of their first-
16 party claims against the Allianz tower for what we've
17 described as a "wrongful denial of coverage," whether that is
18 a breach of the duty to defend or otherwise. And in exchange
19 for that assignment, the insiders will see -- will receive a
20 covenant not to sue them from -- by the trust, relating to
21 the post April 30 claims. And as Mr. Carr alluded, the
22 intent is: If and once the assignment goes effective, the
23 trust will then prosecute those assigned first-party claims
24 in arbitration.

25 So that is the general structure of the settlements

1 before the Court. And unless the Court has questions, I'm
2 happy to turn to the substance of the motion.

3 THE COURT: I have no questions at this time.

4 Thank you.

5 MR. LEWIS: Thank you, Your Honor.

6 Your Honor, we respectfully -- the trust
7 respectfully asks that the Court approve this settlement
8 because it is a fair and equitable result of expansive, arm's
9 length dealing and bargaining.

10 I have been involved in the negotiation over these
11 claims for more than a year. I got started on it in December
12 of 2021. I can tell you that it involved hundreds of phone
13 calls and emails back and forth. It had three different
14 mediation sessions over the summer with two different
15 mediators. It's the culmination of thousands of hours of
16 attorney time and also, as referenced in the motion, dozens
17 and dozens of draft agreements across several months, trying
18 to nail down the exact terms now memorialized in Exhibits B
19 and C.

20 So, I mean, the total result are two different
21 agreements, each of which expand -- spans more than nine
22 single-spaced pages, plus glossaries and schedules, and even
23 an extra document, this assignment piece and nontraditional
24 consideration.

25 In fact, as further evidence of the arm's length

1 dealing, the trust and the settling parties couldn't even
2 come to an agreement on the value of the post April 30 claims
3 and, instead, went to Judge Rosen, former Chief Judge of the
4 Eastern District of Michigan, and it was Judge Rosen who,
5 after a day of mediation, made a mediator's proposal that
6 both parties ended up accepting.

7 I'll now turn to why, in our view, the settlements
8 before the Court are fair and equitable, according to the
9 Third Circuit's Martin factors. And I will do my best, Your
10 Honor, not to just rehash the motion, but instead, to just
11 touch on a few things that I think are worthy of the Court's
12 consideration when looking at this.

13 The first Martin factor is, of course, the
14 probability of success on the merits. Now I -- you want to
15 look at each of these sets of claims individually, I
16 recognize, and that, with respect to the pre April 30 claims,
17 the gist of those claims is that the debtor made quarterly
18 distributions to its members while it was insolvent, and
19 those are, therefore, a breach of fiduciary duties by the
20 insiders, we allege, and also, you know, breach of the duty
21 of loyalty.

22 Now the claims are seemingly straightforward. But
23 one thing to keep in mind is the perhaps ceiling of those
24 claims. In other words, probability of success on what and
25 for how much?

1 Well, as the Court is well aware, Delaware has a
2 three-year statute of limitations for breach of fiduciary
3 duty claims. The total of quarterly distributions that the
4 debtor made within three years of the petition date is less
5 than \$20 million. So, arguably, the ceiling for those claims
6 or damages on those claims starts at 20 million.

7 Layered onto that, there is also an argument that
8 the insiders would have been entitled to a settlement credit
9 related to the SEC settlement that Mr. Carr referenced under
10 the -- Delaware's Uniform Contribution Among Tort Feasors
11 Act, which arguably could bring the ceiling on damages
12 further down to where now we're talking about a breach of
13 fiduciary duty claim with a possible maximum damages amount
14 of less than \$15 million.

15 So that's the ceiling and that's where you start
16 before you start getting into thorny issues like insolvency.
17 The debtor's pre April 30 claims all rise and fall on
18 insolvency. If Medley, LLC wasn't insolvent at the time that
19 he made the quarterly distributions, arguably, those
20 quarterly distributions are not wrongful and there was no
21 fiduciary breach.

22 Further, it's not just an all-or-nothing game.
23 These are -- with respect to the distributions, they happen
24 quarter by quarter. And so the closer in time to the
25 bankruptcy that the potential targets could show insolvency

1 happened, the smaller the trust damages grow. Indeed, the
2 settling insiders here have vehemently contested insolvency
3 and have insisted to this very day that the debtor wasn't --
4 was, in fact, solvent even as of the bankruptcy, which would
5 zero out these claims.

6 So the result of all of that is that, with respect
7 to the pre April 30 claims, we're looking at a 6.7-million-
8 dollar settlement at roughly 50 percent or more of the
9 potentially maximum damages that the trust could have
10 recovered on those claims.

11 Turning now to the probability of success on the
12 post April 30 claims. Again, those related to non-ratable
13 benefits and allege bad faith conduct in the management of
14 the debtor.

15 The damage model for those claims, as the motion
16 recites, is about \$19 million. And I'll also -- I just
17 talked about ceiling. The ceiling on those damages stays
18 about there. There are no limitations issues. We're talking
19 about things that happened within two years of the petition
20 date. These breach of fiduciary duty claims do not dependent
21 on insolvency. And to the extent that there could be any
22 settlement credit related to these claims, its effect would
23 be minimal.

24 But the insiders have raised defenses to these
25 claims. We are pre-suit. There have been no dispositive

1 motions yet. And there are fact issues to be sorted out any
2 time you have questions in a case like the post April 30
3 claims, where you're talking about corporate governance. So
4 a reasonable discount off of that nineteen-million-dollar
5 damage model is appropriate.

6 Turning now to the complexity, expense, and delay
7 of litigation; in other words, if we couldn't settle this,
8 what would a trial -- what would discovery and trial look
9 like.

10 Well, these -- a case on these claims would involve
11 both insolvency and corporate governance though -- on the
12 breach of fiduciary duty under Delaware law. Those tend to
13 be complex, lengthy, and expensive cases to litigate, just
14 based on my experience in these things.

15 The discovery here would involve terabytes of ESI
16 needed to be collected, produced, hosted.

17 And then you've got your -- what I might describe
18 as "thorny expert issues" related to insolvency on the pre
19 April 30 claims, and perhaps the necessity of experts
20 testifying as to corporate governance principles with respect
21 to the post April 30 claims. And so a reasonable budget for
22 the trust's experts to work up and put together testimony,
23 both during discovery and at trial, could easily reach over
24 \$500,000. That's money that would otherwise or could
25 otherwise go to pay the estate's creditors.

1 And also, a lengthy, fact-intensive discovery
2 process often begets a lengthy and expensive trial. And so -
3 - which can then lead to a lengthy and expensive appeal
4 process. And so all of that can be shortcut with the
5 settlements before the Court today.

6 And then, turning to the third Martin factor, the
7 difficulties in collection. And with respect to, if we go
8 forward with these claims and if we ultimately prevail, what
9 difficulties might the trust have in collecting the full
10 amount of this, you know, eight-figure judgment that we would
11 be seeking? Well, we see three primary difficulties there,
12 Your Honor:

13 The first is that, at the end of the day, after
14 discovery, after trial, after appeals, there will be little
15 to no insurance money left to collect from. The Allianz
16 tower has denied coverage, leaving what we believe to be at
17 most \$10 million in remaining insurance policies and limits.
18 These are wasting insurance policies, Your Honor, as the
19 motion references. So that, with each dollar spent on
20 defense costs and defense expenses through discovery, trial,
21 and appeals, the dollar amount continues to decrease lower
22 and lower and lower.

23 Also, we understand that there are certain defense
24 counsel related to the SEC inquiry who remain unpaid. They
25 deserve to be paid and I believe should be paid. Under the

1 insurance policies, they're entitled to be paid. And so that
2 would take another chunk out of what currently remains as
3 less than \$10 million.

4 And even then, the defendants in the litigation,
5 the defendants' expert fees, discovery costs, litigation
6 costs, those would all drain against the ten-million-dollar
7 policy, such that this set of, I'll call them "melting ice
8 cubes," could be reduced to nothing by the time it comes time
9 to collect a judgment.

10 And after all of that cost and after all of that
11 delay, the trust would be looking at recovering against
12 individuals. These insiders, they're individuals. We would
13 be looking to liquid, nonexempt assets, which is -- you know,
14 which can be its own adventure.

15 But layered on top of that is that certain of these
16 individuals have already paid \$10 million in liquid assets to
17 settle the SEC matter, the \$10 million that Mr. Carr
18 referenced that has gone to bondholders.

19 And so adding that risk on top of the delay,
20 inconvenience, and problems that can arise in post-judgment
21 discovery, seeking out nonexempt assets, liquidating those
22 assets, on top of the specter of perhaps bankruptcy risk
23 while we pursue those things, argues in favor of a settlement
24 now in the amounts that we have put forward to the Court.

25 And finally, I'll end with the paramount interest

1 of creditors, and it kind of flows from this discussion on
2 difficulty of collections. A settlement now avoids
3 substantial costs, delays, and risks, in exchange for a
4 reasonable result. And any settlement can do that. But this
5 one, in particular, allows the trust to get \$6.7 million in
6 cash, in the near term, and perhaps another \$6.4 million in
7 cash or certainly a non-cash asset worth \$6.4 million shortly
8 thereafter.

9 And it does so -- that claim against the Allianz
10 tower is a much easier claim to liquidate or at least
11 monetize in its full amount than perhaps a claim against
12 insider -- individuals. It's an easier claim to prove. It's
13 like a breach of contract claim. It will be quicker to
14 judgment in the long -- in the grand scheme of things. There
15 would be no liquidity risk in seeking to collect a judgment
16 against an insurance company. And there should be little to
17 no bankruptcy risk in terms of pursuing a judgment --
18 pursuing to collect a judgment against an insurance company.

19 So, in sum, I believe you've got a fair and
20 equitable result before you here today, Your Honor. On the
21 pre April 30 claims, we've got \$6.7 million in cash to be
22 paid on claims that are perhaps worth less than \$15 million.
23 And on the post April 30 claims, we've got \$6.4 million in
24 value coming to the trust about that same time, within the
25 next 30 days.

1 You know, we had hoped to settle those post April
2 claims for, but 6.4 was Judge Rosen's mediator's proposal,
3 based on what he saw as representing a fair resolution of the
4 post April 30 claims and their fair value.

5 So, for these reasons, we'd respectfully ask the
6 Court to grant our 9019 motion and enter the order attached
7 as Exhibit A thereto.

8 THE COURT: Okay. Thank you.

9 MR. LEWIS: And if the Court has no further
10 questions, that's my presentation.

11 THE COURT: Okay. I appreciate that presentation
12 and I have no -- I have no questions at this time. Thank
13 you.

14 Let me ask for the record: Does anyone else wish
15 to be heard in connection with approval of the settlements
16 today?

17 (No verbal response)

18 THE COURT: Okay. Mr. Carr, did you want to
19 supplement the record?

20 MR. CARR: No, Your Honor. I'm just here in case
21 you had any questions.

22 THE COURT: Okay. No, I have no questions. I read
23 the motion prior to taking the bench and I thought it was
24 thoroughly explained in the motion. But the presentations of
25 you, as well as your colleague, were helpful, so thank you.

1 MR. CARR: Thank you.

2 THE COURT: Okay. Well, again, thank you for the
3 thorough briefing and presentations today on the settlements.

4 I'll note that the trust is here on an uncontested
5 basis seeking approval of these two important settlements.

6 I certainly understand the types of claims that
7 have been alleged and the difficulty in successfully
8 prosecuting and recovering them. I also understand the
9 expense and time that will be incurred in the pursuit of the
10 claims and the collections thereof if the trust was
11 ultimately successful and the attendant risks posed to
12 creditors' recoveries as a result thereof, including in light
13 of the fact that the insurance policies are wasting policies.

14 So I am very pleased to enter the settlement order
15 and find that you've met the Martin standards to obtain
16 approval of them.

17 I'll ask: Have you uploaded the order and can I
18 act on it forthwith? Mr. Samis?

19 MR. SAMIS: Your Honor, for the record, Chris Samis
20 from Potter, Anderson & Corroon.

21 The order hasn't been uploaded yet, it's in the
22 process of being uploaded, so it should be here shortly --

23 THE COURT: Okay.

24 MR. SAMIS: -- so ...

25 THE COURT: Excellent. Well, then I am hopeful

1 that I can have the entered [sic] approved today; and, if
2 not, first thing in the morning.

3 MR. SAMIS: Thank you, Your Honor.

4 THE COURT: All right. Thank you all for your hard
5 work and your efforts in pursuing these assets for the
6 benefits of creditors. It seems as if the recovery here is
7 going to be much greater than as initially projected. And I
8 look forward to learning about the ultimate number in the
9 end. It may take a while, but it sounds as if there could be
10 a real recovery here that you can all be proud of. So thank
11 you for your efforts in that.

12 With that, we'll stand adjourned.

13 MR. CARR: Thank you, Your Honor.

14 THE COURT: Thank you all very much. Take care.

15 MR. SAMIS: Thank you, Your Honor.

16 (Proceedings concluded at 1:39 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



March 23, 2023

Coleen Rand, AAERT Cert. No. 341
Certified Court Transcriptionist
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